

D R A F T
FOR DISCUSSION ONLY

**PROPOSED REVISIONS OF THE
UNIFORM PARENTAGE ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTH YEAR
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**PROPOSED REVISIONS OF THE
UNIFORM PARENTAGE ACT**

WITH PREFATORY NOTE AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**PROPOSED REVISIONS OF THE
UNIFORM PARENTAGE ACT**

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1 **PROPOSED REVISIONS OF THE**
2 **UNIFORM PARENTAGE ACT**

3 **PREFATORY NOTE**

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

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

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

1 The current draft attempts to integrate the best of UPA (1973), along with
2 provisions covered by UPUFA (1989) and USCACA (1989). Article 2 (Parent-
3 Child Relationship) will look familiar to past users of the Act. Article 3 (Voluntary
4 Acknowledgment of Paternity) is entirely new and is driven by federal mandates in
5 an effort to force States to adopt nonjudicial means to achieve early determination
6 of paternity. Article 4 (Paternity Registry) is entirely new and is an attempt to write
7 a well-considered registry law that States may consider. Article 5 (Genetic Testing)
8 comprehensively covers the subject in nine separate sections [UPA (1973) had one
9 section]. Article 6 (Proceeding to Determine Parentage) is the traditional litigation
10 section, while Article 7 (Parentage Based on Equitable Estoppel) is the first effort to
11 codify this growing area of case law. Article 8 (Child of Assisted Reproduction)
12 recodifies the same subjects covered in UPA (1973) and USCACA (1989) without
13 much change. Article 9 (Gestational Agreement) closely follows USCACA (1989).

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

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

1 **PROPOSED REVISIONS OF THE**
2 **UNIFORM PARENTAGE ACT**

3 **ARTICLE 1**
4 **GENERAL PROVISIONS**

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

7 **SECTION 102. DEFINITIONS.** In this [Act]:

8 (1) “Acknowledged father” means a man who has established a father-child
9 relationship under Section 303.

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

13 (A) a man presumed to be the father under Section 204;

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

16 (C) a male donor.

17 (3) “Assisted reproduction” means a pregnancy resulting from means other
18 than sexual intercourse. The term includes:

19 (A) artificial insemination;

20 (B) donation of eggs;

1 (C) donation of an embryo;

2 (D) in vitro fertilization and transfer of an embryo; and

3 (E) intracytoplasmic sperm injection.

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

6 (5) “Commencement” means the filing of the first pleading in a proceeding
7 affecting parentage.

8 (6) “Court” means an entity authorized under the law of a State to
9 determine parentage. The term does not include a support enforcement agency or
10 any other administrative entity unless that agency or entity has express authority to
11 act upon an issue related to parentage by other state law, including issuing a
12 subpoena, ordering genetic testing, and determining parentage of a child based on
13 voluntary acknowledgment of paternity or from the results of genetic testing.

14 (7) “Determination of parentage” means the establishment of the parent-
15 child relationship under this [Act].

16 (8) “Donor” means an individual who produces eggs or sperm used for
17 assisted reproduction, whether or not a payment is made. The term does not
18 include:

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

21 (B) a woman who gives birth to a resulting child except as otherwise
22 provided in Article 9.

1 (9) “Ethnic or racial group” means, for purposes of genetic testing, a
2 recognized group that an individual identifies as his or her ancestry or that is so
3 identified.

4 (10) “Genetic testing” means an analysis of genetic markers to determine
5 parentage. The term includes one or a combination of the following:

6 (A) analysis of deoxyribonucleic acid;

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

10 (11) “Gestational mother” means the woman who gives birth to a child.

11 (12) “Intended parent” means an individual, whether married or not, who
12 enters into an agreement providing that he or she will be the parent of a child born
13 to a gestational mother through assisted reproductive technology irrespective of a
14 genetic relationship.

15 (13) “Man” means a male individual of any age.

16 (14) “Parent” of a child means:

17 (A) the mother, except a gestational mother under the circumstances
18 described in Article 9;

19 (B) an adoptive mother or father; or

20 (C) a man who is:

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

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

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

2 (15) “Parent-child relationship” means the legal relationship between a child
3 and a parent of the child.

4 (16) “Paternity index” means the likelihood of paternity calculated by
5 computing the ratio between:

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

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

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

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

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

4 (20) “State” means a State of the United States, the District of Columbia,
5 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
6 subject to the jurisdiction of the United States. The term includes an Indian tribe or
7 band, or Alaskan native village, which is recognized by federal law or formally
8 acknowledged by a State.

9 (21) “Support-enforcement agency” means a public official or agency
10 authorized to seek:

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

13 (B) establishment or modification of child support;

14 (C) determination of parentage; or

15 (D) the location of obligors and their income and assets.

16 **Reporter’s Notes**

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

24 **SECTION 103. SCOPE OF [ACT].**

1 (a) This [Act] governs every determination of the parentage of a child in this
2 State.

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

5 **Reporter's Notes**

6 This section makes clear that the Act applies not just in so-called "paternity
7 suits," but also in all disputes of parentage, whether in a proceeding involving
8 divorce, paternity, probate, or any other legal matter. In contrast to Sections 17,
9 18, and 22-25 of the Uniform Parentage Act of 1973, this Act does not provide any
10 significant substantive rules regarding enforcement, modification, support, birth
11 records, adoption, or termination of parental rights. Except for references to
12 unspecified rights and duties regarding custody, visitation, and child support, these
13 matters are left to other provisions in each State's statutory scheme.

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ARTICLE 2
PARENT-CHILD RELATIONSHIP

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

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

(1) the woman’s having given birth to the child, except as otherwise provided in Article 9;

(2) a determination of the woman’s maternity by a court of competent jurisdiction;

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

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

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

(1) a presumption of the man’s paternity of the child as provided in Section 204;

(2) the man’s jointly signing with the mother an unrescinded acknowledgment of paternity under Article 3;

(3) a determination of the man’s paternity by a court of competent jurisdiction;

(4) the adoption of the child by the man;

1 (5) the man’s consent to assisted reproduction of the child under Article
2 8; or

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

5 **Reporter’s Notes**

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

8 **SECTION 202. NO DISCRIMINATION BASED ON MARITAL**

9 **STATUS.** A child born to parents who are not married to each other has the same
10 rights and is entitled to the same protections of the law as a child whose parents are
11 or were married to each other.

12 **Reporter’s Notes**

13 Derived from Massachusetts Gen. Laws ch 209C, § 1.

14 **SECTION 203. CONSEQUENCES OF ESTABLISHMENT OF**

15 **PARENTAGE.** Unless parental rights are terminated, the parent-child relationship
16 established by this [Act] applies for all purposes.

17 **Reporter’s Notes**

18 Derived from USCACA Section 10. This states the obvious, but is
19 necessary because a literal reading of Section 201 is not accurate without further
20 explanation. A birth mother is not always the parent once her parental rights have
21 been terminated. A man whose paternity has been established by acknowledgment
22 or by court determination may subsequently have his parental rights terminated.

1 **SECTION 204. PRESUMPTION OF PATERNITY IN CONTEXT OF**
2 **MARRIAGE.**

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

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

6 (2) he and the mother of the child were married to each other and the
7 child is born within 300 days after the marriage is terminated by death, annulment,
8 declaration of invalidity, or divorce[, or after a decree of separation];

9 (3) before the birth of the child, he and the mother of the child married
10 each other in apparent compliance with law, even if the attempted marriage is, or
11 could be, declared invalid and the child is born during the invalid marriage or within
12 300 days after its termination by death, annulment, declaration of invalidity, or
13 divorce; or

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

17 (A) he has acknowledged his paternity of the child in writing [filed
18 with the appropriate court or state agency responsible for maintaining birth records]
19 before the effective date of Article 3;

20 (B) with his consent, he is named as the child's father on the child's
21 birth certificate; or

1 (C) he is obligated to support the child under a written voluntary
2 promise or by order of a court.

