

D R A F T
FOR DISCUSSION ONLY

REVISED UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 17-18, 2017 Committee Meeting Draft

Without Additional Comments from Committee Chair and Reporter

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ON UNIFORM STATE LAWS

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March 1, 2017

REVISED UNIFORM PARENTAGE ACT

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REVISED UNIFORM PARENTAGE ACT

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1 versions of the 2002 UPA.¹ Of these eleven (11) states, only two (2) – Texas and Utah – enacted
2 the surrogacy provisions based on Article 8 of the 2002 UPA. At least five (5) of the eleven (11)
3 states that enacted the 2002 UPA enacted surrogacy provisions that are *not* premised on the 2002
4 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted
5 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and
6 Washington (banning compensated) (enacted 1989).

7
8 The fact that very few states enacted Article 8 is likely the result of a confluence of factors. One
9 likely factor is the controversial nature of surrogacy itself. But the fact that four of the states that
10 enacted the 2002 UPA have provisions permitting surrogacy that are not modeled on Article 8 of
11 the 2002 UPA suggests that the small number of enactments is also affected by the substance of
12 Article 8. Accordingly, the 2017 UPA updates the surrogacy provisions to make them more
13 consistent with current surrogacy practice.

14
15 Finally, the 2017 UPA includes a new article – Article 9 – that addresses the right of children
16 born through assisted reproductive technology to access medical and identifying information
17 regarding any gamete providers. Based on data from 2014, the CDC reports that “approximately
18 1.6% of all infants born in the United States every year are conceived using ART.”² Data suggest
19 that this percentage continues to increase. Gaia Bernstein, *Unintended Consequences:
20 Prohibitions on Gamete Donor Anonymity and the Fragile Practice of Surrogacy*, 10 Ind. Health
21 L. Rev. 291, 298 (2013) (noting that “from 2004 to 2008 the number of IVF cycles used for
22 gestational surrogacy grew by 60%, the number of births by gestational surrogates grew by 53%
23 and the number of babies born to gestational surrogates grew by 89%”). Accordingly, it is
24 increasingly important for states to address the right of children to access information about their
25 gamete donor. Article 9 does not require disclosure of the identity of gamete providers, but it
26 does require gamete banks and fertility clinics to ask donors if they want to have their identifying
27 information disclosed when the resulting child turns 18.

28 29 **Questions about UPA?**

30 For further information contact the following persons:
31 Jamie Pedersen, Chair of the UPA drafting committee
32 Courtney G. Joslin, Reporter for the UPA drafting committee

33 34 **Notes about ULC Acts:**

35 For information on the specific drafting rules used by ULC, the Conference *Procedural and
36 Drafting Manual* is available online at www.uniformlaws.org.

37
38 Because these are uniform acts, it is important to keep the numbering sequence intact while
39 drafting.

40 In general, the use of bracketed language in ULC acts indicates that a choice must be made

¹ The eleven states are: Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, Wyoming. See Uniform Law Commission, *Legislative Fact Sheet – Parentage Act*.

² Centers for Disease Control, ART Success Rates, <http://www.cdc.gov/art/reports/> (last updated February 24, 2016).

1 between alternate bracketed language, or that specific language must be inserted into the empty
2 brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor]
3 [felony] and, upon conviction, is punishable by [].
4

5 A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that
6 the bracketed language is suggested but may be changed to conform to state usage or
7 requirements, or to indicate that the entire section is optional. For example: “An applicant for
8 registration shall submit an application for registration to the [Secretary of State] in a form
9 prescribed by the [Secretary of State]. [An application filed under this section is a public
10 record.] The application must be in the name of an individual, and, except as otherwise provided
11 in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”
12

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

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

3 (6) “De facto parent” means an individual adjudicated to be a parent under Sections 205
4 and 612.

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

8 (8) “Donor” means an individual who provides gametes intended for use in assisted
9 reproduction, whether or not for consideration. The term does not include:

10 (A) a woman who gives birth to a child by means of assisted reproduction[,
11 except as otherwise provided in [Article] 8]; or

12 (B) a parent under [Article] 7 [or an intended parent under [Article] 8].

13 (9) “Gamete” includes all or part of a gamete.

14 (10) “Genetic testing” means an analysis of genetic markers to identify or exclude an
15 individual as a genetic parent of a child.

16 [(11) “Genetic surrogate” means a woman who is not an intended parent and who agrees
17 to become pregnant through assisted reproduction using her own gamete, under to a genetic
18 surrogacy agreement as described in [Article] 8.]

19 [(12) “Gestational surrogate” means a woman who is not an intended parent and who
20 agrees to become pregnant through assisted reproduction using gametes that are not her own,
21 under a gestational surrogacy agreement as described in [Article] 8.]

22 (13) “Identifying information” includes the following information about a donor:

23 (A) the full name of the donor;

1 (B) the date of birth of the donor; and

2 (C) the current address of the donor.

3 (14) “Individual” means a natural person of any age.

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

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

7 (17) “Medical history” means information regarding any present illnesses, past illnesses,
8 social history, and family history pertaining to the health of the individual.

9 (18) “Parent” means an individual who has established a parent-child relationship under
10 Section 201.

11 (19) “Parent-child relationship” means the legal relationship between a child and a parent
12 of the child. The term includes a mother-child relationship and a father-child relationship.

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

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

18 (22) “Sign” means, with present intent to authenticate or adopt a record:

19 (A) to execute or adopt a tangible symbol; or

20 (B) to attach to or logically associate with the record an electronic
21 symbol, sound, or process.

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

1 (24) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession under the jurisdiction of the
3 United States. The term includes a federally recognized Indian tribe.

4 (25) “Support enforcement agency” means a public official, governmental entity, or
5 private agency authorized to:

6 (A) seek enforcement of an order of support or laws relating to the duty of
7 support;

8 (B) seek establishment or modification of child support;

9 (C) request an adjudication parentage of a child;

10 (D) attempt to locate child-support obligors and their income and assets; or

11 (E) request a determination of the controlling child-support order.

12 [(26) “Surrogacy agreement” means an agreement under [Article] 8 by which a woman
13 who is not an intended parent who agrees to become pregnant through assisted reproduction.
14 Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a
15 genetic surrogacy agreement.]

16 (27) “Woman” means a female individual of any age.

17 **Legislative Note:** *A state should include the definitions for “genetic surrogate,” “gestational*
18 *surrogate,” and “surrogacy agreement” in the act if the state wishes to recognize and give effect*
19 *to surrogacy agreements and includes Article 8 in the act.*

20 21 **Reporter’s Comment**

22 23 1. GENDER NEUTRALITY

24
25 Some of the changes to Section 102 implement the goal of ensuring that the act applies
26 equally to children born to same-sex couples.

27 28 2. ASSISTED REPRODUCTION

29
30 The draft also includes a number of new definitions regarding assisted reproduction.

1 3. DEFINITION OF DONOR

2
3 One of the only substantive changes is with respect to the definition of donor. The draft
4 eliminates what had been subsection (8)(A), in the definition of donor. Subsection (A) was
5 eliminated because spouses are already excluded from the definition of donor under new
6 Subsection (8)(B) (former Subsection (8)(C)), so long as they consented to the assisted
7 reproduction with the intention to be a parent. If a spouse has not consented to the assisted
8 reproduction with the intention to be a parent, then such an individual is and should be
9 considered a donor, unless the conditions of Section 705 are met. If subsection (A) is retained, it
10 must be made gender neutral. If retained, it should provide: “(A) a person who provides a gamete
11 or gametes to be used for assisted reproduction by his or her spouse”.

12
13 **SECTION 103. SCOPE OF [ACT].**

14 (a) This [act] applies to adjudications and determinations of parentage.

15 (b) This [act] does not create, affect, enlarge, or diminish parental rights or duties under
16 law of this state other than this [act].

17 [(c) This [act] does not authorize or prohibit an agreement between an intended parent
18 and a woman in which the woman is not an intended parent and she who agrees to become
19 pregnant through assisted reproduction and which provides that the intended parent is the parent
20 of the resulting child. If a birth results under the agreement and the agreement is unenforceable
21 under [cite to the law of this state regarding surrogacy agreements], the parent-child relationship
22 is established as provided in [Articles] 2 and 6.]

23 *Legislative Note: A state should enact subsection (c) if a state does not enact [Article] 8 or*
24 *otherwise does not permit surrogacy agreements.*

25
26 **SECTION 104. CHOICE OF LAW.** The court shall apply the law of this state to
27 adjudicate the parent-child relationship. The applicable law does not depend on:

- 28 (1) the place of birth of the child; or
29 (2) the past or present residence of the child.

30 **SECTION 105. AUTHORIZED COURT.** The [designate court]may adjudicate
31 parentage under this [act].

1 woman which resulted in the birth of the child[; or
2 [(8) the individual’s execution of an enforceable surrogacy agreement under [Article] 8
3 with the intent to be a parent of the resulting child which resulted in the birth of the child, or an
4 adjudication of the individual’s parentage under [Article] 8 or under law of this state other than
5 this [act]].

6 **Legislative Note:** *A state should include paragraph (8) if the state includes Article 8 in the act or*
7 *otherwise permits and recognizes surrogacy agreements.*

8
9

Reporter’s Comment

10 As noted above, the 2017 UPA updates the act so that it applies equally to children born
11 to same-sex couples. Most of the mechanisms for establishing parentage apply equally without
12 regard to gender. Accordingly, the 2017 UPA merges into a single list what had been separate
13 provisions for establishing the parentage of women and men, respectively. This approach
14 removes unnecessary distinctions based on gender. This approach is also consistent with the
15 approach taken by a number of states that have amended their parentage provisions to apply
16 equally to children born to same-sex couples. *See, e.g.,* ME. STAT., tit. § 1851; N.H. REV. STAT. §
17 168-B:2.

18
19

SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS OF

20 **PARENT.** The parent-child relationship extends equally to every child and to every parent,
21 regardless of the marital status of the parent.

22
23

Comment

24 Historically, children born to unmarried women were often extended fewer rights and
25 protections than were extended to marital children. In the 1960s and 1970s, the Supreme Court
26 decided a number of cases in which it held unconstitutional rules that treated nonmarital children
27 unequally. As explained in the official comment to the original 1973 Uniform Parentage Act, this
28 nondiscrimination provision was one of the “major substantive sections of the Act.” The
29 provision in the 1973 UPA, which was substantively identical to this provision, was intended to
30 “establish the principle that regardless of the marital status of the parents, all children and all
31 parents have equal rights with respect to each other.” 1973 UPA, § 2, Comment. See also 2002
32 UPA, § 202, Comment (“From a legal and social policy perspective, this is one of the most
33 significant substantive provisions of the Act, reaffirming the principle that regardless of the
34 marital status of the parents, children and parents have equal rights with respect to each other.”).

35
36
37

The principle established by this provision is that principle that once a parent-child
relationship has been established, that relationship is entitled to substantive equality, regardless

1 of whether the child is a marital or a nonmarital child.

2

3

SECTION 203. CONSEQUENCES OF ESTABLISHING PARENTAGE. Unless

4 parental rights are terminated, a parent-child relationship established under this [act] applies for

5 all purposes, except as otherwise specifically provided by law of this state other than this [act].

6

SECTION 204. PRESUMPTION OF PARENTAGE.

