

CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Interested People
FROM: Paula Roberts
DATE: April 15, 2005
RE: Update on the Uniform Parentage Act (2002)

In 2000, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved a new Uniform Parentage Act. At the request of several committees of the American Bar Association (ABA) some changes were subsequently made in the Act. It was then approved by the ABA and is now known as the Uniform Parentage Act (2002). This Act provides a comprehensive framework for establishing the parentage of children born to both married and unmarried couples whether those children were conceived through sexual intercourse, assisted reproduction, or through a gestational agreement. The UPA (2002) reflects both federal requirements and state best practices in the paternity area. Highlights include:

- A comprehensive scheme for establishing paternity through voluntary acknowledgment.
- Standards for ordering genetic tests and rules for the administration, admissibility, and payment of such tests.
- A detailed process for establishing paternity through adjudication as well as rules for disestablishing paternity when appropriate.

To date, six states have enacted the UPA (2002). Delaware, Texas, and Washington have operated under their versions of the law for the past few years. North Dakota and Utah adopted their legislation in 2005. Wyoming adopted the UPA (2002) in 2003 and made some changes in 2005. Thus, experience with the Act is relatively new.

Moreover, no state has enacted the law verbatim. As the attached chart shows, most states have closely followed the UPA (2002) provisions, but all have made some adjustments to fit local practice. However, one state (Utah) made substantial changes, and another (Washington) added a number of provisions not found in the model law. In short, UPA (2002) can serve as both a model and a point of departure for states interested in enacting a modern paternity establishment/disestablishment scheme.

UPA 2002
THE MODEL ACT AND STATE VARIATIONS ON MAJOR PROVISIONS¹

	UPA 2002	FOLLOWS UPA 2002	VARIES FROM UPA 2002
ARTICLES 1. PRIVACY PROTECTIONS	Makes proceedings subject to other state law governing safety, health privacy, and liberty.	North Dakota, Texas, Utah, Washington, and Wyoming	<i>Delaware</i> closes all proceedings and limits access to all filings except by order of the court for good cause shown.
ARTICLE 2. PRESUMPTION OF PATERNITY	Presumption of paternity created through 1) marriage; or 2) living with the child for first 2 years of child's life and holding child out as one's own.	Delaware, North Dakota, Texas, and Wyoming	<i>Washington</i> and <i>Utah</i> include only the marital presumption.
ARTICLE 3. VOLUNTARY ACKNOWLEDGMENT PROCESS	<p>Allows minors to execute an acknowledgment without a parent or guardian's signature.</p> <p>Allows a presumed father to deny paternity in the context of an acknowledgment that establishes another man's paternity.</p> <p>Allows rescission of an acknowledgment only through court action.</p> <p>Allows challenge on the basis of fraud, duress, or material mistake of fact through court</p>	<p>Delaware, North Dakota, Texas, Washington, and Wyoming</p> <p>Delaware, North Dakota, Texas, Washington, and Wyoming</p> <p>Delaware, North Dakota, Texas, Washington, and Wyoming</p> <p>Delaware, Washington, and Wyoming</p>	<p><i>Utah</i> requires the signature of a parent or guardian if the signatory is a minor.</p> <p><i>Utah</i> allows both a presumed father and a man who has previously acknowledged his paternity to deny paternity in the context of an acknowledgment that establishes another man's paternity.</p> <p><i>Utah</i> allows rescission through a simple filing with the Office of Vital Statistics.²</p> <p><i>North Dakota</i> follows the UPA but limits the challenge period to 1 year.</p>

¹ The description of the Wyoming law includes changes that become effective July 1, 2005.

² The statute specifically allows rescission in this manner, but later requires the rescission process to be the same as the court challenge process. As a result, this point is not entirely clear.

	UPA 2002	FOLLOWS UPA 2002	VARIES FROM UPA 2002
	<p>action filed within two years of the filing of the acknowledgment.</p> <p>Does not address repayment of child support when an acknowledgment is rescinded.</p>	<p>See Article 6 discussion below.</p>	<p><i>Texas</i> follows UPA but extends the challenge period to 4 years.</p> <p><i>Utah</i> allows challenges based on fraud or duress to be brought at any time. Actions based on material mistake of fact must be filed within 4 years of the filing of the acknowledgment.</p> <p>Both <i>Texas</i> and <i>Utah</i> define genetic test results which exclude the acknowledged father as constituting a “material mistake of fact.”</p> <p><i>Utah</i> prohibits an acknowledged father from recovering support paid before rescission.</p>
ARTICLE 4. PUTATIVE FATHER REGISTRY	<p>Creates a registry for men who wish to be notified of proceedings involving a young child they may have fathered. Allows termination of parental rights of men who fail to register.</p>	<p>Delaware and Texas with some small variations.</p>	<p><i>North Dakota, Washington, and Wyoming</i> do not include this provision.</p> <p><i>Utah</i> includes a registry but it is substantially different from the UPA 2002 model.</p>
ARTICLE 5. GENETIC TESTING	<p>Allows only courts to order genetic testing when a child has a presumed, acknowledged, or adjudicated father.</p> <p>Allows courts to order additional testing beyond the first test.</p>	<p>Delaware, North Dakota, Texas, Washington, and Wyoming</p> <p>Delaware, North Dakota, Texas, Washington, and Wyoming</p>	<p><i>Utah</i> allows child support agencies to order genetic testing even when a child has a presumed, acknowledged, or adjudicated father.</p> <p><i>Utah</i> allows only one additional test and sets limits on the time and circumstances.</p>

