

D R A F T
FOR DISCUSSION ONLY

NON-PARENTAL RIGHTS TO CHILD CUSTODY AND VISITATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

April ~~28 – May 1–2~~, 2016 ~~Drafting~~ Committee ~~on Style~~ Meeting

With Prefatory Note, ~~Reporter's Notes~~, and Comments

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

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the Uniform Law Commission or the Drafting Committee. They do not necessarily reflect the views of the Commission, its Commissioners, the Drafting Committee, its Members, and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

~~February 29~~ April 13, 2016

DRAFTING COMMITTEE ON NON-PARENTAL RIGHTS TO CHILD CUSTODY AND VISITATION ACT

The Committee appointed by and representing the Uniform Law Commission in preparing this Act consists of the following individuals:

DEBRA H. LEHRMANN, The Supreme Court of Texas, Supreme Court Bldg., 201 W. 14th St., Room 104, Austin, TX 78701, *Chair*

BARBARA A. ATWOOD, University of Arizona, James E. Rogers School of Law, 1201 E. Speedway Blvd., P.O. Box 210176

DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105

MARK J. CUTRONA, Division of Research, Legislative Hall, 411 Legislative Ave., Dover, DE 19901

JACK DAVIES, 1201 Yale Pl., Unit #2004, Minneapolis, MN 55403-1961

MARY P. DEVINE, 704 Big Woods Pl., Manakin-Sabot, VA 23103

GAIL HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave., Bismark, ND 58502-1013

JAMIE PEDERSEN, Washington State Senate, 43rd Legislative District, 226 John A. Cherberg Bldg., P.O. Box 40643, Olympia, WA 98504-0643

ARTHUR H. PETERSON, P.O. Box 20444, Juneau, AK, 99802

CRAIG STOWERS, Alaska Supreme Court, 303 K St., Anchorage, AK 99501-2084

J. SAMUEL TENENBAUM, Northwestern Pritzker School of Law, 357 E. Chicago Ave., Chicago, IL 60611

ERIC WEEKS, Office of Legislative Research and General Counsel, 210 House Bldg., Utah State Capitol Complex, Salt Lake City, UT 84114-5210

CANDACE ZIERDT, Stetson University College of Law, 1401 61st St. S., Gulfport, FL 33707

JEFF J. ATKINSON, DePaul University, 3514 Riverside Dr., Wilmette, IL 60091, *Reporter*

EX OFFICIO

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *President*

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

ALLEN G. PALMER, Halloran & Sage LLP, 315 Post Rd. W., Suite 1A, Westport, CT 06880-4739, *ABA Advisor*

LOUISE E. TEITZ, Roger Williams University School of Law, 10 Metacome Ave., Bristol, RI 02809-5103, *ABA Section Advisor*

EDDIE J. VARON LEVY, 2276 Torrence Blvd., Torrence, CA 90501-2518, *ABA Section Advisor*

EXECUTIVE DIRECTOR

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

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

NON-PARENTAL CHILD CUSTODY AND VISITATION ACT

TABLE OF CONTENTS

| | |
|--|----|
| PREFATORY NOTE..... | 1 |
| SECTION 1. SHORT TITLE. | 3 |
| SECTION 2. DEFINITIONS..... | 3 |
| SECTION 3. JURISDICTION..... | 10 |
| SECTION 4. INDIVIDUALS WHO MAY FILE A PETITION. | 11 |
| SECTION 5. PLEADINGS. | 12 |
| SECTION 6. INITIAL PETITION BY DE FACTO PARENT. | 15 |
| SECTION 7. INITIAL PETITION BY AN INDIVIDUAL WHO ENTERED INTO AN AGREEMENT TO ACCEPT FULL AND PERMANENT PARENTAL RESPONSIBILITY..... | 17 |
| SECTION 8. INITIAL PETITION BY NON-PARENT OF CHILD WHO IS NOT A DE FACTO PARENT WHEN CHILD IS IN CUSTODY OF PARENT OR DE FACTO PARENT..... | 18 |
| SECTION 9. INITIAL PETITION BY NON-PARENT OF CHILD WHO IS NOT A DE FACTO PARENT WHEN CHILD IS NOT IN CUSTODY OF PARENT OR DE FACTO PARENT..... | 21 |
| SECTION 10. PRESUMPTION REGARDING DOMESTIC VIOLENCE, CHILD ABUSE, SEXUAL ASSAULT, OR STALKING. | 22 |
| SECTION 11. FACTORS CONSIDERED. | 24 |
| SECTION 12. PETITION TO MODIFY CUSTODY OR VISITATION. | 27 |
| SECTION 13. TEMPORARY ORDER. | 28 |
| SECTION 14. EFFECT OF ADOPTION OF CHILD BY A RELATIVE OR STEPPARENT. | 28 |
| SECTION 15. APPOINTMENTS AND COURT SERVICES. | 29 |
| SECTION 16. COST OF FACILITATING VISITATION..... | 30 |
| SECTION 17. ATTORNEY FEES AND COSTS..... | 31 |
| [SECTION 18. FINDINGS OF FACT AND CONCLUSIONS OF LAW.] | 31 |
| SECTION 19. APPLICATION TO CHILDREN WHO ARE THE SUBJECT OF PROCEEDINGS REGARDING GUARDIANSHIP, ABUSE, NEGLECT, OR DEPENDENCY..... | 31 |
| SECTION 20. OTHER RIGHTS AND REMEDIES. | 33 |
| SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... | 34 |
| SECTION 22. TRANSITIONAL PROVISION..... | 34 |
| SECTION 23. REPEALS; CONFORMING AMENDMENTS..... | 34 |
| SECTION 24. EFFECTIVE DATE..... | 35 |

~~_____This draft includes preliminary “Comments” that, in final form, will be published with the act.~~

— In addition, this draft includes “Reporter’s Notes.” These notes are intended to help guide our discussions, but generally will not be part of the final act. I anticipate that all or most of the current “Reporter’s Notes” will be removed before the act goes to the Conference for its First Reading in Summer 2016.

~~— This draft uses brackets in some sections. At this stage, the most of the bracketed materials are not intended to be part of the final act. The brackets are intended to show alternative language, and the committee will decide which language to use. Some final drafts of uniform acts do utilize brackets to provide legislators with options for handling particular issues, but usually it is best when drafting uniform acts to not use brackets or to keep their use to a minimum.~~

Jeff Atkinson

Reporter

Email: JeffAtkinson747@gmail.com

PREFATORY NOTE

[This is a partial draft of the Prefatory Note. The reporter will update commentary and data as the project proceeds.]

~~This act~~ The Non-Parental Child Custody and Visitation Act provides procedures and factors for courts to apply when asked to grant custody or visitation to non-parents. The act seeks to balance, within constitutional restraints, the interests of children, parents, and non-parents with whom the children have a close relationship.

Continuation of a relationship between a child and a non-parent can be an important – and even vital – interest, both for the child and the non-parent. When deciding whether to grant relief to a non-parent, courts must, of course, consider the rights of parents. The U.S. Supreme Court has recognized a right of a fit parent to make decisions regarding the rearing of his or her child. *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000). In *Troxel*, the Court struck down Washington State’s grandparent visitation statute, as applied, holding the trial court did not give sufficient deference to the decision of a fit parent to decide the amount of contact the children would have with grandparents. The Supreme Court also stated the trial court’s “order was not founded on any special factors that might justify the State’s interference with [the mother’s] fundamental right to make decisions concerning the rearing of her two daughters.” *Id.* at 68.

Justice Connor observed in her plurality option in *Troxel*: “The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household.” *Id.* at 63.

The U.S. Census Bureau reports that the unmarried partner population “grew 41 percent between 2000 and 2010, four times as fast as the overall household population.” U.S. Census Bureau, “Households and Families: 2010” at p. 3 (C2010BR-14) (Apr. 2012), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.

Opposite-sex unmarried partner households increased by 40 percent since 2000; same-sex households increased by 80 percent. *Id.* at p. 6.

In 2012, the Census Bureau reported that there were 73,817,000 children in United States under age 18. Of that number, the breakdown for the children’s living arrangements was:

- Living with both parents: 50,267,000
- Living with mother only: 17,991,000
- Living with father only: 2,924,000
- Living with neither parent: 2,634,000
- Of the children living with neither parent, 1,494,000 were living with grandparents.

U.S. Census Bureau, America’s Families and Living Arrangements: 2012, Table C2, Household Relationship and Living Arrangements of Children Under 18 Years, by Age and Sex: 2012 available at <http://www.census.gov/hhes/families/data/cps2012.html>.