7

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

8

(1) except as otherwise provided [under [Article] 8 or] law of this state other than

9

this [act]:

10

(A) the individual and the woman who gave birth to the child are married

11

to each other and the child is born during the marriage, whether or not the marriage is or could be

12

declared invalid;

13

(B) the individual and the woman who gave birth to the child were

14

married to each other and the child is born not later than 300 days after the marriage is

15

terminated by death, annulment, declaration of invalidity, divorce, or dissolution[, or after a

16

decree of separation], whether or not the marriage is or could be declared invalid;

17

(C) after the birth of the child, the individual and the woman who gave

18

birth to the child married each other, whether or not the marriage is or could be declared invalid,

19

and the individual asserted parentage of the child, and:

20

(i) the assertion is in a record filed with [state agency maintaining

21

birth records];

22

(ii) the individual agreed to be and is named as the child's parent

23

on the child's birth certificate; or

24

(iii) the individual agreed in a record to support the child as the

1 individual’s own child.

2 (2) the individual resided in the same household with the child for the first two
3 years of the child’s life, including periods of temporary absence, and openly held out the child as
4 the individual’s own child.

5 (b) A presumption of parentage under this section may be rebutted, and competing claims
6 to parentage may be resolved, only by an adjudication under [Article] 6.

7 **Reporter’s Comment**

8 9 1. MARITAL PRESUMPTIONS AND GENDER NEUTRALITY

10
11 In its 2015 decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States
12 Supreme Court held that laws barring marriage between two people of the same sex are
13 unconstitutional. After *Obergefell*, some parentage laws that treat same-sex couples differently
14 than different-sex couples may be unconstitutional. For example, in July 2015, a federal district
15 court in Utah held that refusing to apply Utah’s assisted reproduction parentage provisions
16 equally to same-sex couples likely was unconstitutional. Under the Utah Uniform Parentage Act,
17 which is modeled on the 2002 UPA, a husband who consents to his wife’s insemination is the
18 legal father of the resulting child. Utah Code Ann. §§ 78B-15-703, 78B-15-704; 78B-15-
19 201(2)(e). The court concluded that the plaintiffs were “highly likely to succeed in their claim”
20 that extending the “benefits of the assisted reproduction statutes to male spouses in opposite-sex
21 couples but not for female spouses in same-sex couples” was unconstitutional. *Roe v. Patton*,
22 2015 WL 4476734, *3 (D. Utah. 2015). To address this potential constitutional infirmity, Section
23 204 has been amended to make the marital presumption apply equally to both male and female
24 spouses.

25
26 A number of states have made similar changes to their marital presumptions. *See, e.g.*,
27 CAL. FAM. CODE § 7611; D.C. CODE ANN. § 16-909; 750 ILL. COMP. STAT. ANN. § 46/204; ME.
28 STAT., tit. § 1881(1); N.H. REV. STAT. § 168-B:2(V).

29
30 One state – Washington State – has gone further than the above draft goes. The revised
31 Washington marital presumption is fully gender neutral; it establishes a presumption of
32 parentage in any spouse – male or female – of any parent – male or female. Specifically, Wash.
33 Rev. Code Ann. § 26-26-116 provides that “a person is presumed to be the parent of a child if:
34 The person and the mother or father of the child are married to each other ... and the child is
35 born during the marriage.” Thus, under the Washington Statute, a wife is presumed to be the
36 legal parent of the biological child of her husband conceived in an extramarital relationship and
37 born to a woman not his wife.

38
39 The committee decided not to adopt a fully gender-neutral marital presumption for a
40 number of reasons. First, of the seven states that have amended their marital presumptions to

1 account for same-sex marriage, only one state – Washington State – has adopted a fully gender-
2 neutral version of the marital presumption. The other six states have adopted provisions similar
3 to the provision above.
4

5 Second, in practice, a fully-gender neutral marital presumption would rarely establish the
6 parentage of the spouse of a male parent. This is the case because the act provides that the
7 woman who gives birth is a legal parent. Section 201(a)(1). Thus, in the hypothetical described
8 above where a male spouse conceives a child with a woman not his wife, despite the fully
9 gender-neutral marital presumption, a court nonetheless would be likely to conclude that the
10 legal parents of the resulting child are the male spouse and the woman who gave birth to the
11 child. The court would be unlikely to conclude that the man’s wife was a legal parent.
12

13 2. HOLDING OUT PRESUMPTION – SECTION 204(a)(5)
14

15 There was a discussion at the in-person drafting meeting about making the “holding out”
16 period more flexible. Language has been added to the holding out provision to account for
17 situations where the person is absent only temporarily. The language is modeled on the
18 UCCJEA’s definition of “home state.” *See* UCCJEA § 102(7) (“A period of temporary absence
19 of any of the mentioned persons is part of the period.”). Some members of the committee
20 expressed interest in eliminating the requirement of a two-year holding out period.
21

22 3. COMPETING PRESUMPTIONS
23

24 The 1973 UPA contained a provision addressing cases involving competing
25 presumptions. Section (4)(b) of the 1973 UPA provides, in relevant part: “If two or more
26 presumptions arise which conflict with each other, the presumption which on the facts is founded
27 on the weightier considerations of policy and logic controls.”
28

29 The 2002 UPA contains no provision addressing how courts should resolve cases in
30 which there are competing presumptions of parentage. Given that there is a range of
31 circumstances that could result in more than one person claiming a presumption of parentage, it
32 is important for the act to address this possibility. Section 204(b) now references the possibility
33 that a court might have to resolve competing presumptions of parentage. Newly added Section
34 612 provides factors that a court must consider in resolving such cases.
35

36 **SECTION 205. DE FACTO PARENTAGE.**

37 (a) The court may find that an individual is a de facto parent of a child if the individual
38 demonstrates by clear and convincing evidence that:

39 (1) the individual resided with the child as a regular member of the child’s
40 household for a significant period of time;

41 (2) the individual engaged in consistent caretaking of the child;

1 (3) the individual undertook full and permanent responsibilities of a parent of the
2 child without expectation of financial compensation;

3 (4) the individual held out the child as the individual’s own child;

4 (5) the individual established a bonded and dependent relationship with the child;

5 (6) another parent of the child fostered or supported the bonded and dependent
6 relationship required under paragraph (5); and

7 (7) continuing the relationship between the individual and the child is in the best
8 interest of the child.

9 (b) An adjudication that an individual who satisfies subsection (a) is a parent is governed
10 by Sections 609 and 611.

11 [ARTICLE] 3

12 VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

13 Reporter’s Comment

14 Article 3 implements federal law. 42 U.S.C. § 666(a)(5)(C) provides that receipt of a
15 federal subsidy by a state for its child support enforcement program is contingent on state
16 enactment of laws establishing specific procedures for “a simple civil process for voluntarily
17 acknowledging paternity.” If a state does not have such provisions or if its provisions are not in
18 compliance with federal law, the state is at risk of losing its federal child support subsidy. *See*,
19 *e.g.*, 42 U.S.C. § 666(a) (providing that “each State must have in effect laws requiring the use of
20 the following procedures, consistent with this section and with regulations of the Secretary”). *See*
21 *also* 42 U.S.C. § 654(20)(A). Today, all states have adopted procedures for voluntary
22 acknowledgments of paternity. Indeed, “[v]oluntary acknowledgments have become the most
23 common way to establish the legal paternity of children born outside marriage.” Leslie Joan
24 Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, 20 AM. U. J. GENDER
25 SOC. POL’Y & L. 467, 469-70 (2012) (footnotes omitted).

26
27 Currently, Article 3 refers only to the establishment of paternity through this
28 administrative process. Some members of the Drafting Committee feel that women should also
29 be able to establish their parentage through a similar, streamlined administrative process.

30
31 The Drafting Committee considered a number of the possibilities to implement this goal.
32 The Drafting Committee considered creating a parallel procedure that would apply to same-sex
33 couples. At the moment, however, the Drafting Committee has decided against adding separate
34 provisions that would apply only to same-sex couples. Singling out same-sex couples was

1 deemed by some members to be in tension with the charge of making the act apply equally to the
2 children of same-sex couples.

3
4 The Drafting Committee also considered two other possibilities: (1) revising the existing
5 Article 3 so that it is written in gender-neutral terms; or (2) adding an alternative, bracketed
6 version of Article 3 that is written in gender-neutral terms. If a gender-neutral Article 3 is
7 enacted by a state, it must meet the requirements of 42 U.S.C. § 666(a)(5)(C) and not prohibit
8 state child support agencies from establishing paternity in appropriate cases. According to the
9 federal Office of Child Support Enforcement (OCSE), revising Article 3 so that it is gender
10 neutral would not jeopardize the state's receipt of the federal child support subsidy as long as the
11 state is able to meet the requirements of 42 U.S.C. § 666(a)(5)(C) and establish paternity in
12 appropriate cases. OCSE has indicated a willingness to work with the Drafting Committee to
13 ensure the revised UPA is consistent with title IV-D requirements.

14
15 **SECTION 301. ACKNOWLEDGMENT OF PARENTAGE.** A woman who gave
16 birth to a child and an individual claiming to be the alleged genetic father of the child, an
17 intended parent, or a presumed parent may sign an acknowledgment of parentage with intent to
18 establish the parentage of the child.

19 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE.**

20 (a) An acknowledgment of parentage must:

21 (1) be in a record signed under penalty of perjury by the woman who gave birth to
22 the child and by the individual seeking to establish the individual's parentage;

23 (2) state that the child whose parentage is being acknowledged:

24 (A) does not have a presumed parent other than the individual seeking to
25 establish the individual's parentage, or has a presumed parent whose full name is stated; and

26 (B) does not have another acknowledged parent, or an adjudicated parent
27 or a parent by operation of law under [Article] 7 other than the woman who gave birth to the
28 child; and

29 (3) state that the signatories understand that the acknowledgment is the equivalent
30 of an adjudication of parentage of the child and that a challenge to the acknowledgment is

1 permitted only under limited circumstances and is barred two years after the effective date of the
2 acknowledgement.

3 (b) An acknowledgment of parentage is void if, at the time of signing:

4 (1) an individual other than the individual seeking to establish his or her parentage
5 is a presumed parent, unless a denial of parentage in a signed record by the presumed parent is
6 filed with the [agency maintaining birth records]; or

7 (2) an individual other than the woman who gave birth to the child is an
8 acknowledged or adjudicated parent or a parent by operation of law under [Article] 7.

9 **Reporter's Comment**

10
11 Section 302 has been amended to reflect the fact that presumed parents can be men or
12 women. The Committee also made a substantive change to Subsection (b) to better reflect what
13 we believe is the actual intent of the provision. The change makes clear that the VAP is void if
14 another person other than the woman who gave birth *is* a presumed, acknowledged, or
15 adjudicated parent. As previously drafted, the VAP was void only if it *stated* that there was
16 another presumed, acknowledged, or adjudicated parent. Thus, under the 2002 UPA, the VAP
17 was void only if the person knowingly lied on the form. As a result, under the 2002 UPA, the
18 VAP could cut off potential claims of other individuals so long as the signatories did not lie. The
19 amendments better protect the rights of other individuals who are presumed, acknowledged, or
20 adjudicated parents. If Subsection (b) is so amended, then what had previously been (b)(3) is no
21 longer necessary.

22
23 **SECTION 303. DENIAL OF PARENTAGE.** A presumed parent may sign a record of
24 a denial of parentage. The denial is valid only if:

25 (1) an acknowledgment of parentage by another individual is filed under Section 305;

26 (2) the denial is in a record signed under penalty of perjury; and

27 (3) the presumed parent has not previously:

28 (A) completed an effective acknowledgment of parentage, unless the previous
29 acknowledgment has been rescinded under Section 308 or challenged successfully under Section
30 309; or

1 (B) been adjudicated to be the parent of the child.

