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FOR DISCUSSION ONLY

PROPOSED REVISION OF THE UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

OCTOBER, 1999

PROPOSED REVISION OF THE UNIFORM PARENTAGE ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

DRAFTING COMMITTEE TO REVISE THE UNIFORM PARENTAGE ACT

HARRY L. TINDALL, 600 Travis Street, Suite 2800, Houston, TX 77002-3094, *Chair*
JACK DAVIES, Court of Appeals, Judicial Building, 25 Constitution Avenue, St. Paul, MN 55155
LYLE W. HILLYARD, 175 E. 100, N., Logan, UT 84321
PETER K. MUNSON, P.O. Box 1949, 123 S. Travis Street, Sherman, TX 75091-1949
JAMES C. NELSON, Montana Supreme Court, P.O. Box 203001, Helena, MT 59620-3001
ARTHUR H. PETERSON, 350 N. Franklin Street, Juneau, AK 99801
ELWAINE F. POMEROY, 1415 S.W. Topeka Boulevard, Topeka, KS 66612-1818
BATTLE R. ROBINSON, 104 W. Market Street, Georgetown, DE 19947
ROBERT C. ROBINSON, P.O. Box 568, 12 Portland Pier, Portland, ME 04112
JOHN J. SAMPSON, University of Texas School of Law, 727 E. 26th Street, Austin, TX 78705-3299, *Reporter*

EX OFFICIO

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV, 25332, *President*
ROBERT C. ROBINSON, P.O. Box 568, 12 Portland Pier, Portland, ME 04112, *Division Chair*

ABA ADVISOR

NINA VITEK, 222 E. Mason Street, 2nd Floor, Milwaukee, WI 53202-3602, *Advisor*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019-5080, *Executive Director*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104-4047, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

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PROPOSED REVISION OF THE UNIFORM PARENTAGE ACT

PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws addressed the subject of parentage as early as 1922. Several Acts on the subject have been adopted throughout the 20th Century addressing the special needs of a nonmarital child. In 1973, the Conference approved the first UNIFORM PARENTAGE ACT (UPA, 1973), which has been adopted in 19 states stretching from Delaware to California; in addition, many states have enacted portions of the Act. This landmark Act declared equality for parents and children without regard to marital status of the parents. The Act set forth a set of rules for presumption of parentage, shunned the term "illegitimate," and chose instead to employ the term "child with no presumed father." The Act has contributed much to bringing about a more enlightened approach to some sensitive issues that can divide people of goodwill.

Case law has not been so kind. Widely differing treatment on subjects not dealt with by the Act has been common. For example, California holds that a nonmarital father does not have standing to sue an intact family to assert his rights of fatherhood. Two other UPA states, Colorado and Texas, have declared that under their state constitutions the father may not be denied such rights. Similarly, the binding effect of a judgment on the child or on others seeking to claim a benefit of the judgment or collaterally attack that judgment is very confused in the case law. UPA (1973) was entirely silent as to the relationship between a divorce and a determination of parentage.

Other major developments include the fact that genetic testing has undergone a sea change since 1973. Further, the federal government initiated an ever-expanding Title IV-D program mandating some quite prescriptive rules in this area if the state is to retain the substantial federal subsidy for child support enforcement. Beginning in the 1980s, states began to adopt paternity registries in an attempt to deal with late claims of parentage when the mother wishes to relinquish the child for adoption. The Conference adopted the Uniform Putative and Unknown Fathers Act in 1989 (UPUFA) to deal with the rights of such men, but the Act has not been enacted in a single state. In 1989 the Conference also adopted the Uniform Status of Children of Assisted Conception Act (USCACA). Assisted reproduction and gestational agreements have become commonplace in the 1990s, long after the promulgation of UPA (1973). USCACA more closely resembled a model act in that it provided two diametrically opposed options regarding "surrogacy agreements." To date, only two states have enacted the Act, with each choosing a different option.

The current draft attempts to integrate the best of UPA (1973), along with provisions covered by UPUFA (1989) and USCACA (1989). Article 2, Parent-Child Relationship, will look familiar to past users of the Act. Article 3, Voluntary Acknowledgment of Paternity, is entirely new and is driven by federal mandates in an effort to force states to adopt nonjudicial means to achieve early determination of paternity. Article 4, Paternity Registry, is entirely new and is an attempt to write a well-considered registry law that states may consider. Article 5, Genetic Testing, comprehensively covers that subject in nine separate sections [UPA (1973) had but one section]. Article 6, Proceeding to Determine Parentage, the traditional litigation section, while Article 7 (Parentage Based on Equitable Estoppel) is the first effort to codify a growing subject of case law. Article 8, Child of Assisted Reproduction, recodifies the same subjects covered in UPA

(1973) and USCACA (1989) without much change. Article 9, Gestational Agreement, closely follows USCACA (1989).

Our mission is to write workable and sound rules for determining the parentage of a child. This Act does not approve or condemn behavior that some people might find troubling. Most observers are alarmed by the high nonmarital birthrate in this country, but our goal is to resolve serious issues concerning parentage. The primary focus remains on protecting the child, who had no voice in often complex circumstances giving rise to the child's birth. The Act does not deal with reproductive rights or attempt to regulate assisted reproduction activities. This Act does not attempt to list the rights of parents; that is left to other state law. Finally, in contrast to UPA (1973), issues of custody, visitation, and support are avoided because existing state law amply covers these issues.

The Drafting Committee has met four times to produce this draft. We have been fortunate to have the past Chairs of UPUFA (Arthur Peterson) and USCACA (Robert Robinson) to serve on the Committee. We have also had very valuable input from our advisors and observers from the child support community, prosecutors, matrimonial lawyers, genetic testing laboratories, and the federal Office of Child Support Enforcement, Department of Health and Human Services.

PROPOSED REVISIONS OF THE UNIFORM PARENTAGE ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Parentage Act.

SECTION 102. DEFINITIONS. In this [Act]:

(1) "Acknowledged father" means a man who has established a father-child relationship under Section 303.

(2) "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.

(3) "Assisted reproduction" means a pregnancy resulting from means other than sexual intercourse. The term includes:

(A) artificial insemination;

(B) donation of eggs;

(C) donation of embryos;

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

(E) intracytoplasmic sperm injection.

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

(5) "Commence", with respect to the initiation of a proceeding for relief under this [Act], means to file the initial [pleading or request for a determination of parentage] in [the appropriate forum].

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

(7) "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

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

(B) a woman who gives birth to a resulting child [, except as otherwise provided in Article 9].

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

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

(A) analysis of deoxyribonucleic acid;

(B) determination of the presence or absence of common blood-group antigens, red-blood-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

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

(11) "Intended parent" means an individual who enters into an agreement providing that he or she will be the parent of a child born to a gestational mother through assisted reproductive technology irrespective of a genetic relationship.

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

(13) "Mother" [except as more specifically defined in Article 8 or 9] means the female of any age who gives birth to a child.

(14) "Parent" of a child means:

(A) the woman who is the gestational mother of a child [, except a gestational mother under the circumstances described in Article 9];

(B) an adoptive mother or father; or

(C) a man who is:

(i) presumed to be the father under Section 204;

(ii) acknowledged to be the father under Section 303; or

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

(15) "Parent-child relationship" means the legal relationship between a child and a parent of the child. It includes the mother-child relationship and the father-child relationship.

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

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

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

(17) "Presumed father" means a man who, by operation of law under Section 204, is recognized to be the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(18) "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the individual in question is the genetic 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.

(19) "Specimen" means a sample of one or a combination of blood, buccal cells, bone, hair, or other body tissue or fluid taken from an individual for genetic testing.

(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. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a State.

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

Reporter's Notes

The definition of "specimen" in subsection (18) lists constituent elements of "body tissue and fluids" in order to clarify biological terminology for the legal profession. In states with statutes employing only the broad terms, courts and lawyers have evidenced confusion about the fact that buccal cells, bone, hair, etc. are "body tissues." Subsection (19) is based on the definition of "State" in the Uniform Child-Custody Jurisdiction and Enforcement Act Section 102(15)-(16). Subsection (20) is derived from Uniform Interstate Family Support Act Section 101(20).

SECTION 103. SCOPE OF [ACT].

(a) This [Act] governs every determination of the parentage of a child by a court of competent jurisdiction[, and appropriate agency] of this State.

(b) This [Act] does not create, enlarge, or diminish parental rights and duties as established by other law of this State.

Section 103

[(c) This [Act] does not authorize or prohibit an agreement between a gestational mother and an intended parent in which the gestational mother relinquishes all rights as a parent of a child born through assisted reproduction, and which provides that the intended parent becomes the parent of the child.]

Reporter's Notes

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

SECTION 104. COURT OF THIS STATE.

The following courts are authorized to determine parentage under this [Act]:[list appropriate courts]

Reporter's Note

Source: Uniform Interstate Family Support Act §102; Uniform Child Custody Jurisdiction and Enforcement Act §102(6). state courts that are authorized to determine parentage vary enormously, i.e. district, superior, chancery, surrogate, county, family, probate, etc. Identifying the appropriate courts is left to each enacting jurisdiction.

SECTION 105. PROTECTION OF PARTY AND CHILD.

This [Act] is subject to other law of this state governing the health, safety, and liberty of a

party or child that could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, and if appropriate, the child's day-care facility and school.

Reporter's Notes

Source: Uniform Child Custody Jurisdiction and Enforcement Act §209(e).

ARTICLE 2

PARENT-CHILD RELATIONSHIP

SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

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

(1) proof of the woman's having given birth to the child [, except as otherwise provided in Article 9];

(2) a determination of the woman's maternity of the child by a court; [or]

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

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

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

(1) an unrebutted presumption of the man's paternity of the child as provided in Section 204;

(2) the man's signing an unrescinded acknowledgment of paternity as provided under Article 3;

(3) a determination of the man's paternity of the child by a court;

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

(5) the man's consent to assisted reproduction by his wife under Article 8[; or

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

Reporter's Notes

Derived from UPA (1973), § 4, and expanded to include all possible bases of the parent-child relationship

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

Reporter's Notes

Derived from Massachusetts Gen. Laws ch. 209C, § 1. The broad statement according equal treatment to a nonmarital child is not to be construed to extend similar equality to parental rights. For example, Uniform Probate Code § 2-705(b) prohibits inheritance by a parent of a nonmarital child through intestate succession if the parent has not lived with the child as a regular member of the household.

