

DRAFT  
FOR DISCUSSION ONLY

# REVISED UNIFORM PARENTAGE ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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October 28-29, 2016 Drafting Committee Meeting

*CLEAN DRAFT*

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October 7, 2016

## **REVISED UNIFORM PARENTAGE ACT**

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1 **REVISED UNIFORM PARENTAGE ACT**

2 **PREFATORY NOTE**

3 **Drafted by:**

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7

8 **Brief description of act:**

9 The Uniform Parentage Act (UPA) was originally promulgated in 1973 (1973 UPA). The 1973  
10 UPA removed the legal status of illegitimacy and provided a series of presumptions used to  
11 determine a child’s legal parentage. A core principle of the 1973 UPA was to ensure that “all  
12 children and all parents have equal rights with respect to each other,” regardless of the marital  
13 status of their parents. 1973 UPA, Section 2, Comment.  
14

15 The UPA was revised in 2002 (UPA 2002). The 2002 UPA augmented and streamlined the  
16 original 1973 UPA. The 2002 UPA added provisions permitting a non-judicial acknowledgment  
17 of paternity procedure that is the equivalent of an adjudication of parentage in a court and added  
18 a paternity registry. The 2002 UPA also included provisions governing genetic testing and rules  
19 for determining the parentage of children whose conception was not the result of sexual  
20 intercourse. Finally, the 2002 UPA included a bracketed Article 8 that authorizes surrogacy  
21 agreements.  
22

23 The 2017 UPA revises the Act to address three primary issues. First, the 2017 UPA seeks to  
24 ensure the equal treatment of children born to same-sex couples. The 2002 UPA is written in  
25 gendered terms, and its provisions presume that couples consist of one man and one woman. For  
26 example, Section 703 of the 2002 UPA provides that “[a] man who provides sperm for, or  
27 consents to, assisted reproduction by a woman as provided in Section 704 with the intent to be  
28 the parent of her child, is a parent of the resulting child.”  
29

30 In its 2015 decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States Supreme  
31 Court held that laws barring marriage between two people of the same sex are unconstitutional.  
32 After *Obergefell*, some parentage laws that treat same-sex couples differently than different-sex  
33 couples may be unconstitutional. For example, in July 2015, a federal district court in Utah held  
34 that refusing to apply Utah’s assisted reproduction parentage provisions equally to same-sex  
35 couples likely was unconstitutional. Under the Utah Uniform Parentage Act, which is modeled  
36 on the 2002 UPA, a husband who consents to his wife’s insemination is the legal father of the  
37 resulting child. Utah Code Ann. §§ 78B-15-703, 78B-15-704; 78B-15-201(2)(e). The court  
38 concluded that the plaintiffs were “highly likely to succeed in their claim” that extending the  
39 “benefits of the assisted reproduction statutes to male spouses in opposite-sex couples but not for  
40 female spouses in same-sex couples” was unconstitutional. *Roe v. Patton*, 2015 WL 4476734, \*3  
41 (D. Utah. 2015). The 2017 UPA updates the Act to address this potential constitutional infirmity  
42 by amending the provisions so that they address and apply equally to same-sex couples.  
43

44 Second, the 2017 UPA updates the surrogacy provisions to reflect developments in that area.



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

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

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

### 29 30 **Questions about UPA?**

31 For further information contact the following persons:  
32 Jamie Pedersen, Chair of the UPA drafting committee  
33 Courtney G. Joslin, Reporter for the UPA drafting committee  
34

### 35 **Notes about ULC Acts:**

36 For information on the specific drafting rules used by ULC, the Conference *Procedural and  
37 Drafting Manual* is available online at [www.uniformlaws.org](http://www.uniformlaws.org).  
38

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

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<sup>1</sup> 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*.

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

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

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

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

1 **REVISED UNIFORM PARENTAGE ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 *A word about a drafting convention of the Conference that appears throughout this Act. Brackets*  
5 *in the statutory text are inserted to warn legislative draftsmen in the several states that the*  
6 *suggested language is likely to be subject to local variation. For example, a state may not refer*  
7 *to UPA (2017) as an “[act],” but may label it as a “chapter,” “title,” etc. Often times the*  
8 *brackets flag terminology that is known to vary greatly, e.g., [petition], or is clearly subject to*  
9 *local option, e.g., [30 days].*

10  
11 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform  
12 Parentage Act.

13 **SECTION 102. DEFINITIONS.** In this [act]

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

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

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

21 (A) a presumed father;

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

23 (C) a male donor.

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

26 (A) intrauterine insemination;

27 (B) donation of eggs;

- 1 (C) donation of embryos;
- 2 (D) in-vitro fertilization and transfer of embryos; and
- 3 (E) intracytoplasmic sperm injection.

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

6 (6) “De facto parent” means an individual with an un rebutted presumption of parentage  
7 established under Section 204(a)(6) of this [act].

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

11 (8) “Donor” means an individual who produces gametes used for assisted reproduction,  
12 whether or not for consideration, unless the individual and the woman giving birth enter into a  
13 writing providing to the contrary. The term does not include:

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

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

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

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

23 (A) deoxyribonucleic acid; and

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

3 [(11) “Genetic surrogate” means an adult woman who is not an intended parent and who  
4 agrees to become pregnant through assisted reproduction using her own gamete, pursuant to a  
5 genetic surrogacy agreement as set forth in [Article] 8.]

6 [(12) “Gestational surrogate” means an adult woman who is not an intended parent and  
7 who agrees to become pregnant through assisted reproduction using gametes that are not her  
8 own, pursuant to a gestational surrogacy agreement as set forth in [Article] 8.]

9 (13) “Identifying information” includes the following information of the donor:

10 (A) the first and last name of the individual; and

11 (B) the age of the individual at the time of donation.

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

13 (15) “Individual with a claim to parentage” means any individual who has a claim to be  
14 adjudicated a parent under this [act], but who has not yet been adjudicated to be a parent and  
15 who is not a parent as a matter of law under the [act]. The term includes presumed parents and  
16 individuals identified as genetic parents under Section 505.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (A) enforcement of support orders or laws relating to the duty of support;

3 (B) establishment or modification of child support;

4 (C) determination of parentage; or

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

6 [(27) “Surrogacy agreement” means an agreement under [Article] 8 by which a woman  
7 agrees to become pregnant through assisted reproduction with the intention that she will  
8 relinquish the resulting child to the intended parent or parents. The term refers to such an  
9 agreement regardless of the surrogate’s genetic connection to the resulting child or lack thereof.]

10 (28) “Woman” means a female individual of any age.

### 11 **Reporter’s Comment**

#### 12 1. GENDER NEUTRALITY

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

#### 15 2. ASSISTED REPRODUCTION

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

#### 17 3. DEFINITION OF DONOR

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

### 27 **SECTION 103. SCOPE OF [ACT]; CHOICE OF LAW.**

28 (a) This [act] applies to determination of parentage in this state.

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

2 The applicable law does not depend on:

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

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

5 (c) This [act] does not create, enlarge, or diminish parental rights or duties under other  
6 law of this state.

7 [(d) This [act] does not authorize or prohibit an agreement between an intended parent  
8 and a woman who agrees to become pregnant through assisted reproduction and relinquish all  
9 rights as a parent of a resulting child, and which provides that the intended parent is the parent of  
10 the resulting child. If a birth results under such an agreement and the agreement is unenforceable  
11 under [the law of this state], the parent-child relationship is determined as provided in [Article]  
12 2.]

13 **Official Comment**

14  
15 Subsection (d) should be enacted by states that do not enact Article 8 or otherwise do not  
16 statutorily address the permissibility of surrogacy agreements.

17  
18 **SECTION 104. COURT OF THIS STATE.** The [designate] court is authorized to  
19 adjudicate parentage under this [act].

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

25 **SECTION 106. DETERMINATION OF MATERNITY.** Provisions of this [act]  
26 relating to determinations of paternity apply to determinations of maternity.



1 **ARTICLE 2**

2 **PARENT-CHILD RELATIONSHIP**

3 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

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

5 (1) having given birth to the child[, except as otherwise provided in [Article] 8];

6 (2) an un rebutted presumption of parentage under Section 204;

7 (3) an adjudication of the individual’s parentage;

8 (4) an adjudication of de facto parentage under this [act];

9 (5) adoption of the child by the individual;

10 (6) an acknowledgment of paternity under [Article] 3, unless the acknowledgment  
11 has been rescinded or successfully challenged under Section 505;

12 (7) consent by the individual to assisted reproduction by a woman as provided in  
13 [Article] 7 which resulted in the birth of a child [; or

14 [(8) consent by the intended parent or parents to a surrogacy agreement that  
15 resulted in the birth of a child as provided in [Article] 8 or under law of this state other than this  
16 [act].]

17 **Reporter’s Comment**

18 As noted above, the 2017 UPA updates the act so that it applies equally to children born  
19 to same-sex couples. Most of the mechanisms for establishing parentage apply equally without  
20 regard to gender. Accordingly, the 2017 UPA merges into a single list what had been separate  
21 provisions for establishing the parentage of women and men, respectively. This approach  
22 removes unnecessary distinctions based on gender. This approach is also consistent with the  
23 approach taken by a number of states that have amended their parentage provisions to apply  
24 equally to children born to same-sex couples. *See, e.g.*, ME. STAT., tit. § 1851; N.H. REV. STAT. §  
25 168-B:2.