1 * * * * *

2 ~~A nonprofit organization, Generations United, issued a report regarding foster care,~~
3 ~~kinship care, and “grandfamilies.” The report contains the following information:~~

4
5 ~~“Grandfamilies or kinship families are families in which children reside with and are~~
6 ~~being raised by grandparents, other extended family members, and adults with whom~~
7 ~~they have a close familylike relationship, such as godparents and close family friends.”~~

8
9 ~~Children raised in grandfamilies or kinship care: 2,485,000~~

10
11 ~~Children raised in foster care: 397,091~~

12
13 ~~Children in foster care who are raised in grandfamilies or kinship care: 108,822 (which is~~
14 ~~27% of children in foster care)~~

15
16 ~~Source: Generations United, “The State of Grandfamilies in America: 2014”~~
17 ~~http://www.grandfamilies.org/Portals/0/14_State_of_Grandfamilies_Report_Final.pdf~~

18
19 * * * * *

20
21 ~~[A summary of key features of the act will be inserted to the Prefatory Note.]~~

22
23 Key features of this act are:

- 24
- 25 • a right to seek custody or visitation for three categories of persons: (1) de facto parents,
26 (2) persons who entered into an agreement with a parent before birth of a child to raise a
27 child together, and (3) non-parents who have a substantial relationship with the child and
28 who demonstrate that denial or custody or visitation would be as detriment to the child;
 - 29 • a requirement that the pleadings be verified and specify the facts on which the request for
30 custody or visitation is based;
 - 31 • a rebuttable presumption that the parent or de facto parent’s decision about custody or
32 visitation is in the best interests of the child;
 - 33 • a burden of proof on the petitioner of clear and convincing evidence;
 - 34 • protections for victims of domestic violence;
 - 35 • a list of factors to guide the court’s decision;
 - 36 • a provision that a petitioner granted visitation may be ordered to pay the cost of
37 facilitating visitation, including the cost of transportation; and
 - 38 • a provision that the act does not apply to children who are the subject of proceedings for
39 guardianship, abuse, neglect, or dependency.
- 40

1 **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Non-Parental Child

3 Custody and Visitation Act.

4 ~~**Reporter's Note:** Our liaison to the ULC Style Committee, Debra Behr, advised me that~~
5 ~~the Style Committee may prefer the word "Non-Parental" without a hyphen. She notes~~
6 ~~that Washington State statutes do not use a hyphen for "Nonparental." Wash. Code 26.10~~
7 ~~(2016) (chapter entitled "Nonparental actions for child custody." See also 23 Pa. Stat.~~
8 ~~and Cons. Stat. Ann. § 5327 (West 2016) (making reference to presumptions in cases~~
9 ~~involving a "nonparent"). My preference is to keep the hyphen. I think it makes the~~
10 ~~word easier to read and understand. Illinois' Family Law statute uses hyphens for some~~
11 ~~of its Family Law terms—e.g., "non-marital property." 750 Ill. Comp. Stat. 5/503(a)~~
12 ~~(2016). Changes to titles of acts (apparently including on issues related to hyphen) need~~
13 ~~to be approved by the Executive Committee.~~

14
15 ~~While the subject matter of this act was under review by a ULC Study Committee, the~~
16 ~~subject was referred to as "Third Party Custody and Visitation." The term "Non-Parental~~
17 ~~Rights" seems more precise. At the first two Drafting Committee meetings, some~~
18 ~~participants favored utilizing a term other than "Non-Parental," although there was not a~~
19 ~~consensus on what that term would be.~~

20
21 **SECTION 2. DEFINITIONS.** In this act:

22 ~~(1)~~ "Child" means:

23 ~~(1)~~ ———— ~~(A)~~ an unemancipated individual who has not attained [18] years of age;

24 ~~or;~~

25 ~~(B)~~ an adult son or daughter by birth or adoption, or under

26 (2) "Child abuse" means child abuse as defined in [cite to definition of "child abuse" in

27 law of this state other than this [act], ~~who is the subject of a court order concerning custodial~~
28 ~~responsibility.]]~~

29 ~~(23)~~ "Custody" means physical custody, legal custody, or both. The term includes joint
30 custody or shared custody as defined by the law of this state other than this [act].

31 ~~(34)~~ "De facto parent" means:

32 ~~(A)~~ that, an individual who is not a legal parent under another state statute or in

equity who within the last two years, ~~the petitioner~~ has ~~completely~~ undertaken permanent, unequivocal, committed parental responsibility in the child's life. Such a finding requires a determination by the court that:

~~(i)(A)~~ the ~~petitioner~~individual has resided with the child for a ~~significant~~sufficient period of time; to form a bonded and dependent relationship with the child;

~~(ii)(B)~~ the ~~petitioner~~individual has engaged in consistent caretaking of the child;

~~—————(iii) the petitioner has established a bonded and dependent relationship with the child;~~ (C) the relationship between the individual and the child was supported by

another parent of the child, and the ~~petitioner~~individual and the other parent have accepted that relationship or behaved as though the ~~petitioner~~individual is a parent of the child; provided

however that if a parent has completely failed to exercise parental responsibility, the support of the parent who failed to exercise parental responsibility is not required;

~~(iv)(D)~~ the ~~petitioner~~individual has accepted ~~full and permanent~~ parental responsibility without expectation of financial compensation; and

~~(v)(E)~~ the continuing relationship between the ~~petitioner~~individual and the child is in the best interests of the child; ~~or.~~

~~—————(B) that before or after the child's birth, the petitioner entered into an agreement in a record or orally with each parent of the child to accept full and permanent parental responsibility and to raise the child together, except that if a parent has completely failed to exercise parental responsibility, the consent of the parent who failed to exercise parental responsibility is not required.~~

Reporter's Note: At the November 2015 Drafting Committee meeting, we decided to move the definition of "de facto parent" to Section 5. After review of the act for style, however, the definition will stay in this section since the term is used in multiple sections. As agreed at the November 2015 Drafting Committee meeting, the definition of "de facto

parent” is now based on the Maine statutory definition. The definition reduces some of the redundant words in the Maine statute—i.e., the phrases “fully and completely,” “fostered or supported,” and “understood, acknowledged or accepted that or behaved as though the individual is a parent of the child.” Ms. Behr also noted the issue of redundant words. See Appendix B of ULC Drafting Rules which is entitled “Do Not Use Redundant Couplets.” The definition in this act uses the term “parental responsibility” (which we have been using and have separately defined in our act) rather than the Maine act’s term of “parental role.”

——(4)(5) “Detriment to the child” means adverse effect to the child’s physical or psychological well-being, including the effects resulting from interruption of a substantial beneficial relationship with the child or removal of the child from a stable placement of a child with a non-parent: or de facto parent.

(5)(6) “Domestic violence” means domestic violence as defined in [cite to definition of “domestic violence” in law of this state other than this [act]].

(6)(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(7)(8) “Legal custody” means the power to make important decisions regarding a child-
Reporter’s Note: ~~Deborah Behr comments: “Definition of “Legal custody” is quite broad. Covers teachers, judges, etc.” Our earlier definition was more specific, although the opening phrase is broad: “‘Legal custody’ means the power to make important decisions regarding a child, including decisions regarding the child’s education, health care, and extracurricular activities.” Such a definition of “legal custody” is used in many states.~~

——(8)(9) “Non-parent” ~~mean~~means an individual other than a parent, ~~including a child’s grandparents, great grandparents, step parents, and siblings.~~

Reporter’s Note: ~~Ms. Behr raises the questions of whether we wish to include domestic partners in the definition. That seems reasonable to me. (I note that now that same-sex couples can marry, there are likely to be fewer people seeking domestic partnerships (or civil unions). She also notes that the definition is broad—“[i]ncludes any person in the world.” The definition is broad, in part, out of necessity to meet a variety of~~

1 ~~circumstances that may arise, and, in any case, before “non-parents” can obtain custody~~
2 ~~or visitation under this act, they must meet many criteria besides being a non-parent.~~

3
4 ~~——(9)(10)~~ “Parent” means a person recognized as a parent under law of this state other than
5 this [act].

6 **Report’s Note:** ~~At the November 2015 Drafting Committee meeting, the committee~~
7 ~~asked that two alternative definitions of the following term —“parental responsibility”—~~
8 ~~be placed in brackets. The committee will choose between them, and perhaps fine-tune~~
9 ~~the selection at the April 2016 meeting. I lean toward the second option, which is more~~
10 ~~precise, although I do not think we need the word “mental” as part of the definition.~~
11 ~~From my view, “mental needs” is an awkward phrase and is probably encompassed by~~
12 ~~“emotional, developmental, and educational needs.”~~

13
14 ~~——(10)(11)~~ “Parental responsibility” means

15 **Alternative A**

16 ~~——[~~exercising care and control ~~to provide for~~of a child and making decisions regarding the
17 health~~and,~~ welfare, and other needs of the child~~].~~

18 **Alternative B**

19 ~~[~~providing for a child’s well being, including the child’s physical, mental, emotional,
20 ~~developmental, and educational needs].~~

21 **End of Alternatives**

22 ~~——(11)(12)~~ “Parenting time” means parenting time as defined in [cite to definition of
23 “parenting time” in law of this state other than this [act].

24 ~~(12)(13)~~ “Physical custody” means day-to-day care and supervision of a child.

25 **Reporter’s Note:** ~~Ms. Behr comments: “Definition of ‘physical custody’ seems broad.~~
26 ~~Looks like it covers daycare services.” Perhaps we could add “by a person acting in a~~
27 ~~parental role.” We also could add “pursuant to a court order.”~~

28
29 ~~——(13)(14)~~ “Record” means information that is inscribed on a tangible medium or that
30 is stored in an electronic or other medium and is retrievable in perceivable form.

(14)(15) “Sexual assault” means sexual assault as defined in [cite to definition of “sexual assault” in law of this state other than this [act]].

(15)(16) “Stalking” means stalking as defined in [cite to definition of “stalking” in law of this state other than this [act]].