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

5 **Reporter's Notes**

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

1 **ARTICLE 3**

2 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

3 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY.** The mother of
4 a child and a man claiming to be the father of the child may execute an
5 acknowledgment of paternity, as provided in this article, to establish the man’s
6 paternity.

7 **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF**
8 **PATERNITY.**

9 (a) An acknowledgment of paternity must be in writing, signed by the
10 mother and the alleged father, and state whether the child whose paternity is being
11 acknowledged has a presumed father under Section 204.

12 (b) If the mother declares in the acknowledgment that there is a presumed
13 father, the acknowledgment must be accompanied by a denial of paternity signed by
14 the presumed father.

15 **Reporter’s Notes**

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

1 **SECTION 303. FILING OF ACKNOWLEDGMENT.**

2 (a) An acknowledgment of paternity must be filed with the [appropriate
3 state agency].

4 (b) The [appropriate state agency] may not charge a fee for the filing of the
5 acknowledgment.

6 **SECTION 304. SIGNING OF ACKNOWLEDGMENT OR DENIAL OF**
7 **PATERNITY.**

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

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

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

14 **SECTION 305. EFFECT OF ACKNOWLEDGMENT OF PATERNITY.**

15 (a) A signed acknowledgment of paternity filed with the [appropriate state
16 agency] constitutes a legal finding of paternity of a child equivalent to a judicial
17 determination and bestows upon the signatories all the rights and duties of a parent
18 by virtue of law.

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

4 **SECTION 306. SUIT FOR RESCISSION.**

5 (a) Subject to the requirements of subsection (b), a signatory may
6 commence an action petitioning for rescission of an acknowledgment of paternity or
7 a denial of paternity.

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

10 (1) the expiration of 60 days after the filing of the acknowledgment or
11 denial of paternity with the [appropriate state agency]; or

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

15 (c) An action to rescind an acknowledgment or denial of paternity must be
16 conducted in the same manner as a proceeding to determine parentage under Article
17 6.

18 **SECTION 307. CHALLENGE AFTER EXPIRATION OF TIME FOR**
19 **RESCISSION.**

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

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

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

11 **SECTION 309. RATIFICATION BARRED.** In a judicial or administrative
12 proceeding, a court or administrative entity is neither required nor permitted to
13 ratify an unchallenged acknowledgment of paternity.

14 **SECTION 310. FULL FAITH AND CREDIT.** A court of this State shall
15 give full faith and credit to an acknowledgment of paternity signed in another State
16 if the acknowledgment has been signed in apparent compliance with the other
17 State's law.

18 **SECTION 311. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF**
19 **PATERNITY.**

1 (a) The [appropriate state agency] shall prescribe forms for the
2 acknowledgment of paternity and denial of paternity to facilitate compliance with
3 this article.

4 (b) The forms prescribed under this section must:

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

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

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

11 (c) The form for acknowledgment of paternity must inform the man
12 claiming to be the alleged father and the mother that the man's signing of the
13 acknowledgment of paternity with the consent of the mother:

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

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

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

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

21 (1) his future claim of paternity of the child;

22 (2) his rights of custody or visitation with the child; and

1 (3) the mother from asserting a claim that he support the child.

2 **SECTION 312. VALIDITY OF FORMS.** The validity of an
3 acknowledgment of paternity or denial of paternity is not affected by a modification
4 of the prescribed form occurring after it is signed if the signed form met the
5 requirements of state law at the time it was signed.

6 **SECTION 313. RELEASE OF INFORMATION.** The [appropriate state
7 agency] may release information relating to the acknowledgment, denial, and
8 rescission of paternity to [other appropriate state agencies] and other persons or
9 entities, as authorized by law.

10 **SECTION 314. ADOPTION OF RULES.** The [appropriate state agency]
11 may adopt rules to implement this article.

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ARTICLE 4
PATERNITY REGISTRY
PART 1
GENERAL PROVISIONS

SECTION 401. ESTABLISHMENT OF REGISTRY. The paternity registry is established in the [appropriate state agency].

Reporter's Notes

Beginning with *Stanley v. Illinois*, 405 U.S. 545 (1972) and continuing through the 1970s and early 1980s the Supreme Court of the United States recognized the rights of nonmarital fathers with respect to their nonmarital children. In 1983, the Court upheld the constitutionality of the New York paternity registry in the case of *Lehr v. Robertson*, 463 U.S. 248 (1983). The New York statute requires fathers of children born out of wedlock to register if they wish to be notified of any termination of parental rights or adoption proceeding. Following a series of well- publicized adoption cases wherein nonmarital fathers had not been given proper notice, legislatures began responding to these cases by enacting paternity registries similar to the New York statute. As of May, 1999, 28 States had enacted legislation creating paternity registries. This draft accepts the concept, but with some significant differences from the New York model.

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

See table in Appendix to Section 401, *infra*.

1 **SECTION 402. REGISTRATION OF CLAIM OF PATERNITY.**

2 (a) Except as otherwise provided in subsection (b), a man claiming to be the
3 father of a child shall register with the [appropriate state agency].

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

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

7 (2) the man commences a proceeding to determine his parentage before
8 the court has terminated his parental rights.

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

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

16 **Reporter’s Notes**

17 The primary purpose of such a registry is to facilitate infant adoptions by
18 licensed agencies. Therefore, limiting the major impact of failure to register with a
19 paternity registry to infant adoptions seems appropriate. If an infant adoption is not
20 consummated, throughout the minority of the child the nonmarital father and the
21 mother remain responsible for support and eligible for custody or visitation. That
22 fact situation distinguishes the infant adoption in which both parents abdicate those
23 right and duties for the presumed benefit of the child.

24 **SECTION 403. NOTICE OF PROCEEDING TO REGISTRANT.** Notice

25 of a proceeding affecting a child who is, or may be, the subject of a proceeding for

1 termination of parental rights or adoption must be given to a man who has timely
2 registered in the paternity registry. Notice must be given in a manner prescribed for
3 service of process in a civil action.

4 **Reporter's Notes**

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

11 **SECTION 404. TERMINATION OF PARENTAL RIGHTS; CHILD**

12 **LESS THAN ONE YEAR OF AGE.** The rights of a man who may have fathered
13 a child who has not attained one year of age at the time of the hearing may be
14 terminated without notice if:

15 (1) he failed to register with the [appropriate state agency] under this article;
16 and

17 (2) he has not commenced a proceeding to establish his paternity before the
18 rendition of a decree of [termination or adoption].

19 **Reporter's Notes**

20 This section is the obverse logical conclusion to the legal rationale for
21 establishing a paternity registry. In a termination of parental rights or adoption
22 proceeding, the registry provides a clear procedure for resolving that a man does not
23 intend to assert parental rights with regard to the child. Although the registry
24 protects a man's right to notice in a termination or adoption proceeding, his failure
25 to register waives those such rights. Thus, the registry is both a first step for
26 claiming parental rights and the end of those rights for those persons who do not
27 register. If a man fails to register with the paternity registry, a termination and
28 adoption may proceed without fear of a belated claim, most particularly a claim
29 coming after adoptive parents have received custody of the child. This expedited

1 procedure greatly facilitates infant adoption, which in truth explains the existence –
2 and popularity – of the registries and their strong support by the adoption
3 community. As of January 1999, approximately 27 States have enacted similar
4 statutes.

