



## **Modern Divorce: Emerging Family Law Issues, Trends, and Legislations**

**June 10, 2019**

**11:20 a.m. – 12:20 p.m.**

**Connecticut Convention Center  
Hartford, CT**

**CT Bar Institute Inc.**

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## Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

*--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994*

# Faculty Biographies

## **Seth Conant:**

Attorney Conant has focused his entire career as an attorney on family law. To him, the most important part of his job is helping families move onto the next chapter of their lives efficiently and with dignity while always acknowledging the importance of nurturing their children.

Seth earned his undergraduate degree from Boston College and his J.D. from Western New England University School of Law. Seth is a member of the Hartford County, Connecticut and American Bar Associations. He is also a member of the Collaborative Divorce Lawyer Association, and has completed advanced training in collaborative divorce and mediation. Seth is a frequent presenter on divorce and other family law issues at continuing legal education seminars.

## **Meghan Freed:**

Meghan focuses her practice on family law. She is particularly experienced with alternative dispute resolution, including arbitration and mediation, is a graduate of Harvard Law School's Program on Negotiation, and has supplemented her formal legal education with advanced training in mediation. She is a member of the Connecticut Council for Non-Adversarial Divorce and the Collaborative Divorce Lawyer Association.

Meghan has been widely recognized for her leadership in the legal community. In 2013, Meghan was named a Hartford Business Journal 40 Under 40 winner, and a Connecticut Law Tribune New Leader of the Law. She was included on the New England Super Lawyers Rising Star list in 2013 for general litigation, in 2014 for her estate planning work and from 2015 – present for her family law work. In 2014 the Connecticut Women's Education and Legal Fund (CWEALF) named her one of 40 Women for the Next 40 Years.

# Modern Divorce: Emerging Family Law Issues, Trends, and Legislation (CLC2019-B06)

## Agenda

### Part 1: Review of Legislation – 30 minutes

- A. Summary of Inactive Legislation
- B. Passed Legislation
  - a. Minimum Wage
- C. Active Legislation
  - a. Victim Housing Protections
  - b. Court Operations
  - c. Grandparent's Rights
  - d. Paternity Judgments
  - e. Tolling Temporary Restraining Orders

### Part 2: Overview of Emerging National Trends – 30 minutes

- A. Uniform Parentage Act's impact on family law practitioners
- B. Issues when one party has a disability
- C. Practical impacts from tax treatment changes for spousal support
- D. Considerations and options for addressing situations involving concerns for drug or alcohol use and abuse

# **MODERN DIVORCE: EMERGING FAMILY LAW ISSUES, TRENDS, AND LEGISLATION**

**Meghan Freed, Esq.  
Seth Conant, Esq.**

*Freedmarcroft*

**FAMILY LAW**

# TODAY'S AGENDA

## PART 1: REVIEW OF LEGISLATION

- Inactive Legislation
- Passed Legislation
- Active Legislation

## PART 2: OVERVIEW OF EMERGING NATIONAL TRENDS

- Uniform Parentage Act's impact on family law practitioners
- Issues when one party has a disability
- Practical impacts from tax treatment changes for spousal support
- Addressing situations involving concerns for drug or alcohol use and abuse



# PART I: REVIEW OF LEGISLATION

## AGENDA FOR PART I

# *Review of Legislation*

- Summary of Inactive Legislation
- Passed Legislation
  - Minimum Wage
- Active Legislation
  - Victim Housing Protections
  - Court Operations
  - Grandparent's Rights
  - Paternity Judgments
  - Tolling Temporary Restraining Orders





INACTIVE  
LEGISLATION

Legislation that did not make it out  
of Committee this Legislative  
Session

**PROPOSED BILL NO. 505 I**

“An Act Concerning  
the Award of Alimony in a Family  
Relations Matter”

**PROPOSED BILL NO. 5344**

“An Act Concerning  
a Grandparent’s Right to  
Visitation with His or Her  
Grandchild”

**PROPOSED BILL NO. 5523**

“An Act Concerning the Authority of the Court to Enter Orders of Support for an Adult Child who is Twenty-One or Older and has an Intellectual, Mental, or Physical Disability”

**PROPOSED BILL NO. 5529**

“An Act Establishing a Task Force to  
Study the State’s Family Court  
System”

**PROPOSED BILL NO. 5536**

“An Act Concerning Access to  
Records in Family Court”

**PROPOSED BILL NO. 5872**

“An Act Concerning the Payment of  
Child Support by a Parent who is  
Awarded Sole Custody of a Minor Child”

**PROPOSED BILL NO. 5874**

“An Act Concerning the Court’s Ability to Order Supervised Visitation of a Minor Child in a Family Relations Matter”



**PROPOSED BILL NO. 5876**

“An Act Imposing Sanctions Against a Parent who is in Contempt of Court Orders Relating to Custody and Visitation”

**PROPOSED BILL NO. 5877**

“An Act Concerning the Appointment of  
a Guardian Ad Litem in a Child Custody  
or Visitation Case”

**PROPOSED BILL NO. 5878**

“An Act Extending Child Support to Age  
Twenty-One for Certain Children”

**PROPOSED BILL NO. 6104**

“An Act Establishing a Task Force to Study Whether There Should be a Presumption in Favor of Equal Parenting Time in Child Custody Matters”

**PROPOSED BILL NO. 6105**

“An Act Concerning a Study of the Factors that the Court Considers in Making Determinations as to the Best Interests of a Child”

**PROPOSED BILL NO. 6401**

“An Act Recognizing Parental Alienation Syndrome as a Form of Emotional Child Abuse”

**PROPOSED BILL NO. 6402**

“An Act Requiring Mandated Reporters  
to Report Suspected Instances of  
Parental Alienation Syndrome”

**PROPOSED BILL NO. 6485**

“An Act Concerning court Authority to Enter an Order of Support for an Adult Child who is Twenty-One or Older and has an Intellectual, Mental or Physical Disability”



**PROPOSED BILL NO. 6486**

“An Act Concerning Court Rulings on  
Appellate Stays”

**PROPOSED BILL NO. 6489**

“An Act Ensuring that the Privacy of  
Minor Children is Protected in Court  
Documents”

**PROPOSED BILL NO. 6490**

“An Act Concerning the Filing of a  
Custody Evaluation in a Family Relations  
Matter”

**PROPOSED BILL NO. 6492**

“An Act Creating a Task Force to Study  
the Activities of the Judicial Review  
Council”

**PROPOSED BILL NO. 6507**

“An Act Concerning the Adoption of the  
Uniform Parentage Act of 2017”

**PROPOSED BILL NO. 6909**

“An Act Concerning Child Support and  
the Office of Child Support Services”

**RAISED BILL NO. 7393**

“An Act Concerning Court Proceedings in  
Family Relations Matters”

**PROPOSED BILL NO. 438**

“An Act Concerning Court-Ordered  
Grandparent Visitation”



**PROPOSED BILL NO. 443**

“An Act Concerning Allegations of Abuse  
that are made in an Action for a  
Dissolution of Marriage”

**PROPOSED BILL NO. 612**

“An Act Prioritizing Resolution of  
Custody and Visitation Issues in an  
Action for Dissolution of a Marriage”



Legislation Signed Into Law By  
Governor

**PUBLIC ACT 19-4  
HOUSE BILL NO. 5004**

“An Act Raising the  
Minimum Fair Wage”

Signed by the Governor on May 28, 2019

## **PUBLIC ACT 19-4 HOUSE BILL NO. 5004**

The new law requires the minimum wage to increase from its current level of \$10.10 to:

- \$11.00 on October 1, 2019;
- \$12.00 on September 1, 2020;
- \$13.00 on August 1, 2021;
- \$14.00 on July 1, 2022; and
- \$15.00 on June 1, 2023.

**PUBLIC ACT 19-4  
HOUSE BILL NO. 5004**

What's the impact on imputed income  
for child support purposes?



**ACTIVE**  
LEGISLATION

Legislation That Made It Out of  
Committee

**COMMITTEE BILL NO. 693**

“An Act Concerning Additional  
Housing Protections for a Victim of  
Family Violence or Sexual Assault”

(See also original Proposed Senate Bill No. 693)



## **COMMITTEE BILL NO. 693**

### Statement of Purpose:

“To allow a person who has a valid order of protection to request that such person’s landlord change the locks to the person’s dwelling unit.”

**RAISED BILL NO. 964**

“An Act Concerning Court Operations”

## **RAISED BILL NO. 964**

### Sec. 2. Section 46b-44a

(g) (1) If after filing an action for dissolution of marriage on the regular family docket, pursuant to section 46b-45, but prior to the court entering a decree of dissolution of marriage, the parties to such action satisfy all the conditions for a nonadversarial dissolution of marriage as set forth in this section, then such parties may file a joint petition in the existing dissolution of marriage file pursuant to subsection (a) of this section, except that such joint petition need not include a Wavier of Service of Process. Upon the filing of such joint petition, the action may proceed in the manner set forth in sections 46b-44b to 46b-44d, inclusive.

## **RAISED BILL NO. 964**

### Sec. 3. Section 46b-136

(b) (1) When, under the provisions of this section, the court appoints counsel in a proceeding in a juvenile matter in the civil session and orders the Division of Public Defender Services to provide such counsel, the cost of such counsel shall be shared as agreed to by the Division of Public Defender Services and the Judicial Department. When, under the provisions of this subdivision, the court so appoints counsel for any party who is found able to pay, in whole or in part, the cost thereof, the court shall assess as costs against such party, including any agency vested with the legal custody of the child or youth, the expense incurred and paid by the Division of Public Defender Services and the Judicial Department in providing such counsel, and order reimbursement to the Division of Public Defender services and the Judicial Department to the extent of the party's financial ability to do so.

**RAISED BILL NO. 7095**

“An Act Concerning a Grandparent’s  
Right to Visitation with His or Her  
Grandchild”

## **RAISED BILL NO. 7095**

Section 1 (b). ...except that if a verified petition has been filed by a grandparent and (1) either or both parents of the minor child are deceased, (2) the parents of the minor child are divorced, or (3) the parents of the minor child are living separate and apart in different locations, the verified petition for the right of visitation shall be determined in accordance with the provisions of section 2 of this act.

## **RAISED BILL NO. 7095**

### Sec. 2. (NEW)

(2) “unreasonably depriving the grandparent of the opportunity to visit with the minor child” includes, but is not limited to, denying a grandparent the opportunity to visit with the minor child for a period of time exceeding ninety days.

(b) Any grandparent may submit a verified petition under this section to the Superior Court for the right of visitation with a minor child, as described in subdivision (1) of subsection (a) of this section, when (1) either or both parents of the minor child are deceased, (2) the parents of the minor child are divorced, or (3) the parents of the minor child are living separate and apart in different locations. The court shall grant the right of visitation with any minor child to any grandparent if the court finds after hearing and by clear and convincing evidence that : (A) The child’s parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the minor child; (B) awarding the grandparent visitation will not interfere with the relationship between the minor child and the parents or guardians; and (C) (i) the minor child’s parents or guardians are unfit, or (ii) there are compelling circumstances to overcome the presumption that the decision by the parents or guardians to deny the grandparent visitation is in the best interest of the minor child, provided any determination by the court as to the best interest of the minor child shall be made by utilizing Judicial Branch resources and at no cost to the parties.

(c) The court may award the prevailing party necessary and reasonable expenses incurred by or on behalf of the party, including costs and attorneys’ fees.

**RAISED BILL NO. 942**

“An Act Concerning the Opening or  
Setting Aside of a Paternity Judgment”



## **RAISED BILL NO. 942**

### Statement of Purpose:

“To clarify court procedures with respect to the opening or setting aside of a paternity judgment entered by the Superior Court, a family support magistrate or the Probate Court.”

## **COMMITTEE BILL NO. 689**

“An Act Concerning the Issuance of Ex Parte  
Restraining Orders

(See also Proposed Senate Bill No. 689)

## **COMMITTEE BILL NO. 689**

### Statement of Purpose:

“To permit the court to issue ex parte restraining orders when the respondent could pose a physical danger to the applicant prior to the opportunity for a hearing.”



## PART 2: OVERVIEW OF EMERGING NATIONAL TRENDS

## AGENDA FOR PART 2

### *Overview of Emerging National Trends*

- Uniform Parentage Act's impact on family law practitioners
- Issues when one party has a disability
- Practical impacts from tax treatment changes for spousal support
- Considerations and options for addressing situations involving concerns for drug or alcohol use and abuse



# UNIFORM PARENTAGE ACT: THE IMPACT ON FAMILY LAW

## UNIFORM PARENTAGE ACT (2017)

- removes gender distinctions
- methods of establishing parentage for nonbiological parents
- a multi-factor assessment to resolve competing parentage claims
- extensive surrogacy provisions
- addresses rights of children born through ART to information about gamete providers

## ESTABLISHMENT OF PARENTAGE – § 201

A parent-child relationship is established between an individual and a child if:

- (1) the individual gives birth to the child ...;
- (2) there is a presumption under Section 204 of the individual's parentage ...;
- (3) the individual is adjudicated a parent ...;
- (4) the individual adopts the child;
- (5) the individual acknowledges parentage ...; or
- (6) the individual [is a parent of a child born through ART].



## MARRIED SAME-SEX COUPLES IN CT

“This court is not aware of any controlling authority, and the parties have cited to none, that expressly addresses whether the presumption of legitimacy extends to children born to same-sex marriages, or that its counterpart, the marital presumption, extends to same-sex married couples.” *Barse v. Pasternak*, No. HHBFA124030541S, 2015 WL 600973, at \*8 (Conn. Super. Ct. Jan. 16, 2015).

## MARITAL PRESUMPTION – § 204(A)(1)(A)

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

(1)(A) the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage, ...

## “HOLDING OUT” PRESUMPTION – § 204(A)(2)

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

(2) the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual’s child.

## DE FACTO PARENTS IN CT

“[W]e reject the ‘equitable parent’ doctrine. Using purely equitable concerns to reformulate the definition of parentage . . . would be inconsistent with our entire jurisprudence . . . , which . . . locates the source of judicial power in . . . statutes, and not in the court’s common-law powers of equity. Although . . . the court has broad equitable powers . . . , it is clear that those powers concern the court’s authority to fashion appropriate remedies, and they have never been construed to permit the court to define parentage.” *Doe v. Doe*, 244 Conn. 403, 442–43 (1998).

## DE FACTO PARENT – § 609(D)

- An individual alleging to be a de facto parent must show, by clear –and convincing evidence, that:
- “(1) the individual resided with the child as a regular member of the child’s household for a significant period;
- (2) the individual engaged in consistent caretaking of the child;
- (3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- (4) the individual held out the child as the individual’s child;
- (5) the individual established a bonded and dependent relationship with the child which is parental in nature;
- (6) another parent of the child fostered or supported the bonded and dependent relationship required under parentage (5); and
- (7) continuing the relationship between the individual and the child is in the best interest of the child.”

## ART IN CT

“Any child or children born as a result of A.I.D. shall be deemed to acquire, in all respects, the status of a naturally conceived legitimate child of the husband and wife who consented to and requested the use of A.I.D.”  
Conn. Gen. Stat. Ann § 45a-774

## ART (OTHER THAN SURROGACY) – ARTICLE 7

- Applies equally without regard to gender, sexual orientation, or marital status
- Recognizes parentage of individual who consents to assisted reproduction with intent to be parent.
- Section 703:
  - An individual who consents . . . to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

## SURROGACY – ARTICLE 8

Regulates and permits both:

- Gestational surrogacy; and
- Genetic (or traditional) surrogacy.



## GESTATIONAL SURROGACY IN CT

- Only statutes relate to birth certificates, not parentage.
  - Conn. Gen. Stat. Ann. § 7-48a
  - Conn. Gen. Stat. § 7-36(16)

## THE NEED FOR LEGISLATION

“[T]his appeal highlights the fact that our existing statutes addressing parentage do not address the public policy concerns raised by modern assisted reproductive technology. . . . [T]his area of law needs to be clarified so that families are not left in a state of confusion. Our existing statutory scheme only partially addresses these issues. Parentage, however, is not an issue that should be addressed in a “piecemeal” fashion. . . . [O]ur existing statutes provide few answers and raise many questions. It is decidedly not the role of this court to make the public policy determinations necessary to establish the specific rules and procedures governing the validity of gestational agreements or set the standards for valid gestational agreements. The legislature . . . , with the ability to hold public hearings and seek out expert assistance, is the appropriate one to make such public policy determinations.” *Raftopol v. Ramey*, 299 Conn. 681, 711-13 (2011).



Q & A:  
ISSUES WHEN ONE PARTY HAS A DISABILITY

## QUESTION

Joe and Sue are divorced after a 12 year marriage. Joe now has a disability and has no income of his own. Pursuant to the divorce order, Sue is to pay Joe alimony of \$600/month. Is alimony excluded as income for purposes of determining Joe's SSI and Medicaid eligibility?

# ANSWER

The SSI program has strict income and resource requirements for eligibility, and alimony is included as income for purposes of determining SSI and Medicaid eligibility. Therefore, is Joe at risk of ineligibility for benefits given this alimony order.



# QUESTION

Is there anything Joe and his lawyer can do to structure the settlement so as to support or maintain Joe's SSI/Medicaid eligibility?

# ANSWER

Joe and his lawyer can negotiate with the other party to have Joe's alimony paid directly to the Trustee of a Special Needs Trust.



# QUESTION

What about property division? If Joe has no assets in his name, but Sue will be transferring assets pursuant to the divorce, does this necessarily jeopardize Joe's SSI and Medicare eligibility?



# ANSWER

Assets can also be transferred into a Special Needs Trust. Depending on circumstances, QDROs can be used to get retirement assets from one spouse to the disabled spouse's Special Needs Trust in a tax-sensitive manner.



# QUESTION

Paul and Mary are married and both receive SSI. If they obtain a legal separation, will their benefits increase to the higher rates permitted for single individuals?

# ANSWER

The SSA considers a couple to be married as long as legal marriage still exists, and legal separation alone does not imply that a couple is not living together.



# QUESTION

Fred and Wilma do not legally marry in order to maximize their monthly SSI benefits, to be allowed more countable resources, and to keep their two cars. Will the SSA consider them married if they refer to each other as husband and wife to their friends and family?

# ANSWER

SSA considers two individuals married for SSI purposes if they are living together and holding themselves out as a married couple to their community. (Much like “common law marriage” in the states which still recognize that status.)



# QUESTION

Before marrying, Judy received Childhood Disability Benefits (CDB) through her father, George. Will she continue to receive CDB if she marries? What happens if she divorces?

# ANSWER

Judy's CDB benefits were terminated by the marriage. If she divorces, she is not re-entitled to benefits from her father.



QUESTION

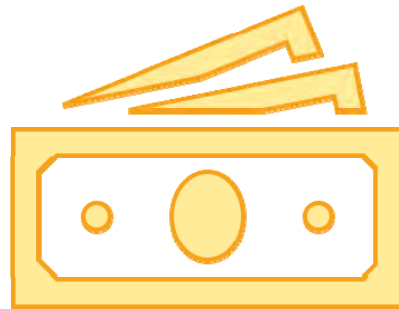
Are there any other practice notes?



# ANSWER

- ABLÉ accounts work like 529 accounts in funding for individuals with disabilities – and they function differently because the funds are exempt, but they can be in the individual's name without the need for a special needs trust.
- In some cases it is the individual with a disability's intent that his or her spouse retain the Power of Attorney. By statute, spouses who are the named agent in a POA, have that authority unrecognized after the dissolution of marriage. POA's need to be redrafted after the divorce decree issues.





PRACTICAL IMPACTS:  
TAX TREATMENT CHANGES FOR SPOUSAL  
SUPPORT

**GROUP DISCUSSION –  
WHAT’S THE VIEW FROM  
THE GROUND?**





ADDRESSING SITUATIONS INVOLVING  
CONCERNS FOR DRUG OR ALCOHOL USE AND  
ABUSE

CONNECTICUT GENERAL STATUTE  
§46B-56(I)

As part of a decision concerning custody or visitation, the court may order either parent or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided such participation is in the best interests of the child.

Conn. Gen. Stat. Ann. § 46b-56



# TESTING OPTIONS

## HAIR FOLLICLE DRUG TESTING

- A standard hair test will detect drugs ingested within the past ninety (90) days, or longer if necessary.
- Hair follicle drug tests can detect drugs of abuse, highly abused prescription medication, and alcohol.
- Hair tests can also be conducted to detect substances used in instances of date rape.

## URINE DRUG TESTING

- When used appropriately, urine testing is very effective in detecting drugs of abuse, as well as more obscure substances, such as medications used for sleep and designer/synthetic drugs.
- It has been used for many years, and is currently the main method of testing in Federal drug testing programs.
- Paymer Associates conducts both lab-based and instant urine tests, and we have access to thousands of collection sites worldwide. Additionally, we can set up, maintain, and monitor a random urine testing program to suit the needs of any situation.



## ALCOHOL TESTING

- SCRAMx continuous alcohol monitoring bracelet, and the Soberlink Remote Breathalyzer.
- Both devices offer coverage previously unmanageable through alcohol bio-marker testing (urine testing).
- They both can effectively distinguish between environmental exposure to alcohol and a true drinking event.

## SCRAMX

- SCRAMx is attached to the client with a durable and tamper-proof strap.
- It is worn 24/7 by the client for the duration of his or her abstinence period.
- Every half hour, the bracelet captures transdermal alcohol readings by sampling the insensible perspiration collected from the air above the skin.
- The bracelet stores the data and, at pre-determined intervals, transmits it via radio-frequency (RF) signal to the base station.
- The data is then securely sent to a centralized location where it is interpreted.

## SCRAMX

The SCRAMx system is the perfect choice for the following situations:

- Ensuring complete abstinence from alcohol
- Monitoring treatment progress
- Gauging client drinking patterns and tailoring individualized treatment

## SL2 REMOTE BREATHALYZER

### How it works:

- The device has an embedded high resolution camera, which takes a photograph during the breath test to verify identity, and a GPS antenna to acquire current location.
- The embedded cellular module transmits the Breath Alcohol Content (BrAC), GPS location, and photograph to a cloud-based web portal where the monitoring party can access and review the test results.
- The SL2 is the first handheld breathalyzer to wirelessly report a person's breath alcohol content in real time.

## SL2 REMOTE BREATHALYZER

### SL2 Solutions:

- SL2 can be used for any type of alcohol abstinence program and is used throughout courts in the United States.
- The device allows the participant to prove abstinence from alcohol while maintaining their dignity and flexibility in their schedule.

## DRUG SWEAT PATCH

- Parent drugs, as well as drug metabolites, are collected onto the patch from the sweat produced by the wearer.
- The patch will detect drug use 24 hours a day, seven days a week, for a period of up to 14 days.
- The adhesive on the patch is designed for one time application, making it completely tamper proof. Once removed, the used patch is sent to a SAMHSA certified laboratory, where it is analyzed.
- The patch is put on the arm, midriff, or back, making it unnoticeable to others. It is extremely durable, and the person being tested can swim, shower, work out, and participate in everyday activities.

**THANK  
YOU!**

Please feel free to contact us  
with any questions.

[meghan@freedmarcroft.com](mailto:meghan@freedmarcroft.com)

[seth@freedmarcroft.com](mailto:seth@freedmarcroft.com)



General Assembly

January Session, 2019

**Proposed Bill No. 5051**

LCO No. 10



Referred to Committee on JUDICIARY

Introduced by:  
REP. O'NEILL, 69th Dist.

**AN ACT CONCERNING THE AWARD OF ALIMONY IN A FAMILY RELATIONS MATTER.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 815j of the general statutes be amended to: (1) Require
- 2 a court to (A) consider the tax consequences of any order entered when
- 3 fixing the nature and value of any property to be assigned or when
- 4 entering an alimony order, (B) consider the gross and net income of
- 5 each of the parties when fixing the nature and value of any property to
- 6 be assigned or when entering an alimony order, and (C) incorporate
- 7 the financial terms of a decree of legal separation into the decree
- 8 dissolving the marriage unless it would be unconscionable to do so,
- 9 and (2) revise the burden of proof in certain cases involving a motion
- 10 to modify the payment of periodic alimony when the party paying the
- 11 periodic alimony has retired and attained the age of sixty-five or when
- 12 the party receiving the periodic alimony is alleged to be living with
- 13 another person in a marriage-like relationship.

**Statement of Purpose:**

To adopt recommendations made by the Law Revision Commission concerning the state's alimony statutes.





General Assembly

January Session, 2019

**Proposed Bill No. 5344**

LCO No. 978



Referred to Committee on JUDICIARY

Introduced by:  
REP. KOKORUDA, 101st Dist.

**AN ACT CONCERNING A GRANDPARENT'S RIGHT TO VISITATION  
WITH HIS OR HER GRANDCHILD.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-59 of the general statutes be amended to allow a
- 2 grandparent the right of visitation with his or her grandchild upon
- 3 demonstrating to the court that clear and convincing circumstances
- 4 support the granting of such visitation.

**Statement of Purpose:**

To allow a grandparent the right of visitation with his or her grandchild upon demonstrating to the court that clear and convincing circumstances support the granting of such visitation.



General Assembly

January Session, 2019

**Proposed Bill No. 5523**

LCO No. 947



Referred to Committee on JUDICIARY

Introduced by:  
REP. LAVIELLE, 143rd Dist.

**AN ACT CONCERNING THE AUTHORITY OF THE COURT TO ENTER  
ORDERS OF SUPPORT FOR AN ADULT CHILD WHO IS TWENTY-  
ONE OR OLDER AND HAS AN INTELLECTUAL, MENTAL OR  
PHYSICAL DISABILITY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-84 of the general statutes be amended to provide
- 2 that the court may, based upon a party's financial circumstances, make
- 3 appropriate orders of support of an adult child with an intellectual,
- 4 mental or physical disability.

**Statement of Purpose:**

To allow the court to order financial support for an adult child who has an intellectual, mental or physical disability when one parent proportionately has greater financial ability to support the adult child.



General Assembly

January Session, 2019

**Proposed Bill No. 5529**

LCO No. 194



Referred to Committee on JUDICIARY

Introduced by:  
REP. KUPCHICK, 132nd Dist.

**AN ACT ESTABLISHING A TASK FORCE TO STUDY THE STATE'S  
FAMILY COURT SYSTEM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That a task force be established to study and then report on
- 2 improvements that can be made to the state's family court system.

**Statement of Purpose:**

To establish a task force to study and then report on improvements that can be made to the state's family court system.



General Assembly

January Session, 2019

**Proposed Bill No. 5536**

LCO No. 953



Referred to Committee on JUDICIARY

Introduced by:  
REP. CONLEY, 40<sup>th</sup> Dist.  
(By Request)

***AN ACT CONCERNING ACCESS TO RECORDS IN FAMILY COURT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That the general statutes be amended to provide greater access to
- 2 criminal court records in a case involving a party in a disputed family
- 3 court matter.

***Statement of Purpose:***

To provide greater access to criminal court records in a case involving a party in a disputed family court matter.



General Assembly

January Session, 2019

**Proposed Bill No. 5872**

LCO No. 1310



Referred to Committee on JUDICIARY

Introduced by:

REP. DUBITSKY, 47th Dist.

***AN ACT CONCERNING THE PAYMENT OF CHILD SUPPORT BY A PARENT WHO IS AWARDED SOLE CUSTODY OF A MINOR CHILD.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-84 of the general statutes be amended to prohibit a
- 2 court from ordering that a parent who is awarded sole legal custody of
- 3 a minor child pay child support for such child to the noncustodial
- 4 parent.

***Statement of Purpose:***

To prohibit a court from ordering a parent who is awarded sole legal custody of a minor child to pay child support for such child to the noncustodial parent.



General Assembly

January Session, 2019

**Proposed Bill No. 5874**

LCO No. 2308



Referred to Committee on JUDICIARY

Introduced by:  
REP. GONZALEZ, 3<sup>rd</sup> Dist.

**AN ACT CONCERNING THE COURT'S ABILITY TO ORDER  
SUPERVISED VISITATION OF A MINOR CHILD IN A FAMILY  
RELATIONS MATTER.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-56 of the general statutes be amended to provide
- 2 that a court may not order that a parent of a minor child be limited to
- 3 supervised visitation with the child, unless the Department of
- 4 Children and Families has made a finding that such parent has abused
- 5 or neglected the minor child.

**Statement of Purpose:**

To limit the court's ability to order supervised visitation between a parent and a minor child to those cases in which the Department of Children and Families has made a finding that such parent has abused or neglected the minor child.



General Assembly

January Session, 2019

**Proposed Bill No. 5876**

LCO No. 2312



\* 0 2 3 1 2 \*

Referred to Committee on JUDICIARY

Introduced by:  
REP. GONZALEZ, 3rd Dist.

**AN ACT IMPOSING SANCTIONS AGAINST A PARENT WHO IS IN CONTEMPT OF COURT ORDERS RELATING TO CUSTODY AND VISITATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-87 of the general statutes be amended to include
- 2 progressive sanctions that may be imposed by the court against a
- 3 parent who repeatedly is found in contempt of court with respect to
- 4 custody and visitation orders; such sanctions shall include, but not be
- 5 limited to: (1) Fines, (2) a reduction in, or loss of, parenting time, and
- 6 (3) a change in the award of custody from one parent to the other
- 7 parent.

**Statement of Purpose:**

To promote the best interests of children by ensuring that parents comply with court orders relating to custody and visitation.



General Assembly

January Session, 2019

**Proposed Bill No. 5877**

LCO No. 1996



\* 0 1 9 9 6 \*

Referred to Committee on JUDICIARY

Introduced by:

REP. GONZALEZ, 3rd Dist.

**AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM IN A CHILD CUSTODY OR VISITATION CASE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-54 of the general statutes be amended to provide
- 2 that the court shall not appoint a guardian ad litem in a child custody
- 3 or visitation case unless the Department of Children and Families has
- 4 confirmed through a formal investigatory process that the child has
- 5 been abused or neglected.

**Statement of Purpose:**

To limit the use of guardians ad litem in child custody or visitation cases to those cases in which the Department of Children and Families has confirmed, through a formal investigatory process, that the child has been abused or neglected.





General Assembly

January Session, 2019

**Proposed Bill No. 5878**

LCO No. 1848



Referred to Committee on JUDICIARY

Introduced by:  
REP. ORANGE, 48<sup>th</sup> Dist.

***AN ACT EXTENDING CHILD SUPPORT TO AGE TWENTY-ONE FOR CERTAIN CHILDREN.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 816 of the general statutes be amended to include
- 2 among child support guidelines that such support should be extended
- 3 until children reach the age of twenty-one if they live at home and are
- 4 enrolled in an educational, apprenticeship or training program.

***Statement of Purpose:***

To extend financial support to families and align Connecticut's child support system with neighboring states in New England.



General Assembly

January Session, 2019

**Proposed Bill No. 6104**

LCO No. 1881



Referred to Committee on JUDICIARY

Introduced by:  
REP. BUCKBEE, 67th Dist.

**AN ACT ESTABLISHING A TASK FORCE TO STUDY WHETHER  
THERE SHOULD BE A PRESUMPTION IN FAVOR OF EQUAL  
PARENTING TIME IN CHILD CUSTODY MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That a task force be established to study whether there should be a
- 2 presumption in favor of equal parenting time in child custody matters.
- 3 Such study shall include, but not be limited to, an examination as to
- 4 whether such a presumption would serve the best interests of the
- 5 state's children.

***Statement of Purpose:***

To study whether adoption of an equal parenting time law would serve the best interests of the state's children.



General Assembly

January Session, 2019

**Proposed Bill No. 6105**

LCO No. 946



Referred to Committee on JUDICIARY

Introduced by:  
REP. SREDZINSKI, 112th Dist.

**AN ACT CONCERNING A STUDY OF THE FACTORS THAT THE COURT CONSIDERS IN MAKING DETERMINATIONS AS TO THE BEST INTERESTS OF A CHILD.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That a task force be established to review, study and, if necessary,
- 2 revise the factors that a court considers in making determinations as to
- 3 the best interests of a child, which factors are specifically set forth in
- 4 subsection (c) of section 46b-56 of the general statutes.

**Statement of Purpose:**

To review existing law related to child custody cases and the best interests of a child.



General Assembly

January Session, 2019

**Proposed Bill No. 6401**

LCO No. 3177



Referred to Committee on COMMITTEE ON CHILDREN

Introduced by:  
REP. GONZALEZ, 3rd Dist.

**AN ACT RECOGNIZING PARENTAL ALIENATION SYNDROME AS A  
FORM OF EMOTIONAL CHILD ABUSE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 815t of the general statutes be amended to (1) define
- 2 "parental alienation syndrome", (2) recognize parental alienation
- 3 syndrome as a form of emotional child abuse, and (3) provide
- 4 adequate remedies when a parent is the victim of parental alienation
- 5 syndrome.

**Statement of Purpose:**

To amend the general statutes to (1) define "parental alienation syndrome", (2) recognize parental alienation syndrome as a form of emotional child abuse, and (3) provide adequate remedies when a parent is the victim of parental alienation syndrome.



General Assembly

January Session, 2019

**Proposed Bill No. 6402**

LCO No. 3192



Referred to Committee on COMMITTEE ON CHILDREN

Introduced by:  
REP. GONZALEZ, 3rd Dist.

**AN ACT REQUIRING MANDATED REPORTERS TO REPORT  
SUSPECTED INSTANCES OF PARENTAL ALIENATION SYNDROME.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapters 319a and 815t of the general statutes be amended to
- 2 require mandated reporters to report suspected instances of parental
- 3 alienation syndrome.

**Statement of Purpose:**

To require mandated reporters to report suspected instances of parental alienation syndrome.



General Assembly

January Session, 2019

**Proposed Bill No. 6485**

LCO No. 2468



Referred to Committee on JUDICIARY

Introduced by:  
REP. DEMICCO, 21st Dist.

**AN ACT CONCERNING COURT AUTHORITY TO ENTER AN ORDER OF SUPPORT FOR AN ADULT CHILD WHO IS TWENTY-ONE OR OLDER AND HAS AN INTELLECTUAL, MENTAL OR PHYSICAL DISABILITY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-84 of the general statutes be amended to provide
- 2 that the court may, based upon a party's financial circumstances, make
- 3 appropriate orders of support of an adult child with an intellectual,
- 4 mental or physical disability.

**Statement of Purpose:**

To allow a judge to order support for an individual beyond the age of twenty-one who has disabilities and resides with and is principally dependent on a parent.



General Assembly

January Session, 2019

**Proposed Bill No. 6486**

LCO No. 2828



Referred to Committee on JUDICIARY

Introduced by:  
REP. SANTIAGO E., 130th Dist.

**AN ACT CONCERNING COURT RULINGS ON APPELLATE STAYS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 52-263 of the general statutes be amended to provide
- 2 that, in any civil matter, when an appeal has been taken concerning an
- 3 order of the court, the judge whose order is being appealed shall not
- 4 hear any motion concerning a termination of an appellate stay.

**Statement of Purpose:**

To ensure that motions to terminate the stay of an order are not heard by the same judge whose order is the subject of an appeal.



General Assembly

January Session, 2019

**Proposed Bill No. 6489**

LCO No. 2861



\* 0 2 8 6 1 \*

Referred to Committee on JUDICIARY

Introduced by:

REP. GONZALEZ, 3rd Dist.

**AN ACT ENSURING THAT THE PRIVACY OF MINOR CHILDREN IS PROTECTED IN COURT DOCUMENTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 870 of the general statutes be amended to require the
- 2 Chief Court Administrator to establish and implement measures to
- 3 ensure that personally identifiable information relating to a minor
- 4 child that is contained in a document filed with the court is protected
- 5 from public access and that such information is not revealed in any
- 6 written decision of the court.

**Statement of Purpose:**

To ensure that the privacy of minor children is protected in court documents.





General Assembly

January Session, 2019

**Proposed Bill No. 6490**

LCO No. 3199



Referred to Committee on JUDICIARY

Introduced by:  
REP. GONZALEZ, 3rd Dist.

**AN ACT CONCERNING THE FILING OF A CUSTODY EVALUATION IN A FAMILY RELATIONS MATTER.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-7 of the general statutes be amended to provide
- 2 that when the court orders a custody evaluation in a family relations
- 3 matter (1) such evaluation shall be completed and a report filed with
- 4 the court, not later than ninety days after the date on which the
- 5 evaluation was ordered, and (2) a copy of the report relating to such
- 6 evaluation shall be provided to counsel, the parties and any self-
- 7 represented parties of record.

**Statement of Purpose:**

To ensure that the parties to a family relations matter have expeditious access to a report relating to custody evaluation.



General Assembly

January Session, 2019

**Proposed Bill No. 6492**

LCO No. 2845



Referred to Committee on JUDICIARY

Introduced by:  
REP. GONZALEZ, 3rd Dist.

**AN ACT CREATING A TASK FORCE TO STUDY THE ACTIVITIES OF  
THE JUDICIAL REVIEW COUNCIL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That a task force be established to study issues concerning the
- 2 ongoing operation of the Judicial Review Council. Such study shall
- 3 include, but not be limited to, an examination of the complaint process,
- 4 communication with parties and witnesses, investigatory procedures
- 5 and selection of contractors, record keeping, statistical and annual
- 6 reporting requirements, compliance with state and federal laws and
- 7 review of statutes pertaining to said council.

**Statement of Purpose:**

To establish a task force to review and examine issues concerning the Judicial Review Council and the efficacy of relevant statutes.



General Assembly

January Session, 2019

**Proposed Bill No. 6507**

LCO No. 3125



Referred to Committee on JUDICIARY

Introduced by:  
REP. ROJAS, 9th Dist.

**AN ACT CONCERNING THE ADOPTION OF THE UNIFORM  
PARENTAGE ACT OF 2017.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That the general statutes be amended to adopt the Uniform
- 2 Parentage Act of 2017 so as to allow an unmarried, same-sex couple to
- 3 be listed as the child's parents on the child's birth certificate.