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

Reporter's Notes

Derived from USCACA § 10. This may seem to state the obvious, but both the statement and the qualifier are is necessary because a literal reading of §§ 201-203 could lead to erroneous constructions without further explanation. The basic statement of the section is to make clear that a birth mother is not a parent once her parental rights have been terminated. Similarly, a man whose paternity has been established by acknowledgment or by court determination may subsequently have his parental rights terminated. The qualifier is necessary because other statutes may restrict other the rights of a parent. For example, Uniform Probate Code § 2-114(c) precludes a parent of a child (and the parent's family) from inheriting from the child by intestate succession "unless that natural parent has openly treated the child as his [or hers] and has not refused to support the child."

SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE.

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

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

(2) he and the 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 and the mother 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

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

(A) asserted his paternity of the child in writing [filed with the state agency responsible for maintaining birth records];

(B) agreed to be named as the child's father on the child's birth certificate; or

(C) promised to support the child as his own in a written agreement.

(b) A father-child relationship established by this section may be contested only as provided in Article 6 or 7.

Reporter's Notes

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

ARTICLE 3

VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Introductory Comment

Although voluntary acknowledgment of paternity has long been an alternative to the contested paternity suit, action by the U.S. Congress hasfundamentally changed the procedure. Under UNIFORM PARENTAGE ACT § 4 (1973) the inclusion of a man's name on the child's birth certificate merely created a presumption of paternity. In enacting the Personal Responsibility at Work Opportunity Reconciliation Act in 1996 (PRWORA, also known as the Welfare Reform Act) Congress tied federal child support enforcement funds to a requirement that all states to enact laws that greatly strengthen the effect of a man's voluntary acknowledgment of paternity. In brief, a completed valid acknowledgment is to be considered the equivalent of a judicial determination of paternity. This article provides a comprehensive version for the states to comply with this quasi-mandate of Congress (quasi because it is not a substantive mandate, but given the fact that it is tied to a federal subsidy has virtually an identical effect to a substantive mandate). That is, all states are sure to comply with federal law in order to keep federal money flowing.

A comprehensive approach is required because the congressional act is badly flawed in many respects. Primary among these flaws is the fact that Congress did not take into account the fact that a mother who, in cooperation with the actual father of the child, seeks to have the man acknowledged the child may be married to another man. By virtue of the laws in universal effect, including this version of the parentage act, the husband of the mother is the presumed father of the child, see § 204, *supra*. Thus, by ignoring the real possibility that there will be both an acknowledging father and a presumed father, Congress inadvertently left it to the states to sort out the difficulties inherent in such a fact situation. Moreover, Congress directed that the acknowledgment could both be rescinded within a particular timeframe and challenged—without stating a timeframe. This too is dealt with in Article 3.

The congressional language creating the challenge to the drafting committee is as follows:

> § 666. Requirement of Statutorily Prescribed Procedures To Improve Effectiveness of Child Support Enforcement.
>
> **(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.
>
> * * *
>
> (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 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.

* * *

(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.

SECTION 301. ACKNOWLEDGMENT OF PATERNITY. The mother of a child and a man claiming to be the father of the child may execute an acknowledgment of paternity to establish the man's paternity.

SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.

(a) An acknowledgment of paternity must be:

(1) in writing;

(2) signed under penalty of perjury by the mother and by a man seekingto establish his paternity; and

(3) state whether the child whose paternity is being acknowledged has an adjudicated father or presumed father.

(b) If the mother or the acknowledging man declares in the acknowledgment that a different man is a presumed father, the acknowledgment must be accompanied by a denial of paternity signed by the presumed father or the acknowledgment is void.

(c) If the mother declares in the acknowledgment that there is an adjudicated father, the acknowledgment is void.

Reporter's Notes

Federal law, 42 U.S.C. 666(a)(5)(C), mandates that in order to retain the subsidy for child support enforcement, state law must provide procedures for the voluntary acknowledgment of paternity. This is simple to mandate, but the application is quite complicated. Problems apparently not foreseen by Congress include fact situations in which the mother is married to someone other than the man who is willing to admit to paternity. Federal law gives no guidance. Recognizing that a large number of births will occur under such circumstances, several states have passed laws allowing the presumed father to sign a denial of paternity, which must be filed as part of the acknowledgment. The draft adopts this common sense solution; otherwise the acknowledgment would have no legal consequence because it cannot affect the legal rights of the presumed father.

SECTION 303. DENIAL OF PATERNITY.

(a) A presumed father of a child may execute a denial of his paternity of that child.

(b) A denial of paternity must be:

(1) in writing; and

(2) signed by the presumed father under penalty of perjury.

(c) A man who has previously been adjudicated to be the father of a child may not sign a valid denial of paternity. A challenge of the previous adjudication is effective only under other provisions of this [Act].

SECTION 304. SPECIAL RULES FOR ACKNOWLEDGMENT OR DENIAL OF PATERNITY.

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

(b) An acknowledgment or denial of paternity may be signed before the birth of the child, and takes effect on the birth of the child or the filing of the document, whichever occurs later.

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

SECTION 305. EFFECT OF ACKNOWLEDGMENT AND DENIAL OF PATERNITY.

(a) Except as otherwise provided in subsection (b), a signed acknowledgment of paternity filed with the [agency maintaining birth records] constitutes a legal finding of paternity of a child equivalent to a judicial determination and upon the acknowledging father all of the rights and imposes all of the duties of a parent by virtue of law.

(b) An acknowledgment of paternity in which the signatories falsely deny the existence of a presumed father is voidable within the time provided for rescission under Section 306 or within the time for challenge under Section 307.

(c) A denial of paternity signed by a presumed father filed with the [agency maintaining birth records] in conjunction with an acknowledgment of paternity signed by the mother and the acknowledging father constitutes a legal finding of nonpaternity of the presumed father and discharges the presumed father from all the rights and duties of a parent.

SECTION 306. NO FILING FEE FOR ACKNOWLEDGMENT.

The [agency maintaining birth records] may not charge a fee for the filing of the acknowledgment.

SECTION 307. PROCEEDING FOR RESCISSION.

(a) Subject to the requirements of subsection (b), a signatory may maintain a proceeding for rescission of an acknowledgment of paternity or a denial of paternity.

(b) A proceeding for rescission of an acknowledgment or denial of paternity must be commenced before the earlier of:

(1) the expiration of 60 days after the filing of the acknowledgment or denial of paternity with the [agency maintaining birth records]; or

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

(c) A proceeding to rescind an acknowledgment or denial of paternity must be conducted in the same manner as a proceeding to determine parentage under Article 6.

SECTION 308. CHALLENGE AFTER EXPIRATION OF TIME FOR RESCISSION.

(a) A signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial. A proceeding to challenge an acknowledgment or denial of paternity commenced after the period for rescission provided in Section 306 may be brought only on the basis of fraud, duress, or material mistake of fact. The party challenging the acknowledgment or denial bears the burden of proof.

(b) A proceeding to challenge an acknowledgment or denial of paternity must be conducted in the same manner as a proceeding to determine parentage under Article 6.

(c) A proceeding to challenge an acknowledgment or denial of paternity may not be commenced more than [two years] after an acknowledgment or denial is filed with the [agency maintaining birth records].

Reporter's Notes

This section reflects the decision of the Drafting Committee to require an adjudicatory process to rescind a voluntary Acknowledgement of paternity. A federal statute, 42 U.S.C. 666(a)(5)(c)(D)(ii), mandates that in order to retain the federal child support subsidy, state law must provide a right of rescission to signatories of an acknowledgment of paternity. However, the federal statute does not prescribe the method for the rescission. Because an acknowledgment of paternity (or a denial) is an act of significant legal consequence, the proposed adjudicatory requirement will result in a legal determination of the child's parentage. The Drafting Committee believes that a system that allows a signatory to merely file a rescission with the state bureau of vital statistics would be an unwise policy choice. The adjudicatory procedure may be either judicial or administrative, at the option of the state legislature. Appendix to Section 307, infra, provides a table identifying the methods with which various states currently address the issue.

SECTION 309. PROCEDURE FOR RESCISSION OR CHALLENGE.

(a) Every signatory to an acknowledgment of paternity or denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

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

(c) On a determination of paternity or nonpaternity, the court shall direct the [agency maintaining birth records] to amend the birth record of the child in accordance with the court's determination.

SECTION 310. RATIFICATION BARRED. A court or administrative entity conducting a judicial or administrative proceeding is neither required nor 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 signed in another State if the acknowledgment has been signed in apparent 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 and denial of paternity.

(b) The forms prescribed under this section must:

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

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

(3) state whether the mother, the man claiming to be the father, or the presumed father, if any, is a minor.

(c) The form for acknowledgment of paternity must inform the mother and the man claiming to be the father that his signing of the acknowledgment of paternity with the consent of the mother, unless rescinded or challenged within the time periods established by the [Act]:

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

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

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

(d) The form for denial of paternity must inform the mother and the presumed father that his signing of the denial of paternity with the consent of the mother, unless rescinded or challenged within the time periods established by the [Act] for rescission will bar:

(1) his future claim of paternity of the child and

his rights of custody or visitation with the child; and

(2) her from asserting a claim against him for support of the child.

SECTION 313. VALIDITY OF FORMS. A valid acknowledgment of paternity or denial of paternity is not affected by a latermodification of the prescribed form.

SECTION 314. RELEASE OF INFORMATION. The [agency maintaining birth records] may release information relating to the acknowledgment or denial of paternity to a signatory of the acknowledgment or denial, or to [a court of this State or another state or to other appropriate state agencies].

SECTION 315. ADOPTION OF RULES. The [agency maintaining birth records] may adopt rules to implement this article.

Reporter's Notes

States will implement voluntary acknowledgment of paternity procedures in a variety of ways, depending on local practice. This grant of rulemaking authority to carryout the provisions of this Article, could include electronic transmission of birth and acknowledgment data to the designated state agency.

ARTICLE 4

PATERNITY REGISTRY

PART 1
GENERAL PROVISIONS

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

Reporter's Notes

Beginning with *Stanley v. Illinois*, 405 U.S. 545 (1972) and continuing through the 1970s and early 1980s the Supreme Court of the United States recognized the rights of nonmarital fathers with respect to their nonmarital children. In 1983, the Court upheld the constitutionality of the New York paternity registry in the case of*Lehr v. Robertson*, 463 U.S. 248 (1983). The New York statute requires fathers of children born out of wedlock to register if they wish to be notified of any termination of parental rights or adoption proceeding. Following a series of well-publicized adoption cases wherein nonmarital fathers had not been given proper notice,

legislatures began responding to these cases by enacting paternity registries similar to the New York statute. As of May, 1999, at least 28 states had enacted legislation creating paternity registries. This draft accepts the concept, but with some significant differences from the New York model.

