



## KANSAS JUDICIAL COUNCIL

JUSTICE MARLA J. LUCKERT, CHAIR, TOPEKA  
JUDGE STEPHEN D. HILL, TOPEKA  
JUDGE PATRICIA MACKE DICK, HUTCHINSON  
JUDGE AMY L. HARTH, PAOLA  
SEN. KELLIE WARREN, LEAWOOD  
REP. FRED PATTON, TOPEKA  
VICTOR J. BRADEN, TOPEKA  
JOSEPH W. JETER, HAYS  
F. JAMES ROBINSON, JR., WICHITA  
SARAH BOOTES SHATTUCK, ASHLAND

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

[judicial.council@ks.gov](mailto:judicial.council@ks.gov)  
[www.kansasjudicialcouncil.org](http://www.kansasjudicialcouncil.org)

EXECUTIVE DIRECTOR  
NANCY J. STROUSE

STAFF ATTORNEYS  
CHRISTY R. MOLZEN  
LAURA E. NORDGREN

**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council – Ron Nelson, attorney and member of the Family Law Advisory Committee**

**DATE: February 13, 2023**

**Re: Proponent Testimony on 2023 H.B. 2409 – Uniform Parentage Act (2017)**

The Kansas Judicial Council and its Family Law Advisory Committee (Committee) recommend passage of 2023 H.B. 2409, which comprehensively updates the Kansas statutes regarding parentage. The Committee's Kansas specific changes and Kansas comments to the Uniform Parentage Act (2017) are below.

In 1985, Kansas enacted the Kansas parentage act based on the Uniform Law Commission's (ULC) 1973 version of the Uniform Parentage Act (UPA). The 1973 version of the UPA was published to provide a framework for states to enact statutes providing substantive legal equality for all children regardless of the marital status of the child's parents. It was unconstitutional for state laws to treat children born out of wedlock differently than children born to married parents.

Since the original enactment of the Kansas Parentage Act in 1985, the Kansas legislature has updated or added individual statutes within the parentage act as needed. For example, in 1994, statutes implementing a hospital-based program for voluntary acknowledgment of paternity were added to the Kansas parentage act. In 2010, the parentage act was recodified and transferred from Chapter 38, Article 11 to Chapter 23, Article 22. However, there has not

been a comprehensive review and update to the Kansas parentage act in the 38 years since its enactment.

The Uniform Law Commission revised its Uniform Parentage Act in 2002. No changes to the Kansas parentage act were based on the UPA (2002). Due to significant changes in society regarding marriage and advancements in technology related to genetic testing and assisted reproduction, the ULC again revised its Uniform Parentage Act in 2017.

Over the last few years, the Committee reviewed the UPA (2017) and considered whether parts of the Kansas parentage act could be rewritten, updated, or amended to incorporate sections of the UPA (2017); however, the necessary amendments were too extensive. The Committee instead recommends replacing the current Kansas parentage act with the UPA (2017), and including Kansas specific changes as set out in H.B. 2409. The Committee recommends retaining K.S.A. 23-2222 & K.S.A. 23-2223 and adding them to the UPA because the procedures contained in these statutes (regarding birth certificates and changing a name of a child) are not covered elsewhere in the UPA (2017).

Enactment of the UPA (2017) with Kansas amendments would replace Kansas' current piece-meal parentage act with a comprehensive and organized act. It would provide essential updates including:

- Clarification and redefinition of “presumed parent;”
- Statutory provisions clearly setting out how courts are to resolve conflicting claims to parentage;
- Updated standards for genetic testing and rules protecting against the unlawful disclosure of genetic testing information;
- Establishment of rights for children born through assisted reproductive technology to access medical and identifying information regard a gamete provider;
- Protection against the establishment of parentage when a child was conceived through sexual assault;
- Use of gender-neutral terminology; and
- An establishment of an administrative process for acknowledgment and denials of parentage.

H.B. 2409 also amends several other statutes to update and maintain the appropriate statutory cross references to the UPA.

The members of the Judicial Council Family Law Advisory Committee who participated in the study of the UPA are:

Hon. Mike Keeley, Co-Chair, Retired District Court Judge; Great Bend

Hon. Amy Harth, Co-Chair, District Court Judge; Paola

Sara S. Beezley, Practicing Attorney; Girard.

Prof. Gillian Chadwick, Clinical Professor at Washburn University School of Law; Topeka.

Elizabeth Cohn, Program Director for Child Support Services, Department for Children and Families; Topeka.

Prof. Melanie Daily, Director and Clinical Professor at the University of Kansas School of Law; Lawrence.

Hon. Robert J. Frederick, District Court Judge, Garden City.

Joyce Grover, Executive Director for the Kansas Coalition Against Sexual and Domestic Violence; Topeka.

Rep. Susan Humphries, Kansas House of Representatives District 99 and Practicing Attorney, Wichita.

Ronald W. Nelson, Practicing Attorney; Shawnee Mission.

Bethany Roberts, Practicing Attorney; Lawrence.

Richard Samaniego, Practicing Attorney; Wichita.

Ardith R. Smith-Woertz, Practicing Attorney; Topeka.