26  
27 **SECTION 202. NO DISCRIMINATION AGAINST CHILDREN BASED ON**  
28 **MARITAL STATUS OF PARENTS.** A child born to parents who are not married to each other

1 has the same rights under the law as a child born to parents who are married to each other.

2 **SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.**

3 Unless parental rights are terminated, a parent-child relationship established under this [act]  
4 applies for all purposes, except as otherwise specifically provided by other law of this state.

5 **SECTION 204. PRESUMPTION OF PARENTAGE.**

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

7 (1) the individual and the woman who gave birth to the child are married to each  
8 other and the child is born during the marriage, except as provided by a valid gestational  
9 surrogacy agreement under [[Article] 8 or ]other law of this state;

10 (2) the individual and the woman who gave birth to the child were married to each  
11 other and the child is born within 300 days after the marriage is terminated by death, annulment,  
12 declaration of invalidity, divorce, or dissolution[, or after a decree of separation], except as  
13 provided by a valid gestational surrogacy agreement under [[Article] 8 or ]other law of this state;

14 (3) before the birth of the child, the individual and the woman who gave birth to  
15 the child married each other in apparent compliance with law, even if the attempted marriage is  
16 or could be declared invalid, and the child is born during the invalid marriage or within 300 days  
17 after its termination by death, annulment, declaration of invalidity, divorce, or dissolution[, or  
18 after a decree of separation], except as provided by a valid gestational surrogacy agreement  
19 under [[Article] 8 or] other law of this state;

20 (4) after the birth of the child, the individual and the woman who gave birth to the  
21 child married each other in apparent compliance with law, whether or not the marriage is or  
22 could be declared invalid, and the individual voluntarily asserted parentage of the child, except  
23 as provided by a valid gestational surrogacy contract under [[Article] 8 or ]other law of this state;

1 (5) for the first two years of the child’s life, the individual resided in the same  
2 household with the child and openly held out the child as the individual’s own child. A period of  
3 temporary absence is counted as part of the period.

4 (6) the individual:

5 (i) resided with the child for a significant period of time;

6 (ii) engaged in consistent caretaking of the child;

7 (iii) accepted full and permanent responsibilities as a parent of the child  
8 without expectation of financial compensation; and

9 (iv) established a bonded and dependent relationship with the child, and  
10 the other parent understood, acknowledged, or accepted the formation of that relationship or  
11 behaved as though the individual is a parent of the child.

12 (b) A presumption of parentage established under this section may be rebutted, and  
13 competing presumptions of parentage may be resolved, only by an adjudication under [Article]  
14 6.

## 15 **Reporter’s Comment**

### 16 1. MARITAL PRESUMPTIONS AND GENDER NEUTRALITY

17 To comply with the Supreme Court’s decision in *Obergefell v. Hodges*, the marital  
18 presumptions have been amended to apply to any spouse -- male and female -- of the woman  
19 who gave birth. A number of states have made similar changes to their marital presumptions.  
20 *See, e.g.*, CAL. FAM. CODE § 7611; D.C. CODE ANN. § 16-909; 750 ILL. COMP. STAT. ANN. §  
21 46/204; ME. STAT., tit. § 1881(1); N.H. REV. STAT. § 168-B:2(V).  
22  
23  
24

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

1 The committee decided not to adopt a fully gender-neutral marital presumption for a  
2 number of reasons. First, of the seven states that have amended their marital presumptions to  
3 account for same-sex marriage, only one state – Washington State – has adopted a fully gender-  
4 neutral version of the marital presumption. The other six states have adopted provisions similar  
5 to the provision above.  
6

7 Second, in practice, a fully-gender neutral marital presumption would rarely establish the  
8 parentage of the spouse of a male parent. This is the case because the act provides that the  
9 woman who gives birth is a legal parent. Section 201(a)(1). Thus, in the hypothetical described  
10 above where a male spouse conceives a child with a woman not his wife, despite the fully  
11 gender-neutral marital presumption, a court nonetheless would be likely to conclude that the  
12 legal parents of the resulting child are the male spouse and the woman who gave birth to the  
13 child. The court would be unlikely to conclude that the man’s wife was a legal parent.  
14

15 2. HOLDING OUT PRESUMPTION – SECTION 204(a)(5)  
16

17 There was a discussion at the in-person drafting meeting about making the “holding out”  
18 period more flexible. Language has been added to the holding out provision to account for  
19 situations where the person is absent only temporarily. The language is modeled on the  
20 UCCJEA’s definition of “home state.” *See* UCCJEA § 102(7) (“A period of temporary absence  
21 of any of the mentioned persons is part of the period.”). Some members of the committee  
22 expressed interest in eliminating the requirement of a two-year holding out period.  
23

24 3. DE FACTO PARENTAGE  
25

26 Consistent with the directive given to me during our September 2016 committee call, I  
27 have added de facto parents to the UPA. There are a few things to note and consider:

- 28 - **Placement** – I included de facto parents in Section 204 – Presumptions. Delaware, by  
29 contrast, includes de facto parents in Section 201, which lays out the means by which one  
30 can establish a parent-child relationship. Maine added de facto parents in a new, separate  
31 Article that follows what is considered Article 2 in this Act.
- 32 - **Effect** – In both Maine and Delaware, if a court determines that the de facto parent  
33 criteria have been fulfilled, the court must declare the person to be a legal parent. In this  
34 draft, I took a different approach. I made de facto parentage a presumption. Under  
35 Section 612, if there is no one else with a competing claim to parentage, then the court  
36 must declare the person to be a legal parent. But, if there are other people who have a  
37 competing claim to parentage, Section 612 lays out the procedures the court should  
38 follow to determine which of the various individuals should be declared to be a legal  
39 parent. I thought it made sense to treat such people like the way people who hold out  
40 within the first two years are treated. Obviously Maine and Delaware took a different  
41 approach.
- 42 - **Criteria** – The criteria above drawn heavily from the Maine statute, as well as the prior  
43 draft of the Nonparental Child Custody and Visitation Act. Those provisions, as well as  
44 the Delaware provision are included in the accompanying memo.  
45

1 4. COMPETING PRESUMPTIONS

2  
3 The 1973 UPA contained a provision addressing cases involving competing  
4 presumptions. Section (4)(b) of the 1973 UPA provides, in relevant part: “If two or more  
5 presumptions arise which conflict with each other, the presumption which on the facts is founded  
6 on the weightier considerations of policy and logic controls.”  
7

8 The 2002 UPA contains no provision addressing how courts should resolve cases in  
9 which there are competing presumptions of parentage. Given that there is a range of  
10 circumstances that could result in more than one person claiming a presumption of parentage, it  
11 is important for the act to address this possibility. Section 204(b) now references the possibility  
12 that a court might have to resolve competing presumptions of parentage. Newly added Section  
13 612 provides factors that a court must consider in resolving such cases.  
14

15 **ARTICLE 3**

16 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

17 **Reporter’s Comment**

18 Article 3 implements federal law. 42 U.S.C. § 666(a)(5)(C) provides that receipt of a  
19 federal subsidy by a state for its child support enforcement program is contingent on state  
20 enactment of laws establishing specific procedures for “a simple civil process for voluntarily  
21 acknowledging paternity.” If a state does not have such provisions or if its provisions are not in  
22 compliance with federal law, the state is at risk of losing its federal child support subsidy. *See*,  
23 *e.g.*, 42 U.S.C. § 666(a) (providing that “each State must have in effect laws requiring the use of  
24 the following procedures, consistent with this section and with regulations of the Secretary”). *See*  
25 *also* 42 U.S.C. § 654(20)(A). Today, all states have adopted procedures for voluntary  
26 acknowledgments of paternity. Indeed, “[v]oluntary acknowledgments have become the most  
27 common way to establish the legal paternity of children born outside marriage.” Leslie Joan  
28 Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, 20 AM. U. J. GENDER  
29 SOC. POL’Y & L. 467, 469-70 (2012) (footnotes omitted).  
30

31 Currently, Article 3 refers only to the establishment of paternity through this  
32 administrative process. Some members of the Drafting Committee feel that women should also  
33 be able to establish their parentage through a similar, streamlined administrative process.  
34

35 The Drafting Committee considered a number of the possibilities to implement this goal.  
36 The Drafting Committee considered creating a parallel procedure that would apply to same-sex  
37 couples. At the moment, however, the Drafting Committee has decided against adding separate  
38 provisions that would apply only to same-sex couples. Singling out same-sex couples was  
39 deemed by some members to be in tension with the charge of making the act apply equally to the  
40 children of same-sex couples.  
41

42 The Drafting Committee also considered two other possibilities: (1) revising the existing  
43 Article 3 so that it is written in gender-neutral terms; or (2) adding an alternative, bracketed

1 version of Article 3 that is written in gender-neutral terms. If a gender-neutral Article 3 is  
2 enacted by a state, it must meet the requirements of 42 U.S.C. § 666(a)(5)(C) and not prohibit  
3 state child support agencies from establishing paternity in appropriate cases. According to the  
4 federal Office of Child Support Enforcement (OCSE), revising Article 3 so that it is gender  
5 neutral would not jeopardize the state’s receipt of the federal child support subsidy as long as the  
6 state is able to meet the requirements of 42 U.S.C. § 666(a)(5)(C) and establish paternity in  
7 appropriate cases. OCSE has indicated a willingness to work with the Drafting Committee to  
8 ensure the revised UPA is consistent with title IV-D requirements.