In *Lehr*, the father was actually already in litigation seeking to establish his parental rights, but still did not prevail because he had failed to register his claim. This Act excepts from registration those persons who initiate a proceeding for paternity, notwithstanding the failure to register. In addition, the Act applies only to children under one year of age at the time of the court hearing, see Section 405, *infra*. This recognizes the need to expedite infant adoptions, while properly protecting the rights of nonmarital fathers who may have had some informal relationship with the child following birth. Finally, this Act requires those who register and who are served with notice of a proceeding for termination of parental rights or adoption to respond to such a proceeding, by either admitting paternity or cross-action for paternity. Section 404. This gives the nonmarital father the opportunity to step forward to accept respnsibility of parenthood, but failing to do so, will not derail the termination or adoption proceeding.

See Appendix to Section 401, *infra*.

SECTION 402. REGISTRATION OF CLAIM OF PATERNITY.

(a) To ensure notice of a proceeding under Section 403, a man who wishes to be notified of a proceeding for termination of parental rights or adoption of a child that he may have fathered, must register with the [agency maintaining registry of paternity].

(b) A man is not required to register in the registry of paternity if:

(1) a father-child relationship between the man and the child has been established under Article 2, 3, 6, or 7; or

(2) the man commences a proceeding to determine his parentage before the courthas terminated his parental rights.

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

(d) A man who registers a claim of paternity in the registry of paternity shall promptly notify the registryin writing of any change in the information registered. The [agency maintaining registry of paternity] shall incorporate all new information received into its records, but need not affirmatively seek to obtain current information to be maintained in the registry.

Reporter's Notes

Although often advertised as being designed to protect the claims of paternity from arbitrary elimination, in truth the primary purpose of such a registry is to facilitate infant adoptions by licensed agencies. Therefore, limiting the consequence of a failure to register with a registry of paternity to termination of paternal rights in cases of infant adoption seems appropriate. If an

infant adoption is not consummated in the first year of the child's life, throughout the minority of the child the nonmarital father and the mother remain responsible for support and eligible for custody or visitation. The latter fact situation distinguishes it from an infant adoption in which both parents lose those right and duties for the benefit of the child.

SECTION 403. NOTICE OF PROCEEDING TO REGISTRANT. Notice of a proceeding affecting a child who is, or may be, the subject of a proceeding for termination of parental rights or adoption must be given to a man who has timely registered in the registry of paternity. Notice must be given in a manner prescribed for service of process in a civil action.

Reporter's Notes

This section is the logical conclusion to the legal rationale for establishing a paternity registry. In a termination of parental rights or adoption proceeding, the registry provides a clear procedure for resolving whether a nonmarital father intends to assert his rights with regard to the child. If he registers, termination of his rights and adoption of his child may not proceed without notice to him, thereby affording him the opportunity to assert his paternity and claims for custody or visitation.

SECTION 404. TERMINATION OF PARENTAL RIGHTS OR ADOPTION: CHILD LESS THAN ONE YEAR OF AGE. The rights of a man who may have fathered a child who has not attained one year of age at the time of the hearing may be terminated without notice if:

(1) he failed to register timely with the [agency maintaining registry of paternity] under this article; and

(2) is not exempt from registration under Section 402(b).

Reporter's Notes

This section is the obverse logical conclusion to the legal rationale for establishing a paternity registry. In a termination of parental rights or adoption proceeding, the registry provides a clear procedure for resolving that a man does not intend to assert parental rights with regard to the child. Although the registry protects a man's right to notice in a termination or adoption proceeding, his failure to register waives those rights. Thus, the registry is both a first step for claiming parental rights and the end of those rights for those persons who do not register. If a man fails to register with the paternity registry, a termination and adoption may proceed without fear of a belated claim, most particularly a claim coming after adoptive parents have received custody of the child. This expedited procedure greatly facilitates infant adoption, which in truth explains the existence – and popularity – of the registries and their strong support by the adoption community.

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

(a) If a child without a presumed father has attained one year of age, notice of a proceeding for termination of parental rights or adoption must be given to a man who may be the child's father whether or not he has registered with [agency maintaining registry of paternity] under this article.

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

Reporter's Notes

With the exception of children under one year of age, this section reaffirms *Stanley v. Illinois*, *supra*, and its progeny by requiring notice to the nonmarital father of a termination of parental rights or adoption proceeding. This section is derived from Uniform Putative and Unknown Fathers Act § 3 (1989). This protects those fathers who may have had some informal nonlegal relationship with the child or mother for some time and prevents unilateral action to adversely affect the father's rights. Although *Stanley* involved a nonmarital father who had established a long-term parental relationship with his children, the principle of notice to such men is expanded to apply to all fathers of nonmarital toddlers to teenagers.

[Sections 406-410 reserved for expansion]

PART 2
OPERATION OF REGISTRY

SECTION 411. INFORMATION TO BE PROVIDED TO REGISTRANT BY FORM FOR REGISTRATION.

(a) The [agency maintaining registry of paternity] shall prepare a form, to be signed by the man claiming paternity under penalty of perjury, for registering with the agency. The form must provide notice to the man that:

(1) a timely registration entitles the man to be served in a proceeding for termination of parental rights or for adoption until the child attains one year of age;

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

(3) the information disclosed on the form may be used to establish an obligation of child support;

(4) he may seek to be awarded custody of or visitation with the child;

(5) services to assist in establishing paternity are available to him through the State's support-enforcement agency;

(6) he should register in another state if conception or birth of the child occurred in another State; and

(7) information on registries of other states is available from [appropriate state agency or agencies].

(b) A registration must be filed on a form prepared by the [agency maintaining registry of paternity].

SECTION 412. FURNISHING OF INFORMATION: CONFIDENTIALITY.

(a) The registry need not seek to locate the mother, but if the mother's address has been provided, the [agency maintaining registry of paternity] shall send a copy of the notice of a man's registration with the registry to her at that address.

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

(1) the court;

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

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) a support-enforcement agency;

(6) an attorney of record participating in a proceeding under this [Act] or in a proceeding for termination of parental rights or adoption of a child; and

(7) the registry of paternity in another State.

(c) The [agency maintaining registry of paternity] shall furnish information regarding the registry of paternity by electronic data exchange or any other available means to [other appropriate agencies].

SECTION 413. PENALTY FOR RELEASING INFORMATION. A person commits a [appropriate level misdemeanor] if the person intentionally releases information from the registry to an individual or entity not identified as authorized to receive the information under Section 412.

SECTION 414. REVOCATION OF REGISTRATION. A man who registers under this article may revoke the registration at any time by sending to the registry of paternity a written revocation signed by him and witnessed or notarized. The revocation must state that, to the best of the man's knowledge and belief:

(1) he is not the father of the child; or

(2) an individual other than the registrant has acknowledged paternity under Article 3 of this [Act] or has been determined by a court to be the father of the child.

SECTION 415. REMOVAL OF REGISTRANT'S NAME. If a court determines that the registrant is not the father of the child, the court shall direct the [agency maintaining registry of paternity] to remove the registrant's name from the registry of paternity.

SECTION 416. UNTIMELY ATTEMPT TO FILE CLAIM. If a man seeks to register with the [agency maintaining registry of paternity] more than 30 days after the birth of the child or the [agency maintaining registry of paternity] receives notice of an order terminating the rights of a registrant with regard to a child from the clerk of the court, the [agency] shall:

(1) refuse to file the registration;

(2) notify the registrant that his request to file a claim has been denied; and

(3) state the reason for the denial.

SECTION 417. FEES FOR REGISTRY.

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

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

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

[Sections 418-420 reserved for expansion]

PART 3

SEARCH OF REGISTRIES

SECTION 421. SEARCH OF APPROPRIATE REGISTRY.

(a) If a child does not have an established father-child relationship under Article 2, 3, or 6, [a petitioner] for adoption of the child must obtain a certificate of diligent search of the registry of paternity of this State.

(b) If the [petitioner] for adoption has reason to believe that the conception of the child may have occurred in another state, the [petitioner] must also obtain a certificate of diligent search from the registry of paternity in that state, if any.

SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.

(a) On request, the [agency maintaining registry of paternity] shall furnish a certificate attesting to the results of a search of the registry of paternity regarding a claim of paternity to:

(1) the court;

(2) the mother of a child;

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) a support-enforcement agency; or

(6) an attorney of record participating in a proceeding relating to a child who is the subject of the certificate under this [Act], or for termination of parental rights of, or adoption of that child.

(b) A certificate provided by the [applicable state agency] must be signed by [applicable individual or officer] and state that:

(1) a diligent search has been made of the registry of paternity maintained by the [agency]; and

(2) a registration:

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

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

SECTION 423. FILING CERTIFICATE OF SEARCH.

(a) A [petitioner] must file the certificate of search with the court before a hearing on the merits in a proceeding for termination of parental rights or adoption may be completed.

(b) If a child who has not attained one year of age is the subject of a proceeding for termination of parental rights or adoption, filing a certificate of search of the registry stating that a relevant registration has not been found pertaining to a man identified as a possible father of the child dispenses with the necessity of personal or constructive service on the possible father.

SECTION 424. ADMISSIBILITY OF REGISTERED INFORMATION. A certificate of search of an appropriate registry of paternity is admissible in a proceeding for termination of parental rights or adoption, and, if relevant, in other legal proceedings.

ARTICLE 5

GENETIC TESTING

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

(1) submits voluntarily to testing; or

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

Reporter's Notes

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

SECTION 502. ORDER FOR TESTING.

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

(1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the parties; or

(2) denying paternity.

(b) Genetic testing must be of a type generally acknowledged to be scientifically reliable 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 U.S. Secretary of Health and Human Services.

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

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

(e) If a man admits paternity, the parties may waive or the court may dispense with genetic testing.

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

Reporter's Notes

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

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

SECTION 503. REQUIREMENTS OF GENETIC TESTING.

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

(b) Documentation from the genetic-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 name of the person who collected the specimens;

(3) the place and date the specimens were collected;

(4) the name of the person who received the specimens in the testing laboratory; and

(5) the date the specimens were received.

(c) A specimen used in the testing need not be of the same kind for each person undergoing genetic testing.

[Alternative A]

(d) Based on information provided by an individual about his or her ethnic or racial groups, the testing laboratory shall determine the databases from which to select frequencies for use in the calculations. 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 test, to recalculate the probability of 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 make 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.

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

[Alternative B]

(d) The laboratory shall conduct the testing in accordance with current scientific standards.