## 2023 H.B. 2409 & UNIFORM PARENTAGE ACT (2017) SECTIONS CHART

H.B. 2409 Section	UPA Section	UPA Section Title
<i>GENERAL PROVISION</i>		
1	101	SHORT TITLE
2	102	DEFINITIONS
3	103	SCOPE
4	104	AUTHORIZED COURT
5	105	APPLICABLE LAW
6	106	DATA PRIVACY
7	107	ESTABLISHMENT OF MATERNITY AND PATERNITY
<i>PARENT-CHILD RELATIONSHIP</i>		
8	201	ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP
9	202	NO DISCRIMINATION BASED ON MARITAL STATUS OF PARENT
10	203	CONSEQUENCES OF ESTABLISHING PARENTAGE
11	204	PRESUMPTION OF PARENTAGE
<i>VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE</i>		
12	301	ACKNOWLEDGMENT OF PARENTAGE
13	302	EXECUTION OF ACKNOWLEDGMENT OF PARENTAGE
14	303	DENIAL OF PARENTAGE
15	304	RULES FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE
16	305	EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PARENTAGE
17	306	FILING FEE
18	307	RATIFICATION BARRED
19	308	PROCEDURE FOR RESCISSION
20	309	CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION
21	310	PROCEDURE FOR CHALLENGE BY SIGNATORY
22	311	FULL FAITH AND CREDIT
23	312	FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE
24	313	RELEASE OF RECORDS
25	314	ADOPTION OF RULES
26	New Section 1	HOSPITAL BASED PROGRAM FOR VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE
<i>GENETIC TESTING</i>		
27	501	DEFINITIONS
28	502	SCOPE OF [ARTICLE]; LIMITATION ON USE OF GENETIC TESTING
29	503	AUTHORITY TO ORDER OR DENY GENETIC TESTING
30	504	REQUIREMENTS FOR GENETIC TESTING
31	505	REPORT OF GENETIC TESTING
32	506	GENETIC TESTING RESULTS; CHALLENGE TO RESULTS

<b>H.B. 2409 Section</b>	<b>UPA Section</b>	<b>UPA Section Title</b>
33	507	COST OF GENETIC TESTING
34	508	ADDITIONAL GENETIC TESTING
35	509	GENETIC TESTING WHEN SPECIMEN NOT AVAILABLE
36	510	DECEASED INDIVIDUAL
37	511	IDENTICAL SIBLINGS
38	512	CONFIDENTIALITY OF GENETIC TESTING
<i>PROCEEDINGS TO ADJUDICATE PARENTAGE</i>		
39	601	PROCEEDING AUTHORIZED
40	602	STANDING TO BRING PROCEEDING
41	603	NOTICE OF PROCEEDING
42	604	PERSONAL JURISDICTION
43	605	VENUE
44	New Section 2	PLEADINGS
45	New Section 3	RESPONSIVE PLEADINGS
46	606	ADMISSIBILITY OF RESULTS OF GENETIC TESTING
47	607	ADJUDICATING PARENTAGE OF CHILD WITH ALLEGED GENETIC PARENT
48	608	ADJUDICATING PARENTAGE OF CHILD WITH PRESUMED PARENT
49	610	ADJUDICATING PARENTAGE OF CHILD WITH ACKNOWLEDGED PARENT
50	611	ADJUDICATING PARENTAGE OF CHILD WITH ADJUDICATED PARENT
51	612	ADJUDICATING PARENTAGE OF CHILD OF ASSISTED REPRODUCTION
52	613	ADJUDICATING COMPETING CLAIMS OF PARENTAGE
53	614	PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT
54	615	TEMPORARY ORDER
55	616	COMBINING PROCEEDINGS
56	New Section 4	PRECEDENCE OF CERTAIN OTHER ORDERS
57	618	CHILD AS PARTY; REPRESENTATION
58	619	COURT TO ADJUDICATE PARENTAGE
59	622	ORDER ADJUDICATING PARENTAGE
60	623	BINDING EFFECT OF DETERMINATION OF PARENTAGE
<i>ASSISTED REPRODUCTION</i>		
61	701	SCOPE OF [ARTICLE]
62	702	PARENTAL STATUS OF DONOR
63	703	PARENTAGE OF CHILD OF ASSISTED REPRODUCTION
64	704	CONSENT TO ASSISTED REPRODUCTION
65	705	LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE

<b>H.B. 2409 Section</b>	<b>UPA Section</b>	<b>UPA Section Title</b>
66	706	EFFECT OF CERTAIN LEGAL PROCEEDINGS REGARDING MARRIAGE
67	707	WITHDRAWAL OF CONSENT
68	708	PARENTAL STATUS OF DECEASED INDIVIDUAL
		<i>INFORMATION ABOUT DONOR</i>
69	901	DEFINITIONS
70	902	APPLICABILITY
71	903	COLLECTION OF INFORMATION
72	904	DECLARATION REGARDING IDENTITY DISCLOSURE
73	905	DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY
74	906	RECORDKEEPING
		<i>MISCELLANEOUS PROVISIONS</i>
75	1001	UNIFORMITY OF APPLICATION AND CONSTRUCTION
76	1002	RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT
77	1003	TRANSITIONAL PROVISION
78	1004	SEVERABILITY

# UNIFORM PARENTAGE ACT (2017)

## [ARTICLE] 1

### GENERAL PROVISIONS

#### SECTION 101. SHORT TITLE.

This [act] may be cited as the Kansas 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.

#### **Kansas Comment**

This section provides a more comprehensive definition section than the current Kansas parentage act. Discussion of the five classifications of parents is discussed in the Kansas Comment on Section 204. The Kansas drafting committee removed references to Article 8.

#### **UPA 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.}~~

#### **Kansas Comment**

Even though the Kansas drafting committee does not recommend the adoption of Article 8, the committee removed subsection (c) because the committee agreed the subsection is not necessary in Kansas.

#### **UPA 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]~~ district court may adjudicate parentage under this [act].

#### **Kansas Comment**

In Kansas, district courts have jurisdiction over parentage proceedings. Kansas has not created an administrative procedure for establishing parentage. This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2210(a) and the committee supports adoption of uniform language.

#### **UPA 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; ~~or~~
- (3) the place of conception of the child.

**Kansas Comment**

The Kansas drafting committee added Section 105(3) because, in the context of assisted reproduction, the place of conception can vary and should not be a material consideration in determining applicable law.

**UPA 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.

**Kansas Comment**

This section is consistent with Kansas’ efforts to protect personal information and the committee supports adoption of uniform language.

**UPA 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.

**Kansas Comment**

This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2220 and the committee supports adoption of uniform language.

**UPA 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.~~

### **Kansas Comment**

This section outlines the ways parentage may be established in a gender-neutral manner. Section 201 incorporates the same methods for establishing parentage as currently set out in K.S.A. 2020 Supp. 23-2207, while also clarifying that parentage can be established based on a presumption and as set out in the statutes governing assisted reproduction. The Kansas drafting committee removed references to Article 8.