**Statement of Purpose:**

To ensure that unmarried, same-sex couples are treated the same as unmarried, heterosexual couples for purposes of being able to be listed as the child's parents on the child's birth certificate.



General Assembly

January Session, 2019

**Proposed Bill No. 6909**

LCO No. 3291



\* 0 3 2 9 1 \*

Referred to Committee on JUDICIARY

Introduced by:  
REP. SIMMS, 140<sup>th</sup> Dist.

**AN ACT CONCERNING CHILD SUPPORT AND THE OFFICE OF CHILD SUPPORT SERVICES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That: (1) Section 46b-84 of the general statutes be amended to ensure  
2 that a court does not engage in gender bias when entering an order of  
3 support in a family relations matter, and (2) section 17b-179 be  
4 amended to require that the Office of Child Support Services send a  
5 copy of any correspondence sent by said office to a state or federal  
6 agency concerning an allegedly delinquent child support amount  
7 owed by the child support obligor that potentially could result in a loss  
8 of income to the obligor or interfere with the obligor's ability to secure  
9 income and future employment.

**Statement of Purpose:**

To ensure that (1) a court does not engage in gender bias when entering an order of support in a family relations matter, and (2) a child support obligor is aware of actions that may be taken by state or federal agencies that could result in loss of income or diminished future earning capacity.



General Assembly

January Session, 2019

**Raised Bill No. 7393**

LCO No. 6440



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***AN ACT CONCERNING COURT PROCEEDINGS IN FAMILY RELATIONS MATTERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-87 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) When any person is found in contempt of an order of the  
4 Superior Court entered under [section 46b-60 to 46b-62, inclusive, 46b-  
5 81 to 46b-83, inclusive, or 46b-86] the provisions of this chapter, the  
6 court may award to the petitioner a reasonable attorney's fee and the  
7 fees of the officer serving the contempt citation, such sums to be paid  
8 by the person found in contempt, provided if any such person is found  
9 not to be in contempt of such order, the court may award a reasonable  
10 attorney's fee to such person. The costs of commitment of any person  
11 imprisoned for contempt of court by reason of failure to comply with  
12 such an order shall be paid by the state as in criminal cases.

13 (b) In addition to the award of fees pursuant to subsection (a) of this  
14 section, when any person is found in contempt of a court order

15 concerning an assignment of custody, visitation with a minor child or  
16 parental access, the court may impose additional sanctions against the  
17 person found to be in contempt of the court order that include, but are  
18 not limited to, (1) fines, (2) a reduction or suspension of visitation or  
19 parental access, and (3) a change in the assignment of physical and  
20 legal custody.

21 Sec. 2. Section 46b-56 of the general statutes is repealed and the  
22 following is substituted in lieu thereof (*Effective October 1, 2019*):

23 (a) In any controversy before the Superior Court as to the custody or  
24 care of minor children, and at any time after the return day of any  
25 complaint under section 46b-45, the court may make or modify any  
26 proper order regarding the custody, care, education, visitation and  
27 support of the children if it has jurisdiction under the provisions of  
28 chapter 815p. Subject to the provisions of section 46b-56a, the court  
29 may assign parental responsibility for raising the child to the parents  
30 jointly, or may award custody to either parent or to a third party,  
31 according to its best judgment upon the facts of the case and subject to  
32 such conditions and limitations as it deems equitable. The court may  
33 also make any order granting the right of visitation of any child to a  
34 third party to the action, including, but not limited to, grandparents.  
35 Notwithstanding the provisions of this subsection, the court shall not  
36 make or modify any order as to the custody of a child involving an  
37 allegation of abuse, unless and until there is an evidentiary offer of  
38 proof and hearing concerning such allegation of abuse.

39 (b) In making or modifying any order as provided in subsection (a)  
40 of this section, the rights and responsibilities of both parents shall be  
41 considered and the court shall enter orders accordingly that serve the  
42 best interests of the child and provide the child with the active and  
43 consistent involvement of both parents commensurate with their  
44 abilities and interests. Such orders may include, but shall not be  
45 limited to: (1) Approval of a parental responsibility plan agreed to by  
46 the parents pursuant to section 46b-56a; (2) the award of joint parental  
47 responsibility of a minor child to both parents, which shall include (A)

48 provisions for residential arrangements with each parent in accordance  
49 with the needs of the child and the parents, and (B) provisions for  
50 consultation between the parents and for the making of major  
51 decisions regarding the child's health, education and religious  
52 upbringing; (3) the award of sole custody to one parent with  
53 appropriate parenting time for the noncustodial parent where sole  
54 custody is in the best interests of the child; or (4) any other custody  
55 arrangements as the court may determine to be in the best interests of  
56 the child. In making or modifying any order concerning visitation with  
57 a child pursuant to subsection (a) of this section, absent agreement of  
58 the parties, the court shall not order that a parent's visitation with a  
59 child be supervised unless the court enters a finding on the record of  
60 the circumstances necessitating that such visitation be supervised.

61 (c) In making or modifying any order as provided in subsections (a)  
62 and (b) of this section, the court shall consider the best interests of the  
63 child, and in doing so may consider, but shall not be limited to, one or  
64 more of the following factors: (1) The temperament and developmental  
65 needs of the child; (2) the capacity and the disposition of the parents to  
66 understand and meet the needs of the child; (3) any relevant and  
67 material information obtained from the child, including the informed  
68 preferences of the child; (4) the wishes of the child's parents as to  
69 custody; (5) the past and current interaction and relationship of the  
70 child with each parent, the child's siblings and any other person who  
71 may significantly affect the best interests of the child; [(6) the  
72 willingness and ability of each parent to facilitate and encourage such  
73 continuing parent-child relationship between the child and the other  
74 parent as is appropriate, including compliance with any court orders;  
75 (7)] (6) any manipulation by or coercive behavior of the parents in an  
76 effort to involve the child in the parents' dispute; [(8)] (7) the ability of  
77 each parent to be actively involved in the life of the child; [(9)] (8) the  
78 child's adjustment to his or her home, school and community  
79 environments; [(10)] (9) the length of time that the child has lived in a  
80 stable and satisfactory environment and the desirability of maintaining  
81 continuity in such environment, provided the court may consider

82 favorably a parent who voluntarily leaves the child's family home  
83 pendente lite in order to alleviate stress in the household; [(11)] (10) the  
84 stability of the child's existing or proposed residences, or both; [(12)]  
85 (11) the mental and physical health of all individuals involved, except  
86 that a disability of a proposed custodial parent or other party, in and of  
87 itself, shall not be determinative of custody unless the proposed  
88 custodial arrangement is not in the best interests of the child; [(13)] (12)  
89 the child's cultural background; [(14)] (13) the effect on the child of the  
90 actions of an abuser, if any domestic violence has occurred between  
91 the parents or between a parent and another individual or the child;  
92 [(15)] (14) whether the child or a sibling of the child has been abused or  
93 neglected, as defined respectively in section 46b-120; and [(16)] (15)  
94 whether the party satisfactorily completed participation in a parenting  
95 education program established pursuant to section 46b-69b. The court  
96 is not required to assign any weight to any of the factors that it  
97 considers, but shall articulate the basis for its decision.

98 (d) There shall be a rebuttable presumption that a parent is not  
99 acting in the best interests of a child when such parent's conduct  
100 evidences an unwillingness or inability to (1) facilitate and encourage  
101 the other parent's relationship with the child, as is appropriate under  
102 the circumstances, or (2) comply with court orders that seek to  
103 facilitate and encourage such relationship.

104 [(d)] (e) Upon the issuance of any order assigning custody of the  
105 child to the Commissioner of Children and Families, or not later than  
106 sixty days after the issuance of such order, the court shall make a  
107 determination whether the Department of Children and Families made  
108 reasonable efforts to keep the child with his or her parents prior to the  
109 issuance of such order and, if such efforts were not made, whether  
110 such reasonable efforts were not possible, taking into consideration the  
111 best interests of the child, including the child's health and safety.

112 [(e)] (f) In determining whether a child is in need of support and, if  
113 in need, the respective abilities of the parents to provide support, the  
114 court shall take into consideration all the factors enumerated in section



115 46b-84.

116 [(f)] (g) When the court is not sitting, any judge of the court may  
117 make any order in the cause which the court might make under this  
118 section, including orders of injunction, prior to any action in the cause  
119 by the court.

120 [(g)] (h) A parent not granted custody of a minor child shall not be  
121 denied the right of access to the academic, medical, hospital or other  
122 health records of such minor child, unless otherwise ordered by the  
123 court for good cause shown.

124 [(h)] (i) Notwithstanding the provisions of subsections (b) and (c) of  
125 this section, when a motion for modification of custody or visitation is  
126 pending before the court or has been decided by the court and the  
127 investigation ordered by the court pursuant to section 46b-6, as  
128 amended by this act, recommends psychiatric or psychological therapy  
129 for a child, and such therapy would, in the court's opinion, be in the  
130 best interests of the child and aid the child's response to a  
131 modification, the court may order such therapy and reserve judgment  
132 on the motion for modification.

133 [(i)] (j) As part of a decision concerning custody or visitation, the  
134 court may order either parent or both of the parents and any child of  
135 such parents to participate in counseling and drug or alcohol  
136 screening, provided such participation is in the best interests of the  
137 child.

138 Sec. 3. Section 46b-54 of the general statutes is repealed and the  
139 following is substituted in lieu thereof (*Effective October 1, 2019*):

140 (a) The court may appoint counsel or a guardian ad litem for any  
141 minor child or children of either or both parties at any time after the  
142 return day of a complaint under section 46b-45, if the court deems it to  
143 be in the best interests of the child or children. The court may appoint  
144 counsel or a guardian ad litem on its own motion, or at the request of  
145 either of the parties or of the legal guardian of any child or at the

146 request of any child who is of sufficient age and capable of making an  
147 intelligent request.

148 (b) Counsel or a guardian ad litem for the minor child or children  
149 may also be appointed on the motion of the court or on the request of  
150 any person enumerated in subsection (a) of this section in any case  
151 before the court when the court finds that the custody, care, education,  
152 visitation or support of a minor child is in actual controversy, provided  
153 the court may make any order regarding a matter in controversy prior  
154 to the appointment of counsel or a guardian ad litem where it finds  
155 immediate action necessary in the best interests of any child.

156 (c) In the absence of an agreement of the parties to the appointment  
157 of counsel or a guardian ad litem for a minor child in the parties'  
158 matter and a canvassing by the court concerning the terms of such  
159 agreement, the court shall only appoint such counsel or guardian ad  
160 litem under this section when, in the court's discretion, reasonable  
161 options and efforts to resolve a dispute of the parties concerning the  
162 custody, care, education, visitation or support of a minor child have  
163 been made.

164 (d) If the court deems the appointment of counsel or a guardian ad  
165 litem for any minor child or children to be in the best interests of the  
166 child or children, such appointment shall be made in accordance with  
167 the provisions of section 46b-12.

168 (e) Counsel or a guardian ad litem for the minor child or children  
169 shall be heard on all matters pertaining to the interests of any child,  
170 including the custody, care, support, education and visitation of the  
171 child, so long as the court deems such representation to be in the best  
172 interests of the child. To the extent practicable, when hearing from  
173 such counsel or guardian ad litem, the court shall permit such counsel  
174 or guardian ad litem to participate at the beginning of the matter, at  
175 the conclusion of the matter or at such other time the court deems  
176 appropriate so as to minimize legal fees incurred by the parties due to  
177 the participation of such counsel or guardian ad litem in the matter.

178 Such counsel or guardian ad litem may be heard on a matter  
179 pertaining to a medical diagnosis or conclusion concerning a minor  
180 child made by a health care professional treating such child when (1)  
181 such counsel or guardian ad litem is in possession of a medical record  
182 or report of the treating health care professional that indicates or  
183 supports such medical diagnosis or conclusion; or (2) one or more  
184 parties have refused to cooperate in paying for or obtaining a medical  
185 record or report that contains the treating health care professional's  
186 medical diagnosis or conclusion. If the court deems it to be in the best  
187 interests of the minor child, such health care professional shall be  
188 heard on matters pertaining to the interests of any such child,  
189 including the custody, care, support, education and visitation of such  
190 child.

191 (f) When recommending the entry of any order as provided in  
192 subsections (a) and (b) of section 46b-56, as amended by this act,  
193 counsel or a guardian ad litem for the minor child shall consider the  
194 best interests of the child, and in doing so shall consider, but not be  
195 limited to, one or more of the following factors: (1) The temperament  
196 and developmental needs of the child; (2) the capacity and the  
197 disposition of the parents to understand and meet the needs of the  
198 child; (3) any relevant and material information obtained from the  
199 child, including the informed preferences of the child; (4) the wishes of  
200 the child's parents as to custody; (5) the past and current interaction  
201 and relationship of the child with each parent, the child's siblings and  
202 any other person who may significantly affect the best interests of the  
203 child; [(6) the willingness and ability of each parent to facilitate and  
204 encourage such continuing parent-child relationship between the child  
205 and the other parent as is appropriate, including compliance with any  
206 court orders; (7)] (6) any manipulation by or coercive behavior of the  
207 parents in an effort to involve the child in the parents' dispute; [(8)] (7)  
208 the ability of each parent to be actively involved in the life of the child;  
209 [(9)] (8) the child's adjustment to his or her home, school and  
210 community environments; [(10)] (9) the length of time that the child  
211 has lived in a stable and satisfactory environment and the desirability

212 of maintaining continuity in such environment, provided counsel or a  
 213 guardian ad litem for the minor child may consider favorably a parent  
 214 who voluntarily leaves the child's family home pendente lite in order  
 215 to alleviate stress in the household; [(11)] (10) the stability of the child's  
 216 existing or proposed residences, or both; [(12)] (11) the mental and  
 217 physical health of all individuals involved, except that a disability of a  
 218 proposed custodial parent or other party, in and of itself, shall not be  
 219 determinative of custody unless the proposed custodial arrangement is  
 220 not in the best interests of the child; [(13)] (12) the child's cultural  
 221 background; [(14)] (13) the effect on the child of the actions of an  
 222 abuser, if any domestic violence has occurred between the parents or  
 223 between a parent and another individual or the child; [(15)] (14)  
 224 whether the child or a sibling of the child has been abused or  
 225 neglected, as defined respectively in section 46b-120; and [(16)] (15)  
 226 whether a party satisfactorily completed participation in a parenting  
 227 education program established pursuant to section 46b-69b. Counsel or  
 228 a guardian ad litem for the minor child shall not be required to assign  
 229 any weight to any of the factors considered.

230 (g) There shall be a rebuttable presumption that a parent is not  
 231 acting in the best interests of a child when such parent's conduct  
 232 evidences an unwillingness or inability to (1) facilitate and encourage  
 233 the other parent's relationship with the child, as is appropriate under  
 234 the circumstances, or (2) comply with court orders that seek to  
 235 facilitate and encourage such relationship.

236 Sec. 4. Section 46b-6 of the general statutes is repealed and the  
 237 following is substituted in lieu thereof (*Effective October 1, 2019*):

238 (a) In any pending family relations matter the court [or any judge  
 239 may cause] may order an investigation, evaluation or study to be made  
 240 with respect to any circumstance of the matter which may be helpful  
 241 or material or relevant to a proper disposition of the case. Such  
 242 investigation, evaluation or study may include an examination of the  
 243 parentage and surroundings of any child, his age, habits and history,  
 244 inquiry into the home conditions, habits and character of his parents or

245 guardians and evaluation of his mental or physical condition. In any  
246 action for dissolution of marriage, legal separation or annulment of  
247 marriage such investigation, evaluation or study may include an  
248 examination into the age, habits and history of the parties, the causes  
249 of marital discord and the financial ability of the parties to furnish  
250 support to either spouse or any dependent child.

251 (b) A report with respect to any investigation, evaluation or study,  
252 undertaken pursuant to subsection (a) of this section by an individual  
253 who is not an employee of the Judicial Department, shall be completed  
254 and filed with the court not later than one hundred twenty days after  
255 the date on which the court ordered such investigation, evaluation or  
256 study, unless the court enters a finding on the record that  
257 extraordinary circumstances warrant an extended period of time for  
258 the completion and filing of the report with respect to such  
259 investigation, evaluation or study. Upon the filing of such report, the  
260 court shall not order that a further investigation, evaluation or study  
261 be undertaken within the twelve-month period following the date on  
262 which the report was filed, unless the court enters a finding on the  
263 record that extraordinary circumstances necessitate that further  
264 investigation, evaluation or study be undertaken.

265 (c) If the court orders that an investigation, evaluation or study be  
266 undertaken in any controversy involving the custody or care of a  
267 minor child, absent agreement of the parties, the court shall enter a  
268 finding on the record articulating the reasoning for undertaking such  
269 investigation, evaluation or study.

270 (d) Whenever an investigation, evaluation or study has been  
271 ordered by the court pursuant to subsection (a) of this section, the case  
272 shall not be disposed of until a report with respect to such  
273 investigation, evaluation or study has been filed in accordance with  
274 this section, and counsel and the parties have had a reasonable  
275 opportunity to examine such report prior to the date on which the case  
276 is to be heard, unless the court orders that the case be heard before the  
277 report is filed. Unless otherwise permitted to do so by the court,

278 counsel for the parties, including any guardian ad litem, and any self-  
279 represented parties shall not initiate contact with the individual who is  
280 undertaking the investigation, evaluation or study until such  
281 individual files a report in accordance with subsection (b) of this  
282 section.

283 Sec. 5. Section 46b-6a of the general statutes is repealed and the  
284 following is substituted in lieu thereof (*Effective October 1, 2019*):

285 (a) In a family relations matter, as defined in section 46b-1, if a court  
286 orders that a parent undergo treatment from a qualified, licensed  
287 health care provider, the court shall permit the parent to select a  
288 qualified, licensed health care provider to provide such treatment.

289 (b) In a family relations matter, as defined in section 46b-1, if a court  
290 orders that a child undergo treatment from a qualified, licensed health  
291 care provider, the court shall permit the parent or legal guardian of  
292 such child to select a qualified, licensed health care provider to provide  
293 such treatment. Except in a case where one of the parents has been  
294 awarded sole custody, if both parents do not agree on the selection of a  
295 qualified, licensed health care provider to provide such treatment to a  
296 child, the court shall continue the matter for two weeks to allow the  
297 parents an opportunity to jointly select a qualified, licensed health care  
298 provider. If after the two-week period, the parents have not reached an  
299 agreement on the selection of a qualified, licensed health care provider,  
300 the court shall select such provider after giving due consideration to  
301 the health insurance coverage and financial resources available to such  
302 parents.

303 (c) (1) In a family relations matter, as defined in section 46b-1, if the  
304 parties agree or if a court orders that a parent or child undergo an  
305 evaluation from a qualified, licensed health care provider, the court  
306 shall first make a finding that the parties have the financial resources  
307 to pay for such evaluation.

308 (2) If the court has determined that an evaluation can be undertaken  
309 and a qualified, licensed health care provider has been selected to

310 perform the evaluation, the court's order for an evaluation shall  
311 contain the name of each provider who is to undertake the evaluation,  
312 the estimated cost of the evaluation, each party's responsibility for the  
313 cost of the evaluation, the professional credentials of each provider  
314 and the estimated deadline by which such evaluation shall be  
315 completed and submitted to the court.

316 (3) Not later than thirty days after the date of completion of such  
317 evaluation, the provider shall (A) file a report containing the results of  
318 the evaluation with the clerk of the court, who shall seal such report,  
319 and (B) unless otherwise ordered by the court, provide a copy of such  
320 report to counsel of record, including any guardian ad litem and any  
321 self-represented parties. Unless otherwise permitted by the court,  
322 counsel of record, including any guardian ad litem and any self-  
323 represented parties shall not provide or otherwise disclose such report  
324 to any other person, except that counsel to the plaintiff or the  
325 defendant in the action may provide a copy of the report to his or her  
326 client.

327 Sec. 6. (NEW) (Effective October 1, 2019) (a) As used in this section,  
328 "personal identifying information" means: An individual's date of  
329 birth; mother's maiden name; motor vehicle operator's license number;  
330 Social Security number; other government-issued identification  
331 number, except for juris, license, permit or other business-related  
332 identification numbers that are otherwise made available to the public  
333 directly by any government agency or entity; health insurance  
334 identification number; or any financial account number, security code  
335 or personal identification number. "Personal identifying information"  
336 does not include a person's name unless a judicial authority has  
337 entered an order allowing the use of a pseudonym in place of the name  
338 of a party, in which case a person's name is included in the definition  
339 "personal identifying information".

340 (b) Any person filing a document with the court, whether in an  
341 electronic or paper format, that includes personal identifying  
342 information shall redact any such information contained in the

343 document, unless otherwise required by law or ordered by the court.  
344 The party filing the redacted document shall retain the original,  
345 unredacted document throughout the pendency of the action, any  
346 appeal period and any applicable appellate process.

347 (c) The person filing the document shall be solely responsible for  
348 omitting or redacting personal identifying information. The court or  
349 the clerk of the court shall not be responsible for reviewing any filed  
350 document to ensure compliance with the provisions of this section.

351 Sec. 7. (NEW) (*Effective July 1, 2019*) (a) Notwithstanding the  
352 provisions of sections 46b-12, 46b-62, 51-296 and 51-296a of the general  
353 statutes, on and after January 1, 2020, in any family relations matter, as  
354 described in section 46b-1 of the general statutes, in which the court  
355 orders that a guardian ad litem be appointed on behalf of a minor  
356 child, the Division of Public Defender Services shall be solely  
357 responsible for the assignment of the guardian ad litem in such matter.

358 (b) The Division of Public Defender Services shall: (1) Prescribe a  
359 uniform fee agreement applicable to the assignment of a guardian ad  
360 litem to a family relations matter under this section; and (2) develop  
361 and implement a methodology for calculating, on a sliding-scale basis,  
362 the fees due and owing from a person who is not indigent to the  
363 guardian ad litem assigned to a matter under this section. The  
364 maximum fee payable to a guardian ad litem pursuant to this section  
365 shall not exceed the fee prescribed by the Judicial Branch under section  
366 46b-62 of the general statutes for a couple with a gross combined  
367 income of one hundred thousand dollars.

368 (c) The Division of Public Defender Services may assess an  
369 administrative fee to be paid by any person who is not indigent and  
370 who is assigned a guardian ad litem under the provisions of this  
371 section. Any administrative fees collected by the Division of Public  
372 Defender Services pursuant to this subsection shall be used by said  
373 division to defray costs incurred in connection with the administration  
374 of this section.



This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	46b-87
Sec. 2	<i>October 1, 2019</i>	46b-56
Sec. 3	<i>October 1, 2019</i>	46b-54
Sec. 4	<i>October 1, 2019</i>	46b-6
Sec. 5	<i>October 1, 2019</i>	46b-6a
Sec. 7	<i>July 1, 2019</i>	New section

**Statement of Purpose:**

To make revisions to various statutes relating to court proceedings that concern family relations matters.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



General Assembly

January Session, 2019

**Proposed Bill No. 438**

LCO No. 2416



Referred to Committee on JUDICIARY

Introduced by:  
SEN. KELLY, 21<sup>st</sup> Dist.

**AN ACT CONCERNING COURT-ORDERED GRANDPARENT VISITATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That section 46b-59 of the general statutes be amended to allow a
- 2 grandparent the right of visitation with his or her grandchild upon
- 3 demonstrating to the court that clear and convincing circumstances
- 4 support the granting of such visitation.

**Statement of Purpose:**

To allow a grandparent the right of visitation with his or her grandchild upon demonstrating to the court that clear and convincing circumstances support the granting of such visitation.



General Assembly

January Session, 2019

**Proposed Bill No. 443**

LCO No. 2287



\* 0 2 2 8 7 \*

Referred to Committee on JUDICIARY

Introduced by:  
SEN. MARTIN, 31st Dist.  
(By Request)

***AN ACT CONCERNING ALLEGATIONS OF ABUSE THAT ARE MADE  
IN AN ACTION FOR A DISSOLUTION OF MARRIAGE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 815j of the general statutes be amended to require an
- 2 offer of proof and a hearing when allegations of abuse are made and
- 3 serve as the basis of awarding custody in an action for a dissolution of
- 4 marriage.

***Statement of Purpose:***

To require evidence to support serious allegations of abuse when making custody determinations in an action for a dissolution of marriage.



General Assembly

January Session, 2019

**Proposed Bill No. 612**

LCO No. 2284



Referred to Committee on JUDICIARY

Introduced by:  
SEN. MARTIN, 31st Dist.  
(By Request)

***AN ACT PRIORITIZING RESOLUTION OF CUSTODY AND VISITATION  
ISSUES IN AN ACTION FOR DISSOLUTION OF A MARRIAGE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 815j of the general statutes be amended to require that
- 2 in any action for a dissolution of a marriage that includes issues
- 3 surrounding the care and custody of one or more minor children, the
- 4 court shall prioritize resolving such issues prior to addressing any
- 5 other unresolved issues presented by the parties to the action.

***Statement of Purpose:***

To prioritize resolution of custody and visitation issues in an action for a dissolution of a marriage.



**House Bill No. 5004**

**Public Act No. 19-4**

***AN ACT INCREASING THE MINIMUM FAIR WAGE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (i) of section 31-58 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(i) "Minimum fair wage" in any industry or occupation in this state means: [a]

(1) A wage of not less than six dollars and seventy cents per hour, and effective January 1, 2003, not less than six dollars and ninety cents per hour, and effective January 1, 2004, not less than seven dollars and ten cents per hour, and effective January 1, 2006, not less than seven dollars and forty cents per hour, and effective January 1, 2007, not less than seven dollars and sixty-five cents per hour, and effective January 1, 2009, not less than eight dollars per hour, and effective January 1, 2010, not less than eight dollars and twenty-five cents per hour, and effective January 1, 2014, not less than eight dollars and seventy cents per hour, and effective January 1, 2015, not less than nine dollars and fifteen cents per hour, and effective January 1, 2016, not less than nine dollars and sixty cents per hour, and effective January 1, 2017, not less than ten dollars and ten cents per hour, and effective October 1, 2019,

**House Bill No. 5004**

not less than eleven dollars per hour, and effective September 1, 2020, not less than twelve dollars per hour, and effective August 1, 2021, not less than thirteen dollars per hour, and effective July 1, 2022, not less than fourteen dollars per hour, and effective June 1, 2023, not less than fifteen dollars per hour. On October 15, 2023, and on each October fifteenth thereafter, the Labor Commissioner shall announce the adjustment in the minimum fair wage which shall become the new minimum fair wage and shall be effective on January first immediately following. On January 1, 2024, and not later than each January first thereafter, the minimum fair wage shall be adjusted by the percentage change in the employment cost index, or its successor index, for wages and salaries for all civilian workers, as calculated by the United States Department of Labor, over the twelve-month period ending on June thirtieth of the preceding year, rounded to the nearest whole cent.

(2) In no event shall the minimum fair wage be less than the amount established under subdivision (1) of this subsection, or one-half of one per cent rounded to the nearest whole cent more than the highest federal minimum wage, whichever is greater, except as may otherwise be established in accordance with the provisions of this part.

(3) All wage orders in effect on October 1, 1971, wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided.

(4) Whenever the highest federal minimum wage is increased, the minimum fair wage established under this part shall be increased to the amount of said federal minimum wage plus one-half of one per cent more than said federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the highest federal minimum wage, and shall apply to all wage orders and administrative regulations then in force.

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(5) The rates for [learners, beginners, and] all persons under the age of eighteen years, except emancipated minors, shall be not less than eighty-five per cent of the minimum fair wage for the first [two hundred hours] ninety days of such employment, or ten dollars and ten cents per hour, whichever is greater, and shall be equal to the minimum fair wage thereafter, except in institutional training programs specifically exempted by the commissioner.

(6) After two consecutive quarters of negative growth in the state's real gross domestic product, as reported by the Bureau of Economic Analysis of the United States Department of Commerce, the Labor Commissioner shall report his or her recommendations, in writing, to the Governor regarding whether any scheduled increases in the minimum fair wage pursuant to this section should be suspended. Upon receiving the report, the Governor may submit his or her recommendations regarding the suspension of such minimum fair wage increases to the General Assembly.

Sec. 2. Section 31-60 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) [Any] Except as provided in subdivision (5) of subsection (i) of section 31-58, as amended by this act, any employer who pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part.

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; and piece rates in relation to time rates; and shall recognize, as

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part of the minimum fair wage, gratuities in an amount (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, and ending on June 30, 2019, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to fifteen and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, and ending on June 30, 2019, equal to eighteen and one-half per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent with this section.

(c) Regulations adopted by the commissioner pursuant to



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subsection (b) of this section which define executive, administrative and professional employees shall be updated not later than October 1, 2000, and every four years thereafter, to specify that such persons shall be compensated on a salary basis at a rate determined by the Labor Commissioner.

(d) (1) Effective July 1, 2019, the Labor Commissioner shall recognize, as part of the minimum fair wage, gratuities in an amount equal to the difference between the minimum fair wage and the employer's share per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities. The Labor Commissioner shall also recognize, as part of the subminimum wage established in subdivision (5) of subsection (i) of section 31-58, as amended by this act, gratuities in an amount equal to the difference between such subminimum wage and the employer's share per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities.

(2) Effective July 1, 2019, the Labor Commissioner shall recognize, as part of the minimum fair wage, gratuities in an amount equal to the difference between the minimum fair wage and the employer's share per hour for persons employed as bartenders who customarily and regularly receive gratuities.

(3) As used in this subsection "employer's share" means (A) six dollars and thirty-eight cents per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, and (B) eight dollars and twenty-three cents per hour for persons employed as bartenders who customarily and regularly receive gratuities.

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(e) On and after October 1, 2020, no employer may take any action to displace an employee, including, but not limited to, a partial displacement of an employee, such as reducing the employee's hours, wages or employment benefits, for purposes of hiring persons under the age of eighteen years at a rate below the minimum fair wage. If the Labor Commissioner determines that an employer has violated this subsection, the commissioner shall suspend the employer's right to pay the reduced rate for employees for a period of time specified in regulations adopted pursuant to subsection (b) of this section.

Sec. 3. (*Effective from passage*) (a) The Labor Commissioner shall conduct a study regarding workers in this state who receive gratuities. The commissioner may consult with any individuals or entities the commissioner deems relevant to the purposes of the study. When the study is concluded, the commissioner shall make recommendations regarding the optimal methods of obtaining the following information: (1) Which groups of workers in this state receive compensation in the form of gratuities, (2) the demographics of such workers, (3) the amount of gratuities received by such workers, and (4) any difference in wage growth between workers who receive gratuities and workers who do not receive gratuities. Such study shall include an estimate of the potential costs associated with the commissioner's recommendations.

(b) Not later than January 17, 2020, the commissioner shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to labor of the findings of such study.

Approved: May 28, 2019



General Assembly

January Session, 2019

**Committee Bill No. 693**

LCO No. 6398



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT CONCERNING ADDITIONAL HOUSING PROTECTIONS FOR  
A VICTIM OF FAMILY VIOLENCE OR SEXUAL ASSAULT.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2019*) (a) Upon the request of a  
2 tenant, a landlord shall change the locks to a tenant's dwelling unit  
3 when: (1) The tenant is named as a protected person in (A) a protective  
4 or restraining order issued by a court of this state, including, but not  
5 limited to, an order issued pursuant to sections 46b-15, 46b-16a, 46b-  
6 38c, 53a-40e and 54-1k of the general statutes, that is in effect at the  
7 time the tenant makes such request of the landlord, or (B) a foreign  
8 order of protection that has been registered in this state pursuant to  
9 section 46b-15a of the general statutes, that is in effect at the time the  
10 tenant makes such request of the landlord; and (2) the tenant provides  
11 a copy of such protective order, restraining order or foreign order of  
12 protection to the landlord. A landlord who is required to change a  
13 tenant's locks under this subsection shall do so, or in the alternative  
14 permit the tenant to do so, not later than two business days after the  
15 date that the tenant makes such request.

16 (b) If a landlord fails to change the locks, or fails to permit a tenant

17 the change of the locks within the timeframe prescribed under  
18 subsection (a) of this section, the tenant may proceed to change the  
19 locks without the landlord's permission. If a tenant changes the locks  
20 without the landlord's permission, the tenant shall ensure that the  
21 locks are changed in a workmanlike manner, utilizing locks of similar  
22 or improved quality as compared to the original locks. The landlord  
23 may replace a lock installed by or at the behest of a tenant if the locks  
24 installed were not of equal or improved quality or were not installed  
25 properly. If a tenant changes the locks to his or her dwelling unit  
26 under this subsection, the tenant shall provide a key to the new locks  
27 to the landlord not later than two business days after the date on  
28 which the locks were changed, except when good cause prevents the  
29 tenant from providing a key to the landlord within the prescribed time  
30 period.

31 (c) When a landlord changes the locks to a dwelling unit under  
32 subsection (a) or (b) of this section, the landlord (1) shall, at or prior to  
33 the time of changing such locks, provide a key to the new locks to the  
34 tenant, and (2) may charge a fee to the tenant not exceeding the actual  
35 reasonable cost of changing the locks. A tenant's inability to pay the  
36 cost for replacing the locks shall not be the basis for a summary  
37 process action under chapter 832 of the general statutes, but such costs  
38 may be recouped by suit against the tenant or as a deduction from the  
39 security deposit when the tenant vacates the dwelling unit.

40 (d) If a tenant residing in the dwelling unit is named as the  
41 respondent in an order described in subsection (a) of this section and  
42 under such order is required to stay away from the dwelling unit, the  
43 landlord shall not provide a key to such tenant for the new locks.  
44 Absent a court order permitting a tenant who is the respondent in such  
45 order to return to the dwelling unit to retrieve personal belongings, the  
46 landlord has no duty under the rental agreement or by law to allow  
47 such tenant access to the dwelling unit once the landlord has been  
48 provided with a court order requiring such tenant to stay away from  
49 the dwelling unit, and the landlord shall not permit such tenant to

50 access the dwelling unit. Any tenant excluded from the dwelling unit  
51 under this section remains liable under the rental agreement with any  
52 other tenant of the dwelling unit for rent or damages to the dwelling  
53 unit.

54 (e) A landlord may not require a tenant who is named as a protected  
55 person under an order described in subsection (a) of this section to pay  
56 additional rent or an additional deposit or fee because of the exclusion  
57 of the tenant who is named as the respondent in such order.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	New section

**Statement of Purpose:**

To allow a person who has a valid order of protection to request that such person's landlord change the locks to the person's dwelling unit.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: SEN. FLEXER, 29th Dist.; REP. HADDAD, 54th Dist.  
REP. GILCHREST, 18th Dist.

S.B. 693



General Assembly

January Session, 2019

**Proposed Bill No. 693**

LCO No. 3281



Referred to Committee on JUDICIARY

Introduced by:

SEN. FLEXER, 29th Dist.

REP. HADDAD, 54th Dist.

**AN ACT CONCERNING ADDITIONAL HOUSING PROTECTIONS FOR  
A VICTIM OF FAMILY VIOLENCE OR SEXUAL ASSAULT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 830 of the general statutes be amended to provide that
- 2 a landlord shall, upon the request of a tenant who is the victim of
- 3 family violence or a sexual assault and who has a valid court order of
- 4 protection, change the locks of the individual's dwelling unit at the
- 5 expense of the tenant.

**Statement of Purpose:**

To increase safety for a victim of family violence or sexual assault when an order of protection has been issued by a civil or criminal court.



General Assembly

January Session, 2019

**Raised Bill No. 964**

LCO No. 4983



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT CONCERNING COURT OPERATIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 17a-101 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2019*):

4 (b) The following persons shall be mandated reporters: (1) Any  
5 physician or surgeon licensed under the provisions of chapter 370, (2)  
6 any resident physician or intern in any hospital in this state, whether  
7 or not so licensed, (3) any registered nurse, (4) any licensed practical  
8 nurse, (5) any medical examiner, (6) any dentist, (7) any dental  
9 hygienist, (8) any psychologist, (9) any school employee, as defined in  
10 section 53a-65, (10) any social worker, (11) any person who holds or is  
11 issued a coaching permit by the State Board of Education, is a coach of  
12 intramural or interscholastic athletics and is eighteen years of age or  
13 older, (12) any individual who is employed as a coach or director of  
14 youth athletics and is eighteen years of age or older, (13) any  
15 individual who is employed as a coach or director of a private youth  
16 sports organization, league or team and is eighteen years of age or

17 older, (14) any paid administrator, faculty, staff, athletic director,  
18 athletic coach or athletic trainer employed by a public or private  
19 institution of higher education who is eighteen years of age or older,  
20 excluding student employees, (15) any police officer, (16) any juvenile  
21 or adult probation officer, (17) any juvenile or adult parole officer, (18)  
22 any member of the clergy, (19) any pharmacist, (20) any physical  
23 therapist, (21) any optometrist, (22) any chiropractor, (23) any  
24 podiatrist, (24) any mental health professional, (25) any physician  
25 assistant, (26) any person who is a licensed or certified emergency  
26 medical services provider, (27) any person who is a licensed or  
27 certified alcohol and drug counselor, (28) any person who is a licensed  
28 marital and family therapist, (29) any person who is a sexual assault  
29 counselor or a domestic violence counselor, as defined in section 52-  
30 146k, (30) any person who is a licensed professional counselor, (31) any  
31 person who is a licensed foster parent, (32) any person paid to care for  
32 a child in any public or private facility, child care center, group child  
33 care home or family child care home licensed by the state, (33) any  
34 employee of the Department of Children and Families, (34) any  
35 employee of the Department of Public Health, (35) any employee of the  
36 Office of Early Childhood who is responsible for the licensing of child  
37 care centers, group child care homes, family child care homes or youth  
38 camps, (36) any paid youth camp director or assistant director, (37) the  
39 Child Advocate and any employee of the Office of the Child Advocate,  
40 (38) any person who is a licensed behavior analyst, [and] (39) any  
41 family relations counselor, family relations counselor trainee or family  
42 services supervisor employed by the Judicial Department, and (40) any  
43 victim services advocate employed by the Judicial Department.