9  
10 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The woman who gave

11 birth to a child and a man claiming to be the genetic father of the child may sign an  
12 acknowledgment of paternity with intent to establish the man’s paternity.

13 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.**

14 (a) An acknowledgment of paternity must:

15 (1) be in a record;

16 (2) be signed, or otherwise authenticated, under penalty of perjury by the woman  
17 who gave birth and by the man seeking to establish his paternity;

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

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

21 (B) does not have another acknowledged father, or an adjudicated parent  
22 or parents under [Article] 7 other than the woman who gave birth;

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

25 (5) state that the signatories understand that the acknowledgment is the equivalent  
26 of an adjudication of paternity of the child and that a challenge to the acknowledgment is  
27 permitted only under limited circumstances and is barred after two years from the effective date  
28 of the acknowledgement.

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

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

5 (2) an individual other than the woman who gave birth is an adjudicated parent or  
6 a parent under [Article] 7 at the time of signing; or

7 (3) another man is an acknowledged father at the time of signing.

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

### 10 **Reporter's Comment**

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

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

26 (1) an acknowledgment of paternity signed, or otherwise authenticated, by another man is  
27 filed pursuant to Section 305;

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

30 (3) the presumed parent has not previously:

1 (A) acknowledged his paternity, unless the previous acknowledgment has been  
2 rescinded pursuant to Section 308 or successfully challenged pursuant to Section 309; or

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

4 **SECTION 304. RULES FOR ACKNOWLEDGMENT OF PATERNITY AND**  
5 **DENIAL OF PARENTAGE.**

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

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

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

15 (d) An acknowledgment of paternity or denial of parentage signed by a minor is valid if it  
16 is otherwise in compliance with this [act].

17 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OF PATERNITY OR**  
18 **DENIAL OF PARENTAGE.**

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

23 (b) Except as otherwise provided in Sections 308 and 309, a valid denial of parentage by



1 a presumed parent filed with the [agency maintaining birth records] in conjunction with a valid  
2 acknowledgment of paternity is equivalent to an adjudication of the nonparentage of the  
3 presumed parent and discharges the presumed parent from all rights and duties of a parent.

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

6 **SECTION 307. RATIFICATION BARRED.** A court or administrative agency  
7 conducting a judicial or administrative proceeding is not required or permitted to ratify an  
8 unchallenged acknowledgment of paternity.

9 **Reporter's Comment**

10  
11 Based on the comments at the in-person drafting meeting, this Section has been moved  
12 up. It was previously included as Section 310. The text of new Section 307 is identical to the text  
13 of former Section 310 of the 2002 UPA.

14  
15 **SECTION 308. PROCEEDING FOR RESCISSION.** A signatory may rescind an  
16 acknowledgment of paternity or denial of parentage by commencing a proceeding to rescind  
17 before the earlier of:

18 (1) 60 days after the effective date of the acknowledgment or denial, as provided in  
19 Section 304; or

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

22 **SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR**  
23 **RESCISSION.**

24 (a) After the period for rescission under Section 308 has expired, a signatory of an  
25 acknowledgment of paternity or denial of parentage may commence a proceeding to challenge  
26 the acknowledgment or denial only:

1 (1) on the basis of fraud, duress, or material mistake of fact; and  
2 (2) not later than two years after the effective date of the acknowledgment or the  
3 denial.

4 (b) A party challenging an acknowledgment of paternity or denial of parentage has the  
5 burden of proof.

6 **SECTION 310. PROCEDURE FOR RESCISSION OR CHALLENGE.**

7 (a) Every signatory to an acknowledgment of paternity and any related denial of  
8 parentage must be made a party to a proceeding to rescind or challenge the acknowledgment or  
9 denial.

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

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

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

21 (e) At the conclusion of a proceeding to rescind or challenge an acknowledgment of  
22 paternity or denial of parentage, the court shall order the [agency maintaining birth records] to  
23 amend the birth record of the child to reflect the child's legal parentage accurately, if

1 appropriate.

2 **Reporter’s Comment**

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4  
5  
6  
7

Consistent with the discussion at the in-person drafting meeting, former Section 310 has been moved up to follow Section 306.

8 **SECTION 311. FULL FAITH AND CREDIT.** A court of this state shall give full  
9 faith and credit to an acknowledgment of paternity or denial of parentage effective in another  
10 state if the acknowledgment or denial has been signed and is otherwise in compliance with the  
11 law of the other state.

12 **SECTION 312. FORMS FOR ACKNOWLEDGMENT OF PATERNITY AND DENIAL OF PARENTAGE.**

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

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

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

21 **Reporter’s Comment**

22  
23  
24  
25  
26  
27

At the in-person drafting meeting, there was a discussion about whether this provision was meant to restrict the release of information, or, alternatively, to ensure some affirmative right to the information for certain enumerated parties/entities. To the extent the purpose is the former, one participant suggested adding the word “only” to better implement that goal.

28 At this point, the provision does not include the word “only” because the Reporter is of  
29 the opinion that there may be some other individuals who should have a right to ask a court to  
30 grant them access to the acknowledgment or the denial. Such individuals may include the child,  
31 and a presumed parent who was not a signatory to the acknowledgment or the denial.



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

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

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

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

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

16 (2) the man did not register timely with the [agency maintaining the registry]; and

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

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

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

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

1 **PART 2**

2 **OPERATION OF REGISTRY**

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

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

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

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

12 (4) services to assist in establishing parentage are available to the registrant through [the  
13 appropriate state support-enforcement agency];

14 (5) the registrant may also register in another state if conception or birth of the child  
15 occurred in the other state;

16 (6) information on registries of other states is available from [appropriate state agency or  
17 agencies]; and

18 (7) procedures exist to rescind the registration.

19 **Reporter’s Comment**

20 The change to subsection (7) was made in order to make this subsection more consistent  
21 with the other provisions in this Article. There is no other provision that refers to a “registration  
22 of a claim to paternity.” Elsewhere, the form is simply referred to as a “registration.” *See, e.g.,*  
23 Sections 412 - 413. In addition, the phrase “registration of a claim of paternity” is potentially  
24 misleading; the phrase could be understood to suggest that registration provides a basis for  
25 asserting legal parentage, which it does not.  
26

1           **SECTION 412. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

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

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

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

9                   (2) the woman who gave birth to the child who is the subject of the registration;

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

11                  (4) a licensed child-placing agency;

12                  (5) a support-enforcement agency;

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

16                  (7) the registry of paternity in another state.

17           **SECTION 413. PENALTY FOR RELEASING INFORMATION.** An individual  
18 commits a [appropriate level misdemeanor] if the individual intentionally releases information  
19 from the registry to another individual or agency not authorized to receive the information under  
20 Section 412.

21           **SECTION 414. RESCISSION OF REGISTRATION.** A registrant may rescind his  
22 registration at any time by sending to the registry a rescission in a record signed or otherwise  
23 authenticated by him, and witnessed or notarized.





1 search of the registry on request of an individual, court, or agency identified in Section 412.

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

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

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

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

7 (B) has not been found.

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

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

## 14 **ARTICLE 5**

### 15 **GENETIC TESTING**

16 **SECTION 501. SCOPE OF ARTICLE.**

17 (a) This [article] governs genetic testing of an individual to determine parentage, whether  
18 the individual:

19 (1) voluntarily submits to testing; or

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

21 (b) Genetic testing cannot be used:

22 (1) to disestablish the parentage of an individual who is a parent under [Article] 7[  
23 or Article 8]; or

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

2 **Reporter’s Comment**

3  
4 There was a discussion at the in-person drafting meeting about which word to use in  
5 Subsection (b). As was true in the prior draft, Subsection (b) currently uses the term  
6 “disestablish.” Other possibilities include “challenge,” “nullify,” or “invalidate.”  
7

8 **SECTION 502. AUTHORITY TO ORDER OR TO DENY GENETIC TESTING.**

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

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

14 (2) denying genetic parentage and stating facts establishing a possibility that  
15 sexual contact between the individuals, if any, did not result in the conception of the child.

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

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

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

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

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

1 (g) In a proceeding to adjudicate the parentage of a child having a presumed parent or to  
2 challenge an acknowledgment of paternity under Section 310, a court may deny a motion  
3 seeking genetic testing of the mother, the child, or the presumed parent or acknowledged father  
4 based on consideration of the factors listed in Section 612, as well as the extent to which the  
5 passage of time reduces the chances of establishing the parentage of another person and a child-  
6 support obligation in favor of the child. Denial of a motion seeking an order for genetic testing  
7 must be based on clear and convincing evidence.