### **UPA 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.

### **Kansas Comment**

This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2206 and the committee supports adoption of uniform language.

### **UPA 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].

### **Kansas Comment**

No changes are recommended to the uniform language in this section.

### **UPA 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 registrar of vital statistics ~~[state agency or 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.

#### **Kansas Comment**

The UPA (2017) redefines who qualifies as a “presumed parent.” The UPA (2017) takes the categories of individuals included in the definition of “presumed parent” in K.S.A. 2020 Supp. 23-2208(a) and breaks them down into three different categories – “presumed parent,”

“alleged genetic parent,” and “adjudicated parent.” Section 204 defines who is included in the “presumed parent” category. Similar to current Kansas law, the presumption is based on marriage or an individual’s open recognition of parentage.

Section 204(a)(1) is substantially the same as K.S.A. 2020 Supp. 23-2208(a)(1) through (a)(3), defining a presumed parent as a person who was married to the woman who gave birth to the child when the child was born, after the child was born, or whose marriage ended but the child was born within 300 days of the end of the marriage.

Section 204(a)(2) requires a presumed parent reside with the child for the child’s first two years of life and openly holds out the child as the individual’s child. This differs and replaces the presumption in K.S.A. 2020 Supp. 23-2208(a)(4) that requires the individual to notoriously or in writing recognize parentage of the child, including through a voluntary acknowledgment of parentage. K.S.A. 2020 Supp. 23-2208(a)(4) is very broad and does not contain any time frames or residency requirements. Section 204(a)(2) adds residency and timeframe requirements to narrow the presumption.

Section 204 does not include two categories of parents who are currently considered presumed parents under K.S.A. 2020 Supp. 23-2208(a) – a parent with a genetic test showing the individual is the biological parent, and an individual who is obligated to support the child pursuant to a court order. The UPA (2017) Section 102 redefines those categories of individuals as an “alleged genetic parent” (see Section 607) or an “adjudicated parent” (see Section 611).

The Kansas drafting committee removed references to Article 8. It removed the struck language in Section 204(a)(1)(B) in order to reflect the terms used in Kansas law. The Kansas agency designated to maintain birth records is the Kansas state registrar of vital statistics.

#### **UPA 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**

**Kansas Comment**

Article 3 changes the Kansas voluntary acknowledgment of parentage program. Currently, when a child is born, if the person who gave birth to the child is not married, pursuant to K.S.A. 2020 Supp. 65-2409a(c), the parents have the opportunity to sign an acknowledgment of parentage to have the second parent listed on the child's birth certificate. This acknowledgment of parentage form is completed before the child's initial birth record and birth certificate are created by the office of vital statistics. If the child's initial birth record has already been created and only lists one parent and the child's parent wants to establish a second person's parentage by executing an acknowledgment of parentage, then the parents must appear before a judge or hearing officer to execute the acknowledgment of parentage affidavit. *See* K.S.A. 2020 Supp. 23-2223. K.S.A. 2020 Supp. 23-2223(c) declares that no case file will be opened in the district court, nor will any record be made by the court of the parent's acknowledgment of parentage. The statute tasks the court with a ministerial function, rather than a judicial function.

Article 3 removes the courts from the ministerial process of executing a voluntary acknowledgment of parentage affidavit. Under Article 3, using a form created by the state registrar of vital statistics in conjunction with the secretary for children and families pursuant to Section 312, individuals may execute an acknowledgment or denial of parentage and file it directly with the office of vital statistics. Article 3 does not make the office of vital statistics responsible for making decisions regarding parentage and interpreting the legal validity of the individual's claim to parentage. The office of vital statistics serves as the record keeper. If a dispute regarding parentage arises, the dispute requires the filing of a parentage action and an adjudication by the court of the competing claims of parentage pursuant to Article 6.

**UPA 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.

**Kansas Comment**

Kansas statutes do not clearly identify who is eligible to complete an acknowledgment of parentage. K.S.A. 2020 Supp. 23-2203 and 65-2409a established the voluntary acknowledgment of parentage program for children of “unwed mothers.” Unless otherwise determined by the court, if the person who gave birth to the child was married at the time of conception or birth, K.S.A. 2020 Supp. 65-2409a(c) requires the name of the woman’s husband to be placed on the child’s birth record, regardless of genetic connection between the man and the child. Only if the woman who gave birth to the child was unmarried at the time of conception or birth, could a man wanting to be named as the child’s father in the birth record complete the voluntary acknowledgment of paternity.

Section 301 avoids distinguishing between children who are born to married verses unmarried parents by stating that parentage can be established through an acknowledgement of parentage completed by an alleged genetic father, intended parent, or presumed parent.

**UPA 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 registrar of vital statistics ~~{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}~~.

### **Kansas Comment**

The Kansas agency designated to maintain birth records is the Kansas state registrar of vital statistics. The Kansas drafting committee removed references to Article 8.

### **UPA 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.

**Kansas Comment**

Section 303 creates a new process in Kansas allowing an individual to deny parentage. As set out in Section 304, the denial of parentage is filed directly with the office of vital statistics; however, the office of vital statistics is not responsible for making decisions regarding parentage. The office of vital statistics serves as the record keeper. A denial of parentage is only allowed in narrow circumstances and requires that another individual acknowledge parentage. Denials of parentage cannot be used to voluntarily relinquish parental rights if the individual has previously completed a valid acknowledgment of parentage or has been adjudicated to be the 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 registrar of vital statistics ~~[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 registrar of vital statistics ~~[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].

#### **Kansas Comment**

The Kansas agency designated to maintain birth records is the Kansas state registrar of vital statistics. The office of vital statistics is not responsible for making decisions regarding parentage. The office of vital statistics serves as the record keeper. If a dispute regarding parentage arises, the dispute requires the filing of a parentage action and an adjudication by the court of the competing claims of parentage pursuant to Article 6.

#### **UPA 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 registrar of vital statistics ~~[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 registrar of vital statistics ~~[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.