44 Sec. 2. Section 46b-44a of the general statutes is repealed and the  
45 following is substituted in lieu thereof (*Effective October 1, 2019*):

46 (a) An action for a nonadversarial dissolution of marriage may be  
47 commenced by the filing of a joint petition in the judicial district in  
48 which one of the parties resides. The joint petition shall be notarized  
49 and contain an attestation, under oath, by each party that the  
50 conditions set forth in subsection (b) of this section exist.



51 (b) An action brought pursuant to subsection (a) of this section may  
52 proceed if, at the time of the filing of the action, the parties attest,  
53 under oath, that the following conditions exist: (1) The marriage has  
54 broken down irretrievably; (2) the duration of the marriage does not  
55 exceed nine years; (3) neither party to the action is pregnant; (4) no  
56 children were born to or adopted by the parties prior to, or during, the  
57 marriage; (5) neither party has any interest or title in real property; (6)  
58 the total combined fair market value of all property owned by either  
59 party, less any amount owed on such property, is less than eighty  
60 thousand dollars; (7) neither party has a defined benefit pension plan;  
61 (8) neither party has a pending petition for relief under the United  
62 States Bankruptcy Code; (9) no other action for dissolution of marriage,  
63 civil union, legal separation or annulment is pending in this state or in  
64 a foreign jurisdiction, except as provided in subsection (g) of this  
65 section; (10) a restraining order, issued pursuant to section 46b-15, or a  
66 protective order, issued pursuant to section 46b-38c, between the  
67 parties is not in effect; and (11) the residency provisions of section 46b-  
68 44 have been satisfied. After the filing of the joint petition and prior to  
69 the court entering a decree of dissolution of marriage pursuant to  
70 section 46b-44c, if a change occurs with respect to any of the conditions  
71 set forth in this subsection, one or both of the parties shall notify the  
72 court forthwith of the changed condition. For the purposes of this  
73 subsection, "defined benefit pension plan" means a pension plan in  
74 which an employer promises to pay a specified monthly benefit upon  
75 an employee's retirement that is predetermined by a formula based on  
76 the employee's earnings history and tenure of service.

77 (c) In addition to attesting to the conditions enumerated in  
78 subsection (b) of this section, any joint petition filed pursuant to  
79 subsection (a) of this section shall also state the date and place of  
80 marriage and the current residential address for each party.

81 (d) A joint petition shall be accompanied by financial affidavits  
82 completed by each party on a form prescribed by the Office of the  
83 Chief Court Administrator, a request for the court to order the  
84 restoration of a birth name or former name, if so desired by either

85 party, and a certification attested to by the parties, under oath, that: (1)  
86 The parties agree to proceed by consent and waive service of process,  
87 except as provided in subsection (g) of this section; (2) neither party is  
88 acting under duress or coercion; and (3) each party is waiving any  
89 right to a trial, alimony, spousal support or an appeal.

90 (e) If the parties submit a settlement agreement to the court that  
91 they are requesting be incorporated into the decree of dissolution, such  
92 settlement agreement shall be filed with the joint petition. Each party  
93 shall attest, under oath, that the terms of the settlement agreement are  
94 fair and equitable. If the court finds that the settlement agreement is  
95 fair and equitable, it shall be incorporated by reference into the decree  
96 of the court. If the court cannot determine whether such agreement is  
97 fair and equitable, the matter shall be docketed for the court's review  
98 in accordance with the provisions of section 46b-44d.

99 (f) The provisions of subsection (a) of section 46b-67 shall not apply  
100 to a nonadversarial dissolution action brought under this section.

101 (g) (1) If after filing an action for dissolution of marriage on the  
102 regular family docket, pursuant to section 46b-45, but prior to the court  
103 entering a decree of dissolution of marriage, the parties to such action  
104 satisfy all the conditions for a nonadversarial dissolution of marriage  
105 as set forth in this section, then such parties may file a joint petition in  
106 the existing dissolution of marriage file pursuant to subsection (a) of  
107 this section, except that such joint petition need not include a waiver of  
108 service of process. Upon the filing of such joint petition, the action may  
109 proceed in the manner set forth in sections 46b-44b to 46b-44d,  
110 inclusive.

111 (2) No new filing fee shall be imposed by the court for a joint  
112 petition filed pursuant to this subsection.

113 Sec. 3. Section 46b-136 of the general statutes is repealed and the  
114 following is substituted in lieu thereof (*Effective July 1, 2019*):

115 (a) In any proceeding in a juvenile matter, the judge before whom

116 such proceeding is pending shall, even in the absence of a request to  
117 do so, provide an attorney to represent the child or youth, the child's  
118 or youth's parent or parents or guardian, or other person having  
119 control of the child or youth, if such judge determines that the interests  
120 of justice so require, and in any proceeding in which the custody of a  
121 child is at issue, such judge shall provide an attorney to represent the  
122 child and may authorize such attorney or appoint another attorney to  
123 represent such child or youth, parent, guardian or other person on an  
124 appeal from a decision in such proceeding. [Where]

125 (b) (1) When, under the provisions of this section, the court appoints  
126 counsel in a proceeding in a juvenile matter in the civil session and  
127 orders the Division of Public Defender Services to provide such  
128 counsel, the cost of such counsel shall be shared as agreed to by the  
129 Division of Public Defender Services and the Judicial Department.  
130 When, under the provisions of this subdivision, the court so appoints  
131 counsel for any party who is found able to pay, in whole or in part, the  
132 cost thereof, the court shall assess as costs against such party,  
133 including any agency vested with the legal custody of the child or  
134 youth, the expense incurred and paid by the Division of Public  
135 Defender Services and the Judicial Department in providing such  
136 counsel, and order reimbursement to the Division of Public Defender  
137 Services and the Judicial Department to the extent of the party's  
138 financial ability to do so.

139 (2) When, under the provisions of this section, the court [so]  
140 appoints counsel in a proceeding in a juvenile matter in the criminal  
141 session and orders the Division of Public Defender Services to provide  
142 such counsel, the cost of such counsel shall be incurred by the Division  
143 of Public Defender Services. When, under the provisions of this  
144 subdivision, the court so appoints counsel for any [such] party who is  
145 found able to pay, in whole or in part, the cost thereof, the court shall  
146 assess as costs against such [parents, guardian or custodian] party,  
147 including any agency vested with the legal custody of the child or  
148 youth, the expense [so] incurred and paid by the Division of Public  
149 Defender Services in providing such counsel, and order

150 reimbursement to the Division of Public Defender Services to the  
151 extent of [their] the party's financial ability to do so.

152 (c) The Division of Public Defender Services shall establish the rate  
153 at which counsel provided pursuant to this section shall be  
154 compensated.

155 Sec. 4. Subsection (a) of section 54-1g of the general statutes is  
156 repealed and the following is substituted in lieu thereof (*Effective*  
157 *October 1, 2019*):

158 (a) Any arrested person who is not released sooner or who is  
159 charged with a family violence crime, as defined in section 46b-38a, or  
160 a violation of section 53a-181c, 53a-181d or 53a-181e shall be promptly  
161 presented before the superior court sitting next regularly for the  
162 geographical area where the offense is alleged to have been committed.  
163 If an arrested person is hospitalized, or has escaped or is otherwise  
164 incapacitated, the person shall be presented, if practicable, to the first  
165 regular sitting after return to police custody. Upon a finding of good  
166 cause shown that is placed on the record, the judicial authority may  
167 waive the presence of the defendant at the arraignment.

168 Sec. 5. Section 51-60 of the general statutes is repealed and the  
169 following is substituted in lieu thereof (*Effective July 1, 2019*):

170 (a) As used in this chapter:

171 (1) "State's attorney" means a state's attorney, assistant state's  
172 attorney, deputy assistant state's attorney and special deputy assistant  
173 state's attorney;

174 (2) "Public defender" means a public defender, assistant public  
175 defender, deputy assistant public defender and special public  
176 defender;

177 (3) "Public official" means any official of (A) the state, (B) any state  
178 agency, board or commission, or (C) a municipality of the state acting  
179 in an official capacity;

180     (4) "Transcript" means the official written record of a proceeding, or  
181 any part thereof, including, but not limited to, testimony and  
182 arguments of counsel, produced in the Superior, Appellate or Supreme  
183 Court, by an official court reporter or a court recording monitor  
184 designated by the Chief Court Administrator; and

185     (5) "Transcript page" means a page consisting of twenty-seven  
186 double-spaced lines on paper eight and one-half by eleven inches in  
187 size, with sixty spaces available per line.

188     [(a)] (b) The judges of the Superior Court shall appoint official court  
189 reporters for the court as the judges or an authorized committee  
190 thereof determines the business of the court requires.

191     [(b)] A person shall not be appointed a court reporter under the  
192 provisions of this section who has not passed the entry level  
193 examination provided for under section 51-63 and a reporter shall not  
194 be placed in the higher court reporter salary classification who has not  
195 passed the examination provided for in said section for such higher  
196 classification, provided each person serving on July 1, 1978, as a court  
197 reporter or assistant court reporter in the Court of Common Pleas shall  
198 continue to serve in the Superior Court for the balance of the term for  
199 which he was appointed. In no event shall the compensation of such  
200 person be affected solely as a result of the transfer of jurisdiction  
201 provided in section 51-164s.]

202     (c) The Chief Court Administrator shall adopt policies and  
203 procedures necessary to implement the provisions of this chapter,  
204 including, but not limited to, the establishment and administration of a  
205 system of fees for production of expedited transcripts.

206     Sec. 6. Section 51-61 of the general statutes is repealed and the  
207 following is substituted in lieu thereof (*Effective July 1, 2019*):

208     (a) Each official court reporter, before entering upon the duties of  
209 [his] the office, shall be sworn to faithfully perform [them] such duties  
210 and shall then be an officer of the court. [He shall] Each official court

211 reporter may attend [the] court proceedings and make accurate records  
212 of all proceedings in the court, except sessions of small claims. [and the  
213 arguments of counsel, provided upon the request of any party, he shall  
214 make accurate records of the arguments of counsel.]

215 (b) [Each official court reporter shall, if the judge or judges of the  
216 court so direct, employ assistant court reporters and monitors to attend  
217 such court as the judge or judges may desire. He shall not employ  
218 assistant reporters or monitors receiving a per diem rate to attend any  
219 session unless their employment is authorized by the judge holding  
220 the session. Each assistant court reporter or monitor, before entering  
221 upon his duties, shall be sworn to faithfully perform them.] The  
222 Judicial Branch shall employ court recording monitors. Each court  
223 recording monitor, before entering upon the duties of the office, shall  
224 be sworn to faithfully perform such duties.

225 (c) Each official court reporter [, assistant court reporter] and court  
226 recording monitor shall, when requested, furnish to the court, to the  
227 state's attorney, [or any assistant or deputy assistant state's attorney,]  
228 to any party of record and to any other person, within a reasonable  
229 time, a transcript [of the proceedings, or such portion thereof] as may  
230 be desired, except that, if the proceedings were closed to the public,  
231 such official court reporter or court recording monitor shall not furnish  
232 such transcript [or portion thereof] to such other person unless [the  
233 proceedings were commenced on or after October 1, 1988, and] the  
234 court in its discretion determines that such disclosure is appropriate.

235 [(d) Whenever a transcript of proceedings, or a portion thereof, has  
236 been requested by any party of record pursuant to subsection (c) of  
237 this section, the court reporter or monitor shall furnish a transcript or  
238 portion thereof to the state's attorney, assistant state's attorney or  
239 deputy assistant state's attorney at no cost as provided in subsection (c)  
240 of section 51-63.

241 (e) Whenever a transcript of proceedings, or a portion thereof, has  
242 been requested by the state's attorney, assistant state's attorney or

243 deputy assistant state's attorney and the public defender, assistant  
244 public defender or deputy assistant public defender, the court reporter  
245 or monitor shall provide a transcript or portion thereof, in a form that  
246 may be photocopied, to either such state's attorney or such public  
247 defender and the cost of such transcript, or portion thereof, shall be  
248 shared by such state's attorney and such public defender.]

249 (d) Each official court reporter and court recording monitor shall  
250 inform the state's attorney whenever a transcript has been requested  
251 by a party to a case in which the state's attorney has an appearance. If  
252 such request is made by a party, or by a party represented by counsel  
253 other than a public defender, the state's attorney shall, upon request,  
254 receive from such official court reporter or court recording monitor a  
255 copy of the transcript at no cost, as provided in subsection (c) of  
256 section 51-63, as amended by this act.

257 (e) If a transcript has been requested by the state's attorney or a  
258 public defender in a matter in which each is a party to the case, the  
259 official court reporter or the court recording monitor shall inform the  
260 party that has not made the original request that the request has been  
261 made. If the nonrequesting party requests a copy of the transcript,  
262 prior to its delivery to the requesting party, the cost of such transcript  
263 shall be shared by the parties. The official court reporter or the court  
264 recording monitor shall provide the transcript in a form that may be  
265 photocopied, to either the state's attorney or the public defender. If a  
266 request for a transcript is received by the official court reporter or court  
267 recording monitor subsequent to delivery of the transcript, the  
268 requesting party in this instance shall be responsible for payment of  
269 the full copy rate of such transcript as provided in subsection (c) of  
270 section 51-63, as amended by this act.

271 (f) Each official court reporter [, assistant court reporter] and court  
272 recording monitor shall inform the court whenever a transcript of  
273 proceedings [, or a portion thereof,] has been requested by the state's  
274 attorney [, assistant or deputy assistant state's attorney] or any party of  
275 record pursuant to subsection (c) of this section. If such transcript [or

276 portion thereof] has been requested, the court, upon request, shall  
277 receive from such official court reporter or court recording monitor a  
278 transcript [, or portion thereof,] at no cost as provided in subsection (c)  
279 of section 51-63, as amended by this act.

280 (g) Whenever the court deems it necessary, it may order a transcript  
281 [of the proceedings, or any part thereof,] to be filed with the clerk of  
282 the trial court.

283 [(h) All records of the proceedings taken on the trial of any action  
284 shall, within thirty days after the action has been submitted, be filed  
285 with the clerk or the clerk's designee, except that for the purpose of  
286 transcribing such records the court reporter or monitor may at any  
287 time withdraw them for a reasonable time.]

288 Sec. 7. Section 51-62 of the general statutes is repealed and the  
289 following is substituted in lieu thereof (*Effective July 1, 2019*):

290 (a) Whenever a judge of the Superior Court, a judge trial referee or a  
291 family support magistrate sitting in chambers [, a family support  
292 magistrate or a state referee] deems it necessary, the judge, [or referee]  
293 judge trial referee or family support magistrate may call upon the  
294 official court reporter or court recording monitor for the judicial  
295 district in which any action pending [before the judge sitting in  
296 chambers, family support magistrate or state referee] is to be heard to  
297 take the evidence therein. The judge, [magistrate or referee] judge trial  
298 referee or family support magistrate shall have and may exercise all  
299 the powers conferred by law upon a judge of the Superior Court when  
300 sitting as a court, with respect to transcripts of the official records of  
301 the official court reporter or court recording monitor.

302 (b) The official court reporter or court recording monitor when  
303 called upon [, or a competent assistant designated by him,] shall attend  
304 the hearings, and shall have all the powers, be subject to the same  
305 duties and receive the same compensation for attendance and fees for  
306 transcripts of [his] the official records as are authorized by law. [for  
307 official court reporters of the Superior Court.]



308 [(c) Compensation for attendance and fees for copies ordered by the  
309 judge or state referee, when approved, shall be paid by the clerk of the  
310 superior court for the judicial district in which the action is heard in  
311 the same manner as other court expenses.]

312 Sec. 8. Section 51-63 of the general statutes is repealed and the  
313 following is substituted in lieu thereof (*Effective July 1, 2019*):

314 [(a) Each official court reporter of the Superior Court, and as many  
315 assistant reporters as the judges of the Superior Court consider  
316 necessary, shall receive a salary. Each other assistant reporter shall  
317 receive a per diem rate fixed by the judges, to be paid as court  
318 expenses.

319 (b) The salaries of the court reporters and assistant court reporters  
320 shall be established as provided in section 51-12 and shall be in two  
321 classes. Examinations shall be held to determine level of skills and  
322 placement in a class.

323 (c) In addition to other compensation, official and assistant reporters  
324 and monitors shall be entitled to charge a party or other individual  
325 three dollars for each transcript page which is or previously was  
326 transcribed from the original record as provided by law, provided the  
327 charge to any such party or other individual shall be one dollar and  
328 seventy-five cents for each page for which a charge of three dollars  
329 already has been made, except that (1) the charge to any official of the  
330 state, or any of its agencies, boards or commissions or of any  
331 municipality of the state, acting in his or her official capacity, shall be  
332 two dollars for each transcript page which is or previously was  
333 transcribed from the official record, provided the charge to any such  
334 official shall be seventy-five cents for each page for which a charge of  
335 two dollars already has been made, (2) there shall be no charge to the  
336 state's attorney, assistant state's attorney or deputy assistant state's  
337 attorney for a transcript provided pursuant to subsection (d) of section  
338 51-61, and (3) there shall be no charge to the court for a transcript  
339 provided pursuant to subsection (f) of section 51-61. For the purposes

340 of this subsection, "transcript page" means a page consisting of twenty-  
341 seven double-spaced lines on paper eight and one-half by eleven  
342 inches in size, with sixty spaces available per line. The Chief Court  
343 Administrator shall adopt policies and procedures necessary to  
344 implement the provisions of this section, including, but not limited to,  
345 the establishment and administration of a system of fees for  
346 production of expedited transcripts.]

347 (a) (1) In addition to a salary, an official court reporter and a court  
348 recording monitor shall be entitled to charge an individual, who is not  
349 a public official, three dollars for each transcript page which is ordered  
350 and transcribed from the original record as provided by law, provided  
351 such rate may only be charged once. Any subsequent charge for a  
352 transcript page previously produced for an individual who is not a  
353 public official shall be one dollar and seventy-five cents.

354 (2) In addition to a salary, an official court reporter and a court  
355 recording monitor shall be entitled to charge any public official two  
356 dollars for each transcript page which is ordered and transcribed from  
357 the official record as provided by law, provided such rate may only be  
358 charged once. The charge to any public official shall be seventy-five  
359 cents for each transcript page previously produced, except (A) there  
360 shall be no charge to the state's attorney for a transcript provided  
361 pursuant to subsection (d) of section 51-61, as amended by this act, and  
362 (B) there shall be no charge to the court for a transcript provided  
363 pursuant to subsection (f) of section 51-61, as amended by this act.

364 [(d)] (b) The fee for a transcript of such record, when made for the  
365 court or for the state's attorney when acting in [his] the court's or  
366 state's attorney's official capacity, and for one copy each to the plaintiff  
367 and the defendant, shall, upon the certificate of the presiding judge  
368 having so ordered such transcript, be paid as other court expenses and,  
369 in all other cases, by the party ordering the same, and such copies shall  
370 be furnished within a reasonable time.

371 [(e)] (c) Official and assistant stenographers in the offices of the

372 workers' compensation commissioners shall be entitled, in addition to  
373 the compensation otherwise provided for, to the same fees for  
374 preparing transcripts as are provided for official court reporters and  
375 court recording monitors in the Superior Court.

376 [(f) Official court reporters shall be allowed such clerical assistance  
377 in each judicial district as may be determined to be necessary by the  
378 judges of the Superior Court at such compensation as may be fixed by  
379 the judges.

380 (g) Official court reporters and assistant reporters shall receive, in  
381 addition to the compensation allowed by law, necessary traveling  
382 expenses to be taxed and paid as other court expenses.]

383 Sec. 9. Section 51-74 of the general statutes is repealed and the  
384 following is substituted in lieu thereof (*Effective October 1, 2019*):

385 [(a)] The record of proceedings in any court required to be made by  
386 an official court reporter [, assistant court reporter, stenographer or  
387 assistant stenographer may in the first instance be made by shorthand,  
388 by shorthand writing machine, or by a mechanical or sound recording  
389 device] or court recording monitor shall be made by digital audio  
390 equipment or such other medium as approved by the Chief Justice of  
391 the Supreme Court.

392 [(b) Whenever the general statutes provide that a court reporter or  
393 stenographer attend a court, or be appointed to attend a court, to make  
394 a record of the proceedings therein, the court reporter or stenographer  
395 may be a person competent to make the record by shorthand, by a  
396 shorthand writing machine or by an approved mechanical or sound  
397 recording device.

398 (c) The term "shorthand notes", "stenographic notes" or "official  
399 notes", when used in the general statutes to mean the original record of  
400 court proceedings, shall include the record made by a shorthand  
401 writing machine or other approved mechanical or sound recording  
402 device.]

403       Sec. 10. Section 51-197a of the general statutes is repealed and the  
404 following is substituted in lieu thereof (*Effective January 1, 2020*):

405       (a) Appeals and writs of error from final judgments or actions of the  
406 Superior Court shall be taken to the Appellate Court in accordance  
407 with section 51-197c, except for small claims, which are not appealable,  
408 [appeals within the jurisdiction of the Supreme Court as provided for  
409 in section 51-199,] appeals as provided for in sections 8-8 and 8-9, and  
410 except as otherwise provided by statute.

411       (b) The Appellate Court may issue all writs necessary or appropriate  
412 in aid of its jurisdiction and agreeable to the usages and principles of  
413 law.

414       (c) All matters pending in the appellate session of the Superior  
415 Court on July 1, 1983, shall be construed as pending with the same  
416 status in the Appellate Court on said date.

417       (d) Notwithstanding subsection (c) of this section, the appellate  
418 session of the Superior Court shall continue to have jurisdiction over  
419 appeals which it heard prior to July 1, 1983, pursuant to the provisions  
420 which were applicable at such time.

421       (e) Except as otherwise provided in sections 2-40, 2-42, 7-143, 7-230,  
422 8-8, 8-9, 8-132, 8-132a, 10-153e, 12-4, 13a-76, 31-109, 31-118, 31-249b, 31-  
423 272, 31-301b, 31-301c, 31-324, 31-491, 31-493, 38a-470, 46a-94, 46a-95,  
424 46b-142, 46b-143, 46b-150c, 51-1a, 51-14, 51-49, 51-50j, 51-164x, 51-165,  
425 51-197a, as amended by this act, 51-197b, 51-197c, 51-197e, 51-197f, [51-  
426 199,] 51-201, 51-202, 51-203, 51-209, 51-210, as amended by this act, 51-  
427 211, 51-213, 51-215a, 51-216a, 52-235, 52-257, 52-259, 52-263, 52-267, 52-  
428 405, 52-434, 52-434a, 52-470, 52-476, 52-477, 52-592, 54-63g, 54-95, 54-96,  
429 54-96a, 54-96b and 54-143, all jurisdiction conferred upon and  
430 exercised by the appellate session prior to July 1, 1983, of the Superior  
431 Court shall be transferred to the Appellate Court.

432       Sec. 11. Subsection (b) of section 51-199 of the general statutes is  
433 repealed and the following is substituted in lieu thereof (*Effective*

434 *January 1, 2020*):

435 (b) The following matters shall be taken directly to the Supreme  
436 Court: (1) Any matter brought pursuant to the original jurisdiction of  
437 the Supreme Court under section 2 of article sixteen of the  
438 amendments to the Constitution; (2) an appeal in any matter where the  
439 Superior Court declares invalid a state statute or a provision of the  
440 state Constitution; (3) an appeal in any criminal action involving a  
441 conviction for a capital felony under the provisions of section 53a-54b  
442 in effect prior to April 25, 2012, class A felony or any other felony,  
443 including any persistent offender status, for which the maximum  
444 sentence which may be imposed exceeds twenty years; (4) review of a  
445 sentence of death pursuant to section 53a-46b; (5) any election or  
446 primary dispute brought to the Supreme Court pursuant to section 9-  
447 323 or 9-325; (6) an appeal of any reprimand or censure of a probate  
448 judge pursuant to section 45a-65; (7) any matter regarding judicial  
449 removal or suspension pursuant to section 51-51j; (8) an appeal of any  
450 decision of the Judicial Review Council pursuant to section 51-51r; (9)  
451 any matter brought to the Supreme Court pursuant to section 52-265a;  
452 and (10) [writs of error; and (11)] any other matter as provided by law.

453 Sec. 12. Section 51-292 of the general statutes is repealed and the  
454 following is substituted in lieu thereof (*Effective July 1, 2019*):

455 [Reasonable] Except as provided in section 46b-136, as amended by  
456 this act, reasonable expenses of, or incurred by, the commission, the  
457 Chief Public Defender, or those serving pursuant to the provisions of  
458 this chapter, including rental of facilities, witnesses summoned, costs  
459 of transcripts ordered from the official court reporters or court  
460 recording monitors, costs of service of process, and costs of equipment,  
461 and other necessary disbursements or costs of defense shall be paid  
462 from the budget of the commission upon approval of the commission.

463 Sec. 13. Section 54-91a of the general statutes is repealed and the  
464 following is substituted in lieu thereof (*Effective October 1, 2019*):

465 (a) No defendant convicted of a crime, other than a capital felony

466 under the provisions of section 53a-54b in effect prior to April 25, 2012,  
467 or murder with special circumstances under the provisions of section  
468 53a-54b in effect on or after April 25, 2012, the punishment for which  
469 may include imprisonment for more than one year, may be sentenced,  
470 or the defendant's case otherwise disposed of, until a written report of  
471 investigation by a probation officer has been presented to and  
472 considered by the court, if the defendant is so convicted for the first  
473 time in this state or upon any conviction of a felony involving family  
474 violence pursuant to section 46b-38a for which the punishment may  
475 include imprisonment; but any court may, in its discretion, order a  
476 presentence investigation for a defendant convicted of any crime or  
477 offense other than a capital felony under the provisions of section 53a-  
478 54b in effect prior to April 25, 2012, or murder with special  
479 circumstances under the provisions of section 53a-54b in effect on or  
480 after April 25, 2012.

481 (b) A defendant who is convicted of a crime and is not eligible for  
482 sentence review pursuant to section 51-195 may, with the consent of  
483 the sentencing judge and the prosecuting official, waive the  
484 presentence investigation, except that the presentence investigation  
485 may not be waived when the defendant is convicted of a felony  
486 involving family violence pursuant to section 46b-38a and the  
487 punishment for which may include imprisonment.

488 (c) Whenever an investigation is required, the probation officer shall  
489 promptly inquire into the circumstances of the offense, the attitude of  
490 the complainant or victim, or of the immediate family where possible  
491 in cases of homicide, and the criminal record, social history and  
492 present condition of the defendant. Such investigation shall include an  
493 inquiry into any damages suffered by the victim, including medical  
494 expenses, loss of earnings and property loss. All local and state police  
495 agencies shall furnish to the probation officer such criminal records as  
496 the probation officer may request. When in the opinion of the court or  
497 the investigating authority it is desirable, such investigation shall  
498 include a physical and mental examination of the defendant. If the  
499 defendant is committed to any institution, the investigating agency

500 shall send the reports of such investigation to the institution at the time  
501 of commitment.

502 (d) In lieu of ordering a full presentence investigation, the court may  
503 order an abridged version of such investigation, which (1) shall contain  
504 (A) identifying information about the defendant, (B) information about  
505 the pending case from the record of the court, (C) the circumstances of  
506 the offense, and (D) the attitude of the complainant or victim,  
507 including any damages suffered by the victim, including medical  
508 expenses, loss of earnings and property loss, the criminal record of the  
509 defendant, and (2) may encompass one or more areas of the social  
510 history and present condition of the defendant, including family  
511 background, significant relationships or children, educational  
512 attainment or vocational training, employment history, financial  
513 situation, housing situation, medical status, mental health status,  
514 substance abuse history, the results of any clinical evaluation  
515 conducted of the defendant or any other information required by the  
516 court that is consistent with the provisions of this section.

517 [(d)] (e) Any information contained in the files or report of an  
518 investigation pursuant to this section shall be available to the Court  
519 Support Services Division for the purpose of performing the duties  
520 contained in section 54-63d and to the Department of Mental Health  
521 and Addiction Services for purposes of diagnosis and treatment.

522 Sec. 14. Subsection (a) of section 54-210 of the general statutes is  
523 repealed and the following is substituted in lieu thereof (*Effective July*  
524 *1, 2019*):

525 (a) The Office of Victim Services or a victim compensation  
526 commissioner may order the payment of compensation under sections  
527 54-201 to 54-218, inclusive, for: (1) Expenses actually and reasonably  
528 incurred as a result of the personal injury or death of the victim,  
529 provided coverage for the cost of medical care and treatment of a  
530 crime victim who does not have medical insurance or who has  
531 exhausted coverage under applicable health insurance policies or

532 Medicaid shall be ordered; (2) loss of earning power as a result of total  
533 or partial incapacity of such victim; (3) pecuniary loss to the spouse or  
534 dependents of the deceased victim, provided the family qualifies for  
535 compensation as a result of murder or manslaughter of the victim; (4)  
536 pecuniary loss to an injured victim or the relatives or dependents of an  
537 injured victim or a deceased victim for attendance at court  
538 proceedings, juvenile proceedings and Board of Pardons and Parole  
539 hearings with respect to the criminal case of the person or persons  
540 charged with committing the crime that resulted in the injury or death  
541 of the victim; (5) loss of wages by any parent or guardian of a deceased  
542 victim, provided the amount paid under this subsection shall not  
543 exceed one week's net wage; and (6) any other loss, except as set forth  
544 in section 54-211, resulting from the personal injury or death of the  
545 victim which the Office of Victim Services or a victim compensation  
546 commissioner, as the case may be, determines to be reasonable.

547 Sec. 15. Subdivision (2) of subsection (b) of section 1-206 of the  
548 general statutes is repealed and the following is substituted in lieu  
549 thereof (*Effective October 1, 2019*):

550 (2) In any appeal to the Freedom of Information Commission under  
551 subdivision (1) of this subsection or subsection (c) of this section, the  
552 commission may confirm the action of the agency or order the agency  
553 to provide relief that the commission, in its discretion, believes  
554 appropriate to rectify the denial of any right conferred by the Freedom  
555 of Information Act. The commission may declare null and void any  
556 action taken at any meeting which a person was denied the right to  
557 attend and may require the production or copying of any public  
558 record. In addition, upon the finding that a denial of any right created  
559 by the Freedom of Information Act was without reasonable grounds  
560 and after the custodian or other official directly responsible for the  
561 denial has been given an opportunity to be heard at a hearing  
562 conducted in accordance with sections 4-176e to 4-184, inclusive, the  
563 commission may, in its discretion, impose against the custodian or  
564 other official a civil penalty of not less than twenty dollars nor more  
565 than one thousand dollars. If the commission finds that a person has



566 taken an appeal under this subsection frivolously, without reasonable  
 567 grounds and solely for the purpose of harassing the agency from  
 568 which the appeal has been taken, after such person has been given an  
 569 opportunity to be heard at a hearing conducted in accordance with  
 570 sections 4-176e to 4-184, inclusive, the commission may, in its  
 571 discretion, impose against that person a civil penalty of not less than  
 572 twenty dollars nor more than one thousand dollars. The commission  
 573 shall notify a person of a penalty levied against him pursuant to this  
 574 subsection by written notice sent by certified or registered mail. If a  
 575 person fails to pay the penalty within thirty days of receiving such  
 576 notice, the [superior court for the judicial district of Hartford] Superior  
 577 Court shall, on application of the commission, issue an order requiring  
 578 the person to pay the penalty imposed. If the executive director of the  
 579 commission has reason to believe an appeal under subdivision (1) of  
 580 this subsection or subsection (c) of this section (A) presents a claim  
 581 beyond the commission's jurisdiction; (B) would perpetrate an  
 582 injustice; or (C) would constitute an abuse of the commission's  
 583 administrative process, the executive director shall not schedule the  
 584 appeal for hearing without first seeking and obtaining leave of the  
 585 commission. The commission shall provide due notice to the parties  
 586 and review affidavits and written argument that the parties may  
 587 submit and grant or deny such leave summarily at its next regular  
 588 meeting. The commission shall grant such leave unless it finds that the  
 589 appeal: (i) Does not present a claim within the commission's  
 590 jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute  
 591 an abuse of the commission's administrative process. Any party  
 592 aggrieved by the commission's denial of such leave may apply to the  
 593 superior court for the judicial district of [Hartford] New Britain, within  
 594 fifteen days of the commission meeting at which such leave was  
 595 denied, for an order requiring the commission to hear such appeal.

596       Sec. 16. Subsections (f) and (g) of section 46b-231 of the general  
 597 statutes are repealed and the following is substituted in lieu thereof  
 598 (*Effective July 1, 2019*):

599       (f) (1) (A) The Family Support Magistrate Division shall include nine

600 family support magistrates who shall, (i) prior to January 1, 2017, be  
601 appointed by the Governor to serve in that capacity for a term of three  
602 years, and (ii) on and after January 1, 2017, be nominated by the  
603 Governor and appointed by the General Assembly to serve in that  
604 capacity for a term of five years, except that each family support  
605 magistrate serving on December 31, 2016, shall continue to serve in  
606 that capacity on and after January 1, 2017, until the expiration of such  
607 magistrate's three-year term. [, unless removed from office pursuant to  
608 this subsection, and shall continue to serve after the expiration of such  
609 three-year term until a successor is appointed or the family support  
610 magistrate's nomination has failed to be approved in accordance with  
611 this subsection.] A family support magistrate may be nominated by the  
612 Governor for reappointment. If a family support magistrate continues  
613 to serve after the expiration of such three-year term and such family  
614 support magistrate is nominated by the Governor for reappointment,  
615 the family support magistrate's five-year term shall begin on the date  
616 that the General Assembly approves the nomination for reappointment  
617 pursuant to subdivision (3) of this subsection.

618 (B) To be eligible for nomination as a family support magistrate, a  
619 person shall have engaged in the practice of law for five years prior to  
620 appointment and be experienced in the field of family law. The family  
621 support magistrate shall devote full time to the duties of a family  
622 support magistrate and shall not engage in the private practice of law.  
623 A family support magistrate may be removed from office by the  
624 Governor for cause and is subject to admonishment, censure,  
625 suspension and removal from office as provided in chapter 872a.

626 (2) Each nomination made by the Governor to the General  
627 Assembly for a family support magistrate shall be referred, without  
628 debate, to the committee on the judiciary, which shall report thereon  
629 within thirty legislative days from the time of reference, but not later  
630 than seven legislative days before the adjourning of the General  
631 Assembly.

632 (3) Each appointment of a family support magistrate shall be by

633 concurrent resolution. The action on the passage of each such  
634 resolution in the House of Representatives and in the Senate shall be  
635 by vote taken on the electrical roll-call device. No resolution shall  
636 contain the name of more than one nominee. The Governor shall,  
637 within five days after the Governor has notice that any family support  
638 magistrate nomination has failed to be approved by the affirmative  
639 concurrent action of both houses of the General Assembly, make  
640 another nomination to such office.

641 (4) Notwithstanding the provisions of section 4-19, no vacancy in  
642 the position of a family support magistrate shall be filled by the  
643 Governor when the General Assembly is not in session unless, prior to  
644 such filling, the Governor submits the name of the proposed vacancy  
645 appointee to the committee on the judiciary. Within forty-five days, the  
646 committee on the judiciary may, upon the call of either chairperson,  
647 hold a special meeting for the purpose of approving or disapproving  
648 such proposed vacancy appointee by majority vote. The Governor  
649 shall not administer the oath of office to such proposed vacancy  
650 appointee until the committee has approved such proposed vacancy  
651 appointee. If the committee determines that it cannot complete its  
652 investigation and act on such proposed vacancy appointee within such  
653 forty-five-day period, it may extend such period by an additional  
654 fifteen days. The committee shall notify the Governor in writing of any  
655 such extension. Failure of the committee to act on such proposed  
656 vacancy appointee within such forty-five-day period or any fifteen-day  
657 extension period shall be deemed to be an approval.

658 (5) Prior to a public hearing on a family support magistrate, the  
659 committee on the judiciary may employ a person to investigate, at the  
660 request of the chairpersons of said committee, any family support  
661 magistrate nominee with respect to the suitability of such nominee for  
662 magisterial office. Such investigator shall report his or her findings to  
663 said committee and any such report shall be confidential and shall not  
664 be subject to public disclosure. Such person shall receive such  
665 compensation as may be fixed by the Joint Committee on Legislative  
666 Management for each day such person is engaged in his or her duties

667 as an investigator.

668 (g) A Chief Family Support Magistrate shall be designated by the  
669 Chief Court Administrator of the Superior Court from among the nine  
670 family support magistrates appointed pursuant to subsection (f) of this  
671 section, except that the Chief Family Support Magistrate serving in  
672 that capacity on December 31, 2016, shall continue to serve in that  
673 capacity on and after January 1, 2017, until the expiration of such  
674 family support magistrate's term. [ unless a successor is designated by  
675 the Chief Court Administrator or such family support magistrate is  
676 removed from office pursuant to subsection (f) of this section or such  
677 family support magistrate's nomination has failed to be approved in  
678 accordance with subsection (f) of this section.] Under the direction of  
679 the Chief Court Administrator, the Chief Family Support Magistrate  
680 shall supervise the Family Support Magistrate Division and perform  
681 such other duties as provided in this section.

682 Sec. 17. Subsection (c) of section 52-196a of the general statutes is  
683 repealed and the following is substituted in lieu thereof (*Effective July*  
684 *1, 2019*):

685 (c) Any party filing a special motion to dismiss shall file such  
686 motion not later than thirty days after the [date of] return date of the  
687 complaint, or the filing of a counterclaim or cross claim described in  
688 subsection (b) of this section. The court, upon a showing of good cause  
689 by a party seeking to file a special motion to dismiss, may extend the  
690 time to file a special motion to dismiss.