2 **SECTION 304. RULES FOR ACKNOWLEDGMENT AND DENIAL OF**
3 **PARENTAGE.**

4 (a) An acknowledgment of parentage and a denial of parentage may be contained in a
5 single document or may be in counterparts, and may be filed with the [agency maintaining birth
6 records] separately or simultaneously. If the filing of the acknowledgement and denial are both
7 necessary, neither is effective until both are filed.

8 (b) An acknowledgment of parentage or a denial of parentage may be signed in a record
9 before the birth of the child.

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

13 (d) An acknowledgment of parentage or denial of parentage in a record signed by a minor
14 is valid if it is otherwise complies with this [act].

15 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF**
16 **PARENTAGE.**

17 (a) Except as otherwise provided in Sections 308 and 309, a valid acknowledgment of
18 parentage filed with the [agency maintaining birth records] is equivalent to an adjudication of
19 parentage of a child and confers on the acknowledged parent all of the rights and duties of a
20 parent.

21 (b) Except as otherwise provided in Sections 308 and 309, a valid denial of parentage by
22 a presumed parent filed with the [agency maintaining birth records] with a valid
23 acknowledgment of parentage is equivalent to an adjudication of the nonparentage of the

1 [ARTICLE] 4

2 REGISTRY OF PATERNITY

3 Reporter’s Comment

4 The provisions establishing a paternity registry were added by the 2002 UPA. Signing a
5 registry entitles the registrant to notice of and a right to oppose the adoption of an infant child;
6 signing a paternity registry is *not* a means of establishing parentage. In *Lehr v. Robertson*, 463
7 U.S. 248 (1983), the Supreme Court upheld the constitutionality of a New York “putative father
8 registry.” A New York statute required a father of a nonmarital child to sign a paternity registry
9 if he wished to be notified of a termination of parental rights or adoption proceeding. Thereafter,
10 a series of well-publicized adoption cases occurred in which state courts held that nonmarital
11 fathers had not been given proper notice of such proceedings and voided established adoptions.
12 A substantial number of legislatures responded to these decisions by enacting paternity registries
13 similar to the New York statute.

14
15 The 2017 UPA does not make any substantive changes to Article 4.

16 [PART] 1

17
18 GENERAL PROVISIONS

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

21 SECTION 402. REGISTRATION FOR NOTIFICATION.

22 (a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to
23 be notified of a proceeding for adoption of, or termination of parental rights regarding, his
24 genetic child must register in the registry of paternity established by Section 401 before the birth
25 of the child or not later than 30 days after the birth.

26 (b) A man is not required to register under subsection (a) if[:

27 (1) a parent-child relationship between the man and the child has been
28 established under this [act] or law of this state other than this [act][; or

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

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

5 **SECTION 403. NOTICE OF PROCEEDING.**

6 (a) The [individual][petitioner] who seeks to adopt the child or to terminate parental
7 rights of the child must provide notice of the proceeding to a registrant who has timely registered
8 under Section 402.

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

11 **SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER**

12 **ONE YEAR OF AGE.** The [individual][petitioner] who seeks to adopt the child or to terminate
13 parental rights of the child does not need to provide notice to a man who may be the genetic
14 father of the child if:

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

17 (2) the man did not timely register under Section 402(a) with the [agency maintaining the
18 registry]; and

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

20 **SECTION 405. TERMINATION OF PARENTAL RIGHTS; CHILD AT LEAST**

21 **ONE YEAR OF AGE.**

22 (a) If a child has attained one year of age, the [individual][petitioner] seeking to adopt or
23 to terminate the parental rights of the child must provide notice of a proceeding for adoption of,

1 or termination of parental rights regarding, the child to every alleged genetic father of the child,
2 whether or not he has registered under Section 402(a).

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

5 **[PART] 2**

6 **OPERATION OF REGISTRY**

7 **SECTION 406. REQUIRED FORM.** The [agency maintaining the registry] shall
8 prepare a form for registering under Section 402(a). The form must require the registrant to sign
9 the form in a record. The form must state that:

10 (1) the form is signed under penalty of perjury;

11 (2) a timely registration entitles the registrant to notice of a proceeding for adoption of
12 the child or termination of the registrant's parental rights;

13 (3) a timely registration does not commence a proceeding to establish parentage;

14 (4) the information disclosed on the form may be used against the registrant to establish
15 parentage;

16 (5) services to assist in establishing parentage are available to the registrant through [the
17 appropriate state support-enforcement agency];

18 (6) the registrant also may register in a registry of paternity in another state if conception
19 or birth of the child occurred in the other state;

20 (7) information on registries of paternity of other states is available from [appropriate
21 state agency or agencies]; and

22 (8) procedures exist to rescind the registration.

1 **Reporter’s Comment**

2 The change to subsection (8) was made in order to make this subsection more consistent
3 with the other provisions in this Article. There is no other provision that refers to a “registration
4 of a claim to paternity.” Elsewhere, the form is simply referred to as a “registration.” *See, e.g.*,
5 Sections 412 - 413. In addition, the phrase “registration of a claim of paternity” is potentially
6 misleading; the phrase could be understood to suggest that registration provides a basis for
7 asserting legal parentage, which it does not.

8
9 **SECTION 407. FURNISHING INFORMATION; CONFIDENTIALITY.**

10 (a) The [agency maintaining the registry] need not seek to locate the woman who gave
11 birth to the child who is the subject of a registration under Section 402(a), but the [agency
12 maintaining the registry] shall send a copy of the notice of registration to the woman who gave
13 birth to the child if she has provided an address.

14 (b) Information contained in the registry established by Section 401 is confidential and
15 may be released on request only to:

- 16 (1) a court or individual designated by the court;
- 17 (2) the woman who gave birth to the child who is the subject of the registration;
- 18 (3) an agency authorized by law of this state other than this [act], law of another
19 state, or federal law to receive the information;
- 20 (4) a licensed child-placing agency;
- 21 (5) a support-enforcement agency;
- 22 (6) a party or the party’s attorney of record in a proceeding under this [act] or in a
23 proceeding for adoption of, or for termination of parental rights regarding, a child who is the
24 subject of the registration; and
- 25 (7) a registry of paternity in another state.

26 **SECTION 408. PENALTY FOR RELEASING INFORMATION.** An individual
27 who intentionally releases information from the registry established by Section 401 to another

1 individual or agency not authorized to receive the information under Section 412 commits a
2 [appropriate level misdemeanor].

3 **SECTION 409. RESCISSION OF REGISTRATION.** A registrant under Section
4 402(a) may rescind his registration at any time by filing with the registry established under
5 Section 401 a rescission in a signed record that is notarized or witnessed by at least one
6 individual.

7 **SECTION 410. UNTIMELY REGISTRATION.** If a man registers under Section
8 402(a) more than 30 days after the birth of the child, the [agency maintaining the registry] shall
9 notify the registrant that based on a review of the registration, the registration was not filed
10 timely.

11 **SECTION 411. FEES FOR REGISTRY.**

12 (a) [The agency maintaining records] may not charge a fee for filing a registration under
13 Section 402(a) or a rescission of registration under Section 409.

14 (b) [Except as otherwise provided in subsection (c), the][The] [agency maintaining the
15 registry] may charge a reasonable fee for making a search of the registry established under
16 Section 401 and for furnishing a certificate of search under Section 413.

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

19 *Legislative Note: A state should include subsection (c) if the state wishes not to require certain*
20 *agencies to pay fees authorized by subsection (b).*

1 [PART] 3

2 SEARCH OF REGISTRIES

3 SECTION 412. SEARCH OF APPROPRIATE REGISTRY. If a parent-child

4 relationship has not been established under this [act] for a child who has not attained one year of
5 age for an individual other than the woman who gave birth to the child:

6 (a) a [petitioner] for adoption of, or termination of parental rights regarding, the child
7 must obtain a certificate of search under Section 413 to determine if a registration has been filed
8 in the registry regarding the child.

9 (b) In addition to the certificate required by subsection (a), if a [petitioner] for adoption
10 of, or termination of parental rights regarding, a child has reason to believe that conception or
11 birth of the child may have occurred in another state, the [petitioner] must obtain a certificate of
12 search from the registry of paternity, if any, in that state.

13 SECTION 413. CERTIFICATE OF SEARCH OF REGISTRY.

14 (a) The [agency maintaining the registry] established under Section 401 shall furnish to a
15 requester a certificate of search of the registry on request of an individual, court, or agency
16 identified in Section 407.

17 (b) A certificate furnished under subsection (a) must be signed on behalf of the [agency
18 maintaining the registry] established under Section 401 and state that:

19 (1) a search has been made of the registry established under Section 401; and

20 (2) a registration under Section 402(a) containing the information required to
21 identify the registrant:

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

23 (B) has not been found.

1 (c) A [petitioner] shall file the certificate of search furnished under subsection (a) with
2 the court before a proceeding for adoption of, or termination of parental rights regarding, a child
3 may be concluded.

4 **SECTION 414. ADMISSIBILITY OF REGISTERED INFORMATION.** A

5 certificate of search of a registry of paternity in this or another state is admissible in a proceeding
6 for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal
7 proceedings.

8 **[ARTICLE] 5**

9 **GENETIC TESTING**

10 **SECTION 501. DEFINITIONS.** In this [article]:

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

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

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

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

23 (3) “Probability of paternity” means the measure, for the ethnic or racial group to which

1 the alleged genetic father belongs, of the probability that the man is the father of the child,
2 compared with a random, unrelated man of the same ethnic or racial group, expressed as a
3 percentage incorporating the paternity index and a prior probability.

4 **SECTION 502. SCOPE OF [ARTICLE].**

5 (a) This [article] governs genetic testing of an individual in an action to adjudicate
6 parentage, whether the individual:

7 (1) voluntarily submits to testing; or

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

9 (b) Genetic testing cannot be used:

10 (1) to disestablish [challenge] parentage of an individual who is a parent by
11 operation of law under [Article] 7[or Article 8]; or

12 (2) to establish parentage of an individual who is a donor.

13 **Reporter's Comment**

14
15 There was a discussion at the in-person drafting meeting about which word to use in
16 Subsection (b). As was true in the prior draft, Subsection (b) currently uses the term
17 "disestablish." Other possibilities include "challenge," "nullify," or "invalidate."
18

19 NOTE: May want to add an official comment stating that a donor is not precluded from
20 establishing parentage through means other than genetic testing.
21

22 **SECTION 503. AUTHORITY TO ORDER OR TO DENY GENETIC TESTING.**

23 (a) In a proceeding under this [act] to determine parentage, except as otherwise provided
24 in this [article] and [Article] 6, a court shall order the child and other designated individuals to
25 submit to genetic testing if a request for testing is supported by the sworn statement of a party:

26 (1) alleging genetic parentage and stating facts establishing a reasonable
27 probability of genetic parentage; or

28 (2) denying genetic parentage and stating facts establishing a possibility that

1 sexual contact between the individuals, if any, did not result in the conception of the child.

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

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

6 (d) If two or more individuals are subject to court-ordered genetic testing, the court may
7 order that testing be completed concurrently or sequentially.

8 (e) Genetic testing of a woman who gave birth to the child is not a condition precedent to
9 testing of a child and an individual whose genetic paternity is being determined. If the woman
10 who gave birth is unavailable or declines to submit to genetic testing, the court may order the
11 testing of the child and every individual whose genetic paternity is being adjudicated.

12 (f) An order under this section for genetic testing is enforceable by contempt.

13 (g) In a proceeding to adjudicate the parentage of a child having a presumed parent or to
14 challenge under Section 310 an acknowledgment of parentage, the court may deny a motion for
15 genetic testing of the woman who gave birth, the child, or the presumed parent or acknowledged
16 parent after considering the factors listed in Section 612(3), and the extent to which the passage
17 of time reduces the likelihood of establishing the parentage of another person and a child-support
18 obligation in favor of the child. Denial of a motion for genetic testing must be based on clear and
19 convincing evidence.