#### **Kansas Comment**

The Kansas agency designated to maintain birth records is the Kansas state registrar of vital statistics. The office of vital statistics is not responsible for making decisions regarding parentage. The office of vital statistics serves as the record keeper. If a dispute regarding parentage arises, the dispute requires the filing of a parentage action and an adjudication by the court of the competing claims of parentage pursuant to Article 6.

### UPA 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 registrar of vital statistics ~~{state agency maintaining birth records}~~ may **not** charge a fee for filing an acknowledgment of parentage or denial of parentage.

### Kansas Comment

The Kansas drafting committee changed this section to allow the state registrar of vital statistics to charge a fee for filing an acknowledgment or denial of parentage in order to assist the agency in processing these documents.

#### **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.

### Kansas Comment

The Kansas drafting committee struck the language in this section because Kansas does not have an administrative agency conducting administrative proceedings to establish parentage.

### UPA 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 state registrar of vital statistics ~~{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 registrar of vital statistics ~~[state agency maintaining birth records]~~ shall notify the person ~~woman~~ who gave birth to the child and any person ~~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.

### **Kansas Comment**

Section 308 changes Kansas' current process for rescinding an acknowledgment of parentage. Under K.S.A. 2020 Supp. 23-2209(e), in order to rescind an acknowledgment of parentage, the parent or child must file a petition with the court. If the parent files a petition to rescind the acknowledgment before the earlier of 60 days after completion of the acknowledgment or before a court hearing relating to the child and the parents, the parent does not have to show that the parent signed the acknowledgment under fraud, duress or material mistake of fact. If it is more than 60 days from the completion of the acknowledgment, then the parent requesting rescission of the acknowledgment must prove the acknowledgment was based upon fraud, duress, or material mistake of fact.

Section 308(a) maintains a distinction for rescinding an acknowledgment or denial of parentage within the earlier of 60 days of the effective date of the acknowledgment or denial, or before a court hearing to adjudicate issues relating to the child. A signatory to an acknowledgment or denial of parentage may file the rescission directly with the office of vital statistics within 60 days of the effective date without requiring any showing of fraud, duress, or mistake of fact. Because of the automatic nature of this rescission, Section 308, unlike K.S.A. 2020 Supp. 23-2209, does not require the process to involve the courts. The UPA maintains court involvement in Section 309 when rescission is requested after the 60-day timeframe has passed.

Section 308(b) is a new requirement of the office of vital statistics. Section 308(b) does not require proof of actual notice and even clarifies that the validity of the rescission is not dependent on the agency's ability to provide notice.

The Kansas drafting committee made changes to wording in Section 308(b) to maintain gender-neutral language and promote clarity. The agency designated to maintain birth records is the Kansas state registrar of vital statistics.

## UPA 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) Except as provided in subsection (b), 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~~ file a petition 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) If the signatory of the acknowledgment of parentage or denial of parentage was a minor on the effective date under Section 304 of the acknowledgment parentage or denial of parentage, the proceeding to challenge the acknowledgment or denial, including a challenge brought under Section 614, may be brought at any time until one year after that person attains age 18, unless the court finds that the child is more than one year of age and that rescission of the acknowledgment or denial is not in the child's best interest.

~~(b)~~ (c) 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.

## Kansas Comment

Section 309 is similar to Kansas' requirements in K.S.A. 2020 Supp. 23-2209(e) requiring a showing of fraud, duress, or material mistake of fact. Section 309(a) lengthens the timeframe in which a petition for rescission may be filed. Under K.S.A. 2020 Supp. 23-2209(e) a petition for rescission must be filed within one year after the child's date of birth. Under Section 309(a), the time frame is extended to two years after the effective date of the filed acknowledgment or denial of parentage.

The Kansas drafting committee added subsection (b) based on Kansas' current approach as stated in K.S.A. 2020 Supp. 23-2209(e). If the signatory of the acknowledgment or denial of parentage was a minor when the document took effect, the signatory has until he or she turns 19 years old to file the petition to rescind. However, even if the signatory can prove the

acknowledgment or denial of parentage was executed on the basis of fraud, duress, or material mistake of fact, the court may still deny the rescission if the child is more than one year old and the court finds that rescission is not in the child's best interest. This gives the courts discretion to protect an established parent-child relationship as needed.

#### UPA 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)(1) 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.

(2) If there has been an assignment of the child's support rights pursuant to K.S.A. 39-709, and amendments thereto, the secretary for children and families shall be a necessary party to any action under this section.

(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 registrar of vital statistics [~~state agency maintaining birth records~~].

(c) The court may not suspend stay 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 that the legal responsibilities should be stayed.

(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 registrar of vital statistics ~~[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.

#### **Kansas Comment**

Section 310 is consistent with current Kansas law, including subsection (c) prohibiting the stay of legal responsibilities arising from the acknowledgment of parentage. *See* K.S.A. 2020 Supp. 23-2209(e). The Kansas drafting committee added Section 310(a)(2) based on K.S.A. 2020 Supp. 23-2209(e). The committee made non-substantive changes to wording to promote clarity. The agency designated to maintain birth records is the Kansas state registrar of vital statistics.

#### **UPA 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.

#### **Kansas Comment**

Section 311 is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2208(d) and the committee supports adoption of uniform language.

### UPA 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 registrar of vital statistics, in conjunction with the secretary for children and families, ~~[state agency maintaining birth records]~~ shall prescribe forms for an acknowledgment of parentage and denial of parentage. The form for an acknowledgment of parentage shall include or have attached a written description of the rights and responsibilities of acknowledging parentage.

(b) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

### Kansas Comment

The Kansas drafting committee conformed the language in subsection (a) to match the current statutory language in K.S.A. 2020 Supp. 23-2204(a). In order to qualify for certain federal funding, 45 C.F.R. 303.5(g)(2) requires states to provide information about the rights and responsibilities of acknowledging parentage. K.S.A. 2020 Supp. 23-2204(b) contains the specific description of the rights and responsibilities of acknowledging parentage that the form must contain. However, such detail is not necessary in the statute. The drafting committee agreed the state registrar of vital statistics and the secretary for children and families should be responsible for drafting the written description.

### UPA Comment

Source: 42 U.S.C. § 666(a)(5)(C)(i), (iv); UPA (2002) § 312.