5 **SECTION 405. TERMINATION OF PARENTAL RIGHTS; CHILD AT**
6 **LEAST ONE YEAR OF AGE.**

7 (a) Notice of a proceeding for termination of parental rights or adoption
8 must be given to a man registered with the paternity registry:

9 (1) if the child affected has attained one year of age at the time of the
10 judicial hearing; and

11 (2) whether or not the man has timely registered with [appropriate state
12 agency].

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

15 **Reporter’s Notes**

16 This section reaffirms *Stanley v. Illinois*, supra, and its progeny by requiring
17 notice to the nonmarital father of a termination of parental rights or adoption
18 proceeding. This section is derived from Uniform Putative and Unknown Fathers
19 Act Section 3 (1989). This protects those fathers who may have had some informal
20 nonlegal relationship with the child or mother for some time and prevents unilateral
21 action to adversely affect the father’s rights.

22 *[Sections 406-410 reserved for expansion]*

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PART 2
OPERATION OF REGISTRY

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SECTION 411. FORM FOR REGISTRATION.

4 (a) The [appropriate state agency] shall prepare a form, to be signed by the
5 man under penalty of perjury, for registering with the agency. The form must
6 provide notice to the man that:

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

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

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

13 (4) if the court determines that he is the father of the child, he may seek
14 to be awarded custody of or visitation with the child;

15 (5) services are available to him through the State's support-enforcement
16 agency to establish parentage; and

17 (6) he may acquire information on obtaining the address of other state
18 registries to protect his claim of parentage if conception or birth of the child
19 occurred in another State.

20 (b) A registration must be filed on a form prepared by the [appropriate state
21 agency].

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

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

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

9 (1) the court;

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

11 (3) an authorized agency;

12 (4) a licensed child-placing agency;

13 (5) a support enforcement agency;

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

16 (7) the paternity registry of another State.

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

20 **SECTION 413. PENALTY FOR RELEASING INFORMATION. A**
21 person commits a [appropriate level misdemeanor] if the person intentionally

1 releases information from the registry to an individual or entity not identified as
2 authorized to receive the information under Section 412.

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

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

8 (2) a court has determined paternity and an individual other than him been
9 determined to be the father of the child.

10 **SECTION 415. REMOVAL OF REGISTRANT'S NAME.** If the court
11 determines that the registrant is not the father of the child, the court shall direct the
12 [appropriate state agency] to remove the registrant's name from the paternity
13 registry.

14 **SECTION 416. UNTIMELY ATTEMPT TO FILE CLAIM.** If a man seeks
15 to register with the [appropriate state agency] later than 30 days after the birth of
16 the child or the [appropriate state agency] receives notice of an order terminating
17 the rights of a registrant with regard to a child from the clerk of the court, the
18 [agency] shall:

19 (1) refuse to file the registration; and

1 (2) notify the registrant that his request to file a claim has been denied,
2 stating the reason for the denial.

3 **SECTION 417. FEES FOR REGISTRY.**

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

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

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

10 *[Sections 418-420 reserved for expansion]*

11 **PART 3**
12 **SEARCH OF REGISTRIES**

13 **SECTION 421. SEARCH OF APPROPRIATE REGISTRY.**

14 (a) A [petitioner] for adoption of a child without an established father-child
15 relationship under Articles 2, 3, or 6 must obtain a certificate of diligent search of
16 the paternity registry of this State.

17 (b) If the [petitioner] has reason to believe that the conception of the child
18 may have occurred in another State, the [petitioner] must also obtain a certificate of
19 diligent search from the paternity registry of that State if a registry is maintained
20 there.

1 **SECTION 422. CERTIFICATE OF SEARCH OF REGISTRY.**

2 (a) The [agency that maintains the paternity registry] shall, on request,
3 furnish a certificate attesting to the results of a search of the registry regarding a
4 claim of paternity to:

- 5 (1) the court;
- 6 (2) the mother of a child;
- 7 (3) an authorized agency;
- 8 (4) a licensed child-placing agency;
- 9 (5) a support enforcement agency; or
- 10 (6) an attorney of record participating in a proceeding under this [Act],
11 including for termination of parental rights or adoption.

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

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

16 (2) a registration:

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

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

1 **SECTION 423. FILING CERTIFICATE OF SEARCH.**

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

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

10 **SECTION 424. ADMISSIBILITY OF REGISTERED INFORMATION.**

11 Information maintained in the paternity registry is admissible in a proceeding for
12 termination of parental rights or adoption, and, if relevant, in other legal
13 proceedings.

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ARTICLE 5
GENETIC TESTING

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

- (1) submits voluntarily to testing; or
- (2) is ordered by the court or by the support-enforcement agency to be tested.

Reporter’s Notes

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

SECTION 502. ORDER FOR TESTING.

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

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

- (2) denying paternity.

(b) Genetic testing must be of a type generally acknowledged to be scientifically reliable and performed in a testing laboratory accredited by:

1 (1) the American Association of Blood Banks, or a successor to its
2 functions;

3 (2) the American Society for Histocompatibility and Immunogenetics, or
4 a successor to its functions; or

5 (3) an accrediting body designated by the U.S. Secretary of Health and
6 Human Services.

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

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

13 (e) If there is an admission of paternity, the parties may waive or the court
14 may dispense with genetic testing.

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

17 **Reporter's Notes**

18 Subsections (a) and (b) conform to the mandates of 42 U.S.C.
19 § 666(a)(5)(B)(i)(I)(II) and § 666(a)(5)(F)(i)(I)(II).

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

1 **SECTION 503. REQUIREMENTS OF GENETIC TESTING.**

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

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

7 (1) the names and photographs of the individuals whose specimens have
8 been taken;

9 (2) the name of the person who collected the specimens;

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

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

13 (5) the date the specimens were received.

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

16 (d) Based on information provided by an individual about his or her ethnic
17 or racial groups, the testing laboratory shall determine the databases from which to
18 select frequencies for use in the calculations. If there is disagreement as to the
19 testing laboratory's choice, the following rules apply:

20 (1) The individual objecting may require the testing laboratory, within
21 30 days after receipt of the test, to recalculate the probability of paternity using an
22 ethnic or racial group different from that used by the laboratory.

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

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

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

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

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

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

14 **Reporter's Notes**

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

1 Genetic testing results will often exceed the statutory minimum. During the
2 drafting meetings several statutory presumptions were considered, i.e., 95%, 99%,
3 99.9% and 99.99%. Genetic testing laboratory representatives presented quite
4 persuasive arguments for a variety of choices. The Drafting Committee ultimately
5 chose 99% because:

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

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

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

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

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

19 (6) A paternity suit is a civil action based on a preponderance of the
20 evidence, not a criminal action based on evidence beyond reasonable doubt.

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

22 **SECTION 505. COSTS OF GENETIC TESTING.**

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

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

26 (2) by the party who made the request;

27 (3) as agreed upon by the parties; or

28 (4) as ordered by the court.

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

3 **Reporter's Notes**

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

6 **SECTION 506. ADDITIONAL GENETIC TESTING.** The court or the
7 support-enforcement agency shall order additional genetic testing upon the request
8 of an individual who contests the result of the original testing. The court need not
9 order additional testing until the contestant provides advance payment for the
10 testing.