~~Reporter’s Note: Two definitions of “visitation” are offered. The first is the brief Black’s Law Dictionary definition. The second provides a little more detail. Ms. Behr notes that the definition “seems broad [] covers school nurses for physicals.” As with the definition of “physical custody,” we could add the phrase “pusuant to a court order.”~~

~~(16)(17) “Visitation” means~~

~~Alternative A~~

~~[access to a child.]~~

~~Alternative B~~

~~[the right to spend time with a child, which, may include overnights.]~~

~~End of Alternatives~~

~~Reporter’s Note: Ms. Behr raises the issue of whether the act needs a definition of “state.” I don’t think so. This is not a jurisdictional act in which we are dealing with issues of recognition of out-of-state orders and need to clarify if Puerto Rico, the Virgin Island, and U.S. territories should be considered states. When we use the term “state,” it is in brackets and is part of a direction to insert citation to other law within the state. A U.S. territory could insert its definition, if the territory adopts the act).~~

~~Comment~~

The definition of “child” is the same as that used in subsection A of the Uniform Deployed Parents Custody and Visitation Act, § 102(3)(A) (2012). The age of majority in most states is 18, although some states set the age of majority at graduation from high school, and a few states set the age higher than 18. ~~The (B) portion of~~ This act does not include in the definition ~~includes~~ of “child” adult children who are the subject of a court order concerning custodial responsibility, such as persons with a developmental disability. ~~The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) defines “Child” as “an individual who has not attained 18 years of age.” UCCJEA, § 102(2).~~ Rights to custody of visitation with adult children would be determined under the state’s guardianship laws.

In Family Law, the terms “custody” and “visitation” are flexible concepts. In most states, there is not a fixed amount of time the child spends with a parent who has “custody” or

“visitation,” although some states utilize guidelines to specify the time the child spends with the noncustodial parent. Nonetheless, a person with “custody” provides the child with a home or primary home. The drafters anticipate that visitation granted to non-parents will be decided on the facts of each case rather than by guidelines. The definition of “custody” includes joint custody or shared custody as defined by other state law. Thus, under this act, courts have the option of granting ~~a non-parent~~ joint custody or shared custody (as well as sole custody).

The definition of “de facto parent” is based on Maine Rev. Stat. tit. 19-A, § 1891 (2015), which also is similar to the definition in Delaware -- 13 Del. Code § 8-201(c) (2015). The Delaware definition includes the element that the person seeking status as a de facto parent “has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature.” Some states set specific time periods before a person may obtain custody as a de facto custodian – e.g., six months or more if the child is under three years old, and one year or more if the child is three years of age or older. See, e.g., Ky. Rev. Stat. 403.270 (2012); S.C. Code § 63-15-60 (2012). At least eleven states allow a non-parent to seek visitation if the child has lived with a person for a certain period of time, such as six or 12 months.

The Washington Supreme Court in the case of *In re Parentage of L.B.*, 122 P.3d 161, 163 (Wash. 2005) held that the state’s “common law recognizes the status of de facto parents and grants them standing to petition for a determination of the rights and responsibilities that accompany legal parentage in this state.” To establish standing as a de facto parent, the Washington Supreme Court adopted the following criteria:

- (1) the natural or legal parent consented to and fostered the parent-like relationship,
- (2) the petitioner and the child lived together in the same household,
- (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, and
- (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.

Id. at 176 (citations omitted).

The American Law Institute Principles of the Law of Family Dissolution § 2.03(1)(c) (2002) defines a de facto parent as “an individual other than a legal parent or a parent by estoppel who, for a significant period of time not less than two years, (i) lived with the child and, (ii) for reasons primarily other than financial compensation, and with the agreement of a legal parent to form a parent-child relationship, or as a result of a complete failure or inability of any legal parent to perform caretaking functions, (A) regularly performed a majority of the caretaking functions for the child, or (B) regularly performed a share of caretaking functions at least as great as that of the parent with whom the child primarily lived.”

Some of the phrasing in the definition of “de facto parent” also is drawn from the American Law Institute’s Principles of the Law of Family Dissolution, § 2.03(1)(b) (2002). That section provides, as one of the alternative definitions of “parent by estoppel”: “an individual who, though not a legal parent, . . . (iii) lived with the child since the child’s birth, holding out

1 and accepting full and permanent responsibilities as parent, as part of a prior co-parenting
2 agreement with the child’s legal parent (or, if there are two legal parents, both parents) to raise a
3 child together each with full parental rights and responsibilities, when the court finds that
4 recognition of the individual as a parent is in the child’s best interests.”

5
6 ~~This section provides two alternate bases by which a petitioner can be determined by the~~
7 ~~court to be a de facto parent. There is overlap between the bases, as well as a difference between~~
8 ~~the bases. The first basis [subsection (a)] requires that “the petitioner has completely undertaken~~
9 ~~permanent, unequivocal, committed parental responsibility in the child’s life,” and requires that~~
10 ~~the court make five findings. The second basis [subsection (b)] requires that there be “an~~
11 ~~agreement . . . to accept full and permanent parental responsibility and to raise the child~~
12 ~~together.” Both bases require agreement or consent of the parents for the petitioner to become a~~
13 ~~de facto parent (except consent of a parent is not necessary under the second basis if a parent has~~
14 ~~completely failed to exercise parental responsibility). The first basis focuses the quality and~~
15 ~~duration of the petitioner’s relationship with the child. The second basis focuses on the existence~~
16 ~~of an agreement, and the agreement could be enforced soon after the child’s birth even if the~~
17 ~~child and petitioner have not had a long-term relationship.~~

18
19 The definition of “~~Detriment~~detriment to the child” is based on Cal. Fam. Code § 3041(c)
20 (2016) (a section entitled “Custody award to nonparent; findings of court; hearing”). That
21 section provides: “As used in this section, ‘detriment to the child’ includes the harm of removal
22 from a stable placement of a child with a person who has assumed, on a day-to-day basis, the
23 role of his or her parent, fulfilling both the child’s physical needs and the child’s psychological
24 needs for care and affection, and who has assumed that role for a substantial period of time. A
25 finding of detriment does not require any finding of unfitness of the parents.”

26
27 The definitions of “electronic” and “record” are the definitions provided by the Uniform
28 Law Commission “Drafting Rules,” Rule 304 (2012).

29
30 The definition of “legal custody” is “similar to the definition of “legal custody” in many
31 states. The definition of “legal custody also is similar to the definition of “decision-making
32 authority” in the Uniform Deployed Parents Custody and Visitation Act (2012), which provides:
33 “the power to make important decisions regarding a child.” Such, including decisions
34 includeregarding the child’s education, religious training, health care, and extracurricular
35 activities, and travel.” “Legal custody” might include the power to enroll a child in a religious
36 school, but it normally should not include selection of a child’s religion since most courts have
37 held both parents have a right to expose their child to his or her religious beliefs (or lack of
38 religious beliefs). See, e.g., *Felton v. Felton*, 383 Mass. 232, 418 N.E.2d 606 (1981); *In re*
39 *Marriage of Mentry*, 142 Cal. App 260, 190 Cal. Rptr. 843 (1983); *Hansen v. Hansen*, 404
40 N.W.2d 460 (N.D. 1987). Decisions about travel are not included since persons with custody, as
41 well as persons with visitation, generally have a right to travel with the children, including on
42 vacation. A person with “legal custody,” however, generally would determine if the child were
43 to travel on his own her own, such as for an educational or athletic program.

44
45 The definition of “non-parent” is “an individual other than a parent.” The term includes,
46 but is not limited to, a child’s grandparents, great-grandparents, step-parents, and siblings. Other

1 persons could obtain relief under the act provided they meet the requirements of the act
2 (including clear and convincing evidence of substantial relationship with the child and detriment
3 to the child if custody or visitation was not granted).

4
5 The definition of “parent” is “a person recognized as a parent under law of this state other
6 than this [act].” The sources of the definition of “parent” may include the state’s parentage
7 statutes, divorce statutes, and case law. In most states, “parent” would include biological
8 parents, adoptive parents, and men who have acknowledged paternity (even though they are not
9 biologically related to the child). “Parent” also might include persons who agree to conceive a
10 child through assisted reproductive technology or by use of surrogates. Generally, a person
11 ceases to be a parent if his or her rights have been terminated. In addition, a man who donates
12 sperm or a woman who donates an egg usually are not considered to be parents.

13
14 The definition of “parental responsibility” is based, in part, on Del. Code Ann. tit. 13, §
15 1101(10) (2016), which provides: “‘Parental responsibilities’ means the care, support and control
16 of the child in a manner that provides for the child’s necessary physical needs, including
17 adequate food, clothing and shelter, and that also provides for the mental and emotional health
18 and development of such child.” Payment for the child’s food, clothing, shelter, and other
19 physical needs is not enough, by itself, to constitute exercise of parental responsibility.

20
21 The definition of “parenting time” is made with reference to law of the state other than
22 this act. The term is a comparatively modern term designed to supplement or replace the terms
23 “custody” and “visitation,” particularly in disputes between parents. The term is used to focus
24 on parenting of the child and allocation of time with the child rather than which parent has
25 “custody.” The Illinois definition of “parenting time” is: “the time during which a parent is
26 responsible for exercising caretaking functions and non-significant decision-making
27 responsibilities with respect to the child.” 750 Ill. Comp. Stat. 5/600-(e) (2016).

28
29 ~~**Reporter’s Note:** Regarding the section on “Pleadings,” the Drafting Committee agreed~~
30 ~~that pleadings should include information required by the Uniform Child Custody~~
31 ~~Jurisdiction and Enforcement Act (UCCJEA). The committee also asked that the reporter~~
32 ~~prepare an alternate “Pleadings” section, which would include an “ideal” list of specific~~
33 ~~items to be included in pleadings, taking into consideration the suggestions of the~~
34 ~~National Organization for Women Foundation. Below are two alternatives: Alternative~~
35 ~~A, which is the original pleadings section with the addition of reference to the UCCJEA,~~
36 ~~and Alternative B, which includes a more detailed list specific items to be included in the~~
37 ~~pleadings.~~

38
39 **SECTION 3. JURISDICTION. Only a court that has jurisdiction under ~~PLEADINGS.~~**

40 **Alternative A**

41 ~~[The individual requesting custody or visitation shall file a verified petition specifying the facts~~
42 ~~on which the request is based. The facts must include the nature the relationship between the~~

~~petitioner and the child and the information required by~~ [cite to ~~Section 209~~ of this state's
Uniform Child Custody Jurisdiction and Enforcement Act~~]].~~ may determine custody or
visitation under this act.