#### **SECTION 313. RELEASE OF ~~RECORDS~~ INFORMATION.**

(a) The state registrar of vital statistics ~~[state agency maintaining birth records]~~ may release information any record relating to an acknowledgment of parentage, ~~or~~ denial of parentage to a signatory of the acknowledgment, ~~or~~ denial, or rescission, a court, federal agency, and child-support agency of this or another state.



(b) Upon request, the state registrar of vital statistics must provide a certified copy of the acknowledgment of parentage, denial of parentage, or rescission of acknowledgment of parentage to a child-support agency.

#### **Kansas Comment**

The Kansas drafting committee changed the term “information” to “records” because “record” is a defined term in Section 102. The committee added subsection (b) to ensure the office of vital statistics is authorized to provide the child-support agency with certified copies of the listed documents, as is currently authorized in K.S.A. 2020 Supp. 23-2204(e). The agency designated to maintain birth records is the Kansas state registrar of vital statistics.

#### **UPA Comment**

Source: UPA (2002) § 313.

#### **SECTION 314. ADOPTION OF RULES.**

The state registrar of vital statistics [~~state agency maintaining birth records~~] may adopt rules and regulations ~~under~~ [~~state administrative procedure act~~] to implement this [article].

#### **Kansas Comment**

The Kansas drafting committee modified this section to be consistent with other Kansas statutory authorization for an agency to adopt rules and regulations. The agency designated to maintain birth records is the Kansas state registrar of vital statistics.

#### **UPA 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.

#### **NEW SECTION 1. HOSPITAL BASED PROGRAM FOR VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE**

(a) There is hereby established in this state a hospital based program for voluntary acknowledgment of parentage pursuant to K.S.A. 65-2409a, and amendments thereto, for

newborn children. Birthing hospitals shall participate in the program. Other hospitals and persons may participate in the program by agreement with the secretary for children and families.

(b) The secretary for children and families shall provide information and instructions to birthing hospitals for the hospital based program for voluntary acknowledgment of parentage. The secretary for children and families may adopt rules and regulations establishing procedures for birthing hospitals under the program.

(c) Subject to appropriations, the secretary for children and families is authorized to establish in this state a physicians' office-based program for voluntary acknowledgment of parentage pursuant to K.S.A. 65-2409a, and amendments thereto, for newborn children. The secretary shall provide information and instructions to physicians' offices for the program and may adopt rules and regulations establishing procedures for physicians' offices under the program.

(d) The secretary of health and environment shall provide services for the voluntary acknowledgment of parentage, in appropriate circumstances, through the office of the state registrar. The secretary of health and environment may adopt rules and regulations to carry out the requirements of this section.

(e) "Birthing hospital" means a hospital or facility as defined by rules and regulations of the secretary for children and families.

#### **Kansas Comment**

The Kansas drafting committee added this section in order to maintain the authorization for the Kansas hospital based program for voluntary acknowledgment of parentage. The substance of the section was taken from K.S.A. 2020 Supp. 23-2202(a) and 23-2203. The terms were updated to conform to the terms used in the UPA (2017).

### **[ARTICLE] 4 REGISTRY OF PATERNITY**

#### **Kansas Comment**

The Kansas drafting committee does not recommend adoption of Article 4 regarding a paternity registry. K.S.A. 23-36,201(a)(7) governs Kansas' putative father registry.

**[ARTICLE] 5**  
**GENETIC TESTING**  
**Kansas Comment**

Kansas currently has very few statutes governing genetic testing conducted for the purpose of establishing parentage. Article 5 provides an up-to-date, well-organized and comprehensive statutory framework for 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.

**Kansas Comment**

Kansas currently has very few statutes governing genetic testing conducted for the purpose of establishing parentage. Article 5 provides an up-to-date, well-organized and comprehensive statutory framework for genetic testing.

### UPA 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.

### Kansas Comment

The Kansas drafting committee removed references to Article 8.

The UPA (2002) comment on UPA (2002) § 501 which has been carried over to UPA (2017) Section 502(a):

“This section is intended to avoid problems with regard to the admissibility of the results of voluntary genetic testing. Testing is often agreed upon to avoid the cost and delay engendered by requiring a proceeding to be filed before the results of genetic testing can be admitted as evidence. If the test excludes parentage, an unnecessary step has been avoided.”

### UPA 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.

(i) If any party refuses to submit to the tests, the court may resolve the question of parentage against the party or enforce its order if the rights of others and the interests of justice so require.

### **Kansas Comment**

The Kansas drafting committee removed references to Section 609 because the committee does not recommend inclusion of sections involving de facto parentage. The committee added subsection (i) based on current Kansas law in K.S.A. 2020 Supp. 23-2212(a). Ex parte genetic testing orders are covered in Section 615.

### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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 until the requirements of testing and manner of payment are determined. ~~unless the contesting individual pays for the testing in advance.~~

#### **Kansas Comment**

It may be appropriate for the individual contesting genetic test results to pay for the additional genetic testing; however, the Kansas drafting committee changed Section 508 to allow flexibility regarding payment depending on the circumstances of the case.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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 class A nonperson misdemeanor. ~~{appropriate level misdemeanor}~~.

#### **Kansas Comment**

The Kansas drafting committee assigned the classification of the crime set out in Section 512(b) to be a Class A nonperson misdemeanor because it is consistent with other statutes criminalizing disclosure of personal information.

#### **UPA 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**

**UPA 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 chapter 60 of the Kansas Statutes Annotated, and amendments thereto. ~~[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.~~

**Kansas Comment**

Section 601 is consistent with the law in K.S.A. 2020 Supp. 23-2214(a) and the committee supports adoption of uniform language. The Kansas drafting committee removed references to Article 8.

**UPA 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 BRING MAINTAIN PROCEEDING.**

Except as otherwise provided in [Article] 3 and Sections 608 through 611, a proceeding to adjudicate parentage may be brought 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, when authorized under K.S.A. 39-755 or 39-756, and amendments thereto, at any time during a child's minority; ~~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.