11 **Reporter's Notes**

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

13 **SECTION 507. GENETIC TESTING WHEN NOT ALL PERSONS**
14 **AVAILABLE.**

15 (a) If a specimen is not available for genetic testing, a court, on its own
16 motion or upon request of a party, may order the following persons, as appropriate,
17 to submit to genetic testing by a laboratory:

- 18 (1) the parents of the presumed or alleged father or the mother;
- 19 (2) brothers and sisters of the presumed or alleged father or the mother;
- 20 (3) other children of the presumed or alleged father and their mothers;
- 21 (4) other children of the mother and their fathers; and
- 22 (5) other persons the court finds to be appropriate for testing.

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

3 **Reporter's Notes**

4 In rare cases if both the mother and alleged father are missing, testing the
5 mother's relatives may be useful; thus, the term is included in subsection (a) to
6 accommodate those cases where the mother and alleged father are both missing. If
7 only the mother is missing, as provided for in subsection (b), there is generally no
8 need to collect samples from the mother's relatives.

9 Some of the persons listed for testing in subsection (a) may not be parties to
10 the proceeding. If the persons do not volunteer to participate in the testing and the
11 individual is not a party, the court will need to decide if it has the authority to order
12 the testing and the necessity of testing the objecting individual. In some cases, the
13 court has refused to order the testing for lack of personal jurisdiction. Other courts
14 have ordered the testing as the person needed for testing is an essential witness. See
15 *William M. v. Superior Court* (Dana F.), 275 Cal. Rptr. 103 (Cal. App. 3 Dist.
16 1990); *Estate of Rodgers*, 583 A.2d 782 (N.J. Super. A.D. 1990). At least one
17 State has incorporated similar language in their statutes See: Minn. Stat. Ann.
18 § 257.62(1).

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

22 **Reporter's Notes**

23 The court with jurisdiction to determine parentage may not have jurisdiction
24 to order disinterment of a deceased individual in some States. If so, proper
25 authority should be substituted in this section.

26 **SECTION 509. IDENTICAL BROTHERS.**

27 (a) If identical brothers are identified as alleged fathers in a proceeding to
28 determine parentage, the court shall order the brothers to submit to genetic testing.

1 (b) If no identical brother is excluded by genetic testing as the genetic
2 father, and each brother exceeds the presumption of paternity under Section 504
3 without consideration of another identical brother's probability of paternity, the
4 court may rely on nongenetic evidence to determine which brother is the genetic
5 father.

6 **Reporter's Notes**

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

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

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

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ARTICLE 6
PROCEEDING TO DETERMINE PARENTAGE
PART 1
NATURE OF PROCEEDING

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

Reporter’s Notes

Source: derived from UPA (1973) § 8(2). This section authorizes the suit for a parentage proceeding. The suit is declared a “civil proceeding” to remove it from criminal law jurisdiction. The bracket for filling in appropriate court rules should be tailored to local court structure. For example some jurisdictions have special rules for family court, surrogate court, etc.

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

- (1) the child;
- (2) the mother of the child;
- (3) a presumed father of the child;
- (4) a man who has acknowledged being the father under Article 3;
- (5) a man alleging that he is or is not the father of the child;
- (6) the support-enforcement agency [and other authorized governmental entity];
- (7) an authorized adoption agency or licensed child-placing agency;

1 (8) a representative authorized by law to act for an individual who would
2 otherwise be entitled to maintain a proceeding but who is deceased, incapacitated,
3 or a minor; or

4 (9) an intended parent under Article 9.

5 **Reporter's Notes**

6 Source: UPA (1973) § 6.

7 **SECTION 603. PARTIES TO PROCEEDING.**

8 (a) The following individuals must be joined as parties upon the
9 commencement of a proceeding to determine parentage:

10 (1) the mother of the child;

11 (2) a presumed father of the child; and

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

13 (b) An individual, governmental entity, adoption agency, or licensed child-
14 placing agency, asserting an interest in the child must be joined as a party to a
15 proceeding to determine parentage if required by other law of this State.

16 **Reporter's Notes**

17 Source: UPA (1973) § 9. This section partially follows, and partially rejects,
18 the original UPA requirement as to who must be named as parties. First, the child is
19 not a necessary party. Few States require children as necessary parties; the Drafting
20 Committee believes that, with the widespread use of DNA testing and child support
21 guidelines, such a requirement has outlived its usefulness.

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

1 **SECTION 604. NO LIMITATION; CHILD WITHOUT PRESUMED**

2 **FATHER.**

3 (a) A proceeding to determine paternity of a child having no presumed
4 father may be commenced:

5 (1) at any time, even after the child becomes an adult; and

6 (2) after an earlier proceeding has been dismissed because a statute of
7 limitation applied.

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

10 **Reporter’s Notes**

11 Source: UPA (1973) §§ 6, 7. In order for a State to retain the federal child
12 support enforcement subsidy, 42 U.S.C. 666(a)(5)(A)(i) mandates that as part of the
13 Title IV-D statutory requirements States have laws to “permit the establishment of
14 the paternity of a child at any time before the child attains 18 years of age.” States
15 have chosen a wide range of age options: age 18 (20 States), age 19 (6 States), age
16 20 (2 States), age 21 (10 States), age 22 (2 States), age 23 (2 States), and no
17 limitation (9 States). Several States limit the establishment of parental rights to a
18 shorter time period. The Drafting Committee believes that an individual’s right to
19 determine his or her own parentage is a very important right and should not be
20 subject to limitation except when an estate has been closed. Accordingly, the
21 present draft allows a suit to determine parentage at any time. Anecdotally, there
22 appear to be no reported problems encountered in States without a statute of
23 limitations for such actions. See Appendix to Section 604, *infra*, for a table of the
24 state laws on this issue.

25 **SECTION 605. LIMITATION; CHILD WITH PRESUMED FATHER.**

26 (a) Except as otherwise provided in subsections (b) and (c) and Article 7, a
27 proceeding seeking to negate the father-child relationship by rebutting the

1 presumption of paternity under Section 204 must be commenced not later than two
2 years after the birth of the child.

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

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

9 (2) the presumed father has not treated the child as his own.

10 (c) The court shall dismiss a proceeding under subsection (b) commenced
11 more than two years after the birth of the child unless the party seeking to establish
12 that the presumed father is not the father of the child demonstrates that:

13 (1) the proceeding is in the best interest of the child;

14 (2) the presumed father of the child has neither resided in the same
15 household as the child in a father-child relationship nor treated the child as his own;

16 (3) the presumed father of the child is not seeking a determination of
17 parental rights by the court naming him as the father of the child;

18 (4) no other man has been determined to be the father of the child; and

19 (5) no other man has signed an acknowledgment of paternity pursuant to
20 Section 204(a)(4) or Article 3.

21 **Reporter's Notes**

22 Source: UPA (1973) § 6. This section represents an attempt to deal with a
23 difficult issue, namely, the right of a man to claim paternity of a child who has an

1 existing presumed father, and conversely, the right of a mother and presumed father
2 to challenge the presumption. The UPA (1973) places a five year limitation on the
3 latter issue [Section 6(a)]. The rights of an “outsider” to claim paternity in an intact
4 marriage vary considerably among the States.

5 Thirty-three States allow a man alleging himself to be the father of a child
6 with a presumed father to rebut the marital presumption. Some States have granted
7 this right through legislation. In others, courts have recognized the alleged father’s
8 right to rebut the presumption and establish his paternity. Further, in some States
9 there is both statutory and common law support for the standing of a man alleging
10 himself to be the father to assert his paternity of a child born to a married woman.