	UPA 2002	FOLLOWS UPA 2002	VARIES FROM UPA 2002
ARTICLE 6. TIMING OF PATERNITY ACTION	<p>A <i>child</i> who has no presumed, acknowledged, or adjudicated father may bring a paternity action at any time.</p> <p>Allows a non-marital child whose paternity was established through acknowledgment or adjudication that did not include genetic testing to bring a paternity action <i>at any time</i>.</p>	<p>Delaware, North Dakota, Texas, Utah, Wyoming</p> <p>North Dakota, Texas, Utah, Washington, and Wyoming</p>	<p><i>Washington</i> allows any party to bring an action at any time if the child has no presumed, acknowledged, or adjudicated father.</p> <p><i>Delaware</i> holds the child to be in privity with the mother and binds the child even if there was no genetic testing.</p>
ARTICLE 6. TIMING OF ACTION TO DISESTABLISH PATERNITY	<p>Disestablishment action for a child with a <i>presumed</i> father must be brought within 2 years of the child's birth. Exception if mother and presumed father never cohabited or engaged in sexual intercourse and father never held child out as his own.</p> <p>Disestablishment action for a child with an <i>acknowledged</i> or <i>adjudicated</i> father must be commenced within 2</p>	<p>Delaware, Washington, and North Dakota</p> <p>Delaware, Washington, and Wyoming</p>	<p><i>Texas</i> follows the general provision but allows suit to be brought within 4 years of the child's birth.</p> <p><i>Utah</i> allows parents of a child born during marriage to challenge paternity at any time prior to filing a divorce or in their divorce pleadings. If the child was born prior to the marriage, the presumption can be rebutted at any time a tribunal determines that there was no cohabitation or sexual intercourse between the parents during the probable time of conception.</p> <p><i>Wyoming</i> follows the general provision but allows suit within 5 years of the child's birth.</p> <p><i>North Dakota</i> requires a signatory to an acknowledgment to challenge within 1 year. In all other respects, it follows the UPA rule.</p>

	UPA 2002	FOLLOWS UPA 2002	VARIES FROM UPA 2002
	years of the effective date of the acknowledgment or adjudication unless brought by child him/herself.		<p><i>Texas</i> requires the action be commenced within 4 years. In all other respects it follows the UPA.</p> <p><i>Utah</i> allows challenge to an <i>acknowledgment</i> based on fraud or duress to be brought at any time. An action based on material mistake of fact must be brought within 4 years of filing the declaration.</p>
ARTICLE 6. BINDING EFFECT OF DETERMINATION OF PARENTAGE	Makes determination binding on all signatories to an acknowledgment and all parties to an adjudication. Child is not bound by adjudication unless it was based on genetic tests or he/she was a party to the proceeding and represented by counsel.	North Dakota, Texas, Utah, and Washington	<p><i>Delaware</i> follows the general rule and also binds the child.</p> <p><i>Wyoming</i> follows the UPA rule on the child's right to challenge and also allows parties to an adjudication or acknowledgment entered without the benefit of genetic testing to file a challenge if the request is filed within 2 years of the time the party knew or should have known that paternity was at issue.</p>
ARTICLE 6. EFFECT OF DISESTABLISHMENT ON SUPPORT ALREADY PAID AND/OR ARREARS	Does not include a provision on this issue.	Texas and Washington	<p><i>Delaware</i> states that an individual has no right to reimbursement for support or medical expenses paid prior to the date of service of notice of the commencement of a disestablishment action.</p> <p><i>North Dakota</i> specifies that the state is not liable for support collected and paid to the obligee. If the state collected and retained the money, it may be liable if genetic test results show that the former parent is not the genetic parent of the child.</p> <p><i>Utah</i> provides that if an acknowledgment is rescinded, the father may not recover support already paid.</p>

	UPA 2002	FOLLOWS UPA 2002	VARIES FROM UPA 2002
			<i>Wyoming</i> provides that an adjudicated father whose paternity is disestablished has no right to reimbursement of past support paid to the mother, the state of Wyoming, or any other assignee.
ARTICLE 7. PROVISIONS FOR PARENTAGE OF CHILDREN BORN THROUGH ASSISTED REPRODUCTION	Establishes rules for determining parentage of a child born to a heterosexual couple through assisted reproduction.	Delaware, North Dakota, and Wyoming	<i>Texas, Utah, and Washington</i> follow the general scheme but limit its applicability to husband and wife couples.
ARTICLE 8. PROVISIONS FOR PARENTAGE OF CHILDREN BORN PURSUANT TO A GESTATIONAL AGREEMENT	Sets a framework for validating gestational agreements and determining parentage of children born pursuant to such agreements.	Texas and Utah adopted the general UPA scheme but limited it to husband and wife couples and added some additional protections.	<i>Delaware, North Dakota, and Wyoming</i> did not include this Article. <i>Washington</i> addressed the issue but adopted a different approach.
ARTICLE 9. EFFECT ON PRIOR ACKNOWLEDGMENTS AND JUDGMENTS	Makes prior law applicable in all proceedings commenced prior to effective date of new act.	Delaware, North Dakota, Utah, and Washington	<i>Texas</i> allowed those who executed a voluntary statement of paternity before September 1, 1999 to bring a rescission action before September 1, 2003. <i>Wyoming</i> did not address this issue.

“Not included” means the provision is not included in the adopted version of the UPA. There may be provisions addressing the issue that are codified elsewhere in state law.