Reporter's Notes

Subsection (b) is designed to indicate that in these civil trials only a minimal showing of reliability of the chain of custody is needed. This section is to avoid evidentiary problems, such as

finding that the report of the results of genetic testing is not admissible in a paternity case because the pilot of the airplane that transported the specimens did not testify, reversed in *Dotson v. Petty*, 359 S.E. 2d 403 (Va. App. 1987). Most jurisdictions apparently do not have this problem. See *State v. Brashear*, 841 S.W. 2d 754 (Mo. App. 1992); *DeLaGarza v. Salazar*, 851 S.W. 2d 380 (Tex.App.—San Antonio 1993, no writ).

SECTION 504. GENETIC TESTING: PRESUMPTION.

(a) A man is presumed to be the father of a child tested if the genetic testing complies with current scientific standards and the results disclose that:

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

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

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

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

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

(c) Except as otherwise provided in Section 509, if another man is identified by a second genetic test as a possible father of the child, the court shall order both men to submit to additional genetic testing that satisfies the requirements of this article.

Reporter's Notes

The selection of a probability of paternity of 99.0% and a combined paternity index of 100 to 1 as a genetic presumption is consistent with the current standard of practice in the genetic testing community. Because all states except Texas use one or the other or both, there will be a minimum impact on legal precedents. Accrediting agencies require the reporting of both of these numbers. Currently, 27 states have established a presumption at less than this genetic level. However, for several years the standard of practice in the scientific community has been 99.0%. Therefore, raising the genetic presumption to the 99.0% level should have no impact on those states. This number represents a reasonable level of testing, given the breadth of the Act and potential difficulty of working with some specimens in a probate case. It is not intended as a standard of practice for the laboratories, but as a legal presumption given the legal standard of proof. The standard of practice in paternity laboratories may change, which is safeguarded by the requirement that laboratories be accredited in order to perform testing under the Act. If the accrediting organizations change the standard of practice, the legal significance of the genetic presumption stated in this section will be unaffected.

Genetic testing results will often exceed the statutory minimum. During the drafting meetings several statutory presumptions were considered, *i.e.*, 95%, 99%, 99.9% and 99.99%. Genetic testing laboratory representatives presented quite persuasive arguments for a variety of choices. The Drafting Committee ultimately chose 99% because:

(1) The 99% standard reflects the current standard of the American Association of Blood Banks (Standards for Parentage Testing Laboratories, 3rd Edition);

(2) The standards promulgated by the various accrediting bodies (American Association of Blood Banks and the American Society for Histocompatibility and Immunogenetics) will, in reality, set the benchmark for genetic testing;

(3) The 99% status represents the plurality of American jurisdictions;

(4) A standard higher than 99% could cause evidentiary problems in probate proceedings because of degraded specimens. Similarly, cases involving one or more missing persons, *e.g.*, the mother is not available, but the child and alleged father are available;

(5) The percentage is an evidentiary presumption that the respondent may always challenge by requesting a second test under Section 506; and

(6) A proceeding to determine paternity is a civil action based on a preponderance of the evidence, not a criminal action based on evidence beyond reasonable doubt.

See table in Appendix to Section 504, *infra*.

SECTION 505. COSTS OF GENETIC TESTING.

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

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

(2) by the party who made the request;

(3) as agreed upon by the parties; or

(4) as ordered by the court.

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

Reporter's Notes

Source: UPA (1973) § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(I); see *Little v. Streater*, 454 U.S. 1, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981).

SECTION 506. ADDITIONAL GENETIC TESTING. The court or the support-enforcement agency shall order additional genetic testing upon the request of an individual party who contests the result of the original testing. If the previous genetic testing established a presumption of paternity under Section 504, the court or agency shall not order additional testing unless the contestant provides advance payment for the testing.

Reporter's Notes

Source: UPA § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(II).

SECTION 507. GENETIC TESTING WHEN NOT ALL PERSONS AVAILABLE.

(a) If a specimen is not available for genetic testing, a court, for good cause shown, may order the following persons, as appropriate, to submit to genetic testing by a laboratory:

(1) the parents of the mother or of the presumed or alleged father;

(2) brothers and sisters of the mother or of the presumed or alleged father;

(3) other children of the presumed or alleged father and their mothers;

(4) other children of the mother and their fathers; and

(5) other persons the court finds to be appropriate for testing.

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

Reporter's Notes

In rare cases, both the mother and alleged father may be missing. In such cases, testing the mother's relatives may be useful in establishing paternity. Subsection (a) accommodates those cases where the mother and alleged father are both missing. If only the mother is missing, as provided for in subsection (b), there is generally no need to collect samples from the mother's relatives in order to establish paternity.

Some of the persons listed for testing in subsection (a) may not be parties to the proceeding. If the persons do not volunteer to participate in the testing and the individual is not a party, the court will need to decide if it has the authority to order the testing and the necessity of testing the objecting individual. In some cases, the court has refused to order the testing for lack of personal jurisdiction. Other courts have ordered the testing as the person needed for testing is an essential witness. See *William M. v. Superior Court* (Dana F.), 275 Cal. Rptr. 103 (Cal. App. 3 Dist. 1990); *Estate of Rodgers*, 583 A.2d 782 (N.J. Super. A.D. 1990). At least one state has incorporated similar language in its statutes, see: Minn. Stat. Ann. § 257.62(1).

SECTION 508. DECEASED INDIVIDUAL. For good cause shown, the court may order genetic testing of a deceased individual to determine the parentage of a child.

Reporter's Notes

In some states the court with jurisdiction to determine parentage might not have jurisdiction to order disinterment of a deceased individual. If so, that authority is provided by this section.

SECTION 509. IDENTICAL BROTHERS.

(a) If a man who is an identical brother is identified as an alleged father, a court may order all the identical brothers to submit to genetic testing.

(b) If genetic testing excludes none of the identical brothers as the genetic father, and each brother satisfies the presumption of paternity under Section 504 without consideration of another

identical brother's probability of paternity, the court may rely on nongenetic evidence to determine which brother is the genetic father.

Reporter's Notes

See *Illinois Dept. of Public Aid v. Whitworth*, 652 N.E.2d 458 (Ill. App. 4 Dist. 1995). In some cases, non-identical brothers (and even other related men) will not be excluded after initial testing. This section should not be used to resolve those cases; the appropriate response is for the court to order additional testing as provided in Section 504(c).

Genetic testing can differentiate non-identical siblings; there should never be a case with non-identical siblings where one is not excluded. If a case occurs in which, after initial testing, two men are not excluded, both men should be ordered to submit to additional testing in order to determine which is the father. In the extremely rare case in which a competent laboratory exhausts all of its in-house testing and still cannot determine which non-identical sibling is excluded, the common practice is to provide the genetic material to another laboratory for more extensive testing to resolve the case.

Contrasting identical brothers with non-identical twins, identical twin alleged fathers can never be differentiated by additional genetic testing. This creates a completely different situation for the court. This section resolves the identical-twin conundrum as much as it is possible to do, and is designed to prevent the court from simply dismissing the case.

ARTICLE 6

PROCEEDING TO DETERMINE PARENTAGE

PART 1
NATURE OF PROCEEDING

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

Reporter's Notes

Source: derived from UPA (1973) § 8(2). This section authorizes the proceeding to determine parentage, which is declared to be a "civil proceeding" to eliminate any implication that criminal law is involved. The bracket for filling in appropriate court rules should be tailored to local court structure. For example some jurisdictions have special rules for family court, surrogate court, etc.

Drawing on medieval English precedent, many states originally treated determination of paternity as a criminal or quasi-criminal prosecution. The impetus for suits for bastardy, filiation, or paternity, was to transfer the financial burden of the support of a nonmarital child from the taxpayers of the county or the parish to the child's biological father. Early bastardy prosecutions often granted the alleged father procedural advantages adapted from criminal law, including the option of refusing to testify, sharply limiting discovery, and requiring of proof beyond a reasonable doubt. These strategic advantages aided the alleged father in avoiding an erroneous paternity finding, but came at the cost of a greatly increased risk to the mother and child of an erroneous

finding of nonpaternity. All remnants of this unfortunate history are swept away by the simple declaratory sentence that a suit for parentage is a civil proceeding.

Henceforth, a determination of paternity is governed by the ordinary rules of civil procedure. The party seeking to establish paternity is entitled to full discovery, to compel the testimony of all witnesses, and to have the case tried by a preponderance of the evidence. "The equipoise of the private interests that are at stake in a paternity proceeding supports the conclusion that the standard of proof normally applied in private litigation is also appropriate for these cases." *Rivera v. Minnich*, 483 U.S. 574, 581 (1987).

As first promulgated in 1969, UNIFORM PROBATE CODE, § 2-114. Parent and Child, provided for inheritance by a deceased father's nomarital child on proof of paternity by clear and convincing evidence. Until that time, most states adhered to the rule derived from the common law of England which absolutely prohibited paternal inheritance by an illegitimate child, no matter how conclusive the proof of paternity might be. One such categorical prohibition was sustained in *Labine v. Vincent*, 401 U.S. 532 (1971). Thus, the UNIFORM PROBATE CODE was ahead of its time in allowing inheritance from the paternal side. The procedure in the current version of the UNIFORM PROBATE CODE was added in 1978. Section 2-114 provides for parentage to be established under the provision of the UNIFORM PARENTAGE ACT or other comparable state law. Under this provision, a parentage determination in probate proceedings will be treated as a civil suit in a state that has adopted the UNIFORM PARENTAGE ACT, and similarly in other states that have adopted comparable provisions. This provision was not the exclusive alternative provided by the 1978 amendments, however. Because a handful of states had adopted the clear and convincing evidence requirements of the original version of the UNIFORM PROBATE CODE, this more onerous provision was retained as a secondary alternative.

The UNIFORM PROBATE CODE was again revised to its current version in 1990. By that time, imposing discriminatory burdens on children born out of wedlock seeking paternal inheritance had been recognized as illogical and unjust, and had been ruled unconstitutional by application of the intermediate scrutiny test formulated under the 14th Amendment. *Reed v. Campbell*, 476 U.S. 852 (1986). Moreover, by 1990 the preponderance of the evidence standard had been adopted by a number of states for determinations of paternity and probate proceedings. Some of these states adopted the preferred alternative of the 1978 UNIFORM PROBATE CODE, while others adopted the preponderance standard independently without reference to that act. Against this background, the committee revising the UNIFORM PROBATE CODE in 1990 abandoned the clear and convincing evidence alternative for determining paternal relationships.