691 Sec. 18. Section 51-65 of the general statutes is repealed. (*Effective*  
692 *July 1, 2019*)

693 Sec. 19. Section 52-158 of the general statutes is repealed. (*Effective*  
694 *October 1, 2019*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2019</i>	17a-101(b)

Sec. 2	<i>October 1, 2019</i>	46b-44a
Sec. 3	<i>July 1, 2019</i>	46b-136
Sec. 4	<i>October 1, 2019</i>	54-1g(a)
Sec. 5	<i>July 1, 2019</i>	51-60
Sec. 6	<i>July 1, 2019</i>	51-61
Sec. 7	<i>July 1, 2019</i>	51-62
Sec. 8	<i>July 1, 2019</i>	51-63
Sec. 9	<i>October 1, 2019</i>	51-74
Sec. 10	<i>January 1, 2020</i>	51-197a
Sec. 11	<i>January 1, 2020</i>	51-199(b)
Sec. 12	<i>July 1, 2019</i>	51-292
Sec. 13	<i>October 1, 2019</i>	54-91a
Sec. 14	<i>July 1, 2019</i>	54-210(a)
Sec. 15	<i>October 1, 2019</i>	1-206(b)(2)
Sec. 16	<i>July 1, 2019</i>	46b-231(f) and (g)
Sec. 17	<i>July 1, 2019</i>	52-196a(c)
Sec. 18	<i>July 1, 2019</i>	Repealer section
Sec. 19	<i>October 1, 2019</i>	Repealer section

**Statement of Purpose:**

To make various changes to the general statutes affecting both civil and criminal court proceedings.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



General Assembly

January Session, 2019

**Raised Bill No. 7095**

LCO No. 3718



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT CONCERNING A GRANDPARENT'S RIGHT TO VISITATION  
WITH HIS OR HER GRANDCHILD.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-59 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) As used in this section:

4 (1) "Grandparent" means a grandparent or great-grandparent  
5 related to a minor child by (A) blood, (B) marriage, or (C) adoption of  
6 the minor child by a child of the grandparent; and

7 (2) "Real and significant harm" means that the minor child is  
8 neglected, as defined in section 46b-120, or uncared for, as defined in  
9 said section.

10 (b) Any person may submit a verified petition to the Superior Court  
11 for the right of visitation with any minor child, [. Such petition] except  
12 that if a verified petition has been filed by a grandparent and (1) either  
13 or both parents of the minor child are deceased, (2) the parents of the

14 minor child are divorced, or (3) the parents of the minor child are  
15 living separate and apart in different locations, the verified petition for  
16 the right of visitation shall be determined in accordance with the  
17 provisions of section 2 of this act. A verified petition submitted under  
18 this section shall include specific and good-faith allegations that [(1)]  
19 (A) a parent-like relationship exists between the person and the minor  
20 child, and [(2)] (B) denial of visitation would cause real and significant  
21 harm. Subject to subsection (e) of this section, the court shall grant the  
22 right of visitation with any minor child to any person if the court finds  
23 after hearing and by clear and convincing evidence that a parent-like  
24 relationship exists between the person and the minor child and denial  
25 of visitation would cause real and significant harm.

26 (c) In determining whether a parent-like relationship exists between  
27 the person and the minor child, the Superior Court may consider, but  
28 shall not be limited to, the following factors:

29 (1) The existence and length of a relationship between the person  
30 and the minor child prior to the submission of a petition pursuant to  
31 this section;

32 (2) The length of time that the relationship between the person and  
33 the minor child has been disrupted;

34 (3) The specific parent-like activities of the person seeking visitation  
35 toward the minor child;

36 (4) Any evidence that the person seeking visitation has  
37 unreasonably undermined the authority and discretion of the custodial  
38 parent;

39 (5) The significant absence of a parent from the life of a minor child;

40 (6) The death of one of the minor child's parents;

41 (7) The physical separation of the parents of the minor child;

42 (8) The fitness of the person seeking visitation; and

43 (9) The fitness of the custodial parent.

44 (d) In determining whether a parent-like relationship exists between  
45 a grandparent seeking visitation pursuant to this section and a minor  
46 child, the Superior Court may consider, in addition to the factors  
47 enumerated in subsection (c) of this section, the history of regular  
48 contact and proof of a close and substantial relationship between the  
49 grandparent and the minor child.

50 (e) If the Superior Court grants the right of visitation pursuant to  
51 subsection (b) of this section, the court shall set forth the terms and  
52 conditions of visitation including, but not limited to, the schedule of  
53 visitation, including the dates or days, time and place or places in  
54 which the visitation can occur, whether overnight visitation will be  
55 allowed and any other terms and conditions that the court determines  
56 are in the best interest of the minor child, provided such conditions  
57 shall not be contingent upon any order of financial support by the  
58 court. In determining the best interest of the minor child, the court  
59 shall consider the wishes of the minor child if such minor child is of  
60 sufficient age and capable of forming an intelligent opinion. In  
61 determining the terms and conditions of visitation, the court may  
62 consider (1) the effect that such visitation will have on the relationship  
63 between the parents or guardians of the minor child and the minor  
64 child, and (2) the effect on the minor child of any domestic violence  
65 that has occurred between or among parents, grandparents, persons  
66 seeking visitation and the minor child.

67 (f) Visitation rights granted in accordance with this section shall not  
68 be deemed to have created parental rights in the person or persons to  
69 whom such visitation rights are granted, nor shall such visitation  
70 rights be a ground for preventing the relocation of the custodial  
71 parent. The grant of such visitation rights shall not prevent any court  
72 of competent jurisdiction from thereafter acting upon the custody of  
73 such child, the parental rights with respect to such child or the  
74 adoption of such child and any such court may include in its decree an  
75 order terminating such visitation rights.



76 (g) Upon motion, the court may order the payment of fees for  
77 another party, the attorney for the minor child, the guardian ad litem,  
78 or any expert by any party in accordance with such party's financial  
79 ability.

80 Sec. 2. (NEW) (*Effective October 1, 2019*) (a) As used in this section,  
81 (1) "grandparent" means a grandparent or great-grandparent related to  
82 a minor child by blood, marriage or adoption of the minor child by a  
83 child of the grandparent, and (2) "unreasonably depriving the  
84 grandparent of the opportunity to visit with the minor child" includes,  
85 but is not limited to, denying a grandparent the opportunity to visit  
86 with the minor child for a period of time exceeding ninety days.

87 (b) Any grandparent may submit a verified petition under this  
88 section to the Superior Court for the right of visitation with a minor  
89 child, as described in subdivision (1) of subsection (a) of this section,  
90 when (1) either or both parents of the minor child are deceased, (2) the  
91 parents of the minor child are divorced, or (3) the parents of the minor  
92 child are living separate and apart in different locations. The court  
93 shall grant the right of visitation with any minor child to any  
94 grandparent if the court finds after hearing and by clear and  
95 convincing evidence that: (A) The child's parents or guardians are  
96 unreasonably depriving the grandparent of the opportunity to visit  
97 with the minor child; (B) awarding the grandparent visitation will not  
98 interfere with the relationship between the minor child and the parents  
99 or guardians; and (C) (i) the minor child's parents or guardians are  
100 unfit, or (ii) there are compelling circumstances to overcome the  
101 presumption that the decision by the parents or guardians to deny the  
102 grandparent visitation is in the best interest of the minor child,  
103 provided any determination by the court as to the best interest of the  
104 minor child shall be made by utilizing Judicial Branch resources and at  
105 no cost to the parties.

106 (c) The court may award the prevailing party necessary and  
107 reasonable expenses incurred by or on behalf of the party, including  
108 costs and attorneys' fees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	46b-59
Sec. 2	<i>October 1, 2019</i>	New section

**Statement of Purpose:**

To allow a grandparent the right of visitation with his or her grandchild upon demonstrating to the court that clear and convincing circumstances support the granting of such visitation.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



General Assembly

January Session, 2019

**Raised Bill No. 942**

LCO No. 4775



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***AN ACT CONCERNING THE OPENING OR SETTING ASIDE OF A  
PATERNITY JUDGMENT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46b-171 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2019*):

4 (b) (1) Except as provided in subdivisions (2) and (3) of this  
5 subsection, a judgment of paternity entered by the Superior Court or  
6 family support magistrate pursuant to this chapter may not be opened  
7 or set aside unless a motion to open or set aside is filed not later than  
8 four months after the date on which the judgment was entered, and  
9 only upon a showing of reasonable cause, or that a valid defense to the  
10 petition for a judgment of paternity existed, in whole or in part, at the  
11 time judgment was rendered, and that the person seeking to open or  
12 set aside the judgment was prevented by mistake, accident or other  
13 reasonable cause from making a valid defense. The court or a family  
14 support magistrate may not order genetic testing to determine  
15 paternity unless such court or magistrate determines that the person

16 seeking to open or set aside the judgment of paternity pursuant to this  
17 subdivision has made such a showing of reasonable cause or  
18 established the existence of a good defense.

19 (2) The Superior Court or a family support magistrate may consider  
20 a motion to open or set aside a judgment of paternity filed more than  
21 four months after such judgment was entered if such court or  
22 magistrate determines that the judgment was entered due to fraud,  
23 duress or material mistake of fact, with the burden of proof on the  
24 person seeking to open or set aside such judgment. A court or family  
25 support magistrate may not order genetic testing to determine  
26 paternity unless such court or magistrate determines that the person  
27 seeking to open or set aside the judgment of paternity under this  
28 subdivision has met such burden.

29 (3) If the court or family support magistrate, as the case may be,  
30 determines that the person seeking to open or set aside a judgment of  
31 paternity under subdivision (2) of this subsection has met his or her  
32 burden of demonstrating fraud, duress or material mistake of fact,  
33 such court or magistrate shall set aside the judgment only upon  
34 determining that doing so is in the best interest of the child. In  
35 evaluating the best interest of the child, the court or magistrate may  
36 consider, but shall not be limited to, the following factors:

37 (A) Any genetic information available to the court or family support  
38 magistrate concerning paternity;

39 (B) The past relationship between the child and (i) the person  
40 previously adjudged father of the child, and (ii) such person's family;

41 (C) The child's future interests in knowing the identity of his or her  
42 biological father;

43 (D) The child's potential emotional and financial support from his or  
44 her biological father; and

45 (E) Any potential harm the child may suffer by disturbing the

46 judgment of paternity, including loss of a parental relationship and  
47 loss of financial support.

48 (4) During the pendency of any motion to open or set aside a  
49 judgment of paternity filed pursuant to this subsection, any  
50 responsibilities arising from such earlier judgment shall continue,  
51 except for good cause shown.

52 [(b)] (5) Whenever the Superior Court or family support magistrate  
53 [reopens] opens a judgment of paternity entered pursuant to this  
54 [section] subsection in which (A) a person was found to be the father of  
55 a child who is or has been supported by the state, and (B) the court or  
56 family support magistrate finds that the person adjudicated the father  
57 is not the father of the child, the Department of Social Services shall  
58 refund to such person any money paid to the state by such person  
59 during the period such child was supported by the state.

60 Sec. 2. Subsection (a) of section 46b-172 of the general statutes is  
61 repealed and the following is substituted in lieu thereof (*Effective*  
62 *October 1, 2019*):

63 (a) (1) In lieu of or in conclusion of proceedings under section 46b-  
64 160, a written acknowledgment of paternity executed and sworn to by  
65 the putative father of the child when accompanied by (A) an attested  
66 waiver of the right to a blood test, the right to a trial and the right to an  
67 attorney, (B) a written affirmation of paternity executed and sworn to  
68 by the mother of the child, and (C) if the person subject to the  
69 acknowledgment of paternity is an adult eighteen years of age or  
70 older, a notarized affidavit affirming consent to the voluntary  
71 acknowledgment of paternity, shall have the same force and effect as a  
72 judgment of the Superior Court. It shall be considered a legal finding  
73 of paternity without requiring or permitting judicial ratification, and  
74 shall be binding on the person executing the same whether such  
75 person is an adult or a minor, subject to subdivision (2) of this  
76 subsection. Such acknowledgment shall not be binding unless, prior to  
77 the signing of any affirmation or acknowledgment of paternity, the

78 mother and the putative father are given oral and written notice of the  
79 alternatives to, the legal consequences of, and the rights and  
80 responsibilities that arise from signing such affirmation or  
81 acknowledgment. The notice to the mother shall include, but shall not  
82 be limited to, notice that the affirmation of paternity may result in  
83 rights of custody and visitation, as well as a duty of support, in the  
84 person named as father. The notice to the putative father shall include,  
85 but not be limited to, notice that such father has the right to contest  
86 paternity, including the right to appointment of counsel, a genetic test  
87 to determine paternity and a trial by the Superior Court or a family  
88 support magistrate and that acknowledgment of paternity will make  
89 such father liable for the financial support of the child until the child's  
90 eighteenth birthday. In addition, the notice shall inform the mother  
91 and the father that DNA testing may be able to establish paternity with  
92 a high degree of accuracy and may, under certain circumstances, be  
93 available at state expense. The notices shall also explain the right to  
94 rescind the acknowledgment, as set forth in subdivision (2) of this  
95 subsection, including the address where such notice of rescission  
96 should be sent, and shall explain that the acknowledgment cannot be  
97 challenged after sixty days, except in court upon a showing of fraud,  
98 duress or material mistake of fact.

99 (2) The mother and the acknowledged father shall have the right to  
100 rescind such affirmation or acknowledgment in writing within the  
101 earlier of (A) sixty days, or (B) the date of an agreement to support  
102 such child approved in accordance with subsection (b) of this section  
103 or an order of support for such child entered in a proceeding under  
104 subsection (c) of this section.

105 (3) (A) An acknowledgment executed in accordance with  
106 subdivision (1) of this subsection may be challenged in court or before  
107 a family support magistrate after the rescission period only on the  
108 basis of fraud, duress or material mistake of fact which may include  
109 evidence that he is not the father, with the burden of proof upon the  
110 challenger. A court or family support magistrate may not order genetic  
111 testing to determine paternity unless the court or magistrate, as the

112 case may be, determines that the challenger has met such burden.

113 (B) If the court or family support magistrate, as the case may be,  
114 determines that the challenger has met his or her burden under  
115 subparagraph (A) of this subdivision, the acknowledgment of  
116 paternity shall be set aside only if such court or magistrate determines  
117 that doing so is in the best interest of the child. In evaluating the best  
118 interest of the child, the court or magistrate may consider, but shall not  
119 be limited to, the following factors:

120 (i) Any genetic information available to the court concerning  
121 paternity;

122 (ii) The past relationship between the child and (I) the person who  
123 executed an acknowledgment of paternity, and (II) such person's  
124 family;

125 (iii) The child's future interests in knowing the identity of his or her  
126 biological father;

127 (iv) The child's potential emotional and financial support from his  
128 or her biological father; and

129 (v) Any potential harm the child may suffer by disturbing the  
130 acknowledgment of paternity, including loss of a parental relationship  
131 and loss of financial support.

132 (C) During the pendency of any [such] challenge to a previous  
133 acknowledgment of paternity, any responsibilities arising from such  
134 acknowledgment shall continue except for good cause shown.

135 [(3)] (4) All written notices, waivers, affirmations and  
136 acknowledgments required under subdivision (1) of this subsection,  
137 and rescissions authorized under subdivision (2) of this subsection,  
138 shall be on forms prescribed by the Department of Public Health,  
139 provided such acknowledgment form includes the minimum  
140 requirements specified by the Secretary of the United States  
141 Department of Health and Human Services. All acknowledgments and

142 rescissions executed in accordance with this subsection shall be filed in  
143 the paternity registry established and maintained by the Department  
144 of Public Health under section 19a-42a.

145 ~~[(4)]~~ (5) An acknowledgment of paternity signed in any other state  
146 according to its procedures shall be given full faith and credit by this  
147 state.

148 Sec. 3. Section 46b-172a of the general statutes is repealed and the  
149 following is substituted in lieu thereof (*Effective October 1, 2019*):

150 (a) Any person claiming to be the father of a child who was born out  
151 of wedlock and for whom paternity has not yet been established may  
152 file a claim for paternity with the Probate Court for the district in  
153 which either the mother or the child resides, on forms provided by  
154 such court. The claim may be filed at any time during the life of the  
155 child, whether before, on or after the date the child reaches the age of  
156 eighteen, or after the death of the child, but not later than sixty days  
157 after the date of notice under section 45a-716. The claim shall contain  
158 the claimant's name and address, the name and last-known address of  
159 the mother and the month and year of the birth or expected birth of the  
160 child. Not later than five days after the filing of a claim for paternity,  
161 the court shall cause a certified copy of such claim to be served upon  
162 the mother or prospective mother of such child by personal service or  
163 service at her usual place of abode, and to the Attorney General by first  
164 class mail. The Attorney General may file an appearance and shall be  
165 and remain a party to the action if the child is receiving or has received  
166 aid or care from the state, or if the child is receiving child support  
167 enforcement services, as defined in subdivision (2) of subsection (b) of  
168 section 46b-231. The claim for paternity shall be admissible in any  
169 action for paternity under section 46b-160, and shall estop the claimant  
170 from denying his paternity of such child and shall contain language  
171 that he acknowledges liability for contribution to the support and  
172 education of the child after the child's birth and for contribution to the  
173 pregnancy-related medical expenses of the mother.



174 (b) If a claim for paternity is filed by the father of any minor child  
175 who was born out of wedlock, the Probate Court shall schedule a  
176 hearing on such claim, send notice of the hearing to all parties  
177 involved and proceed accordingly.

178 (c) The child shall be made a party to the action and shall be  
179 represented by a guardian ad litem appointed by the court in  
180 accordance with section 45a-708. Payment shall be made in accordance  
181 with such section from funds appropriated to the Judicial Department,  
182 except that, if funds have not been included in the budget of the  
183 Judicial Department for such purposes, such payment shall be made  
184 from the Probate Court Administration Fund.

185 (d) In the event that the mother or the claimant father is a minor, the  
186 court shall appoint a guardian ad litem to represent him or her in  
187 accordance with the provisions of section 45a-708. Payment shall be  
188 made in accordance with said section from funds appropriated to the  
189 Judicial Department, except that, if funds have not been included in  
190 the budget of the Judicial Department for such purposes, such  
191 payment shall be made from the Probate Court Administration Fund.

192 (e) By filing a claim under this section, the putative father submits to  
193 the jurisdiction of the Probate Court.

194 (f) Once alleged parental rights of the father have been adjudicated  
195 in his favor under subsection (b) of this section, or acknowledged as  
196 provided for under section 46b-172, as amended by this act, his rights  
197 and responsibilities shall be equivalent to those of the mother,  
198 including those rights defined under section 45a-606. Thereafter,  
199 disputes involving custody, visitation or support shall be transferred  
200 to the Superior Court under chapter 815j, except that the Probate Court  
201 may enter a temporary order for custody, visitation or support until an  
202 order is entered by the Superior Court.

203 (g) Failing perfection of parental rights as prescribed by this section,  
204 any person claiming to be the father of a child who was born out of  
205 wedlock (1) who has not been adjudicated the father of such child by a

206 court of competent jurisdiction, or (2) who has not acknowledged in  
207 writing that he is the father of such child, or (3) who has not  
208 contributed regularly to the support of such child, or (4) whose name  
209 does not appear on the birth certificate, shall cease to be a legal party in  
210 interest in any proceeding concerning the custody or welfare of the  
211 child, including, but not limited to, guardianship and adoption, unless  
212 he has shown a reasonable degree of interest, concern or responsibility  
213 for the child's welfare.

214 (h) Notwithstanding the provisions of this section, after the death of  
215 the father of a child who was born out of wedlock, a party deemed by  
216 the court to have a sufficient interest may file a claim for paternity on  
217 behalf of such father with the Probate Court for the district in which  
218 either the putative father resided or the party filing the claim resides. If  
219 a claim for paternity is filed pursuant to this subsection, the Probate  
220 Court shall schedule a hearing on such claim, send notice of the  
221 hearing to all parties involved and proceed accordingly.

222 (i) (1) Except as provided in subdivisions (2) and (3) of this  
223 subsection, a judgment of paternity entered under this section may not  
224 be opened or set aside unless a motion to open or set aside is filed with  
225 the Probate Court district that entered such judgment not later than  
226 four months after the date on which it was entered, and only upon a  
227 showing of reasonable cause, or that a valid defense to the claim for a  
228 judgment of paternity existed, in whole or in part, at the time  
229 judgment was entered, and that the person seeking to open or set aside  
230 said judgment was prevented by mistake, accident or other reasonable  
231 cause from making a valid defense. The Probate Court may not order  
232 genetic testing to determine paternity unless and until the court  
233 determines that the person seeking to open or set aside the judgment  
234 of paternity pursuant to this subdivision has made such a showing of  
235 reasonable cause or established the existence of a good defense.

236 (2) The Probate Court in the district where a judgment of paternity  
237 was entered pursuant to this section may consider a motion to open or  
238 set aside such judgment filed more than four months after such

239 judgment was rendered if such court determines that the judgment  
240 was rendered due to fraud, duress or material mistake of fact, with the  
241 burden of proof on the person seeking to open or set aside such  
242 judgment. Such court may not order genetic testing to determine  
243 paternity unless and until the court determines that the person seeking  
244 to open or set aside the judgment of paternity under this subdivision  
245 has met such burden.

246 (3) If such court determines that the person seeking to open or set  
247 aside a judgment of paternity under subdivision (2) of this subsection  
248 has met his or her burden of demonstrating fraud, duress or material  
249 mistake of fact, such court shall set aside the judgment only upon  
250 determining that doing so is in the best interest of the child. In  
251 evaluating the best interest of the child, the court may consider, but  
252 shall not be limited to, the following factors:

253 (A) Any genetic information available to the court concerning  
254 paternity;

255 (B) The past relationship between the child and (i) the person  
256 previously adjudged father of the child, and (ii) such person's family;

257 (C) The child's future interests in knowing the identity of his or her  
258 biological father;

259 (D) The child's potential emotional and financial support from his or  
260 her biological father; and

261 (E) Any potential harm the child may suffer by disturbing the  
262 judgment of paternity, including loss of a parental relationship and  
263 loss of financial support.

264 (4) Upon the filing of any motion to open and set aside a judgment  
265 of paternity filed pursuant to this subsection, the Probate Court shall  
266 schedule a hearing on the motion and provide notice of the hearing  
267 and a copy of the motion to all interested parties, including the  
268 Attorney General.

269        (5) During the pendency of any motion to open or set aside a  
270 judgment of paternity filed pursuant to this subsection, any  
271 responsibilities arising from such earlier judgment shall continue,  
272 except for good cause shown.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	46b-171(b)
Sec. 2	<i>October 1, 2019</i>	46b-172(a)
Sec. 3	<i>October 1, 2019</i>	46b-172a

***Statement of Purpose:***

To clarify court procedures with respect to the opening or setting aside of a paternity judgment entered by the Superior Court, a family support magistrate or the Probate Court.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



General Assembly

January Session, 2019

**Committee Bill No. 689**

LCO No. 6175



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT CONCERNING THE ISSUANCE OF EX PARTE RESTRAINING ORDERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46b-15 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2019*):

4 (b) The application form shall allow the applicant, at the applicant's  
5 option, to indicate whether the respondent holds a permit to carry a  
6 pistol or revolver, an eligibility certificate for a pistol or revolver, a  
7 long gun eligibility certificate or an ammunition certificate or possesses  
8 one or more firearms or ammunition. The application shall be  
9 accompanied by an affidavit made under oath which includes a brief  
10 statement of the conditions from which relief is sought. Upon receipt  
11 of the application the court shall order that a hearing on the  
12 application be held not later than fourteen days from the date of the  
13 order except that, if the application indicates that the respondent holds  
14 a permit to carry a pistol or revolver, an eligibility certificate for a  
15 pistol or revolver, a long gun eligibility certificate or an ammunition  
16 certificate or possesses one or more firearms or ammunition, and the

17 court orders an ex parte order, the court shall order that a hearing be  
18 held on the application not later than seven days from the date on  
19 which the ex parte order is issued. The court, in its discretion, may  
20 make such orders as it deems appropriate for the protection of the  
21 applicant and such dependent children or other persons as the court  
22 sees fit. In making such orders ex parte, the court, in its discretion, may  
23 consider relevant court records if the records are available to the public  
24 from a clerk of the Superior Court or on the Judicial Branch's Internet  
25 web site. In addition, at the time of the hearing, the court, in its  
26 discretion, may also consider a report prepared by the family services  
27 unit of the Judicial Branch that may include, as available: Any existing  
28 or prior orders of protection obtained from the protection order  
29 registry; information on any pending criminal case or past criminal  
30 case in which the respondent was convicted of a violent crime; any  
31 outstanding arrest warrant for the respondent; and the respondent's  
32 level of risk based on a risk assessment tool utilized by the Court  
33 Support Services Division. The report may also include information  
34 pertaining to any pending or disposed family matters case involving  
35 the applicant and respondent. Any report provided by the Court  
36 Support Services Division to the court shall also be provided to the  
37 applicant and respondent. Such orders may include temporary child  
38 custody or visitation rights, and such relief may include, but is not  
39 limited to, an order enjoining the respondent from (1) imposing any  
40 restraint upon the person or liberty of the applicant; (2) threatening,  
41 harassing, assaulting, molesting, sexually assaulting or attacking the  
42 applicant; or (3) entering the family dwelling or the dwelling of the  
43 applicant. Such order may include provisions necessary to protect any  
44 animal owned or kept by the applicant including, but not limited to, an  
45 order enjoining the respondent from injuring or threatening to injure  
46 such animal. If an applicant alleges an immediate and present physical  
47 danger to the applicant or that the respondent could pose a physical  
48 danger to the applicant prior to the opportunity for a hearing, the court  
49 may issue an ex parte order granting such relief as it deems  
50 appropriate. If a postponement of a hearing on the application is

51 requested by either party and granted, the ex parte order shall not be  
 52 continued except upon agreement of the parties or by order of the  
 53 court for good cause shown. If a hearing on the application is  
 54 scheduled or an ex parte order is granted and the court is closed on the  
 55 scheduled hearing date, the hearing shall be held on the next day the  
 56 court is open and any such ex parte order shall remain in effect until  
 57 the date of such hearing. If the applicant is under eighteen years of age,  
 58 a parent, guardian or responsible adult who brings the application as  
 59 next friend of the applicant may not speak on the applicant's behalf at  
 60 such hearing unless there is good cause shown as to why the applicant  
 61 is unable to speak on his or her own behalf, except that nothing in this  
 62 subsection shall preclude such parent, guardian or responsible adult  
 63 from testifying as a witness at such hearing. As used in this subsection,  
 64 "violent crime" includes: (A) An incident resulting in physical harm,  
 65 bodily injury or assault; (B) an act of threatened violence that  
 66 constitutes fear of imminent physical harm, bodily injury or assault,  
 67 including, but not limited to, stalking or a pattern of threatening; (C)  
 68 verbal abuse or argument if there is a present danger and likelihood  
 69 that physical violence will occur; and (D) cruelty to animals as set forth  
 70 in section 53-247.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	46b-15(b)

**Statement of Purpose:**

To permit the court to issue ex parte restraining orders when the respondent could pose a physical danger to the applicant prior to the opportunity for a hearing.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: SEN. LOONEY, 11th Dist.; SEN. DUFF, 25th Dist.  
 SEN. FONFARA, 1st Dist.; SEN. MCCRORY, 2nd Dist.  
 SEN. CASSANO, 4th Dist.; SEN. LESSER, 9th Dist.  
 SEN. COHEN, 12th Dist.; SEN. ABRAMS, 13th Dist.

SEN. MARONEY, 14th Dist.; SEN. MOORE, 22nd Dist.  
SEN. BRADLEY, 23rd Dist.; SEN. KUSHNER, 24th Dist.  
SEN. HASKELL, 26th Dist.; SEN. FLEXER, 29th Dist.  
SEN. NEEDLEMAN, 33rd Dist.; REP. ELLIOTT, 88th Dist.

S.B. 689





General Assembly

January Session, 2019

**Proposed Bill No. 689**

LCO No. 2872



Referred to Committee on JUDICIARY

Introduced by:

SEN. LOONEY, 11th Dist.

SEN. DUFF, 25th Dist.

SEN. FONFARA, 1st Dist.

SEN. MCCRORY, 2nd Dist.

SEN. CASSANO, 4th Dist.

SEN. LESSER, 9th Dist.

SEN. COHEN, 12th Dist.

SEN. ABRAMS, 13th Dist.

SEN. MARONEY, 14th Dist.

SEN. MOORE, 22nd Dist.

SEN. BRADLEY, 23rd Dist.

SEN. KUSHNER, 24th Dist.

SEN. HASKELL, 26th Dist.

SEN. FLEXER, 29th Dist.

SEN. NEEDLEMAN, 33rd Dist.

**AN ACT CONCERNING THE TOLLING OF TEMPORARY  
RESTRAINING ORDERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That the general statutes be amended to require that any period of
- 2 incarceration for the respondent of a temporary restraining order be
- 3 excluded from any calculation determining the period of time for
- 4 which the order is in effect and that such order shall be continued
- 5 upon the release from custody of the respondent.

**Statement of Purpose:**

To provide that the time for which a temporary restraining order is in effect does not toll during any period for which the respondent is held in custody.



General Assembly

January Session, 2019

**Proposed Bill No. 5051**

LCO No. 10



Referred to Committee on JUDICIARY

Introduced by:  
REP. O'NEILL, 69th Dist.

**AN ACT CONCERNING THE AWARD OF ALIMONY IN A FAMILY RELATIONS MATTER.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That chapter 815j of the general statutes be amended to: (1) Require
- 2 a court to (A) consider the tax consequences of any order entered when
- 3 fixing the nature and value of any property to be assigned or when
- 4 entering an alimony order, (B) consider the gross and net income of
- 5 each of the parties when fixing the nature and value of any property to
- 6 be assigned or when entering an alimony order, and (C) incorporate
- 7 the financial terms of a decree of legal separation into the decree
- 8 dissolving the marriage unless it would be unconscionable to do so,
- 9 and (2) revise the burden of proof in certain cases involving a motion
- 10 to modify the payment of periodic alimony when the party paying the
- 11 periodic alimony has retired and attained the age of sixty-five or when
- 12 the party receiving the periodic alimony is alleged to be living with
- 13 another person in a marriage-like relationship.

**Statement of Purpose:**

To adopt recommendations made by the Law Revision Commission concerning the state's alimony statutes.



General Assembly

January Session, 2019

**Proposed Bill No. 5529**

LCO No. 194



Referred to Committee on JUDICIARY

Introduced by:  
REP. KUPCHICK, 132nd Dist.

**AN ACT ESTABLISHING A TASK FORCE TO STUDY THE STATE'S  
FAMILY COURT SYSTEM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 That a task force be established to study and then report on
- 2 improvements that can be made to the state's family court system.

**Statement of Purpose:**

To establish a task force to study and then report on improvements that can be made to the state's family court system.



General Assembly

January Session, 2019

***Raised Bill No. 7393***

LCO No. 6440



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***AN ACT CONCERNING COURT PROCEEDINGS IN FAMILY RELATIONS MATTERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-87 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) When any person is found in contempt of an order of the  
4 Superior Court entered under [section 46b-60 to 46b-62, inclusive, 46b-  
5 81 to 46b-83, inclusive, or 46b-86] the provisions of this chapter, the  
6 court may award to the petitioner a reasonable attorney's fee and the  
7 fees of the officer serving the contempt citation, such sums to be paid  
8 by the person found in contempt, provided if any such person is found  
9 not to be in contempt of such order, the court may award a reasonable  
10 attorney's fee to such person. The costs of commitment of any person  
11 imprisoned for contempt of court by reason of failure to comply with  
12 such an order shall be paid by the state as in criminal cases.

13 (b) In addition to the award of fees pursuant to subsection (a) of this  
14 section, when any person is found in contempt of a court order

15 concerning an assignment of custody, visitation with a minor child or  
16 parental access, the court may impose additional sanctions against the  
17 person found to be in contempt of the court order that include, but are  
18 not limited to, (1) fines, (2) a reduction or suspension of visitation or  
19 parental access, and (3) a change in the assignment of physical and  
20 legal custody.

21 Sec. 2. Section 46b-56 of the general statutes is repealed and the  
22 following is substituted in lieu thereof (*Effective October 1, 2019*):

23 (a) In any controversy before the Superior Court as to the custody or  
24 care of minor children, and at any time after the return day of any  
25 complaint under section 46b-45, the court may make or modify any  
26 proper order regarding the custody, care, education, visitation and  
27 support of the children if it has jurisdiction under the provisions of  
28 chapter 815p. Subject to the provisions of section 46b-56a, the court  
29 may assign parental responsibility for raising the child to the parents  
30 jointly, or may award custody to either parent or to a third party,  
31 according to its best judgment upon the facts of the case and subject to  
32 such conditions and limitations as it deems equitable. The court may  
33 also make any order granting the right of visitation of any child to a  
34 third party to the action, including, but not limited to, grandparents.  
35 Notwithstanding the provisions of this subsection, the court shall not  
36 make or modify any order as to the custody of a child involving an  
37 allegation of abuse, unless and until there is an evidentiary offer of  
38 proof and hearing concerning such allegation of abuse.

39 (b) In making or modifying any order as provided in subsection (a)  
40 of this section, the rights and responsibilities of both parents shall be  
41 considered and the court shall enter orders accordingly that serve the  
42 best interests of the child and provide the child with the active and  
43 consistent involvement of both parents commensurate with their  
44 abilities and interests. Such orders may include, but shall not be  
45 limited to: (1) Approval of a parental responsibility plan agreed to by  
46 the parents pursuant to section 46b-56a; (2) the award of joint parental  
47 responsibility of a minor child to both parents, which shall include (A)

48 provisions for residential arrangements with each parent in accordance  
49 with the needs of the child and the parents, and (B) provisions for  
50 consultation between the parents and for the making of major  
51 decisions regarding the child's health, education and religious  
52 upbringing; (3) the award of sole custody to one parent with  
53 appropriate parenting time for the noncustodial parent where sole  
54 custody is in the best interests of the child; or (4) any other custody  
55 arrangements as the court may determine to be in the best interests of  
56 the child. In making or modifying any order concerning visitation with  
57 a child pursuant to subsection (a) of this section, absent agreement of  
58 the parties, the court shall not order that a parent's visitation with a  
59 child be supervised unless the court enters a finding on the record of  
60 the circumstances necessitating that such visitation be supervised.

61 (c) In making or modifying any order as provided in subsections (a)  
62 and (b) of this section, the court shall consider the best interests of the  
63 child, and in doing so may consider, but shall not be limited to, one or  
64 more of the following factors: (1) The temperament and developmental  
65 needs of the child; (2) the capacity and the disposition of the parents to  
66 understand and meet the needs of the child; (3) any relevant and  
67 material information obtained from the child, including the informed  
68 preferences of the child; (4) the wishes of the child's parents as to  
69 custody; (5) the past and current interaction and relationship of the  
70 child with each parent, the child's siblings and any other person who  
71 may significantly affect the best interests of the child; [(6) the  
72 willingness and ability of each parent to facilitate and encourage such  
73 continuing parent-child relationship between the child and the other  
74 parent as is appropriate, including compliance with any court orders;  
75 (7)] (6) any manipulation by or coercive behavior of the parents in an  
76 effort to involve the child in the parents' dispute; [(8)] (7) the ability of  
77 each parent to be actively involved in the life of the child; [(9)] (8) the  
78 child's adjustment to his or her home, school and community  
79 environments; [(10)] (9) the length of time that the child has lived in a  
80 stable and satisfactory environment and the desirability of maintaining  
81 continuity in such environment, provided the court may consider

82 favorably a parent who voluntarily leaves the child's family home  
83 pendente lite in order to alleviate stress in the household; [(11)] (10) the  
84 stability of the child's existing or proposed residences, or both; [(12)]  
85 (11) the mental and physical health of all individuals involved, except  
86 that a disability of a proposed custodial parent or other party, in and of  
87 itself, shall not be determinative of custody unless the proposed  
88 custodial arrangement is not in the best interests of the child; [(13)] (12)  
89 the child's cultural background; [(14)] (13) the effect on the child of the  
90 actions of an abuser, if any domestic violence has occurred between  
91 the parents or between a parent and another individual or the child;  
92 [(15)] (14) whether the child or a sibling of the child has been abused or  
93 neglected, as defined respectively in section 46b-120; and [(16)] (15)  
94 whether the party satisfactorily completed participation in a parenting  
95 education program established pursuant to section 46b-69b. The court  
96 is not required to assign any weight to any of the factors that it  
97 considers, but shall articulate the basis for its decision.

98 (d) There shall be a rebuttable presumption that a parent is not  
99 acting in the best interests of a child when such parent's conduct  
100 evidences an unwillingness or inability to (1) facilitate and encourage  
101 the other parent's relationship with the child, as is appropriate under  
102 the circumstances, or (2) comply with court orders that seek to  
103 facilitate and encourage such relationship.

104 [(d)] (e) Upon the issuance of any order assigning custody of the  
105 child to the Commissioner of Children and Families, or not later than  
106 sixty days after the issuance of such order, the court shall make a  
107 determination whether the Department of Children and Families made  
108 reasonable efforts to keep the child with his or her parents prior to the  
109 issuance of such order and, if such efforts were not made, whether  
110 such reasonable efforts were not possible, taking into consideration the  
111 best interests of the child, including the child's health and safety.

112 [(e)] (f) In determining whether a child is in need of support and, if  
113 in need, the respective abilities of the parents to provide support, the  
114 court shall take into consideration all the factors enumerated in section

115 46b-84.

116 [(f)] (g) When the court is not sitting, any judge of the court may  
117 make any order in the cause which the court might make under this  
118 section, including orders of injunction, prior to any action in the cause  
119 by the court.

120 [(g)] (h) A parent not granted custody of a minor child shall not be  
121 denied the right of access to the academic, medical, hospital or other  
122 health records of such minor child, unless otherwise ordered by the  
123 court for good cause shown.

