

Uniform Parentage Act Statement

In 1973, the National Conference of Commissioners on Uniform State Laws published the Uniform Parentage Act. In its time it led a revolution in the law of determination of parentage, paternity actions and child support. A child whose mother was not married was an illegitimate child under the common law. The father of an illegitimate child was burdened neither with rights nor obligations. He could be subject to an action for limited damages (the costs of delivering the baby for the most part) in an action that was quasi-criminal, not a civil action. The child had no right of support, but then the unmarried father also had no rights to custody.

The U.S. Supreme Court eliminated illegitimacy as a legal barrier in a number of cases in the 1960's and 70's. The old-fashioned paternity actions simply did not respond to these changes in fundamental law. The 1973 Uniform Parentage Act was law for a new generation. Section 2 of the Uniform Parentage Act confirmed and completed the revolution with very simple language: "The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parent." The rest of the 1973 Uniform Parentage Act was devoted to a modern civil paternity action in which the sole issue was identifying the natural father of any child. Section 15 of the 1973 Uniform Parentage Act also authorized a support action within the paternity action.

In 1988, the Uniform Law Commissioners promulgated two other Acts that deal with issues of parentage. The Uniform Status of Children of Assisted Conception Act provided rules establishing legal parentage for children conceived other than by sexual intercourse and possibly carried by a woman other than the legal mother. It was a response to the technologies of assisted conception, like in vitro fertilization and artificial insemination. The second was the Uniform Putative and Unknown Fathers Act. It is a procedural Act that allows the identification of putative and unknown fathers and termination of their parental rights.

The new Uniform Parentage Act (revised in 2000 and amended in 2002) continues to serve the purposes of the 1973 Uniform Parentage Act, particularly the purpose of identifying fathers so that child support obligations may be ordered. The two 1988 Acts are, also, incorporated into it and lose their separate existence. There are technological changes that make it necessary to revise the 1973 Uniform Act. New technology in the form of the exact genetic identification was not available in 1973. A statute providing for paternity actions in 2002 must take this technology into account.

There are seven substantive articles: Article 2, Parent-Child Relationship; Article 3, Voluntary Acknowledgment of Paternity; Article 4, Registry of Paternity; Article 5, Genetic Testing; Article 6, Proceeding to Adjudicate Parentage; Article 7, Child of Assisted Conception; and, Article 8, Gestational Agreement. It is not possible in a short summary to cover every provision in the new Uniform Parentage Act. This summary provides some highlights of important provisions.

The original policy of the 1973 Uniform Act that provides a relationship between natural parents and their children notwithstanding the marriage of the parents continues. Legal parenthood, however, is more complicated in than it was in 1973. In Article 2 of the new Uniform Act, a legal mother is one who carries a child to birth (rather than the one whose egg has been fertilized), but may also be one who is adjudicated as the legal mother, who adopts the child (thus expressly recognizing adoption), or who is the legal mother under a gestational agreement. In the last three instances, the woman who carries the child to birth is not the legal mother.

In Article 2, the legal father may be one of the following: an unrebutted presumed father (usually a man married to the birth mother at conception or a man who has lived with a child for

the first two years of the child's life and treated the child as his child), a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father, a man who consents to an assisted reproduction under Article 7, or an adjudicated father in a proceeding confirming a gestational agreement under Article 8. The genetic father or the presumed genetic father is the legal father in the first three of these categories, but is not necessarily the legal father in the latter three categories.

The 1973 Uniform Act was simpler, identifying the birth mother and the natural (read genetic) father as the legal parents, except for the case of adoption. It did cut-off the legal fatherhood of the genetic sperm donor in an artificial insemination (the first kind of assisted conception), in favor of the consenting husband of the woman artificially inseminated. But the contrast between the 1973 Uniform Act and the 2000 Uniform Act couldn't be more definitive than just on this issue of legal parenthood. Technology has changed the combinations and permutations of the parent-child relationship, and the new Uniform Act simply reflects that fact.

Article 3 of the new Uniform Act provides a non-judicial, consent proceeding for acknowledgment of paternity. The 1973 Uniform Act permits a court to recommend settlement of a paternity action in a pre-trial proceeding (Section 13), upon acknowledgment of paternity and assumption of a child support obligation by the defendant in the action. An agreed settlement becomes a judgment of paternity. The non-judicial acknowledgment of paternity proceeding under Article 3 of the new Uniform Act allows a knowing and voluntary acknowledgment of paternity that is the equivalent of a judgment of paternity for enforcement purposes. An acknowledgment from another state is given the privilege of full faith and credit in a state adopting the new Uniform Act.

Such an acknowledgment is effective so long as there is not another presumed, acknowledged or adjudicated father. There are provisions for rescission, if a proceeding is filed within two years of registration pursuant to Article 4. There is a counterpart denial of paternity by a presumed father that is, also, available and has the effect of a judgment of non-paternity, if another man acknowledged paternity or is adjudicated to be the natural father.

Article 4 provides a specific registry for putative and unknown fathers. The registry permits them to be notified if there is a proceeding for adoption or termination of parental rights. Before a child is one-year-old, there must be a certificate of search presented to the court hearing the adoption or termination of parental rights action. If the certificate shows that no putative or unknown father has registered within 30 days of the birth of the child, parental rights may be terminated without further notice. Once a child has reached the age of one year, however, the registry no longer has any effect. Actual notice is then required before any termination of parental rights may occur.

