

DRAFT

FOR DISCUSSION ONLY

REVISION OF UNIFORM PARENTAGE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

SEPTEMBER, 1998

REVISION OF UNIFORM PARENTAGE ACT

With Prefatory Note and Comments

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1 **ARTICLE 1.**

2 **GENERAL PROVISIONS**

3
4 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the "Uniform Parentage
5 Act."

6
7 **SECTION 102. DEFINITIONS.** In this [Act]:

8 (1) "Assisted reproduction" means a pregnancy resulting by means other than
9 sexual intercourse, including:

10 (A) artificial insemination;

11 (B) donation of an egg;

12 (C) donation of an embryo;

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

14 (E) intracytoplasmic injection of sperm.

15 (2) "Child" means an individual whose parentage may be determined under
16 this [Act].

17 (3) "Commencement" means the filing of the first pleading in a proceeding to
18 determine parentage.

19 (4) "Determination of parentage" means the legal establishment of the
20 parent-child relationship under this [Act].

21 (5) "Donor" means an individual who produces eggs or sperm used for
22 assisted reproduction, whether or not a payment is made, but the term does not include a
23 woman who gives birth to a resulting child.

24 (6) "Ethnic or racial group" means a recognized group with which an
25 individual identifies, or with which is identified to be in his or her ancestry.

26 (7) "Genetic testing" means testing that analyzes genetic markers in order to
27 determine parentage, including:

28 (A) analysis of specimens of deoxyribonucleic acid; and

29 (B) analysis of specimens that identify the presence or absence of
30 common blood-group antigens, red blood cell antigens, human leukocyte antigens, serum
31 enzymes, serum proteins, or red cell enzymes.

- 1 (8) “Man” means a male individual of any age.
- 2 (9) “Parent” of a child means:
- 3 (A) the mother;
- 4 (B) an adoptive mother or father; and
- 5 (C) a man who is:
- 6 (i) presumed to be the father as provided in Section 203;
- 7 (ii) acknowledged to be the father as provided in Article 3; or
- 8 (iii) determined to be the father by a tribunal of competent
- 9 jurisdiction.
- 10 (10) “Parent-child relationship” means the legal relationship between a child
- 11 and a parent of the child.
- 12 (11) “Paternity index” means the ratio of the chance that the mother and a
- 13 man of the alleged father’s composition and ethnic or racial group conceived the child
- 14 compared with the chance that the mother and a random man conceived the child.
- 15 (12) “Presumed father” means a man who, by operation of law, is considered
- 16 to be the father of a child under the factual circumstances described in Section 201 unless he
- 17 is affirmatively determined not to be the father of that child under other provisions of this
- 18 [Act] or a similar law.
- 19 (13) “Probability of paternity” means the measure, for the ethnic or racial
- 20 group of the alleged father, of the probability that the individual in question is the genetic
- 21 father of the child, expressed as a percentage incorporating the paternity index and a prior
- 22 probability.
- 23 (14) “Putative father” means a man who claims to be, or is alleged to be, the
- 24 genetic father, or the possible genetic father, of a child, but whose paternity has not been
- 25 determined. The term does not include:
- 26 (A) a man presumed to be the father under Section 203;
- 27 (B) a man whose parental rights have been terminated or declared
- 28 not to exist; or
- 29 (C) a male donor.

1 (15) "State" means a state of the United States, the District of Columbia,
2 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject
3 to the jurisdiction of the United States. The term includes an Indian tribe.

4 (16) "Specimen" means a sample of blood, buccal cells, bone, hair, or other
5 body tissue or fluid taken from an individual to be genetically tested. The term includes any
6 other physical component of the individual which the testing laboratory determines is
7 appropriate for testing.

8 (17) "Support enforcement agency " means a public official or agency
9 authorized to seek:

10 (i) enforcement of support orders or laws relating to the duty of
11 support;

12 (ii) establishment or modification of child support;

13 (iii) determination of parentage; or

14 (iv) to locate obligors or their assets.

15 (18) "Tribunal" means a court, administrative agency, or quasi-judicial entity
16 authorized to determine parentage.

17 *Reporter's Note*

18 *Source: subsection (2) Uniform Child Custody Jurisdiction and Enforcement Act*
19 *§ 102(2); subsections (6) and (7) Ohio Rev Code Section 3111.09 (E); subsection (15),*
20 *UIFSA § 101(20).*
21

22 **SECTION 103. APPLICATION OF [ACT].**

23 (a) This [Act] governs every proceeding in which the parentage of a child is at issue.

24 (b) This [Act] does not create, enlarge, or diminish the rights and duties of a parent
25 as established by [applicable state law].

26 *Reporter's Note*

27 *This section makes clear that the Act applies not just in so-called "paternity*
28 *suits," but in all disputes of parentage, whether by divorce, paternity, probate, or any*
29 *other proceeding.*
30

31 **SECTION 104. CHOICE OF LAW.** The provisions of this [Act] apply to all
32 proceedings to determine parentage before a tribunal in this State.

33 *Reporter's Note*

34 *This section simplifies choice of law principles; the local tribunal always applies*
35 *local law; derived from UIFSA § 303.*

1
2 **SECTION 105. TRIBUNAL OF STATE.** The [court, administrative agency, quasi-
3 judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

4 *Reporter's Note*

5 *Source: UIFSA § 102.*
6

7 **ARTICLE 2**

8 **PARENT-CHILD RELATIONSHIP**

9
10 **SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.**

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

13 (1) the woman's having given birth to the child [except as otherwise provided in
14 Article 9];

15 (2) a determination of the woman's maternity by a tribunal of competent
16 jurisdiction; [or]

17 (3) an adoption of the child by the woman; [or]

18 [(4) her status as an intended parent of a child born pursuant a surrogate
19 agreement as provided in Article 9.]

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

21 (1) a presumption of the man's paternity of the child as provided in Section 203;

22 (2) the man's jointly signing with the mother an unchallenged acknowledgment
23 of paternity as provided in Article 3;

24 (3) a determination of the man's paternity by a tribunal of competent
25 jurisdiction;

26 (4) an adoption of the child by the man; [or]

27 (5) the man's consent to assisted reproduction as provided in Article 8; [or]

28 [(6) his status as an intended parent of a child born pursuant to a surrogate
29 agreement as provided in Article 9.]

30 *Reporter's Note*

31 *Derived from § 4 U.P.A. (1973), and expanded to include all possible bases of the*
32 *parent-child relationship.*
33

1 **SECTION 202. STATUS OF CHILD.**

2 (a) A child whose status as a child is declared or negated by this [Act] is the child of
3 his or her parents as established under this [Act].

4 (b) A child born to parents who are not married to each other shall be entitled to the
5 same rights and protections of the law as all other children.

6 (c) Unless superseded by later events forming or terminating a parent-child
7 relationship, the status of parent-child relationship declared or negated by this [Act] as to a
8 given individual and a child is for all purposes, including:

9 (1) custody, visitation, and support;

10 (2) intestate succession;

11 (3) probate law exemptions, allowances, or other protections for children in a
12 parent's estate; and

13 (4) determining eligibility of the child or its descendants to share in a donative
14 transfer from any person as a member of a class determined by reference to the relationship.