### **Kansas Comment**

This section is based on UPA (2002) § 602. The UPA (2002) comment on UPA (2002) § 602 states:

“This section grants standing to a broad range of individuals and agencies to bring a parentage proceeding. But, several limitations on standing to sue are contained within the Act. Article 3 details the procedures involved in a voluntary acknowledgment of parentage.”

Sections 608 through 611 establish the ground rules for proceedings involving children with a presumed, acknowledged, or adjudicated parent. At the request of Kansas Department for Children and Families Child Support Services, the Kansas drafting committee rewrote Section 602(5) to clarify that a child support agency may only bring an action during the child's minority and to include specific statutory references authorizing the Kansas Department for Children and Families to take actions based on the assignment of support rights.

### **UPA 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).

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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 [K.S.A. 23-36,201, and amendments thereto, \[cite to this state’s Section 201 of the Uniform Interstate Family Support Act\]](#) are satisfied.

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

**Kansas Comment**

K.S.A. 23-36,201 is the relevant statute in Kansas’ Uniform Interstate Family Support Act.

**UPA 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].



### **Kansas Comment**

This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2210(c) and the committee supports adoption of uniform language.

### **UPA Comment**

Source: UPA (2002) § 605; UPA (1973) § 8(c).

The venue provision follows the approach taken by UPA (1973) and UPA (2002).

### **NEW SECTION 2. PLEADINGS**

(a) In all pleadings under this act brought by anyone listed in Section 602, other than a child-support agency:

(1) The truth of the allegations of any petition under this article must be verified by the filing party in person or by the guardian of a minor or an incapacitated person.

(2) All pleadings shall be captioned, "In the matter of the parentage of \_\_\_\_\_." If the request for determination of parentage is filed in another action, the caption shall follow the caption of that matter.

(3) All parties shall be referenced by their names and not as petitioner, respondent, plaintiff or defendant.

(4) A petition for determination of parentage shall include:

(A) The filing party's name and county and state of residence;

(B) The name and county and state of residence of any person sought to be determined the child's legal parent;

(C) The name and county and state of residence of each acknowledged, adjudicated, alleged genetic, intended, or presumed parent of the child;

(D) The child's name and year of birth;

(E) The basis under which the filing party alleges jurisdiction to determine parentage;

(F) The basis under which the filing party alleges jurisdiction to make any other orders sought; and

(G) If the filing party is requesting the court make orders regarding legal custody, residency, and parenting time, the petition shall include the information required by K.S.A. 23-37,209, and amendments thereto.

(H) If the filing party is requesting the court to make orders regarding child support, the petition shall include the request.

(b) In all pleadings under this act brought by a child-support agency pursuant to Section 602:

(1) All pleadings shall be captioned, "In the matter of the parentage of \_\_\_\_\_." If the request for determination of parentage is filed in another action, the caption shall follow the caption of that matter.

(2) All parties shall be referenced by their names and not as petitioner, respondent, plaintiff or defendant.

(3) A petition for determination of parentage shall include:

(A) That the case is being brought pursuant to the assignment of rights under K.S.A. 39-755 or 39-756, and amendments thereto;

(B) That pursuant to K.S.A. 39-756, and amendments thereto, the attorney providing legal services on behalf of the child-support agency has an attorney-client relationship only with the child-support agency, and not with any person other than the child-support agency;

(D) The name and county and state of residence of any person sought to be determined the child's legal parent;

(E) The name and county and state of residence of each acknowledged, adjudicated, alleged genetic, intended, or presumed parent of the child;

(F) The child's name and year of birth;

(G) The basis under which the filing party alleges jurisdiction to determine parentage; and

(H) The basis under which the filing party alleges jurisdiction to make any other orders sought.

(4) The child-support agency is not required to verify the truth of the allegations in the petition under this article.

(5) The child-support agency shall file with the petition a verified allegation of parentage from the person making the allegation.

(c) Service of process shall be made in the manner provided in article 3 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

### **Kansas Comment**

The Kansas drafting committee added this section in order to clearly state the requirements for all pleadings, including how the case shall be captioned, that parties will be referred to by name rather than as petitioner, respondent, plaintiff or defendant, and what must be included in the petition to establish parentage. Due to the unique position of a child-support agency, the section sets out different requirements for pleadings filed by a child-support agency.

### **NEW SECTION 3. RESPONSIVE PLEADINGS**

(a) A responding party may file an answer.

(b) A responding party may file a verified cross-claim for legal custody, residency, and parenting time. A claim for legal custody, residency, and parenting time shall be verified by a responding party in person or by the guardian of a minor or an incapacitated person and shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. 23-37,209, and amendments thereto.

(c) In an action filed by the child-support agency:

(1) Notice of any cross-claim to a person residing outside this state must be given as provided in K.S.A. 23-37,108, and amendments thereto.

(2) Notice of any cross-claim to a person residing inside this state shall be given as provided in chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

### **Kansas Comment**

The Kansas drafting committee added this section to govern responsive pleadings. Subsection (b) is included to remind parties that if the responding party is filing a cross-claim for legal custody, residency, and parenting time, the responding party must provide the court with jurisdictional information as required by the Uniform Child-Custody Jurisdiction and Enforcement Act in K.S.A. 23-37,209, and amendments thereto.

Because the child support agency does not assist individuals in establishing legal custody, residency, and parenting time, subsection (c) clarifies how notice of any cross-claim must be served.

## **[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.

#### **Kansas Comment**

This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2212(c) and the committee supports adoption of uniform language.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.~~**

#### **Kansas Comment**

The Kansas drafting committee does not recommend the adoption of sections regarding de facto parentage.

#### **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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.



### **Kansas Comment**

No changes are recommended to the uniform language in this section.

### **UPA 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.

### **Kansas Comment**

No changes are recommended to the uniform language in this section.