20 **SECTION 504. REQUIREMENTS FOR GENETIC TESTING.**

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

23 (1) AABB, formerly known as the American Association of Blood Banks, or a

1 successor to its functions; or

2 (2) an accrediting body designated by the Secretary of the United States

3 Department of Health and Human Services.

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

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

12 (1) No later than 30 days after receipt of the report of the test, the individual
13 objecting may seek an order from the court requiring the laboratory to recalculate the probability
14 of genetic paternity using an ethnic or racial group different from that used by the laboratory.

15 (2) The individual objecting to the initial choice of laboratory shall:

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

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

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

23 (d) If, after recalculation of the probability of paternity under subsection (c) using a

1 different ethnic or racial group, genetic testing does not rebuttably identify a man as the genetic
2 father of a child under Section 506, the court may require an individual who has been tested to
3 submit to additional genetic testing.

4 **Reporter's Comment**
5

6 Section 502(a)(1) was revised because the listed entity now uses a different name.
7 Section 502(a)(2) has been deleted because the American Society for Histocompatibility and
8 Immunogenetics is no longer accrediting laboratories for parentage testing. New Section
9 502(a)(2)/former Section 502(a)(3) has been revised based on feedback from the federal Office
10 of Child Support Enforcement.
11

12 **SECTION 505. REPORT OF GENETIC TESTING.**

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

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

19 (1) the names and photographs of the individuals whose specimens have been
20 taken;

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

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

23 (4) the names of the individuals who received the specimens in the testing
24 laboratory; and

25 (5) the dates the specimens were received.

26 **SECTION 506. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.**

27 (a) Subject to challenge under subsection (b), a man is identified under this [act] as the

1 genetic father of a child if genetic testing complies with this [article] and the results of the testing
2 discloses that:

3 (1) the man has at least a 99 percent probability that he is the genetic father, using
4 a prior probability of 0.50, as calculated by using the combined paternity index obtained in the
5 testing; and

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

7 (b) A man identified under subsection (a) as the genetic father of the child may challenge
8 the genetic testing results only by other genetic testing satisfying the requirements of this
9 [article] which:

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

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

12 (c) Except as otherwise provided in Section 511, if more than one man is identified by
13 genetic testing as the possible genetic father of the child, the court shall order them to submit to
14 further genetic testing to identify the genetic father.

15 **Reporter's Comment**

16
17 The references to “rebut” and “rebuttal” in this Section have been removed because those
18 terms create confusion in this context. “Rebut” and “rebuttal” are typically used to refer to
19 rebuttals of presumptions of parentage. This section, by contrast, deals with attempts to challenge
20 a *factual finding of genetic parentage*. A person identified as a genetic parent may or may not be
21 determined to be a legal parent. Using a different word seems appropriate and helps avoid
22 confusion.

23
24 At the in-person drafting meeting, the Drafting Committee noted that it might be helpful
25 to include an official comment clarifying that this section deals only with challenges to the
26 factual finding of genetic parentage; this section does not address legal parentage.

27 28 **SECTION 507. COST OF GENETIC TESTING.**

29 (a) Subject to assessment of fees under [Article] 6, the payment of cost of initial genetic
30 testing must be paid in advance:

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

6 (b) In a case in which the cost of genetic testing is paid in advance by the support
7 enforcement agency, the agency may seek reimbursement from the genetic parent if parentage is
8 established.

9 **Reporter’s Comment**

10 The word “rebuttably” has been removed from Section 506(b) because it is unnecessary.
11 Section 505 sets out how one can challenge a factual finding of genetic parentage.

12 **SECTION 508. ADDITIONAL GENETIC TESTING.** The court or the support-
13 enforcement agency shall order additional genetic testing on the request of a party who contests
14 the result of the initial testing. If the initial genetic testing under Section 506 identified a man as
15 the genetic father of the child, the court or agency may not order additional testing unless the
16 party who contests the result of the initial testing pays for the testing in advance.

17 **SECTION 509. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.**

18 (a) Subject to subsection (b), if a genetic-testing specimen is not available from a man
19 who may be the genetic father of a child and if the individual seeking the genetic testing
20 demonstrates good cause and the court finds that the circumstances are just, the court may order
21 the following individuals to submit specimens for genetic testing:

- 22 (1) the parents of the man;
- 23 (2) a sibling of the man;
- 24 (3) another child of the man and the mother of the child; and

1 (4) another relative of the man necessary to complete genetic testing.

2 (b) To issue an order under this section, the court must find that a need for genetic testing
3 outweighs the legitimate interests of the individual sought to be tested.

4 **SECTION 510. DECEASED INDIVIDUAL.** If the individual seeking genetic testing
5 demonstrates good cause, the court may order genetic testing of a deceased individual.

6 **SECTION 511. IDENTICAL BROTHERS.**

7 (a) The court may order genetic testing of a brother of a man identified as the genetic
8 father of a child if the court has reason to believe that the man is reasonably believed to have an
9 identical brother and there is evidence that the brother may be the genetic father of the child.

10 (b) If each brother is identified as a genetic father of the child under Section 506 without
11 consideration of another identical brother being identified as the genetic father of the child, the
12 court may rely on nongenetic evidence to adjudicate which brother is the genetic father of the
13 child.

14 **Reporter's Comment**

15 There was a discussion at the in-person drafting meeting about the phrase “commonly
16 believed.” The Drafting Committee concluded that the concept should be retained to cover
17 situations where the individuals are not identical twins, but many believe them to be identical
18 twins. This draft, however, replaces the word “commonly” with “reasonably.” “Reasonably”
19 continues to capture the concept, but is clearer.

20
21 **SECTION 512. CONFIDENTIALITY OF GENETIC TESTING.**

22 (a) Release of a report of genetic testing for parentage is controlled by [cite to applicable
23 law of this state other than this [act]].

24 (b) An individual who intentionally releases an identifiable specimen of another
25 individual for a purpose not relevant to a proceeding regarding parentage, without a court order
26 or written permission of the individual who furnished the specimen, commits a [appropriate level

1 misdemeanor].

2 **[ARTICLE] 6**

3 **PROCEEDING TO ADJUDICATE PARENTAGE**

4 **Reporter’s Comment**

5
6 While the 2017 UPA largely retains the substance of Article 6 of the 2002 UPA, it
7 substantially reorganizes the content of former Article 6 to improve its clarity and flow.

8
9 The dispositional table below tracks the relocation of some of the principal provisions. A
10 more comprehensive side-by-side comparison is available.

Former Section (2002 UPA)	New Section (2017 UPA)
Section 608(a)	Section 502(g)
Section 608(b)	Section 612
Section 609	Section 608
Section 610	Section 614
Section 611	Section 615
Section 612	Section 616
Section 621(a) & (b)	Section 609
Section 621(d)	Section 620
Section 622(a) & (c)	Section 502(f) & (e)
Section 622(b)	Section 611(2)
Section 623	Section 611(1)(B)
Section 624	Section 613
Section 631	Section 611(1)(A) & (4)
Section 632	Section 617
Section 633	Section 619
Section 634	Section 611(3)
Section 635	Section 619
Section 636	Section 620
Section 637	Section 621

11
12
13 **[PART] 1**

14 **NATURE OF PROCEEDING**

15 **SECTION 601. PROCEEDING AUTHORIZED.**

16 [(a)] A civil proceeding may be commenced to adjudicate the parentage of a child. The
17 proceeding is governed by [the rules of civil procedure].

18 [(b) Proceedings to adjudicate the parentage of children born under a surrogacy

1 agreement are governed by [Article] 8.]

2 **SECTION 602. STANDING TO MAINTAIN PROCEEDING.**

3 (a) [Except as otherwise provided in Section 601(b), and subject][Subject] to [Article] 3
4 and Sections 607, 608, and 609, a proceeding to adjudicate parentage may be maintained by:

5 (1) the child;

6 (2) the woman who gave birth to the child unless her parental rights have been
7 terminated[or she is a surrogate under [Article] 8];

8 (3) an individual who is a parent under this [act];

9 (4) except as otherwise provided in subsection (b), an individual whose parentage
10 of the child is to be adjudicated;

11 (5) a support-enforcement agency [or other governmental agency authorized by
12 law of this state other than this [act]];

13 (6) an adoption agency authorized by law of this state other than this [act] or
14 licensed child-placement agency; or

15 (7) a representative authorized by law of this state other than this [act] to act for
16 an individual who otherwise would be entitled to maintain a proceeding but is deceased,
17 incapacitated, or a minor.

18 (b) If the proceeding to establish parentage is commenced by an individual seeking to be
19 adjudicated to be a de facto parent under Section 205, the individual must establish standing to
20 maintain the action under the following rules.

21 (1) The individual must file with the initial pleading an affidavit alleging specific
22 facts that support the existence of a de-facto-parent relationship with the child under Section 205.
23 The pleading and affidavit must be served on all parents and any legal guardians of the child and

1 any other party to the proceeding.

2 (2) An adverse party, parent, or legal guardian who files a pleading in response to
3 the pleadings under paragraph (1) also must file an affidavit in response and serve a copy on the
4 parties to the proceeding.

5 (3) The court shall determine on the basis of the pleading and affidavit under
6 paragraphs (1) and (2) whether the individual seeking to be adjudicated a de facto parent has
7 presented prima facie evidence that the requirements of Section 205 are satisfied. In its sole
8 discretion, the court may hold a hearing to determine disputed facts necessary and material to the
9 issue of standing. If the court holds a hearing, the hearing must be held on an expedited basis.

10 (4) If the court determines that an individual has presented prima facie evidence
11 that the requirements of Section 205 are satisfied, the individual has standing to maintain a
12 proceeding to adjudicate parentage.

13 **Reporter's Comment**

14 This draft includes a heightened standing standard that must be met where the action is
15 brought by an individual claiming to be a de facto parentage. This provision is premised on a
16 similar provision in Maine's newly enacted Parentage Act. As I understand it, this provision was
17 added to allay the concerns of some people that permitting actions by de facto parents might
18 subject parents to unwarranted and unjustified litigation. This ensures that the action will not
19 proceed unless it appears that the person has a strong claim to being a de facto parent.

20
21 It is important to note that the Delaware Parentage Act does not include any similar
22 special standing requirements for individuals who claim de facto parentage.

23
24 As drafted, no other individuals are required to fulfill a heightened standing requirement
25 to proceed.

26
27 If we decide to include this heightened pleading standard, we may want to clarify in the
28 comment that this heightened pleading standard does not apply if the person initiating the action
29 to declare an individual to be a de facto parent is an existing legal parent of the child.

30
31 **SECTION 603. PARTIES TO PROCEEDING.**

32 [(a) A proceeding to adjudicate the parentage of a child born under a surrogacy

1 agreement is governed by [Article] 8.]

2 (b) [Except as otherwise provided in subsection (a), the][The] petitioner must provide
3 notice of the proceeding to adjudicate parentage to the following individuals:

4 (1) the woman who gave birth to the child unless her parental rights have been
5 terminated[or she is a surrogate under [Article] 8];

6 (2) an individual who is a parent of the child under this [act];

7 (3) a presumed, acknowledged, or adjudicated parent of the child;

8 (4) an individual alleged to be a de facto parent of the child;

9 (5) an individual whose parentage of the child is to be adjudicated; and

10 (6) a known alleged genetic father.

11 (c) An individual entitled to notice under subsection (b) is entitled to intervene in the
12 action.

