Revised Uniform Parentage Act 2017

Suggested Amendments by Commissioner Harry L. Tindall and NCSEA Observer Diane Potts

Proposed amendment No. 1

Replace "action" with "proceeding" through the entire act.

Explanation for amendment

Consistent terminology. Nonsubstantive change.

Proposed Amendment No. 2

Section 102 is amended as follows:

(1) "Acknowledged ~~father~~ parent" means an ~~man~~ individual who has established a ~~father~~parent-child relationship under [Article] 3.

(6) "De facto parent" means an individual adjudicated to be a parent under Sections 205 and 6~~12~~09.

Explanation for amendment

Terminology and section reference corrections. Nonsubstantive changes.

Proposed amendment No. 3

Section 205 is amended by adding a new subsection (c) to read as follows:

(c) Only the individual seeking to be adjudicated a de facto parent may bring a proceeding under this section.

Explanation for amendment

De facto parentage has been recognized to create a parent-child relationship but the proceeding is always brought by an individual seeking to establish him or herself a de facto parent in order to maintain the relationship with the child. De facto parentage should never be imposed by a court on an individual who does not wish to be a de facto parent. Example: A stepparent has been a significant person in the life of the stepchild. The parties are now divorcing and the parent of the child seeks to impose parentage on the stepparent to establish a basis for child support. This would have a chilling effect on stepparents who in good faith have been an active participant in the child's life.

Proposed Amendment No. 4

Section 301 is amended as follows:

A woman who gave birth to a child and an individual claiming to be the alleged genetic father of the child[, an intended parent, or a presumed parent] may sign an acknowledgment of parentage with intent to establish the parentage of the child.

Explanation for amendment

The intent was to give states an option to open the acknowledgment process up to unmarried same sex intended or presumed parents. Note that if presumed parent is a bracketed state option, portions of section 302(a)(2)(A) and 302(b)(1) will have to be bracketed as well.

Proposed Amendment No. 5

Section 310 is amended as follows:

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

(c) Unless the party challenging the acknowledgment of parentage or denial of parentage makes a showing of good cause, during the pendency of a proceeding to ~~rescind or~~ challenge an acknowledgment of parentage or denial of parentage, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

Explanation for amendment

Because there is such a short time frame for rescission, the requirement that a signatory must institute a judicial proceeding to rescind was removed in section 308. This amendment is technical, reflecting that change.

Proposed amendment No. 6

Section 310(d) is amended as follows:

(d) ~~A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted in the same manner as a proceeding to adjudicate parentage under [Article] 6.~~ A proceeding to challenge an acknowledgment of parentage or denial or parentage must be conducted under Part 3 of Article 6. A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof.

Explanation for amendment

The current language refers to the entire Article 6, which could be interpreted as including the best interest factors in section 611. The intent of this language from the 2002 UPA was to ensure a judicial proceeding on whether the VAP should be vacated on fraud, duress, or material mistake of fact, not to open up the proceeding to a best interest determination.

Proposed Amendment No. 7

Section 503 is amended as follows:

(a) In a proceeding under this [act] to determine parentage, except as otherwise provided in this [article] and [Article] 6, a court shall order the child and other designated individuals to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

(1) alleging genetic parentage ~~and stating facts establishing a reasonable probability of genetic parentage~~; . . .

(g) change "Section 612(3)" to "Section 611"

Explanation for amendment

Genetic testing is extremely common in parentage establishment cases and there need not be anything else required such as facts regarding the sexual relationship for the court to order testing. It should be a matter of course.

Proposed Amendment No. 8

Section 603 is amended as follows:

(b) [Except as otherwise provided in subsection (a), the] petitioner must provide notice of the proceeding to adjudicate parentage to the following individuals:

~~(6) a known alleged genetic father.~~

Explanation for amendment

The 2002 UPA did not require joinder or notice to a known alleged genetic father, and there has been no reported published cases to our knowledge challenging the lack of notice. Further, a genetic father's constitutional rights (such as the right to notice of a parentage or adoption proceeding) derive from a relationship to the child – not simple biology. As the United States Supreme Court stated in Lehr v. Robertson, 463 U.S. 248, 261 (1983):

When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child his interest in personal contact with his child acquires substantial protection under the Due Process Clause. At that point it may be said that he acts as a father toward his

children. **But the mere existence of a biological link does not merit equivalent constitutional protection**.