15 *Reporter's note*

16 *Derived from USCACA § 10; Massachusetts Gen. Laws ch 209C, § 1*

17
18 **SECTION 203. PRESUMPTION OF PATERNITY BY PROOF OF MARRIAGE**

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

20 (1) he and the child's mother are married to each other and the child is born
21 during the marriage;

22 (2) he and the child's mother have been married to each other and the child is
23 born within 300 days after the marriage is terminated by death, annulment, declaration of
24 invalidity, or divorce, [or after a decree of separation];

25 (3) before the child's birth, he and the child's mother attempted to marry each
26 other in apparent compliance with law, although the attempted marriage is, or could be,
27 declared invalid; and:

28 (A) the child is born during the attempted marriage; or

29 (B) within 300 days after its termination by divorce, annulment,
30 declaration of invalidity, or death;

1 (4) after the child's birth, he and the child's mother have married, or attempted
2 to marry, each other in apparent compliance with law, although the attempted marriage is,
3 or could be, declared invalid, and:

4 (A) he has acknowledged his paternity of the child in a writing filed with
5 the [appropriate tribunal or state agency responsible for maintaining birth records];

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

8 (C) he is obligated to support the child under a written voluntary promise
9 or by order of the tribunal.

10 (b) A father-child relationship established by this section may be contested only as
11 provided in Article 6.

12 **ARTICLE 3**

13 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

14
15
16 **SECTION 301. ACKNOWLEDGMENT OF PATERNITY AUTHORIZED.** The
17 mother and the putative father of a child may jointly sign an acknowledgment of paternity
18 as provided in this article.

19 *Reporter's Note*

20 *Source: 42 U.S.C. Section 666(a)(5)(C)(i).*

21
22 **SECTION 302. FORM OF ACKNOWLEDGMENT OF PATERNITY.** The
23 [appropriate state agency] shall prepare a form entitled “acknowledgment of paternity” to
24 comply with this article. The form must include provisions for rescission of the
25 acknowledgment.

26 *Reporter's Note*

27 *Source: 42 U.S.C. Section 666 (a)(5)(C)(i); 42 U.S.C. Section 666 (a)(D)(ii).*
28 *Alaska Statutes, Chapter 18.50. Vital Statistics Act; California Family Code Section 7574.*
29 *Items (a)(1)-(7) are prescribed as the minimum requirements for an acknowledgment by*
30 *the O.C.S.E., Federal Register, January 23, 1998.*

31
32 **SECTION 303. EFFECT OF ACKNOWLEDGMENT OF PATERNITY.** An
33 acknowledgment of paternity signed by both the mother and the putative father after the
34 effective date of this [Act] is a legal determination of paternity, subject to the right of a

1 signatory to rescind the acknowledgment and the right of a signatory to challenge the
2 determination as provided in this article.

3
4 **SECTION 304. DENIAL OF PATERNITY.** If the acknowledgment of paternity states
5 that there is a presumed father of the child as provided in Section 203, the presumed father
6 must sign a denial of paternity for the acknowledgment to be effective.

7 *Reporter's Note*

8 *Source: 42 U.S.C. Section 666(a)(5)(C)(i).*

9
10 **SECTION 305. FORM OF DENIAL OF PATERNITY.** The [appropriate state
11 agency] shall prepare a form entitled “denial of paternity” to comply with this article.

12
13 **SECTION 306. EFFECT OF DENIAL OF PATERNITY.** A denial of paternity signed
14 by a presumed father and filed as a part of, or in conjunction with, an acknowledgment of
15 paternity signed by the mother and the putative father is a legal determination of:

16 (1) the paternity of the putative father; and

17 (2) the nonpaternity of the presumed father, subject to the right of a signatory to
18 rescind the acknowledgment of paternity.

19
20 **SECTION 307. ADDITIONAL PROVISIONS RELATING TO FORMS.**

21 (a) Failure of a form to list all rights and duties of parents or the alternatives to or
22 legal consequences of not signing the form is not a basis for voiding the acknowledgment
23 of paternity or denial of paternity if the tribunal determines that:

24 (1) the form for acknowledgment of paternity substantially informs the
25 signatory that the putative father, by signing the acknowledgment of paternity with the
26 consent of the mother:

27 (A) becomes the father of the child;

28 (B) is under a legal duty to support the child; and

29 (C) may be granted rights of visitation; or

30 (2) the form for denial of paternity form substantially informs the signatory
31 that the presumed father, by signing the denial of paternity with the consent of the mother:

32 (A) denies that he is the genetic father of the child;

1 (B) is not under a legal duty to support the child; and
2 (C) may not be granted rights of visitation.

3 (b) An acknowledgment and denial of paternity may be contained in a single
4 document and may be signed in counterparts.

5 (c) An acknowledgment and denial of paternity may be signed before the birth of the
6 child.

7

8 **SECTION 308. VALIDITY OF FORMS.** The validity of an acknowledgment or denial
9 of paternity that met the requirements of state law at the time that the document was signed
10 is not affected by changes to the form occurring after the date of signing.

11

12 **SECTION 309. RESCISSION OF ACKNOWLEDGMENT OF PATERNITY.**

13 (a) An acknowledgment of paternity by a putative father may be rescinded by a
14 signatory within the earlier of:

15 (1) 60 days; or

16 (2) the date of the first hearing before a tribunal to determine an issue
17 relating to the child, including a proceeding to establish a support order in which the
18 signatory is a party.

19 (b) After the 60-day period for rescission:

20 (1) an acknowledgment of paternity may be challenged in a tribunal only on
21 the basis of fraud, duress, or material mistake of fact if a proceeding is commenced not
22 later than [two years] after the time for rescission has expired;

23 (2) the burden of proof is on the challenger; and

24 (3) the legal responsibility, including child support, of a signatory arising
25 from the acknowledgment is not suspended during the challenge, except for good cause
26 shown.

27 (c) the rescission must be in writing, signed by the rescinding signatory, and
28 witnessed or notarized.

29

Reporter's Note

30

Source: 42 U.S.C. Section 666(a)(5)(D)(ii).

31

32 **SECTION 310. PROCEDURE FOR RESCISSION OF ACKNOWLEDGMENT.**

33

1 (a) A rescission of an acknowledgment of paternity must be filed with the [state agency
2 for maintaining birth records] within the time limits prescribed in Section 309 to effectuate
3 a rescission of the acknowledgment.

4 (b) Upon timely filing of a rescission, the [state agency for maintaining birth records]
5 shall mail a copy of the rescission to each individual who may have signed the
6 acknowledgment, denial or rescission. The copy must be sent to the address shown in the
7 acknowledgment, denial or rescission.

8
9 **SECTION 311. RATIFICATION BARRED.** A tribunal is not permitted or required to
10 ratify an unchallenged acknowledgment of paternity.

11 *Reporter's Note*

12 *Source: 42 U.S.C. Section 666(a)(5)(E).*

13
14 **SECTION 312. AGENCY TO PROVIDE SERVICES.** The support enforcement
15 agency shall offer services for the voluntary establishment of paternity to:

16 (1) hospitals; and

17 (2) other organizations participating in this State's program for voluntary
18 establishment of paternity.

19 *Reporter's Note*

20 *Source: 42 U.S.C. Section 666(a)(5)(C)(iii)(I),(II).*

21
22 **SECTION 313. FULL FAITH AND CREDIT.** A tribunal of this State must give full
23 faith and credit to an acknowledgment of paternity signed in another state if the
24 acknowledgment has been signed in apparent compliance with the provisions of that the
25 other State's law.

26 *Reporter's Note*

27 *Source: 42 U.S.C. Section 666(a)(5)(C)(iv).*

28
29 **ARTICLE 4**

30 **PUTATIVE-FATHER REGISTRY**

31
32 **SECTION 401. ESTABLISHMENT OF REGISTRY.** The putative-father registry is established in
33 the [appropriate state agency].