13 **Legislative Note:** *A state should include subsection (a) if the state wishes to recognize in statute*
14 *surrogacy agreements and includes Article 8 in the act.*

15

16

Reporter's Comment

17

18 This provision is intended to ensure that steps are taken to join all persons with a claim to
19 parentage regarding a particular child in a single action. Without the requirement of joinder, the
20 rights of any absent individual with a claim to parentage could be indirectly affected. Take, for
21 example, a situation where two men are presumed parents, one because he was married to the
22 child's mother and one because he had held the child out as his own for the first two years of the
23 child's life. If the UPA did not require the court to join all parties with a claim to parentage, the
24 husband may not have a right to be notified of the action and his rights could be negatively
25 affected even though he did not have an opportunity to present his claims to the court. Indeed,
26 Section 621(d) provides that, "[e]xcept as otherwise provided in subsection (b), a determination
27 of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an
28 individual who was not a party to the earlier proceeding." (This subsection was taken verbatim
29 from former Section 637(d)).

30

31 While a goal of the revised Section 603 is to ensure that steps are taken to include all
32 parties with a potential claim to parentage in a proceeding to adjudicate parentage, another goal
33 of the revised Section is to ensure that the proceeding could go forward even if such a party
34 declines to participate in the proceeding. Subsection (c), seeks to achieve this goal. Subsection

1 (c) is modeled on Federal Rule of Civil Procedure 19. Although state court parentage actions are
2 not governed by the Federal Rules of Civil Procedure, this new Section is consistent with the
3 spirit of FRCP 19.

4
5 **SECTION 604. PERSONAL JURISDICTION.**

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

8 (b) A court of this state having jurisdiction to adjudicate parentage may exercise personal
9 jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the
10 conditions prescribed in [cite to this state’s Section 201 of the Uniform Interstate Family Support
11 Act] are met.

12 (c) Lack of jurisdiction over one individual does not preclude the court from making an
13 adjudication of parentage binding on another individual over whom the court has personal
14 jurisdiction.

15 **SECTION 605. VENUE.** Venue for a proceeding to adjudicate parentage is in the
16 [county] of this state in which:

17 (1) the child resides or is found;

18 (2) the [respondent] resides or is found, if the child does not reside in this state; or

19 (3) a proceeding for probate or administration of the estate of the presumed parent or
20 alleged genetic father has been commenced.

21 **[PART] 2**

22 **SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

23 **SECTION 606. GENERAL RULES REGARDING ADMISSIBILITY OF**
24 **RESULTS OF GENETIC TESTING.**

25 (a) Except as otherwise provided in subsection (c), a report of a genetic-testing expert is

1 admissible as evidence of the truth of the facts asserted in the report unless a party objects to its
2 admission not later than [14] days after the objecting party receives the report and cites specific
3 grounds for exclusion. The admissibility of the report is not affected by whether the testing was
4 performed:

- 5 (1) voluntarily or under an order of the court or a support-enforcement agency; or
- 6 (2) before or after commencement of the proceeding.

7 (b) A party who objects to the results of genetic testing may call one or more genetic-
8 testing experts to testify in person or by another method approved by the court. Unless the court
9 orders otherwise, the party offering the testimony bears the expense for the expert testifying.

10 (c) Genetic testing is not admissible for the purpose of:

- 11 (1) disestablishing the parentage of an individual who is a parent under [Article] 7
12 [or 8]; or
- 13 (2) establishing the parentage of an individual who is a donor.

14 **Reporter's Comment**

15

16 1. PLACEMENT OF THE PROVISION

17

18 This section has been moved up. It was previously included as Section 621. The Reporter
19 believes the content is better placed here, along with the other substantive rules regarding
20 adjudication of parentage. What had been addressed in former Section 621(c) is now addressed
21 in new Section 612 (adjudicating parentage in cases involving competing claims to parentage).

22

23 Former Section 621(d) has been moved into new Section 619/former Section 636 (Order
24 Adjudicating Parentage). Section 619/former Section 636 addresses other costs and expenses,
25 including “fees for genetic testing, other costs, and necessary travel and other reasonable
26 expenses incurred in a proceeding under this [article].” Thus, it seems like a better placement for
27 this content.

28

29 2. GENETIC TESTING AND INTENDED PARENTS

30

31 The new Section 609(c) is similar to the new Section 501(c); both new provisions make
32 clear that genetic testing cannot be used to challenge the parentage of an individual who is a
33 parent of a child born through assisted reproductive technology.

1 **SECTION 607. ADJUDICATING PARENTAGE OF A CHILD HAVING NO**
2 **ALLEGE DE FACTO, PRESUMED, ACKNOWLEDGED, OR ADJUDICATED OTHER**
3 **THAN THE WOMAN WHO GAVE BIRTH.** The following rules apply in a proceeding to

4 adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated parent
5 and no parent under [Article] 7 [or [Article] 8], other than the woman who gave birth, and in
6 which there is only one individual other than the woman who gave birth with a claim to
7 parentage under this [act].

8 (1) Except as provided in Section 205, a proceeding to adjudicate the parentage of a child
9 under this Section may be commenced:

10 (a) at any time before the child becomes an adult; or

11 (b) at any time after the child becomes an adult, but only if the child initiates the
12 proceeding.

13 (2) Except as otherwise provided in subsection (3), in a proceeding to adjudicate the
14 parentage of a child under this Section, the court shall issue an order establishing the parentage
15 of the individual if the individual alleged to be child's parent:

16 (a) is identified as the genetic parent of the child under Section 505 and that
17 identification is not successfully challenged under Section 505;

18 (b) admits parentage by filing a pleading to that effect or by admitting parentage
19 under penalty of perjury when making an appearance or during a hearing; the court accepts the
20 admission; and the individual is found by the court to be the parent of the child;

21 (c) declines to submit to genetic testing ordered by the court, in which case the
22 court may adjudicate parentage contrary to the position of the individual;

23 (d) is in default after service of process and is found by the court to be the parent

1 of the child; or

2 (e) is neither identified nor excluded as the genetic parent by genetic testing and is
3 found by the court to be the parent of the child. The results of genetic testing, and other evidence,
4 are admissible to adjudicate the issue of parentage.

5 **SECTION 608. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED**

6 **PARENT.** The following rules apply in a proceeding to adjudicate the parentage of a child
7 having a presumed parent where the child had no adjudicated or acknowledged parent and no
8 parent under [Article] 7 [or [Article] 8].

9 (1) A proceeding to establish the parentage of a child under this Section may be
10 commenced by:

11 (a) the presumed parent or the woman who gave birth at any time before the child
12 becomes an adult;

13 (b) the child at any time; and

14 (c) an alleged genetic parent within 2 years of the child's birth.

15 (2) A presumption of parentage established under Section 204 becomes irrefutable after
16 the child attains 2 years of age unless the court determines that:

17 (a) the presumed parent is not the genetic parent; and

18 (b) the presumed parent never resided with the child and never held out the child
19 as the presumed parent's own child; or

20 (c) under Section 611, another individual is the child's parent.

21 (3) In a proceeding to establish the parentage of a child under this Section in which there
22 is only one [individual][party] other than the woman who gave birth with a claim to parentage
23 under this [act]:

1 (a) if no party to the proceeding challenges the parentage of the presumed parent,
2 the court shall issue an order establishing the presumed parent to be child's parent;

3 (b) if the presumed parent is identified as the genetic parent of the child under
4 Section 505 and that identification is not successfully challenged under Section 505, the court
5 shall issue an order establishing the presumed parent to be the child's parent;

6 (c) if the presumed parent is not identified as the genetic parent of the child under
7 Section 505 and if at least one party to the proceeding challenges the parentage of the presumed
8 parent, the court shall adjudicate the child's parentage pursuant to the best interests of the child
9 based on the factors set forth in Section 611.

10 (d) In a proceeding to establish the parentage of a child under this Section in which more
11 than one [individual][party] other than the woman who gave birth has a claim to parentage under
12 this [act], the court shall adjudicate parentage under Section 611.

13 **SECTION 609. ADJUDICATING PARENTAGE OF A CHILD WITH AN**
14 **ALLEGED DE FACTO PARENT.** The following rules apply in a proceeding to adjudicate
15 the parentage of a child having an alleged de facto parent under Section 205 where the child had
16 no adjudicated or acknowledged parent and no parent under [Article] 7 [or [Article] 8].

17 (1) An action seeking an adjudication that an individual is a child's de facto parent under
18 this Section must be commenced prior to the child's eighteen birthday, but in any case, no later
19 than the death of the individual alleged to be a de facto parent or the child, whichever is earlier.

20 (2) In an action to establish parentage under this Section, the court must adjudicate an
21 individual alleged to be a de facto parent to be a parent of the child if the court determines that
22 the requirements of Section 205(a) have been satisfied and there is no other [individual][party]
23 other than the woman who gave birth with a claim to parentage under this [act].

1 (3) Except as provided in subsection (2), if the court determines that the requirements of
2 Section 205(a) have been satisfied, the court shall adjudicate parentage under Section 611.

3 **SECTION 610. ADJUDICATING PARENTAGE OF A CHILD WITH AN**
4 **ACKNOWLEDGED OR ADJUDICATED PARENT.** The following rules apply in a
5 proceeding to adjudicate the parentage of a child where there is an acknowledged or adjudicated
6 parent and no parent under [Article] 7 [or [Article] 8], other than the woman who gave birth.

7 (1) If a child has an acknowledged parent, a proceeding to challenge the
8 acknowledgement or denial of parentage by a signatory to the acknowledgment or denial of
9 parentage is governed by Sections 309 and 310.

10 (2) If a child has an acknowledged parent or an adjudicated parent, an individual, other
11 than the child, who is neither a signatory to the acknowledgment of parentage nor was a party to
12 the prior adjudication and who seeks an adjudication of parentage of the child must commence a
13 proceeding not later than two years after the effective date of the acknowledgment or
14 adjudication. A court should permit the action to proceed only if the court finds that the action is
15 in the best interests of the child based on consideration of the factors set forth in Section 610.

16 (3) If the child has an adjudicated parent, an action to challenge the prior adjudication by
17 an individual who was a party to the prior adjudicate is governed by the rules governing
18 collateral attacks on judgments.

19 **SECTION 611. ADJUDICATING PARENTAGE OF A CHIDL IN CASES**
20 **INVOLVING COMPETING CLAIMS OF PARENTAGE.**

21 (a) Except as otherwise provided in Article 8, in an action in which more than one
22 individual other than the woman who gave birth seeks to be adjudicated to be a child's parent
23 under this [act], the court shall determine parentage pursuant to the best interests of the child,

1 based on the following factors:

2 (1) the age of the child;

3 (2) the length of time during which the individual assumed the role of parent of
4 the child;

5 (3) the nature of the relationship between the child and the individual;

6 (4) the harm to the child if the relationship between the child and the individual is
7 not recognized;

8 (5) in an action in which an individual is challenging parentage based on the
9 results of genetic testing:

10 (i), the facts surrounding the discovery that an individual might not be the
11 genetic parent of the child;

12 (ii) the length of time between the commencement of the action and the
13 time that an individual was placed on notice that he might not be the genetic parent; and

14 (6) other equitable factors arising from the disruption of the relationship between
15 the child and the individuals or the likelihood of other harm to the child.

16 [(b) A court may find that two or more [individuals other than the woman who gave birth
17 are parents under this [act] if the court finds that recognizing only two parents would be
18 detrimental to the child. A finding of detriment to the child does not require a finding of
19 unfitness of any of the parents or individuals with a claim to parentage. In determining detriment
20 to the child, the court shall consider all relevant factors, including, but not limited to, the harm of
21 removing the child from a stable placement with an individual who has fulfilled the child's
22 physical needs and the child's psychological needs for care and affection, and who has assumed
23 that role for a substantial period of time.]