Comment

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (1997) has
been adopted in 49 states. As of February 2016, Massachusetts is the only state that has not
adopted the UCCJEA, although Massachusetts did adopt the Uniform Child Custody Jurisdiction
Act (UCCJA). The Uniform Law Commission has promulgated a 2013 version of the UCCJEA
(to cover international issues as well as domestic issues). As of February 2016, the 2013
UCCJEA has not been adopted in any states.

If at the time a petition is filed under this act, an action is already pending regarding the
same child, the petition should be filed as part of the pending action (assuming the pending
action is filed in compliance with the UCCJEA).

Jurisdiction over Native American children is governed by the Indian Child Welfare Act,
25 U.S.C. §§ 1901 et seq. (2015).

~~SECTION Alternative B~~ — [The **4. INDIVIDUALS WHO MAY FILE A**

PETITION. An individual may file a petition if the individual ~~requesting~~ claims that:

(a) he or she is a de facto parent;

(b) a substantial relationship exists between the child and the individual, and the denial of
custody or visitation ~~shall file a verified petition specifying to~~ the individual would be a
~~detriment to~~ the ~~facts on which~~ child; or

(c) before the child's birth, the individual entered into an agreement in a record or orally
with each parent of the child to accept full and permanent parental responsibility and to raise the
child together, except that if a parent has completely failed to exercise parental responsibility, the
consent of the parent who failed to exercise parental responsibility is not required.

Legislative Note: Courts in approximately seven states have held that, as a matter of state or
federal constitutional law, harm to the child without granting visitation must be shown before
visitation is granted to a non-parent. See *Weldon v. Ballow*, No. 2140471, ___ So.3d ___, 2015
WL 6618983, at 15 (Ala. Civ. App. Oct. 30, 2015), cert. denied sub nom. *Ex parte Strange*, No.

1 1150152, 2016 WL 281069 (Ala. Jan. 22, 2016); Crockett v. Pastore, 259 Conn. 240, 789 A.2d
2 453 (2002); Sullivan v. Sapp, 866 So. 2d 28 (Fla. 2004); Doe v. Doe, 116 Haw. 323, 172 P.3d
3 1067 (Haw. 2007); Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1060 (2002); Moriarty v. Bradt,
4 177 N.J. 84, 827 A.2d 203 (2003); In re Parentage of C.A.M.A., 154 Wash. 2d 52, 109 P.3d 405
5 (2005). In those states, legislative drafters may wish to substitute the word “harm” for
6 “detriment” in subsection (b).

7 8 Comment

9 The designation of individuals who may file a petitions serves to protect the interests of
10 parents and filter out cases in which the petitioner does not have a meritorious claim, while at the
11 same time allowing the opportunity to preserve relationships between children and individuals
12 other than parents with whom children have a particularly close relationship. The bases for
13 standing correspond to the individuals who may file petitions under Section 6 – 9.

14 15 SECTION 5. PLEADINGS. ~~request is based.~~

16 (a) In all pleadings under this act requesting custody or visitation, the petition shall be
17 verified and specify the facts on which the request is based. The facts must include:

18 _____ (1) the nature the relationship between the petitioner and the child;

19 _____ (2) if applicable, the nature of any agreement between the parties regarding care
20 for the child and contact with the child;

21 _____ (3) attempts to obtain visitation or other contact with the child;

22 ~~_____ (4) the detriment to the child if the custody or visitation requested by the petitioner is not~~
23 ~~granted; and~~

24 ~~_____ (5) _____~~ (4) the information required by [cite to Section 209 of this state’s Uniform
25 Child Custody Jurisdiction and Enforcement Act~~]].—~~; and _____

26 End of Alternatives

27 _____ (5) reasons why a continuing relationship between the petitioner and the child is
28 in the best interests of the child.

29 (b) In pleadings in which a petitioner requests adjudication that the petitioner is a de facto
30 parent, the petition also shall describe:

1 (1) the period of time the petitioner has resided with the child;
2 (2) the caretaking the petitioner has provided the child;
3 (3) the degree to which the relationship between the petitioner and the child was
4 supported by another parent or parents of the child, and the degree to which the petitioner and the
5 other parent or parents have accepted that relationship or behaved as though the individual is a
6 parent of the child; and
7 (4) the financial compensation, if any, the petitioner has accepted in exchange for
8 providing care for the child.
9 (c) In pleadings in which a petitioner who is not a de facto parent requests custody or
10 visitation, the petition also shall describe why denial of custody or visitation to the petitioner
11 would be a detriment to the child.
12 (d) In pleadings in which a petitioner claims that the petitioner entered into an agreement
13 with each parent of the child to accept full and permanent parental responsibility and to raise the
14 child together, the petition also shall state:
15 (1) the date of the agreement;
16 (2) the manner in which the agreement was made (by writing, oral statement, or
17 other means).

18 **Comment**

19 In the U.S. Supreme Court's plurality opinion in *Troxel v. Granville*, Justice O'Connor
20 stated: "As Justice KENNEDY recognizes, the burden of litigating a domestic relations
21 proceeding can itself be 'so disruptive of the parent-child relationship that the constitutional right
22 of a custodial parent to make certain basic determinations for the child's welfare becomes
23 implicated.'" 530 U.S. at 75, *quoting* Kennedy, J. at 530 U.S. at 101. Requiring verified pleading
24 and specificity in pleadings is intended to reduce actions that are not meritorious and facilitate
25 disposition of non-meritorious cases by motions to dismiss or for summary judgment.

26
27 Among the facts required in the pleading is the information required by Section 209 of
28 the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) ~~is~~ a section entitled

1 “Information to be Submitted to the Court.” The section provides:

2
3 ~~“(a)~~ [Subject to [local law providing for the confidentiality of procedures,
4 addresses, and other identifying information], in] [In] a child-custody proceeding, each
5 party, in its first pleading or in an attached affidavit, shall give information, if reasonably
6 ascertainable, under oath as to the child’s present address or whereabouts, the places
7 where the child has lived during the last five years, and the names and present addresses
8 of the persons with whom the child has lived during that period. The pleading or affidavit
9 must state whether the party:

10
11 _____(1) has participated, as a party or witness or in any other capacity,
12 in any other proceeding concerning the custody of or visitation with the child and,
13 if so, identify the court, the case number, and the date of the child-custody
14 determination, if any;

15
16 _____(2) knows of any proceeding that could affect the current
17 proceeding, including proceedings for enforcement and proceedings relating to
18 domestic violence, protective orders, termination of parental rights, and adoptions
19 and, if so, identify the court, the case number, and the nature of the proceeding;
20 and

21
22 _____(3) knows the names and addresses of any person not a party to the
23 proceeding who has physical custody of the child or claims rights of legal custody
24 or physical custody of, or visitation with, the child and, if so, the names and
25 addresses of those persons.

26
27 (b) If the information required by subsection (a) is not furnished, the court, upon
28 motion of a party or its own motion, may stay the proceeding until the information is
29 furnished.

30
31 (c) If the declaration as to any of the items described in subsection (a)(1) through
32 (3) is in the affirmative, the declarant shall give additional information under oath as
33 required by the court. The court may examine the parties under oath as to details of the
34 information furnished and other matters pertinent to the court’s jurisdiction and the
35 disposition of the case.

36
37 (d) Each party has a continuing duty to inform the court of any proceeding in this
38 or any other State that could affect the current proceeding.

39
40 [(e) If a party alleges in an affidavit or a pleading under oath that the health,
41 safety, or liberty of a party or child would be jeopardized by disclosure of identifying
42 information, the information must be sealed and may not be disclosed to the other party
43 or the public unless the court orders the disclosure to be made after a hearing in which the
44 court takes into consideration the health, safety, or liberty of the party or child and
45 determines that the disclosure is in the interest of justice-~~4.1~~.”

Reporter's Note: Two alternatives are presented for the Drafting Committee to consider regarding the following section on "Jurisdiction." Alternative A is based on the language used in the Uniform Child Abduction Prevention Act, Section 5(a) (2006) after a style edit by Ms. Behr's to delete the phrase "at issue" and to make the sentence active rather than passive. The language of Section 5(a) of the Uniform Child Abduction Prevention Act is: "A petition under this [act] may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act]." The substance of Alternative B is the same and is perhaps a little more reader friendly (particularly for non-lawyers).

SECTION 4. JURISDICTION.

Alternative A

[The individual requesting custody or visitation shall file a petition only in a court that has jurisdiction to make a child custody determination with respect to the child under [cite to this state's Uniform Child Custody Jurisdiction and Enforcement Act]].

Alternative B

[The individual requesting custody or visitation shall file a petition only in a court that has jurisdiction under [cite to this state's Uniform Child Custody Jurisdiction and Enforcement Act]].