11 Ten States have denied standing to a man claiming to be the father when the
12 mother was married to another at the time of the child’s birth. In some States, the
13 statutes grant the presumed father, not the alleged father, a right to rebut his
14 presumed paternity. In other States, the courts have denied the alleged father
15 standing to sue.

16 This draft attempts a middle ground on this issue. A limitation is set at two
17 years, but is open ended if the mother did not live with the presumed father or
18 engage in sexual intercourse with him at the probable time of conception. The
19 Drafting Committee believes that a two year period allows an adequate time period
20 to resolve the status of a child. A longer period may have severe consequences for
21 the child. Appendix C provides a table of jurisdiction addressing the subject.

22 See table in Appendix to Section 605, *infra*.

23 **SECTION 606. PERSONAL JURISDICTION.**

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

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

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

- 4 (1) the place of the birth of the child; or
- 5 (2) the residence of the child, past or present.

6 **Reporter's Notes**

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

10 **SECTION 608. VENUE.** A proceeding to determine parentage must be
11 commenced in the [county] of this State in which:

- 12 (1) the child resides or is found;
- 13 (2) the [respondent] resides or is found if the child does not reside in this
14 State; or
- 15 (3) a proceeding for probate of the presumed or alleged father's estate has
16 been commenced.

17 **Reporter's Notes**

18 Source: UPA (1973) § 8.

19 **SECTION 609. JOINDER OF PROCEEDINGS.** If the court has
20 appropriate jurisdiction, a proceeding to determine parentage may be joined with a
21 proceeding for divorce, annulment, legal separation, separate maintenance, custody,

1 visitation, support, termination of parental rights, adoption, or probate or
2 administration of an estate.

3 **Reporter's Notes**

4 Source: UPA (1973) § 8(2).

5 **SECTION 610. PROCEEDING STAYED UNTIL AFTER BIRTH.** A

6 proceeding may be commenced before or after the birth of the child. The
7 proceeding may not be concluded until after the birth, but the following actions may
8 be pursued at any time after the proceeding is commenced: (1) service of process;
9 (2) taking of depositions to perpetuate testimony; and (3) collection of specimens
10 for genetic testing, except as prohibited by Section 502(c).

11 **SECTION 611. REPRESENTATION OF CHILD.**

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

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

15 **Reporter's Notes**

16 This section rejects UPA (1973) § 9.

17 **SECTION 612. MOTHER-CHILD RELATIONSHIP.** As far as

18 practicable, the provisions of this article relating to father-child proceedings apply to
19 a proceeding to determine the mother-child relationship.

20 *[Sections 613-620 reserved for expansion.]*

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PART 2
SPECIAL RULES FOR PARENTAGE PROCEEDING

SECTION 621. ADMISSIBILITY OF GENETIC TEST RESULTS AND EXPENSES.

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

(1) the testings having resulted from an agreement of the parties or an order of the court; or

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

(b) A party objecting to the results of a genetic test may call one or more genetic-testing experts to testify in person, by telephone, or by deposition. The party objecting bears the expense for the expert testifying.

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

- (1) with the consent of both the mother and the presumed father; or
- (2) pursuant to an order of the court under Section 502.

1 (d) Copies of bills for genetic testing and for prenatal and postnatal health
2 care for the mother and child furnished to the adverse party at least 10 days before a
3 hearing are admissible in evidence to prove:

4 (1) the amount of the charges; and

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

6 **Reporter's Notes**

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

14 **SECTION 622. CONSEQUENCES OF REFUSING GENETIC TESTING.**

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

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

18 (c) If an alleged or presumed father declines to submit to genetic testing for
19 parentage, the fact of declination may be introduced as evidence.

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

22 **Reporter's Notes**

23 Source: UPA (1973) § 10.

24 **SECTION 623. ADMISSION OF PATERNITY AUTHORIZED.**

1 (a) A [respondent] in a proceeding under this [Act] may admit to the
2 paternity of a child by signing an admission of paternity or by admitting paternity at
3 an appearance or hearing in a proceeding to determine parentage of the child.

4 (b) The court shall issue an order determining the child to be the child of the
5 father if the court finds that the admission of paternity was made pursuant to this
6 article.

7 **Reporter's Notes**

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

14 **SECTION 624. TEMPORARY ORDERS.**

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

17 (1) is a presumed father;

18 (2) is a man petitioning to have his paternity determined, who has
19 admitted paternity in pleadings filed with the court;

20 (3) is shown to be the father through genetic testing or has declined to
21 submit to genetic testing;

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

24 (5) is the mother.

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

3 **Reporter's Notes**

4 Source: UIFSA § 401.

5 *[Sections 625-630 reserved for expansion]*

6 PART 3
7 HEARINGS AND FINAL ORDER

8 **SECTION 631. RESOLUTION OF CLAIM OF PATERNITY.**

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

11 (b) Except as otherwise provided by Article 7, if two or more claims of
12 paternity are in conflict, the presumption of parentage created in Section 504
13 prevails.

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

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

20 (e) Subject to a party's right to additional genetic testing as provided in
21 Section 506 and except as otherwise provided under Article 7, the court shall

1 dismiss with prejudice a proceeding to determine parentage of a man if it finds that
2 genetic testing excludes the man as the father of the child.

3 **Reporter's Notes**

4 Source: UPA (1973) § 14.

5 Subsection (d) is intended to indicate that on occasion a genetic test may not
6 reach the presumption level. In modern paternity testing, this is very rare with living
7 persons. On the other hand, this may present a problem in probate matters, which
8 often must rely on the use of non-traditional specimens, such as bone and hair. In
9 this context, the amount of testing may be limited by the specimen available. This
10 section is designed to indicate that if the result of the genetic testing is less than the
11 presumption, the number is not an indicator of nonpaternity. The number below the
12 genetic presumption should be considered as an indicator of paternity and weighed
13 along with all the other evidence.

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

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

25 **SECTION 633. HEARINGS AND RECORDS; CONFIDENTIALITY.**

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

1 (b) A final order in a proceeding under this article is available for public
2 inspection. Other papers and records are available only with the consent of the
3 parties or on order of the court for good cause shown.

4 **Reporter's Notes**

5 Source: UPA (1973) § 20.

6 **SECTION 634. ORDER ON DEFAULT.** The court shall issue an order of
7 parentage against a man who:

8 (1) is determined by the court to be the father; and

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

10 **Reporter's Notes**

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

12 **SECTION 635. FINAL ORDER REGARDING PARENTAGE.**

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

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

16 (c) An order determining that a man is the father of a child confirms or
17 creates the father-child relationship between the father and the child under Section
18 201.

19 (d) Except as otherwise provided in subsection (f), the court may assess
20 filing fees, reasonable attorney's fees, genetic-testing fees, other costs, and
21 necessary travel and other reasonable expenses incurred in a proceeding under this

1 article. The court may award attorney’s fees, which may be paid directly to the
2 attorney, who may enforce the order in the attorney’s own name.

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

5 **Reporter’s Notes**

6 Derived from UIFSA Section 313; UPA (1973) §§ 15, 16

7 **SECTION 636. BINDING EFFECT OF ORDER.**

8 (a) Except as otherwise provided in subsection (b), a determination of
9 parentage is binding on all parties if the determination satisfies the jurisdictional
10 requirements of [Section 201 of the Uniform Interstate Family Support Act].