124 [(h)] (i) Notwithstanding the provisions of subsections (b) and (c) of  
125 this section, when a motion for modification of custody or visitation is  
126 pending before the court or has been decided by the court and the  
127 investigation ordered by the court pursuant to section 46b-6, as  
128 amended by this act, recommends psychiatric or psychological therapy  
129 for a child, and such therapy would, in the court's opinion, be in the  
130 best interests of the child and aid the child's response to a  
131 modification, the court may order such therapy and reserve judgment  
132 on the motion for modification.

133 [(i)] (j) As part of a decision concerning custody or visitation, the  
134 court may order either parent or both of the parents and any child of  
135 such parents to participate in counseling and drug or alcohol  
136 screening, provided such participation is in the best interests of the  
137 child.

138 Sec. 3. Section 46b-54 of the general statutes is repealed and the  
139 following is substituted in lieu thereof (*Effective October 1, 2019*):

140 (a) The court may appoint counsel or a guardian ad litem for any  
141 minor child or children of either or both parties at any time after the  
142 return day of a complaint under section 46b-45, if the court deems it to  
143 be in the best interests of the child or children. The court may appoint  
144 counsel or a guardian ad litem on its own motion, or at the request of  
145 either of the parties or of the legal guardian of any child or at the



146 request of any child who is of sufficient age and capable of making an  
147 intelligent request.

148 (b) Counsel or a guardian ad litem for the minor child or children  
149 may also be appointed on the motion of the court or on the request of  
150 any person enumerated in subsection (a) of this section in any case  
151 before the court when the court finds that the custody, care, education,  
152 visitation or support of a minor child is in actual controversy, provided  
153 the court may make any order regarding a matter in controversy prior  
154 to the appointment of counsel or a guardian ad litem where it finds  
155 immediate action necessary in the best interests of any child.

156 (c) In the absence of an agreement of the parties to the appointment  
157 of counsel or a guardian ad litem for a minor child in the parties'  
158 matter and a canvassing by the court concerning the terms of such  
159 agreement, the court shall only appoint such counsel or guardian ad  
160 litem under this section when, in the court's discretion, reasonable  
161 options and efforts to resolve a dispute of the parties concerning the  
162 custody, care, education, visitation or support of a minor child have  
163 been made.

164 (d) If the court deems the appointment of counsel or a guardian ad  
165 litem for any minor child or children to be in the best interests of the  
166 child or children, such appointment shall be made in accordance with  
167 the provisions of section 46b-12.

168 (e) Counsel or a guardian ad litem for the minor child or children  
169 shall be heard on all matters pertaining to the interests of any child,  
170 including the custody, care, support, education and visitation of the  
171 child, so long as the court deems such representation to be in the best  
172 interests of the child. To the extent practicable, when hearing from  
173 such counsel or guardian ad litem, the court shall permit such counsel  
174 or guardian ad litem to participate at the beginning of the matter, at  
175 the conclusion of the matter or at such other time the court deems  
176 appropriate so as to minimize legal fees incurred by the parties due to  
177 the participation of such counsel or guardian ad litem in the matter.

178 Such counsel or guardian ad litem may be heard on a matter  
179 pertaining to a medical diagnosis or conclusion concerning a minor  
180 child made by a health care professional treating such child when (1)  
181 such counsel or guardian ad litem is in possession of a medical record  
182 or report of the treating health care professional that indicates or  
183 supports such medical diagnosis or conclusion; or (2) one or more  
184 parties have refused to cooperate in paying for or obtaining a medical  
185 record or report that contains the treating health care professional's  
186 medical diagnosis or conclusion. If the court deems it to be in the best  
187 interests of the minor child, such health care professional shall be  
188 heard on matters pertaining to the interests of any such child,  
189 including the custody, care, support, education and visitation of such  
190 child.

191 (f) When recommending the entry of any order as provided in  
192 subsections (a) and (b) of section 46b-56, as amended by this act,  
193 counsel or a guardian ad litem for the minor child shall consider the  
194 best interests of the child, and in doing so shall consider, but not be  
195 limited to, one or more of the following factors: (1) The temperament  
196 and developmental needs of the child; (2) the capacity and the  
197 disposition of the parents to understand and meet the needs of the  
198 child; (3) any relevant and material information obtained from the  
199 child, including the informed preferences of the child; (4) the wishes of  
200 the child's parents as to custody; (5) the past and current interaction  
201 and relationship of the child with each parent, the child's siblings and  
202 any other person who may significantly affect the best interests of the  
203 child; [(6) the willingness and ability of each parent to facilitate and  
204 encourage such continuing parent-child relationship between the child  
205 and the other parent as is appropriate, including compliance with any  
206 court orders; (7)] (6) any manipulation by or coercive behavior of the  
207 parents in an effort to involve the child in the parents' dispute; [(8)] (7)  
208 the ability of each parent to be actively involved in the life of the child;  
209 [(9)] (8) the child's adjustment to his or her home, school and  
210 community environments; [(10)] (9) the length of time that the child  
211 has lived in a stable and satisfactory environment and the desirability

212 of maintaining continuity in such environment, provided counsel or a  
 213 guardian ad litem for the minor child may consider favorably a parent  
 214 who voluntarily leaves the child's family home pendente lite in order  
 215 to alleviate stress in the household; [(11)] (10) the stability of the child's  
 216 existing or proposed residences, or both; [(12)] (11) the mental and  
 217 physical health of all individuals involved, except that a disability of a  
 218 proposed custodial parent or other party, in and of itself, shall not be  
 219 determinative of custody unless the proposed custodial arrangement is  
 220 not in the best interests of the child; [(13)] (12) the child's cultural  
 221 background; [(14)] (13) the effect on the child of the actions of an  
 222 abuser, if any domestic violence has occurred between the parents or  
 223 between a parent and another individual or the child; [(15)] (14)  
 224 whether the child or a sibling of the child has been abused or  
 225 neglected, as defined respectively in section 46b-120; and [(16)] (15)  
 226 whether a party satisfactorily completed participation in a parenting  
 227 education program established pursuant to section 46b-69b. Counsel or  
 228 a guardian ad litem for the minor child shall not be required to assign  
 229 any weight to any of the factors considered.

230 (g) There shall be a rebuttable presumption that a parent is not  
 231 acting in the best interests of a child when such parent's conduct  
 232 evidences an unwillingness or inability to (1) facilitate and encourage  
 233 the other parent's relationship with the child, as is appropriate under  
 234 the circumstances, or (2) comply with court orders that seek to  
 235 facilitate and encourage such relationship.

236 Sec. 4. Section 46b-6 of the general statutes is repealed and the  
 237 following is substituted in lieu thereof (*Effective October 1, 2019*):

238 (a) In any pending family relations matter the court [or any judge  
 239 may cause] may order an investigation, evaluation or study to be made  
 240 with respect to any circumstance of the matter which may be helpful  
 241 or material or relevant to a proper disposition of the case. Such  
 242 investigation, evaluation or study may include an examination of the  
 243 parentage and surroundings of any child, his age, habits and history,  
 244 inquiry into the home conditions, habits and character of his parents or

245 guardians and evaluation of his mental or physical condition. In any  
246 action for dissolution of marriage, legal separation or annulment of  
247 marriage such investigation, evaluation or study may include an  
248 examination into the age, habits and history of the parties, the causes  
249 of marital discord and the financial ability of the parties to furnish  
250 support to either spouse or any dependent child.

251 (b) A report with respect to any investigation, evaluation or study,  
252 undertaken pursuant to subsection (a) of this section by an individual  
253 who is not an employee of the Judicial Department, shall be completed  
254 and filed with the court not later than one hundred twenty days after  
255 the date on which the court ordered such investigation, evaluation or  
256 study, unless the court enters a finding on the record that  
257 extraordinary circumstances warrant an extended period of time for  
258 the completion and filing of the report with respect to such  
259 investigation, evaluation or study. Upon the filing of such report, the  
260 court shall not order that a further investigation, evaluation or study  
261 be undertaken within the twelve-month period following the date on  
262 which the report was filed, unless the court enters a finding on the  
263 record that extraordinary circumstances necessitate that further  
264 investigation, evaluation or study be undertaken.

265 (c) If the court orders that an investigation, evaluation or study be  
266 undertaken in any controversy involving the custody or care of a  
267 minor child, absent agreement of the parties, the court shall enter a  
268 finding on the record articulating the reasoning for undertaking such  
269 investigation, evaluation or study.

270 (d) Whenever an investigation, evaluation or study has been  
271 ordered by the court pursuant to subsection (a) of this section, the case  
272 shall not be disposed of until a report with respect to such  
273 investigation, evaluation or study has been filed in accordance with  
274 this section, and counsel and the parties have had a reasonable  
275 opportunity to examine such report prior to the date on which the case  
276 is to be heard, unless the court orders that the case be heard before the  
277 report is filed. Unless otherwise permitted to do so by the court,

278 counsel for the parties, including any guardian ad litem, and any self-  
279 represented parties shall not initiate contact with the individual who is  
280 undertaking the investigation, evaluation or study until such  
281 individual files a report in accordance with subsection (b) of this  
282 section.

283 Sec. 5. Section 46b-6a of the general statutes is repealed and the  
284 following is substituted in lieu thereof (*Effective October 1, 2019*):

285 (a) In a family relations matter, as defined in section 46b-1, if a court  
286 orders that a parent undergo treatment from a qualified, licensed  
287 health care provider, the court shall permit the parent to select a  
288 qualified, licensed health care provider to provide such treatment.

289 (b) In a family relations matter, as defined in section 46b-1, if a court  
290 orders that a child undergo treatment from a qualified, licensed health  
291 care provider, the court shall permit the parent or legal guardian of  
292 such child to select a qualified, licensed health care provider to provide  
293 such treatment. Except in a case where one of the parents has been  
294 awarded sole custody, if both parents do not agree on the selection of a  
295 qualified, licensed health care provider to provide such treatment to a  
296 child, the court shall continue the matter for two weeks to allow the  
297 parents an opportunity to jointly select a qualified, licensed health care  
298 provider. If after the two-week period, the parents have not reached an  
299 agreement on the selection of a qualified, licensed health care provider,  
300 the court shall select such provider after giving due consideration to  
301 the health insurance coverage and financial resources available to such  
302 parents.

303 (c) (1) In a family relations matter, as defined in section 46b-1, if the  
304 parties agree or if a court orders that a parent or child undergo an  
305 evaluation from a qualified, licensed health care provider, the court  
306 shall first make a finding that the parties have the financial resources  
307 to pay for such evaluation.

308 (2) If the court has determined that an evaluation can be undertaken  
309 and a qualified, licensed health care provider has been selected to

310 perform the evaluation, the court's order for an evaluation shall  
311 contain the name of each provider who is to undertake the evaluation,  
312 the estimated cost of the evaluation, each party's responsibility for the  
313 cost of the evaluation, the professional credentials of each provider  
314 and the estimated deadline by which such evaluation shall be  
315 completed and submitted to the court.

316 (3) Not later than thirty days after the date of completion of such  
317 evaluation, the provider shall (A) file a report containing the results of  
318 the evaluation with the clerk of the court, who shall seal such report,  
319 and (B) unless otherwise ordered by the court, provide a copy of such  
320 report to counsel of record, including any guardian ad litem and any  
321 self-represented parties. Unless otherwise permitted by the court,  
322 counsel of record, including any guardian ad litem and any self-  
323 represented parties shall not provide or otherwise disclose such report  
324 to any other person, except that counsel to the plaintiff or the  
325 defendant in the action may provide a copy of the report to his or her  
326 client.

327 Sec. 6. (NEW) (Effective October 1, 2019) (a) As used in this section,  
328 "personal identifying information" means: An individual's date of  
329 birth; mother's maiden name; motor vehicle operator's license number;  
330 Social Security number; other government-issued identification  
331 number, except for juris, license, permit or other business-related  
332 identification numbers that are otherwise made available to the public  
333 directly by any government agency or entity; health insurance  
334 identification number; or any financial account number, security code  
335 or personal identification number. "Personal identifying information"  
336 does not include a person's name unless a judicial authority has  
337 entered an order allowing the use of a pseudonym in place of the name  
338 of a party, in which case a person's name is included in the definition  
339 "personal identifying information".

340 (b) Any person filing a document with the court, whether in an  
341 electronic or paper format, that includes personal identifying  
342 information shall redact any such information contained in the

343 document, unless otherwise required by law or ordered by the court.  
344 The party filing the redacted document shall retain the original,  
345 unredacted document throughout the pendency of the action, any  
346 appeal period and any applicable appellate process.

347 (c) The person filing the document shall be solely responsible for  
348 omitting or redacting personal identifying information. The court or  
349 the clerk of the court shall not be responsible for reviewing any filed  
350 document to ensure compliance with the provisions of this section.

351 Sec. 7. (NEW) (*Effective July 1, 2019*) (a) Notwithstanding the  
352 provisions of sections 46b-12, 46b-62, 51-296 and 51-296a of the general  
353 statutes, on and after January 1, 2020, in any family relations matter, as  
354 described in section 46b-1 of the general statutes, in which the court  
355 orders that a guardian ad litem be appointed on behalf of a minor  
356 child, the Division of Public Defender Services shall be solely  
357 responsible for the assignment of the guardian ad litem in such matter.

358 (b) The Division of Public Defender Services shall: (1) Prescribe a  
359 uniform fee agreement applicable to the assignment of a guardian ad  
360 litem to a family relations matter under this section; and (2) develop  
361 and implement a methodology for calculating, on a sliding-scale basis,  
362 the fees due and owing from a person who is not indigent to the  
363 guardian ad litem assigned to a matter under this section. The  
364 maximum fee payable to a guardian ad litem pursuant to this section  
365 shall not exceed the fee prescribed by the Judicial Branch under section  
366 46b-62 of the general statutes for a couple with a gross combined  
367 income of one hundred thousand dollars.

368 (c) The Division of Public Defender Services may assess an  
369 administrative fee to be paid by any person who is not indigent and  
370 who is assigned a guardian ad litem under the provisions of this  
371 section. Any administrative fees collected by the Division of Public  
372 Defender Services pursuant to this subsection shall be used by said  
373 division to defray costs incurred in connection with the administration  
374 of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	46b-87
Sec. 2	<i>October 1, 2019</i>	46b-56
Sec. 3	<i>October 1, 2019</i>	46b-54
Sec. 4	<i>October 1, 2019</i>	46b-6
Sec. 5	<i>October 1, 2019</i>	46b-6a
Sec. 7	<i>July 1, 2019</i>	New section

**Statement of Purpose:**

To make revisions to various statutes relating to court proceedings that concern family relations matters.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



# UNIFORM PARENTAGE ACT (2017)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR  
SAN DIEGO, CALIFORNIA  
JULY 14 - JULY 20, 2017

*WITH PREFATORY NOTE AND COMMENTS*

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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

September 22, 2017

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## **UNIFORM PARENTAGE ACT (2017)**

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## UNIFORM PARENTAGE ACT (2017)

### PREFATORY NOTE

The Uniform Parentage Act (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. A core principle of UPA (1973) was to ensure that “all children and all parents have equal rights with respect to each other,” regardless of the marital status of their parents. UPA (1973) § 2, Comment.

The UPA was revised in 2002 (UPA (2002)). UPA (2002) 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 Article 8 to authorize surrogacy agreements.

UPA (2017) makes five major changes to the UPA. First, 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. For example, Section 703 of UPA (2002) provided that “[a] man who provides sperm for, or consents to, assisted reproduction by a woman as provided in Section 704 with the intent to be the parent of her child, is a parent of the resulting child.”

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the United States Supreme Court held that laws barring marriage between two people of the same sex are unconstitutional. Even more recently, in June 2017, the Supreme Court held that a state may not, consistent with *Obergefell*, deny married same-sex couples recognition on their children’s birth certificates that the state grants to married different-sex couples. *Pavan v. Smith*, 137 S. Ct. 2075, 2078-79 (2017). After *Obergefell* and *Pavan*, parentage laws that treat same-sex couples differently than different-sex couples may be unconstitutional. For example, in September 2017 the Arizona Supreme Court held that refusing to apply that state’s marital presumption equally to same-sex spouses would violate the Due Process and Equal Protection Clauses of the United States Constitution. *McLaughlin v. Jones*, slip op. at 9 (Ariz. 2017) (“The marital paternity presumption is a benefit of marriage, and following *Pavan* and *Obergefell*, the state cannot deny same-sex spouses the same benefits afforded opposite-sex spouses.”). See also *Roe v. Patton*, 2015 WL 4476734, \*3 (D. Utah. 2015) (concluding that the plaintiffs were “highly likely to succeed in their claim” that extending the “benefits of the assisted reproduction statutes [which are based on UPA (2002)] to male spouses in opposite-sex couples but not for female spouses in same-sex couples” was unconstitutional). As the Arizona Supreme Court explained in *McLaughlin*, state legislatures, like state courts, are “obliged to follow the United States Constitution. . . . Through legislative enactments and rulemaking, [the] coordinate branches of government can forestall unnecessary litigation and help ensure that [state] law guarantees same-sex spouses the dignity and equality the Constitution requires—namely the same benefits afforded couples in opposite-sex marriages.” *McLaughlin v. Jones*, slip op. at 13 (Ariz. 2017). UPA (2017) helps state legislatures address this potential constitutional infirmity by amending provisions throughout the act so that they address

and apply equally to same-sex couples. These changes include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction articles to make them gender-neutral.

UPA (2017) updates the act to address this potential constitutional infirmity by amending provisions throughout the act so that they address and apply equally to same-sex couples. These changes include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction articles to make them gender-neutral.

Second, 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. These states span the country; ranging from Massachusetts, to West Virginia, to North and South Carolina, to Texas. Some states recognize such people under a variety of equitable doctrines – sometimes called de facto parentage, or in loco parentis, or the psychological parent doctrine. Other states extend rights to such people through broad third party standing statutes. And, more recently, states have begun to treat such people as legal parents under their parentage provisions. Two states – Delaware and Maine – achieve this result by including “de facto parents” in their definition of parent in their state versions of the Uniform Parentage Act. Other states, including California, Colorado, Kansas, New Hampshire, and New Mexico, reached this conclusion by applying their existing parentage provisions to such persons. New Section 609 provides a process for the establishment of parentage by those who claim to be de facto parents.

Third, 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 United States 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.” In 2017, at least 17 state legislatures were considering bills to enact such statutes. New Section 614 provides language to implement the federal law.

Fourth, UPA (2017) updates the surrogacy provisions to reflect developments in that area. States have been particularly slow to enact Article 8 of UPA (2002). Eleven states adopted versions of UPA (2002).<sup>1</sup> Of these 11 states, only two – Texas and Utah – enacted the surrogacy provisions based on Article 8 of UPA (2002). At least five of the 11 states that enacted UPA (2002) enacted surrogacy provisions that are *not* premised on the 2002 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted 2004); Maine (permitting) (enacted 2015); North Dakota (banning) (enacted 2005); and Washington (banning compensated) (enacted 1989).

The fact that very few states enacted Article 8 is likely the result of a confluence of factors. One

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<sup>1</sup> The eleven states are: Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, and Wyoming. *See* Uniform Law Commission, *Legislative Fact Sheet – Parentage Act*.

likely factor is the controversial nature of surrogacy itself. But the fact that four of the states that enacted UPA (2002) have provisions permitting surrogacy that are not modeled on Article 8 of UPA (2002) suggests that the small number of enactments is also affected by the substance of Article 8. Accordingly, UPA (2017) updates the surrogacy provisions to make them more consistent with current surrogacy practice.

Finally, 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. Based on data from 2015, the CDC reports that “approximately 1.6% of all infants born in the United States every year are conceived using ART.”<sup>2</sup> Data suggest that this percentage continues to increase. Gaia Bernstein, *Unintended Consequences: Prohibitions on Gamete Donor Anonymity and the Fragile Practice of Surrogacy*, 10 Ind. Health L. Rev. 291, 298 (2013) (noting that “from 2004 to 2008 the number of IVF cycles used for gestational surrogacy grew by 60%, the number of births by gestational surrogates grew by 53% and the number of babies born to gestational surrogates grew by 89%”). Accordingly, it is increasingly important for states to address the right of children to access information about their gamete donor. Article 9 does not require disclosure of the identity of a gamete donor, but it does require gamete banks and fertility clinics to ask donors if they want to have their identifying information disclosed when the resulting child attains 18 years of age. It does require disclosure of non-identifying medical history of the gamete donor.

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<sup>2</sup> Centers for Disease Control, ART Success Rates, <http://www.cdc.gov/art/reports/> (last updated May 4, 2017).

**UNIFORM PARENTAGE ACT (2017)**

**[ARTICLE] 1**

**GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Parentage Act (2017).

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

(1) “Acknowledged parent” means an individual who has established a parent-child relationship under [Article] 3.

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

(3) “Alleged genetic parent” means an individual who is alleged to be, or alleges that the individual is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) an individual whose parental rights have been terminated or declared not to exist; or

(C) a donor.

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

(A) intrauterine or intracervical insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in-vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

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

(7) “Child-support agency” means a government entity, public official, or private agency, authorized to provide parentage-establishment services under Title IV-D of the Social Security Act, 42 U.S.C. Sections 651 through 669.

(8) “Determination of parentage” means establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under [Article] 3.

(9) “Donor” means an individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. The term does not include:

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

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

(10) “Gamete” means sperm, egg, or any part of a sperm or egg.

(11) “Genetic testing” means an analysis of genetic markers to identify or exclude a genetic relationship.

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

(13) “Intended parent” means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

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

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

(16) “Parentage” or “parent-child relationship” means the legal relationship between a child and a parent of the child.

(17) “Presumed parent” means an individual who under Section 204 is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is made under [Article] 3, or a court adjudicates the individual to be a parent.

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

(19) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(20) “Signatory” means an individual who signs a record.

(21) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(22) “Transfer” means a procedure for assisted reproduction by which an embryo or sperm is placed in the body of the woman who will give birth to the child.

(23) “Witnessed” means that at least one individual who is authorized to sign has signed a record to verify that the individual personally observed a signatory sign the record.

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

## Comment

As was true of UPA (2002), UPA (2017) utilizes separate classifications of parents. Five of the classifications—acknowledged parents, adjudicated parents, alleged genetic parents, intended parents, and presumed parents—are largely carried over from UPA (2002), although the classifications have been made gender neutral.

As was true in UPA (2002), the terms “woman” and “man” are defined to clarify that any human, regardless of age, can be a parent under the act.

UPA (2017) includes new definitions and amendments to existing definitions related to assisted reproduction. For example, the definition of the term “gamete” has been amended to include parts of gametes to reflect new technological developments. Definitions that are used in only one article have been moved into the relevant Article.

### **SECTION 103. SCOPE.**

(a) This [act] applies to an adjudication or determination of parentage.

(b) This [act] does not create, affect, enlarge, or diminish parental rights or duties under law of this state other than this [act].

[(c) This [act] does not authorize or prohibit an agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived through assisted reproduction. If a birth results under the agreement and the agreement is unenforceable under [cite to law of this state regarding surrogacy agreements], the parent-child relationship is established as provided in [Articles] 1 through 6.]

***Legislative Note:*** A state should enact subsection (c) if the state does not enact Article 8 or otherwise does not permit surrogacy agreements.

## Comment

Source: UPA (2002) § 103.

UPA (2002) contained a single section—Section 103—that addressed both the scope of the act and the issue of choice of law under the act. UPA (2017) follows the substance of UPA (2002), but addresses these concepts in two separate sections. The scope of the act is addressed in Section 103. Choice of law is addressed in Section 105.



**SECTION 104. AUTHORIZED COURT.** The [designate court] may adjudicate parentage under this [act].

**Comment**

Source: UPA (2002) § 104.

The court and, if applicable, child-support agency having jurisdiction over parentage proceedings under the UPA should be identified here. As recognized in the comment to Section 402 of UIFSA, several states have laws that allow a child-support agency to determine parentage administratively in certain cases, such as when parentage is not contested, while other states rely solely on the judicial process for parentage adjudications. Section 466(a)(2) of the Social Security Act authorizes both administrative and judicial procedures for parentage establishment.

**SECTION 105. APPLICABLE LAW.** The court shall apply the law of this state to adjudicate parentage. The applicable law does not depend on:

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

**Comment**

Source: UPA (2002) § 103; UIFSA (2008) § 303; UIFSA (1996) § 303.

UPA (2017) follows the choice of law approach of UPA (2002) § 103, UIFSA (1996) § 303, and UIFSA (2008) § 303. These acts all direct the local court to apply local law. If this state is an inappropriate forum, dismissal for forum non-conveniens may be appropriate.

**SECTION 106. DATA PRIVACY.** A proceeding under this [act] is subject to law of this state other than this [act] which governs the health, safety, privacy, and liberty of a child or other individual who could be affected by disclosure of information that could identify the child or other individual, including address, telephone number, digital contact information, place of employment, Social Security number, and the child's day-care facility or school.

**Comment**

Source: UPA (2002) § 105; UCCJEA (1997) § 209(e).

**SECTION 107. ESTABLISHMENT OF MATERNITY AND PATERNITY.** To the extent practicable, a provision of this [act] applicable to a father-child relationship applies to a mother-child relationship and a provision of this [act] applicable to a mother-child relationship applies to a father-child relationship.

**Comment**

Source: UPA (2002) § 106; UPA (1973) § 21.

This section carries over a principle followed in UPA (1973) § 21 and UPA (2002) § 106, that, where appropriate, a court may apply a gender-specific provision in a gender-neutral manner. Although UPA (2017) revised many provisions and concepts to make them gender neutral, some provisions of UPA (2017) remain written in terms applicable to one gender or the other. This section makes clear that a court has the authority to apply gendered provisions in a gender-neutral manner if appropriate.

**[ARTICLE] 2**

**PARENT-CHILD RELATIONSHIP**

**SECTION 201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.** A parent-child relationship is established between an individual and a child if:

- (1) the individual gives birth to the child[, except as otherwise provided in [Article] 8];
- (2) there is a presumption under Section 204 of the individual's parentage of the child, unless the presumption is overcome in a judicial proceeding or a valid denial of parentage is made under [Article] 3;
- (3) the individual is adjudicated a parent of the child under [Article] 6;
- (4) the individual adopts the child;
- (5) the individual acknowledges parentage of the child under [Article] 3, unless the acknowledgment is rescinded under Section 308 or successfully challenged under [Article] 3 or 6;[ or]
- (6) the individual's parentage of the child is established under [Article] 7; or

(7) the individual’s parentage of the child is established under [Article] 8].

**Legislative Note:** *A state should include paragraph (7) if the state includes Article 8 in this act. If the state does not enact Article 8 but otherwise permits and recognizes surrogacy agreements by statute, the state should include a reference to the statute in paragraph (7).*

### Comment

Source: UPA (2002) § 201.

UPA (2017) updates the UPA so that it applies equally to children born to same-sex couples. Most of the mechanisms for establishing parentage apply equally without regard to gender. Accordingly, UPA (2017) merges into a single list what had been separate subsections for establishing the parentage of women and men. This approach removes unnecessary distinctions based on gender. This approach is also consistent with the approach taken by states that have amended their UPA-based parentage provisions to apply equally to children born to same-sex couples. *See, e.g.,* Me. Rev. Stat. tit. 19-a, § 1851; N.H. Rev. Stat. § 168-B:2.

In Section 201(2) and in other provisions of the act related to presumed parents, the UPA (2017) uses the term “overcome” in place of the term “rebuttal” that was used in prior versions of the act. The term “overcome” better captures the concept that the determination as to whether a presumed parent is a legal parent is a policy choice based on equitable considerations. Although the UPA (2017) uses a new term, the same principle animated earlier versions of the act. *See, e.g.,* UPA (2002), Section 608(a) (providing that a court can deny a presumed parent’s challenge to his parentage “if the court determines that: (1) the conduct of the mother or . . . father estops that party from denying parentage; and (2) it would be inequitable to disprove the father-child relationship between the child and the presumed . . . father”); UPA (1973), Section 4(b) (“If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.”). A court may draw upon case law regarding the term “rebuttal” when considering whether a presumption has been overcome.

### **SECTION 202. NO DISCRIMINATION BASED ON MARITAL STATUS OF**

**PARENT.** A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

### Comment

Source: UPA (2002) § 202; UPA (1973) § 2.

Historically, children born to unmarried women were extended fewer rights and protections than marital children. In the 1960s and 1970s, the Supreme Court decided cases in which it held unconstitutional rules that treated nonmarital children unequally. The nondiscrimination provision of UPA (1973), UPA 1973, § 2, was one of the “major substantive

sections of the Act.” UPA (1973), § 2, Comment. Section 2 of UPA (1973) was intended to “establish the principle that regardless of the marital status of the parents, all children and all parents have equal rights with respect to each other.” UPA (1973) § 2, Comment. *See also* UPA (2002) § 202, Comment (“From a legal and social policy perspective, this is one of the most significant substantive provisions of the act, reaffirming the principle that regardless of the marital status of the parents, children and parents have equal rights with respect to each other.”).

This provision reaffirms the principle that once a parent-child relationship has been established, that relationship is entitled to substantive equality, regardless of whether the child is a marital or a nonmarital child.

**SECTION 203. CONSEQUENCES OF ESTABLISHING PARENTAGE.** Unless parental rights are terminated, a parent-child relationship established under this [act] applies for all purposes, except as otherwise provided by law of this state other than this [act].

#### **Comment**

Source: UPA (2002) § 203; USCACA (1988) § 10.

The qualifier “as otherwise provided by law of this state other than this [act]” is necessary because other statutes may restrict rights of a parent. For example, UPC (2008) § 2-114(a)(2) precludes a parent of a child (and the parent’s family) from inheriting from the child by intestate succession if the child “died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under the law of this state . . .”

#### **SECTION 204. PRESUMPTION OF PARENTAGE.**

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

(1) except as otherwise provided under[ [Article] 8 or] law of this state other than this [act]:

(A) the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(B) the individual and the woman who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is

terminated by death, [divorce, dissolution, annulment, or declaration of invalidity, or after a decree of separation or separate maintenance], whether the marriage is or could be declared invalid; or

(C) the individual and the woman who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child, and:

(i) the assertion is in a record filed with the [state agency maintaining birth records]; or

(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual's child.

(b) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under [Article] 6 or a valid denial of parentage under [Article] 3.

***Legislative Note:*** A state should use its own terms for the proceedings identified in the bracketed language in subsection (a)(1)(B).

### **Comment**

Source: UPA (2002) § 204; UPA (1973) § 4.

A network of presumptions was established by UPA (1973). Under UPA (1973), presumptions of parentage were established by previous marriage to the woman, subsequent marriage to the woman, and by the conduct of holding the child out as the individual's own child. Because, at the time of its drafting, marriage was permitted only between one man and one woman, and because few same-sex couples were raising children together, the presumptions were written to apply only to men.

These presumptions were largely carried over by UPA (2002), although UPA (2002) added an express durational requirement to the holding out presumption. As was true of UPA (1973), the presumptions remained gendered, referring only to men.

UPA (2017) carries over the substance of these presumptions, but revises them so that they apply equally to men and women. Revising the presumptions so that they apply equally to men and women may be required now that same-sex couples can marry in all states. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). In *Obergefell*, and more recently in *Pavan v. Smith*, 137 S. Ct. 2075, 2078 (2017), the Supreme Court made clear that states not only are precluded from denying same-sex couples from the right to marry, they are also precluded from denying same-sex married spouses the “constellation of benefits” that are extended to married different-sex spouses. *See also McLaughlin v. Jones*, slip op. at 9 (Ariz. 2017) (“[T]he presumption of paternity . . . cannot, consistent with the Fourteenth Amendment’s Equal Protection and Due Process Clauses, be restricted to only opposite-sex couples. The marital paternity presumption is a benefit of marriage, and following *Pavan* and *Obergefell*, the state cannot deny same-sex spouses the same benefits afforded opposite-sex spouses.”). Several states recently have enacted similar revisions to parentage presumptions, making them apply equally to men and women. *See, e.g.*, Cal. Fam. Code § 7611; D.C. Code § 16-909; 750 Ill. Comp. Stat. Ann. § 46/204; Me. Rev. Stat. tit. 19-a, § 1881(1); N.H. Rev. Stat. § 168-B:2(V).

In addition, the holding out provision has been amended to account for situations where the person is absent only temporarily. The newly added language is modeled on the definition of “home state” in the Uniform Child Custody Jurisdiction and Enforcement Act. *See* UCCJEA § 102(7) (“A period of temporary absence of any of the mentioned persons is part of the period.”).

Subsection (b) expressly addresses cases where multiple individuals have claims to parentage of a child under the act. UPA (1973) contained a provision for resolving cases involving multiple presumptions. Section 4(b) of UPA (1973) provided, in relevant part: “If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.” UPA (1973) § 4(b). UPA (2002) omitted this provision and contained no provision expressly addressing how courts should resolve cases in which there are multiple presumptions of parentage. UPA (2017) provides express guidance for resolving such cases. Section 204(b) references the possibility that a court might have to resolve competing presumptions of parentage. Factors to be considered in such cases are set forth in Section 613.

### [ARTICLE] 3

## VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

### Comment

Article 3 implements federal law. 42 U.S.C. § 666(a)(5)(C) provides that receipt of a federal subsidy by a state for its child-support enforcement program is contingent on state enactment of laws establishing specific procedures for “a simple civil process for voluntarily acknowledging paternity.” If a state does not have such provisions or if its provisions are not in

compliance with federal law, the state is at risk of losing its federal child-support subsidy. *See, e.g.*, 42 U.S.C. § 666(a) (providing that “each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary”). *See also* 42 U.S.C. § 654(20). Today, all states have adopted procedures for voluntary acknowledgments of paternity. Indeed, “[v]oluntary acknowledgments have become the most common way to establish the legal paternity of children born outside marriage.” Leslie Joan Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, 20 AM. U. J. GENDER SOC. POL’Y & L. 467, 469-70 (2012) (footnotes omitted).

Article 3 of UPA (2002) referred only to the establishment of paternity through this administrative process. UPA (2017) makes Article 3 gender neutral and refers to the establishment of parentage through the acknowledgment process for an alleged genetic father, an intended parent, and a presumed parent, allowing Article 3 to apply to both men and women. The gender-neutral language and addition of the term “intended parent” is consistent with one of the goals of this revision process, which is to ensure that UPA (2017) applies equally to same-sex couples.

Revised Article 3 of UPA (2017) was drafted in close consultation with the federal Office of Child Support Enforcement (OCSE) to be consistent with Title IV-D requirements. State law determines what support rights exist and are legally enforceable. These changes ensure that all children can have parentage established regardless of a parent’s gender and facilitate the establishment and enforcement of child support under state law.

Following is the text of portions of the Title IV-D statute most relevant to determinations of parentage:

**42 U. S. C. § 666. Requirement of Statutorily Prescribed Procedures To Improve Effectiveness of Child Support Enforcement.**

**(a) Types of procedures required.** In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

\* \* \*

**(5) Procedures concerning paternity establishment.**

**(A) Establishment process available from birth until age 18.**

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

**(B) Procedures concerning genetic testing.**

(i) Genetic testing required in certain contested cases. Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party:

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

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

(ii) Other requirements. Procedures which require the State agency, in any case in which the agency orders genetic testing:

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

**(C) Voluntary paternity acknowledgment.**

(i) Simple civil process. Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally or through the use of audio or video equipment and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services.

(I) State-offered services. Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations.

(aa) Services offered by hospitals and birth record agencies. The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities. The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit. Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

**(D) Status of signed paternity acknowledgment.**

(i) Inclusion in birth records. Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if:

(I) the father and mother have signed a voluntary acknowledgment of paternity;

or



(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity. Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest. Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

**(E) Bar on acknowledgment ratification proceedings.** Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

**(F) Admissibility of genetic testing results.** Procedures:

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is:

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

**(G) Presumption of paternity in certain cases.** Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

**(H) Default orders.** Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

**(I) No right to jury trial.** Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

**(J) Temporary support order based on probable paternity in contested cases.** Procedures which require that a temporary order be issued, upon motion by a party, requiring the

provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

**(K) Proof of certain support and paternity establishment costs.** Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

**(L) Standing of putative fathers.** Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

**(M) Filing of acknowledgments and adjudications in State registry of birth records.** Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

**SECTION 301. ACKNOWLEDGMENT OF PARENTAGE.** A woman who gave birth to a child and an alleged genetic father of the child, intended parent under [Article] 7, or presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

#### **Comment**

Source: 42 U.S.C. § 666(a)(5)(C); UPA (2002) § 301.

This section has been revised to permit an intended parent under Article 7 or a presumed parent to sign an acknowledgment of parentage, in addition to an alleged genetic parent. This change not only furthers the goal of ensuring that the act applies equally to children born to same-sex couples, but it also furthers the goal of establishing parentage quickly and with certainty.

#### **SECTION 302. EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE.**

(a) An acknowledgment of parentage under Section 301 must:

(1) be in a record signed by the woman who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;

(2) state that the child whose parentage is being acknowledged:

(A) does not have a presumed parent other than the individual seeking to

establish the parent-child relationship or has a presumed parent whose full name is stated; and

(B) does not have another acknowledged parent, adjudicated parent, or individual who is a parent of the child under [Article] 7[ or 8] other than the woman who gave birth to the child; and

(3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.

(b) An acknowledgment of parentage is void if, at the time of signing:

(1) an individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed with the [state agency maintaining birth records]; or

(2) an individual, other than the woman who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under [Article] 7[ or 8].

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(C); UPA (2002) § 302.

Section 302 has been amended to apply equally to men and women.