1 [(b) A court may not adjudicate that a child has more than two parents under this [act].]

2 **SECTION 612. ADJUDICATING PARENTAGE FOR INDIVIDUAL WHO IS**

3 **PARENT UNDER [ARTICLE] 7.** An individual who is a parent under [Article] 7 may bring a
4 proceeding to adjudicate parentage. On a finding that the individual is a parent under [Article] 7,
5 the court shall adjudicate the individual to be a parent to the child.

6 **Reporter's Comment**

7
8 This new section specifically authorizes the filing of a proceeding to adjudicate the
9 parentage of individuals who are intended parents under Article 7. The rules regarding
10 adjudications of parentage for individuals who are parents under Article 8 are set forth in Article
11 8.

12
13 **[PART] 3**

14 **HEARING AND ADJUDICATION**

15 **SECTION 613. TEMPORARY ORDER.**

16 (a) In a proceeding under this [article], the court may issue a temporary order for support
17 of a child if the order is consistent with the law of this state other than this [act] and the
18 individual ordered to pay support is:

- 19 (1) a presumed parent of the child;
20 (2) petitioning to have the individual's parentage adjudicated;
21 (3) identified as the genetic father through genetic testing under Section 506;
22 (4) an alleged genetic father who has declined to submit to genetic testing;
23 (5) shown by clear and convincing evidence to be the parent of the child; or
24 (6) a parent under this [act].

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

1 a child in a proceeding under this [article] if the court finds that the interests of the child are not
2 adequately represented.

3 **SECTION 617. COURT TO ADJUDICATE PARENTAGE.** The court, without a
4 jury, shall adjudicate parentage of a child.

5 **SECTION 618. HEARING; INSPECTION OF RECORDS.**

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

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

11 *Legislative Note: A state should review the state's open records laws to determine if subsection*
12 *(b) needs to be addressed.*

13
14 **SECTION 619. DISMISSAL FOR WANT OF PROSECUTION.** The court may
15 issue an order dismissing a proceeding under this [act] for want of prosecution only without
16 prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and
17 has only the effect of a dismissal without prejudice.

18 **SECTION 620. ORDER ADJUDICATING PARENTAGE.**

19 (a) An order adjudicating parentage must identify the child in a manner provided by the
20 law of this state other than this [act].

21 (b) Except as otherwise provided in subsection (c), the court may assess filing fees,
22 reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other
23 reasonable expenses incurred in a proceeding under this [article]. Attorney's fees awarded under
24 this subsection may be paid directly to the attorney and the attorney may enforce the order in the
25 attorney's own name.

1 (c) The court may not assess fees, costs, or expenses in a proceeding under this [article]
2 against the support-enforcement agency of this state or another state, except as provided by law
3 other than this [act].

4 (d) In a proceeding under this [article], a copy of a bill for genetic testing or for prenatal
5 and postnatal health care for the mother and child, which is provided to the adverse party not less
6 than 10 days before the date of a hearing, is admissible to establish:

- 7 (1) the amount of the charge billed; and
- 8 (2) the charge is reasonable, necessary, and customary.

9 (e) On request of a party and for good cause, the court in a proceeding under this [article]
10 may order that the name of the child be changed. If the order of the court changing the name
11 varies from the birth certificate of the child, the court shall order [agency maintaining birth
12 records] to issue an amended birth certificate.

13 **Reporter’s Comment**

14 Much of the content of this section is taken from former Section 636. The Committee
15 may want to add an Official Comment about inserting citations to other law of the state in
16 subsection (a), if such law or court rules provide alternative means for identifying the child.

17
18 **SECTION 621. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

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

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

23 (2) all parties to an adjudication by a court acting under circumstances that satisfy
24 the jurisdictional requirements of [cite to this state’s Section 201 of the Uniform Interstate
25 Family Support Act].

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

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

4 (2) except for a determination of parentage under [Article] 7 [or 8], the
5 determination of parentage was based on a finding consistent with the results of genetic testing
6 and the consistency is declared in the determination or is otherwise shown; or

7 (3) the child was a party or was represented by an [attorney, guardian ad litem, or
8 similar person] in the proceeding determining parentage.

9 (c) In a proceeding to dissolve or annul a marriage, the court is deemed to have made an
10 adjudication of parentage of a child if the court acts under circumstances that satisfy the
11 jurisdictional requirements of [cite to this state's Section 201 of the Uniform Interstate Family
12 Support Act] and the final order:

13 (1) expressly identifies a child as a "child of the marriage", "issue of the
14 marriage", or similar words indicating that both spouses are parents of the child; or

15 (2) provides for support of the child by a spouse unless that spouse's parentage is
16 disclaimed specifically in the order.

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

20 (e) A party to an adjudication of parentage may challenge the adjudication only under law
21 of this state other than this [act] relating to appeal, vacation of judgment, or other judicial review.

1 **Reporter’s Comment**

2 There was a discussion at the in-person drafting meeting about whether and under what
3 circumstances a child should be bound by a prior determination of parentage.
4

5 **[ARTICLE] 7**

6 **Reporter’s Comment**

7 The content of Article 7 is substantively similar to the content of Article 7 of the 2002
8 UPA. Almost all of the changes made to Article 7 are intended to update Article 7 so that it
9 applies equally to same-sex couples. Article 7 is presented in revision form. A side-by-side
10 comparison with the 2002 UPA is available in the supporting documents.
11

12 **ASSISTED REPRODUCTION**

13 **SECTION 701. SCOPE OF [ARTICLE].** This [article] does not apply to the birth of a
14 child conceived by means of sexual intercourse[, or as the result of a surrogacy agreement under
15 [Article] 8].

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

18 **SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.** An
19 individual who provides a gamete for, or consents to under Section 704, assisted reproduction by
20 a woman with the intent to be the parent of the resulting child, is a parent of the resulting child.

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

22 (a) Under Section 703, consent to assisted reproduction by the woman giving birth to the
23 child and the individual who intends to be the parent of a child born through assisted
24 reproduction must be in a record.

25 (b) Failure to consent in a record as required by subsection (a), before or after birth of the
26 child, does not preclude a finding of parentage if the woman giving birth and the individual,
27 during the first two years of the child’s life, including periods of temporary absence, resided

1 together in the same household with the child and openly held out the child as the individual's
2 own child.

3 **SECTION 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE.**

4 (a) Except as otherwise provided in subsection (b), an individual who, at the time of the
5 child's birth, is the spouse of the woman who gave birth to the child by means of assisted
6 reproduction may not challenge the individual's parentage of the child unless:

7 (1) not later than two years after learning of the birth of the child, the individual
8 commences a proceeding to adjudicate the individual's parentage of the child; and

9 (2) the court finds that the individual did not consent to the assisted reproduction,
10 before or after birth of the child.

11 (b) A proceeding to adjudicate a spouse's parentage of a child born by means of assisted
12 reproduction may be commenced at any time if the court determines:

13 (1) the spouse neither provided a gamete for, nor consented to, the assisted
14 reproduction;

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

17 (3) the spouse never openly held out the child as the spouse's own child.

18 (c) This section applies to a marriage declared invalid after assisted reproduction.

19 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE.** If a marriage of a
20 woman who gives birth to a child by means of assisted reproduction is dissolved before transfer
21 of gametes or embryos to the woman, the former spouse of the woman is not a parent of the
22 resulting child unless the former spouse consented in a record that if assisted reproduction were

1 to occur after a [divorce, dissolution, annulment[, legal separation or separate maintenance]], the
2 former spouse would be a parent of the child.

3 **SECTION 707. WITHDRAWAL OF CONSENT.** An individual who consents to
4 assisted reproduction under Section 704 may withdraw consent in a record with notice to the
5 woman giving birth to the child any time before transfer of gametes or embryos which results in
6 a pregnancy. An individual who withdraws consent under this section is not a parent under
7 Section 704 of the resulting child.

8 **SECTION 708. PARENTAL STATUS OF DECEASED INDIVIDUAL.** If an
9 individual who consented in a record to be a parent by assisted reproduction dies before transfer
10 of gametes or embryos, the deceased individual is not a parent of the resulting child unless the
11 deceased individual consented in a record that if assisted reproduction were to occur after death,
12 the deceased individual would be a parent of the child.

13 **Reporter's Comment**

14 Mary Louise Fellows suggests that the UPA approach to posthumous reproduction should
15 follow the approach of the UPC, which allows for a determination of parentage either in the
16 event of prior written consent or where there was sufficient other evidence that the decedent
17 intended to be a parent of the child.

18 UPA § 2-120(f) provides:

19
20 "...Consent to assisted reproduction by the birth mother with intent to be treated as the other
21 parent of the child is established if the individual:

22 (1) before or after the child's birth, signed a record that, considering all the facts and
23 circumstances, evidences the individual's consent; or

24 (2) in the absence of a signed record under paragraph (1):

25 (A) functioned as a parent of the child no later than two years after the child's birth;

26 (B) intended to function as a parent of the child no later than two years after the child's birth
27 but was prevented from carrying out that intent by death, incapacity, or other circumstances;

28 or

29 (C) intended to be treated as a parent of a posthumously conceived child, if that intent is
30 established by clear and convincing evidence."

1 [ARTICLE] 8

2 SURROGACY AGREEMENTS

3 *Legislative Note:* A state should include Article 8 if the state wishes to recognize in statute
4 surrogacy agreements.

5
6 **Reporter’s Comment**

7
8 The 2017 UPA updates the surrogacy provisions to reflect developments in that area. The
9 2002 UPA includes a bracketed Article 8 that authorized surrogacy agreements. States have been
10 particularly slow to enact Article 8 of the 2002 UPA. Eleven (11) states adopted versions of the
11 2002 UPA. Of these eleven (11) states, however, only two (2) – Texas and Utah – enacted the
12 surrogacy provisions based on Article 8 of the 2002 UPA. At least five (5) of the eleven (11)
13 states that enacted the 2002 UPA enacted surrogacy provisions that are *not* premised on the 2002
14 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted
15 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and
16 Washington (banning compensated) (enacted 1989).

17
18 The fact that very few states enacted Article 8 is likely the result of a confluence of
19 factors. One likely factor is the controversial nature of surrogacy itself. But given that four of the
20 states that enacted the 2002 UPA enacted provisions permitting surrogacy, *but did not adopt*
21 *Article 8* of the UPA, another factor appears to be a lack of enthusiasm for the substance of the
22 provisions themselves. Accordingly, the 2017 UPA updates the surrogacy provisions to make
23 them more consistent with current surrogacy practice.

24
25 As was true of the 2002 UPA, Article 8 of the 2017 UPA regulates and permits both
26 genetic (often referred to as “traditional”) and gestational surrogacy agreements. But the 2017
27 UPA differs in the way that it regulates these two types of surrogacy agreements. The 2002 UPA
28 set forth a single set of requirements that applied equally to genetic and gestational surrogacy
29 agreements. While the 2017 UPA continues to permit both types of surrogacy, the 2017 UPA
30 imposes additional safeguards or requirements on genetic surrogacy agreements. This
31 differentiation between genetic and gestational surrogacy is intended to reflect both the factual
32 differences between the two types of surrogacy as well as the reality that policy makers view
33 these two forms of surrogacy as being quite different. Of the states that permit surrogacy, almost
34 all of them permit *only* gestational surrogacy agreements.

35
36 While the 2017 UPA adds additional requirements that apply only to genetic surrogacy
37 agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements.
38 The changes to the rules governing gestational surrogacy agreements is intended to make these
39 rules more consistent with current practice and law.