11 (b) A child, during minority, may not challenge a determination or
12 establishment of parentage under this [Act] if:

13 (1) the challenged determination was based on genetic testing and this
14 fact is declared in the determination or is otherwise shown of record; or

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

17 (c) If the court is acting under circumstances that satisfies the jurisdictional
18 requirements of [Section 201 of the Uniform Interstate Family Support Act], in a
19 proceeding to dissolve a marriage the court is deemed to have determined parentage
20 of a child if it:

21 (1) expressly identifies a child as a “child of the marriage,” “issue of the
22 marriage,” or similar words indicating that the husband is the father of the child; or

1 Subsection (d) binds state agencies to a parentage order. This is a minority
2 view; most States hold that since the state agency was not a party to the earlier suit,
3 it should not be bound to a prior decision. Roddy, supra. However, child support
4 observers urged the Drafting Committee to take the position that agencies be bound
5 because the State's right to sue is based on an assignment of rights from an
6 applicant. Therefore the State's interest is derivative of the applicants. If the
7 applicant is bound by the earlier order, then the State should also be bound.
8 Further, valuable state resources should not be spent relitigating the issue.

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

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ARTICLE 7
PARENTAGE BASED ON EQUITABLE ESTOPPEL

SECTION 701. COURT AUTHORIZED TO REFUSE GENETIC TESTING.

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

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

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

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

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

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

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

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

(5) the age of the child;

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

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

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

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

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

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

16 **Reporter’s Notes**

17 See “Paternity Litigation Involving Presumed Versus Putative Fathers:
18 Conflicting Right and Results” by Marilyn Ray Smith.

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ARTICLE 8
CHILD OF ASSISTED REPRODUCTION

SECTION 801. HUSBAND’S LIABILITY FOR ASSISTED REPRODUCTION. If a husband consents to assisted reproduction under Section

802, he is deemed to be the father of any child resulting from:

- (1) the artificial insemination of his wife;
- (2) providing his sperm to fertilize a donor’s eggs that are placed in the uterus of his wife; or
- (3) the implanting of an embryo in the uterus of his wife, whether the donated embryo is the result of separate donations of sperm and eggs or the donated embryo is created for the purpose of assisted reproduction.

Reporter’s Notes

Subsection (a) is derived from UPA Section 5. Subsection (b) is derived from USCACA Sections 1 and 2

SECTION 802. CONSENT TO ASSISTED REPRODUCTION.

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

- (1) a husband and wife;
- (2) the donor of sperm if other than the husband;
- (3) the donor of eggs if other than the wife; and
- (4) a woman who intends to be the gestational mother on behalf of the intended parents.

- 1 (b) The consent must:
- 2 (1) be in writing; and
- 3 (2) be signed by the participant.
- 4 (c) Failure to comply with subsection (b) does not:
- 5 (1) preclude treating the husband as the father of a child born to his wife
- 6 if the wife and husband treat the child as their child in all respects and jointly
- 7 represent their parenthood to others; or
- 8 (2) confer rights or impose duties on a donor as a mother or father of the
- 9 child if the donation of reproductive material was made under circumstances
- 10 demonstrating an intent that the assisted reproduction would not impose parental
- 11 responsibility upon anyone other than the husband and wife.

12 **SECTION 803. LIMITATION ON HUSBAND’S DISPUTE OF**

13 **PATERNITY.**

- 14 (a) The husband of a woman who, through assisted reproduction, gives
- 15 birth to a child during marriage is deemed the father of the child unless:
- 16 (1) within two years after learning of the birth of the child he commences
- 17 a proceeding to contest his presumed parentage; and
- 18 (2) the court determines he did not consent to the assisted reproduction.
- 19 (b) The limitation of subsection (a) applies to a marriage declared invalid
- 20 after the assisted reproduction.

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

4 **Reporter's Notes**

5 This section is derived from USCACA Section 3

6 **SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.**

7 An individual who dies before implantation of an embryo or before a child is
8 conceived from assisted reproduction using the individual's eggs or sperm is not a
9 parent of the resulting child unless the decedent has consented in writing to continue
10 the donation posthumously.

11 **Reporter's Notes**

12 This section is derived from USCACA Section 4

13 **SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE.** If a

14 husband and wife dissolve their marriage before implantation of an embryo or before
15 a child is conceived by use of the husband's sperm, his earlier consent to assisted
16 reproduction is void.

17 **Reporter's Notes**

18 This section is entirely new, but is derived from the policy stated in Section
19 804. If there is to be no liability for a child conceived after death, then there should
20 be no liability for a child conceived or implanted after divorce.

21 **SECTION 806. PARENTAL STATUS OF DONOR.**

1 (a) A donor of sperm is not the father of a child conceived through assisted
2 reproduction if the mother is unmarried at the time of conception unless the donor
3 and the mother of the child acknowledge the donor's paternity pursuant to Article 3.

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

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ARTICLE 9
GESTATIONAL AGREEMENT

Introductory Note

This article revisits the subject of gestational agreements, last dealt with by the Conference in 1989 with the adoption of the Uniform Status of Children of Assisted Conception Act. That Act offered two alternatives on the subject: to regulate such activities through a judicial review process or to void such contracts. Only two States have adopted either version of the Act; Virginia chose to regulate such agreements and North Dakota opted to void such agreements. Meanwhile the advance of science and wider acceptance of such reproductive arrangements led the Drafting Committee to conclude that it is time to accept the reality of such agreements and to recognize that judicial review is the only viable process to regulate such activity.

This article is not to be interpreted as an endorsement of gestational agreements, but rather that to ignore them is unrealistic. Childless couples will choose surrogacy over traditional adoption in hopes of having a child of their own genetic making. Voiding or criminalizing gestation agreements will cause individuals to find friendly legal forums for the process. This raises a host of legal issues. For example, a couple returning to their home State with a child born as the consequence of a gestational agreement entered into in a State recognizing that agreement presents a full faith and credit question if their home State has a strong public policy declaring gestational agreements to be void. One thing is clear; a child born under these circumstances is surely entitled to have its status clarified.

In the opinion of the Drafting Committee entering into a gestational agreement is a significant legal act and should be reviewed by a court, just as an adoption is be reviewed. This draft closely follows the 1989 Act, but departs in two important ways. First, the draft provides that unapproved gestational agreements are void, thereby providing a strong incentive for the participants to consent to judicial scrutiny. Second, persons who enter into unapproved gestational agreements and later refuse to adopt the resulting child may be liable for support of the child. Assisted reproduction facilities and numerous other entities are involved in the subject. Internet sites are omnipresent promoting the activity. Currently States take a variety of approaches to the issue: eleven States allow such agreements by statutes or caselaw. Six States void such agreements by statute, while eight States statutorily ban compensation to the gestational mother. Two States have judicially refused to recognize such agreements. See Appendix to Article 9, *infra*.

1 **SECTION 901. GESTATIONAL AGREEMENT AUTHORIZED.**

2 (a) A gestational mother, her husband if she is married, a donor or the
3 donors, and an intended parent may enter into a written agreement in which:

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

7 (2) the intended parent becomes the parent of the child under Section
8 904.

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

11 (c) A gestational agreement is enforceable only if approved pursuant to
12 Section 902.

13 **SECTION 902. APPROVAL OF GESTATIONAL AGREEMENT.**

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

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

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

6 (1) the court has jurisdiction and all parties have submitted to its
7 jurisdiction under subsection (e) and have agreed that the law of this State governs
8 all matters arising under this [Act] and the agreement;

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

12 (3) the [relevant child-welfare agency] has made a home study of the
13 intended parent and the gestational mother and a copy of the report has been filed
14 with the court;

15 (4) the intended parent, the gestational mother, and the gestational
16 mother's husband, if she is married, meet the standards of fitness applicable to
17 adoptive parents in this State;

18 (5) all parties have voluntarily entered into the agreement and understand
19 its terms, nature, and meaning, and the effect of proceeding;

20 (6) the gestational mother has had at least one pregnancy and delivery
21 and her bearing another child will not pose an unreasonable health risk to the unborn

1 child or to the physical or mental health of the gestational mother, and this finding is
2 supported by medical evidence;

3 (7) a report of the results of any medical or psychological examination or
4 genetic screening agreed to by the parties or required by law has been filed with the
5 court and made available to the parties;

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

9 (9) the agreement will not be substantially detrimental to the interest of
10 any of the affected individuals.