UPA (2017) also effects a substantive change to Subsection (b): the acknowledgment is void if another person other than the woman who gave birth *is* a presumed, acknowledged, or adjudicated parent. Under UPA (2002), the acknowledgment was void only if it *stated* that there was another presumed, acknowledged, or adjudicated parent. Thus, under UPA (2002), the acknowledgment was void only if the person knowingly lied on the form. As a result, under UPA (2002), the acknowledgment could cut off potential claims of other individuals so long as the signatories did not lie. UPA (2017) protects the rights of other individuals who are presumed, acknowledged, or adjudicated parents. What had been subsection (b)(3) of UPA (2002) § 302 has been eliminated because it is no longer necessary in light of this change to subsection (b).

**SECTION 303. DENIAL OF PARENTAGE.** A presumed parent or alleged genetic parent may sign a denial of parentage in a record. The denial of parentage is valid only if:

(1) an acknowledgment of parentage by another individual is filed under Section 305;

(2) the signature of the presumed parent or alleged genetic parent is attested by a notarial officer or witnessed; and

(3) the presumed parent or alleged genetic parent has not previously:

(A) completed a valid acknowledgment of parentage, unless the previous acknowledgment was rescinded under Section 308 or challenged successfully under Section 309; or

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

**SECTION 304. RULES FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.**

(a) An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the [state agency maintaining birth records] separately or simultaneously. If filing of the acknowledgment and denial both are required under this [act], neither is effective until both are filed.

(b) An acknowledgment of parentage or denial of parentage may be signed before or after the birth of the child.

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

(d) An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this [act].

### Comment

Source: 42 U.S.C. § 666(a)(5)(C)(i); UPA (2002) § 304.

### **SECTION 305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PARENTAGE.**

(a) Except as otherwise provided in Sections 308 and 309, an acknowledgment of parentage that complies with this [article] and is filed with the [state agency maintaining birth records] is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Except as otherwise provided in Sections 308 and 309, a denial of parentage by a presumed parent or alleged genetic parent which complies with this [article] and is filed with the [state agency maintaining birth records] with an acknowledgment of parentage that complies with this [article] is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

### Comment

Source: 42 U.S.C. § 666(a)(5)(D)(ii), and 42 U.S.C. § 666(a)(5)(M); UPA (2002) § 305.

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

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

### Comment

This provision, which is carried over verbatim from UPA (2002), is required by federal law. *See* 42 U.S.C. § 666(a)(5)(E) (“procedures under which judicial administrative proceedings

are not required or permitted to ratify an unchallenged acknowledgment of paternity.”).

### **SECTION 308. PROCEDURE FOR RESCISSION.**

(a) A signatory may rescind an acknowledgment of parentage or denial of parentage by filing with the [relevant state agency] a rescission in a signed record which is attested by a notarial officer or witnessed, before the earlier of:

(1) 60 days after the effective date under Section 304 of the acknowledgment or denial; or

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

(b) If an acknowledgment of parentage is rescinded under subsection (a), an associated denial of parentage is invalid, and the [state agency maintaining birth records] shall notify the woman who gave birth to the child and the individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.

### **Comment**

UPA (2002) required a judicial process to rescind a voluntary acknowledgment of parentage. This is not required by the federal statute, 42 U.S.C. § 666(a)(5)(D)(ii), and many states allow the acknowledgment to be rescinded within the applicable timeframe by filing a rescission form with the child-support agency or vital records agency. UPA (2017) removes the judicial proceeding requirement to offer states flexibility in designing their rescission process.

### **SECTION 309. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.**

(a) After the period for rescission under Section 308 expires, but not later than two years after the effective date under Section 304 of an acknowledgment of parentage or denial of

parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under Section 614, only on the basis of fraud, duress, or material mistake of fact.

(b) A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by Section 610.

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(D)(iii); UPA (2002) § 308.

The substance of subsection (a) is largely carried over from UPA (2002), § 308. This provision is consistent with federal law which permits a “challenge” to a voluntary acknowledgment of parentage, but only on the basis of alleged “fraud, duress, or material mistake of fact.” 42 U.S.C. § 666(a)(5)(D)(iii). UPA (2017) does, however, add a cross-reference to the new Section 614 regarding children born as the result of sexual assault. If a woman establishes that the child was born as the result of sexual assault under Section 614, generally this showing will be sufficient to establish that she signed the acknowledgment under duress.

UPA (2017) also adds an express cross-reference to the provision governing challenges to an acknowledgment by a nonsignatory. The substantive rules governing such challenges were included in Article 6 of UPA (2002), but there was no cross-reference in Article 3 to the relevant provision.

### **SECTION 310. PROCEDURE FOR CHALLENGE BY SIGNATORY.**

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

(b) By signing an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction in this state in a proceeding to challenge the acknowledgment or denial, effective on the filing of the acknowledgment or denial with the [state agency maintaining birth records].

(c) The court may not suspend the legal responsibilities arising from an acknowledgment of parentage, including the duty to pay child support, during the pendency of a proceeding to challenge the acknowledgment or a related denial of parentage, unless the party challenging the

acknowledgment or denial shows good cause.

(d) A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof.

(e) If the court determines that a party has satisfied the burden of proof under subsection (d), the court shall order the [state agency maintaining birth records] to amend the birth record of the child to reflect the legal parentage of the child.

(f) A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted under [Article] 6.

### **Comment**

Source: UPA (2002) § 309.

The relevant provision of UPA (2002) addressed the procedure for both rescission and challenge. UPA (2017), however, removed the requirement that rescission be done through an adjudicatory process. Accordingly, references to rescission have been removed from this section. This section now addresses only the judicial procedures governing a challenge to an acknowledgment or denial of parentage.

UPA (2017) also places the responsibility to file the order described in subsection (e) with the agency maintaining birth records on the party who wants the record changed. If the party who wants the record changed does not file the order with the agency maintaining records and take any other required steps, the record will not be changed.

**SECTION 311. FULL FAITH AND CREDIT.** The court shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the acknowledgment or denial was in a signed record and otherwise complies with law of the other state.

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(C)(iv); UPA (2002) § 311.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states “to give full faith and credit to such an affidavit signed in any other State according to its procedures,” 42 U.S.C. § 666(a)(5)(C)(iv), and that it have the same status as a



judgment. This section, carried over from UPA (2002), implements these mandates.

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

(a) The [state agency maintaining birth records] shall prescribe forms for an acknowledgment of parentage and denial of parentage.

(b) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

**Comment**

Source: 42 U.S.C. § 666(a)(5)(C)(i), (iv); UPA (2002) § 312.

**SECTION 313. RELEASE OF INFORMATION.** The [state agency maintaining birth records] may release information relating to an acknowledgment of parentage or denial of parentage to a signatory of the acknowledgment or denial, a court, federal agency, and child-support agency of this or another state.

**Comment**

Source: UPA (2002) § 313.

**[SECTION 314. ADOPTION OF RULES.** The [state agency maintaining birth records] may adopt rules under [state administrative procedure act] to implement this [article].]

*Legislative Note: A state should include Section 314 unless the provision is unnecessary or is inconsistent with other law of the state regarding agency rulemaking authority.*

**Comment**

Source: UPA (2002) § 314.

Like UPA (2002), UPA (2017) makes this section optional to account for situations in which it may conflict with other rulemaking limitations in a particular state. States will implement acknowledgment procedures in a variety of ways, depending on local practice. This grant of rulemaking authority to carry out the provisions of this article may include electronic

transmission of birth and acknowledgment data to the designated state agency.

## [ARTICLE] 4

### REGISTRY OF PATERNITY

#### Comment

The provisions establishing a paternity registry were added by UPA (2002). Signing a registry entitles the registrant to notice of and a right to oppose the adoption of an infant child; signing a paternity registry is *not* a means of establishing parentage. In *Lehr v. Robertson*, 463 U.S. 248 (1983), the Supreme Court upheld the constitutionality of a New York “putative father registry.” A New York statute required a father of a nonmarital child to sign a paternity registry if he wished to be notified of a termination of parental rights or adoption proceeding. Thereafter, a series of well-publicized adoption cases occurred in which state courts held that nonmarital fathers had not been given proper notice of such proceedings and voided established adoptions. A substantial number of legislatures responded to these decisions by enacting paternity registries similar to the New York statute.

Like UPA (2002), UPA (2017) limits the effect of the registry to cases in which a child is less than one year of age at the time of the court hearing. This recognizes the need to expedite infant adoptions, while properly protecting the rights of those individuals who have not registered, but instead have established some relationship with the child following birth.

UPA (2017) does not make any substantive changes to Article 4. UPA (2017) does, however, replace gendered terms with gender-neutral ones where appropriate.

## [PART] 1

### GENERAL PROVISIONS

**SECTION 401. ESTABLISHMENT OF REGISTRY.** A registry of paternity is established in the [state agency maintaining the registry].

**SECTION 402. REGISTRATION FOR NOTIFICATION.**

(a) Except as otherwise provided in subsection (b) or Section 405, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, his genetic child must register in the registry of paternity established by Section 401 before the birth of the child or not later than 30 days after the birth.

(b) A man is not required to register under subsection (a) if[:

(1)] a parent-child relationship between the man and the child has been established under this [act] or law of this state other than this [act]]; or

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

(c) A man who registers under subsection (a) shall notify the registry promptly in a record of any change in the information registered. The [state agency maintaining the registry] shall incorporate new information received into its records but need not seek to obtain current information for incorporation in the registry.

### **Comment**

Source: UPA (2002) § 402.

Subsection (b)(2) addresses and eliminates a concern raised by *Lehr v. Robertson*, 463 U.S. 248 (1983). In *Lehr*, although the alleged genetic father did not avail himself of the New York putative fathers registry, he had filed a “visitation and paternity” petition in another local court. The trial judge in the adoption proceeding knew the identity of the genetic father, where he could be located, and that he was seeking to establish his parentage in another court. Nonetheless, the court granted the adoption and terminated the genetic father’s parental rights without notice to him. Subsection (b)(2) exempts an alleged parent from the requirement of registration if the man “commences a proceeding to adjudicate his parentage before a court has terminated his parental rights.”

**SECTION 403. NOTICE OF PROCEEDING.** An individual who seeks to adopt a child or terminate parental rights to the child shall give notice of the proceeding to a man who has registered timely under Section 402(a) regarding the child. Notice must be given in a manner prescribed for service of process in a civil proceeding in this state.

**SECTION 404. TERMINATION OF PARENTAL RIGHTS: CHILD UNDER ONE YEAR OF AGE.** An individual who seeks to terminate parental rights to or adopt a child is not required to give notice of the proceeding to a man who may be the genetic father of the child if:

- (1) the child is under one year of age at the time of the termination of parental rights;
- (2) the man did not register timely under Section 402(a); and
- (3) the man is not exempt from registration under Section 402(b).

**SECTION 405. TERMINATION OF PARENTAL RIGHTS: CHILD AT LEAST ONE YEAR OF AGE.** If a child is at least one year of age, an individual seeking to adopt or terminate parental rights to the child shall give notice of the proceeding to each alleged genetic father of the child, whether or not he has registered under Section 402(a) unless his parental rights have already been terminated. Notice must be given in a manner prescribed for service of process in a civil proceeding in this state.

## [PART] 2

### OPERATION OF REGISTRY

#### **SECTION 406. REQUIRED FORM.**

(a) The [state agency maintaining the registry] shall prescribe a form for registering under Section 402(a). The form must state that:

- (1) the man who registers signs the form under penalty of perjury;
- (2) timely registration entitles the man who registers to notice of a proceeding for adoption of the child or termination of the parental rights of the man;
- (3) timely registration does not commence a proceeding to establish parentage;
- (4) the information disclosed on the form may be used against the man who registers to establish parentage;
- (5) services to assist in establishing parentage are available to the man who registers through [the appropriate child-support agency];
- (6) the man who registers also may register in a registry of paternity in another

state if conception or birth of the child occurred in the other state;

(7) information on registries of paternity of other states is available from [the appropriate state agency]; and

(8) procedures exist to rescind the registration.

(b) A man who registers under Section 402(a) shall sign the form described in subsection (a) under penalty of perjury.

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

(a) The [state agency maintaining the registry] is not required to seek to locate the woman who gave birth to the child who is the subject of a registration under Section 402(a), but the [state agency maintaining the registry] shall give notice of the registration to the woman if the [state agency maintaining the registry] has her address.

(b) Information contained in the registry of paternity established by Section 401 is confidential and may be released on request only to:

(1) a court or individual designated by the court;

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

(3) an agency authorized by law of this state other than this [act], law of another state, or federal law to receive the information;

(4) a licensed child-placing agency;

(5) a child-support agency;

(6) a party or the party's attorney of record in a proceeding under this [act] or in a proceeding to adopt or terminate parental rights to the child who is the subject of the registration; and

(7) a registry of paternity in another state.

**SECTION 408. PENALTY FOR RELEASING INFORMATION.** An individual who intentionally releases information from the registry of paternity established by Section 401 to an individual or agency not authorized under Section 407(b) to receive the information commits a [appropriate level misdemeanor].

**SECTION 409. RESCISSION OF REGISTRATION.** A man who registers under Section 402(a) may rescind his registration at any time by filing with the registry of paternity established by Section 401 a rescission in a signed record that is attested by a notarial officer or witnessed.

**SECTION 410. UNTIMELY REGISTRATION.** If a man registers under Section 402(a) more than 30 days after the birth of the child, the [state agency maintaining the registry] shall notify the man who registers that, based on a review of the registration, the registration was not filed timely.

**SECTION 411. FEES FOR REGISTRY.**

(a) The [state agency maintaining the registry] may not charge a fee for filing a registration under Section 402(a) or rescission of registration under Section 409.

(b) [Except as otherwise provided in subsection (c), the][The] [state agency maintaining the registry] may charge a reasonable fee to search the registry of paternity established by Section 401 and for furnishing a certificate of search under Section 414.

[(c) A child-support agency [is][and other appropriate agencies, if any, are] not required to pay a fee authorized by subsection (b).]

*Legislative Note: A state should include subsection (c) if the state does not require certain agencies to pay a fee authorized by subsection (b).*

**[PART] 3**

**SEARCH OF REGISTRY**

**SECTION 412. CHILD BORN THROUGH ASSISTED REPRODUCTION:**

**SEARCH OF REGISTRY INAPPLICABLE.** This [part] does not apply to a child born through assisted reproduction.

**Comment**

This section was added to clarify that individuals who have children through assisted reproduction are not required to conduct a search of the paternity registry, which was not designed or intended to address such situations.

**SECTION 413. SEARCH OF APPROPRIATE REGISTRY.** If a parent-child relationship has not been established under this [act] between a child who is under one year of age and an individual other than the woman who gave birth to the child:

(1) an individual seeking to adopt or terminate parental rights to the child shall obtain a certificate of search under Section 414 to determine if a registration has been filed in the registry of paternity established by Section 401 regarding the child; and

(2) if the individual has reason to believe that conception or birth of the child may have occurred in another state, the individual shall obtain a certificate of search from the registry of paternity, if any, in that state.

**SECTION 414. CERTIFICATE OF SEARCH OF REGISTRY.**

(a) The [state agency maintaining the registry] shall furnish a certificate of search of the registry of paternity established by Section 401 on request to an individual, court, or agency identified in Section 407(b) or an individual required under Section 413(1) to obtain a certificate.

(b) A certificate furnished under subsection (a):

(1) must be signed on behalf of the [state agency maintaining the registry] and

state that:

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

(B) a registration under Section 402(a) containing the information required

to identify the man who registers:

(i) has been found; or

(ii) has not been found; and

(2) if paragraph (1)(B)(i) applies, must have a copy of the registration attached.

(c) An individual seeking to adopt or terminate parental rights to a child must file with the court the certificate of search furnished under subsection (a) and Section 413(2), if applicable, before a proceeding to adopt or terminate parental rights to the child may be concluded.

**SECTION 415. ADMISSIBILITY OF REGISTERED INFORMATION.** A certificate of search of a registry of paternity in this or another state is admissible in a proceeding for adoption of or termination of parental rights to a child and, if relevant, in other legal proceedings.

## [ARTICLE] 5

### GENETIC TESTING

**SECTION 501. DEFINITIONS.** In this [article]:

(1) “Combined relationship index” means the product of all tested relationship indices.

(2) “Ethnic or racial group” means, for the purpose of genetic testing, a recognized group that an individual identifies as the individual’s ancestry or part of the ancestry or that is identified by other information.

(3) “Hypothesized genetic relationship” means an asserted genetic relationship between



an individual and a child.

(4) “Probability of parentage” means, for the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage incorporating the combined relationship index and a prior probability.

(5) “Relationship index” means a likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

### **Comment**

UPA (2017) amends terms that were used in UPA (2002) to reflect the fact that a court may need to adjudicate the parentage of an alleged genetic mother. UPA (2017) moves the relevant definitions from Section 102 to Section 501 because they are used only in this article.

The formula for calculating the probability of parentage is  $100 \cdot AB / (AB - (1 - B))$ , where A is the combined relationship index and B is the prior probability (assumed to be 0.50).

### **SECTION 502. SCOPE OF [ARTICLE]; LIMITATION ON USE OF GENETIC TESTING.**

(a) This [article] governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

- (1) voluntarily submits to testing; or
- (2) is tested under an order of the court or a child-support agency.

(b) Genetic testing may not be used:

- (1) to challenge the parentage of an individual who is a parent under [Article] 7[

or 8]; or

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

*Legislative Note:* A state should include the bracketed reference to Article 8 if the state includes Article 8 in this act.

### Comment

Source: UPA (2002) § 501.

The substance of Section 502(a) is carried over from UPA (2002) § 501.

Subsection (b) has been added to clarify that genetic testing cannot be used to challenge or argue against the parentage of an intended parent who is considered a parent under Articles 7 or 8. Because the parentage of an intended parent under Articles 7 and 8 is not premised on a genetic connection, the lack of a genetic connection should not be the basis of a challenge to the individual's parentage.

New subsection (b)(2) clarifies that an individual who is a donor under this act, and therefore is not a parent, is precluded from seeking to establish parentage by evidence of a genetic connection to the child.

### **SECTION 503. AUTHORITY TO ORDER OR DENY GENETIC TESTING.**

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

(1) alleging a reasonable possibility that the individual is the child's genetic parent; or

(2) denying genetic parentage of the child and stating facts establishing a reasonable possibility that the individual is not a genetic parent.

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

(c) The court or child-support agency may not order in utero genetic testing.

(d) If two or more individuals are subject to court-ordered genetic testing, the court may

order that testing be completed concurrently or sequentially.

(e) Genetic testing of a woman who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the woman is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under Section 609, or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and any other individual after considering the factors in Section 613(a) and (b).

(g) If an individual requesting genetic testing is barred under [Article] 6 from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) An order under this section for genetic testing is enforceable by contempt.

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(B)(i); UPA (2002) § 502 & § 608; UPA (1973) § 11.

Most of the substance of this section regarding genetic testing is carried over from UPA (2002). This section of UPA (2017) does, however, consolidate several subsections that had been included in different sections and in different articles of UPA (2002). Subsections (a) through (d) are carried over from UPA (2002) § 502, with some minor modifications to make the provisions gender neutral where appropriate. Subsection (e) is carried over from UPA (2002) § 622(c). Subsection (h) is carried over from UPA (2002), § 622(a). Subsection (f) is similar in substance to Section 608 of UPA (2002).

Subsection (g) is new and is intended to clarify that if an individual is barred under Article 6 from establishing parentage, there is no use for the genetic testing under this act, which governs legal parentage. Accordingly, it directs a court to deny the request in such circumstances.

### **SECTION 504. REQUIREMENTS FOR GENETIC TESTING.**

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

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

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

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

(c) Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual or a child-support agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or child-support agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child-support agency objecting to the laboratory's choice under this subsection shall:

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

(B) engage another laboratory to perform the calculations.

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

(d) If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing under Section 506 does not identify an individual as a genetic parent of a child, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

#### **Comment**

Source: 42 U.S.C. § 666(a)(5)(B)(i) and § 666(a)(5)(F)(i); UPA (2002) § 503.

This substance of this section is largely carried over from UPA (2002). Section 504(a)(1), however, was revised because the listed entity now uses a different name. The reference to the American Society for Histocompatibility and Immunogenetics was deleted because that body is no longer accrediting laboratories for parentage testing.

#### **SECTION 505. REPORT OF GENETIC TESTING.**

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

(b) Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of genetic testing to be admissible without testimony:

- (1) the name and photograph of each individual whose specimen has been taken;
- (2) the name of the individual who collected each specimen;
- (3) the place and date each specimen was collected;
- (4) the name of the individual who received each specimen in the testing

laboratory; and

- (5) the date each specimen was received.

#### **Comment**

Source: 42 U.S.C. § 666(a)(5)(F).

**SECTION 506. GENETIC TESTING RESULTS; CHALLENGE TO RESULTS.**

(a) Subject to a challenge under subsection (b), an individual is identified under this [act] as a genetic parent of a child if genetic testing complies with this [article] and the results of the testing disclose:

(1) the individual has at least a 99 percent probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and

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

(b) An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this [article] which:

(1) excludes the individual as a genetic parent of the child; or

(2) identifies another individual as a possible genetic parent of the child other than:

(A) the woman who gave birth to the child; or

(B) the individual identified under subsection (a).

(c) Except as otherwise provided in Section 511, if more than one individual other than the woman who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a genetic parent.

**Comment**

Source: 42 U.S.C. § 666(a)(5)(G); UPA (2002) § 505.

The use of a probability of parentage of 99.0% and a combined relationship index of 100 to 1 is consistent with accreditation standards in the year 2017 within the parentage-testing

community.

The prior probability is expressed as a number, rather than a percentage, within the parentage-testing community and by applicable cases. *See, e.g., Butcher v. Commonwealth*, 96 S.W.3d 3 (Ky. 2002); *Brown v. Smith*, 526 S.E.2d 686 (N.C. App. 2000); *Griffith v. State*, 976 S.W.2d 241 (Tex. Ct. App. 1998); *Plemel v. Walter*, 735 P.2d 1209 (Or. 1987).

Identification as a child's genetic parent does not, in and of itself, establish the child's legal parentage. The standards for adjudicating the parentage of a child are addressed in Article 6.

#### **SECTION 507. COST OF GENETIC TESTING.**

(a) Subject to assessment of fees under [Article] 6, payment of the cost of initial genetic testing must be made in advance:

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

(2) by the individual who made the request for genetic testing;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) If the cost of genetic testing is paid by a child-support agency, the agency may seek reimbursement from the genetic parent whose parent-child relationship is established.

#### **Comment**

Source: 42 U.S.C. § 666(a)(5)(B)(ii)(I); UPA (2002) § 506; UPA (1973) § 11.

**SECTION 508. ADDITIONAL GENETIC TESTING.** The court or child-support agency shall order additional genetic testing on request of an individual who contests the result of the initial testing under Section 506. If initial genetic testing under Section 506 identified an individual as a genetic parent of the child, the court or agency may not order additional testing unless the contesting individual pays for the testing in advance.

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(B)(ii)(II); UPA (2002) § 507; UPA (1973) § 11.

### **SECTION 509. GENETIC TESTING WHEN SPECIMEN NOT AVAILABLE.**

(a) Subject to subsection (b), if a genetic-testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause, and the court finds that the circumstances are just, the court may order any of the following individuals to submit specimens for genetic testing:

(1) a parent of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the woman who gave birth to the other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

### **Comment**

Source: UPA (2002) § 508.

In the vast majority of cases, a genetic-testing specimen will be available from an alleged genetic parent of a child. In those circumstances when a specimen is not available, Section 509 gives the court authority to order genetic testing from other relatives of the alleged genetic parent in a limited set of circumstances. To order genetic testing of other relatives, the court must find that the circumstances are just, and the court must also find that the need for genetic testing outweighs the legitimate interests, including the privacy and bodily integrity interests, of the individual sought to be tested.



**SECTION 510. DECEASED INDIVIDUAL.** If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

**Comment**

Source: UPA (2002) § 509.

**SECTION 511. IDENTICAL SIBLINGS.**

(a) If the court finds there is reason to believe that an alleged genetic parent has an identical sibling and evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) If more than one sibling is identified under Section 506 as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

**Comment**

Source: UPA (2002) § 510.

**SECTION 512. CONFIDENTIALITY OF GENETIC TESTING.**

(a) Release of a report of genetic testing for parentage is controlled by law of this state other than this [act].

(b) An individual who intentionally releases an identifiable specimen of another individual collected for genetic testing under this [article] for a purpose not relevant to a proceeding regarding parentage, without a court order or written permission of the individual who furnished the specimen, commits a [appropriate level misdemeanor].

**Comment**

Source: UPA (2002) § 511.

This provision is carried over from UPA (2002).

Subsection (a) refers to provisions other than this act that may regulate the disclosure of a genetic testing report that is part of the case record. In some states, the records of parentage proceedings are sealed. In these states, rules regarding disclosure of materials from a sealed proceeding would apply. In addition, there are also privacy rules in the federal regulations governing child support programs that may be applicable.

Subsection (b) expressly prohibits the intentional release of an identifiable specimen of another individual for a purpose not relevant to the parentage proceeding without proper authorization.

## **[ARTICLE] 6**

### **PROCEEDING TO ADJUDICATE PARENTAGE**

#### **Comment**

While largely retaining the substance of Article 6 of UPA (2002), UPA (2017) substantially reorganizes the content of former Article 6 to improve its clarity and flow.

#### **[PART] 1**

### **NATURE OF PROCEEDING**

#### **SECTION 601. PROCEEDING AUTHORIZED.**

[(a)] A proceeding may be commenced to adjudicate the parentage of a child. Except as otherwise provided in this [act], the proceeding is governed by [cite to this state's rules of civil procedure].

[(b)] A proceeding to adjudicate the parentage of a child born under a surrogacy agreement is governed by [Article] 8.]

*Legislative Note:* A state should include subsection (b) if the state includes Article 8 in the act.

#### **Comment**

Source: UPA (2002) § 601.

Subsection (b), which is new, clarifies that Article 8 governs proceedings to determine the parentage of a child born through surrogacy.

**SECTION 602. STANDING TO MAINTAIN PROCEEDING.** Except as otherwise provided in [Article] 3 and Sections 608 through 611, a proceeding to adjudicate parentage may be maintained by:

- (1) the child;
- (2) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;
- (3) an individual who is a parent under this [act];
- (4) an individual whose parentage of the child is to be adjudicated;
- (5) a child-support agency[ or other governmental agency authorized by law of this state other than this [act]];
- (6) an adoption agency authorized by law of this state other than this [act] or licensed child-placement agency; or
- (7) a representative authorized by law of this state other than this [act] to act for an individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated, or a minor.

**Comment**

Source: UPA (2002) § 602; UPA (1973) § 6.

**SECTION 603. NOTICE OF PROCEEDING.**

(a) The [petitioner] shall give notice of a proceeding to adjudicate parentage to the following individuals:

- (1) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;
- (2) an individual who is a parent of the child under this [act];

- (3) a presumed, acknowledged, or adjudicated parent of the child; and
- (4) an individual whose parentage of the child is to be adjudicated.

(b) An individual entitled to notice under subsection (a) has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection (a) from bringing a proceeding under Section 611(b).

### **Comment**

This new section is intended to ensure that steps are taken to give notice to all persons with a claim to parentage of a child. Giving such individuals notice of and a right to intervene in the proceeding is important because the rights of any absent individual with a claim to parentage of a child could be indirectly affected by the proceeding. Indeed, Section 623(d) provides that, “[e]xcept as otherwise provided in subsection (b), a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.”

While a goal of the Section 603 is to ensure that steps are taken to permit all individuals with a claim to parentage of a child the opportunity to participate in the proceeding, another goal of the section is to permit parentage to be adjudicated even if such an individual declines to participate in the proceeding. Hence, the section does not require joinder of such individuals. Subsection (c) also clarifies that failure to comply with the notice requirement of this section does not render the judgment void.

The notice should include a copy of Section 603.

Section 603 does not require that notice be given to the child. This is consistent with the policy decision of UPA (2002) not to require that the child be joined as a necessary party to the proceeding. As the Comment to Section 602 of UPA (2002) explained, few states require children to be joined as necessary parties in parentage actions, and no states then required children born during a marriage to be named as parties to a divorce proceeding. Because the child need not be a party to the action, there is no obligation to notice the child of the proceeding. In addition, as provided in Section 623, the child is not bound during minority by the adjudication unless the order is consistent with the results of genetic testing or the child was represented by an attorney.

### **SECTION 604. PERSONAL JURISDICTION.**

(a) The court may adjudicate an individual’s parentage of a child only if the court has

personal jurisdiction over the individual.

(b) A court of this state with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the [guardian or conservator] of the individual, if the conditions prescribed in [cite to this state’s Section 201 of the Uniform Interstate Family Support Act] are satisfied.

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

### **Comment**

Source: UPA (2002) § 604; UPA (1973) § 6(b).

This section is carried over from UPA (2002). UPA (2017) continues to take the position that, unlike child custody and visitation proceedings which are considered status adjudications that do not require personal jurisdiction over both parents, parentage proceedings require personal jurisdiction.

While the ideal scenario involves bringing all potential claimants together in a single proceeding, subsection (c) takes the approach that if the court lacks jurisdiction over an individual with a claim to parentage of a child, the court can still proceed.

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

- (1) the child resides or is located;
- (2) if the child does not reside in this state, the [respondent] resides or is located; or
- (3) a proceeding has been commenced for administration of the estate of an individual who is or may be a parent under this [act].

### **Comment**

Source: UPA (2002) § 605; UPA (1973) § 8(c).

The venue provision follows the approach taken by UPA (1973) and UPA (2002).

**[PART] 2**

**SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE**

**SECTION 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING.**

(a) Except as otherwise provided in Section 502(b), the court shall admit a report of genetic testing ordered by the court under Section 503 as evidence of the truth of the facts asserted in the report.

(b) A party may object to the admission of a report described in subsection (a), not later than [14] days after the party receives the report. The party shall cite specific grounds for exclusion.

(c) A party that objects to the results of genetic testing may call a genetic-testing expert to testify in person or by another method approved by the court. Unless the court orders otherwise, the party offering the testimony bears the expense for the expert testifying.

(d) Admissibility of a report of genetic testing is not affected by whether the testing was performed:

- (1) voluntarily or under an order of the court or a child-support agency; or
- (2) before, on, or after commencement of the proceeding.

**Comment**

Source: 42 U.S.C. § 666(a)(5)(F)(ii); UPA (2002) § 621(a), (b); UPA (1973) §§ 10, 13.

**SECTION 607. ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED GENETIC PARENT.**

(a) A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

- (1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Except as otherwise provided in Section 614, this subsection applies in a proceeding described in subsection (a) if the woman who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified under Section 506 as a genetic parent of the child and the identification is not successfully challenged under Section 506;

(2) admits parentage in a pleading, when making an appearance, or during a hearing, the court accepts the admission, and the court determines the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court or a child-support agency, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court determines the alleged genetic parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the court determines the alleged genetic parent to be a parent of the child.

(c) Except as otherwise provided in Section 614 and subject to other limitations in this [part], if in a proceeding involving an alleged genetic parent, at least one other individual in addition to the woman who gave birth to the child has a claim to parentage of the child, the court shall adjudicate parentage under Section 613.

## Comment

This substance of this section is largely carried over from UPA (2002). This section, however, consolidates into a single provision concepts that were previously scattered throughout Article 6 of UPA (2002).

Subsection (a) is based on UPA (2002) § 606; UPA (2017), however, eliminates UPA (2002) § 606(2), which permitted a parentage action to be commenced at any time if an earlier proceeding had been dismissed based on the application of a statute of limitation then in effect. Because federal law requires states to permit parentage establishment any time before the child attains 18 years of age, that provision is no longer necessary. 42 U.S.C. § 666(a)(5)(A)(ii).

Subsection (b)(1) is based on UPA (2002) § 631(2). Subsection (b)(2) is based on UPA (2002) § 623. Subsection (b)(3) is based on UPA (2002) § 622(b). Subsection (b)(4) is based on UPA (2002) § 634. Subsection (b)(5) is based on UPA (2002) § 631(3).

Subsection (c) is arguably new, although its underlying principle – that a court may adjudicate an individual who is not a genetic parent to be a child’s legal parent based on consideration of the child’s best interest – is based on and consistent with UPA (2002) § 608.

### **SECTION 608. ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED PARENT.**

(a) A proceeding to determine whether a presumed parent is a parent of a child may be commenced:

- (1) before the child becomes an adult; or
- (2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) A presumption of parentage under Section 204 cannot be overcome after the child attains two years of age unless the court determines:

- (1) the presumed parent is not a genetic parent, never resided with the child, and never held out the child as the presumed parent’s child; or
- (2) the child has more than one presumed parent.

(c) Except as otherwise provided in Section 614, the following rules apply in a proceeding to adjudicate a presumed parent’s parentage of a child if the woman who gave birth



to the child is the only other individual with a claim to parentage of the child:

(1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child.

(2) If the presumed parent is identified under Section 506 as a genetic parent of the child and that identification is not successfully challenged under Section 506, the court shall adjudicate the presumed parent to be a parent of the child.

(3) If the presumed parent is not identified under Section 506 as a genetic parent of the child and the presumed parent or the woman who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under Section 613(a) and (b).

(d) Except as otherwise provided in Section 614 and subject to other limitations in this [part], if in a proceeding to adjudicate a presumed parent's parentage of a child, another individual in addition to the woman who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under Section 613.

### **Comment**

This substance of this section is largely carried over from UPA (2002). This section, however, consolidates into a single provision concepts that were previously included in several provisions of Article 6 of UPA (2002).

Subsection (a) is based on UPA (2002) § 607(a). Subsection (b) is based on UPA (2002) § 607(b)(1) and (2). Subsections (c) and (d) are based on UPA (2002) § 608.

### **SECTION 609. ADJUDICATING CLAIM OF DE FACTO PARENTAGE OF CHILD.**

(a) A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

(1) is alive when the proceeding is commenced; and

(2) claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence a proceeding to establish parentage of a child under this section:

(1) before the child attains 18 years of age; and

(2) while the child is alive.

(c) The following rules govern standing of an individual who claims to be a de facto parent of a child to maintain a proceeding under this section:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage of the child asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent, or legal guardian may file a pleading in response to the pleading filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of paragraphs (1) through (7) of subsection (d). If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.

(d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence that:

(1) the individual resided with the child as a regular member of the child's

household for a significant period;

(2) the individual engaged in consistent caretaking of the child;

(3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) the individual held out the child as the individual's child;

(5) the individual established a bonded and dependent relationship with the child which is parental in nature;

(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) Subject to other limitations in this [part], if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under Section 613.

### **Comment**

This section adds a new means by which an individual can establish a parent-child relationship. This section is modeled on provisions that were recently enacted in Delaware and Maine, two states that adopted UPA (2002), and it reflects trends in state family law.

In most states, if an individual can establish that he or she has developed a strong parent-child relationship with the consent and encouragement of a legal parent, the individual is entitled to some parental rights and possibly some parental responsibilities. Some states extend rights to such persons under equitable principles. *See, e.g., Bethany v. Jones*, 378 S.W.3d 731 (Ark. 2011) (in loco parentis); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010) (in equity); *Boseman v. Harrell*, 704 S.E.2d 494 (N.C. 2010) (in equity); *McAllister v. McAllister*, 779 N.W.2d 652 (N.D. 2010) (psychological parent); *Marquez v. Caudill*, 656 S.E.2d 737 (S.C. 2008) (psychological parent); In re *Clifford K.*, 619 S.E.2d 138 (W. Va. 2005) (psychological parent).

Other states extend rights to such individuals through broad third party custody and visitation statutes. *See, e.g.*, Minn. Stat. § 257C.01-08; Tex. Fam. Code § 102.003(9).

In addition, by statute and through case law, several states recognize such persons as legal parents. *See, e.g.*, *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) (under the holding out provision of UPA (1973)); *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005) (under Washington state constitution); *In re S.N.V.*, 2011 WL 6425562 (Colo. App. 2011) (under the holding out provision of UPA (1973)); Del. Code Ann., tit. 13, § 8-201(c) (by express statutory provision); *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013) (under a provision based on UPA (1973)); *Partanen v. Gallagher*, 59 N.E.3d 1133 (Mass. 2016) (under a provision based on the holding out provision of UPA (1973)); Me. Rev. Stat. tit. 19-a, § 1891 (by express statutory provision); *Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014) (under the holding out provision of UPA (1973)); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012) (under the holding out provision of UPA (1973)).

To provide greater clarity to the parties and affected child, UPA (2017) addresses this issue through an express statutory provision. Under this new section, an individual who has functioned as a child's parent for a significant period such that the individual formed a bonded and dependent parent-child relationship may be recognized as a legal parent. This provision ensures that individuals who form strong parent-child bonds with children with the consent and encouragement of the child's legal parent are not excluded from a determination of parentage simply because they entered the child's life sometime after the child's birth. Consistent with the case law and the existing statutory provisions in other states, this section does not include a specific time length requirement. Instead, whether the period is significant is left to the determination of the court, based on the circumstances of the case. The length of time required will vary depending on the age of the child.

At the same time, however, the scope of this section is limited in several ways. First, this section includes a heightened standing requirement that must be satisfied by the individual claiming to be a de facto parent. This requirement is included to ensure that permitting proceedings by de facto parents does not subject parents to unwarranted and unjustified litigation. At the standing stage, under Section 609(c)(3), the requirements may be proved by only a preponderance of the evidence.

Second, the section sets forth a series of substantive requirements that must be satisfied before a court can adjudicate such an individual to be a parent. Some of these substantive requirements—the individual reside with the child for a significant period of time and the individual formed a bonded and dependent relationship with the child which is parental in nature—are based on factors developed under common law doctrine that is utilized in many states. *See, e.g.*, *In re Parentage of L.B.*, 122 P.3d 161, 176 (Wash. 2005), cert. denied, 547 U.S. 1143 (2006); *V.C. v. J.M.B.*, 748 A.2d 539, 551 (N.J.), cert. denied, 531 U.S. 926 (2000); *Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995). Accordingly, a court may look to those common law decisions for guidance.