End of Alternatives

Comment

~~———— The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (1997) has been adopted in 49 states. As of February 2016, Massachusetts is the only state that has not adopted the UCCJEA, although Massachusetts did adopt the Uniform Child Custody Jurisdiction Act (UCCJA). The Uniform Law Commission has promulgated a 2013 version of the UCCJEA (to cover international issues as well as domestic issues). As of February 2016, the 2013 UCCJEA has not been adopted in any states.~~

~~———— If at the time a petition is filed under this act, an action is already pending regarding the same child, the petition should be filed as part of the pending action (assuming the pending action is filed in compliance with the UCCJEA).~~

~~———— Jurisdiction over Native American children is governed by the Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. (2015).~~

Reporter's Note: Perhaps the preceding sentence (or concept) should be in the text of the act. Ms. Behr asks if we “need a scope section for whether Indian children covered by the Indian Child Welfare Act are included under the Act?” Inclusion of such a scope section seems like a useful reminder to litigants and courts (although, in a technical sense, the scope section is not necessary since the Indian Child Welfare Act preempts any inconsistent state law). The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) has a scope provision. Section 104(a) of the UCCJEA—entitled “Application To Indian Tribes”—provides: “A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this [act] to the extent that it is governed by the Indian Child Welfare Act.” On the other hand, the Uniform Deployed Parents Custody and Visitation Act and the Uniform Child Abduction Prevention Act do not have such a provision.

6 ~~SECTION 5.~~ INITIAL PETITION BY DE FACTO PARENT.

~~(a) An individual who has served as a de facto parent may file an initial petition for custody of or visitation with the child.~~

~~—(b)~~(a) The court shall adjudicate ~~a petitioner~~an individual to be a de facto parent if the court finds by clear and convincing evidence that the petitioner is a de facto parent.

~~(c) A petitioner~~(b) An individual adjudicated to be a de facto parent has the same right to custody, visitation, or parenting time as a parent~~—, as those rights are provided under law of this state other than this act.~~

Reporter's Note: Ms. Behr comments that although some sections refer to “Initial Petition[s],” there is no mention of “Subsequent Petitions.” (The differentiation the Drafting Committee made was between “Initial Petition[s]” and actions to modify existing orders.” Ms. Behr suggested we might use the word “commence” for initial actions. I think that verb has some ambiguity since both an initial action and a modification action can be “commenced.” For this draft, I tried to deal with Ms. Behr’s concern by keeping the phrase “Initial Petition” and adding the phrase “Petition to Modify.”

Comment

“De facto parent” is defined in the definition section of this act [Section 2(~~3~~4)]. As noted in the Comment to that section, a trend in the law is to grant rights by statute or case law to de facto parents to seek custody or visitation. States which provide that de facto parents (or persons who stood in loco parentis to the child) have standing to seek custody or visitation include: AZ,

1 CT, DE, HA, IN, KY, MN, MT, PA, WA. A related concept is an individual may seek visitation
2 (or custody) if the child has been residing with the individual for a certain period of time – e.g.,
3 CA, MI, NV, WI.

4
5 The right of de facto parents to seek custody or visitation applies to couples of the same
6 sex or different sex, even though only one of the parties is related to the child by genetics,
7 adoption, or other bases for parenthood recognized by the state.

8
9 ~~This~~In this section ~~(coupled with~~(as well as in Sections 7, 8, and 9) the standards for
10 being able to obtain custody or visitation are the same within each section.

11
12 **SECTION definition of “de facto7. INITIAL PETITION BY AN INDIVIDUAL**
13 **WHO ENTERED INTO AN AGREEMENT TO ACCEPT FULL AND PERMANENT**
14 **PARENTAL RESPONSIBILITY.**

15 (a) This is section applies to an individual who is not a legal parent” in Section 2(3)(
16 under another state statute or in equity and who alleges he or she entered into an agreement
17 before the child’s birth to accept full and permanent parental responsibility and to raise the child
18 together.

19 (b) If the child has more than more than one parent, agreement of each parent is
20 necessary, except that if a parent has completely failed to exercise parental responsibility, the
21 agreement of that parent is not required.

22 (c) If a court determines by clear and convincing that an individual entered into a
23 agreement under this section, in a record or orally, that individual has the same right to custody,
24 visitation, or parenting time as a parent, as those rights are provided under law of this state other
25 than this act.

26 **Comment**

27 ~~⌘~~This section provides that ~~a de facto parent~~an individual who has entered into an
28 agreement with the parent “to accept full and permanent parental responsibility and to raise the
29 child together” “has the same right to custody, visitation, or parenting time as a parent.”
30 Agreements between parents regarding custody of children have been held to be of
31 “constitutional magnitude” and entitled to presumptive enforcement. *In re Marriage of Coulter*

1 *and Trinidad*, 2012 IL 113474, 364 Ill. Dec. 59, 976 N.E.2d 337, 342 (enforcing an agreement
2 between parents regarding future relocation of the children). *See also Frazier v. Goudschaal*,
3 296 Kan. 730, 295 P.3d 542 (2013) (enforcing a coparenting agreement between members of a
4 same-sex couple); *Fawzy v. Fawzy*, 199 N.J. 456, 973 A.2d 347, 350 (2009) (enforcing parents'
5 agreement to arbitrate a custody dispute).

6
7 ~~———— In this section (as well as in Section 6 and 7) the standards for being able to obtain~~
8 ~~custody or visitation are the same.~~

9
10 There is overlap as well as differences between this section and Section 6 (regarding de
11 facto parents). The de facto parent section requires that the individual seeking status as a de
12 facto parent “has undertaken permanent, unequivocal, committed parental responsibility in the
13 child’s life” and requires that the court make five findings. Both sections require agreement or
14 consent of the parents for the individual to obtain custody or visitation under the act (except
15 consent of a parent is not necessary under this section if a parent has completely failed to
16 exercise parental responsibility). The de facto parent section focuses the quality and duration of
17 the individual’s relationship with the child. This section focuses on the existence of an
18 agreement, and the agreement could be enforced soon after the child’s birth even if the child and
19 individual have not had a long-term relationship.

20
21 **SECTION 68. INITIAL PETITION BY NON-PARENT OF CHILD WHO IS NOT**
22 **A DE FACTO PARENT WHEN CHILD IS IN CUSTODY OF PARENT OR DE FACTO**
23 **PARENT.**

24 ~~(a) If a child~~ (a) This section applies to initial petitions for custody or visitation filed by a
25 non-parent who is not a de facto parent when the child is in the custody of a parent or de facto
26 parent, ~~a non-parent requesting custody or visitation may file an initial petition with the court for~~
27 ~~custody of or visitation with the child if the non-parent demonstrates: .~~

28 ~~———— (1) a substantial relationship exists between the child and the non-parent, and~~

29 ~~———— (2) the denial of custody or visitation to the non-parent would be a detriment to~~
30 ~~the child.~~

31 (b) In a proceeding under subsection (a), a rebuttable presumption exists that the parent’s
32 or de facto parent’s decision about custody and visitation is in the best interests of the child. To
33 rebut the presumption, the ~~petitioner~~ non-parent must establish by clear and convincing evidence

1 that:

2 (1) a substantial relationship exists between the child and the non-parent, and
3 (2) denial of custody or visitation to the ~~petitioner~~non-parent is a detriment to the
4 child, and

5 (23) custody or visitation to ~~petitioner~~non-parent is the best interests of the child.

6 (c) Proof of parental unfitness is not required to rebut the presumption described in
7 subsection (b).

8 **Legislative Note:** Courts in approximately seven states have held that, as a matter of state or
9 federal constitutional law, harm to the child without granting visitation must be shown before
10 visitation is granted to a non-parent. See Weldon v. Ballow, No. 2140471, ___ So.3d ___, 2015
11 WL 6618983, at 15 (Ala. Civ. App. Oct. 30, 2015), cert. denied sub nom. Ex parte Strange, No.
12 1150152, 2016 WL 281069 (Ala. Jan. 22, 2016); Crockett v. Pastore, 259 Conn. 240, 789 A.2d
13 453 (2002); Sullivan v. Sapp, 866 So. 2d 28 (Fla. 2004); Doe v. Doe, 116 Haw. 323, 172 P.3d
14 1067 (Haw. 2007); Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1060 (2002); Moriarty v. Bradt,
15 177 N.J. 84, 827 A.2d 203 (2003); In re Parentage of C.A.M.A., 154 Wash. 2d 52, 109 P.3d 405
16 (2005). In those states, legislative drafters may wish to substitute the word “harm” for
17 “detriment” in subsection (b)(1).

18 19 Comment

20 This section governs requests for custody or visitation by a non-parent when the child is
21 in the custody of a parent or de facto parent. Section 2(89) defines “non-parent” as “an
22 individual other than a parent, ~~including.~~” The most common non-parents seeking custody and
23 visitation are a child’s grandparents, great-grandparents, step-parents, and siblings.” ~~The most~~
24 ~~common persons seeking custody or visitation will be one of the specifically listed categories of~~
25 ~~individuals, but, although~~ the definition allows others to seek custody or visitation if the
26 requirements of the act are met.

27
28 The statutes of many states specify the circumstances in which visitation may be sought –
29 circumstances which often involve some disruption of the family – e.g., divorce, separation,
30 death of a parent, or a child born outside of marriage. The categories of persons who may seek
31 visitation and the broad description of circumstances in which visitation may be sought do not,
32 by themselves, provide a reliable indicator of whether non-parental visitation (or custody) should
33 be allowed. It is preferable to focus on the factors used to decide visitation or custody,
34 particularly the closeness of the relationship between the child and the non-parent.

35
36 The presumption and burden of proof in this section recognize the superior right of
37 parents to custody of their children in custody disputes with non-parents, and also provides that
38 the superior right or presumption can be overcome. The standard is similar to Pa. Stat. Ann. tit.

23, § 5327(b) (2015).

As stated in Black’s Law Dictionary, “The Burden of proof includes both the burden of persuasion and the burden of production.” Black’s Law Dictionary (7th ed. 1999).