### 8 **Reporter's Comment**

#### 9 10 1. AUTHORITY TO ORDER AND AUTHORITY TO DENY GENETIC TESTING

11 Articles 5 and 6 of the 2002 UPA contain a number of provisions that are interrelated.  
12 Section 502 addresses the circumstances under which a court *can order* genetic testing. Former  
13 Section 608 addresses the circumstances under which a court *can deny* a request for genetic  
14 testing. Having the provisions in separate Articles may create confusion. This is particularly true  
15 in the states that adopt only Article 5, but not Article 6, or vice versa. Because the concepts are  
16 so related, this draft includes both concepts in the same Section – Section 502.  
17

#### 18 19 2. NEW SUBSECTIONS 502(e) AND 502(f)

20 This draft includes two additional new subsections to Section 502 – 502(e) and 502(f).  
21 The text for these two new subsections was taken from former Section 622. The content in new  
22 Sections 502(e) and 502(f) is closely connected to the substance of Article 5, and particularly to  
23 Section 502. The Reporter is of the opinion that this content is more appropriately included here,  
24 in Section 502.  
25

### 26 **SECTION 503. REQUIREMENTS FOR GENETIC TESTING.**

27  
28 (a) Genetic testing must be of a type reasonably relied upon by experts in the field of  
29 genetic testing and performed in a testing laboratory accredited by:

30 (1) AABB, formerly known as the American Association of Blood Banks, or a  
31 successor to its functions; or

32 (2) an accrediting body designated by the Secretary of the United States  
33 Department of Health and Human Services.

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

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

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

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

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

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

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

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

1 **Reporter’s Comment**

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

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

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

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

16 (1) the names and photographs of the individuals whose specimens have been  
17 taken;

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

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

20 (4) the names of the individuals who received the specimens in the testing  
21 laboratory; and

22 (5) the dates the specimens were received.

23 **SECTION 505. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.**

24 (a) Subject to challenge under subsection (b), a man is identified as the genetic father of a  
25 child under this [act] if the genetic testing complies with this [article] and the results disclose  
26 that:

27 (1) the man has at least a 99 percent probability of genetic paternity, using a prior

1 probability of 0.50, as calculated by using the combined paternity index obtained in the testing;  
2 and

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

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

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

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

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

### 12 **Reporter's Comment**

13  
14 The references to “rebut” and “rebuttal” in this Section have been removed because those  
15 terms create confusion in this context. “Rebut” and “rebuttal” are typically used to refer to  
16 rebuttals of presumptions of parentage. This section, by contrast, deals with attempts to challenge  
17 a *factual finding of genetic parentage*. A person identified as a genetic parent may or may not be  
18 determined to be a legal parent. Using a different word seems appropriate and helps avoid  
19 confusion.

20  
21 At the in-person drafting meeting, the Drafting Committee noted that it might be helpful  
22 to include an official comment clarifying that this section deals only with challenges to the  
23 factual finding of genetic parentage; this section does not address legal parentage.

### 24 **SECTION 506. COSTS OF GENETIC TESTING.**

25  
26 (a) Subject to assessment of costs under [Article] 6, the cost of initial genetic testing must  
27 be advanced:

28 (1) by a support-enforcement agency in a proceeding in which the support-  
29 enforcement agency is providing services;

30 (2) by the individual who made the request;

1 (3) as agreed by the parties; or

2 (4) as ordered by the court.

3 (b) In cases in which the cost is advanced by the support-enforcement agency, the agency  
4 may seek reimbursement from a man who is identified as the genetic father.

5 **Reporter's Comment**

6  
7 The word "rebuttably" has been removed from Section 506(b) because it is unnecessary.  
8 Section 505 sets out how one can challenge a factual finding of genetic parentage.

9  
10 **SECTION 507. ADDITIONAL GENETIC TESTING.** The court or the support-  
11 enforcement agency shall order additional genetic testing upon the request of a party who  
12 contests the result of the original testing. If the previous genetic testing identified a man as the  
13 genetic father of the child under Section 505, the court or agency may not order additional  
14 testing unless the party provides advance payment for the testing.

15 **SECTION 508. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.**

16 (a) Subject to subsection (b), if a genetic-testing specimen is not available from a man  
17 who may be the genetic father of a child, for good cause and under circumstances the court  
18 considers to be just, the court may order the following individuals to submit specimens for  
19 genetic testing:

20 (1) the parents of the man;

21 (2) siblings of the man;

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

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

24 (b) Issuance of an order under this section requires a finding that a need for genetic  
25 testing outweighs the legitimate interests of the individual sought to be tested.

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

1 order genetic testing of a deceased individual.

2 **SECTION 510. IDENTICAL BROTHERS.**

3 (a) The court may order genetic testing of a brother of a man identified as the genetic  
4 father of a child if the man is reasonably believed to have an identical brother and evidence  
5 suggests that the brother may be the genetic father of the child.

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

10 **Reporter's Comment**

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

16  
17 **SECTION 511. CONFIDENTIALITY OF GENETIC TESTING.**

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

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



1 **ARTICLE 6**

2 **PROCEEDING TO ADJUDICATE PARENTAGE**

3 **Reporter’s Comment**

4  
5 While the 2017 UPA largely retains the substance of Article 6 of the 2002 UPA, it  
6 substantially reorganizes the content of former Article 6 to improve its clarity and flow.

7  
8 The dispositional table below tracks the relocation of some of the principal provisions. A  
9 more comprehensive side-by-side comparison is available.

<b>Former Section (2002 UPA)</b>	<b>New Section (2017 UPA)</b>
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 **PART 1**

12 **NATURE OF PROCEEDING**

13  
14 **SECTION 601. PROCEEDING AUTHORIZED.** A civil proceeding may be  
15 maintained to adjudicate the parentage of a child. The proceeding is governed by the [rules of  
16 civil procedure].

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

18 [(a) Proceedings to adjudicate the parentage of children born pursuant to an enforceable

1 surrogacy agreement are governed by [Article] 8.]

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

4 (1) the child;

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

7 (3) an individual who is a parent under this act;

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

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

12 (6) an authorized adoption agency or licensed child-placing agency; or

13 (7) a representative authorized by law to act for an individual who would  
14 otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

15 (c) If the proceeding is filed by an individual who asserts parentage under Section  
16 204(a)(6), that individual must establish standing to maintain the action in accordance with the  
17 following.

18 (1) An individual seeking to be adjudicated to be a parent under Section 204(a)(6)  
19 shall file with the initial pleadings an affidavit alleging under oath specific facts to support the  
20 existence of a de facto parent relationship with the child as set forth in Section 204(a)(6). The  
21 pleadings and affidavit must be served upon all parents and legal guardians of the child and any  
22 other party to the proceeding.

23 (2) An adverse party, parent, or legal guardian who files a pleading in response to

1 the pleadings described in Subsection (c)(1) shall also file an affidavit in response, serving all  
2 parties to the proceeding with a copy.

3 (3) The court shall determine on the basis of the pleadings and affidavits under  
4 Subsections (c)(1) and (c)(2) whether the individual seeking to be adjudicated a de facto parent  
5 has presented prima facie evidence of the requirements set forth in Section 204(a)(6). The court  
6 may, in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine  
7 disputed facts that are necessary and material to the issue of standing.

8 (4) If the court determines that the individual has presented prima facie evidence  
9 of the requirements set forth in Section 204(a)(6), the individual has standing to maintain the  
10 proceeding.

11 **Reporter's Comment**

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

18  
19 It is important to note that the Delaware Parentage Act does not include any similar  
20 special standing requirements for individuals who claim de facto parentage.

21  
22 As drafted, no other individuals are required to fulfill a heightened standing requirement  
23 to proceed.

24  
25 **SECTION 603. PARTIES TO PROCEEDING.**

26 [(a) Proceedings to adjudicate the parentage of children born pursuant to an enforceable  
27 surrogacy agreement are governed by [Article] 8.]

28 (b) [Except as provided in subsection (a),] the following individuals must be provided  
29 notice of and must be joined as parties to a proceeding to adjudicate parentage:

30 (1) a woman who gave birth unless her parental rights have been terminated [or

1 she is a surrogate under [Article] 8];

2 (2) an individual who is a parent under this act;

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

4 (4) an individual whose parentage of the child is to be adjudicated.

5 (c) If an individual who is required to be joined under subsection (b) cannot be joined, the  
6 action must proceed among the existing parties.

7 **Reporter's Comment**

8  
9 This provision is intended to ensure that steps are taken to join all persons with a claim to  
10 parentage regarding a particular child in a single action. Without the requirement of joinder, the  
11 rights of any absent individual with a claim to parentage could be indirectly affected. Take, for  
12 example, a situation where two men are presumed parents, one because he was married to the  
13 child's mother and one because he had held the child out as his own for the first two years of the  
14 child's life. If the UPA did not require the court to join all parties with a claim to parentage, the  
15 husband may not have a right to be notified of the action and his rights could be negatively  
16 affected even though he did not have an opportunity to present his claims to the court. Indeed,  
17 Section 621(d) provides that, "[e]xcept as otherwise provided in subsection (b), a determination  
18 of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an  
19 individual who was not a party to the earlier proceeding." (This subsection was taken verbatim  
20 from former Section 637(d)).