Third, this section permits only the individual alleging himself or herself to be a de facto parent to initiate a proceeding under this section. This limitation was added to address concerns

that stepparents might be held responsible for child support under this theory of parentage. Finally, this section requires the proceeding to establish de facto parentage be commenced before the death of the child and the death of the individual alleged to be a de facto parent, and before the child attains 18 years of age. These safeguards protect against unwarranted and unjustified litigation.

This section is not intended to preclude legal actions based on other legal theories. *See, e.g., DeHart v. DeHart*, 986 N.E.2d 85 (Ill. 2013) (recognizing a cause of action for equitable adoption and contract for adoption in an action contesting the validity of a will).

**SECTION 610. ADJUDICATING PARENTAGE OF CHILD WITH  
ACKNOWLEDGED PARENT.**

(a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage, brought by a signatory to the acknowledgment or denial, is governed by Sections 309 and 310.

(b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under Section 602 and was not a signatory to the acknowledgment or denial:

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment.

(2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

**Comment**

Source: UPA (2002) § 609.

This section is based on UPA (2002) § 609. Section 609 of UPA (2002) addressed challenges both to adjudicated parents and to acknowledged parents. UPA (2017) separates these

concepts into separate sections – Section 610, addressing challenges to acknowledged parents, and Section 611, addressing challenges to adjudicated parents.

As was true under UPA (2002), subsection (b) imposes a two-year limitations period to challenges to an acknowledgment. This is consistent with the limitations periods in other sections of the UPA, including the time for challenging an acknowledgment of parentage by a signatory under Section 307. As was true under UPA (2002), a challenge brought within this limitations period is subject to considerations related to the best interest of the child.

**SECTION 611. ADJUDICATING PARENTAGE OF CHILD WITH  
ADJUDICATED PARENT.**

(a) If a child has an adjudicated parent, a proceeding to challenge the adjudication, brought by an individual who was a party to the adjudication or received notice under Section 603, is governed by the rules governing a collateral attack on a judgment.

(b) If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual, other than the child, who has standing under Section 602 and was not a party to the adjudication and did not receive notice under Section 603:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

**Comment**

Source: UPA (2002) § 609.

This section is based on UPA (2002) § 609. Section 609 of UPA (2002) addressed challenges both to adjudicated parents and to acknowledged parents. UPA (2017) separates these concepts into separate sections: Section 610, addressing challenges to acknowledged parents, and

Section 611, addressing challenges to adjudicated parents.

Subsection (a) clarifies that if the individual received notice of the action under Section 603, a proceeding to challenge the adjudication by the individual is governed by the rules governing collateral attacks on judgments.

As was true under UPA (2002), subsection (b) imposes a two-year limitations period on challenges to an adjudication of parentage of a child by an individual who was not a party to and did not receive notice of the prior proceeding. Other sections of the act likewise utilize a two-year limitations period. *See, e.g.*, Section 307; Section 608. As was true under UPA (2002), a challenge brought within this limitations period is subject to considerations related to the best interest of the child.

**SECTION 612. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.**

(a) An individual who is a parent under [Article] 7 or the woman who gave birth to the child may bring a proceeding to adjudicate parentage. If the court determines the individual is a parent under [Article] 7, the court shall adjudicate the individual to be a parent of the child.

(b) In a proceeding to adjudicate an individual's parentage of a child, if another individual other than the woman who gave birth to the child is a parent under [Article] 7, the court shall adjudicate the individual's parentage of the child under Section 613.

**Comment**

This new section specifically authorizes the filing of a proceeding to adjudicate the parentage of individuals who are intended parents under Article 7. The rules regarding adjudications of parentage for individuals who are parents under Article 8 are set forth in Article 8.

**SECTION 613. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.**

(a) Except as otherwise provided in Section 614, in a proceeding to adjudicate competing claims of, or challenges under Section 608(c), 610, or 611 to, parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

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

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

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

(5) the basis for each individual's claim to parentage of the child; and

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

(b) If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

(1) the facts surrounding the discovery the individual might not be a genetic parent of the child; and

(2) the length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

#### **Alternative A**

(c) The court may not adjudicate a child to have more than two parents under this [act].

#### **Alternative B**

(c) The court may adjudicate a child to have more than two parents under this [act] if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child's physical needs and psychological



needs for care and affection and has assumed the role for a substantial period.

### **End of Alternatives**

***Legislative Note:** A state should enact Alternative A if the state does not wish a child to have more than two parents. A state should enact Alternative B if the state wishes to authorize a court in certain circumstances to establish more than two parents for a child.*

### **Comment**

UPA (1973) contained a provision addressing situations in which multiple individuals have a claim to parentage of a child. Section 4(b) of UPA (1973) provided guidance in such situations, although the guidance was vague. UPA (1973) § 4(b) (“If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.”).

UPA (2002) eliminated that provision and did not expressly address how a court should resolve cases involving competing presumptions or claims of parentage. UPA (2002) did, however, include a provision that implicitly acknowledged the possibility of multiple claimants. UPA (2002), § 608 authorized a court to deny a request for genetic testing in cases in which a party sought to challenge a presumption of parentage. The section provided a list of factors that a court was directed to consider in such cases. The reality is, however, that whether or not the court orders genetic testing, the parties often know what the results of that genetic tests would reveal. In that way, the section concealed the purpose of the provision, which was to provide guidance to a court faced with competing claims of parentage between an alleged genetic parent and a presumed parent.

UPA (2017) addresses how to resolve cases between competing claimants directly. While UPA (2017) frames the issue differently, this section is consistent with the basic approach of UPA (2002) § 608. Thus, the factors included in this section are largely carried over from UPA (2002) § 608.

This section also expressly addresses another issue that UPA (2002) did not: whether a court may conclude that a child has more than two parents under the act. This is a question with which courts have increasingly been confronted.

The act provides two alternatives. Alternative A provides that a child cannot have more than two legal parents. Alternative B permits a court, in rare circumstances, to find that a child has more than two legal parents.

Alternative B is consistent with an emerging trend permitting courts to recognize more than two people as a child’s parents. Four states expressly permit a court to find that a child has more than two legal parents by statute. *See* Cal. Fam. Code 7612(c); Del. Code Ann. tit. 13, § 8-201(a)(4), (b)(6), (c); D.C. Code § 16-909(e); Me. Rev. Stat. tit. 19-a, § 1853(2). In addition, courts in several other states have reached that conclusion as a matter of common law. *See, e.g., Warren v. Richard*, 296 So.3d 813, 815 (La. 1974). In addition, courts in some states have

concluded that a child had two legal parents and one equitable parent who was entitled to at least some rights and duties of a parent. *See, e.g., In Interest of P.S.*, 505 S.W.3d 106 (Tex. Ct. App. 2016) (3-way custody and visitation arrangement); *A.B. v. T.V.*, 2015 WL 7571451 (Pa. Super. Ct. 2015); *In re Parentage of J.B.R. Child*, 336 P.3d 648, 653 (Wash. App. Ct. 2014) (“The fact that [the child] has two living biological parents does not prohibit [the child’s stepparent] from petitioning for de facto parentage.”); *McAllister v. McAllister*, 779 N.W.2d 652 (N.D. 2010).

Again, Alternative B recognizes and reflects this trend in favor of recognizing the possibility that a child may have more than two legal parents. Alternative B, however, stakes out a narrow, limited approach to the issue by erecting a high substantive hurdle before the court can reach this conclusion: a court can determine that a child has more than two legal parents only when failure to do so would cause detriment to the child.

**SECTION 614. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT.**

(a) In this section, “sexual assault” means [cite to this state’s criminal rape statutes].

(b) In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man from establishing that he is a parent of the child.

(c) This section does not apply if:

(1) the man described in subsection (b) has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the man established a bonded and dependent relationship with the child which is parental in nature.

(d) Unless Section 309 or 607 applies, a woman must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child. The woman may file the pleading only in a proceeding to establish parentage under this [act].

(e) An allegation under subsection (b) may be proved by:

(1) evidence that the man was convicted of a sexual assault, or a comparable crime in another jurisdiction, against the woman and the child was born not later than 300 days

after the sexual assault; or

(2) clear-and-convincing evidence that the man committed sexual assault against the woman and the child was born not later than 300 days after the sexual assault.

(f) Subject to subsections (a) through (d), if the court determines that an allegation has been proved under subsection (e), the court shall:

(1) adjudicate that the man described in subsection (b) is not a parent of the child;

(2) require the [state agency maintaining birth records] to amend the birth certificate if requested by the woman and the court determines that the amendment is in the best interest of the child; and

(3) require the man pay to child support, birth-related costs, or both, unless the woman requests otherwise and the court determines that granting the request is in the best interest of the child.

### **Comment**

According to the National Conference of State Legislatures (NCSL), it is estimated that there are between “17,000 and 32,000 rape-related pregnancies in the United States each year.” In 2015, Congress enacted the Rape Survivor Child Custody Act. Title IV of that act provides for increased funding for states that have statutes permitting women who conceived children through rape to seek termination of the perpetrator’s parental rights. According to NCSL, today “[a]pproximately 45 states and the District of Columbia have enacted legislation regarding the parental rights of perpetrators of sexual assault.” Most states that have enacted legislation address the issue in one of two ways: (1) approximately 30 states have statutes that permit a court to terminate the parental rights of the perpetrator; (2) approximately 20 states permit courts to restrict the custodial or visitation rights of the perpetrator.

This section permits a court to declare that the perpetrator is not a parent if the person has been convicted of sexual assault or if the sexual assault is proved by clear and convincing evidence in the proceeding and the child was conceived as a result the sexual assault. The latter method of proof must be included to meet the requirements of the federal statute. 42 U.S.C. § 14043h-2.

In subsection (a), states must decide which criminal rape statutes should be included in this section. A state may, for example, want to exclude from coverage some forms of statutory rape where the individuals are close in age, or incest between consenting adults who do not have

a parent-child relationship.

In most cases, an allegation that this section applies must be made within two years of the child's birth. This is consistent with several other provisions of UPA 2017 that also impose a two-year statute of limitations. *See, e.g.*, Sections 307, 608, 705. There is one exception to this two-year limitations period. In an action to adjudicate parentage when the child has no presumed, adjudicated, or acknowledged parent, the two-year statute of limitations does not apply.

Even if the action is timely filed, a court must deny the request to preclude the man's parentage of the child if the man has developed a bonded and dependent parent-child relationship with the child. This exception is consistent with the act's focus on the best interest of the child, and with the act's goal of protecting established parent-child bonds.

A woman may seek to preclude establishment of parentage of a child by an alleged perpetrator of sexual assault only in a proceeding to adjudicate parentage.

Subsection (c) provides that a woman may seek to preclude an establishment of parentage under this section. While most proceedings under this section will be brought by the woman, subsection (c) does not expressly limit such proceedings to ones initiated by the woman because there may be limited circumstances when someone acting on behalf of the woman may be permitted to bring a proceeding under this section. This may be the case, for example, if the woman is very young or if she is incapacitated.

### **[PART] 3**

#### **HEARING AND ADJUDICATION**

##### **SECTION 615. TEMPORARY ORDER.**

(a) In a proceeding under this [article], the court may issue a temporary order for child support if the order is consistent with law of this state other than this [act] and the individual ordered to pay support is:

- (1) a presumed parent of the child;
- (2) petitioning to be adjudicated a parent;
- (3) identified as a genetic parent through genetic testing under Section 506;
- (4) an alleged genetic parent who has declined to submit to genetic testing;
- (5) shown by clear-and-convincing evidence to be a parent of the child; or
- (6) a parent under this [act].

(b) A temporary order may include a provision for custody and visitation under law of this state other than this [act].

### **Comment**

Source: 42 U.S.C. § 666(a)(5)(J); UPA (2002) § 624; UIFSA (1996) § 401.

This provision is carried over from UPA (2002) § 624. The provision requires that parentage be established by clear and convincing evidence to comply with federal law. *See* 42 U.S.C. § 666(a)(5)(J) (requiring states to adopt “[p]rocedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).”).

The temporary orders referenced in both subsections (a) and (b) include interim orders.

### **SECTION 616. COMBINING PROCEEDINGS.**

(a) Except as otherwise provided in subsection (b), the court may combine a proceeding to adjudicate parentage under this [act] with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, [divorce, dissolution, annulment, declaration of invalidity, or legal separation or separate maintenance,] administration of an estate, or other appropriate proceeding.

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

**Legislative Note:** *A state should use its own terms for the proceedings identified in the bracketed language in subsection (a).*

### **Comment**

Source: UPA (2002) § 610; UPA (1973) § 8.

This provision is carried over from UPA (2002), although the prior concept of “joining” proceeding has been replaced with the concept of “combining” various proceedings. As the comment to the UPA (2002) provision explained, it is common to have multiple proceedings regarding a single child pending at the same time, especially when a child-support agency seeks to establish paternity and fix child support.

This provision is intended to permit a court to combine such proceedings unless the court

would not otherwise have jurisdiction over the proceeding. Accordingly, subsection (b) restricts counterclaims in those instances in which an initiating state sends proceeding to adjudicate parentage to the responding state. Because petitioner is “appearing” in the other forum, to permit counterclaims would serve as a major deterrent to bringing such proceedings. This bar does not prevent a separate proceeding for such matters, but there must be independent jurisdiction not arising from the petitioner’s appearance in the parentage proceeding.

**SECTION 617. PROCEEDING BEFORE BIRTH.** [Except as otherwise provided in [Article] 8, a][A] proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment may be entered before birth, but enforcement of the order or judgment must be stayed until the birth of the child.

*Legislative Note:* A state should include the bracketed phrase on Article 8 if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

#### **Comment**

UPA (2002) provided that an action to determine parentage could be initiated prior to birth, but that it could not be concluded until after the birth of the child. UPA (2002) § 611.

UPA (2017) takes a slightly different position. This section permits a court to issue an order prior to birth, although the judgment is stayed until the birth of the child. This provision is based on a California provision. Cal. Fam. Code § 7633. In some instances, it may be very helpful for the parties to have a determination of parentage prior to birth, even if the order or judgment is not effective until after birth.

#### **SECTION 618. CHILD AS PARTY; REPRESENTATION.**

(a) A minor child is a permissive party but not a necessary party to a proceeding under this [article].

(b) The court shall appoint [an attorney, guardian ad litem, or similar person] to represent a child in a proceeding under this [article], if the court finds that the interests of the child are not adequately represented.

*Legislative Note:* A state should replace the bracketed language in subsection (b) for terms of persons authorized to represent a child in a proceeding under this article with terms for persons performing similar representation under law of the state other than this act.

### Comment

Source: UPA (2002) § 612.

Section 618 follows UPA (2002). Unlike UPA (1973), UPA (2002) and UPA (2017) take the view that the child is not a necessary party. The court, however, is permitted to appoint an attorney or similar person to represent the child if the court finds that the child's interests are not adequately represented.

**SECTION 619. COURT TO ADJUDICATE PARENTAGE.** The court shall adjudicate parentage of a child without a jury.

### Comment

Source: 42 U.S.C. § 666(a)(5)(I); UPA (2002) § 632.

This provision is carried over from UPA (2002). This provision is consistent with federal law, which provides that “parties to an action to establish paternity are not entitled to a trial by jury.” 42 U.S.C. § 666(a)(5)(I).

### **SECTION 620. HEARING[; INSPECTION OF RECORDS].**

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

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

*Legislative Note: A state should review the state's open records laws to determine if subsection (b) needs to be included or amended.*

### Comment

Source: UPA (2002) § 633; UPA (1973) § 20.

**SECTION 621. DISMISSAL FOR WANT OF PROSECUTION.** The court may dismiss a proceeding under this [act] for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

## Comment

Source: UPA (2002) § 635.

A major principle of UPA (2017) —and its predecessors—is that the child’s right to have a determination of parentage is fundamental. This section, which is carried over from UPA (2002), confirms this right by declaring that the delinquency of another person, such as the mother or a support enforcement agency, in prosecuting such a proceeding may not permanently preclude the ultimate resolution of a parentage determination.

### **SECTION 622. ORDER ADJUDICATING PARENTAGE.**

(a) An order adjudicating parentage must identify the child in a manner provided by law of this state other than this [act].

(b) Except as otherwise provided in subsection (c), the court may assess filing fees, reasonable attorney’s fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this [article]. Attorney’s fees awarded under this subsection may be paid directly to the attorney, and the attorney may enforce the order in the attorney’s own name.

(c) The court may not assess fees, costs, or expenses in a proceeding under this [article] against a child-support agency of this state or another state, except as provided by law of this state other than this [act].

(d) In a proceeding under this [article], a copy of a bill for genetic testing or prenatal or postnatal health care for the woman who gave birth to the child and the child, provided to the adverse party not later than 10 days before a hearing, is admissible to establish:

- (1) the amount of the charge billed; and
- (2) that the charge is reasonable and necessary.

(e) On request of a party and for good cause, the court in a proceeding under this [article] may order the name of the child changed. If the court order changing the name varies from the



name on the birth certificate of the child, the court shall order the [state agency maintaining birth records] to issue an amended birth certificate.

### **Comment**

Source: UPA (2002) § 636; UPA (1973) §§ 15, 16, 23; UIFSA (1996) § 313.

### **SECTION 623. BINDING EFFECT OF DETERMINATION OF PARENTAGE.**

(a) Except as otherwise provided in subsection (b):

(1) a signatory to an acknowledgment of parentage or denial of parentage is bound by the acknowledgment and denial as provided in [Article] 3; and

(2) a party to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of [cite to this state's Section 201 of the Uniform Interstate Family Support Act] and any individual who received notice of the proceeding are bound by the adjudication.

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

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

(2) the determination was based on a finding consistent with the results of genetic testing, and the consistency is declared in the determination or otherwise shown;

(3) the determination of parentage was made under [Article] 7[ or 8]; or

(4) the child was a party or was represented by [an attorney, guardian ad litem, or similar person] in the proceeding.

(c) In a proceeding for [divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance], the court is deemed to have made an adjudication of parentage of a child if the court acts under circumstances that satisfy the jurisdiction

requirements of [cite to this state’s Section 201 of the Uniform Interstate Family Support Act] and the final order:

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

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

(d) Except as otherwise provided in subsection (b) or Section 611, a determination of parentage may be asserted as a defense in a subsequent proceeding seeking to adjudicate parentage of an individual who was not a party to the earlier proceeding.

(e) A party to an adjudication of parentage may challenge the adjudication only under law of this state other than this [act] relating to appeal, vacation of judgment, or other judicial review.

***Legislative Note:*** *A state should include the bracketed reference to Article 8 if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.*

*A state should replace the bracketed language in subsection (b)(4) for terms of persons authorized to represent a child in a proceeding under this article with terms for persons performing similar representation under law of the state other than this act.*

*A state should use its own terms for the proceedings identified in the bracketed language in subsection (c).*

### **Comment**

Source: UPA (2002) § 637.

As explained in the comment to UPA (2002) § 637, a considerable amount of litigation involves who is bound by a final order determining parentage. This section codifies rules regarding the effect of such orders. Consistent with UPA (2002), subsection (a) provides that, if the order is issued under standards of personal jurisdiction of UIFSA (2008), the order is binding on all parties to the proceeding.

Subsection (b) follows UPA (2002) with regard to whether a child is bound by the terms of the order determining parentage. UPA (2017), as did UPA (2002), adopts the rule that a child is not bound during minority unless the order is consistent with the results of genetic testing or the child was represented by an attorney.

Subsection (c) follows UPA (2002) on whether a divorce decree constitutes a finding of parentage. Subsection (d) follows UPA (2002) by giving protection to third parties who may claim benefit of an earlier determination of parentage.

As was true of UPA (2002), this section is silent on whether state IV-D agencies are bound by prior determinations of parentage. This issue is left to other law of the state. Similarly, issues of collateral attack on final judgments are to be resolved by recourse to other state law.

## [ARTICLE] 7

### ASSISTED REPRODUCTION

#### Comment

The content of Article 7 is substantively similar to the content of Article 7 of UPA (2002). The primary changes to Article 7 are intended to update the article so that it applies equally to same-sex couples.

**SECTION 701. SCOPE OF [ARTICLE].** This [article] does not apply to the birth of a child conceived by sexual intercourse[ or assisted reproduction under a surrogacy agreement under [Article] 8].

*Legislative Note:* A state should include the bracketed phrase concerning a surrogacy agreement if the state wishes to recognize in statute surrogacy agreements and includes Article 8 in this act.

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

#### Comment

Source: UPA (2002) § 702.

**SECTION 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.** An individual who consents under Section 704 to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

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

(a) Except as otherwise provided in subsection (b), the consent described in Section 703 must be in a record signed by a woman giving birth to a child conceived by assisted reproduction

and an individual who intends to be a parent of the child.

(b) Failure to consent in a record as required by subsection (a), before, on, or after birth of the child, does not preclude the court from finding consent to parentage if:

(1) the woman or the individual proves by clear-and-convincing evidence the existence of an express agreement entered into before conception that the individual and the woman intended they both would be parents of the child; or

(2) the woman and the individual for the first two years of the child's life, including any period of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child, unless the individual dies or becomes incapacitated before the child attains two years of age or the child dies before the child attains two years of age, in which case the court may find consent under this subsection to parentage if a party proves by clear-and-convincing evidence that the woman and the individual intended to reside together in the same household with the child and both intended the individual would openly hold out the child as the individual's child, but the individual was prevented from carrying out that intent by death or incapacity.

### **Comment**

Source: UPA (2002) § 704; UPC (2010) § 2-120(f).

This section largely follows UPA (2002), in that it provides that an individual is a parent of a child born through assisted reproduction if the individual consents in writing to the assisted reproduction, or, in the absence of consent, if for the first two years of the child's life, the individual resided together in the same household with the child and both openly held out the child as the individual's child.

This section adds two new means by which an individual can establish parentage of a child born through assisted reproduction. In the absence of written consent to the assisted reproduction, parentage can be established under subsection (b)(1) if the woman or the individual proves that the parties entered into an express agreement prior to conception that they intended that they would both be parents of the child. UPA (2017) continues to provide the most protection to those who have written consent. This protection encourages parties to obtain

written consent, which helps avoid disputes and litigation.

Case law and experience make clear, however, that many parties do not consent in writing, even when the statute requires written consent and even when the evidence indicates that the parties intended that they would both be parents to the child. Some courts have relied on equitable or common law doctrines to do justice in such cases. *See, e.g., In re Parentage of M.J.*, 203 Ill. 3d 526, 541, 787 N.E.2d 144, 152 (2003) (holding that even though the assisted reproduction statute did not apply in the absence of written consent, a man who consented in fact to the woman’s insemination was a parent under common law principles and that “to hold otherwise would deprive the children of financial support merely because of deception and a technical oversight.”). Some other courts, however, have rigidly applied written consent requirements, often producing results that seem inequitable and harmful to the child.

In light of this experience, UPA (2017) recognizes some non-written forms of consent. New subsection (b)(1) adds a new method of establishing parentage in the absence of written consent, but this new method imposes a high substantive bar: the express agreement must be proven by clear and convincing evidence.

In addition, subsection (b)(2) has been expanded to bring UPA (2017) more in line with the Uniform Probate Code. UPA (2002) provided that the failure to sign a written consent did not preclude a determination of parentage if the individual, during the first two years of the child’s life, resided together in the same household with the child and openly held out the child as the individual’s own. UPA (2017) also permits a determination of parentage when this two-year period is not fulfilled because of the death or incapacity of the individual or the death of the child.

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

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

(1) not later than two years after the birth of the child, the individual commences a proceeding to adjudicate the individual’s parentage of the child; and

(2) the court finds the individual did not consent to the assisted reproduction, before, on, or after birth of the child, or withdrew consent under Section 707.

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

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

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

(3) the spouse never openly held out the child as the spouse's child.

(c) This section applies to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

### **Comment**

Source: UPA (2002) § 705.

The substance of this section is carried over from UPA (2002). Like UPA (2002) § 705, this section applies even if the parties' marriage is annulled or declared invalid after assisted reproduction occurs, and the term "spouse" includes parties who were in a marriage that was declared invalid after the assisted reproduction occurred.

**SECTION 706. EFFECT OF CERTAIN LEGAL PROCEEDINGS REGARDING MARRIAGE.** If a marriage of a woman who gives birth to a child conceived by assisted reproduction is [terminated through divorce or dissolution, subject to legal separation or separate maintenance, declared invalid, or annulled] before transfer of gametes or embryos to the woman, a former spouse of the woman is not a parent of the child unless the former spouse consented in a record that the former spouse would be a parent of the child if assisted reproduction were to occur after a [divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance], and the former spouse did not withdraw consent under Section 707.

*Legislative Note:* A state should use its own terms for the proceedings identified in the bracketed language.

### **Comment**

Source: UPA (2002) § 706(a).

This section is largely carried over from UPA (2002) § 706(a). This section applies only to married couples and provides that the spouse is not a parent if the gamete or embryo transfer resulting in pregnancy occurs after annulment or dissolution unless the individual consented in a record that the individual would be a parent if assisted reproduction were to occur after divorce or annulment. The only substantive change made by UPA (2017) is to clarify that the principle established in UPA (2002) § 706(a) applies equally to divorces and annulments.

Like UPA (2002), § 706 of UPA (2017) provides rules for determining of parentage. Accordingly, in the event of a dissolution of marriage or the withdrawal of consent, this act does not address under what circumstances a transfer or gametes or embryos may or may not occur, or which party has the right to control any gametes or embryos.

#### **SECTION 707. WITHDRAWAL OF CONSENT.**

(a) An individual who consents under Section 704 to assisted reproduction may withdraw consent any time before a transfer that results in a pregnancy, by giving notice in a record of the withdrawal of consent to the woman who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health-care provider facilitating the assisted reproduction. Failure to give notice to the clinic or health-care provider does not affect a determination of parentage under this [act].

(b) An individual who withdraws consent under subsection (a) is not a parent of the child under this [article].

#### **Comment**

Source: UPA (2002) § 706(b).

The substance of this provision is carried over from UPA (2002) § 706. UPA (2017), however, divides two concepts that had previously been included in a single section into two separate sections.

The substance of UPA (2002) § 706(b), regarding the rules for the withdrawal of consent by any individual, married or unmarried, is addressed in this section. The content of UPA (2002) § 706(a), regarding the effect of a dissolution or annulment of a marriage, is addressed in UPA (2017) § 706.

#### **SECTION 708. PARENTAL STATUS OF DECEASED INDIVIDUAL.**

(a) If an individual who intends to be a parent of a child conceived by assisted

reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this [act].

(b) If an individual who consented in a record to assisted reproduction by a woman who agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased individual is a parent of a child conceived by the assisted reproduction only if:

(1) either:

(A) the individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child; or

(B) the individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death is established by clear-and-convincing evidence; and

(2) either:

(A) the embryo is in utero not later than [36] months after the individual's death; or

(B) the child is born not later than [45] months after the individual's death.

### **Comment**

Source: UPA (2002) § 707; UPC (2008) § 2-120(f).

The rule stated in subsection (a) was implicit in UPA (2002), but UPA (2017) makes the rule explicit. The substance of subsection (b)(1)(A) is carried over from UPA (2002).

Subsection (b)(1)(B) was not included in UPA (2002), but is based on and consistent with the Uniform Probate Code. UPC § 2-120(f) provides that an individual is "treated as the other parent" if it can be shown, "considering all the facts and circumstances," that the individual consented to the assisted reproduction. Subsection (b)(2) was not included in UPA (2002), but, again, is based on and consistent with the approach of UPC § 2-120(k). *See also* 750 ILCS 46/705.



## [[ARTICLE] 8

### SURROGACY AGREEMENT

*Legislative Note:* A state should include Article 8 if the state wishes to recognize in statute surrogacy agreements.

#### Comment

UPA (2017) updates the surrogacy provisions of UPA (2002) to reflect developments that have occurred over the last 15 years. UPA (2002) included a bracketed Article 8 that authorized surrogacy agreements. States have been particularly reluctant to enact that article. Eleven states adopted versions of UPA (2000) or UPA (2002). However, of these 11 states, only two – Texas and Utah – enacted the surrogacy provisions based on Article 8 of UPA (2002).

The fact that very few states enacted Article 8 of UPA (2002) is likely the result of a confluence of factors. One likely factor is the controversial nature of surrogacy itself. To be clear, however, it is not simply resistance to surrogacy that explains states' reluctance to enact Article 8 of UPA (2002). Indeed, at least five of the 11 states that enacted UPA (2002) enacted statutory provisions permitting surrogacy that are *not* premised on UPA (2002). These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted 2004); Maine (permitting) (enacted 2015). Thus, there appeared to be a lack of enthusiasm for the substance of the provisions themselves. Moreover, much has changed in this rapidly developing area of law and practice during the last 15 years. More states address surrogacy by statute, and more people are having children through surrogacy. Accordingly, UPA (2017) updates the surrogacy provisions to make them more consistent with current surrogacy practice.

As was true of UPA (2002), Article 8 of UPA (2017) regulates and permits both genetic (often referred to as “traditional”) and gestational surrogacy agreements. But UPA (2017) differs in the way that it regulates these two types of surrogacy agreements. UPA (2002) set forth a single set of requirements that applied equally to genetic and gestational surrogacy agreements. While UPA (2017) continues to permit both types of surrogacy, UPA (2017) imposes additional safeguards or requirements on genetic surrogacy agreements. For example, while gestational surrogacy agreements are binding once the successful transfer has occurred, UPA (2017) allows genetic surrogates to withdraw their consent any time up until 72 hours after birth. This differentiation between genetic and gestational surrogacy is intended to reflect both the factual differences between the two types of surrogacy as well as the reality that policy makers view these two forms of surrogacy as being quite different. Of the states that permit surrogacy, most permit *only* gestational surrogacy agreements.

While UPA (2017) adds additional requirements that apply only to genetic surrogacy agreements, it simultaneously liberalizes the rules governing gestational surrogacy agreements. For example, UPA (2017) eliminates the requirement imposed under UPA (2002) that parties to a gestational agreement obtain court approval of the agreement before any medical procedures related to the agreement. The changes to the rules governing gestational surrogacy agreements are intended to bring UPA (2017) more in line with current practice and law.

Sections 801 through 807 establish the rules that apply to both types of surrogacy agreements. Sections 808 through 812 include rules that apply only to gestational surrogacy agreements. Sections 813 through 818 include rules that apply only to genetic surrogacy agreements.

## [PART] 1

### GENERAL REQUIREMENTS

#### **SECTION 801. DEFINITIONS.** In this [article]:

(1) “Genetic surrogate” means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using her own gamete, under a genetic surrogacy agreement as provided in this [article].

(2) “Gestational surrogate” means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not her own, under a gestational surrogacy agreement as provided in this [article].

(3) “Surrogacy agreement” means an agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

#### **SECTION 802. ELIGIBILITY TO ENTER GESTATIONAL OR GENETIC SURROGACY AGREEMENT.**

(a) To execute an agreement to act as a gestational or genetic surrogate, a woman must:

- (1) have attained 21 years of age;
- (2) previously have given birth to at least one child;
- (3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(4) complete a mental-health consultation by a licensed mental-health professional; and

(5) have independent legal representation of her choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(1) have attained 21 years of age;

(2) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(3) complete a mental-health consultation by a licensed mental health professional; and

(4) have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

### **Comment**

This section is modeled on the more recently adopted surrogacy provisions, including those enacted in Delaware (enacted 2013); Maine (enacted 2015); Nevada (enacted 2013); New Hampshire (enacted 2014); Illinois (enacted 2004); and the District of Columbia (enacted 2017), among other states. *See, e.g.*, Del. Stat., tit. 13 §§ 8-801 to 8-809; Me. Rev. Stat. tit. 19-a, §§ 1931 to 1938; Nev. Rev. Stat. §§ 126.500 to 126.810; N.H. Rev. Stat. §§ 168-B:1 to 168-B:22; 750 ILCS 47/1 to 47/75; D.C. Code §§ 16-401 to 16-412.

Most of these recently adopted surrogacy provisions include similar requirements regarding age, medical and mental health evaluations, and independent counsel. *See, e.g.*, D.C. Code § 16-405 (age, medical and mental health evaluations); 16-406(3) (requiring affirmation that all parties had independent legal counsel); Me. Rev. Stat. tit. 19-a, § 1931; Nev. Rev. Code § 126.740; N.H. Rev. Code § 128-B:9. Another requirement included in some recently adopted statutes is that the surrogate have “given birth to at least one live child.” *See, e.g.*, D.C. Code § 16-405(a)(2). *See also* Me. Rev. Stat. tit. 19-a, § 1931(1)(B). This requirement was not included

in UPA (2002), but has been included here.

### **SECTION 803. REQUIREMENTS OF GESTATIONAL OR GENETIC**

**SURROGACY AGREEMENT: PROCESS.** A surrogacy agreement must be executed in compliance with the following rules:

(1) At least one party must be a resident of this state or, if no party is a resident of this state, at least one medical evaluation or procedure or mental-health consultation under the agreement must occur in this state.

(2) A surrogate and each intended parent must meet the requirements of Section 802.

(3) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties to the agreement.

(4) The agreement must be in a record signed by each party listed in paragraph (3).

(5) The surrogate and each intended parent must acknowledge in a record receipt of a copy of the agreement.

(6) The signature of each party to the agreement must be attested by a notarial officer or witnessed.

(7) The surrogate and the intended parent or parents must have independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement, and each counsel must be identified in the surrogacy agreement.

(8) The intended parent or parents must pay for independent legal representation for the surrogate.

(9) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required

by Section 802.

### Comment

This section is modeled on several recently adopted surrogacy schemes, including those enacted in Delaware (enacted 2013); Maine (enacted 2015); Nevada (enacted 2013); New Hampshire (enacted 2014); Illinois (enacted 2004); and the District of Columbia (enacted 2017), among other states. *See, e.g.*, Del. Stat., tit. 13 §§ 8-801 to 8-809; Me. Rev. Stat. tit. 19-a, §§ 1931 to 1938; Nev. Rev. Stat. §§ 126.500 to 126.810; N.H. Rev. Stat. §§ 168-B:1 to 168-B:22; 750 ILCS 47/1 to 47/75; D.C. Code §§ 16-401 to 16-412.

One issue on which these recently adopted statutory schemes diverge is with regard to payment for the surrogate's counsel. As noted above, most recently adopted statutory schemes require the surrogate and the intended parent or parents to be represented by separate, independent counsel. That said, only a minority of states statutorily require the intended parents to pay for the surrogate's counsel. *See* Me. Rev. Stat. tit. 19-a, § 1931(1)(D). *Contra cf.* Nev. Rev. Stat. § 126.750(2) (requiring separate and independent counsel, but not addressing payment); N.H. Rev. Stat. § 168-B:11(III) (same); D.C. Code § 16-406(b) (same). UPA (2017) requires the intended parents to pay for the surrogate's counsel.

## **SECTION 804. REQUIREMENTS OF GESTATIONAL OR GENETIC SURROGACY AGREEMENT: CONTENT.**

(a) A surrogacy agreement must comply with the following requirements:

(1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(2) Except as otherwise provided in Sections 811, 814, and 815, the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(3) The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(4) Except as otherwise provided in Sections 811, 814, and 815, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or

gender or mental or physical condition of each child.

(5) Except as otherwise provided in Sections 811, 814, and 815, the intended parent or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of number of children born or gender or mental or physical condition of each child.

(6) The agreement must include information disclosing how each intended parent will cover the surrogacy-related expenses of the surrogate and the medical expenses of the child. If health-care coverage is used to cover the medical expenses, the disclosure must include a summary of the health-care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the surrogate, third-party-liability liens, other insurance coverage, and any notice requirement that could affect coverage or liability of the surrogate. Unless the agreement expressly provides otherwise, the review and disclosure do not constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to comply with this paragraph.

(7) The agreement must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy. This [act] does not enlarge or diminish the surrogate's right to terminate her pregnancy.

(8) The agreement must include information about each party's right under this [article] to terminate the surrogacy agreement.

(b) A surrogacy agreement may provide for:

(1) payment of consideration and reasonable expenses; and

(2) reimbursement of specific expenses if the agreement is terminated under this [article].

(c) A right created under a surrogacy agreement is not assignable and there is no third-party beneficiary of the agreement other than the child.

### **Comment**

This section is modeled on several recently adopted surrogacy provisions. *See, e.g.*, D.C. Code § 16-406; Me. Rev. Stat. tit. 19-a, § 1932(J); N.H. Rev. Stat. § 168-B:11.

Subsection (a)(6) is based on Cal. Fam. Code § 7692(a)(4).

The first sentence of subsection (a)(7) is modeled on UPA (2002) and the recently adopted provisions in Maine and D.C. *See, e.g.*, UPA (2002) § 801(f) (“A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or that of the embryos or fetus.”); Me. Rev. Stat. tit. 19-a, § 1932(5) (“A gestational carrier agreement may not limit the right of the gestational carrier to make decisions to safeguard her health.”); D.C. Code § 16-406(c) (“A surrogacy agreement may not limit the right of the surrogate to make decisions to safeguard the surrogate’s health or that of the embryo or fetus.”). The second sentence of subsection (a)(7) reaffirms that the surrogate has a constitutionally protected right to decide whether to terminate the pregnancy within the limits of the law. *Cf.* D.C. Code § 16-406(4)(C) (“Agree that at all times during the pregnancy and until delivery, regardless of whether the court has issued an order of parentage, the surrogate shall maintain control and decision-making authority over the surrogate’s body.”).

Subsection (b) carries over the position of UPA (2002) by permitting compensated surrogacy agreements. Most states that permit surrogacy agreements by statute likewise permit compensated as well as uncompensated agreements.

Unless terminated as provided in this article, a gestational or genetic surrogacy agreement that complies with the requirements of Sections 802, 803, and 804 is enforceable; the agreement may contain additional requirements so long as they are not inconsistent with Sections 802, 803, and 804.