11 (c) Unless otherwise provided in the gestational agreement, all costs of the
12 court, attorney's fees, and other costs and expenses associated with the proceeding
13 must be assessed against the intended parent.

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

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

1 **SECTION 903. TERMINATION OF GESTATIONAL AGREEMENT.**

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

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

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

12 **SECTION 904. PARENTAGE UNDER APPROVED GESTATIONAL**

13 **AGREEMENT.** Upon birth of a child to a gestational mother, the intended parent
14 shall furnish to the facility in which the birth takes place a certified copy of the order
15 of the court issued under Section 902. The facility shall notify the [department of
16 vital statistics] of the birth of the child and request that agency:

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

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

19 **SECTION 905. GESTATIONAL AGREEMENT: MISCELLANEOUS**
20 **PROVISIONS.**

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

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

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

9 (d) A child born to a gestational mother within 300 days after assisted
10 reproduction pursuant to an approved gestational agreement is presumed to result
11 from the assisted reproduction. The presumption is conclusive as to all individuals
12 who:

13 (1) have notice of the birth; and

14 (2) do not commence a timely proceeding in the court that issued the
15 order.

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

19 **SECTION 906. UNAPPROVED GESTATIONAL AGREEMENT.**

20 (a) An agreement not approved by a court pursuant to Section 902 is void.

1 (b) If there is a birth pursuant to an unapproved agreement, the gestational
2 mother is the mother of a child resulting from assisted reproduction, and paternity of
3 the child shall be determined under this [Act].

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

8 (d) This section applies to an agreement that:

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

10 (2) was expressly disapproved by the court before the birth of the child.

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ARTICLE 10
MISCELLANEOUS PROVISIONS

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

SECTION 1002. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to an individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

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

SECTION 1004. [REPEAL]. The following acts and parts of acts are repealed:

- (1) [Uniform Act on Paternity, 1960]
- (2) [Uniform Parentage Act, 1973]
- (3) [Uniform Putative and Unknown Fathers Act, 1989]
- (4) [Uniform Status of Children of Assisted Conception Act, 1989]

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

APPENDIX TO SECTION 307

**METHODOLOGY FOR RESCINDING
ACKNOWLEDGMENT OF PATERNITY**

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

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

New Jersey
New Mexico

Fully-administrative process
Quasi-administrative process (limited court involvement)

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

APPENDIX TO SECTION 401

PATERNITY REGISTRY STATUTES

(As of May 3, 1999)

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

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

APPENDIX TO SECTION 504

TABLE OF PATERNITY PRESUMPTION STATUTES *

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

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

State	Statute	Probability of Paternity	Prior Probability	Probability of Exclusion	Combined Paternity Index	Rebuttable or Conclusive	Rebutted by
Missouri	§ 210.822	98	0.5			R	C & C
Montana	§ 40-5-234	95				R	P of E
Nebraska	§ 43-1415	99				R	
Nevada	§ 126.051	99				R	C & C
New Hampshire	§ 522:4	97				R	C & C
New Jersey	§ 9:17-48	99***				C	
New Mexico	§ 40-11-5	99				R	
New York	§ 418	95				R	
North Carolina	§ 8-50.1	97				R	C & C
North Dakota	§ 14-17-04	95				R	C & C
Ohio	§ 3111.03	99				R	C & C
Oklahoma	§ 504	98				C	
Oklahoma	§ 504	95				R	C & C
Oregon	§ 416.430				99	R	
Pennsylvania	§ 4343	99				R	C & C
Rhode Island	§ 15-8-3	97				C	
South Carolina	§ 20-7-956	95				R	
South Dakota	§ 25-8-58	99				R	
Tennessee	§ 24-7-112	95				R	
Texas	§ 160.110			99		R	
Utah	§ 78-45a-10				150	R	Second Genetic test
Vermont	§ 308	98				R	
Virginia	§ 20-49.1	98				R	
Washington	§ 26.26.040	98				R	C & C
West Virginia	§ 48A-6-3	98				C	
Wisconsin	§ 767.48	99				R	
Wyoming	§ 14-2-109	97				R	C & C

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

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

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

APPENDIX TO SECTION 604

STATUTE OF LIMITATIONS FOR PATERNITY ESTABLISHMENT

State	Statute of Limitation
Alabama	Age 19
Alaska	Age 18
Arkansas	None
Arizona	Age 18
California	None (IV-D agency to age 18)
Colorado	Age 21
Connecticut	Age 18
Delaware	Age 18
D.C.	Age 21
Florida	Age 22
Georgia	None
Hawaii	Age 21
Idaho	Age 18
Illinois	Age 20
Indiana	Not available
Iowa	Age 19
Kansas	Age 18
Kentucky	Age 18
Louisiana	Age 19
Massachusetts	None
Maine	Age 18
Maryland	Age 18
Michigan	None
Minnesota	Age 18
Missouri	Age 21
Mississippi	Age 18
Montana	Age 18
Nebraska	Age 18
Nevada	Age 18
N. Hampshire	Age 19
New Jersey	Age 23
N. Mexico	Age 21
New York	Age 21
N. Carolina	Age 18
N. Dakota	Age 21
Ohio	Age 23

Oklahoma
Oregon

Age 19
None

State	Statute of Limitation
Pennsylvania	Age 18
Puerto Rico	Age 22
Rhode Island	None
S. Carolina	Age 18
S. Dakota	None
Tennessee	Age 19
Texas	Age 20
Utah	Age 18
Vermont	Age 21
Virgin Is.	None
Virginia	Age 18
Washington	Age 18
W. Virginia	Age 21
Wisconsin	Age 19
Wyoming	Age 21