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SECTION 402. IDENTIFICATION OF KNOWN FATHER. The existence of the putative-father registry does not relieve the [petitioner] of the duty to identify the putative father of the child and notify the man of a proceeding affecting the parent-child relationship.

SECTION 403. NOTICE OF INTENT TO CLAIM PATERNITY.

(a) Except as otherwise provided in subsection (b), a man claiming to be the putative father of a child shall file a notice of intent to claim paternity with the putative-father registry on a form provided by the registry. This form must be signed under penalty of perjury.

(b) A man is not required to register in the putative-father registry if he:

- (1) is a presumed father of a child;
- (2) has been determined to be the father of a child by a tribunal of competent jurisdiction; or
- (3) has signed an acknowledgment of paternity pursuant to Article 3.

SECTION 404. EFFECT OF FAILURE TO FILE NOTICE OF INTENT. A man who fails to file a notice of intent to claim paternity of a child may not assert a claim of paternity with respect to the child unless:

- (1) registration is not required under Section 403;
- (2) he registers within [30] days after birth of the child; or
- (3) he commences a proceeding to determine parentage before a tribunal has terminated his parental rights.

SECTION 405. FORM TO REGISTER CLAIM OF PATERNITY.

(a) The [appropriate state agency] shall prepare a form for registration of a putative father's claim of paternity with the registry to comply with this article.

(b) The putative-father registry shall make forms for registration available to:

- (1) hospitals and other facilities for giving birth in this State;
- (2) licensed child-placing agencies;

- 1 (3) county and district clerks;
- 2 (4) municipal clerks;
- 3 (5) justices of the peace;
- 4 (6) jails;
- 5 (7) prisons; and
- 6 (8) facilities [for the detention of juvenile offenders].

7 (c) A notice of intent to claim paternity may be filed before the birth of the child and
8 must be filed no later than [30] days after the birth of the child.

9 (d) If the putative-father registry has received notice of an order terminating the rights
10 of a putative father from the clerk of a tribunal of competent jurisdiction, the registry shall:

11 (1) refuse to enter the notice of intent to claim paternity filed by the man into the
12 registry; and

13 (2) notify the man that his rights have been terminated by the order.

14 (e) A man who files a notice of intent to claim paternity with the putative-father
15 registry shall promptly notify the registry in writing of a change in the information
16 registered.

17

18 **SECTION 406. KNOWLEDGE OF POSSIBILITY OF PREGNANCY.**

19 (a) A person who has sexual intercourse with a person of the opposite sex is deemed
20 to have knowledge that sexual intercourse can result in the woman's pregnancy.

21 (b) Ignorance of a pregnancy does not excuse the legal consequences of failing to
22 register.

23

24 **SECTION 407. FURNISHING OF INFORMATION; CONFIDENTIALITY.**

25 (a) If the mother's address has been provided, the [the agency that maintains the
26 putative-father registry] shall send her a copy of the notice of a man's intent to claim
27 paternity.

28 (b) Information contained in the putative-father registry is confidential and may be
29 released on request only to:

30 (1) a tribunal;

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

1 (3) an authorized agency;

2 (4) a licensed child-placing agency;

3 (5) an attorney at law in this State who is participating or assisting in a
4 proceeding affecting the parent-child relationship, including termination of the parent-child
5 relationship or a proceeding for the adoption of the child that the registrant claims to have
6 fathered;

7 (6) the putative-father registry of another state; or

8 (7) a person the [agency that maintains the putative-father registry] considers to
9 have a legitimate interest in the information.

10 (c) The putative-father registry must furnish information by electronic data exchange
11 or any other available means to [appropriate state agency and other appropriate agencies, if
12 any].

13
14 **SECTION 408. PENALTY FOR RELEASING INFORMATION.** A person commits
15 a [appropriate level] misdemeanor if the person intentionally and unlawfully releases
16 information from the putative-father registry to the public or makes other use of the
17 information in violation of this article.

18
19 **SECTION 409. CONTEST OF REGISTRANT'S PATERNITY.**

20 (a) The mother may contest the claim of paternity on a form provided by the putative-
21 father registry not later than [30] days after receiving notice of a man's intent to claim
22 paternity.

23 (b) On receipt of a mother's contest of a registration claiming paternity of her child,
24 the [agency that maintains the putative-father registry] shall immediately notify the
25 registrant of the denial and of his right to commence a proceeding to determine paternity.

26
27 **SECTION 410. REVOCATION OF CLAIM OF PATERNITY.** A man who files a
28 notice of intent to claim paternity may revoke the notice at any time by sending the
29 putative-father registry a written statement signed by the registrant and witnessed or
30 notarized. The revocation must include a declaration that, to the best of the registrant's
31 knowledge and belief:

1 (1) the registrant is not the father of the named child; or

2 (2) a tribunal has determined paternity and a person other than he has been
3 determined to be the father of the child.

4
5 **SECTION 411. CERTIFICATE OF SEARCH OF REGISTRY.** On request, the
6 [agency that maintains the putative-father registry] shall furnish a certificate attesting to the
7 results of a search of the registry regarding a notice of intent to claim paternity to:

8 (1) a tribunal;

9 (2) the mother of a child;

10 (3) an authorized agency;

11 (4) a licensed child-placing agency;

12 (5) an attorney licensed to practice law in this State who is participating or
13 assisting in a termination of parental rights or an adoption proceeding; or

14 (6) any other person the [agency] considers to have a legitimate interest in the
15 information.

16
17 **SECTION 412. REMOVAL OF REGISTRANT'S NAME.** If a tribunal determines
18 that a registrant is not the father of a particular child, the tribunal shall order the putative-
19 father registry to remove the registrant's name from the registry.

20
21 **SECTION 413. FEES FOR REGISTRY.**

22 (a) A fee may not be charged for filing a notice of intent to claim paternity of a child
23 or a contest of a registrant's paternity.

24 (b) [Except as otherwise provided in subsection (c), the] The putative-father registry
25 may charge a fee for making a search of the registry and for furnishing a certificate.

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

28
29 **SECTION 414. ADMISSIBILITY OF REGISTRY INFORMATION.** In a
30 proceeding under this [Act], information maintained in the putative-father registry is

1 admissible for any purpose, including the establishment of the registrant's paternity or a
2 proceeding to terminate parental rights.

3
4 **ARTICLE 5**
5 **GENETIC TESTING**

6
7 **SECTION 501. APPLICATION OF ARTICLE.**

8 (a) This article applies to genetic testing performed under this [Act] of an individual
9 who:

10 (1) submits voluntarily to testing; or

11 (2) is ordered by a tribunal or by the support enforcement agency to be
12 tested.

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

15 (1) with the consent of the mother and the presumed father; or

16 (2) in a manner described in subsection (a).

17 *Reporter's Note*

18 *Subsection (a) is intended to avoid problems encountered in Catawba v. Khatod, 479*
19 *S.E. 2d 270 (N.C. App 1997) and Yokley v. Townsend, 849 S.W. 2d 722 (Mo. App. W.D.*
20 *1993).*

21 *Subsection (b) is designed to deter unilateral self-testing of a parent and a child.*
22

23 **SECTION 502. ORDER FOR TESTING.**

24 (a) The tribunal or support enforcement agency shall order the parties and the child to
25 submit to genetic testing as soon as feasible if the request for testing is supported by the
26 sworn statement of a party:

27 (1) alleging paternity and setting forth facts establishing a reasonable possibility
28 of the requisite sexual contact between the parties; or

29 (2) denying paternity and setting forth facts establishing a reasonable possibility
30 of the nonexistence of sexual contact between the parties.