## **SECTION 805. SURROGACY AGREEMENT: EFFECT OF SUBSEQUENT CHANGE OF MARITAL STATUS.**

(a) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of a surrogate after the agreement is signed by all parties does not affect the validity of the agreement, her spouse’s consent to the agreement is not required, and her spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the [divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance] of the surrogate after the agreement is signed by all parties does not affect the validity of the agreement.

(b) Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

(2) the [divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance] of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in Section 814, the intended parents are the parents of the child.

*Legislative Note:* A state should use its own terms for the proceedings identified in the bracketed language in subsections (a)(2) and (b)(2).

### Comment

Source: UPA (2002) § 808; D.C. Code § 16-410.

In some states, the statutes address the effect of a subsequent marriage of the surrogate only. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1937; Nev. Rev. Stat. § 126.770; N.H. Rev. Stat. § 168-B:14. *See also* UPA (2002) § 808. To avoid ambiguity and unnecessary litigation, UPA (2017) expressly addresses the effect of any subsequent marriage or divorce by any party to the surrogacy agreement.

**[SECTION 806. INSPECTION OF DOCUMENTS.** Unless the court orders otherwise, a petition and any other document related to a surrogacy agreement filed with the court under this [part] are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys, and [the relevant state agency]. A court may not authorize an individual to inspect a document related



to the agreement, unless required by exigent circumstances. The individual seeking to inspect the document may be required to pay the expense of preparing a copy of the document to be inspected.]

*Legislative Note: A state should review the state's open records law to determine if this section needs to be included or amended.*

#### **Comment**

Source: UPA (2002) § 804; Cal. Fam. Code § 7962(h); Nev. Rev. Stat. § 126.730.

In some states, family law matters are not open for inspection. In such a state, this provision may be unnecessary. If, however, family law matters generally are open for inspection, a state may consider enacting Section 806.

**SECTION 807. EXCLUSIVE, CONTINUING JURISDICTION.** During the period after the execution of a surrogacy agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, a court of this state conducting a proceeding under this [act] has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child-custody or child-support proceeding if jurisdiction is not otherwise authorized by law of this state other than this [act].

#### **Comment**

Source: UPA (2002) § 805; Me. Rev. Stat. tit. 19-a, § 1935.

### **[PART] 2**

## **SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT**

#### **Comment**

As noted above, UPA (2002) applied the same substantive rules to gestational and genetic surrogacy agreements. Among other things, UPA (2002) required all agreements to be validated by a court prior to any medical treatments. UPA (2002) also required a home study of the intended parents unless waived by the court. These rules were not widely adopted by states, and they are not consistent with contemporary practice. Part 2, providing special rules for gestational surrogacy agreements, modernizes the rules regarding gestational surrogacy to make them more consistent with contemporary surrogacy practice and the laws in the states that permit surrogacy agreements.

## **SECTION 808. TERMINATION OF GESTATIONAL SURROGACY**

### **AGREEMENT.**

(a) A party to a gestational surrogacy agreement may terminate the agreement, at any time before an embryo transfer, by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer.

(b) Unless a gestational surrogacy agreement provides otherwise, on termination of the agreement under subsection (a), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of termination.

(c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages, for terminating a gestational surrogacy agreement under this section.

### **Comment**

Source: UPA (2002) § 808; Me. Rev. Stat. tit. 19-a, § 1936.

Subsection (a) is largely carried over from UPA (2002). Subsection (a) permits a party to terminate the agreement before a successful transfer. This allows the parties some time to change their minds, but within a limited window that does not unduly prejudice the interests of other parties to the agreement.

Subsection (b) is new. The substance of subsection (b) is consistent with the implicit but unstated rule of UPA (2002). UPA (2017) states expressly that if a party properly terminates the agreement under this provision, that termination releases the parties from the obligations recited under the agreement—most importantly rights and duties with regard to the child—except with regard to expenses that are reimbursable under the agreement.

Subsection (c) clarifies that, except in cases involving fraud, the gestational carrier and her spouse, if any, are not liable for any penalties other than any expenses that are reimbursement under the agreement.

## **SECTION 809. PARENTAGE UNDER GESTATIONAL SURROGACY**

### **AGREEMENT.**

(a) Except as otherwise provided in subsection (c) or Section 810(b) or 812, on birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(b) Except as otherwise provided in subsection (c) or Section 812, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) If a child is alleged to be a genetic child of the woman who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the woman who agreed to be a gestational surrogate, parentage must be determined based on [Articles] 1 through 6.

(d) Except as otherwise provided in subsection (c) or Section 810(b) or 812, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

### **Comment**

Source: Me. Rev. Stat. tit. 19-a, § 1933; Me. Rev. Stat. tit. 19-a, § 1938(4).

Subsections (a) and (b) expressly clarify the legal parentage of a child born through an enforceable gestational surrogacy agreement.

Subsection (c) clarifies how parentage should be determined if the child was not conceived through assisted reproduction. UPA (2002) § 807 acknowledged that possibility and provided for the ordering of genetic testing, but did not expressly state how parentage should be determined in such cases. UPA (2017) includes a clear rule for determining parentage.

UPA (2002) did not expressly address cases involving clinic error. While such cases are rare, they have occurred. *See, e.g., Perry-Rogers v. Fasano*, 715 N.Y.S.2d 19 (N.Y. App. Div. 2000). UPA (2017) addresses such cases expressly in subsection (d). The substance of subsection (d) is based on the newly adopted provision in Maine.

**SECTION 810. GESTATIONAL SURROGACY AGREEMENT: PARENTAGE OF DECEASED INTENDED PARENT.**

(a) Section 809 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Section 812, an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of a gamete or embryo occurs not later than [36] months after the death of the intended parent or birth of the child occurs not later than [45] months after the death of the intended parent.

**Comment**

Source: UPC (2010) § 2-121; D.C. Code § 16-409.

UPA (2002) did not specifically address the issue of parentage if an intended parent died during the arrangement. To avoid uncertainty and unnecessary litigation, UPA (2017) addresses this issue specifically. The principle stated in subsection (a) is implicit with other provisions in Article 8. Subsection (b) is based on the relevant UPC provision, and is consistent with the analogous provision in Article 7 of the act.

**SECTION 811. GESTATIONAL SURROGACY AGREEMENT: ORDER OF PARENTAGE.**

(a) Except as otherwise provided in Sections 809(c) or 812, before, on, or after the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, a party to the agreement may commence a proceeding in the [appropriate court] for an order or judgment:

(1) declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the content of the birth record in accordance with [cite applicable law of this state other than this [act]] and directing the [state agency maintaining birth records] to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection[ except as authorized under Section 806];

(5) if necessary, that the child be surrendered to the intended parent or parents;  
and

(6) for other relief the court determines necessary and proper.

(b) The court may issue an order or judgment under subsection (a) before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

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

*Legislative Note:* A state should include the bracketed language in subsection (a)(4) if the state enacts Section 806.

### **Comment**

Source: D.C. Code § 16-408(d); Me. Rev. Stat. tit. 19-a, § 1934; N.H. Rev. Stat. § 168-B:12.

## **SECTION 812. EFFECT OF GESTATIONAL SURROGACY AGREEMENT.**

(a) A gestational surrogacy agreement that complies with Sections 802, 803, and 804 is

enforceable.

(b) If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not comply with Sections 802, 803, and 804, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(c) Except as expressly provided in a gestational surrogacy agreement or subsection (d) or (e), if the agreement is breached by the gestational surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(d) Specific performance is not a remedy available for breach by a gestational surrogate of a provision in the agreement that the gestational surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(e) Except as otherwise provided in subsection (d), if an intended parent is determined to be a parent of the child, specific performance is a remedy available for:

(1) breach of the agreement by a gestational surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(2) breach by the intended parent which prevents the intended parent's acceptance, immediately on birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

### **Comment**

Source: Me. Rev. Stat. tit. 19-a, § 1938(3), (5); Nev. Rev. Stat. § 126.790(1), (2); N.H. Rev. Stat. § 168-B:18(I), (II).

Subsection (a) expressly declares that a gestational surrogacy agreement that complies

with the requirements of this Article is enforceable.

Subsection (b), setting forth the rules for determining parentage in the event of a noncompliant agreement, is based on Me. Rev. Stat. tit. 19-a, § 1938(2); Nev. Rev. Stat. § 126.780(2). In such cases, a court must determine parentage by looking to the intent of the parties at the time of execution.

UPA (2002) did not address the rules that apply in the event of a breach of a surrogacy agreement. New subsection (c) follows the approach taken by several of the recently enacted comprehensive surrogacy statutes, providing that the parties are entitled to remedies available at law or in equity. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1938(3); Nev. Rev. Stat. § 126.790(1), (2) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “any remedy available at law or equity.”); N.H. Rev. Stat. § 168-B:18(I), (II) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “all remedies available at law or equity”).

Subsection (d) clarifies that certain forms of specific performance are precluded, including a court order requiring a surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures. Such an order may violate the constitutional rights of the surrogate. *See also* Me. Rev. Stat. tit 19-a, § 1938(5) (addressing impregnation and termination, but not submission to medical procedures); Nev. Rev. Stat. § 126.780 (“There must be no specific performance remedy available for breach of the gestational agreement by the gestational carrier that would require the gestational carrier to be impregnated.”).

Subsection (e) provides some forms of specific performance that can be ordered.

### **[PART] 3**

## **SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT**

### **Comment**

UPA (2002) imposed the same rules on gestational and genetic surrogacy agreements. UPA (2017) departs from this approach. While there are some common requirements, UPA (2017) imposes additional requirements or safeguards on genetic surrogacy agreements. Among other things, UPA (2017) allows a genetic surrogate to withdraw her consent up until 72 hours after birth.

Currently, only a very small minority of states expressly permit genetic surrogacy through a comprehensive statutory scheme. These states include Florida, Maine (for close relatives only), Virginia, and the District of Columbia. The statutes in these states distinguish between genetic and gestational arrangements and several of these states permit genetic surrogates to withdraw consent after pregnancy has occurred. *See, e.g.*, Fla. Stat. Ann. § 63.213 (48 hours after birth); D.C. Code § 16-411(4) (48 hours after birth). *Cf.* Vir. Code Ann. § 20-161(B) (providing that in cases where the “surrogate ... is also a genetic parent” the surrogate may “terminate the agreement ... [w]ithin 180 days after the last performance of any assisted

conception”).

**SECTION 813. REQUIREMENTS TO VALIDATE GENETIC SURROGACY AGREEMENT.**

(a) Except as otherwise provided in Section 816, to be enforceable, a genetic surrogacy agreement must be validated by the [designate court]. A proceeding to validate the agreement must be commenced before assisted reproduction related to the surrogacy agreement.

(b) The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

(1) Sections 802, 803, and 804 are satisfied; and

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

(c) An individual who terminates under Section 814 a genetic surrogacy agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate any order issued under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

**Comment**

Source: UPA (2002) § 803, § 806(c).

UPA (2002) required pre-pregnancy validation for all agreements. This requirement is now imposed only on genetic surrogacy agreements. Section 813 makes changes to the requirements of UPA (2002). First, Section 813 eliminates the prior requirement of a home study of the intended parents unless waived by a court. Given that it was waivable by the court, in practice it often was not required of the parties. The inclusion in the provision, however, created uncertainty for the parties. Second, UPA (2002) provided that a court “may” issue an order validating the agreement upon a finding that the requirements were fulfilled. Thus, even if the parties complied with all of the statutory requirements, their right to obtain an order validating their agreement was within the discretion of the court. Again, this added uncertainty to the process. Accordingly, UPA (2017) requires the court to issue the order validating the agreement if the court finds that the requirements have been fulfilled.



**SECTION 814. TERMINATION OF GENETIC SURROGACY AGREEMENT.**

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

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed.

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record stating the surrogate's intent to terminate the agreement. The notice of termination must be attested by a notarial officer or witnessed and be delivered to each intended parent any time before 72 hours after the birth of the child.

(b) On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages, for terminating a genetic surrogacy agreement under this section.

**Comment**

Source: Fla. Stat. Ann. § 63.213 (providing that a genetic surrogacy agreement must permit "a right of rescission by the volunteer mother any time within 48 hours after the birth of

the child, if the volunteer mother is genetically related to the child”); D.C. Code § 16-411(4) (providing that a genetic surrogate may withdraw consent “within 48 hours after the birth of the child”).

UPA (2002) did not permit a genetic surrogate to withdraw her consent after validation of the agreement. No state, however, enacted a version of UPA (2002) that authorized genetic surrogacy agreements. Currently, only a very small minority of states expressly permit genetic surrogacy through a comprehensive statutory scheme. These states include Florida, Maine (for close relatives only), Virginia, and the District of Columbia. The statutes in several of these states similarly provide that the genetic surrogate can withdraw her consent up until some period shortly after the birth of the child. *See, e.g.*, Fla. Stat. Ann. § 63.213 (48 hours after birth); D.C. Code § 16-411(4) (48 hours after birth). *Cf.* Vir. Code Ann. § 20-161(B) (providing that in cases where the “surrogate ... is also a genetic parent” the surrogate may “terminate the agreement ... [w]ithin 180 days after the last performance of any assisted conception”).

## **SECTION 815. PARENTAGE UNDER VALIDATED GENETIC SURROGACY AGREEMENT.**

(a) Unless a genetic surrogate exercises the right under Section 814 to terminate a genetic surrogacy agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under Section 813.

(b) Unless a genetic surrogate exercises the right under Section 814 to terminate the genetic surrogacy agreement, on proof of a court order issued under Section 813 validating the agreement, the court shall make an order:

(1) declaring that each intended parent is a parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate’s spouse or former spouse, if any, are not parents of the child;

(3) designating the contents of the birth certificate in accordance with [cite to applicable law of the state other than this [act]] and directing the [state\_agency maintaining birth records] to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection[ except as authorized under Section 806];

(5) if necessary, that the child be surrendered to the intended parent or parents;  
and

(6) for other relief the court determines necessary and proper.

(c) If a genetic surrogate terminates under Section 814(a)(2) a genetic surrogacy agreement, parentage of the child conceived by assisted reproduction under the agreement must be determined under [Articles] 1 through 6.

(d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined under [Articles] 1 through 6. Unless the genetic surrogacy agreement provides otherwise, if the child was not conceived by assisted reproduction the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(e) Unless a genetic surrogate exercises the right under Section 814 to terminate the genetic surrogacy agreement, if an intended parent fails to file notice required under Section 814(a), the genetic surrogate or [the appropriate state agency] may file with the court, not later than 60 days after the birth of a child conceived by assisted reproduction under the agreement, notice that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under Section 814 to withdraw consent to the agreement, on proof of a court order issued under Section 813 validating the agreement, the court shall order that each intended parent is a parent of the child.

**Legislative Note:** A state should include the bracketed language in subsection (b)(4) if the state enacts Section 806.

## Comment

Source: UPA (2002) § 807.

The substance of this section is largely carried over from UPA (2002). The content of this section does reflect, however, that UPA (2017) permits a genetic surrogate to withdraw consent any time up until 72 hours after the child's birth. Accordingly, new subsection (c) sets forth how parentage should be determined in the event the genetic surrogate withdraws consent within that time period.

### **SECTION 816. EFFECT OF NONVALIDATED GENETIC SURROGACY**

#### **AGREEMENT.**

(a) A genetic surrogacy agreement, whether or not in a record, that is not validated under Section 813 is enforceable only to the extent provided in this section and Section 818.

(b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 813 is born and the genetic surrogate, consistent with Section 814(a)(2), withdraws her consent to the agreement before 72 hours after the birth of the child, the court shall adjudicate the parentage of the child under [Articles] 1 through 6.

(d) If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under Section 813 is born and a genetic surrogate does not withdraw her consent to the agreement, consistent with Section 814(a)(2), before 72 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in Section 613(a) and the intent of the parties at the time of the execution of the agreement.

(e) The parties to a genetic surrogacy agreement have standing to maintain a proceeding

to adjudicate parentage under this section.

### **Comment**

This section sets forth the rules for determining parentage of children born through genetic surrogacy where the genetic surrogacy agreement was not properly validated.

Under subsection (b), even if the parties did not validate the agreement prior to pregnancy as required by Section 813, a court is authorized to validate the agreement thereafter if all parties are still in agreement.

Subsections (c) and (d) set forth the rules for determining parentage if the agreement is never validated. Subsection (c) confirms that a genetic surrogate retains the right to withdraw her consent up until 72 hours after the birth of the child, even if the agreement is not validated. If the genetic surrogate withdraws her consent within this time period, parentage is determined based on Articles 1 through 6 of the act. In cases involving an unvalidated genetic surrogacy agreement where the genetic surrogate does not withdraw her consent within that period, subsection (d) provides that the court must determine parentage based on the best interest of the child. In such cases, the genetic surrogate may or may not be determined to be the child's parent.

### **SECTION 817. GENETIC SURROGACY AGREEMENT: PARENTAGE OF DECEASED INTENDED PARENT.**

(a) Except as otherwise provided in Section 815 or 816, on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Except as otherwise provided in Section 815 or 816, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of the gamete or embryo occurs not later than [36] months after the death of the intended parent, or birth of the child occurs not later than [45] months after the death of the intended parent.

## Comment

Source: UPC (2010) § 2-121; D.C. Code § 16-409.

UPA (2002) did not specifically address parentage in the event of the death of an intended parent. To avoid uncertainty and unnecessary litigation, UPA (2017) expressly addresses this scenario. The principle stated in subsection (a) is implicit in other provisions in Article 8, but UPA (2017) states the rule expressly.

Subsection (b) is based on the relevant UPC provision, and is consistent with the analogous provision in Article 7.

### **SECTION 818. BREACH OF GENETIC SURROGACY AGREEMENT.**

(a) Subject to Section 814(b), if a genetic surrogacy agreement is breached by a genetic surrogate or one or more intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

(b) Specific performance is not a remedy available for breach by a genetic surrogate of a requirement of a validated or non-validated genetic surrogacy agreement that the surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(c) Except as otherwise provided in subsection (b), specific performance is a remedy available for:

(1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a requirement which prevents an intended parent from exercising the full rights of parentage 72 hours after the birth of the child; or

(2) breach by an intended parent which prevents the intended parent's acceptance of duties of parentage 72 hours after the birth of the child.]

## Comment

Source: Me. Rev. Stat. tit. 19-a, § 1938(3), (5); Nev. Rev. Stat. § 126.790(1), (2); N.H. Rev. Stat. § 168-B:18(I), (II).

UPA (2002) did not address the applicable rules in the event of a breach of the agreement. New subsection (a) follows the approach taken by several of the recently enacted comprehensive surrogacy statutes, and provides that the parties are entitled to remedies available at law or in equity. *See, e.g.*, Me. Rev. Stat. tit. 19-a, § 1938(3); Nev. Rev. Stat. § 126.790(1), (2) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “any remedy available at law or equity.”); N.H. Rev. Stat. § 168-B:18(I), (II) (providing that, in the event of a breach, the intended parents or the gestational surrogate, as appropriate, are entitled to “all remedies available at law or equity”).

New subsection (b) expressly states that a court cannot order that a surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures. Such an order may violate the constitutional rights of the surrogate. *See also* Me. Rev. Stat. tit 19-a, § 1938(5) (addressing impregnation and termination, but not submission to medical procedures); Nev. Rev. Stat. § 126.780 (“There must be no specific performance remedy available for breach of the gestational agreement by the gestational carrier that would require the gestational carrier to be impregnated.”).

## [ARTICLE] 9

### INFORMATION ABOUT DONOR

#### Comment

Article 9 is a new addition to the UPA. The content of this article was not included in UPA (2002). The content of new Article 9 is premised on a Washington State provision. Wash. Rev. Code § 26.26.750.

#### **SECTION 901. DEFINITIONS.** In this [article]:

(1) “Identifying information” means:

(A) the full name of a donor;

(B) the date of birth of the donor; and

(C) the permanent and, if different, current address of the donor at the time of the

donation.

(2) “Medical history” means information regarding any:

(A) present illness of a donor;

(B) past illness of the donor; and

(C) social, genetic, and family history pertaining to the health of the donor.

**SECTION 902. APPLICABILITY.** This [article] applies only to gametes collected on or after [the effective date of this [act]].

**SECTION 903. COLLECTION OF INFORMATION.** A gamete bank or fertility clinic licensed in this state shall collect from a donor the donor's identifying information and medical history at the time of the donation. If the gamete bank or fertility clinic sends the gametes of a donor to another gamete bank or fertility clinic, the sending gamete bank or fertility clinic shall forward any identifying information and medical history of the donor, including the donor's signed declaration under Section 904 regarding identity disclosure, to the receiving gamete bank or fertility clinic. A receiving gamete bank or fertility clinic licensed in this state shall collect and retain the information about the donor and each sending gamete bank or fertility clinic.

**SECTION 904. DECLARATION REGARDING IDENTITY DISCLOSURE.**

(a) A gamete bank or fertility clinic licensed in this state which collects gametes from a donor shall:

(1) provide the donor with information in a record about the donor's choice regarding identity disclosure; and

(2) obtain a declaration from the donor regarding identity disclosure.

(b) A gamete bank or fertility clinic licensed in this state shall give a donor the choice to sign a declaration, attested by a notarial officer or witnessed, that either:

(1) states that the donor agrees to disclose the donor's identity to a child conceived by assisted reproduction with the donor's gametes on request once the child attains 18 years of age; or

(2) states that the donor does not agree presently to disclose the donor's identity to



the child.

(c) A gamete bank or fertility clinic licensed in this state shall permit a donor who has signed a declaration under subsection (b)(2) to withdraw the declaration at any time by signing a declaration under subsection (b)(1).

### **Comment**

Article 9 permits a donor to withdraw a declaration of non-disclosure and replace it with a declaration of identity disclosure. The Article does not permit, however, a donor to withdraw a declaration of identity disclosure. UPA (2017) makes this distinction because the recipients of identity disclosure gametes often chose those gametes at least in part because the donor had agreed to identity disclosure. While some donors may change their minds, the equities weigh in favor of holding the donor to his or her original position permitting identity disclosure.

### **SECTION 905. DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY.**

(a) On request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic licensed in this state which collected, stored, or released for use the gametes used in the assisted reproduction shall make a good-faith effort to provide the child with identifying information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration under Section 904(b)(2). If the donor signed and did not withdraw the declaration, the gamete bank or fertility clinic shall make a good-faith effort to notify the donor, who may elect under Section 904(c) to withdraw the donor's declaration.

(b) Regardless whether a donor signed a declaration under Section 904(b)(2), on request by a child conceived by assisted reproduction who attains 18 years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank or fertility clinic licensed in this state shall make a good-faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor.

**SECTION 906. RECORDKEEPING.** A gamete bank or fertility clinic licensed in this state which collects, stores, or releases gametes for use in assisted reproduction shall collect and maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall collect and maintain records of gamete screening and testing and comply with reporting requirements, in accordance with federal law and applicable law of this state other than this [act].

## [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. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 1003. TRANSITIONAL PROVISION.** This [act] applies to a pending proceeding to adjudicate parentage commenced before [the effective date of this [act]] for an issue on which a judgment has not been entered.

**[SECTION 1004. SEVERABILITY.** If any provision of this [act] or its application to any 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.]

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

**SECTION 1005. REPEALS; CONFORMING AMENDMENTS.** The following are repealed:

- (1) [Uniform Act on Paternity (1960)];
- (2) [Uniform Parentage Act (1973)];
- (3) [Uniform Putative and Unknown Fathers Act (1988)];
- (4) [Uniform Status of Children of Assisted Conception Act (1988)];
- (5) [Uniform Parentage Act (2002)]; and
- (6) [other inconsistent statutes].

**SECTION 1006. EFFECTIVE DATE.** This [act] takes effect ....

# CONNECTICUT PARENTAGE ACT

## BILL SUMMARY

There are many paths to parenthood and many types of families in Connecticut, but Connecticut statutes have not kept pace with innovations in science and the diversity of our families, leaving children vulnerable. Connecticut law has failed to fully protect LGBTQ parents and other families with nonbiological parent-child relationships.

The Connecticut Parentage Act (“CPA”) updates Connecticut statutes to clarify who can be a parent and how to establish parentage. This bill is critical to ensuring that all children can access the security of legal parentage, regardless of the circumstances of their birth. Establishing a legal parent-child relationship is a key source of stability and security for a child.

This bill is based on the Uniform Parentage Act (UPA) of 2017, which serves as a uniform framework for ensuring the protection of the relationship between parents and children. Several states, including some in New England, have passed similar parentage legislation.

## PATHS TO PARENTAGE UNDER THE CPA

- The CPA provides a path to parentage through birth, adoption, acknowledgment, adjudication, genetics, assisted reproduction, surrogacy, de facto parentage, and presumptions (including a marital presumption).
- The CPA provides clear standards for courts to apply in order to establish parentage.

## KEY HIGHLIGHTS OF THE CPA

- Advances equality for LGBTQ families so they have access to the same parentage protections as other families, including the voluntary acknowledgement of parentage procedures.
- Ensures that **all** children born through assisted reproduction technology (such as in vitro fertilization) have a clear route to establish their parentage, regardless of the marital status, sex, or sexual orientation of their parents.
- Provides clear standards for establishing parentage through surrogacy. These standards are intended to safeguard the interests of all parties, including the person serving as the surrogate, the intended parents, and the child.
- Offers a standard for courts to resolve competing claims of parentage.
- Codifies key protections for children such as the marital presumption of parentage and does so in a way that complies with constitutional mandates.
- Ensures greater efficiency and consistency in the courts and reduces unnecessary litigation.

The Connecticut Parentage Act Coalition includes the following supporters:  
Professor Doug NeJaime, Yale Law School; GLBTQ Legal Advocates & Defenders; Freed Marcroft, LLC;  
The Triangle Community Center; the Center for Advanced Reproductive Services at UCONN;  
and RESOLVE New England

## **What is the Uniform Parentage Act of 2017 and why does Connecticut need it?**

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The passage of the 2017 Uniform Parentage Act, tailored to Connecticut, would update state law to ensure that parent-child relationships are legally recognized regardless of sexual orientation, gender, marital status, and circumstances of birth. Most critically, the law would ensure equal treatment for same-sex couples and their children, as well as other families formed through assisted reproduction, by removing gender distinctions and adding methods of establishing parentage for nonbiological parents. The proposed legislation would accomplish these important ends through a comprehensive, clear, and consistent statutory framework that would also promote efficiency in the courts, improve access to justice, and provide greater certainty and security to children and families. In what follows, I briefly explain the major contributions of the UPA (2017) and observe how it would update Connecticut law.

### **Article 1: General Provisions**

Although current Connecticut parentage law does not include a list of defined terms, Article 1 of the Act establishes clear definitions for terms used throughout the rest of the Act. The definitions in Article 1 purposely avoid gendered terms currently in use in Connecticut like “mother,” “father,” “maternity,” and “paternity,” instead opting for inclusive terms like “parent” and “parentage.” This choice reflects the Act’s goal of providing the same legal benefits to parents regardless of gender, sexual orientation, or gender identity.

### **Article 2: Parent-Child Relationship**

Article 2 provides presumptions of parentage that currently do not appear in Connecticut statutes, and these presumptions are written in gender-neutral terms. Article 2 includes a marital presumption (or presumption of legitimacy), providing that an individual is presumed to be a parent when that individual is married to the person who gives birth. This provides clarity, currently missing in Connecticut law, that the marital presumption applies to married same-sex couples. Moreover, it makes clear that the marital presumption does not apply in circumstances involving surrogacy – thus addressing a gap in current law. Article 2 also includes a “holding out” presumption, providing that an individual is presumed to be a parent if “the individual resided in the same household with the child . . . and openly held out the child as the individual’s child.” (Every other New England state effectively furnishes the protection of the “holding out” presumption through statute or case law.)

### **Article 3: Voluntary Acknowledgement of Parentage**

Each state is required under federal law to have a process for parents to establish their parentage administratively immediately upon birth rather than through the court system. The acknowledgment procedure is a simple, free way for families to obtain a determination of parentage that will protect them not only while they are in Connecticut but also when they travel to other

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states. Currently in Connecticut, this process is called the acknowledgment of paternity and is only available to men.

Article 3 renames and expands the process to ensure that this protection is more broadly available to parents. Under the UPA (2017), voluntary acknowledgments of parentage (VAPs) can be used to establish parentage for a biological father as well as for an intended parent under Article 7 or a “presumed parent” under Article 2. This would mean that female same-sex couples would be able to establish parentage for the nonbiological mother in the hospital, at birth. A VAP has the force of an adjudication of parentage after the 60-day rescission period, and under federal law states are required to respect VAPs from other states. This change is important. While female spouses are presumed to be parents under the UPA (2017), another state with different law may not recognize them as parents in the absence of a judgment or something that has the force of a judgment. This change ensures that both men and women are entitled to the security and protection that VAPs provide.

#### **Article 4: Registry of Paternity [reserved]**

Because Connecticut does not maintain a paternity registry of the sort contemplated in Article 4 – for the purpose of notice of and the right to oppose an infant’s adoption – Article 4 would be omitted from the Connecticut bill.

#### **Article 5: Genetic Testing**

Article 5 supplements existing Connecticut law by providing greater detail about who may request the use of genetic testing in a parentage proceeding, more clearly establishing when genetic testing is appropriate, and detailing genetic testing procedures in specific circumstances. For example, Article 5 includes provisions on genetic testing in the case of a deceased alleged genetic parent. It also replaces uses of the word “paternity” and “putative father” in genetic testing law in favor of “parentage” and “alleged genetic parent” to reflect the necessity of gender-neutral statutes in parentage disputes.

#### **Article 6: Proceeding to Adjudicate Parentage**

Article 6 addresses proceedings to adjudicate parentage, including questions of standing and notice. Article 6 would make three significant updates to Connecticut law. First, it would clarify Connecticut law regarding competing claims to parentage – a question on which there is currently no statutory guidance. Article 6 provides that, in resolving competing claims to parentage, the court shall adjudicate parentage in the best interest of the child, based on: (1) the age of the child; (2) the length of time during which each individual assumed the role of parent of the child; (3) the nature of the relationship between the child and each individual; (4) the harm to the child if the relationship between the child and each individual is not recognized; (5) the basis for each individual’s claim to parentage of the child; and (6) other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

Second, although courts addressing competing parentage claims will ordinarily choose which individual should be legally recognized as the child’s parent, Article 6 would ensure that Connecticut courts have the discretion to recognize a child’s relationship with more than two parents in the rare cases in which not doing so would be detrimental to the child.

Finally, Article 6 would recognize de facto parentage, a status that Connecticut lacks. Every other New England state has a parentage mechanism to protect children’s relationships with adults who have parented them – caring and supporting them – without being a biological or adoptive parent. Article 6 provides such a mechanism, yet it also imposes a higher standard. It allows an individual to be adjudicated a legal parent if the individual shows, by clear and convincing evidence, that: (1) the individual resided with the child as a regular member of the child’s household for a significant period; (2) engaged in consistent caretaking of the child; (3) undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation; (4) held out the child as the individual’s child; and (5) established a bonded and dependent relationship with the child which is parental in nature. The individual also must show that (6) the other parent fostered or supported the bonded and dependent relationship, and (7) that continuing the relationship between the individual and the child is in the best interest of the child.

### **Article 7: Assisted Reproduction**

Article 7 addresses families formed through assisted reproduction, other than surrogacy. It provides that “[a]n individual who consents . . . to assisted reproduction by a person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.” Connecticut law needs to be modernized both to include same-sex couples and to keep pace with medical advances. Currently, the statutes governing assisted reproduction are framed from the perspective of married, different-sex couples, requiring consent of the “husband and the wife” and deeming the child to be the “legitimate child of the husband and wife.” Article 7 applies gender-neutral language, ensuring the law does not discriminate against same-sex couples. It also removes the reference to “physician” involvement in Connecticut law, thus including couples, including many same-sex couples, who engage in at-home insemination. Article 7 also applies regardless of the marital status of the intended parents. Overall, Article 7 simplifies the requirements for parentage of children born through assisted reproduction and ensures that protections extend to all parents, regardless of gender, sexual orientation, or marital status.

### **Article 8: Surrogacy Agreement**

Although Connecticut allows for gestational surrogacy, the statutory framework is limited and, as a result, courts and parties are often left without clear guidance. The only two statutory provisions with any bearing on surrogacy agreements in Connecticut relate to vital records and birth certificates; there are currently no Connecticut statutes addressing the requirements for and parentage consequences of surrogacy itself. Indeed, when the Connecticut Supreme Court authorized parental recognition for intended parents in the context of gestational surrogacy, it urged the legislature to devise a more extensive framework given the lack of clarity as to “whether the [existing] statute creates a new means by which persons may become legal parents.” *Raftopol v. Ramey*, 299 Conn. 681, 701–02, 12 A.3d 783, 795 (2011). Article 8 provides the kind of framework the court urged, protecting the interests of people serving as surrogates as well as intended parents.

- *Gestational Surrogacy*

Connecticut law defines gestational agreements but does not provide sufficient guidance for how parties can form valid gestational agreements and who can enter into these agreements. Article 8 includes requirements for eligibility to enter into a surrogacy agreement (including a minimum age, previous experience giving birth, and required medical and mental health evaluations), requirements for the process of forming a valid surrogacy agreement, and requirements for the content of the

agreement itself. It provides greater protection for individuals serving as surrogates than under existing law. The person serving as a surrogate must have independent legal representation paid for by the intended parent(s), and the agreement “must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy.” Article 8 also provides clear rules on legal parentage resulting from a surrogacy agreement – rules currently missing in Connecticut statutes – and is explicit about its application regardless of gender, sexual orientation, or marital status. Article 8 also lays out a clear process for accessing judgments of parentage.

- *Genetic Surrogacy*

In Connecticut, a gestational agreement is defined as “a written agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent or intended parents, *which woman contributed no genetic material to the child.*” Conn. Gen. Stat. Ann. § 7-36(16) (emphasis added). Under existing Connecticut law, there are no statutory standards governing genetic surrogacy (sometimes referred to as “traditional” surrogacy), in which the person serving as the surrogate is also genetically related to the child. By contrast, Article 8 expressly regulates genetic surrogacy and sets forth provisions specific to genetic surrogacy agreements. While Article 8 recognizes the intended parents as the legal parents, it provides additional protections to the person serving as a surrogate by requiring the agreement be validated by a court and allowing the surrogate to withdraw consent up to 72 hours after the child’s birth.

[Note: The recently promulgated ABA Model Act Governing Assisted Reproduction (2019) includes both gestational and genetic surrogacy and treats them similarly to the extent that there would be no post-birth period during which the person serving as a genetic surrogate could rescind the agreement. (Nonetheless, the ABA Model Act requires that a genetic surrogacy agreement, unlike a gestational surrogacy agreement, be “judicially pre-approved prior to the commencement of any medical procedures in furtherance of the Surrogacy Arrangement.”) Connecticut could easily integrate the ABA’s approach into the UPA (2017).]

### **Article 9: Information about Donor**

Currently, Connecticut does not have any law on access to gamete donor information. Given the increasing use of donor gametes and advances in genetic identification technology, Article 9 offers protocols aimed at protecting the rights of children to their donors’ medical information, and in some cases identifying information. Under Article 9, a child, or legal guardian if the child is under eighteen, can access non-identifying medical information at any time, regardless of whether the donor has elected to disclose identifying information. Upon reaching age eighteen, children can access identifying information from donors who have elected to disclose their identities. (While Article 9 does not require disclosure of the identity of a gamete donor, it does require that, at the time of donation, donors be asked whether they would like their identity disclosed.) Under Article 9, gamete banks in Connecticut that collect gametes must maintain donor records.

\* \* \*

For more information on the UPA (2017), please visit the Uniform Law Commission’s website.

- To track state adoption, see:  
<https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f>



- For the text of the full Act and comments, see:  
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3b81bdbc-08c4-c4c9-9f6e-366fdefb436d&forceDialog=0>
- For a summary of the Act, see:  
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d756bf9a-6672-76ae-7424-9b13e3687830&forceDialog=0>
- On why states should adopt the Act, see:  
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=aadf2bba-fc4d-805f-ac24-6cc7b13604df&forceDialog=0>

To view state laws that track the UPA (2017), see:

- The Vermont Parentage Act:  
<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT162/ACT162%20As%20Enacted.pdf>
- The Maine Parentage Act:  
<https://legislature.maine.gov/statutes/19-A/title19-Ach61.pdf>
- The Washington Parentage Act:  
<http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6037-S.SL.pdf>
- The California Parentage Act:  
[https://leginfo.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=FA&division=12.&title=&part=3.&chapter=&article](https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=FA&division=12.&title=&part=3.&chapter=&article)

For ABA developments, see:

- ABA Resolution 113 (adopted January 2019), supporting law reform to ensure equal parental rights for LGBT individuals:  
<https://www.americanbar.org/content/dam/aba/images/news/2019mymhodres/113.pdf>
- ABA Model Act Governing Assisted Reproduction (2019):  
[https://www.americanbar.org/content/dam/aba/administrative/family\\_law/committees/art/resolution-111.pdf](https://www.americanbar.org/content/dam/aba/administrative/family_law/committees/art/resolution-111.pdf)

For scholarly commentary by the chief reporter for the UPA (2017), see Courtney G. Joslin, *Nurturing Parenthood Through the UPA (2017)*, 127 YALE L.J. F. 589 (2018), [https://www.yalelawjournal.org/pdf/Joslin\\_4srmpjia.pdf](https://www.yalelawjournal.org/pdf/Joslin_4srmpjia.pdf).

For my own work on the topic, see Douglas NeJaime, *The Nature of Parenthood*, 127 YALE L.J. 2260 (2017), [https://www.yalelawjournal.org/pdf/NeJaimeFinalPDF\\_bc9p4f88.pdf](https://www.yalelawjournal.org/pdf/NeJaimeFinalPDF_bc9p4f88.pdf).