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

APPENDIX TO SECTION 605

**STANDING TO CHALLENGE THE
MARITAL PRESUMPTION OF PATERNITY**

State	Standing	Statutes/Case
Alabama	No	ALA. CODE § 26-17-6(a) (1992) Ex Parte Presse, 554 So. 2d 406 (Ala. 1989)
Alaska		Unknown
Arizona	Yes	ARIZ. REV. STAT. § 25-803 (Supp. 1997) <i>R.A.J. v. L.B.V.</i> , 817 P.2d 37 (Ariz. Ct. App. 1991)
Arkansas	Yes	<i>Willmon v. Hunter</i> , 761 S.W. 2d 924 (Ark. 1988)
California	No	CAL. FAM. CODE ANN. § 7630 (West 1998)
Colorado	Yes	<i>R. McG. v. J.W.</i> , 615 P.2d 666 (Colo. 1988)
Connecticut	Yes	<i>Weldenbacher v. Duclos</i> , 661 A.2d 988 (Conn. 1995)
Delaware	Yes	DEL. CODE ANN. tit. 13, § 805(a) (1993)
Florida	No	<i>G.F.C. V. S.G.</i> , 686 So. 2d 1382 (Fla. Dist. Ct.App. 1997)
Georgia	Yes	GA. CODE ANN. § 19-7-43 (1991)
Hawaii	Yes	HAW. REV. STAT. ANN. § 584-6(a) (Michie 1997)
Idaho	Yes	<i>Johnson v. Studley-Preston</i> , 812 P.2d 1216 (Idaho 1991)
Illinois	Yes	750 ILL. COMP. STAT. 45/7 (West 1993)
Indiana	Yes	IND. CODE § 31-14-4-1 (1997) <i>K. S. v. R. S.</i> , 669 N.E. 2d 399 (Ind. 1996)
Iowa	Yes	<i>Callender v. Skiles</i> , No. 276/98-308 (Iowa 1999)
Kansas	Yes	<i>D.B.S. by & through P.S. v. M.S.</i> , 888 P.2d 875 (Kan. App. 1995)
Kentucky	No	KY. REV. STAT. ANN. § 406.021 (Banks-Baldwin)
Louisiana	Yes	<i>Green v. Green</i> , 666 So.2d 1192 (La. Ct. App. 1995)
Maine	Yes	ME. REV. STAT. ANN. tit. 19-A, § 1562 (West 1998)
Maryland	Yes	<i>Turner v. Whisted</i> , 607 A.2d 935 (Md. 1992)
Massachusetts	Yes	<i>C.C. v. A.B.</i> , 550 N.E.2d 365 (Mass. 1990)
Michigan	No	MICH. COMP. LAWS ANN. § 722.714 (West Supp. 1997)

Hauser v. Reilly, 536 N.W. 2d 865 (Mich. Ct. App. 1995)

State	Standing	Statutes/Case
Minnesota	No	MINN. STAT. § 257.57 <i>Market v. Behm</i> , 394 N.W. 2d 239 (Minn. Ct. App. 1986)
Mississippi	Yes	<i>Ivy v. Harrington</i> , 644 So. 2d 1218 (Miss. 1994)
Missouri		Unknown
Montana	Yes	MONT. CODE ANN. § 40-6-107(1) (1997)
Nebraska	Yes	NEB. REV. STAT. § 43-1411 (1993)
Nevada	Yes	NEV. REV. STAT. § 126.071 (1997)
New Hampshire	Yes	N.H. REV. STAT. ANN. § 168-A:2 (Supp. 1997)
New Jersey	Yes	<i>M.F. v. N.H.</i> , 599 A.2d 1297 (N.J. Super. Ct. App. Div. 1991) (Subject to a “best interest” finding)
New Mexico	Yes	N.M. STAT. ANN. § 40-11-7 (Michie 1994)
New York		Unknown
North Carolina	Unclear	N.C. GEN. STAT. § 49-16 (1984)
North Dakota	No	<i>B.H. v. K.D.</i> , 506 N.W. 2d 368 (N.D. 1993)
Ohio	Yes	OHIO REV. CODE ANN. § 3111.04 (Banks-Baldwin Supp. 1998) <i>Crawford County Child Support Enforcement Agency v. Sprague</i> , 1997 WL 746770 (Ohio Ct. App. 1997)
Oklahoma	Yes	OKLA. STAT. ANN. tit. 10, § 3 (West 1998)
Oregon	Yes	OR. REV. STAT. § 109.125 (1)(e) (1997)
Pennsylvania	No	<i>Brinkley v. King</i> , 701 A.2d 176 (Pa. 1997)
Rhode Island	Unclear	R.I. GEN. LAWS § 15-8-2 (1996)
South Carolina	Yes	S.C. CODE ANN. § 20-7-952 (Lawyers Co-op 1985)
South Dakota		Unknown
Tennessee	Yes	TENN. CODE ANN. § 36-2-305 (Supp. 1996)
Texas	Yes	TEX. FAM. CODE ANN. § 160.110 (West 1997) <i>In re J.W.T.</i> , 872 S.W.2d 189 (Tex. 1994)
Utah	Yes	UTAH CODE ANN. § 78-45a-2 (1996)
Vermont		Unknown
Virginia	Yes	VA. CODE ANN. § 20-49-2 (Michie 1995)
Washington	Yes	<i>McDaniels v. Carlson</i> , 738 P.2d 254 (Wash. 1987)
West Virginia	Yes	<i>State ex. rel. Roy Allen S. v. Stone</i> , 474 S.E.2d 554 (W. Va. 1996)

State	Standing	Statutes/Case
Wisconsin	Yes	WIS. STAT. § 767.45 (1993) <i>In re Paternity of C.A.S.</i> , 468 N.W.2d 719 (Wis. 1991)
Wyoming	No	WYO. STAT. ANN. § 14-2-104 (Michie 1997) <i>A v. X, Y, & Z</i> , 641 P.2d 1222 (Wyo. 1982)

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

APPENDIX TO ARTICLE 9

TABLE OF GESTATIONAL AGREEMENT LAWS*

State	Status of Gestational Agreements	Statute
Alabama	Specifically “not covered” in prohibition against payment to parent for adoption of child	Code of Ala. § 26-10A-34 (1997)
Arizona	No, by statute	Ariz. Rev. Stat. Ann. § 25-218 (1996)
Arkansas	Yes, by statute	Ark. Code Ann. § 9-10-201 <i>et seq.</i> (Michie 1995)
California	Yes, by case law	<i>Marriage of Balduzzi</i> , 72 Cal. Rptr. 2d 280 (1998)
D.C.	No, by statute	D.C. Code Ann. §§ 16-401, 402 (1996)
Florida	Yes, by statute	Fla. Stat. Ann. §§ 63.212, 742.15 (West 1997)
Indiana	No, by statute	Ind. Code Ann. § 31-8-2.1 <i>et seq.</i> (Burns Cum. Supp. 1994)
Iowa	Yes, by statute	Iowa Code Ann. § 710.11 (West 1997)
Kentucky	No, compensation prohibited	Ky. Rev. Stat. Ann. § 199.590 (Michie/Bobbs-Merrill 1995)
Louisiana	No, compensation prohibited	La. Rev. Stat. Ann. § 2713 (West 1991)
Massachusetts	No, by case law	<i>RR v. MH</i>
Michigan	No, compensation prohibited	Mich. Comp Laws Ann. § 722.853 <i>et seq.</i> (West 1997)
Nebraska	No, compensation prohibited	Neb. Rev. Stat. § 25-21, 200 (1989)
Nevada	Yes, by statute	Nev. Rev. Stat. Ann. §§ 126.045, 126.051 (Michie 1995)
New Hampshire	Yes, by statute	N.H. Rev. Stat. Ann. § 168-B:16 <i>et seq.</i> (1996)
New Jersey	No, by case law	<i>Baby M</i> , 537 A.2d 1227 (1988)

New Mexico

No, compensation prohibited

Cite not available

State	Status of Gestational Agreements	Statute
New York	No, compensation prohibited	N.Y. Dom. Rel. Law § 121 <i>et seq.</i> (McKinney 1997)
North Dakota	No, by statute	N.D. Cen. Code § 14-18-05 (1991)
Ohio	Yes, by case law	<i>Balsito v. Clark</i> , 644 N.E.2d 760
Tennessee	Yes, by statute (vague)	Tenn. Code Ann. 36-1-102 (1996)
Utah	No, compensation prohibited	Utah Code Ann. § 76-7-204 (1997)
Virginia	Yes, by statute	Va. Code Ann. § 20-160 (Michie 1997)
Washington	No, compensation prohibited	Wash. Rev. Code Ann. § 26.26.210 (West 1997)
West Virginia	Yes, by statute	W. Va. Code § 48-4-16 (1997)
Wisconsin	Yes, by statute	Wis. Stat. Ann. § 69.14 (West 1997)

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

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

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