(internal citations and quotations omitted) (emphasis added). There is a constitutionally important distinction between a non-existent versus developed parent-child relationship. *See, e.g.,* Note, 58 Neb. L. Rev. 610, 617 (1979) ("a putative father's failure to show a substantial interest in his child's welfare and to employ methods provided by state law for solidifying his parental rights . . . will remove from him the full constitutional protection afforded the parental rights of other classes of parents.").

Further, under sections 608 and 610 of the 2017 UPA, the alleged genetic father has 2 years to bring a proceeding to establish parentage even if there is an adjudicated, presumed, or acknowledged parent for the child. Therefore, he has a reasonable opportunity to assert his rights even *after* another individual establishes parentage and he often has an opportunity to assert his rights before that time. In other words, if the genetic father does not step forward to either establish his parental rights or establish a relationship to his child, he does not have a constitutionally protected right to notice of the parentage proceeding but he has standing after that parentage proceeding to assert his claim.

From the IV-D perspective, there are many cases where there are two or more possible genetic fathers. Many IV-D agencies and attorneys pursue the most likely genetic father first and then, if genetic tests excluded that man, the other possible genetic fathers. Under (b)(6) as written, it would require notice to all the alleged genetic fathers, which could cause unnecessary embarrassment and detriment to relationships for the birth mother.

Proposed Amendment No. 9

Section 607(1) is amended as follows:

(1) ~~Except as provided in Section 205, a~~ A proceeding to adjudicate the parentage of a child under this Section may be commenced: . . .

(2) ~~Except as otherwise provided in subsection (3), I~~in a proceeding to adjudicate the parentage of a child under this Section, the court shall issue an order establishing the parentage of the individual if the individual alleged to be the child's parent:

Explanation for amendment

Section 607 was changed to also exclude children with alleged de facto parents; instead, section 609 covers the timeframes for section 205 de facto parentage claims – rendering the reference here unnecessary. There is no subsection (3) for section 607.

Proposed Amendment No. 10

Section 611 is amended as follows:

(a) Except as otherwise provided in Article 8, in an action in which more than one individual other than the woman who gave birth seeks to be adjudicated to be a child's parent under this [act], the court shall determine parentage pursuant to the best interests of the child, based on the following factors:

(1) the age of the child;

(2) the length of time during which the individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and the individual;

(4) the harm to the child if the relationship between the child and the individual is not recognized; and

(6)5) other equitable factors arising from the disruption of the relationship between the child and the individuals or the likelihood of other harm to the child.

(5) (b) In an action in which an individual is challenging parentage based on the results of genetic testing, the court shall determinate parentage pursuant to the best interests of the child, based on the factors set forth in (a)(1) through (a)(5), and the following additional factors:

(i) (1) the facts surrounding the discovery that an individual might not be the genetic parent of the child;

(ii) (2) the length of time between the commencement of the action and the time that an individual was placed on notice that he might not be the genetic parent; and

~~(6) other equitable factors arising from the disruption of the relationship between the child and the individuals or the likelihood of other harm to the child.~~

Explanation for amendment

Because subsection (a) relates to proceedings in which more than one individual is seeking to be adjudicated, a new subsection (b) is necessary for proceedings involving a challenge to parentage – no substantive change.

Proposed amendment No. 11

Section 611 is amended by reversing the placement of options for subsection (b) to read as follows:

[(b) A court may not adjudicate that a child has more than two parents under this [act].]

[(b) A court may find that two or more individuals other than the woman who gave birth are parents under this [act] if the court finds that recognizing only two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any of the parents or individuals with a claim to parentage. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with an individual who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period.]

[(b) A court may not adjudicate that a child has more than two parents under this [act].]

Explanation for amendment

The two parent is prevailing rule of law and should be listed as the first option.