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

(1) the child;

(2) the mother of the child;

(3) a man presumed to be the father of the child under Section 204 or Section 504;

(4) a man who has acknowledged being the father under Article 3;

(5) a man alleging that he is or is not the father of the child;

(6) the support-enforcement agency [or other authorized governmental entity];

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

(8) 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

(9) an intended parent under Article 9].

Reporter's Notes

Source: UPA (1973) § 6.

SECTION 603. PARTIES TO PROCEEDING.

(a) The following individuals must be joined as parties in a proceeding to determine parentage:

(1) the mother of the child;

(2) a man presumed to be father of the child under Section 204 or 504; and

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

(b) If asserting an interest in the child, an individual, governmental entity, adoption agency, or licensed child-placing agency, must be joined as a party to a proceeding to determine parentage.

Reporter's Notes

Source: UPA (1973) § 9. This section partially follows, and partially rejects, the original requirements regarding who must be named as parties. First, contra to UPA (1973), the child is not a necessary party. Few states require children as necessary parties; with the widespread use of DNA testing, such a requirement has outlived its usefulness. On the other hand, failure to join a child as a party may result in a later successful collateral attack on the original determination of paternity to be filed by the child, see *Lalli v. Lalli*, 977 P.2d 776 (Ariz. 1999).

Second, as far as can be determined, no state requires the children to be named as parties in every divorce proceeding; and, those decrees serve as res judicata if a later attack on a prior determination is mounted. Subsection (b) is designed to cover a myriad of state law variations on those other persons or entities who may be necessary parties. This Act does not attempt to exhaust the subject, which is left to other state law.

SECTION 604. NO LIMITATION: CHILD WITHOUT PRESUMED FATHER.

(a) A proceeding to determine paternity of a child having no presumed father may be commenced at any time, even after:

(1) the child becomes an adult; or

(2) an earlier proceeding was dismissed based on the application of a statute of limitation then in effect.

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

Reporter's Notes

Source: UPA (1973) §§ 6, 7. In order for a state to retain the federal child support enforcement subsidy, 42 U.S.C. 666(a)(5)(A)(i) mandates that the states must have laws to "permit the establishment of the paternity of a child at any time before the child attains 18 years of age." States have chosen a wide range of age options: age 18 (20 states), age 19 (6 states), age 20 (2 states), age 21 (10 states), age 22 (2 states), age 23 (2 states), and no limitation (9 states). Several states limit the establishment of parental rights to a shorter time period. The Drafting Committee believes that an individual's right to determine his or her own parentage is a very important right and should not be subject to limitation except when an estate has been closed. Accordingly, this section allows a proceeding to determine parentage at any time. Anecdotally, there appear to be no reported problems encountered in states without a statute of limitations for such actions. See Appendix to Section 604, *infra*, for a table of the state laws on this issue.

SECTION 605. LIMITATION: CHILD HAVING PRESUMED FATHER.

(a) Except as otherwise provided in subsection (b) or Article 7, a proceeding seeking to determine paternity of a child having a presumed father by rebutting the presumption of paternity established under Section 204 must be commenced not later than two years after the birth of the child.

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

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

(2) the presumed father never resided in the same household as the child in a father-child relationship or treated the child as his own.

(c) The court shall dismiss a proceeding seeking to negate the father-child relationship between a child and the child's presumed father commenced more than two years after the birth of the child if the presumed father:

(1) resided in the same household as the child in a father-child relationship or treated the child as his own;

(2) is affirmatively seeking a determination of parental rights by the court naming him as the father of the child; and

(3) demonstrates that confirming his presumed paternity is in the best interest of the child.

Reporter's Notes

Source: UPA (1973) § 6. This section represents an attempt to deal with difficult issues. First, the right of a mother or the presumed father to challenge the presumption of paternity established by Section 204—basically, the age-old presumption that marriage creates a presumption that the mother's husband is the father of a child born to her (with some additional complexities). Second, the right, if any, of a third-party male to claim paternity of a child who has an existing presumed father must be clarified.

The UPA (1973) places a five-year limitation on the former issue [Section 6(a)]. Ten states have denied standing to a man claiming to be the father when the mother was married to another at the time of the child's birth. In some of these states, even though a presumed father may seek to rebut his presumed paternity, a third-party male will be denied standing to raise that same issue.

The right of an "outsider" to claim paternity of a child born to a married woman varies considerably among the states. Thirty-three states allow a man alleging himself to be the father of a child with a presumed father to rebut the marital presumption. Some states have granted this right through legislation. In states, courts have recognized the alleged father's right to rebut the presumption and establish his paternity. Further, in some states there is both statutory and common law support for the standing of a man alleging himself to be the father to assert his paternity of a child born to a married woman.

This draft attempts a middle ground on these exceedingly complex issues. A limitation on rebutting the presumption of paternity established under Section 204 is set at two years if the mother and presumed father were cohabiting at the time of conception. But, the statute is open ended if the mother did not live with the presumed father or engage in sexual intercourse with him at the probable time of conception. This distinction is based on the belief that a two-year period allows an adequate time period to resolve the status of a child within the context of an intact family unit; a longer period may have severe consequences for the child. On the other hand, if the family is not intact, the issue of nonpaternity of the presumed father is, in fact, generally assumed by all the parties concerned under those facts, it is inappropriate to assume a presumption known by those concerned to be untrue. Appendix to Section 605, *infra,* provides a table listing the limitation periods of the various states.

SECTION 606. PERSONAL JURISDICTION.

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

(b) Lack of jurisdiction over one party does not preclude the court from making a final determination of parental rights binding on a different party over whom the court has personal jurisdiction.

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

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

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

Reporter's Notes

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

SECTION 608. VENUE. Venue for a proceeding to determine 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 of the presumed or alleged father's estate has been commenced.

Reporter's Notes

Source: UPA (1973) § 8.

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

Reporter's Notes

Source: UPA (1973) § 8(2).

SECTION 610. PROCEEDING STAYED UNTIL AFTER BIRTH. A proceeding may be commenced before or after the birth of the child. The proceeding may not be concluded until after the birth of the child, but the following may be done at any time after the proceeding is

commenced: service of process, taking of depositions to perpetuate testimony, and collection of specimens for genetic testing, except as prohibited by Section 502(c).

SECTION 611. REPRESENTATION OF CHILD.

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

(b) If the court finds that the interests of a child are not adequately represented, the court shall appoint an [attorney ad litem] to represent the child.

Reporter's Notes

This section rejects UPA (1973) § 9. Consistent with § 603, *supra*, this Act rejects the view of UPA 1973 that the child necessarily has an independent standing in a parentage proceeding. On the other hand, if the court determines that the child in fact does have a position at variance with all the other litigants, an attorney may be appointed to represent that interest.

SECTION 612. MOTHER-CHILD RELATIONSHIP. Insofar as is practicable, the provisions of this article relating to a proceeding to determinepaternity apply to a proceeding to determine maternity if that subject is at issue.

[Sections 613-620 reserved for expansion.]

PART 2
SPECIAL RULES FOR PARENTAGE PROCEEDING

SECTION 621. ADMISSIBILITY OF RESULTS OF GENETIC TEST; EXPENSES.

(a) Except as otherwise provided in subsection (c), a written report of a genetictesting expert is admissible as evidence of the truth of thefacts asserted in it unless a party objects to the report within 30 days after its receipt and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(1) in accordance with an agreement of the parties or an order of the court; or

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

(b) A party objecting to the results of a genetic test may call one or more genetictesting experts to testify in person, by video conference or telephone, by deposition, or by any other method approved by the court. The party objecting bears the expense for the expert testifying.

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

(1) with the consent of both the mother and the presumed 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 furnished to the adverse party at least 10 days before a hearing are admissible in evidence to prove:

(1) the amount of the charges; and

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

Reporter's Notes

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

SECTION 622. CONSEQUENCES OF REFUSING GENETIC TESTING.

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

(b) If the mother declines to submit to genetic testing, the court may proceed with testing of the child and any man alleged to be the father.

(c) If an alleged or presumed father declines to submit to genetic testing for parentage, that fact may be admitted as evidence.

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

Reporter's Notes

Source: UPA (1973) § 10.

SECTION 623. ADMISSION OF PATERNITY AUTHORIZED.

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

(b) The court shall issue an order determining the child to be the child of the man admitting paternity if the court finds that the admission of paternity was made pursuant to this section.

Reporter's Notes

Source: 42 U.S.C. 666(a)(5)(D)(i)(II). This section is intended to clarify that aformal acknowledgment of paternity under Article 3 is not required when a respondent admits the paternity of the alleged father. The admission may be made by either the mother or alleged father. However, this section is not designed to be used by a petitioner to determine paternity. In that instance, a proceeding to determine parentage as provided in Part 1, Article 6, is appropriate.

SECTION 624. TEMPORARY ORDERS.

(a) In a proceeding under this article, the court may issue temporary orders for support of the child if the person ordered to pay support:

(1) is a presumed father;

(2) is petitioning to have his paternity determined or has admitted paternity in pleadings filed with the court;

(3) is presumed to be the father through genetic testing as provided under Section 504;

(4) has declined to submit to genetic testing;

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

(6) is the mother.

(b) A temporary order may include provisions for custody and visitation as provided by other state law.

Reporter's Notes

Source: UIFSA § 401.

[Sections 625-630 reserved for expansion]

PART 3
HEARINGS AND FINAL ORDER

SECTION 631. RESOLUTION OF CLAIM OF PATERNITY.

(a) A presumed father's paternity may be rebutted only by clear and convincing evidence.

(b) Except as otherwise provided in Article 7, if two or more claims of paternity are in conflict, the presumption of parentage established as the result of genetic testing under Section 504 prevails.

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

(d) If the court finds that the genetic testing fails to establish a presumption under Section 504, the court may not dismiss the proceeding. The results of genetic testing, along with other evidence, are admissible to resolve the issue of paternity.

(e) Subject to a party's right to additional genetic testing as provided in Section 506 and except as otherwise provided in Article 7, the court shall dismiss with prejudice a proceeding to determine paternity of a man if it finds that genetic testing excludes the man as the father of the child.

Reporter's Notes

Source: UPA (1973) § 14.

Subsection (d) is intended to indicate that on occasion a genetic test may not reach the level required to establish a presumption of paternity. In modern paternity testing, this is a very rare occurrence when living persons are tested. On the other hand, this may present a problem in probate matters, which often must rely on the use of non-traditional specimens, such as bone and hair. In this context, the amount of testing may be limited by the specimen available. This section is designed to indicate that if the result of the genetic testing is less than the presumption, the probability of paternity is not an indicator of nonpaternity. A probability of paternity percentage and a combined paternity index that do not exclude the alleged father but also do not establish a presumption of paternity as provided by Section 504 are to be considered as indicators of paternity and weighed along with all the other evidence produced in the proceeding.