40
41 Sections 801 – 806 establish the rules that apply to both types of surrogacy agreements.
42 Sections 807 – 810 include rules that apply only to gestational surrogacy agreements. Sections
43 811 – 814 include rules that apply only to genetic surrogacy agreements.
44

1 [PART] 1

2 GENERAL REQUIREMENTS

3 SECTION 801. ELIGIBILITY TO ENTER GESTATIONAL OR GENETIC
4 SURROGACY AGREEMENT.

5 (a) To execute an agreement to act as a gestational or a genetic surrogate, a woman must:

6 (1) have attained the age of 21 years;

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

8 (3) complete a medical evaluation, which includes a mental health consultation,
9 by a licensed doctor or physician; and

10 (4) have independent legal representation of her own choice throughout the
11 surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal
12 consequences of the agreement.

13 (b) To execute a surrogacy agreement, each intended parent, whether or not genetically
14 related to the child, must:

15 (1) have attained the age of 21 years;

16 (2) complete a medical evaluation, which includes a mental health consultation,
17 by a licensed doctor or physician; and

18 (3) have independent legal representation of the intended parent's choice
19 regarding the terms of the surrogacy agreement and the potential legal consequences of the
20 agreement.

21 **Reporter's Comment**

22 There was a discussion at the in-person drafting meeting about whether the intended
23 parents should be required to pay for the surrogate's counsel. A number of states, including
24 Maine, require the intended parents to pay for the surrogate's counsel. *See, e.g.,* ME. STAT., tit. §
25 1931(1)(D) (requiring the surrogate to have "had independent legal representation of her own

1 choosing and paid for by the intended parent or parents regarding the terms of the gestational
2 carrier agreement and have been advised of the potential legal consequences of the gestational
3 carrier agreement”). A number of other states do not require the intended parents to pay for the
4 surrogate’s counsel. *See, e.g.*, CAL. FAM. CODE § 7962(b) (“Prior to executing the written
5 assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or
6 intended parents shall be represented by separate independent licensed attorneys of their
7 choosing.”).

8
9 NOTE: at the Oct. 2016 meeting, there was a discussion about what should be done with the
10 information collected during the medical examinations. We discussed including a comment that
11 we envision that this information will be used consistent with the ASRM guidelines.

12
13 **SECTION 802. REQUIREMENTS OF GESTATIONAL OR GENETIC**

14 **SURROGACY AGREEMENT: PROCESS.** A surrogacy agreement must be executed in
15 compliance with the following rules:

16 (1) At least one party must be a resident of this state, or, if no party is a resident of this
17 state, at least one medical procedure under the agreement must occur in this state.

18 (2) The surrogate and each intended parent must meet the requirements of Section 801.

19 (3) Each intended parent, the surrogate, and the surrogate’s spouse, if any, must be parties
20 to the agreement.

21 (4) The agreement must be in a record and signed by each party listed in paragraph (3).

22 (5) The surrogate and each intended parent must acknowledge in a record receipt of a
23 copy of the agreement.

24 (6) The signature of each party to the agreement must be notarized, acknowledged, or
25 attested by a person authorized to take oaths in accord with the law of the jurisdiction where it is
26 executed.

27 (7) The surrogate and the intended parent or parents must be represented by independent
28 legal counsel in all matters concerning the agreement, and each counsel must be identified in the
29 surrogacy agreement.

1 (8) The intended parent or parents must pay for independent legal representation for the
2 surrogate.

3 (9) The agreement must be executed before a medical procedure related to the surrogacy
4 agreement, other than the medical evaluation required by Section 801.

5 **SECTION 803. REQUIREMENTS OF GESTATIONAL OR GENETIC**
6 **SURROGACY AGREEMENT: CONTENT.**

7 (a) The content of a surrogacy agreement must comply with the following requirements:

8 (1) The prospective surrogate agrees to attempt to become pregnant by means of
9 assisted reproduction.

10 (2) Except as otherwise provided in Sections 811, 812, 813, and 814, the
11 prospective surrogate and the surrogate's spouse, if any, have no claim to parentage to any
12 resulting child.

13 (3) The surrogate's spouse, if any, must acknowledge and agree to abide by the
14 obligations imposed on the surrogate by the agreement.

15 (4) Except as otherwise provided in Sections 811, 812, 813, and 814, the intended
16 parent or, if there are two intended parents, each one jointly and severally, immediately on birth
17 or delivery will be the exclusive parent or parents of any resulting child regardless of the
18 number, gender, or mental or physical condition of the resulting child.

19 (5) Except as otherwise provided in Sections 811, 812, 813, and 814, the intended
20 parent or, if there are two intended parents, each one jointly and severally, immediately on birth
21 of delivery will assume responsibility for the financial support of any resulting child regardless
22 of the number, gender, or mental or physical condition of the resulting child.

23 (6) The agreement must include information disclosing how the intended parent

1 or parents will cover the expenses of the surrogate and the resulting child related to the
2 surrogacy. If health-care coverage is used to cover the medical expenses, the disclosure must
3 include a review of the health care policy provisions related to coverage for surrogate pregnancy,
4 including any possible liability of the surrogate, third-party liability liens, or other insurance
5 coverage, and any notice requirements that could affect coverage or liability of the surrogate.
6 Unless the agreement expressly provides otherwise, the review and disclosure do not constitute
7 legal advice. If coverage of liability is uncertain, a statement of that fact is sufficient to meet the
8 requirements of this section.

9 (7) The agreement must permit the surrogate to make all health and welfare
10 decisions regarding herself and her pregnancy. This Act does not enlarge or diminish a woman's
11 right to terminate her pregnancy.

12 (b) A surrogacy agreement may provide for:

13 (1) payment of reasonable consideration; and

14 (2) reimbursement of specific expenses if the agreement is terminated under this
15 [article].

16 (c) A right created under a surrogacy agreement is not assignable and there is no third
17 party beneficiary of the agreement other than the child.

18 **SECTION 804. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**
19 **CHANGE OF MARITAL STATUS.**

20 (a) Unless a surrogacy agreement expressly provides otherwise:

21 (1) the marriage of the surrogate after the agreement has been signed by all parties
22 does not affect the validity of the agreement, her spouse's consent to the agreement is not
23 required, and her spouse is not a presumed parent of the resulting child; and

1 (2) the [divorce, dissolution, annulment[, legal separation or separate
2 maintenance]] of the surrogate after the agreement has been signed by all parties does not affect
3 the validity of the agreement.

4 (b) Unless a surrogacy agreement expressly provides otherwise:

5 (1) the marriage of an intended parent after the agreement has been signed by all
6 parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the
7 intended parent is not required, and the spouse of the intended parent is not a parent of the
8 resulting child by virtue of the surrogacy agreement; and

9 (2) The [divorce, dissolution, annulment[, legal separation or separate
10 maintenance]] of an intended parent after the agreement has been signed by all parties does not
11 affect the validity of the agreement, and the intended parents are the parents of the resulting
12 child.

13 **SECTION 805. INSPECTION OF DOCUMENTS.** Except upon a written court order,
14 a petition and other documents related to a surrogacy agreement filed in the office of the clerk of
15 the court under this [part] are not open to inspection by any person other than the parties to the
16 proceeding, any resulting child, their attorneys, and [the relevant state agency]. A judge of the
17 [court having jurisdiction] may not authorize an individual to inspect a document related to the
18 agreement, except in exigent circumstances and if necessary. The individual seeking to inspect
19 the documents may be required to pay the expense of preparing the copies of the documents to
20 be inspected.

21 *Legislative Note: A state should review the state's open records law to determine if this section*
22 *needs to be addressed.*

23
24 **SECTION 806. EXCLUSIVE, CONTINUING JURISDICTION.** During the period
25 governed by the surrogacy agreement, a court of this state conducting a proceeding under this

1 [act] has exclusive, continuing jurisdiction of all matters arising out of the agreement until the
2 90th day after a child is born to the surrogate. This section does not give the court jurisdiction
3 over a child custody or a child support action if jurisdiction is not otherwise authorized.

4 **[PART] 2**

5 **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT**

6 **SECTION 807. TERMINATION OF GESTATIONAL SURROGACY**

7 **AGREEMENT.**

8 (a) A party to a gestational surrogacy agreement may withdraw consent to a medical
9 procedure and may terminate the agreement at any time before an embryo transfer by giving
10 notice of termination in a record to all other parties. If transfer does not result in a pregnancy, a
11 party may withdraw consent any time before a subsequent embryo transfer.

12 (b) Unless a gestational surrogacy agreement provides otherwise, on proper termination
13 of the agreement under subsection (a), the parties are released from the obligations recited in the
14 agreement except that each intended parent remains responsible for expenses incurred by the
15 gestational surrogate through the date of termination that are reimbursable under the agreement.
16 Unless the agreement provides otherwise, the gestational surrogate must reimburse each intended
17 parent for non-expense related compensation received for serving as a surrogate. Except in a case
18 involving fraud, neither a prospective surrogate nor the surrogate's spouse, if any, is liable to the
19 intended parent or parents for a penalty, including liquidated damages, for terminating the
20 agreement under this section.

21 **SECTION 808. PARENTAGE UNDER GESTATIONAL SURROGACY**

22 **AGREEMENT.**

23 (a) Except as otherwise provided in subsection (c) and in Section 810, on birth or delivery

1 of the resulting child, each intended parent is, by operation of law, the parent or parents of the
2 child born as a result of a gestational surrogacy agreement.

3 (b) Except as otherwise provided in subsection (c) and in Section 810, neither a
4 gestational surrogate, nor the surrogate's spouse, if any, nor the surrogate's former spouse, if
5 any, is the parent of the child born as a result of a gestational surrogacy agreement.

6 (c) If a child is alleged to be the genetic child of the woman who agreed to be a
7 gestational surrogate, the court shall order genetic testing of the child. If the child is the genetic
8 child of the woman who agreed to be a surrogate, parentage must be determined based on
9 [Articles] 1 through 6.

10 (d) Except as otherwise provided in subsection (c) and in Section 810, if due to a
11 laboratory error a child born as a result of a gestational surrogacy agreement is not genetically
12 related to the intended parent or parents, or if due to a laboratory error a child born as a result of
13 the agreement is not genetically related to a donor who donated to the intended parent or parents,
14 each intended parent, and not the gestational surrogate and the surrogate's spouse, if any, is
15 considered the parent of a child born through a surrogacy agreement, subject to other claims of
16 parentage.

17 **SECTION 809. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**
18 **PARENTAGE.**

19 (a) Except as otherwise provided in Section 808(c) and in Section 810, before or after the
20 birth of a child born as a result of a gestational surrogacy agreement, a party to the agreement
21 may commence a proceeding in the [appropriate court] for an order or judgment:

22 (1) declaring that each intended parent is the parent of the child and ordering that
23 parental rights and responsibilities vest immediately on the birth of the child exclusively in each

1 intended parent;

2 (2) declaring that the gestational surrogate and the surrogate's spouse, if any, are
3 not the parents of the resulting child;

4 (3) designating the contents of the birth record in accord with [cite to the
5 applicable law of this state other than this [act]] and directing the [agency maintaining birth
6 records] to designate each intended parent as the parent of the child; or

7 (4) sealing the court record from the public to protect the privacy of the child and
8 the parties.

9 (b) A court may issue an order or judgment issued under subsection (a) before the birth of
10 the child. The court shall stay enforcement of that order or judgment until the birth of the child.

11 (c) Neither this state nor the [agency maintaining birth records] is a necessary party to a
12 proceeding under subsection (a).