## UPA 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**

#### **Kansas Comment**

This section sets out specific considerations for a court to use when resolving conflicting claims of parentage. It provides better and a more specific list of the factors to consider, rather than the language of current Kansas law from the UPA (1973), which only provides that “If two or more presumptions under this section arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic, including the best interests of the child, shall control.” K.S.A. 2020 Supp. 23-2208(c). Determining what is the “weightier” consideration has proven increasingly complex in the modern world. The Kansas Supreme Court attempted to resolve this problem in 1989 by setting out how trial courts are to balance those competing interests, directing that the child’s best interests are paramount. “The mere filing of a paternity action does not automatically imply that the action is in the child’s best interests. A court must reach this conclusion independently based on the facts in the record.” *In re Marriage of Ross*, 245 Kan. 591, 783 P.2d 331 (1989). Among other things, the *Ross* case determined that a trial court need not order, allow, or consider genetic test results if the child’s interests would not be advanced. Later cases refined this requirement, including the various circumstances a court should consider in determining the child’s best interests in these situations.

The Kansas drafting committee removed both Alternative A and B from this section because current Kansas law does not include a declaratory statement regarding the number of parents of a child. The committee agreed such a declaratory statement is unnecessary.

#### **UPA 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)~~(1)~~ In this section, “sexual assault” means an act of rape, aggravated indecent liberties or incest as defined in subsection (a)(2). ~~[cite to this state’s criminal rape statutes].~~

(2) As used in this section:

(A) “Aggravated indecent liberties” means an act meeting the elements of K.S.A. 2020 Supp. 21-5506(b)(1), and amendments thereto, or an act in any other jurisdiction that is in substantial conformity with the elements of K.S.A. 2020 Supp. 21-5506(b)(1), and amendments thereto, unless there is a finding that the act involved non-forcible conduct, both parties to the act were at least 14 years of age and neither party was more than four years older than the other party.

(B) “Incest” means an act meeting the elements of K.S.A. 2020 Supp. 21-5604, and amendments thereto, or an act committed in any other jurisdiction that is in substantial conformity with the elements of K.S.A. 2020 Supp. 21-5604, and amendments thereto.

(C) “Rape” means an act meeting the elements of K.S.A. 2020 Supp. 21-5503, and amendments thereto, or an act committed in any other jurisdiction that is in substantial conformity with the elements of K.S.A. 2020 Supp. 21-5503, and amendments thereto.

(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.~~

~~(cd)~~(1) Unless Section 309 or 607 applies, Except as provided in subsection (c)(2), a woman must file a verified 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].~~

(2) If Section 309 or 607 applies, a woman may file a verified pleading making an allegation under subsection (b) later than two years after the birth of the child.

(fe) 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.

(gf) Subject to subsections (a) through (cd), if the court determines that an allegation has been proved under subsection (de), the court shall:

(1) adjudicate that the man described in subsection (b) is not a parent of the child;

(2) require the state registrar of vital statistics ~~[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.

### **Kansas Comment**

Section 614(a) defines “sexual assault” using specific subsection references to the definitions of rape, aggravated indecent liberties, and incest in the Kansas criminal code that include intercourse. The definitions are intended to cover not just acts committed in Kansas, but also acts committed outside of Kansas but that fulfill the elements of the act as set out in the Kansas statute. Section 614(a)(2)(A) excludes voluntary sexual conduct by age-mates over the age of 14.

The Kansas drafting committee removed Section 614(c)(1) because Section 623 governs the binding effect of an adjudication of parentage. The committee removed Section 614(c)(2) because Section 614 can only be used until the child is two years old and the standard of having a “bonded and dependent relationship with the child which is parental in nature” is not used anywhere else in the UPA (2017).

The Kansas drafting committee reorganized Section 614(d) to provide clarity. The agency designated to maintain birth records is the Kansas state registrar of vital statistics.

### **UPA 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].~~

~~(b)(1) In a proceeding under this [article], the court may, without requiring bond, issue orders, after a hearing or ex parte, which:~~

~~(A) Restrain the parties from molesting or interfering with the privacy or rights of each other;~~

~~(B) confirm the existing residency of the child subject to further order of the court, if the court has jurisdiction under K.S.A. 23-37,101 et seq., and amendments thereto;~~

~~(C) order genetic tests for determination of parentage as provided in Article 5; or~~



(D) the court deems appropriate under the provisions of article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto.

(2) If such ex parte orders are issued, the court shall hear a motion to vacate or modify the order within 14 days of the date on which a party requests a hearing whether to vacate or modify the order.

(c)(1) Temporary orders authorized by this section that relate to genetic testing may only be issued ex parte, if the order does not require an adverse party to make advance payment toward the cost of the test.

(2) If such ex parte orders are issued, the court shall hear a motion to vacate or modify the order within 14 days of the date on which a party requests a hearing whether to vacate or modify the order.

(d) In a proceeding under this [article] and brought by a child-support agency, after parentage has been established, the court may issue a temporary order for child support pending final disposition.

#### **Kansas Comment**

The Kansas drafting committee drafted Section 615(b) and (c) based on K.S.A. 2020 Supp. 23-2224. The Committee added Section 615(d) to clarify that in a proceeding brought by a child-support agency, the court may issue a temporary child support order even if the parents are still in the process of resolving any legal custody, residency, and parenting time issues.

#### **UPA 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, residency, or parenting time 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) may not be combined with a proceeding to adjudicate parentage brought under the uniform family support act, K.S.A. 23-36,101 et seq., and amendments thereto. ~~[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).*

### **Kansas Comment**

The Kansas drafting committee inserted Kansas specific terminology and the Kansas reference for the Uniform Family Support Act. This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2210(a) and the committee supports adoption of uniform language.

### **UPA 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.~~**

### **Kansas Comment**

The Kansas drafting committee does not recommend the adoption of this section because adoption would be in conflict with current Kansas law.

#### **NEW SECTION 4. PRECEDENCE OF CERTAIN OTHER ORDERS**

(a) Any order issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall take precedence over any order under article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

(b) If a court of competent jurisdiction within this state has entered an order pursuant to the revised Kansas code for care of children regarding custody of a child or children who are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to K.S.A. 38-2264(k), and amendments thereto, that the orders in that case shall become the custody orders in the parentage case, such court shall file a certified copy of the orders with the civil case number in the caption and then close the case under the revised Kansas code for care of children. Such orders shall be binding on the parties, unless modified based on a material change in circumstances, even if such courts have different venues.