The inclusion of the first clause in subsection (e) indicates that although a genetic testing exclusion can be absolute, errors may occur in testing. Some courts have imposed a rule that a party must first show the test is in error before ordering another test. This imposes an impossible burden because the only accurate method to show that a test is in error is to repeat the testing. Without this clause some litigants have argued that once an exclusion is obtained it is absolute and no other test can be ordered, even when the first test is shown to be wrong, see *Cable v. Anthou*, 674 A.2d 732 (Pa. Super. 1996), affirmed, 699 A.2d 722 (Pa. 1997); *In re Paternity of Bratcher*, 551 N.E.2d 1160 (Ind. App. 1st Dist. 1990).

SECTION 632. JURY PROHIBITED. The court shall conduct the final hearing without a jury.

SECTION 633. HEARINGS AND RECORDS: CONFIDENTIALITY.

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

(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 oron order of the court for good cause shown.

Reporter's Notes

Source: UPA (1973) § 20.

SECTION 634. ORDER ON DEFAULT. The court shall issue an order determining paternity of a man who:

(1) is found by the court to be the father of a child; and

(2) after service of process, is in default.

Reporter's Notes

Source: 42 U.S.C. 666(a)(5)(H).

SECTION 635. FINAL ORDER REGARDING PARENTAGE.

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

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

(c) Except as otherwise provided in subsection (d), the court may assess filing fees, reasonable attorney's fees, genetic-testing fees, 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.

Reporter's Notes

Sources: UIFSA Section 313; UPA (1973) §§ 15, 16

SECTION 636. BINDING EFFECT OF ORDER.

(a) Except as otherwise provided in subsection (b), a determination of parentage that satisfies the jurisdictional requirements of [Section 201 of the Uniform InterstateFamily Support Act] is binding on all parties.

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

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

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

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

(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; or

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

(d) A determination of parentage made consistently with this [Act] is not bindingupon the support-enforcement agency or any other state agency.

(e) Subject to subsection (b), a determination of parentage made under this [Act] is binding in a subsequent proceeding, even if asserted by a person who was not a party to the first proceeding.

Reporter's Notes

This section codifies rules regarding the effect of a final order determining parentage. A considerable amount of litigation involves just exactly who is bound and who is not bound by such orders. Subsection (a) provides that, if the order is entered under standards of personal jurisdiction of the Uniform Interstate Family Support Act, the order is binding on all parties to the proceeding. This solves the problem of an order rendered without the appropriate jurisdiction, as would be the case of a divorce based on status jurisdiction in which the court lacked the requisite personal jurisdiction over a nonresident party.

Subsection (b) partially resolves the question as to whether a child is bound by the terms of the order. UPA (1973) required the child to be made a party to a parentage proceeding, and therefore would be bound. However, the 1973 Act did not address whether a divorce decree had a the legal impact on paternity. A majority of jurisdictions holds that the child is not bound by the divorce decree because the child was not a party to the proceeding. See, Nadine E. Roddy, *The Preclusive Effect of Paternity Findings in Divorce Decrees*, DIVORCE LITIGATION (1998). A minority of states hold that the child is bound to the order and that the child is in privity with the actions of the parents. In its present formulation, adopts the majority rule and which does not bind the child during minority unless the parentage order is based on genetic testing, or if the child was represented by an ad litem.

Subsection (c) resolves whether a divorce decree constitutes a finding of paternity. This subsection provides that such a decree is a determination of paternity if the decree states that the child was born of the marriage or grants the husband visitation, custody or orders support. This rule is the majority rule in American jurisprudence. See Roddy, *supra.*

Subsection (d) provides that state agencies are not bound by an earlier parentage order. This is the majority view; most states hold that because the state agency was not a party to the earlier proceeding, it should not be bound. Roddy, *supra.* Some observers from the child support enforcement community urged that the Act take the position that agencies should be bound because the state's right to sue is based on an assignment of rights from an applicant. Therefore the state's interest is derivative of the applicant's ability to sue. If the applicant is bound by the earlier order, then the state should also be bound. They argue further that valuable state resources should not be spent relitigating an issue already decided.

Subsection (e) gives protection to third parties who may claim benefit of an earlier determination of parentage.

ARTICLE 7
PARENTAGE BASED ON EQUITABLE ESTOPPEL

SECTION 701. COURT AUTHORIZED TO REFUSE GENETIC TESTING.

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

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

(2) an order for genetic testing may cause an inequitable result by negating the father-child relationship between the child and the presumed father.

(b) In determining whether to grant or deny genetic testing based on equitable estoppel, the court shall consider the best interest of the child, including the following factors:

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

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

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

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

(5) the age of the child;

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

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

(8) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or the chance of other harm to the child.

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

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

SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL. If the court denies genetic testing, it shall issue an order determining that the presumed father is the father of the child.

Reporter's Notes

See, Marilyn Ray Smith, *Paternity Litigation Involving Presumed Versus Putative Fathers: Conflicting Rights and Results*.

ARTICLE 8

CHILD OF ASSISTED REPRODUCTION

SECTION 801. HUSBAND'S PATERNITY OF CHILD RESULTING FROM ASSISTED REPRODUCTION. If a husband consents to assisted reproduction pursuant to Section 802, he is deemed to be the father of any child resulting from:

(1) the artificial insemination of his wife;

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

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

Reporter's Notes

Sources: UPA § 5; USCACA §§ 1, 2

SECTION 802. CONSENT TO ASSISTED REPRODUCTION.

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

(1) a husband and wife;

(2) the donor of sperm if other than the husband; [and]

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

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

(b) The consent must:

(1) be in writing; and

(2) be signed by the participant.

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

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

(2) confer rights or impose duties on a donor as a mother or father of the child if the donation of reproductive material was made under circumstances demonstrating an intent that the assisted reproduction would not impose parental responsibility upon anyone other than the husband and wife.

SECTION 803. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.

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

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

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

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

(c) A husband who does not consent in writing to assisted reproduction by his wife may challenge the presumption of paternity of the resulting child subject to Section 605.

Reporter's Notes

Source: USCACA § 3

SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL. An individual who dies before implantation of an embryo or before a child is conceived from assisted reproduction using the individual's eggs or sperm is not a parent of the resulting child unless the decedent has consented in writing to continue the donation posthumously.

Reporter's Notes

Source: USCACA § 4

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

Reporter's Notes

This section is entirely new, but is derived from the policy stated in Section 804, *supra*. If there is to be no liability for a child conceived after death, then there should be no liability for a child conceived or implanted after divorce. This Act does not attempt to resolve issues as to control of frozen embryos following dissolution of marriage. Those matters are left to other state laws, usually in the context of settlement of divorce and regulation of health care facilities.

SECTION 806. PARENTAL STATUS OF DONOR.

(a) A donor of sperm is not the father of a child conceived through assisted reproduction if the mother is:

(1) married and her husband has consented to the assisted reproduction; or

(2) unmarried at the time of conception, unless the donor and the mother of the child acknowledge the donor's paternity pursuant to Article 3.

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

[ARTICLE 9]

[GESTATIONAL AGREEMENT]

Introductory Note

The subject of gestational agreements was last addressed by the Conference in 1989 with the adoption of the Uniform Status of Children of Assisted Conception Act (USCACA). That Act offers two alternatives on the subject: to regulate such activities through a judicial review process or to void such contracts. Only two states have adopted either version of the Act: Virginia chose to regulate such agreements, while North Dakota opted to void them.

The Drafting Committee recognizes that there are strongly held differences on this subject. Nonetheless, the Committee has concluded that the advances of science and the wide use of such reproductive agreements virtually demand that provisions for judicial supervision of gestational agreements be enacted. For this reason, Article 9 is included as an option in the Act. However, the Committee includes this article without a recommendation either for or against its adoption. The Uniform Parentage Act, as revised, contains too many important changes to jeopardize its passage because of opposition to this article. If the inclusion of Article 9 is so controversial in a state considering adoption of this Act to cause a risk of failure, the article may be omitted entirely.

Childless couples may choose modern science over traditional adoption in hopes of having a child of their own genetic making. Voiding or criminalizing gestational agreements will force individuals to find friendly legal forums for the process, which raises a host of legal issues. For example, a couple returning to their home state with a child born as the consequence of a gestational agreement entered into in a state recognizing that agreement presents a full faith and credit question if their home state has a statute declaring gestational agreements to be void. One thing is clear; a child born under these circumstances is surely entitled to have its status clarified.

In the opinion of the Drafting Committee, entering into a gestational agreement is a significant legal act that should be reviewed by a court, just as an adoption is judicially reviewed. This draft generally follows the 1989 Act but departs in two important ways. First, unapproved gestational agreements are void, thereby providing a strong incentive for the participants to seek judicial scrutiny. Second, persons who enter into unapproved gestational agreements and later refuse to adopt the resulting child may be liable for support of the child.

Assisted reproduction facilities and numerous other entities are involved in the subject. Internet sites are omnipresent promoting the activity. Currently states take a variety of approaches to the issue: eleven states allow such agreements by statutes or caselaw; six states void such agreements by statute; eight states statutorily ban compensation to the gestational mother; and two states have judicially refused to recognize such agreements. See Appendix to Article 9, *infra*.

[SECTION 901. GESTATIONAL AGREEMENT DEFINED.]

[(a) A gestational mother, her husband if she is married, a donor or the donors, and an intended parent enter into a written agreement providing that:

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

(2) the intended parent becomes the parent of the child.

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

[SECTION 902. GESTATIONAL AGREEMENT.]

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

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

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

(1) the parties have submitted to jurisdiction of the court in accordance with the jurisdictional standards of this [act];

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

(3) the [relevant child-welfare agency] has made a home study of the intended parent and the intended parent meets the standards of fitnessapplicable to an adoptive parent;

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

(5) the gestational mother has had at least one pregnancy and delivery and her bearing another child will not pose an unreasonable health risk to the unborn child or to the physical or mental health of the gestational mother; and

(6) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated.

(c) The court may close all proceedings under this article. All records of the proceedings are confidential and subject to inspection only under the standards applicable to adoptions. At the request of a party to the agreement, the court shall take steps necessary to ensure that the identities of the individuals are not disclosed. The ruling of the court to validate or not validate a

gestational agreement is within the discretion of the court, subject only to showing an abuse of discretion.

(d) The court conducting the proceedings has exclusive and continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days.]