13 **SECTION 810. EFFECT OF GESTATIONAL SURROGACY AGREEMENT.**

14 (a) A gestational surrogacy agreement that complies with the requirements as provided in
15 this [article] [or, in Sections 801, 802, and 803] is enforceable.

16 (b) If a birth results under a gestational surrogacy agreement that does not comply with
17 Sections 801, 802, and 803, a court shall determine the respective rights and obligations of the
18 parties to the agreement consistent, to the maximum extent possible, with the intent of the parties
19 at the time of the execution of the agreement.

20 (c) Except as expressly provided in a gestational surrogacy agreement and in subsection

21 (d) and (e), if the agreement is breached by the gestational surrogate or one or more intended
22 parents, the gestational surrogate or the intended parent or parents are entitled to the remedies
23 available at law or in equity.

1 (d) Specific performance is not a remedy available for breach by a gestational surrogate
2 of any provision in the agreement that the gestational surrogate be impregnated or terminate or
3 not terminate a pregnancy.

4 (e) Except as otherwise provided in subsection (d), specific performance is a remedy
5 available for breach by a gestational surrogate of the agreement that prevents an intended parent
6 from exercising immediately on birth of the child the full rights of parentage, or for a breach by
7 an intended parent that prevents the intended parent's acceptance immediately on birth of the
8 child of the responsibilities of parentage [when the intended parents are determined to be the
9 legal parents of the resulting child].

10 **[PART] 3**

11 **SPECIAL RULES FOR GENETIC SURROGACY AGREEMENTS**

12 **SECTION 811. REQUIREMENTS TO VALIDATE GENETIC SURROGACY**

13 **AGREEMENT.**

14 (a) To be enforceable, a genetic surrogacy agreement must be validated by [the
15 appropriate] court. The proceeding to validate the agreement must be commenced before assisted
16 reproduction related to the surrogacy agreement.

17 (b) The court shall issue an order validating a genetic surrogacy agreement if the court
18 finds that:

19 (1) the requirements of Sections 801, 802, and 803 are satisfied; and

20 (2) all parties have entered into the agreement voluntarily and understand its
21 terms.

22 (c) An individual who terminates under Section 812 a genetic surrogacy agreement shall
23 file notice of the termination with the court. On receipt of the notice, the court shall vacate the

1 order issued under subsection (b). An individual who does not notify the court of the termination
2 of the agreement is subject to sanctions.

3 **SECTION 812. TERMINATION OF GENETIC SURROGACY AGREEMENT.**

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

5 (1) An intended parent who is a party to the agreement may withdraw consent to
6 and may terminate the genetic surrogacy agreement at any time before the use of assisted
7 reproduction which results in a pregnancy by giving notice of termination in a record to all other
8 parties. The notice of termination must be notarized, acknowledged, or attested by a person
9 authorized to take an oath in accord with the law of the jurisdiction where the notice is executed.

10 (2) A genetic surrogate who is a party to the agreement may withdraw consent to
11 the agreement any time before 72 hours after the birth of the child. To withdraw consent, any
12 time before 72 hours after the birth of the child, the genetic surrogate must execute a notice of
13 termination in a record of the surrogate's intent to terminate the agreement. The notice of
14 termination must be notarized, acknowledged, or attested by a person authorized to take an oath
15 in accord with the law of the jurisdiction where the notice is executed and delivered to each
16 intended parent any time before 72 hours after the birth of the child.

17 (b) On termination of the genetic surrogacy agreement in accord with subsection (a), the
18 parties are released from all obligations under the agreement except that each intended parent
19 remains responsible for all expenses that are reimbursable under the agreement incurred by the
20 surrogate through the date of termination. Unless the agreement provides otherwise, the
21 surrogate is not entitled to keep any non-expense related compensation paid for serving as a
22 surrogate. Except in a case involving fraud, neither a prospective surrogate nor the surrogate's
23 spouse, if any, is liable to the intended parent or parents for a penalty, including liquidated

1 damages, for terminating the agreement as provided in this section.

2 **SECTION 813. PARENTAGE UNDER VALIDATED GENETIC SURROGACY**
3 **AGREEMENT.**

4 (a) Unless a genetic surrogate exercises the surrogate’s right to terminate a genetic
5 surrogacy agreement under Section 812, each intended parent is the parent of any child born as a
6 result of an agreement validated under Section 811.

7 (b) Unless a genetic surrogate exercises the genetic surrogate’s right to terminate the
8 genetic surrogacy agreement under Section 812, on proof of a court order issued under Section
9 811 validating the agreement, the court shall issue an order:

10 (1) declaring that each intended parent is the parent of the resulting child and
11 ordering that parental rights and responsibilities vest exclusively in the intended parent or
12 parents;

13 (2) designating the contents of the birth certificate in accord with [applicable law
14 of the state other than this [act]] and directing [the agency maintaining birth records] to designate
15 each intended parent as the parent of the child;

16 (3) [sealing] the record from the public to protect the privacy of the child and the
17 parties;

18 (4) if necessary, ordering that the child be surrendered to the intended parent or
19 parents; or

20 (5) for any relief that the court determines necessary and proper.

21 (c) If a party to a genetic surrogacy agreement withdraws consent consistent with Section
22 812, parentage of the resulting child must be determined based on [[Articles] 1 through 6 of this
23 [act]][provisions of this [act] other than this [article]].

1 (d) If the parentage of a child born to a genetic surrogate is alleged not to be the result of
2 assisted reproduction, the court shall order genetic testing to determine the parentage of the child.
3 If the child was not born through assisted reproduction, parentage must be determined based on
4 provisions of this [act] other than this [article]. Unless the genetic surrogacy agreement provides
5 otherwise, the surrogate is not entitled to keep any non-expense related compensation paid for
6 serving as a surrogate if the child was not born through assisted reproduction.

7 (e) Unless a genetic surrogate exercises the surrogate’s right to terminate the agreement
8 under Section 812, if the intended parent or parents fail to file notice required under Section
9 812(a), the genetic surrogate or [the appropriate state agency] may file notice with the court not
10 later than 60 days after the birth of the child that a child has been born to the genetic surrogate.
11 Unless the genetic surrogate has properly exercised the genetic surrogate’s right to withdraw
12 consent to the agreement under Section 812, on proof of a court order issued under Section 811
13 validating the agreement, the court shall order that each intended parent is the parent of the child
14 and is financially responsible for the child.

15 **SECTION 814. EFFECT OF NONVALIDATED GENETIC SURROGACY**
16 **AGREEMENT.**

17 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
18 Section 811 is not enforceable.

19 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
20 reproduction has occurred but before the birth of the child.

21 (c) If a birth results under a genetic surrogacy agreement that is not validated under
22 Section 811, the parent-child relationship is determined under other provisions of this [act] other
23 than this [article].

1 bank or fertility clinic licensed in this state, the transferring gamete bank or fertility clinic must
2 forward any identifying information and medical history of the donor, including the donor's
3 signed affidavit regarding identity disclosure under Section 903, to the receiving gamete bank or
4 fertility clinic. The receiving gamete bank or fertility clinic must collect and retain the
5 information about the donor and the gamete bank or fertility clinic from which it received the
6 gametes.

7 **SECTION 903. AFFIDAVIT REGARDING IDENTITY DISCLOSURE.**

8 (a) A gamete bank or fertility clinic licensed in this state which collects or stores gametes
9 shall provide the donor information regarding identity disclosure in a record.

10 (b) A gamete bank or fertility clinic licensed in this state that collects or stores gametes
11 shall obtain an affidavit regarding identity disclosure from the donor. The donor must be given
12 the choice to sign either:

13 (1) an affidavit agreeing to disclose the donor's identity to the resulting child on
14 request once the child attains at least 18 years of age; or

15 (2) an affidavit that the donor presently does not agree to disclose the donor's
16 identity to the resulting child.

17 (c) A gamete bank or fertility clinic licensed in this state which collects or stores gametes
18 shall permit a donor who has signed an affidavit of identity nondisclosure under subsection
19 (b)(2) to withdraw the donor's affidavit of identity nondisclosure at any time.

20 **Comment**

21
22 NOTE: should add a comment about why the act allows a change from nondisclosure to
23 disclosure but not in the other direction.

24
25 **SECTION 904. DISCLOSURE OF IDENTIFYING INFORMATION.**

26 (a) On request of a child conceived through assisted reproduction who attains at least 18

1 years of age, the gamete bank or fertility clinic licensed in this state which collected, stored, or
2 released for use the gametes used in the assisted reproduction shall make a good faith effort to
3 provide the resulting child with identifying information of the donor who provided the gametes,
4 unless the donor signed and did not withdraw an affidavit for identity nondisclosure under
5 Section 903. If a donor signed, and did not withdraw, an affidavit for identity nondisclosure, the
6 gamete bank or fertility clinic licensed in this state that collected, stored, or released for use the
7 gametes shall make a good faith effort to notify the donor, who may elect to withdraw the
8 donor's affidavit.

9 (b) Regardless of whether a donor signed an affidavit for identity nondisclosure, on
10 request by a child conceived through assisted reproduction who attains at least 18 years of age,
11 the gamete bank or fertility clinic licensed in this state that collected, stored, or released the
12 gametes used in the assisted reproduction shall [make a good faith effort to] provide the resulting
13 child access to nonidentifying medical history of the donor. [NOTE: should anyone else have a
14 right to access the medical history?]

15 **Comment**

16
17 NOTE: may want to include an official comment which notes that the family likely
18 already has access to a fair amount of medical information about the donor. Therefore, the real
19 effect of Section 904 is to give the child the possibility of accessing identifying information
20 about the donor.

21
22 QUESTION: Does this Act create a private right of action against the facility in the event
23 of noncompliance?

24
25 **SECTION 905. RECORD KEEPING.** A gamete bank or fertility clinic licensed in
26 this state that collects, stores, or releases gametes for use in assisted reproduction shall collect
27 and maintain identifying information and medical history about all gamete donors, and records of
28 all gamete screening and testing, in accord with federal and applicable law of this state other than

1 this [act].

2 **[ARTICLE] 10**

3 **MISCELLANEOUS PROVISIONS**

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

7 **SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
8 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
9 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
10 does not modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
11 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
12 U.S.C. Section 7003(b).

13 **SECTION 1003. TRANSITIONAL PROVISION.** This [act] applies to all pending
14 proceedings to adjudicate parentage commenced before [insert effective date of this [act]] with
15 respect to issues on which a judgment has not been entered.

16 **[SECTION 1004. SEVERABILITY.** If any provision of this [act] or its application to
17 any person or circumstance is held invalid, the invalidity does not affect other provisions or
18 applications of this [act] which can be given effect without the invalid provision or application,
19 and to this end the provisions of this [act] are severable.]

20 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
21 *decision by the highest court of this state stating a general rule of severability.*

22
23 **SECTION 1005. REPEALS; CONFORMING AMENDMENTS.** The following
24 [acts] and parts of [acts] are repealed:

25 (1) [Uniform Act on Paternity, 1960];

- 1 (2) [Uniform Parentage Act, 1973];
- 2 (3) [Uniform Putative and Unknown Fathers Act, 1988];
- 3 (4) [Uniform Status of Children of Assisted Conception Act, 1988];
- 4 (5) [Uniform Parentage Act, 2002]; and
- 5 (6) [other inconsistent statutes].

6 **SECTION 1006. EFFECTIVE DATE.** This [act] takes effect on [insert effective date
7 of this [act].

8

1 **APPENDIX**

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

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

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

9 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) Paternity establishment services.

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

4 (II) Regulations.

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

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

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

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

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

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

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

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

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

35 (I) 60 days; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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