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

- 1 (1) the American Association of Blood Banks, or a successor to its functions;
2 (2) the American Society for Histocompatibility and Immunogenetics, or a
3 successor to its functions; or
4 (3) an accrediting body designated by the U.S. Secretary of Health and Human
5 Services.

6 (c) A testing laboratory contracted by this State's or another state's support
7 enforcement agency to perform genetic testing is qualified testing laboratory.

8 (d) If testing is requested before birth of the child, the tribunal shall order the testing
9 as soon as medically practical after birth.

10 (e) A tribunal or support enforcement agency may not order the mother to undergo
11 collection of a specimen from the womb.

12 (f) If more than one man is a possible genetic father of the child, the tribunal may
13 simultaneously order all the men to submit to genetic testing.

14 (g) If a party defaults, or if there is an admission of paternity, the parties may waive
15 or a tribunal may dispense with genetic testing.

16 (h) The tribunal may refuse to order genetic testing as provided in this section only if
17 the tribunal determines that:

- 18 (1) Article 7 applies to the proceeding; and
19 (2) the presumed father is the father of the child.

20 *Reporter's Note*

21 *Subsection (a) and (b) conform to the mandates of 42 U.S.C. § 666(a)(5)(B)(i)(I)(II)*
22 *and § 666(a)(5)(F)(i)(I)(II).*

23 *The Secretary of Health and Human Services has not officially designated any*
24 *accreditation bodies as referenced in subsection (b)(3). However, Information*
25 *Memorandum O.C.S.E.-IM-97-03 of April 10, 1997, from the Deputy Director of O.C.S.E.*
26 *identifies the American Association of Blood Banks and American Society for*
27 *Histocompatibility and Immunogenetics as meeting this requirement.*
28

29 **SECTION 503. REQUIREMENTS OF TESTING.**

30 (a) The tribunal or support enforcement agency shall order that genetic testing be
31 conducted in a method necessary to yield:

- 32 (1) at least a [95] % probability of paternity, using a prior probability of 0.50,
33 that the man is the genetic father of the child; or

1 (2) an exclusion of the man as the genetic father of the child.

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

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

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

9 (2) the name of the person collecting the specimens;

10 (3) the place and date of the collection of the specimens;

11 (4) the name of person receiving the specimens in the testing laboratory; and

12 (5) the date the specimens are received.

13 (d) Based on the information provided by the individuals, the testing laboratory shall
14 determine the ethnic or racial group to be used in the selection of frequencies for use in the
15 calculations. If there is disagreement as to the testing laboratory's choice:

16 (1) the objecting individual shall notify the testing laboratory within [30] days
17 after receipt of the test to recalculate the probability of paternity using a different ethnic or
18 racial group that that used by the laboratory; or the objection is waived;

19 (2) the party objecting to the testing laboratory's initial choice shall provide the
20 requested frequencies, if the frequencies are not available to the testing laboratory for the
21 ethnic or racial group requested, compiled in a manner recognized by accrediting bodies, or
22 obtain another testing laboratory to make its own calculations;

23 (3) the testing laboratory may use its own statistical estimate, if the matter is not
24 resolved as to which ethnic or racial group is appropriate, and, if available, statistics for any
25 other ethnic or racial group requested; and

26 (4) a party or other individual who has been tested may require that additional
27 testing be conducted, if after a recalculation using a different ethnic or racial group, the
28 probability of paternity does not meet the standard of probability of paternity as provided in
29 subsection (a).

1 *Subsections (c) and (d) are designed to avoid evidentiary problems encountered in*
2 *Dotson v. Petty, 359 S.E. 2d 403 (Va. App. 1987) Most jurisdictions apparently do not*
3 *have this problem. See: State v. Brashear, 841 S.W. 2d 754 (Mo. App. 1992); DeLaGarza*
4 *v. Salazar, 851 S.W. 2d 380 (Tex.App.--San Antonio 1993, no writ).*
5

6 **SECTION 504. GENETIC TESTING; PRESUMPTION.**

7 (a) If the results of genetic testing disclose that a man has a greater than [95] %
8 probability of paternity of the child tested, using a prior probability of 0.50, a presumption
9 of that man's paternity is created. The presumption may be rebutted only as provided in
10 subsection (b).

11 (b) A genetic test establishing a presumption of paternity as provided in subsection
12 (a), may be rebutted only by a second genetic test meeting the requirements of this Article
13 which:

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

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

16 (c) If another man is identified by a second genetic test as a possible father of the child
17 other than identical twins as provided in Section 509, the tribunal shall order both men to
18 submit to additional testing that complies with the requirements of this Article.

19 (d) If at the preliminary conference or final hearing no evidence of a second genetic
20 test is presented to rebut the presumption of paternity established under subsection (a), the
21 tribunal shall issue a final order determining the man to be the father of the child.

22 (e) If the tribunal finds the genetic testing fails to either show a [95]% probability of
23 paternity or an exclusion of the presumed father or putative father, the tribunal shall set the
24 proceeding for final hearing.

25 (f) Subject to a party's right to additional testing as provided in Section 506, the
26 tribunal shall dismiss the proceeding with prejudice if it finds that genetic testing excludes a
27 man as the father of the child.

28 *Reporter's Note*

29 *Subsection (e) is designed to avoid situations such as those found in Cable v.*
30 *Anthou, 449 Pa. Super. 553, 674 A.2d 732, appeal granted, 546 Pa 140, 683 A.2d 290*
31 *(1996) and In re Paternity of Bratcher, 551 N.E.2d 1160 (Ind. App. 1 Dist. 1990).*
32

33 **SECTION 505. COSTS OF TESTING.**

34 (a) The cost of initial genetic testing must be paid:

- 1 (1) by the support enforcement agency in a proceeding commenced by that
2 agency;
- 3 (2) by the individual who made the request;
- 4 (3) as agreed upon by the individuals; or
- 5 (4) as ordered by a tribunal.

6 (b) The tribunal shall order reimbursement from the individual who contests the
7 existence or nonexistence of paternity if the result of the genetic test is contrary to the
8 position of the contestant.

9 *Reporter's Note*

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

12

13 **SECTION 506. ADDITIONAL TESTING.** The tribunal or the support enforcement
14 agency shall order additional testing on the request, and advance payment, for the testing of
15 an individual contesting the result of the original testing.

16 *Reporter's Note*

17 *Source: U.P.A. § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(II).*

18

19 **SECTION 507. TESTING WHEN NOT ALL PERSONS AVAILABLE.**

20 (a) If the mother of the child is not available for genetic testing, the child and the
21 putative father or the presumed father may, by order of a tribunal, submit to genetic testing
22 as authorized by this article.

23 (b) If the putative father or the presumed father is not available for testing, a tribunal
24 may, and upon a request of a party shall, order the following persons to submit to genetic
25 testing by a laboratory:

- 26 (1) the parents of the presumed or putative father;
- 27 (2) brothers and sisters of the presumed or putative father;
- 28 (3) other children and their mothers of the presumed or putative father; and
- 29 (4) other persons considered appropriate by the testing laboratory.

30

1 **SECTION 508. DECEASED INDIVIDUAL.** For good cause shown, a [tribunal] may
2 order genetic testing of a deceased individual for the purpose of determining the parentage
3 of a child.