The presumption and burden of proof is designed to meet the requirements of *Troxel v. Granville*, 530 U.S. 57 (2000), in which the Supreme Court struck down Washington State’s third party visitation statute as applied. Justice O’Connor, in a plurality decision, said the Washington statute “contains no requirement that a court accord the parent’s decision any presumption of validity or any weight whatsoever.” *Id.* at 67, ~~120 S.Ct. at 2061~~. “The Superior Court’s order was not founded on any special factors that might justify the State’s interference with Granville’s fundamental right to make decisions concerning the rearing of her two daughters.” *Id.* at 68, ~~120 S.Ct. at 2061~~.

The Supreme Court in *Troxel* did not rule on the issue of whether the constitution requires a showing of harm or potential harm. In her plurality opinion, Justice O’Connor said:

Because we rest our decision on the sweeping breadth of [Washington Code] § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with Justice KENNEDY that the constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best “elaborated with care.” *Post*, at 2079 (dissenting opinion). Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.

530 U.S. at 73.

In the years since *Troxel* was decided, state courts have generally held that a grandparent’s claim that the grandparent has a positive relationship with the grandchild is not sufficient to justify an order of visitation over the objection of a parent. *See, e.g., Neal v. Lee*, 2000 Ok 90, 14 P.3d 547 (2000); *State Dept. of Social and Rehabilitative Services v. Paillet*, 16 P.3d 962 (2001); *Flynn v. Henkel*, 227 Ill.2d 176, 880 N.E.2d 166 (2007). On the other hand, if the grandparent has a substantial relationship with the grandchild – such as raising the child for a few years – that can be the basis for granting visitation to the grandparent over the parents’ objection. *See, e.g., Rideout v. Riendeau*, 761 A.2d 291 (Me. 2000) (the grandparents had helped raise their grandchildren for the first seven years of the oldest grandchild’s life and for lesser periods for the younger grandchildren); *E.S. v. P.D.*, 8 N.Y.3d 150, 863 N.E.2d 100 (2007) (grandparents cared for children while the mother was dying of cancer).

1 This act does not set a maximum number of persons who may obtain rights of custody or
2 visitation. In most cases, the number of actively involved parental figures probably will not be
3 large. As courts sort through complex family structures, the number of persons acting in a
4 parental role is a factor that should be considered -- but without applying a fixed rule about how
5 many parental figures with rights to time with the child is too many. The focus needs to remain
6 on the best interests of the child.

7
8 **SECTION 79. INITIAL PETITION BY NON-PARENT OF CHILD WHO IS NOT**
9 **A DE FACTO PARENT WHEN CHILD IS NOT IN CUSTODY OF PARENT OR DE**
10 **FACTO PARENT.**

11 (a) ~~If~~ This section applies to initial petitions for custody or visitation filed by a non-parent
12 who is not a de facto parent when the child is not in the custody of a parent or de facto parent, ~~a~~
13 ~~non-parent requesting custody or visitation may file an initial petition with the court for custody~~
14 ~~of or visitation with the child if the non-parent demonstrates a substantial relationship exists~~
15 ~~between the child and the non-parent.~~

16 ~~(b) In an initial proceeding for custody of or visitation with a child between two or more~~
17 ~~petitioners who are non-parents, a presumption does not exist that custody or visitation should be~~
18 ~~given to the petitioner.~~

19 ~~(c)~~ (b) To obtain custody or visitation, the non-parent must establish by clear and
20 convincing evidence that ~~custody or visitation for the non-parent is in the best interests of the~~
21 ~~child.~~

22 (1) a substantial relationship exists between the child and the non-parent, and

23 (2) custody or visitation for the non-parent is in the best interests of the child.

24 (c) In an initial proceeding for custody of or visitation with a child between two or more
25 non-parents, a presumption does not exist that custody or visitation should be given to a
26 particular non-parent.

Comment

This section governs custody and visitation disputes when the child is not in the custody of a parent or de facto parent. The non-parent needs to demonstrate by clear and convincing that a substantial relationship exists between the child and the non-parent and ~~establish by clear and convincing evidence~~ that custody or visitation for the non-parent is in the best interests of the child. If the petitioner does not prove his or her case by clear and convincing evidence, other laws – such as guardianship laws – are available to decide custody and visitation issues. In cases in which the dispute does not involve a parent, the Supreme Court’s holding in *Troxel* regarding giving deference to a parent’s decision does not apply.

Subsection (b)(c) is similar to 23 Pa. Stat. and Cons. Stat. Ann. § 5327(c) (West 2016), which provides: “In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.”

Reporter’s Note: ~~Before review for style, this draft had a subsection (d), which provided: “If a non-parent’s petition for custody or visitation is filed under law of this state other than this act, the other law applies.” Ms. Behr commented: “Not needed. Covered by other law.”~~

~~We discussed having a section which would give standing to a non-parent based on the non-parent having exercised parental responsibility pursuant to a court order. Presumably, a non-parent would have standing under whatever law that granted them parental responsibility (as well as potential standing under this act if the person if the criteria of this act were met).~~

~~We have discussed, but not firmly decided, whether to explicitly deal with situations in which “both parents are deceased, incapacitated, [or unfit], or there has been a complete failure of the parents to exercise parental responsibility [and a substantial relationship exists between the child and the non-parent].” These situations could be covered by Sections 5–7.~~

SECTION 10. PRESUMPTION REGARDING ~~SECTION 8. HISTORY OF~~ DOMESTIC VIOLENCE, CHILD ABUSE, SEXUAL ASSAULT, OR STALKING.

(a) There is a rebuttable presumption that it is not in the best interests of a child to grant ~~legal custody, physical custody,~~ or visitation to a non-parent who if the non-parent, or a person residing with the non-parent, has a history committed an act of ~~perpetrating~~ domestic violence, child abuse, sexual assault, or stalking against the other parent, the child, the child’s siblings, or a child’s custodial guardian. For the purposes of this section, the phrase, “committed an act,”

1 refers to a final adjudication by a court hearing a proceeding under this act or an adjudication by
2 court in another proceeding that the designated offense occurred.

3 **Reporter's Note:** ~~The above language was proposed by the ABA Commission on~~
4 ~~Domestic Violence and Sexual Violence. The ABA Commission also proposes language~~
5 ~~that would create a rebuttable presumption against custody or visitation for parents who~~
6 ~~have engaged in domestic violence, sexual assault, or stalking. In addition, the~~
7 ~~Commission proposes language to create a rebuttable presumption against granting legal~~
8 ~~or physical custody to "A non-parent whom has kinship or other significant ties to a~~
9 ~~parent or person who has committed domestic violence, sexual assault, or stalking against~~
10 ~~the other parent, the child, the child's siblings, or a child's custodial guardian."~~

11
12 ~~From my view, standards for parental custody or visitation are beyond the scope of this~~
13 ~~act.~~

14
15 ~~Regarding a non-parent's kinship or other significant ties to a person who has committed~~
16 ~~domestic violence, etc., I agree that should be a relevant factor in the non-parent's request~~
17 ~~for custody or visitation (and it is listed as a factor in Section 9). If a proposed custodian~~
18 ~~is living with an abuser or would expose the child to an abuser, that would be a strong~~
19 ~~negative factor against the proposed custodian. If, however, the proposed custodial (or~~
20 ~~visitor) has a relative or friend who has abused somebody, but the proposed custodian or~~
21 ~~visitor agrees not have the child in the company of that person (or not to have the child in~~
22 ~~the company of that person without others around), I view the non-parent's significant~~
23 ~~ties to the abuser to be a less relevant factor. The proposed language creating a rebuttable~~
24 ~~presumption against custody or visitation for a person who has "kinship or other~~
25 ~~significant ties" to someone who has engaged in abuse, is unduly broad.~~

26
27 ~~Ms. Behr proposes that the list of persons against whom domestic violence has been~~
28 ~~perpetrated include "domestic partners." That seems like a reasonable suggestion.~~
29 ~~Alternatively, she asks if the phrase "family members" would work (as a substitute for~~
30 ~~the more detailed list of persons). [The potential problem with the phrase "family~~
31 ~~members" is that the phrase is somewhat vague. Does it, for example, include third~~
32 ~~cousins or inlaws?]~~

33
34 ——(b) In actions involving a parent and a de facto parent, or a parent and an
35 individual who entered into an agreement to accept full and permanent parental responsibility,
36 the following provisions apply: [insert cite to laws of this state pertaining to presumptions in
37 custody or parenting time disputes between parents involving domestic violence and similar
38 offenses].

1 Comment

2 This section provides protection to victims or potential victims of domestic violence by
3 providing a rebuttable presumption that custody or visitation should not be granted to a non-
4 parent if the non-parent, or a person residing with the non-parent, has committed an act of
5 domestic violence or related offenses. Domestic violence is defined by reference to state law.
6 This section requires that there be a “final adjudication” that the offense occurred. Thus, a
7 temporary order – particularly one entered on an ex parte basis -- would not be considered a final
8 adjudication for the purpose of applying a presumption against granting custody or visitation to a
9 non-parent.

10
11 SECTION 11. FACTORS CONSIDERED.