There are important exclusions from the effect of the registry. No rights of a father who has established a parent-child relationship may be terminated because there was no registration. Therefore, no presumed father, adjudicated father or father by acknowledgment may have his parental rights terminated under Article 4.

Article 5 establishes a separate procedure for genetic testing, so that a court may order testing without a full-blown paternity action. A reasonable probability of sexual contact between the putative father and the mother is enough to initiate the proceeding. A putative father may also initiate the proceeding to obtain the tests to prove that he is not the genetic father. Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99% probability of paternity based on appropriate calculations of "the combined paternity index." The presumption is rebuttable by further genetic evidence that excludes the putative father or that identifies another man as the

genetic father. The standards for admissibility in a paternity proceeding are not contained in Article 5, but are provided in Article 6.

A court may compel genetic testing of a man's blood relatives if he is not available for testing. A child support agency may petition for genetic testing, but only if there is no presumed, acknowledged or adjudicated father. Article 5 also deals with allocation of costs for genetic testing and for confidentiality of results.

The 1973 Uniform Act provided for blood testing in a paternity action. The results were evidence in that action. The "blood" testing of the time could help identify a natural father, but was nowhere as certain and determinative as genetic testing subject to rigorous standards as the new Uniform Act contemplates. Precise genetic testing has changed determination of parentage dramatically.

Article 6 governs the basic proceeding to determine parentage. This was primarily a paternity action under the 1973 Uniform Act, but the new Uniform Act must take into account the need to adjudicate the legal parentage of a woman, also. Who may bring an action is expanded from the 1973 Uniform Act, which favored the mother and the child, but did not generally allow putative fathers to bring actions if a presumed father already existed. Under the new Uniform Act the child, the mother of the child, a man whose paternity is to be adjudicated, a support-enforcement agency, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or an intended parent under a gestational contract have standing.

The objective of this proceeding is to adjudicate parenthood for the alleged father or mother. In a paternity proceeding, rebuttal of a presumption of fatherhood, acknowledged fatherhood or prior adjudicated fatherhood requires genetic information that, within the accepted probabilities, excludes the presumed father from paternity or establishes another man as the father of the child. An un rebutted presumption will ripen into an adjudication of fatherhood in the proceeding.

Jurisdiction to bring an action, generally, is governed by Section 201 of the Uniform Interstate Family Support Act. If there is no presumed, acknowledged or adjudicated father, an action to determine parentage may be brought at any time - no limitation. If there is a presumed father, the statute of limitations for an action is two years from the birth of the child. However, an action to disprove the presumed father's paternity may be brought at any time if the presumed father and mother did not cohabit or have sexual intercourse during the time of conception and the presumed father did not treat the child as his own.

Admission of the results of genetic testing are very important in Article 6. A refusal to submit to genetic testing may, in fact, ripen into an adjudication of paternity for the putative father who refuses. Only genetic evidence overcomes a presumption of fatherhood, as noted above. No child (as a party) is bound by an adjudication of fatherhood unless the "adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown..." The 1973 Uniform Act did not and could not rely upon genetic information in the way the new Uniform Act does.

The section providing for a support action in the 1973 Act is no longer in the new Uniform Parentage Act. Child support actions are covered in other statutes in every state as they were not in 1973.

Article 7 deals with parentage when there is assisted conception and incorporates the earlier Uniform Status of Children of Assisted Conception Act into the 2000 Uniform Parentage Act almost without change. If a couple consents to any sort of assisted conception, and the woman gives birth to the resultant child, they are the legal parents. A donor of either sperm or eggs used in an assisted conception may not be a legal parent under any circumstances.

Article 8 deals with gestational agreements, incorporating parts of the Uniform Status of Children of Assisted Conception Act on this issue. This article is optional to enacting states. Gestational agreements are valid in some states and not in others. They are made an optional part of the new Uniform Act for that reason. Having such provisions available to the states even in optional form is important simply because gestational agreements are being used all the time, and the legal parenthood of children should not be in doubt because such agreements are used.

A gestational agreement occurs between a woman and a couple obligating that woman to carry a child for the intended parents. The conception must be an assisted conception. The woman who carries the child to birth pursuant to a gestational agreement is not the legal mother of that child, an exception to the general rule. If she is a married woman, her husband must consent to the agreement. He then has no parental rights or obligations with respect to the child. The intended parents become the legal parents of the child.

Gestational agreements are carefully controlled under the new Uniform Act. A court must validate such agreements before they are enforceable. The hearing that the court conducts to validate a gestational agreement is analogous to a proceeding for an adoption of a child. The court verifies the birth mother's qualifications to carry the child and the intended parents' qualifications to be parents. The birth mother may be compensated, and has the power to terminate the agreement.

The new Uniform Parentage Act is important to parents and children. We must recognize the obligations of parents in any possible combination and permutation of marriage of the parents, method for conception of the child, and arrangements that intended parents make to have children. Otherwise we have children for whom nobody has responsibility. The new Uniform Parentage Act confronts the complicated issue of establishing legal parentage against the complications that technology provides. It brings genetic testing into modern parentage actions in a manner that is efficient, but that preserves due process rights for all concerned. It is necessary law for the new century.”

The ULC reports nine states have adopted the Act as of February 2009: Alabama, Delaware, North Dakota, Oklahoma, Texas, Utah, Washington and Wyoming.

Submitted as:

Alabama

HB 39 (Enrolled version)

Status: Enacted into law in 2008.