4 *Reporter's Note*

5 *The tribunal with jurisdiction to determine parentage may not have jurisdiction to*
6 *order disinterment of a deceased individual in some states. If so, proper authority should*
7 *be substituted in this section.*

8
9 **SECTION 509. IDENTICAL TWINS.**

10 (a) If identical twin putative fathers are named in a proceeding to determine
11 parentage, the tribunal shall order both twins to submit to genetic testing.

12 (b) If neither twin is excluded by genetic testing, and both twins exceed a [95] %
13 probability of paternity, the tribunal shall rely on nongenetic evidence to determine which
14 man, between the identical twins, is the genetic father.

15 (c) For purposes of this section, “twin” means an individual of a multiple birth of any
16 number.

17 *Reporter's Note*

18 *See Illinois Dept. of Public Aid v. Whitworth, 652 N.E.2d 458 (Ill. App. 4 Dist.*
19 *1995).*

20
21 **ARTICLE 6**

22 **PROCEEDING TO DETERMINE PARENTAGE**

23
24 **PART 1**

25 **NATURE OF PROCEEDING**

26
27 **SECTION 601. PROCEEDING AUTHORIZED.** A proceeding to determine the
28 parentage of a child is a civil action governed by:

29 (1) the rules of civil procedure; and

30 (2) this [Act].

31

1 **SECTION 602. STANDING TO MAINTAIN PROCEEDING.** Subject to Sections
2 604 and 605, a proceeding to determine the existence or nonexistence of a parent-child
3 relationship may be maintained by:

- 4 (1) a child;
- 5 (2) the mother;
- 6 (3) the presumed father of the child;
- 7 (4) a man who has acknowledged himself to be the genetic father as provided in
8 Article 3;
- 9 (5) a man alleging that he is the father of the child;
- 10 (6) the support enforcement agency [and other authorized governmental entity];
- 11 (7) an authorized adoption agency or licensed child-placing agency; or
- 12 (8) the representative authorized by law to replace an individual entitled to
13 maintain a proceeding who is deceased, incapacitated, or a minor.

14 *Reporter's Note*

15 *Source: UPA (1973) § 6.*
16

17 **SECTION 603. NECESSARY PARTIES; MANDATORY JOINDER.**

18 (a) The following individuals shall be joined as parties on the filing of a proceeding to
19 determine parentage:

- 20 (1) each parent as to whom the parent-child relationship has not been
21 terminated;
- 22 (2) a putative father, unless;
 - 23 (A) an affidavit of [waiver of claim of paternity of a child signed by the
24 putative father] is attached to the [petition]; or
 - 25 (B) service is not required under Article 4;
- 26 [(3) the child.]

27 (b) A person, governmental entity, adoption agency, or licensed child-placing agency,
28 which has asserted an interest in the child must be joined as parties to a proceeding to
29 determine parentage..
30

31 **SECTION 604. LIMITATION; CHILD HAVING NO PRESUMED FATHER.**

1 (a) A proceeding to determine parentage of a child having no presumed father may be
2 commenced at any time during the lifetime of the child, even after the child becomes an
3 adult.

4 (b) This section applies to a child for whom an earlier proceeding was dismissed
5 because a statute of limitation of less than 18 years after the birth of the child was then in
6 effect.

7 *Reporter's Note*

8 *Source: UPA (1973) §§ 6, 7.*
9

10 **SECTION 605. LIMITATION; CHILD HAVING PRESUMED FATHER.**

11 (a) Except as otherwise provided in subsections (b) and (c) and Article 7, a
12 proceeding seeking to declare the nonexistence of a presumed father-child relationship
13 must be commenced not later than [two years] after the child's birth.

14 (b) A proceeding seeking to declare the nonexistence of the father-child relationship
15 between a child and the presumed father may be commenced at any time if the tribunal
16 determines that:

17 (1) the husband and mother of the child did not cohabit with each other or
18 engage in sexual intercourse during the time of probable time of conception; and

19 (2) the husband has not created a father-child relationship with the child.

20 (c) The tribunal shall dismiss a proceeding commenced more than [two years] after
21 the child's birth unless the putative father seeking to establish his paternity of a child who
22 has a presumed father demonstrates that:

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

24 (2) the child's presumed father has not resided in the same household as the
25 child in a father-child relationship or has not created a father-child relationship with the
26 child through his other actions;

27 (3) the child's presumed father is not seeking a determination by the tribunal
28 naming himself as the father of the child; and

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

30 (5) no other man has signed an acknowledgment of paternity as provided in
31 Article 3.

Reporter's Note

Source: UPA (1973) § 6.

SECTION 606. EFFECT OF EARLIER DETERMINATION OF PATERNITY.

(a) Except as otherwise provided in this subsection (c), a determination of parentage in an action filed under this [Act] or in a suit to dissolve a marriage is binding on all persons if the determination:

(1) was issued consistent with the jurisdictional requirements of Section 201, Uniform Interstate Family Support Act; and

(2) expressly declares the parentage of the child.

(b) An order issued in a proceeding to dissolve a marriage which identifies a child born to the wife as a “child of the marriage,” “issue of the marriage,” or similar words indicating that the husband is the father of the child is a determination of parentage.

(c) A determination of parentage made under this [Act] is subject to review by the tribunal that made the determination if:

(1) a proceeding contesting the determination is commenced not later than [two] years after the determination was made; and

(2) the individual contesting the determination did not receive notice of the proceeding and did not otherwise participate in the proceeding.

(d) A determination of parentage made under this [Act] is not binding on the child, unless:

(1) genetic testing formed the basis of the earlier determination and this fact is declared in the determination or is otherwise shown of record; or

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

(e) an earlier determination of parentage made consistently with this section is binding upon the support enforcement agency and any other state agency.

(f) A nonparty may:

(1) claim benefit of an earlier determination of parentage in another proceeding commenced by or against the nonparty; and

1 (2) may not maintain a proceeding attacking an earlier determination of
2 parentage except as provided in this section.

3
4 **SECTION 607. PERSONAL JURISDICTION.**

5 (a) A tribunal of this State having jurisdiction to determine parentage may exercise
6 personal jurisdiction over a nonresident individual, or the individual's guardian or
7 conservator, if the conditions prescribed in Section 201, Uniform Interstate Family Support
8 Act are met.

9 (b) Lack of jurisdiction over a party does not preclude a tribunal from making a final
10 determination as to those parties over whom the tribunal has personal jurisdiction.

11
12 **SECTION 608. CHOICE OF LAW.** A tribunal shall apply the law to this State to
13 determine the parent-child relationship, which does not depend on:

14 (1) the place of the child's birth; or

15 (2) the child's residence, past or present.

16 *Reporter's Note*

17 *Source: UIFSA § 201; UPA (1973) § 8(b).*

18
19 **SECTION 609. VENUE.** A proceeding to determine paternity shall be commenced in the
20 [county] of this State in which:

21 (1) the child resides or is found;

22 (2) if the child does not reside in this State, the county where the respondent
23 resides or is found; or

24 (3) a suit for probate of the presumed or putative father's estate has been or
25 may be commenced.

26 *Reporter's Note*

27 *Source: UPA (1973) § 8(c).*

28
29 **SECTION 610. JOINDER OF ACTIONS.** A proceeding to determine parentage may
30 be joined with an action for divorce, annulment, legal separation, separate maintenance,
31 custody, visitation, support, termination of parental rights, adoption, or a proceeding for
32 probate or administration of an estate.

Reporter's Note

Source: UPA (1973) § 8(2).