21  
22 While a goal of the revised Section 603 is to ensure that steps are taken to include all  
23 parties with a potential claim to parentage in a proceeding to adjudicate parentage, another goal  
24 of the revised Section is to ensure that the proceeding could go forward even if such a party  
25 declines to participate in the proceeding. Subsection (c), seeks to achieve this goal. Subsection  
26 (c) is modeled on Federal Rule of Civil Procedure 19. Although state court parentage actions are  
27 not governed by the Federal Rules of Civil Procedure, this new Section is consistent with the  
28 spirit of FRCP 19.

29  
30 **SECTION 604. PERSONAL JURISDICTION.**

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

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

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

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

6 (1) the child resides or is found;

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

8 (3) a proceeding for probate or administration of the presumed parent or alleged father's  
9 estate has been commenced.

## 10 **PART 2**

### 11 **SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

12 **SECTION 606. NO STATUTE OF LIMITATION: CHILD HAVING NO**  
13 **PRESUMED, ACKNOWLEDGED, OR ADJUDICATED PARENT OTHER THAN THE**  
14 **WOMAN WHO GAVE BIRTH.** A proceeding to adjudicate the parentage of a child having no  
15 presumed, acknowledged, or adjudicated parent other than the woman who gave birth may be  
16 commenced at any time. Such a proceeding may be commenced even after the child becomes an  
17 adult, but only if the child initiates the proceeding.

### 18 **Reporter's Comment**

19 Former subsection (2) is no longer needed and, therefore, has been struck. Former  
20 subsection (2) provided that a proceeding to adjudicate parentage could be maintained at any  
21 time if "an earlier proceeding to adjudicate paternity has been dismissed based on the application  
22 of a statute of limitation then in effect." In the past, some states had very short statute of  
23 limitations periods for filing an action to establish parentage. *See, e.g., Clark v. Jeter*, 486 U.S.  
24 456 (1988) (holding unconstitutional a six-year statute of limitations period). Since 1984,  
25 however, federal law has required all states to have a statute of limitation period that continues  
26 until at least the child's eighteenth birthday. 42 U.S.C. § 666(a)(5)(A)(i).  
27



1 adjudication.

2 (c) Subsection (b) does not apply to the child, unless the child was represented by  
3 independent counsel in the prior judicial proceeding.

4 (d) A proceeding under this section is subject to the application of the considerations set  
5 forth in Section 612.

6 **Reporter's Comment**

7 1. VOID ACKNOWLEDGMENTS OF PATERNITY

8

9 The Drafting Committee noted that it may be helpful to include an Official Comment  
10 stating that an action to challenge an acknowledgment on the ground that it is void under Section  
11 302 can be made at any time.

12

13 2. THE CHILD

14

15 There was a discussion at the in-person drafting meeting about whether the statute of  
16 limitations period should also apply to a child who had previously been represented by counsel  
17 in a prior action to adjudicate parentage. If the Drafting Committee decides that it does want to  
18 include a different rule for the previously represented child, subsection (b) will need to be  
19 revised accordingly.

20

21 **SECTION 609. GENERAL RULES REGARDING ADMISSIBILITY OF**

22 **RESULTS OF GENETIC TESTING.**

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

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

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

30 (b) A party objecting to the results of genetic testing may call one or more genetic-testing

1 experts to testify in person or by telephone, videoconference, deposition, or another method  
2 approved by the court. Unless otherwise ordered by the court, the party offering the testimony  
3 bears the expense for the expert testifying.

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

5 (1) disestablishing the parentage of an individual who is a parent under [Article]  
6 7[ or [Article] 8]; or

7 (2) establishing the parentage of an individual who is a donor.

8 **Reporter’s Comment**

9

10 1. PLACEMENT OF THE PROVISION

11

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

16

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

22

23 2. GENETIC TESTING AND INTENDED PARENTS

24

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

28

29 **SECTION 610. ADJUDICATING PARENTAGE FOR AN INDIVIDUAL WHO IS**

30 **A PARENT UNDER [ARTICLE] 7.** An individual who is a parent under [Article] 7 can bring

31 a proceeding to adjudicate parentage. Upon a finding that the individual is a parent under

32 [Article] 7, the court shall issue an order declaring that individual to be a parent to the child.

33

**Reporter’s Comment**

34

35 This new section specifically authorizes the filing of a proceeding to adjudicate the



1 parentage of individuals who are intended parents under Article 7. The rules regarding  
2 adjudications of parentage for individuals who are parents under Article 8 are set forth in Article  
3 8.

4  
5 **SECTION 611. ADJUDICATING PARENTAGE OF A CHILD WITH NO**

6 **PRESUMED PARENT.** The following rules apply in a proceeding to adjudicate the parentage  
7 of an individual who is alleged to be a child’s genetic parent and who is not a donor, where the  
8 child has no presumed, acknowledged, or adjudicated parent and no parent under [Article] 7 [or  
9 [Article] 8], other than the woman who gave birth.

10 (1) The court shall issue an order declaring the individual to be the child’s parent if:

11 (A) the individual is identified as the genetic parent of the child under Section 505  
12 and that identification is not successfully challenged under Section 505; or

13 (B) the individual admits parentage by filing a pleading to that effect or by  
14 admitting parentage under penalty of perjury when making an appearance or during a hearing  
15 and the court finds that there is no reason to question the admission.

16 (2) If the individual whose genetic parentage is being determined declines to submit to  
17 genetic testing ordered by the court, the court may adjudicate parentage contrary to the position  
18 of the individual.

19 (3) If the individual whose genetic parentage is being determined is in default after  
20 service of process and is found by the court to be the parent of the child, the court shall issue an  
21 order adjudicating the individual to be the child’s parent.

22 (4) If the court finds that the genetic testing neither identifies nor excludes the individual  
23 as the genetic parent of the child, the court may not dismiss the proceeding. In that event, the  
24 results of genetic testing, and other evidence, are admissible to adjudicate the issue of parentage.

1  
2  
3 **Reporter's Comment**

4 While this is a new Section, most of the content is taken from various provisions of the  
5 2002 UPA. For example, the content of subsection (1)(A) is taken from former Section 631; the  
6 content of subsection (1)(B) is taken from former Section 623; the content of subsection (2) is  
7 taken from former Section 622; the content of subsection (3) is taken from former Section 634;  
8 and the content of subsection (4) is taken from former Section 631.

9 Given that these rules all concern the adjudication of parentage for a child with no  
10 presumed, adjudicated, or acknowledged parent other than the woman who gave birth, it seemed  
11 advisable to put all of the pieces into a single Section.

12  
13 **SECTION 612. ADJUDICATING PARENTAGE OF A CHILD WITH ONE OR**  
14 **MORE PRESUMED PARENTS.** The following rules apply in a proceeding to adjudicate the  
15 parentage of a child where there is one or more presumed parents and where the child has no  
16 adjudicated or acknowledged parent and no parent under [Article] 7 [or [Article] 8], other than  
17 the woman who gave birth.

18 (1) Except as otherwise provided in Section 607, in a proceeding where there is an  
19 individual, other than a donor, who is both a presumed parent and a genetic parent, and there is  
20 no other individual with a claim to parentage other than the woman who gave birth, the court  
21 shall issue an order declaring the individual to be the child's parent.

22 (2) Except as otherwise provided in Section 607, in a proceeding where there is an  
23 individual who is a presumed parent but who is not a genetic parent, and there is no other  
24 individual with a claim to parentage other than the woman who gave birth, the court shall issue  
25 an order declaring the individual to be the child's parent unless:

26 (A) the presumed parent and the woman who gave birth to the child did not  
27 cohabit during the probable time of conception; and

28 (B) the presumed parent never resided with the child and never openly held out  
29 the child as his or her own.

1           (3) In a proceeding where more than one individual has a claim to parentage under this  
2 [act], not including the woman who gave birth, the court shall adjudicate parentage pursuant to  
3 the best interests of the child, based on the following factors:

4                   (A) the age of the child;

5                   (B) the length of time during which the presumed or genetic parents have  
6 assumed the role of parent of the child;

7                   (C) the nature of the relationship between the child and the presumed or genetic  
8 parents;

9                   (D) the harm to the child if the relationship between the child and any presumed  
10 or genetic parents is not recognized;

11                   (E) the facts surrounding the individual's discovery that the individual might not  
12 be the genetic parent;

13                   (F) the length of time between the proceeding to adjudicate parentage and the  
14 time that the individual was placed on notice that the individual might not be the genetic parent;  
15 and

16                   (G) other equitable factors arising from the disruption of the relationship between  
17 the child and a presumed or genetic parent or the chance of other harm to the child.

18           (4) In an appropriate action, a court may find that more than two individuals with a claim  
19 to parentage under this [act] are parents if the court finds that recognizing only two parents  
20 would be detrimental to the child. In determining detriment to the child, the court shall consider  
21 all relevant factors, including, but not limited to, the harm of removing the child from a stable  
22 placement with an individual who has fulfilled the child's physical needs and the child's  
23 psychological needs for care and affection, and who has assumed that role for a substantial

1 period of time. A finding of detriment to the child does not require a finding of unfitness of any  
2 of the parents or individuals with a claim to parentage.