12 (a) If a non-parent establishes that a substantial relationship exists between the child and
13 the non-parent and that denial of custody or visitation to the non-parent is a detriment to the
14 child, the court shall consider the following factors in determining the best interests of the child
15 and whether to grant custody or visitation to a non-parent:

16 _____ (1) the nature, extent, and
17

18 ~~SECTION 9. FACTORS CONSIDERED.~~

19 Alternative A

20 ~~[When determining whether to grant custody or visitation under this [act], the court shall~~
21 ~~consider the best interests of a child. In determining the best interests of a child, the court shall~~
22 ~~consider:~~

23 ~~(1) the~~ quality of the relationship between the child and the parent; including any
24 periods of absence in the relationship;

25 _____ (2) the nature, extent, and quality of the relationship between the child and
26 petitioner, non-parent, including ~~whether~~ specific parent-like activities undertaken by the
27 petitioner has served as a de facto parent of the child; non-parent;

28 _____ (3) the frequency and continuity of contact between the child and the
29 petitioner non-parent, including the period of any disruption in the contact and the reasons for the

1 disruption;

2 _____ (4) the views of the child, ~~having regard to~~ weighed in light of the child's age and
3 maturity;

4 _____ (5) the willingness and ability of the parent and ~~petitioner~~ non-parent to facilitate,
5 a positive relationship among the child, parties to the proceeding, and family members of the
6 child, except that the court may not consider this willingness and ability if the parent or
7 custodian of the child shows that: (i) the ~~petitioning party~~ non-parent has engaged in domestic
8 violence, child abuse, sexual assault, or stalking against the parent, child, child's siblings, or
9 custodial guardian, and ~~that~~ (ii) a continuing relationship with the ~~petitioner~~ party non-parent will
10 affect negatively the health or safety of the parent, child, child's siblings, ~~custodial parent~~, or
11 custodial guardian;

12 _____ (6) the child's adjustment to the child's current and proposed home, school, and
13 community;

14 _____ (7) the mental and physical health of the child and parties to the proceeding,
15 including alcohol abuse and drug abuse by the child or parties to the proceeding; provided,
16 however that the mental and physical health of the parties shall not be considered unless those
17 factors relate to harm caused to the child;

18 _____ (8) a history of or threat of child abuse, child neglect, domestic violence, sexual
19 assault, or stalking towards a parent, the child, child's siblings, or custodial guardian (A) by ~~the~~
20 ~~petitioner~~ a party or (B) by an individual with whom ~~the petitioner~~ a party has kinship or a
21 significant relationship;

22 _____ (9) the reasons for the parties' positions in the proceeding regarding custody and
23 visitation;

_____ (10) an agreement among the parties regarding custody or visitation; ~~and~~
_____~~(11)~~ (11) the applicable factors in [insert cite to laws of this state pertaining
factors considered in custody or parenting time disputes between parents].
_____ (12) any other relevant factor affecting the best interests of the child.]

Reporter's Note: ~~At the November 2015 Drafting Committee meeting, the committee discussed several possible additions to the list of factors. The additions generally could be viewed as sub-categories of the existing factors, particularly the first three factors. We agreed to list the possible additional factors in the next draft and then decide whether to include them, balancing the desire comprehensiveness and precision with a desire not to make the list too unwieldy. The proposed additional factors are:~~

- ~~(A) specific parent like activities undertaken by the non-parent;~~
- ~~(B) nature and extent of parental involvement by the non-parent;~~
- ~~(C) any significant absence of the parent from the child's life;~~
- ~~(D) death of a parent.~~

Ms. Behr comments (b) If an individual establishes that the ULC has a preference for use of the singular in technical drafting. Thus, the Style Committee may prefer the term "best interest" rather than "best interests." She also notes that statutes and court cases have used both terms. From my review of statutes and case law, the plural—"best interests"—he or she is much more widely used than "best interest," and for that reason, I favor use of "best interests."

Alternative B

~~[When determining whether to grant custody or visitation under this [act],~~ a de facto
parent or that he or she is an individual who entered into an agreement to accept full and
permanent parental responsibility, the court shall consider the factors ~~specified in~~ [insert cite to
law laws of this state ~~other than this [act] for deciding custody or visitation disputes between~~
~~parents]]~~.

End of Alternatives

Legislative Note: ~~The act offers two alternatives for a list of factors a court shall consider when determining whether to grant custody or visitation to non-parents. Alternative A lists 11 factors, which are similar to the lists of factors in the 36 states that have factors in statutes pertaining~~

~~non-parental visitation and custody. Alternative B provides a cross-reference to the state's existing factors that are factors considered in disputes between parents regarding custody, visitation, or parenting time. Before using Alternative B, drafters should ascertain if the list of factors in parental disputes is applicable to disputes involving non-parents. Some factors may be specific to parents, such as the wishes of the parents regarding custody or the willingness of the parents to encourage a close and continuing relationship between the child and the other parent. disputes between parents].~~

Reporter's Note: I suggest the Drafting Committee adopt Alternative A (listing 11 factors for the court to consider). There are at least two reasons for this approach. First, when states enacted third party visitation statutes, 36 states listed specific factors for consideration—thus reflecting a preference by legislatures for use of specific factors rather than just a cross-reference to another portion of the state's Family Law statutes. Second, when a state lists factors to be considered in disputes between parents, the factors often are phrased in terms of the parents' conduct or relationship with the child—rather than a more generic factor that would be equally applicable to disputes between two parents versus a parent and a non-parent (or two or more non-parents).

As the drafting process proceeds, official "comments" will be included regarding the "Factors Considered." The comments will note the number of states that have listed factors in the state's non-parental visitation (and custody) statutes. The comments also may address specific factors.

Comment

[Comment will be inserted – including noting that 35 states list factors in their non-parental visitation statutes.]

SECTION ~~10~~12. PETITION TO MODIFY CUSTODY OR VISITATION. A

petition to modify a custody ~~or~~ visitation, or parenting time order entered under this [act] shall be decided under [cite to the law of this state other than this act for modification of a custody, visitation, or parenting time order applicable to a dispute between parents].].

Comment

This section makes reference to a state's existing law regarding modification of custody,

visitation, or parenting time orders applicable to disputes between parents. In most states, that standard is a showing of substantial change of circumstances coupled with a showing that modification is in the best interests of the child (although a few states have different standards, such as requiring a showing of endangerment if modification is sought within two years of a prior order). See Jeff Atkinson, *Modern Child Custody Practice - Second Edition*, §§ 10.1 – 10.13 (LexisNexis 2015). Under this approach, a custody or visitation order in favor of a non-parent generally would stay the same unless the substantial change of circumstances and best interests of the child for modification of the order were shown.

~~**Reporter's Note:** Ms. Behr raises the issue of whether a “judgment” as well as an “order” needs to be covered by this section. I think the word “order” covers judgments.~~

SECTION ~~11~~13. TEMPORARY ORDER.

(a) On motion of a party or the court’s own motion, and after opportunity for hearing, the court may enter an order under this act as a temporary order ~~while the proceeding is pending.~~

(b) An order entered under this section has no presumptive effect and is not determinative when the court considers petitions for other orders under this [act].

Comment

This section makes explicit that the court has the power to enter temporary, as well as permanent, orders. The details of what must be shown to obtain a temporary order is left to local practice – e.g., use of affidavits, need for hearing, elements of proof, although it is expected that the showing of at least a prima facie case would be required for entry of a temporary order.

Subsection (b) is similar to Va. Code Ann. § 20-103(E) (West 2015), which provides: “An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.”

~~The details of what must be shown to obtain a temporary order is left to local practice – e.g., use of affidavits, need for hearing, elements of proof.~~

The factors listed in Section ~~9~~11 apply to both temporary and permanent orders.

~~**Reporter's Note:** Ms. Behr asks the question: “What are the temporary orders about? Do they have any specific standards like TRO?” I believe the Drafting Committee intended to leave the issue of standards for temporary orders to local practice. I have added a “comment” to that effect.~~

SECTION ~~12~~14. EFFECT OF ADOPTION OF CHILD BY A RELATIVE, OR
STEPPARENT. The adoption of a child by a relative, ~~including~~ or a stepparent, does not

preclude granting or continuing custody or visitation to ~~a petitioner~~ an individual who is a non-parent.

Comment

As of 2013, the statutes of 24 states explicitly allow visitation for non-parents if the child has been adopted by a relative, including a stepparent. Jeff Atkinson, *Shifts in the Law Regarding Rights of Third Parties to Seek Visitation and Custody of Children*, 47 Fam. L. Q. 1, 20-23 (Spring 2013).

SECTION 13~~13~~15. APPOINTMENTS AND COURT SERVICES. To the extent available in other cases involving custody and visitation of children, the court may do one or more of the following:

(1) appoint a child's attorney, guardian ad litem, child's representative, or similar personnel;

(2) order mediation, but a party who has been the victim of domestic violence by another party to the proceeding, shall not be required to participate in mediation; [unless the safety of the party can be protected adequately during mediation];

Reporter's Legislative Note: ~~The Drafting Committee discussed bracketing a portion of brackets in subsection (2) or including additional language in~~ should be removed and the subsection—perhaps to allow for phrase “unless the safety of the party can be protected adequately during mediation” should be included in jurisdictions ~~the section in states that have appropriate protections for victims~~ require mediation of custody and visitation cases, including cases in which there are allegations of domestic violence—e.g., shuttle mediation in which the parties do not have direct contact with each other.

(3) order evaluations or home studies of the child, parent, de facto parent, or petitioners who are non-parents; and

(4) allocate payment among the parties to the proceeding of fees for the services listed in this section.

1 **Comment**

2 A variety of personnel and court services may assist the court in making decisions
3 regarding non-parental custody and visitation. This act does not mandate the creation of new
4 services in jurisdictions where no similar services exist, but the act does make such services
5 available if the services already are utilized in other custody and visitation cases.

6
7 In subsection (2), the phrase “the safety of the party can be protected adequately” is based
8 on the Uniform Collaborative Law Act, Section 15(c)(2) (2010). Among the protections that might
9 be used would be “shuttle mediation,” in which the parties to mediation are not in the same room
10 with each other and the mediator shuttles between rooms.

