



UNIFORM PARENTAGE ACT (2017)

-Summary-

The Uniform Parentage Act (UPA) provides states with a uniform legal framework for establishing parent-child relationships. UPA (2017) updates prior versions of the UPA, last revised in 2002 (UPA (2002)).

The UPA was originally promulgated in 1973 (UPA (1973)). UPA (1973) removed the legal status of illegitimacy and provided a series of presumptions used to determine a child's legal parentage. When the UPA was revised in 2002, it augmented and streamlined UPA (1973). UPA (2002) added provisions permitting a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court and added a paternity registry. UPA (2002) also included provisions governing genetic testing and rules for determining the parentage of children whose conception was not the result of sexual intercourse. Finally, UPA (2002) included a bracketed (optional) Article 8 to authorize surrogacy agreements and establish the parentage of children born under the agreements.

UPA (2017) makes **five major changes** to the UPA. First **(1)**, UPA (2017) seeks to ensure the equal treatment of children born to same-sex couples. UPA (2002) was written in gendered terms, and its provisions presumed that couples consist of one man and one woman. In *Obergefell v. Hodges* (2015), the United States Supreme Court held that laws barring marriage between two people of the same sex are unconstitutional. In *Pavan v. Smith* (2017), the Court reaffirmed that conclusion applies to rules regarding children born to same-sex spouses. After these decisions, parentage laws that treat same-sex couples differently than different-sex couples are likely unconstitutional. UPA (2017) updates the Act to address this potential constitutional infirmity by amending provisions so that they address and apply equally to same-sex couples. These amendments include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction articles to make them gender-neutral. In addition to helping states comply with the Constitution, these updates provide clarity to these families and avoid unnecessary litigation.

Second **(2)**, UPA (2017) includes a provision for the establishment of a de facto parent as a legal parent of a child. Most states recognize and extend at least some parental rights to people who have functioned as parents to children but who are unconnected to those children through either biology or marriage. New Section 609 provides a statutory process for the recognition of such individuals as parents.

Third **(3)**, UPA (2017) includes a provision that precludes establishment of a parent-child relationship by the perpetrator of a sexual assault that resulted in the conception of the child. The U.S. Congress adopted the Rape Survivor Child Custody Act in 2015, which provides incentives for states to enact "a law that allows the mother of any child that was conceived by rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court shall grant upon clear and convincing evidence of rape." New Section 614 provides language to implement the federal law.

Fourth **(4)**, UPA (2017) updates the surrogacy provisions to reflect developments in that area, making them more consistent with current surrogacy practice and recently adopted statutes in several states.

Finally **(5)**, UPA (2017) includes a new article – Article 9 – that addresses the right of children born through assisted reproductive technology to access medical and identifying information regarding any gamete providers. While Article 9 does not require disclosure of the identity of a gamete donor, it does require that donors be asked whether they would like their identity disclosed. It also requires a good faith effort to disclose nonidentifying medical history information regarding the gamete donor upon request.

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