### 3 **Reporter’s Comment**

4 Unlike the 1973 UPA, the 2002 UPA contained no provision explaining how a court  
5 should adjudicate parentage in cases involving competing claims to parentage. This new Section  
6 seeks to provide that guidance. The factors included in this new Section are largely taken from  
7 former Section 608, which addressed when a court could deny a request for genetic testing.  
8

9 This new section uses the phrase “individual with a claim to parentage.” This phrase is  
10 now included in the definition section (Section 102).  
11

12 Newly added subsection (4) allows a court to conclude that a child has more than two  
13 parents. It does, however, establish a high threshold that must be met before that conclusion can  
14 be reached. This provision is based on Cal. Fam. Code Section 7612(c).  
15

### 16 **Official Comment**

17  
18 In a proceeding involving application of subsection (3), the court may want to consider  
19 appointing an attorney or guardian ad litem to represent the child.  
20

## 21 **PART 3**

### 22 **HEARINGS AND ADJUDICATION**

#### 23 **SECTION 613. TEMPORARY ORDER.**

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

- 26 (1) a presumed parent of the child;
- 27 (2) petitioning to have his or her parentage adjudicated;
- 28 (3) identified as the genetic father through genetic testing under Section 505;
- 29 (4) an alleged father who has declined to submit to genetic testing;
- 30 (5) shown by clear and convincing evidence to be the parent of the child;
- 31 (6) the woman who gave birth to the child, unless her parental rights have been

32 terminated [or she is a surrogate under [Article] 8]; or

1 (7) a parent to the child under this act.

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

4 **SECTION 614. JOINDER OF PROCEEDINGS.**

5 (a) Except as otherwise provided in subsection (b), a proceeding to adjudicate parentage  
6 may be joined with a proceeding for adoption, termination of parental rights, child custody or  
7 visitation, child support, divorce, dissolution, annulment, [legal separation or separate  
8 maintenance,] probate or administration of an estate, or other appropriate proceeding.

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

11 **SECTION 615. PROCEEDING BEFORE BIRTH.** [Except as otherwise provided in

12 Section 809 with regard to surrogacy,] a proceeding to determine parentage may be commenced  
13 before the birth of the child, and an order or judgment may be entered before birth, but the  
14 enforcement of that order or judgment shall be stayed until the birth of the child.

15 **Reporter's Comment**

16 I replaced the text of former Section 611 with language based on the California provision.  
17 Cal. Fam. Code § 7633. The text of former Section 611 provided that a proceeding to determine  
18 parentage could not be concluded until after the birth of the child. In some instances, however, it  
19 may be very helpful for the parties to have a determination of parentage prior to birth, even if the  
20 order is not effective until after birth. We previously considered this language at our last in-  
21 person meeting, but we did not make a decision about it.

22  
23 At the prior in-person drafting meeting, the Drafting Committee also tabled a discussion  
24 about whether final pre-birth orders should be authorized under Article 7 with respect to children  
25 born through non-surrogacy forms of assisted reproduction. The Drafting Committee never  
26 returned to the issue, and therefore we never made a decision about it. If the Drafting Committee  
27 decides to permit pre-birth orders under Article 7, this provision will need to be amended  
28 accordingly.  
29

1           **SECTION 616. CHILD AS PARTY; REPRESENTATION.**

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

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

7           **SECTION 617. JURY PROHIBITED.** The court, without a jury, shall adjudicate  
8 parentage of a child.

9           **SECTION 618. HEARINGS; INSPECTION OF RECORDS.**

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

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

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

19          **SECTION 620. ORDER ADJUDICATING PARENTAGE.**

20          (a) An order adjudicating parentage must identify the child by means provided by the law  
21 of [this state].

22          (b) Except as otherwise provided in subsection (c), the court may assess filing fees,  
23 reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other

1 reasonable expenses incurred in a proceeding under this [article]. The court may award  
2 attorney’s fees, which may be paid directly to the attorney, who may enforce the order in the  
3 attorney’s own name.

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

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

9 (1) the amount of the charges billed; and

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

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

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

15 **Reporter’s Comment**

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

19  
20 **SECTION 621. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

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

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

25 (2) all parties to an adjudication by a court acting under circumstances that satisfy

1 the jurisdictional requirements of [Section 201 of the Uniform Interstate Family Support Act].

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

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

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

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

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

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

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

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

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



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**Reporter’s Comment**

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

**ARTICLE 7**

**Reporter’s Comment**

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

**ASSISTED REPRODUCTION OTHER THAN SURROGACY**

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

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

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

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

(a) Consent by the woman giving birth and the individual who intends to be a parent of a child born through assisted reproduction must be in a record.

(b) Failure to consent in a record as required by subsection (a), before or after birth of the child, does not preclude a finding of parentage if the woman giving birth and the individual, during the first two years of the child’s life resided together in the same household with the child

1 and openly held out the child as their own. A period of temporary absence is part of the period.

2 **SECTION 705. LIMITATION ON SPOUSE’S DISPUTE OF PARENTAGE.**

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

6 (1) within two years after learning of the birth of the child, the spouse commences  
7 a proceeding to adjudicate his or her parentage; and

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

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

12 (1) the spouse neither provided a gamete for, nor consented to, assisted  
13 reproduction by his or her spouse;

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

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

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

19 **SECTION 706. EFFECT OF DISSOLUTION OF MARRIAGE OR**  
20 **WITHDRAWAL OF CONSENT.**

21 (a) If a marriage is dissolved before transfer of eggs, sperm, or embryos, the former  
22 spouse is not a parent of the resulting child unless the former spouse consented in a record that if  
23 assisted reproduction were to occur after a [divorce, dissolution, or other term used in the state],

1 the former spouse would be a parent of the child.

2 (b) The consent of an individual to assisted reproduction under Section 704 may be  
3 withdrawn by that individual in a record with notice to the woman giving birth any time before  
4 transfer of eggs, sperm, or embryos that results in a pregnancy. An individual who withdraws  
5 consent as provided under this section is not a parent of the resulting child.

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

## 11 **ARTICLE 8**

### 12 **SURROGACY AGREEMENTS**

#### 13 **Reporter's Comment**

14  
15 The 2017 UPA updates the surrogacy provisions to reflect developments in that area. The  
16 2002 UPA includes a bracketed Article 8 that authorized surrogacy agreements. States have been  
17 particularly slow to enact Article 8 of the 2002 UPA. Eleven (11) states adopted versions of the  
18 2002 UPA. Of these eleven (11) states, however, only two (2) – Texas and Utah – enacted the  
19 surrogacy provisions based on Article 8 of the 2002 UPA. At least five (5) of the eleven (11)  
20 states that enacted the 2002 UPA enacted surrogacy provisions that are *not* premised on the 2002  
21 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted  
22 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and  
23 Washington (banning compensated) (enacted 1989).

24  
25 The fact that very few states enacted Article 8 is likely the result of a confluence of  
26 factors. One likely factor is the controversial nature of surrogacy itself. But given that four of the  
27 states that enacted the 2002 UPA enacted provisions permitting surrogacy, *but did not adopt*  
28 *Article 8* of the UPA, another factor appears to be a lack of enthusiasm for the substance of the  
29 provisions themselves. Accordingly, the 2017 UPA updates the surrogacy provisions to make  
30 them more consistent with current surrogacy practice.

31  
32 As was true of the 2002 UPA, Article 8 of the 2017 UPA regulates and permits both  
33 genetic (often referred to as “traditional”) and gestational surrogacy agreements. But the 2017  
34 UPA differs in the way that it regulates these two types of surrogacy agreements. The 2002 UPA

1 set forth a single set of requirements that applied equally to genetic and gestational surrogacy  
2 agreements. While the 2017 UPA continues to permit both types of surrogacy, the 2017 UPA  
3 imposes additional safeguards or requirements on genetic surrogacy agreements. This  
4 differentiation between genetic and gestational surrogacy is intended to reflect both the factual  
5 differences between the two types of surrogacy as well as the reality that policy makers view  
6 these two forms of surrogacy as being quite different. Of the states that permit surrogacy, almost  
7 all of them permit *only* gestational surrogacy agreements.  
8

9 While the 2017 UPA adds additional requirements that apply only to genetic surrogacy  
10 agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements.  
11 The changes to the rules governing gestational surrogacy agreements is intended to make these  
12 rules more consistent with current practice and law.  
13

14 Sections 801 – 806 establish the rules that apply to both types of surrogacy agreements.  
15 Sections 807 – 810 include rules that apply only to gestational surrogacy agreements. Sections  
16 811 – 814 include rules that apply only to genetic surrogacy agreements.  
17

## 18 **PART 1**

### 19 **GENERAL REQUIREMENTS**

#### 20 **SECTION 801. ELIGIBILITY TO ENTER A GESTATIONAL OR GENETIC** 21 **SURROGACY AGREEMENT.**

22 (a) In order to execute an agreement to act as a gestational or a genetic surrogate, a  
23 woman must:

24 (1) be at least 21 years of age;

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

26 (3) complete a medical evaluation that includes a mental health consultation; and

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

30 (b) In order to execute a surrogacy agreement, the intended parent or parents, whether  
31 genetically related to the child or not, must:

32 (1) be at least 21 years of age;

- 1 (2) complete a mental health consultation; and  
2 (3) have independent legal representation regarding the terms of the surrogacy  
3 agreement and the potential legal consequences of the surrogacy agreement.