11
12 **SECTION ~~14. CHILD SUPPORT;~~ 16. COST OF FACILITATING VISITATION**
13 **~~COSTS.~~**

14 (a) ~~The obligation of an individual adjudicated to be a de facto parent under this act is~~
15 ~~governed by [cite to law of this state other than this [act]] governing a child support obligation of~~
16 ~~parents].~~

17 ~~— (b) An individual other than a de facto parent~~ or person who entered into an agreement to
18 accept full and permanent parental responsibility who is granted visitation under this [act] may
19 be ordered to pay the cost of facilitating visitation with the child, including the cost of
20 transportation.

21 (b) The obligation to pay child support of a de facto parent or an individual who entered
22 into an agreement to accept full and permanent parental responsibility is governed by law of this
23 state other than this [act].

24 **Legislative Note:** If current state law does not impose an obligation to pay child support on de
25 facto parents or individuals who entered into an agreement to accept full and permanent
26 parental responsibility, legislatures may wish amend laws to provide such an obligation.

27
28 **Comment**

29 Individuals ~~adjudicated to be de facto parents under this act have the same obligation to~~
30 ~~pay child support as parents. Individuals who are not de facto parents~~ or persons who entered
31 into an agreement to accept full and permanent parental responsibility who receive visitation
32 under this act may, in the court’s discretion, be required to pay the cost of facilitating visitation;

1 ~~including~~ The cost of facilitating visitation may include the cost of transportation, ~~but those~~.
2 Those individuals, however, may not be required to pay child support.

3
4 **SECTION ~~15~~17. ATTORNEY FEES AND COSTS.** The court may allocate and order
5 payment of attorney fees, including interim fees, and costs among the parties to the proceeding
6 under this [act~~]~~; however, a parent may not be ordered to pay the fees and costs of another party
7 unless the parent's position is without merit.

8 **Comment**

9 Litigating issues of non-parental custody and visitation can be financially burdensome,
10 including to the parent. This section gives the court discretion to order payment of attorney fees
11 and costs. An award of such fees may deter non-meritorious cases.

12
13 **[SECTION ~~16~~18. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When
14 making a decision under this [act], the court ~~[on request of a party to the proceeding]~~ shall make
15 findings of fact and conclusions of law on the record in support of its decision.]

16 **Legislative Note:** *This section is placed in brackets because in some states, a requirement (or*
17 *lack of requirement) of making findings of fact is governed by court rule rather than statute.*

18
19 ~~**Reporter's Note:** Does the Drafting Committee wish to require findings of fact and~~
20 ~~conclusions of law in all cases—or just those cases in which a party requests them?~~

21
22 **Comment**

23 Requiring findings of fact has several benefits. The fact-finding process structures the
24 court's review so that the court is less likely to overlook important facts or apply bias in reaching
25 its decision. Careful fact-finding by the trial court also facilitates appellate review and may
26 assist the parties in accepting the decision. At least twenty states and the District of Columbia
27 require the trial court to make findings of fact in custody cases. See Jeff Atkinson, *Modern Child*
28 *Custody Practice - Second Edition*, § 12-45 (LexisNexis 2015).

29
30 ~~**[SECTION 19 17. PRIORITY ON COURT CALENDAR.** A proceeding arising~~
31 ~~under this [act] must be given priority on the court calendar and handled expeditiously.]~~

32
33 **Comment**

34 ~~———The Section 107 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997)~~
35 ~~provides that if a question of jurisdiction “is raised in a child custody proceeding, the question,~~
36 ~~upon request of a party, must be given priority on the calendar and handled expeditiously.”~~

Reporter's Note: Members of the Drafting Committee were ambivalent about including this section in the act. Several members noted that it is common for states to give "priority" to many types of proceedings, and, as a result, such provisions have little effect. John Sebert, former Executive Director of the ULC commented: "Folks representing the judicial system, such as the National Center for State Courts, often object to this type of provision, and I expect they would do so here. Having a priority provision in an act that governs determining jurisdiction is one thing; putting it in this act is very different."

SECTION 18. APPLICATION TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN WHO ARE THE SUBJECT OF PROCEEDINGS REGARDING

GUARDIANSHIP, ABUSE, NEGLECT, OR DEPENDENCY. This [act] does not apply if the child is the subject of a proceeding under [cite to law of this state other than this [act] regarding custody and visitation of ~~abused, neglected, or dependent children~~children in proceedings related to guardianship of the person, abuse, neglect, or dependency].

Comment

This act does not provide for ~~granting non-parental~~ custody or visitation to non-parents for children who are the subject proceedings for ~~abused, neglected~~guardianship of the person, abuse, neglect, or dependent childrendependency. Such laws and related regulations have their own provisions regarding where a child will be placed and who may have contact with the child. The guardianship, abuse, neglect, and dependency laws usually are in a different portion of the statutes than laws pertaining to divorce, parentage, and non-parental rights. The drafters of this act do not wish for this act to conflict with or interfere with the laws of guardianship, abuse, neglect, or dependency~~laws~~. When a child is no longer the subject of such proceedings, relief may be sought under this act. The provision in this section is similar to Or. Stat. § 109.119(9) (West 2015~~7~~) (excluding application of a non-parental visitation statute from children who are the subject of dependency proceedings). See also Minn. Stat. Ann. § 257C.08(4) (West 2015) (excluding foster parents from coverage under the state's non-parental visitation law).

The Uniform Child Custody Jurisdiction and Enforcement (UCCJEA) applies to "child-custody proceeding[s] . . . in which legal custody, physical custody, or visitation with respect to a child is an issue." UCCJEA, Section 104(4) (1997). The UCCJEA applies to guardianship proceedings as well as proceedings under this act. Id. In the event there are simultaneous proceedings under this act and under guardianship law, the UCCJEA (as well as state venue laws) would determine which court has priority to exercise jurisdiction.

SECTION ~~19~~20. OTHER RIGHTS AND REMEDIES. The rights and remedies of this [act] are not exclusive and do not preclude other rights and remedies under law of this state other than this [act].

Comment

The law regarding families is more dynamic than many areas of law. The drafters of this act do not wish to preclude the development of additional rights and remedies in this area.

Principles of law in some states . . . [insert citations] [Citations will inserted] to Family Law cases in which ~~the court~~ courts denied equitable or common law relief because a statute granted rights to certain categories of individuals, but not other categories of individuals~~].~~]

Reporter's Note: Ms. Behr comments: "Please explain the special need for this provision in light of Rule 502. Full Style Committee is likely to have a concern with the provision."

~~Uniform Law Commission, Drafting Rules, Section 502 (2012) provides:~~

~~RULE 502. PROVISION DUPLICATING GENERAL PROVISION OF LAW.~~

~~_____ (a) Do not include a provision concerning civil, criminal, administrative, or appellate procedure unless the act is intended to establish a procedure different from general procedures.~~

~~_____ (b) Do not include a provision stating that the act is supplemented by common-law principles unless, without such an affirmative statement, the act is likely to be construed as occupying the field, displacing common law principles.~~

~~[ULC] Comment~~

The incorporation of procedural provisions may impair the enactability of a uniform or model act. Repetition of general procedural provisions especially creates problems in states in which such procedures are established by court rule rather than by legislation.

State statutes are usually presumed to be supplemented by the common law. The rare exception is an act, such as a workers' compensation act, that is intended to preempt the field and displace common law remedies. Unless there is a legitimate concern that a uniform or model act, although not intended to occupy the field, will nevertheless be so construed, it is unnecessary and confusing to include a provision that repeats this settled principle of common law.

1 **SECTION 20~~21~~. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 ~~**Reporter's Note:** Ms. Behr asks: "Do you need standard provision in [ULC] Rule 602~~
5 ~~regarding electronic signatures? Courts are moving to electronic filing or petitions." I~~
6 ~~am not an expert on the law of electronic signatures, but I doubt that the ULC boilerplate~~
7 ~~signature section (quoted below) is necessary in this act. It appears that the electronic~~
8 ~~signature section is necessary in acts that specifically deal with recognitions of certain~~
9 ~~classes of documents, such as commercial paper and the signatures on those documents.~~
10 ~~Rule 602 provides for using the electronic signature section if the act contains a provision~~
11 ~~"requiring a notice or other record or a signature." Our act does not have such a~~
12 ~~provision. There is a trend toward electronic filings for legal actions (in general), but I~~
13 ~~believe that is an issue for local rules and statutes, not for our uniform act. The ULC~~
14 ~~electronic signature section provides as follows: "RELATION TO ELECTRONIC~~
15 ~~SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act]~~
16 ~~modifies, limits, or supersedes the Electronic Signatures in Global and National~~
17 ~~Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede~~
18 ~~Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of~~
19 ~~any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."~~

20
21 **SECTION 21~~22~~. TRANSITIONAL PROVISION.** ~~A petition or other request for~~

22 ~~relief regarding a non-parent's request for custody and visitation which was commenced before~~
23 ~~the effective date of this act is governed by the statutes in effect at the time the petition or other~~
24 ~~request was made.~~

25 ~~**Reporter's Note:** The Transitional Provision is ULC boiler plate, which has been used in many~~
26 ~~uniform acts. I note that there is another way to handle transitions that might be simpler for~~
27 ~~courts to apply and that may advance the application of the new act to more cases: "This [act]~~
28 ~~applies to all pending actions and proceedings commenced prior to its effective date with respect~~
29 ~~to issues on which a judgment has not been entered." See, e.g., 750 Ill. Comp. Stat.~~
30 ~~5/801(b)(2016).~~

31
32 **SECTION 22~~23~~. REPEALS; CONFORMING AMENDMENTS.**

1 (a)

2 (b)

3 (c)

4 **SECTION ~~23~~24. EFFECTIVE DATE.** This [act] takes effect