[SECTION 903. TERMINATION OF GESTATIONAL AGREEMENT.]

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

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

(c) A gestational mother is not liable to the intended parents for terminating an agreement pursuant to this section.]

[SECTION 904. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT. Upon birth of a child to a gestational mother, the intended parent shall furnish to the facility in which the birth takes place a certified copy of the order of the court issued under Section 902. The facility shall notify the [department of vital statistics] of the birth of the child and request that agency:

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

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

[SECTION 905. GESTATIONAL AGREEMENT: MISCELLANEOUS PROVISIONS.]

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

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

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

(d) A child born to a gestational mother within 300 days after assisted reproduction pursuant to an approved gestational agreement is presumed to result from the assisted reproduction. A challenge to the presumption must be commenced not later than two years after the birth of the child or the challenge is barred.

(e) A proceeding to rebut the presumption established in subsection (d) must name the parties to the agreement and the child as parties to the proceeding. The child must be represented by an [attorney ad litem].]

[SECTION 906. NONVALIDATED GESTATIONAL AGREEMENT.]

[(a) A gestational agreement not validated by a court pursuant to Section 902 is void.

(b) If a birth results under an agreement not validated by a court, the gestational mother is the mother of a child resulting from assisted reproduction, and paternity of the child must be determined under this [Act].

(c) An individual who is a party to a gestational agreement as an intended parent, which has not been validated by the court pursuant to Section 902, may be liable for support of the resulting child if the intended parent fails or refuses to adopt the child.

(d) This section applies to an agreement that:

(1) was not submitted to the court for validation; or

(2) was expressly refused validation by the court before the birth of the child.]

ARTICLE 10

MISCELLANEOUS PROVISIONS

SECTION 1001. 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 1002. 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 1003. TIME OF TAKING EFFECT. This [Act] takes effect on _____.

SECTION 1004. [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, 1989]

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

SECTION 1005. TRANSITIONAL PROVISION. A proceeding to determine parentage that was commenced before the effective date of this [Act] is governed by the law in effect at the time the proceeding was commenced.

APPENDIX TO SECTION 307

METHODOLOGY FOR RESCINDING ACKNOWLEDGMENT OF PATERNITY

As Reported by Office of Inspector General,
U.S. Dept. of Health & Human Services, as of May 3, 1999

State	Rescission Process
Alaska	No answer
Alabama	Other: Procedures not yet developed by IV-D agency
Arkansas	No answer
Arizona	Fully-administrative process
California	Judicial process
Colorado	Not applicable
Connecticut	Fully-administrative process
D.C.	Judicial process
Delaware	Judicial process
Florida	No answer
Georgia	Judicial process
Hawaii	Not applicable
Iowa	Fully-administrative process
Idaho	Quasi-administrative process (limited court involvement)
Illinois	Fully-administrative process
Indiana	Judicial process
Kansas	Judicial process
Kentucky	Judicial process
Louisiana	Fully-administrative process
Massachusetts	Judicial process
Maryland	Fully-administrative process
Maine	Quasi-administrative process (limited court involvement)
Michigan	Judicial process
Minnesota	Fully-administrative process
Missouri	Quasi-administrative process (limited court involvement)
Mississippi	No answer
Montana	Other: From either parent within 60 days of signing paternity
North Carolina	Judicial process
North Dakota	Fully-administrative process
Nebraska	Not applicable
New Hampshire	Fully-administrative process
New Jersey	Fully-administrative process
New Mexico	Quasi-administrative process (limited court involvement)

State	Rescission Process
Nevada	Other: Written request to rescind the paternity. If the father is to be removed, a court order is necessary.
New York	Judicial process
New York City (NYC)	Judicial process
Ohio	Fully-administrative process
Oklahoma	Not applicable
Oregon	Fully-administrative process
Pennsylvania	Quasi-administrative process (limited court involvement)
Rhode Island	Judicial process
South Carolina	Quasi-administrative process (limited court involvement)
South Dakota	Judicial process
Tennessee	Fully-administrative process
Texas	Judicial process
Utah	Fully-administrative process
Virginia	Other: Awaiting instructions from CSE
Vermont	Fully-administrative process
Washington	Fully-administrative process
Wisconsin	Fully-administrative process
West Virginia	Judicial process
Wyoming	Fully-administrative process

APPENDIX TO SECTION 401

PATERNITY REGISTRY STATUTES
(As of May 3, 1999)

State	Statutory Citations
Alabama	ALA Code § 26-10C-2
Arizona	ARIZ. REV. STAT. ANN. § 8-106.01
Arkansas	ARK. STAT. ANN. § 9-9-212
Georgia	GA. DOM. REL. CODE §§ 15-11-82 and 15-11-83 (1998)
Idaho	(1985) IDAHO CODE § 16-1513
Illinois	750 ILLS 50/12.1
Indiana	IND. CODE ANN. § 31-3-1.5-1-21
Iowa	(1994) IOWA CODE ANN. § 144.12A
Kansas	KAN. STAT. ANN. § 59-2136
Louisiana	LA. CH. CODE ART. § 1103
Massachusetts	MASS. ANN. LAWS CH. 210 § 4A
Michigan	MI. ST. 552.1201
Minnesota	1998 MINN. LAWS CH. 6 § 354
Missouri	(1988) MO. STAT. ANN. § 192.016
Montana	MONTANA § 42-2-201 et. seq.
New Hampshire	N.H. RAS 546-B:3
New Mexico	(1993) N.M. STAT. ANN. § 32A-5-20
New York	N.Y. SOC. SERV. LAW § 372-C
Ohio	OHIO REV. CODE ANN. § 3107.062
Oklahoma	OKLA. STAT. ANN. § 7506-1.1
Oregon	OR. REV. STAT. § 109.096(3) and § 109.225
South Dakota	S.D. COD. LAWS ANN. § 25-6-1 and § 25-6-1.1
Tennessee	(1996) TENN. CODE ANN. § 36-2-209
Texas	C.F.C. § 160.250 et. seq.
Utah	(1995) Tit. 78, Ch. 30, Adoption, Vital Records
Vermont	VT. STAT. ANN. TIT. 15A § 3-404
Wisconsin	WISC. STAT. § 48.41
Wyoming	WYO. STAT. § 1-22-110 through 117

Source: National Adoption Information Clearinghouse, U.S. Dept; Health and Human Services; *Adoption Law and Practice* (Matthew Bender & Co. 1998)

APPENDIX TO SECTION 504

TABLE OF PATERNITY PRESUMPTION STATUTES *

The following table contains the statistical presumptions adopted by the District of Columbia and the fifty states. The table also indicates other statistics that the states may require if more than one is needed to establish the presumption. The next-to-last column indicates whether the statistical presumption is rebuttable (R), or conclusive (C). In the last column, if there is a statement in the paternity statutes about how to rebut the presumption, the mechanism or evidence level is indicated. The common evidence levels are indicate as C & C for Clear, Cogent and Convincing and P of E for preponderance of the evidence. Note that some jurisdictions have more than one statistical value; if so, both values are given.

State	Statute	Probability of Paternity	Prior Probability	Probability of Exclusion	Combined Paternity Index	Rebuttable or Conclusive	Rebutted by
Alabama	§ 26-17-13	97				R	C & C
Alaska	§ 25.20.050	95				R	C & C
Arizona	§ 25-807	95				R	C & C
Arkansas	§ 9-10-108	95				R	
California	§ 7555				100	R	P of E
Colorado	§ 13-25-126	97				R	
Connecticut	§ 46b-168	99				R	
District of Columbia	§ 16-909	99				C	
Delaware	§ 804	99				R	C & C
Florida	§ 742.12	95				R	
Georgia	§ 19-7-46	97				R	Competent Evidence
Hawaii	§ 584-11			99.0	500		
Idaho	§ 7-1116	98				R	
Illinois	§ 45/11				500	R	C & C
Indiana	§ 31-6-6.1-9	99				R	
Iowa	§ 600B.41	95				R	C & C
Kansas	§ 38-1114	97				R	C & C
Kentucky	§ 406.111	99			100	R	P of E
Louisiana	§ 397.3	99.9				R	
Maine	§ 280	97				R	C & C
Maryland	§ 5-1029	99		97.3		R	
Massachusetts	§ 17	97				R	
Michigan	§ 25.496	99				R	C & C
Minnesota	§ 257.62(5)(a)	92	No more than 0.5			R**	
Minnesota	§ 257.62(5)(b)	99	No more than 0.5			R	C & C
Mississippi	§ 93-9-27	98				R	P of E
Missouri	§ 210.822	98	0.5			R	C & C
Montana	§ 40-5-234	95				R	P of E
Nebraska	§ 43-1415	99				R	

State	Statute	Probability of Paternity	Prior Probability	Probability of Exclusion	Combined Paternity Index	Rebuttable or Conclusive	Rebutted by
Nevada	§ 126.051	99				R	C & C
New Hampshire	§ 522:4	97				R	C & C
New Jersey	§ 9:17-48	99***				C	
New Mexico	§ 40-11-5	99				R	
New York	§ 418	95				R	
North Carolina	§ 8-50.1	97				R	C & C
North Dakota	§ 14-17-04	95				R	C & C
Ohio	§ 3111.03	99				R	C & C
Oklahoma	§ 504	98				C	
Oklahoma	§ 504	95				R	C & C
Oregon	§ 416.430				99	R	
Pennsylvania	§ 4343	99				R	C & C
Rhode Island	§ 15-8-3	97				C	
South Carolina	§ 20-7-956	95				R	
South Dakota	§ 25-8-58	99				R	
Tennessee	§ 24-7-112	95				R	
Texas	§ 160.110			99		R	
Utah	§ 78-45a-10				150	R	Second Genetic test
Vermont	§ 308	98				R	
Virginia	§ 20-49.1	98				R	
Washington	§ 26.26.040	98				R	C & C
West Virginia	§ 48A-6-3	98				C	
Wisconsin	§ 767.48	99				R	
Wyoming	§ 14-2-109	97				R	C & C

*Compiled and provided courtesy of George Maha, Ph.D., Laboratory Corporation of America.

** In Minnesota at a probability of paternity of 92% or greater the court "shall" order the alleged father to pay temporary child support

*** New Jersey's statute reads ". . . specific threshold probability as set by the State . . .". The level given is their current probability as set by the State.