4 **Reporter’s Comment**

5 There was a discussion at the in-person drafting meeting about whether the intended  
6 parents should be required to pay for the surrogate’s counsel. A number of states, including  
7 Maine, require the intended parents to pay for the surrogate’s counsel. *See, e.g.*, ME. STAT., tit. §  
8 1931(1)(D) (requiring the surrogate to have “had independent legal representation of her own  
9 choosing and paid for by the intended parent or parents regarding the terms of the gestational  
10 carrier agreement and have been advised of the potential legal consequences of the gestational  
11 carrier agreement”). A number of other states do not require the intended parents to pay for the  
12 surrogate’s counsel. *See, e.g.*, CAL. FAM. CODE § 7962(b) (“Prior to executing the written  
13 assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or  
14 intended parents shall be represented by separate independent licensed attorneys of their  
15 choosing.”).

16  
17 **SECTION 802. REQUIREMENTS OF A GESTATIONAL OR GENETIC**

18 **SURROGACY AGREEMENT: PROCESS.** The surrogacy agreement must be executed in  
19 compliance with the following conditions:

20 (1) At least one of the parties must be a resident of the state, or, if no party is a resident of  
21 the state, at least one of the medical procedures pursuant to the agreement must occur in this  
22 state.

23 (2) The surrogate and the intended parent or parents must meet the requirements of  
24 Section 801.

25 (3) The intended parent or parents, the surrogate, and the surrogate’s spouse, if any, must  
26 be parties to the surrogacy agreement.

27 (4) The agreement must be in a record and signed by all parties.

28 (5) The surrogate and each intended parent must acknowledge in a record of having  
29 received a copy of the agreement.

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

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

7 (8) The agreement must be executed before any medical procedures related to the  
8 surrogacy agreement other than the medical evaluations required by Section 801.

9 **SECTION 803. REQUIREMENTS OF A GESTATIONAL OR GENETIC**  
10 **SURROGACY AGREEMENT: CONTENT.**

11 (a) The content of the surrogacy agreement must comply with all of the following  
12 requirements:

13 (1) The prospective surrogate agrees to attempt to become pregnant by means of  
14 assisted reproduction;

15 (2) The prospective surrogate and her spouse, if any, have no claim to parentage  
16 to any resulting child(ren);

17 (3) The surrogate's spouse, if any, must acknowledge and agree to abide by the  
18 obligations imposed on the surrogate by the terms of the surrogacy agreement;

19 (4) The intended parent or parents will be the exclusive parent or parents of any  
20 resulting child(ren) immediately upon birth regardless of the number, gender, or mental or  
21 physical condition of the resulting child(ren);

22 (5) The intended parents will assume responsibility for the financial support of  
23 any resulting child(ren) immediately upon the birth regardless of the number, gender, or mental

1 or physical condition of the resulting child(ren);

2 (6) The agreement must include information disclosing how the intended parents  
3 will cover the medical expenses of the surrogate and the resulting child(ren). If health-care  
4 coverage is used to cover the medical expenses, the disclosure shall include a review of the  
5 health care policy provisions related to coverage for surrogate pregnancy, including any possible  
6 liability of the surrogate, third-party liability liens or other insurance coverage, and any notice  
7 requirements that could affect coverage or liability of the surrogate;

8 (7) The agreement must permit the surrogate to use the services of a health-care  
9 provider of her choosing to provide her care during her pregnancy [subject to the intended parent  
10 or parents' desired level of care]; and

11 (8) The agreement must permit the surrogate to make all health and welfare  
12 decisions regarding herself and her pregnancy, including the right whether or not to terminate the  
13 pregnancy as protected by law.

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

15 (c) A surrogacy agreement may provide for reimbursement of specific expenses if the  
16 agreement is terminated under this [article].

17 **SECTION 804. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT**

18 **CHANGE OF MARITAL STATUS.**

19 (a) Unless the surrogacy agreement expressly provides otherwise:

20 (1) the marriage of a surrogate after the signing of the surrogacy agreement does  
21 not affect the validity of a surrogacy agreement, her spouse's consent to the surrogacy agreement  
22 is not required, and her spouse is not a presumed parent of the resulting child or children; and

23 (2) the [divorce, dissolution, or appropriate term] of the surrogate after the signing

1 of the surrogacy agreement does not affect the validity of the surrogacy agreement.

2 (b) Unless the surrogacy agreement expressly provides otherwise:

3 (1) The marriage of an intended parent after the signing of the surrogacy  
4 agreement does not affect the validity of a surrogacy agreement, the consent of the spouse of the  
5 intended parent is not required, and the spouse of the intended parent is not a parent of the  
6 resulting child or children by virtue of the surrogacy agreement; and

7 (2) The [divorce, dissolution, or appropriate term] of the intended parents after the  
8 signing of the surrogacy agreement does not affect the validity of a surrogacy agreement, and the  
9 intended parents are the parents of the resulting child or children.

10 **SECTION 805. INSPECTION OF RECORDS.** The petition and any other documents  
11 related to the surrogacy agreement filed in the office of the clerk of the court pursuant to this part  
12 may not be open to inspection by any person other than the parties to the proceeding, any  
13 resulting child, and their attorneys and [the relevant state agency], except upon written court  
14 order. A judge of the [court having jurisdiction] may not authorize anyone to inspect any  
15 documents related to the surrogacy agreement, except in exigent circumstances and where  
16 necessary. The petitioner may be required to pay the expense of preparing the copies of the  
17 documents to be inspected.

18 **SECTION 806. EXCLUSIVE, CONTINUING JURISDICTION.** During the period  
19 governed by the surrogacy agreement, a court that is conducting a proceeding under this [act] has  
20 exclusive, continuing jurisdiction of all matters arising out of a surrogacy agreement until the  
21 90th day after a child is born to the surrogate; provided, however, that nothing in this provision  
22 gives the court jurisdiction over a child custody or a child support action where such jurisdiction  
23 is not otherwise authorized.



1 **PART 2**

2 **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENTS**

3 **SECTION 807. TERMINATION OF A GESTATIONAL SURROGACY**

4 **AGREEMENT.**

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

10 (b) Upon proper termination of the gestational surrogacy agreement under subsection (a),  
11 the parties are released from all obligations recited in the agreement except that the intended  
12 parent(s) remain responsible for all expenses that are reimbursable under the agreement incurred  
13 by the gestational surrogate through the date of termination. Unless the agreement provides  
14 otherwise, the gestational surrogate is entitled to keep all payments the gestational surrogate has  
15 received and obtain all payments to which the gestational surrogate is entitled. Neither a  
16 prospective gestational surrogate nor her spouse, if any, is liable to the intended parent(s) for  
17 terminating a surrogacy agreement as provided in this Section.

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

19 **AGREEMENT.**

20 (a) The intended parent or parents are, by operation of law, the parent or parents of the  
21 resulting child born through an enforceable gestational surrogacy agreement immediately upon  
22 the birth of the resulting child.

23 (b) Neither the gestational surrogate, nor her spouse, if any, nor her former spouse, if any,  
24

1 is the parent of the resulting child born through an enforceable gestational surrogacy agreement.

2 (c) If the child is alleged to be the genetic child of the surrogate, the court shall order  
3 genetic testing to determine the parentage of the child. If the child is the genetic child of the  
4 surrogate, parentage must be determined based on other [articles] of this [act].

5 (d) If due to a laboratory error any resulting child is not genetically related to the intended  
6 parent or parents, or if due to a laboratory error any resulting child is not genetically related to a  
7 donor who donated to the intended parent or parents, the intended parent or parents are  
8 considered the parent or parents of any resulting child born through an enforceable surrogacy  
9 agreement, subject to other claims of parentage.

10 **SECTION 809. GESTATIONAL SURROGACY AGREEMENT: ORDER OF**  
11 **PARENTAGE.**

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

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

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

21 (3) sealing the record from the public to protect the privacy of the child and the  
22 parties;

23 (4) if necessary, ordering that the child be surrendered to the intended parent or

1 parents; or

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

3 (b) An order or judgment issued pursuant to subsection (a) may be entered before the  
4 birth of the child, and the court shall stay enforcement of that order or judgment until the birth of  
5 the child.

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

8 **SECTION 810. EFFECT OF UNENFORCEABLE GESTATIONAL**  
9 **SURROGACY AGREEMENT.**

10 (a) A gestational surrogacy agreement that complies with the requirements for a  
11 gestational surrogacy agreement as provided in this [article] is enforceable. If there is non-  
12 compliance with the requirements for a gestational surrogacy agreement that the court considers  
13 to be nonsubstantial, then the gestational surrogacy agreement may be enforceable. If there is  
14 non-compliance with the requirements for a gestational surrogacy agreement that the court  
15 considers to substantial, then the agreement is not enforceable.