#### **Kansas Comment**

The Kansas drafting committee added this section in order to maintain the procedures contained in K.S.A. 2020 Supp. 23-2210(d) and (e).

#### **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) If the court finds that the interests of the child are not adequately represented, The court shall appoint a [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.~~

#### **Kansas Comment**

The Kansas drafting committee made amendments to this section to clarify the provision. In Kansas cases, the court uses attorney guardian ad litem to represent the best interest of a child.

### **UPA 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.

### **Kansas Comment**

This section is consistent with current Kansas law in K.S.A. 2020 Supp. 23-2214(b) and the committee supports adoption of uniform language.

### **UPA 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.**~~

### **Kansas Comment**

The Kansas drafting committee determined this provision to be unnecessary because these topics are adequately addressed in chapter 60 of the Kansas Statutes Annotated and through Kansas Supreme Court rules.

### ~~**SECTION 621. DISMISSAL FOR WANT OF PROSECUTION.**~~

### **Kansas Comment**

The Kansas drafting committee determined this provision to be unnecessary because the dismissal of proceedings is adequately addressed in chapter 60 of the Kansas Statutes Annotated.

**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) Upon adjudging that a party is the parent of a minor child, the court may make orders regarding:

(1) custody, residency and parenting time under article 32 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, unless the action is brought by a child-support agency;

(2) support and education of the child under article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(3) the payment of all or a portion of the necessary medical expenses incident to the child's birth, including prenatal or postnatal health care for the woman who gave birth to the child and the child;

(4)(A) If entering an original order for support of a child under this section, the court may award an additional judgment to the parent or any other party who made expenditures for support and education of the child from the date of birth to the date the order is entered. If the determination of parentage is based upon a presumption arising under [UPA Section 204], and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(B) The court may consider any affirmative defenses pled and proved in making an award under this subsection.

(C) The amount of any award made under this subsection shall be determined by application of the Kansas child support guidelines. For any period occurring five years or less before or after commencement of the action, there is a rebuttable presumption that such child support guidelines amount reflects the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.

~~(c)~~ Except as otherwise provided in subsection ~~(d)~~, 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.

(~~de~~) 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].

~~(ed) Evidence of expenses incurred for genetic tests and prenatal or postnatal health care for the woman who gave birth to the child and the child may be admitted as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of amounts incurred for such goods and services. 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.~~

(~~fe~~)(1) 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 registrar of vital statistics ~~[state agency maintaining birth records]~~ to issue an amended birth certificate.

(2) If the court finds that the birth certificate of the child fails to name the parents of the child or that the name of either parent or the child is incorrect, the court shall order the state registrar of vital statistics to issue an amended birth certificate.

#### **Kansas Comment**

The Kansas drafting committee drafted Section 622(b) based on K.S.A. 2020 Supp. 23-2215. Section 622(e) is based on K.S.A. 2020 Supp. 23-2213(e). Section 622(f)(1) addresses amending a birth certificate if the child's name is changed, but as drafted, the section failed to authorize the court to order an amended birth certificate if the birth certificate fails to include the parents of the child or if the name of a parent or the child is incorrect. Therefore, the Kansas drafting committee added Section 622(f)(2).

#### **UPA 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 K.S.A. 23-36,201, and amendments thereto ~~[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 that has not been rescinded 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 or~~ 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 K.S.A. 23-36,201, and amendments thereto ~~[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.

### **Kansas Comment**

The Kansas drafting committee inserted the relevant Kansas terms and references to Kansas statutes. The committee removed references to Article 8.

### **UPA 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**

#### **Kansas Comment**

Article 7 provides updated guidance and procedures due to the advancements in assisted reproduction.

#### **UPA 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 ~~for assisted reproduction under a surrogacy agreement under [Article] 8~~.

**Kansas Comment**

The Kansas drafting committee removed references to Article 8.

**SECTION 702. PARENTAL STATUS OF DONOR.**

Unless a written agreement provides otherwise, A donor is not a parent of a child conceived by assisted reproduction.

**Kansas Comment**

The Kansas drafting committee amended this section to allow for situations when a donor enters into a written agreement specifying that the donor is a parent of the child.

**UPA 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.

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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.

### **Kansas Comment**

No changes are recommended to the uniform language in this section.

### **UPA 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.

### **Kansas Comment**

The Kansas drafting committee removed the terms that are not used in Kansas.

### **UPA 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 of 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].

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**UPA 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.

#### **Kansas Comment**

No changes are recommended to the uniform language in this section.

#### **UPA 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**

#### **Kansas Comment**

The Kansas drafting committee does not recommend adoption of Article 8 regarding surrogacy agreement.

**[ARTICLE] 9**  
**INFORMATION ABOUT DONOR**  
**Kansas Comment**

Article 9 provides guidance and procedures due to the advancements in assisted reproduction and the Kansas drafting committee supports adoption of uniform language.

**UPA 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.

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**SECTION 902. APPLICABILITY.**

This [article] applies only to gametes collected on or after [the effective date of this [act]].

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**SECTION 903. COLLECTION OF INFORMATION.**

(a) 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.

(b) A gamete bank or fertility clinic licensed in this state which receives gametes of a donor collected by another gamete bank or fertility clinic shall collect the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

(c) A gamete bank or fertility clinic licensed in this state shall disclose the information collected under subsections (a) and (b) as provided under Section 905.

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**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).

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**UPA 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 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 which collected the gametes used in the assisted reproduction 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.

(c) 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 received the gametes used in the assisted reproduction from another gamete bank or fertility clinic shall disclose the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

**Kansas Comment**

No changes are recommended to the uniform language in this section.

**SECTION 906. RECORDKEEPING.**

(a) A gamete bank or fertility clinic licensed in this state which collects gametes for use in assisted reproduction shall maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall 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].

(b) A gamete bank or fertility clinic licensed in this state that receives gametes from another gamete bank or fertility clinic shall maintain the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

## Kansas Comment

No changes are recommended to the uniform language in this section.

### [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 ....