APPENDIX TO SECTION 605

STATUTE OF LIMITATIONS FOR PATERNITY ESTABLISHMENT

State	Statute of Limitation	State	Statute of Limitation
Alabama	Age 19	Montana	Age 18
Alaska	Age 18	Nebraska	Age 18
Arkansas	None	Nevada	Age 18
Arizona	Age 18	N. Hampshire	Age 19
California	None (IV-D agency enforces to age 18)	New Jersey	Age 23
		N. Mexico	Age 21
		New York	Age 21
Colorado	Age 21	N. Carolina	Age 18
Connecticut	Age 18	N. Dakota	Age 21
Delaware	Age 18	Ohio	Age 23
D.C.	Age 21	Oklahoma	Age 19
Florida	Age 22	Oregon	None
Georgia	None	Pennsylvania	Age 18
Hawaii	Age 21	Puerto Rico	Age 22
Idaho	Age 18	Rhode Island	None
Illinois	Age 20	S. Carolina	Age 18
Indiana	Not available	S. Dakota	None
Iowa	Age 19	Tennessee	Age 19
Kansas	Age 18	Texas	Age 20
Kentucky	Age 18	Utah	Age 18
Louisiana	Age 19	Vermont	Age 21
Massachusetts	None	Virgin Is.	None
Maine	Age 18	Virginia	Age 18
Maryland	Age 18	Washington	Age 18
Michigan	None	W. Virginia	Age 21
Minnesota	Age 18	Wisconsin	Age 19
Missouri	Age 21	Wyoming	Age 21
Mississippi	Age 18		

Source: Office of Child Support Enforcement, U.S. Department of Health and Human Services, website as of February 23, 1999.

APPENDIX TO SECTION 605

STANDING TO CHALLENGE THE MARITAL PRESUMPTION OF PATERNITY

State	Standing	Statutes/Case
Alabama	No	ALA. CODE § 26-17-6(a) (1992) Ex Parte Presse, 554 So. 2d 406 (Ala. 1989)
Alaska		Unknown
Arizona	Yes	ARIZ. REV. STAT. § 25-803 (Supp. 1997) *R.A.J. v. L.B.V.*, 817 P.2d 37 (Ariz. Ct. App. 1991)
Arkansas	Yes	*Willmon v. Hunter*, 761 S.W. 2d 924 (Ark. 1988)
California	No	CAL. FAM. CODE ANN. § 7630 (West 1998)
Colorado	Yes	*R. McG. v. J.W.*, 615 P.2d 666 (Colo. 1988)
Connecticut	Yes	*Weldenbacher v. Duclos*, 661 A.2d 988 (Conn. 1995)
Delaware	Yes	DEL. CODE ANN. tit. 13, § 805(a) (1993)
Florida	No	*G.F.C. V. S.G.*, 686 So. 2d 1382 (Fla. Dist. Ct. App. 1997)
Georgia	Yes	GA. CODE ANN. § 19-7-43 (1991)
Hawaii	Yes	HAW. REV. STAT. ANN. § 584-6(a) (Michie 1997)
Idaho	Yes	*Johnson v. Studley-Preston*, 812 P.2d 1216 (Idaho 1991)
Illinois	Yes	750 ILL. COMP. STAT. 45/7 (West 1993)
Indiana	Yes	IND. CODE § 31-14-4-1 (1997) *K. S. v. R. S.*, 669 N.E. 2d 399 (Ind. 1996)
Iowa	Yes	*Callender v. Skiles*, No. 276/98-308 (Iowa 1999)
Kansas	Yes	*D.B.S. by & through P.S. v. M.S.*, 888 P.2d 875 (Kan. App. 1995)
Kentucky	No	KY. REV. STAT. ANN. § 406.021 (Banks-Baldwin)
Louisiana	Yes	*Green v. Green*, 666 So.2d 1192 (La. Ct. App. 1995)
Maine	Yes	ME. REV. STAT. ANN. tit. 19-A, § 1562 (West 1998)
Maryland	Yes	*Turner v. Whisted*, 607 A.2d 935 (Md. 1992)
Massachusetts	Yes	*C.C. v. A.B.*, 550 N.E.2d 365 (Mass. 1990)
Michigan	No	MICH. COMP. LAWS ANN. § 722.714 (West Supp. 1997) *Hauser v. Reilly*, 536 N.W. 2d 865 (Mich. Ct. App. 1995)
Minnesota	No	MINN. STAT. § 257.57 *Market v. Behm*, 394 N.W. 2d 239 (Minn. Ct. App. 1986)
Mississippi	Yes	*Ivy v. Harrington*, 644 So. 2d 1218 (Miss. 1994)
Missouri		Unknown
Montana	Yes	MONT. CODE ANN. § 40-6-107(1) (1997)
Nebraska	Yes	NEB. REV. STAT. § 43-1411 (1993)
Nevada	Yes	NEV. REV. STAT. § 126.071 (1997)
New Hampshire	Yes	N.H. REV. STAT. ANN. § 168-A:2 (Supp. 1997)
New Jersey	Yes	*M.F. v. N.H.*, 599 A.2d 1297 (N.J. Super. Ct. App. Div. 1991) (Subject to a "best interest" finding)
New Mexico	Yes	N.M. STAT. ANN. § 40-11-7 (Michie 1994)
New York		Unknown

State	Standing	Statutes/Case
North Carolina	Unclear	N.C. GEN. STAT. § 49-16 (1984)
North Dakota	No	*B.H. v. K.D.*, 506 N.W. 2d 368 (N.D. 1993)
Ohio	Yes	OHIO REV. CODE ANN. § 3111.04 (Banks-Baldwin Supp. 1998) *Crawford County Child Support Enforcement Agency v. Sprague*, 1997 WL 746770 (Ohio Ct. App. 1997)
Oklahoma	Yes	OKLA. STAT. ANN. tit. 10, § 3 (West 1998)
Oregon	Yes	OR. REV. STAT. § 109.125 (1)(e) (1997)
Pennsylvania	No	*Brinkley v. King*, 701 A.2d 176 (Pa. 1997)
Rhode Island	Unclear	R.I. GEN. LAWS § 15-8-2 (1996)
South Carolina	Yes	S.C. CODE ANN. § 20-7-952 (Lawyers Co-op 1985)
South Dakota		Unknown
Tennessee	Yes	TENN. CODE ANN. § 36-2-305 (Supp. 1996)
Texas	Yes	TEX. FAM. CODE ANN. § 160.110 (West 1997) *In re J.W.T.*, 872 S.W.2d 189 (Tex. 1994)
Utah	Yes	UTAH CODE ANN. § 78-45a-2 (1996)
Vermont		Unknown
Virginia	Yes	VA. CODE ANN. § 20-49-2 (Michie 1995)
Washington	Yes	*McDaniels v. Carlson*, 738 P.2d 254 (Wash. 1987)
West Virginia	Yes	*State ex. rel. Roy Allen S. v. Stone*, 474 S.E.2d 554 (W. Va. 1996)
Wisconsin	Yes	WIS. STAT. § 767.45 (1993) *In re Paternity of C.A.S.*, 468 N.W.2d 719 (Wis. 1991)
Wyoming	No	WYO. STAT. ANN. § 14-2-104 (Michie 1997) *A v. X, Y, & Z*, 641 P.2d 1222 (Wyo. 1982)

*Compiled by Jenny L. Womack, Austin, Texas (Advanced Family Law Seminar 1998, Univ. of Texas School of Law).

APPENDIX TO ARTICLE 9

TABLE OF GESTATIONAL AGREEMENT LAWS*

State	Status of Gestational Agreements	Statute
Alabama	Specifically "not covered" in prohibition against payment to parent for adoption of child	Code of Ala. § 26-10A-34 (1997)
Arizona	No, by statute	Ariz. Rev. Stat. Ann. § 25-218 (1996)
Arkansas	Yes, by statute	Ark. Code Ann. § 9-10-201 *et seq.* (Michie 1995)
California	Yes, by case law	*Marriage of Balduzzi*, 72 Cal. Rptr. 2d 280 (1998)
D.C.	No, by statute	D.C. Code Ann. §§ 16-401, 402 (1996)
Florida	Yes, by statute	Fla. Stat. Ann. §§ 63.212, 742.15 (West 1997)
Indiana	No, by statute	Ind. Code Ann. § 31-8-2.1 *et seq.* (Burns Cum. Supp. 1994)
Iowa	Yes, by statute	Iowa Code Ann. § 710.11 (West 1997)
Kentucky	No, compensation prohibited	Ky. Rev. Stat. Ann. § 199.590 (Michie/Bobbs-Merrill 1995)
Louisiana	No, compensation prohibited	La. Rev. Stat. Ann. § 2713 (West 1991)
Massachusetts	No, by case law	*RR v. MH*
Michigan	No, compensation prohibited	Mich. Comp Laws Ann. § 722.853 *et seq.* (West 1997)
Nebraska	No, compensation prohibited	Neb. Rev. Stat. § 25-21, 200 (1989)
Nevada	Yes, by statute	Nev. Rev. Stat. Ann. §§ 126.045, 126.051 (Michie 1995)
New Hampshire	Yes, by statute	N.H. Rev. Stat. Ann. § 168-B:16 *et seq.* (1996)
New Jersey	No, by case law	Baby M, 537 A.2d 1227 (1988)
New Mexico	No, compensation prohibited	Cite not available
New York	No, compensation prohibited	N.Y. Dom. Rel. Law § 121 *et seq.* (McKinney 1997)
North Dakota	No, by statute	N.D. Cen. Code § 14-18-05 (1991)
Ohio	Yes, by case law	*Balsito v. Clark,* 644 N.E.2d 760
Tennessee	Yes, by statute (vague)	Tenn. Code Ann. 36-1-102 (1996)
Utah	No, compensation prohibited	Utah Code Ann. § 76-7-204 (1997)
Virginia	Yes, by statute	Va. Code Ann. § 20-160 (Michie 1997)
Washington	No, compensation prohibited	Wash. Rev. Code Ann. § 26.26.210 (West 1997)

State	Status of Gestational Agreements	Statute
West Virginia	Yes, by statute	W. Va. Code § 48-4-16 (1997)
Wisconsin	Yes, by statute	Wis. Stat. Ann. § 69.14 (West 1997)

* Remaining jurisdictions have no statutory or case law on the subject. However, Illinois House of Representatives has bill to allow surrogacy (information as of May 1, 1999).

Source: The American Surrogacy Center, Inc.*www.surrogacy.com*; Organization of Parents Through Surrogacy*www.opts.com*. The Institute for Science, Law & Technology, Illinois Institute of Technology, "Changing Conceptions" by Lori B. Andrews, J.D. and Nanette Elster, J.D., M.P.H. (December 5, 1997).

Disclaimer: Information as represented in this chart has not been independently verified on a state by state search.