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

19 (c) Even if the agreement is otherwise unenforceable, individuals who are parties to an  
20 unenforceable gestational surrogacy agreement as intended parents may be held liable for  
21 support of the resulting child if they are parents under other [articles] of this [act].

22 (d) Except as expressly provided in a gestational surrogacy agreement and in subsection  
23 (e), in the event of a breach of the gestational surrogacy agreement by the gestational surrogate

1 or the intended parent or parents, the gestational surrogate or the intended parent or parents are  
2 entitled to all remedies available at law or in equity.

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

8 **PART 3**

9 **SPECIAL RULES FOR GENETIC SURROGACY AGREEMENTS**

10 **SECTION 811. REQUIREMENTS OF PETITION TO VALIDATE A GENETIC**  
11 **SURROGACY AGREEMENT.**

12 (a) To be enforceable, a genetic surrogacy agreement must be validated by [the  
13 appropriate] court. The proceeding to validate the agreement must be commenced before any  
14 medical procedures related to the surrogacy agreement other than the medical evaluations  
15 required by Section 801 are undertaken.

16 (b) The court shall issue an order validating the traditional surrogacy agreement if the  
17 court finds that:

18 (1) all of the requirements of Sections 801, 802, and 803 have been satisfied; and

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

21 (c) An individual who terminates a genetic surrogacy agreement pursuant to Section 812  
22 shall file notice of the termination with the court. On receipt of the notice, the court shall vacate  
23 the order issued under subsection (b). An individual who does not notify the court of the

1 termination of the agreement is subject to sanctions.

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

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

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

11 (2) A genetic surrogate who is a party to a genetic surrogacy agreement may  
12 withdraw consent to the genetic surrogacy agreement any time before 72 hours after the birth of  
13 the child. To withdraw consent, any time before 72 hours after the birth of the child, the genetic  
14 surrogate must execute a signed record of her intent to terminate the agreement. This record of  
15 termination must be notarized, acknowledged, or attested by a person authorized to take oaths in  
16 accordance with the laws of the jurisdiction where it is executed, and delivered to the intended  
17 parent or parents any time before 72 hours after the birth of the child.

18 (b) Upon proper termination of the surrogacy agreement under subsection (a), the parties  
19 are released from all obligations recited in the agreement except that the intended parent or  
20 parents remain responsible for all expenses that are reimbursable under the agreement incurred  
21 by the genetic surrogate through the date of termination. Unless the agreement provides  
22 otherwise, the genetic surrogate is entitled to keep all payments genetic surrogate has received  
23 and obtain all payments to which the genetic surrogate is entitled. Neither a prospective genetic

1 surrogate nor her spouse, if any, is liable to the intended parent or parents for terminating a  
2 surrogacy agreement as provided in this Section.

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

5 (a) Unless the genetic surrogate exercises her right to terminate the agreement under  
6 Section 812, the intended parent or parents are the parents of any child born as a result of a  
7 validated genetic surrogacy agreement.

8 (b) Unless the genetic surrogate exercises her right to terminate the agreement under  
9 Section 812, upon proof of a court order issued pursuant to Section 811 validating the genetic  
10 surrogacy agreement, the court shall issue an order:

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

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

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

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

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

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

1 If the child was not born through assisted reproduction, parentage must be determined based on  
2 other [articles] of this [act].

3 (d) Unless the genetic surrogate exercises her right to terminate the agreement under  
4 Section 811, if the intended parent or parents fail to file notice required under subsection (a), the  
5 genetic surrogate or [the appropriate state agency] may file notice with the court that a child has  
6 been born to the genetic surrogate not later than 300 days after assisted reproduction. Unless the  
7 genetic surrogate has properly exercised the genetic surrogate's right to withdraw consent to the  
8 genetic surrogacy agreement pursuant to Section 812, upon proof of a court order issued  
9 pursuant to Section 811 validating the genetic surrogacy agreement, the court shall order that the  
10 intended parent or parents are the parents of the child and are financially responsible for the  
11 child.

12 **SECTION 814. EFFECT OF NONVALIDATED GENETIC SURROGACY**  
13 **AGREEMENT.**

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

16 (b) If a birth results under a genetic surrogacy agreement that is not judicially validated as  
17 provided in this [part], the parent-child relationship is determined as provided in other [articles]  
18 of this [act].

19 (c) Individuals who are parties to a nonvalidated genetic surrogacy agreement as intended  
20 parents may be held liable for support of the resulting child if they are parents under other  
21 [articles] of this [act].

22 (d) Except as expressly provided in a genetic surrogacy agreement, in the event of a  
23 breach of the genetic surrogacy agreement by the genetic surrogate or the intended parent or

1 parents, the genetic surrogate or the intended parent or parents are entitled to all remedies  
2 available at law or in equity.

## 3 **ARTICLE 9**

### 4 **Reporter's Comment**

5 Article 9 is a new addition to the UPA. The content of this Article was not included in the  
6 2002 UPA. Article 9 is intended to implement the resolution approved by the Executive  
7 Committee. Among other things, the Resolution directs the Drafting Committee to address “the  
8 right of a child to genetic information.” The content of new Article 9 is premised on a  
9 Washington State provision. Wash. Rev. Code § 26.26.750.

## 10 **IDENTIFYING INFORMATION ABOUT DONORS**

11 **SECTION 901. APPLICABILITY.** This [article] applies only to gametes that are  
12 collected after the effective date of this [act].

13 **SECTION 902. COLLECTION OF IDENTIFYING INFORMATION.** A gamete  
14 bank or fertility clinic licensed in [this state] shall collect from any donor the individual's  
15 identifying information and medical history. If the gametes are thereafter transferred to another  
16 gamete bank or fertility clinic licensed in [this state], the receiving entity must collect and retain  
17 information about the gamete bank or fertility clinic from which it received the gametes. A  
18 gamete bank or fertility clinic licensed in [this state] shall disclose the information as provided  
19 under Section 904.

### 20 **SECTION 903. AFFIDAVITS REGARDING DISCLOSURE.**

21 (a) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes  
22 shall provide to the donor written information regarding identity disclosure.

23 (b) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes  
24 shall require any donor to sign an affidavit regarding identity disclosure. The individual must be  
25 given the choice to sign either:  
26



1 (1) an affidavit agreeing to disclose the donor’s identity to the resulting child  
2 upon request once the child is at least eighteen years of age; or

3 (2) an affidavit that the donor does not presently agree to disclose the donor’s  
4 identity to the resulting child.

5 (c) A gamete bank or fertility clinic licensed in [this state] that collects or stores gametes  
6 shall permit a donor who has signed an affidavit of nondisclosure as described in subsection  
7 (b)(2) to withdraw the donor’s affidavit of nondisclosure at any time.

8 **SECTION 904. DISCLOSURE OF IDENTIFYING INFORMATION.**

9 (a) Upon request by a child conceived through assisted reproduction who is at least  
10 eighteen years old, the gamete bank or fertility clinic licensed in [this state] that collected the  
11 gametes shall provide the resulting child with the identifying information of the donor who  
12 provided gametes, unless the donor signed and did not withdraw an affidavit of nondisclosure as  
13 described in Section 903. If a donor has signed, and not withdrawn, such an affidavit, the gamete  
14 bank or fertility clinic licensed in [this state] that collected the gametes shall make good faith  
15 efforts to notify the donor, who may elect to withdraw the donor’s affidavit.

16 (b) Regardless of whether the donor signed an affidavit of nondisclosure, upon request by  
17 a child conceived through assisted reproduction who is at least eighteen years old, the gamete  
18 bank or fertility clinic licensed in [this state] that collected the gametes shall provide to the  
19 resulting child access to the nonidentifying medical history of the donor.

20 **SECTION 905. RECORD KEEPING.** A gamete bank or fertility clinic licensed in  
21 [this state] that collects gametes for use in assisted reproduction shall collect and maintain  
22 medical history and identifying information about all gamete donors, and records of all gamete  
23 screening and testing, in accordance with federal and applicable law of this state.

1 **ARTICLE 10**

2 **MISCELLANEOUS PROVISIONS**

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

6 **SECTION 1002. TRANSITIONAL PROVISION.** This [act] applies to all pending  
7 proceedings to adjudicate parentage commenced before its effective date with respect to issues  
8 on which a judgment has not been entered.

9 **[SECTION 1003. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
10 application to any individual or circumstance is held invalid, the invalidity does not affect other  
11 provisions or applications of this [act] which can be given effect without the invalid provision or  
12 application, and to this end the provisions of this [act] are severable.]

13 *Legislative Note: Include this section only if this state lacks a general severability statute or a*  
14 *decision by the highest court of this state stating a general rule of severability.*  
15

16 **SECTION 1004. REPEALS; CONFORMING AMENDMENTS.** The following  
17 [acts] and parts of [acts] are repealed:

18 (1) [Uniform Act on Paternity, 1960]

19 (2) [Uniform Parentage Act, 1973]

20 (3) [Uniform Putative and Unknown Fathers Act, 1988]

21 (4) [Uniform Status of Children of Assisted Conception Act, 1988]

22 (5) [Uniform Parentage Act, 2002]

23 (6) [other inconsistent statutes]

24 **SECTION 1005. EFFECTIVE DATE.** This [act] takes effect . . . .  
25



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.