SECTION 611. PROCEEDING STAYED UNTIL AFTER BIRTH. A proceeding may be commenced under this article before or after the birth of the child. The proceeding may not be concluded until after the birth, but service of process, the taking of depositions to perpetuate testimony and the collection of specimens for genetic testing may be pursued at any time after the proceeding is commenced.

SECTION 612. REPRESENTATION OF CHILD.

(a) The child is [not] a necessary party to a proceeding under this article.

(b) It is rebuttably presumed that in a final hearing on the merits to determine parentage the interests of the child are adequately represented by the party bringing the proceeding to determine parentage.

(c) If the tribunal finds that a party does not adequately represent the interests of the child to the proceeding, the tribunal shall appoint an [attorney ad litem] to represent the child.

(d) The child must be represented by an [attorney ad litem] appointed by the tribunal in a settlement agreement, dismissal, or nonsuit, unless the tribunal:

(1) finds on the record that the interests of the child are adequately represented by a party to the proceeding, or are not adverse to that party; and

(2) approves the settlement agreement, dismissal, or nonsuit.]

Reporter's Note

This section rejects UPA (1973) § 9.

SECTION 613. HEARINGS AND RECORDS; CONFIDENTIALITY.

(a) A temporary or final hearing under this article must be held in a closed session without admittance of persons other than those necessary to the proceeding.

(b) Except as provided in subsection (c), all papers and records pertaining to the proceeding are not subject to public inspection, including the permanent record of the tribunal and of the support enforcement agency.

(c) Public inspection may be made of the:

(1) final order in the proceeding;

1 (2) papers and records in the proceeding:

2 (A) with consent of the parties; or

3 (B) upon order of the tribunal for good cause shown.

4 *Reporter's Note*

5 *Source: UPA (1973) § 20.*

6
7 **SECTION 614. EFFECT OF PRIVATE AGREEMENT.** An agreement between a
8 presumed or putative father and the mother or child does not bar a proceeding under this
9 article unless the agreement is approved by a tribunal of competent jurisdiction.

10 *Reporter's Note*

11 *Source: UPA (1973) § 13(a)(2); UPUFA § 2(b); see Section 644.*

12
13 **SECTION 615. MOTHER-CHILD RELATIONSHIP.** A woman claiming maternity
14 or a party having standing under Section 602 may maintain a proceeding to determine the
15 existence or nonexistence of a mother-child relationship. As far as practicable, the
16 provisions of this [Act] relating to father-child proceedings apply to a proceeding to
17 determine the mother-child relationship.

18 [Sections 616-620 reserved for expansion.]

19
20 **PART 2**

21 **ADMISSION OF PATERNITY**

22
23 **SECTION 621. ADMISSION OF PATERNITY AUTHORIZED.** A party may admit
24 to the paternity of a child by signing an admission of paternity or by admitting paternity at
25 an appearance or hearing in a proceeding to determine parentage of the child.

26 *Reporter's Note*

27 *Source: 42 U.S.C. 666 (a)(5)(D)(i)(II)*

28
29 **SECTION 622. ORDER BASED ON ADMISSION.** The tribunal shall issue an order
30 determining the child to be the genetic child of the putative father if the tribunal finds that:

31 (1) the admission of paternity was made as provided in this article; and

32 (2) the facts stated in the admission are true.

33 [Sections 623-630 reserved for expansion.]

1
2 **PART 3**

3 **PRELIMINARY CONFERENCE**

4
5 **SECTION 631. CONDUCT OF PRELIMINARY CONFERENCE.**

6 (a) After completion of genetic testing, the tribunal shall order the parties to appear at
7 a preliminary conference, in person or by attorney.

8 (b) At the preliminary conference, a written report of a genetic-testing expert is
9 admissible as evidence of the truth of the matters it contains, unless within [30] days after
10 receipt a party objects to the report and cites specific grounds for exclusion. The
11 admissibility of the report is not affected by:

12 (1) the report having resulted from an agreement of the parties or an order of the
13 tribunal; or

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

15 (c) If a genetic-testing report is objected to no later than[30] days after receipt of the
16 report, the objecting party may call one or more genetic-testing experts to testify in person,
17 by telephone, or by deposition about the expert's findings and opinions.

18 (d) Testimony at a preliminary conference is governed by the rules of evidence as in
19 other civil cases.

20 (e) Evidence admitted at the preliminary conference is a part of the record of the case.

21 *Reporter's Note*

22 *Source: 42 U.S.C. § 666(a)(5)(F)(ii); UPA (1973) § 10, § 13.*

23
24 **SECTION 632. TEMPORARY ORDERS.** The tribunal may issue an order in a
25 proceeding under this article, including an order for temporary support of the child, if the
26 person ordered to pay support:

27 (1) is a presumed father;

28 (2) is a putative father petitioning to have his paternity determined or admitting
29 paternity in pleadings filed with the tribunal;

30 (3) is shown to be the father through genetic testing under Article 5; or

31 (4) is shown to be the father of the child by clear and convincing evidence.

32 *Reporter's Note*

1 *Source: UIFSA § 401.*

2
3 **SECTION 633. CONSEQUENCES OF REFUSING GENETIC TESTING.**

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

5 (b) If the petitioner refuses to submit to genetic testing, whether the refusing party is
6 the mother or a presumed or putative father of the child, the tribunal may dismiss the
7 proceeding, without prejudice.

8 (c) If the respondent refuses to submit to genetic testing as ordered by a tribunal, the
9 tribunal may issue a final determination of parentage against that party on proof sufficient to
10 issue a final order on default.

11 (d) If the mother or a presumed or putative father refuses to submit to testing for
12 parentage, the fact of refusal may be introduced as evidence as provided in this article.

13 *Reporter's Note*

14 *Source: UPA (1973) § 10.*

15 [Sections 634-640 reserved for expansion]

16
17 **PART 4**

18 **FINAL HEARING AND ORDER**

19
20 **SECTION 641. EVIDENCE AT FINAL HEARING.**

21 (a) A written report of a genetic-testing expert is admissible at the final hearing in the
22 same manner as provided in Section 631.

23 (b) If the results of genetic testing are objected to within [30] days after receipt of the
24 most recent genetic test, a party may call a genetic-testing expert to testify at the final
25 hearing in person, by telephone, or by deposition, at the expense of the person objecting to
26 the results.

27 (c) If the tribunal finds that genetic testing shows the possibility of a putative father's
28 paternity, the tribunal shall admit this evidence if offered at the final hearing.

29 (d) The party seeking to establish a putative father's paternity has the right to open
30 and close at final hearing.

1 (e) Copies of bills for genetic testing and for prenatal and postnatal health care of the
2 mother and child furnished to the adverse party not less than [10] days before the final
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

7 **SECTION 642. CONFLICTING CLAIMS OF PATERNITY; BURDEN OF PROOF**

8 (a) In a proceeding in which there are conflicting claims of paternity, the party
9 contesting the presumed father's paternity, has the burden of proof to rebut the status of the
10 presumed father, by clear and convincing evidence.

11 (b) If two or more claims of paternity are in conflict, the weightier evidence of
12 paternity is that of a man who is shown by genetic testing to be the genetic father under
13 Article 5.

14 (c) A man alleged to be the father but who refuses to submit to genetic testing, has the
15 burden of proving that he is not the father of the child by clear and convincing evidence.

16 (d) If a claim of paternity is rebutted, the tribunal shall issue an order finding that the
17 man claiming to be the father of the child is not the father.

18 (e) The final hearing must be by the tribunal without a jury.

19 *Reporter's Note*

20 *Source: UPA (1973) § 14.*
21

22 **SECTION 643. COSTS AND FEES.**

23 (a) Except as otherwise provided in subsection (b), the tribunal may assess filing fees,
24 reasonable attorney's fees, genetic-testing fees, other costs, and necessary travel and other
25 reasonable expenses incurred in a proceeding under this article. Attorney's fees may be
26 taxed as costs and may be paid directly to the attorney, who may enforce the order in the
27 attorney's own name. Payment of child support has priority over fees, costs, and expenses.

28 (b) The tribunal may not assess fees, costs, or expenses against the support-
29 enforcement agency of this State or another state, except as provided under other law.

30 (c) The tribunal shall order the payment of costs and reasonable attorney's fees if the
31 tribunal determines that a final hearing was requested for delay.

32 *Reporter's Note.*

1 *Derived from UIFSA Section 313; UPA (1973) § 16.*

2 **SECTION 644. PRIVATE AGREEMENT TO PAY SUPPORT.**

3 (a) Subject to Section 614, a written agreement to pay child support arising out of a
4 putative father-child relationship does not require consideration and is enforceable
5 according to its terms.

6 (b) In the best interest of the child or the mother, the tribunal may, and upon the
7 payor's request shall, order the agreement to be kept in confidence and designate a person
8 or agency to receive and disburse child-support payments paid in performance of the
9 agreement.

10 *Reporter's Note*

11 *Source: UPA (1973) § 22.*
12

13 **SECTION 645. FINAL ORDER REGARDING PARENTAGE.**

14 (a) The tribunal shall issue a final order declaring whether a man claiming or claimed
15 to be the father is the genetic parent of the child.

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

17 (c) As appropriate, the final order must include provisions for custody, visitation, and
18 support as provided under other state law.

19 *Reporter's Note*

20 *Source: UPA (1973) § 15, 17.*
21

22 **SECTION 646. ORDER ON DEFAULT.** The tribunal may issue a final order of
23 parentage against a party, who, after service of process, fails to answer and wholly defaults.
24

25 **SECTION 647. EFFECT OF FINAL ORDER.** A final order determining that a man is
26 the genetic father of a child confirms or creates the parent-child relationship between the
27 father and the child as provided in Section 202.

28 *Reporter's Note*

29 *Source: UPA (1973) § 15.*
30

31 **ARTICLE 7**

32 **PARENTAGE BASED ON EQUITABLE ESTOPPEL**
33

1 **SECTION 701. TRIBUNAL AUTHORIZED TO REFUSE GENETIC TESTING.**

2 (a) On the motion of either the mother or the presumed father, a tribunal may deny
3 genetic testing of the mother, the child, and the presumed father if the tribunal determines
4 that:

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

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

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

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

13 (2) the length of time that the presumed father has assumed the role of father of
14 the child;

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

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

18 (5) the age of the child;

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

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

22 (8) other factors that may affect the equities involved in the potential disruption
23 of the father-child relationship between the child and the presumed father or the chance of
24 undeniable harm to the child.

25 (c) In a proceeding involving the application of this article, the child must be
26 represented by [an attorney] ad litem.

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

29

1 **SECTION 702. ORDER BASED ON EQUITABLE ESTOPPEL.** If a tribunal denies
2 genetic testing, the tribunal shall issue an order determining that the presumed father is the
3 genetic father of the child.

4 *Reporter's Note*

5 *See "Paternity Litigation Involving Presumed Versus Putative Fathers: Conflicting*
6 *Right and Results" by Marilyn Ray Smith.*

7
8 **ARTICLE 8**

9 **CHILD OF ASSISTED REPRODUCTION**

10
11 **SECTION 801. HUSBAND'S LIABILITY FOR ASSISTED REPRODUCTION.** If a
12 husband consents to assisted reproduction by his wife as provided in Section 802, the
13 husband is deemed to be the genetic father of any child resulting from.

14 (1) the artificial insemination of his wife;

15 (2) providing his sperm to fertilize a donor's egg placed in the uterus of his wife;

16 or

17 (3) the implanting of an embryo in the uterus of his wife, whether the donated
18 embryo is the result of separate donations of sperm and egg or the donated embryo is
19 created for the purpose of assisted reproduction.

20 *Reporter's Note*

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

23
24 **SECTION 802. CONSENT TO ASSISTED REPRODUCTION.**

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

27 (1) a husband and wife;

28 (2) the donor of sperm if other than the husband;

29 (3) the donor of an egg if other than the wife; and

30 (4) an unmarried woman.

31 (b) The consent must:

32 (1) specify the legal consequences of participating in the assisted reproduction;

33 (2) be in writing; and

1 (3) be signed by the participant.

2 (c) Failure to comply with subsection (b) does not:

3 (1) preclude treating the husband as the father of a child born to his wife if
4 the wife and husband treat the child as their child in all respects and jointly represent their
5 parenthood to others;

6 (2) grant a donor rights as a mother or father of the child if the donation of
7 reproductive material was made under circumstances demonstrating that assisted
8 reproduction without parental responsibility was intended; or

9 (3) impose duties on a donor as a mother or father of the child if the
10 donation of reproductive material was made under circumstances demonstrating that
11 assisted reproduction without parental responsibility was intended.

12
13 **SECTION 803. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.**

14 (a) The husband of a woman who gives birth to a child through assisted reproduction
15 is deemed the genetic father of the child unless:

16 (1) within two years after learning of the child's birth he commences a
17 proceeding to contest his presumed parentage; and

18 (2) the tribunal determines he did not consent to the assisted reproduction.

19 (b) The limitation of subsection (a) applies to a marriage declared invalid after the
20 assisted reproduction.

21 *Reporter's Note*

22 *This section is derived from USCACA Section 3*

23
24 **SECTION 804. PARENTAL STATUS OF DECEASED INDIVIDUAL.** An individual
25 who dies before implantation of an embryo or before a child is conceived from the
26 individual's egg or sperm, other than through sexual intercourse, is not a parent of the
27 resulting child.

28 *Reporter's Note*

29 *This section is derived from USCACA Section 4*

1
2 **SECTION 805. EFFECT OF DISSOLUTION OF MARRIAGE.** If a husband and wife
3 dissolve their marriage before implantation of an embryo or before a child is conceived by
4 use of the husband’s sperm, his earlier consent for assisted reproduction is void.

5 *Reporter’s Note*

6 *This section is entirely new, but is derived from the policy stated in Section 804. If*
7 *there is to be no liability for a child conceived after death, then there should be no liability*
8 *for a child conceived or implanted after divorce.*
9

10 **SECTION 806. PARENTAL STATUS OF DONOR TO UNMARRIED WOMAN.**

11 (a) A donor of sperm is not the father of a child conceived through assisted
12 reproduction if the mother is unmarried at the time of conception unless:

13 (1) the donor consents in writing to be treated in law as the father of the child;

14 or

15 (2) after birth of the child, the mother and the donor jointly treat the donor as
16 the father of the child and jointly represent this parentage to others.

17 (b) A donor of an egg or an embryo donor is not a parent of the child born by the
18 woman.

19 **ARTICLE 9**

20 **SURROGACY AGREEMENT**

21
22
23 **SECTION 901. DEFINITIONS. In this [Article]:**

24 (1) “Intended Parents” means a man and woman, married to each other, who
25 enter into an agreement under this [Act] providing that they will be the parents of a child
26 born to a surrogate through assisted reproduction using egg or sperm of one or both of the
27 intended parents.

28 (2) “Surrogate” means an adult woman who enters an agreement to bear a child
29 conceived through assisted reproduction for intended parents.

30
31 **[ALTERNATIVE A]**

32 **SECTION 902. AGREEMENT FOR SURROGACY AUTHORIZED.**

1 (a) The surrogate, her husband if she is married, and the intended parents may enter
2 into a written agreement in which:

3 (1) the surrogate, and her husband if applicable, relinquishes all rights and duties
4 as a parent of a child to be conceived through assisted reproduction; and

5 (2) the intended parents may become the parents of the child pursuant Section
6 905.

7 (b) If the agreement is not approved by a tribunal under Section 903 before
8 conception:

9 (1) the agreement is void;

10 (2) the surrogate is the mother of a resulting child; and

11 (3) the surrogate's husband:

12 (A) if a party to the agreement, is the father of the child;

13 (B) if not a party to the agreement, is not the father of the child unless he
14 is the genetic father; and

15 (4) if the surrogate is unmarried, paternity of the child is governed by Article 8.
16

17 **SECTION 903. APPROVAL OF AGREEMENT FOR SURROGACY.**

18 (a) The intended parents and the surrogate may file a petition in the [appropriate
19 tribunal] to approve an agreement for surrogacy if one of the is a resident of this State. The
20 surrogate's husband, if she is married, must join in the petition. A copy of the agreement
21 must be attached to the petition. The tribunal shall name a [guardian ad litem] to represent
22 the interests of a child to be conceived by the surrogate mother through assisted
23 reproduction and [shall] [may] appoint counsel to represent the surrogate.

24 (b) The tribunal shall hold a hearing on the petition and shall enter an order approving
25 the agreement for surrogacy, authorizing assisted reproduction for a period of 12 months
26 after the date of the order, declaring the intended parents to be the parents of a child to be
27 conceived through assisted reproduction pursuant to the agreement and discharging the
28 guardian ad litem and attorney for the surrogate, upon finding:

29 (1) the tribunal has jurisdiction and all parties have submitted to its jurisdiction
30 under subsection (e) and have agreed that the law of this State governs all matters arising
31 under this [Act] and the agreement;

1 (2) the intended mother is unable to bear a child or is unable to do so without
2 unreasonable risk to an unborn child or to the physical or mental health of the intended
3 mother or child, and the finding is supported by medical evidence;

4 (3) the [relevant child-welfare agency] has made a home study of the intended
5 parents and the surrogate and a copy of the report has been filed with the tribunal;

6 (4) the intended parents, the surrogate, and the surrogate's husband, if she is
7 married, meet the standards of fitness applicable to adoptive parents in this State;

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

10 (6) the surrogate has had at least one pregnancy and delivery and bearing
11 another child will not pose an unreasonable risk to the unborn child or to the physical or
12 mental health of the surrogate or the child, and this finding is supported by medical
13 evidence;

14 (7) all parties have received counseling concerning the effect of the surrogacy
15 by [a qualified provider of healthcare or social worker] and a report containing conclusions
16 about the capacity of the parties to enter into and fulfill the agreement has been filed with
17 the tribunal;

18 (8) a report of the results of any medical or psychological examination or
19 genetic screening agreed to by parties or required by law has been filed with the tribunal
20 and made available to the parties;

21 (9) adequate provision has been made for all reasonable health-care costs
22 associated with the surrogacy until the child's birth including responsibility for those costs
23 if the agreement is terminated pursuant to Section 904; and

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

26 (c) Unless otherwise provided in the agreement for surrogacy, all costs of the
27 tribunal, attorney's fees, and other costs and expenses associated with the proceeding must
28 be assessed against the intended parents.

29 (d) The tribunal shall conduct all proceedings under this section in camera. The
30 tribunal shall keep all records of the proceedings confidential and subject to inspection

1 under the same standards applicable to adoptions. At the request of any party, the tribunal
2 shall take steps necessary to ensure that the identities of the parties are not disclosed.

3 (e) The tribunal conducting the proceedings has exclusive and continuing jurisdiction
4 of all matters arising out of the surrogacy until a child is born after entry of an order under
5 this section is 180 days old.

6
7 **SECTION 904. TERMINATION OF THE SURROGACY AGREEMENT.**

8 (a) After entry of an order under Section 903, but before the surrogate becomes
9 pregnant through assisted reproduction, the tribunal for cause, or the surrogate, her
10 husband, or the intended parents may terminate the surrogacy agreement by giving written
11 notice of termination to all other parties.

12 (b) If the parties terminate the agreement, they shall file notice of the termination with
13 the tribunal. On receipt on the notice, the tribunal shall vacate the order entered under
14 Section 903. A party who fails to notify the tribunal of the termination of the agreement is
15 subject to appropriate sanctions by the tribunal.

16 (c) A surrogate who has provided an egg for the assisted reproduction pursuant to an
17 agreement approved under Section 903 may terminate the agreement by filing written
18 notice with the tribunal. After notice to the parties to the agreement and hearing that the
19 surrogate has voluntarily terminated the agreement, the tribunal shall vacate the order
20 entered under Section 903.

21 (c) The surrogate is not liable to the intended parents for terminating the agreement
22 pursuant to this section.

23
24 **SECTION 905. PARENTAGE UNDER APPROVED AGREEMENT FOR**
25 **SURROGACY.**

26 (a) If an agreement for surrogacy was approved under Section 903 and not
27 subsequently terminated, the terms of the agreement must be enforced by the tribunal.

28 (b) Upon birth of the child, the intended parents shall file a written notice with the
29 tribunal that a child has been born to the surrogate within 300 days after assisted
30 reproduction. The tribunal shall enter an order directing the [Department of Vital
31 Statistics]:

- 1 (1) to issue a new birth certificate naming the intended parents as parents; and
2 (2) to seal the original birth certificate in the records of the [Department of Vital
3 Statistics].
4

5 **SECTION 906. SURROGACY: MISCELLANEOUS PROVISIONS.**

6 (a) An agreement for surrogacy that is the basis of an order under Section 903 may
7 provide for the payment of consideration.

8 (b) An agreement for surrogacy may not limit the right of the surrogate to make
9 decisions regarding her health care or that of the embryo or fetus.

10 (c) After the entry of an order under Section 903, marriage of the surrogate does not
11 affect the validity of the order, and her husband's consent to the surrogacy agreement is not
12 required, nor is he the father of the resulting child.

13 (d) A child born to a surrogate within 300 days after assisted reproduction pursuant
14 to an order under Section 903 is presumed to result from the assisted reproduction. The
15 presumption is conclusive as to all persons:

16 (1) who have notice of the birth; and

17 (2) who do not commence an action in the tribunal that issued the order under
18 Section 903 within 180 days after notice of the birth.

19 (e) An action challenging the presumption of birth by assisted reproduction
20 established in subsection (d) must name the parties to the agreement and the child as
21 parties. The child must be represented by an [attorney ad litem].

22 [END OF ALTERNATIVE A]
23

24 **[ALTERNATIVE B]**

25 **SECTION 902. AGREEMENT FOR SURROGACY VOID.** An agreement in which a
26 woman agrees to become a surrogate or to relinquish her rights and duties as parent of a
27 child thereafter conceived through assisted reproduction is void. However, she is the
28 mother of a resulting child, and her husband, if a party to the agreement is the father of
29 child. If her husband is not a party to the agreement or the surrogate is unmarried, paternity
30 is governed by [Article] 8.

31 [END OF ALTERNATIVE B]

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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 a person 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]