Minutes for September 2, 2020 meeting of UPC 2019 Revisions Committee

Attending:
Darla Daniel
Bette Heller
Carolyn Wiley
Gina Trevey
Lori Kalata
Courtney Smith Hambro
Jacob Tonda

Darla began by welcoming new members and reviewing what we have done to bring everyone up to date.

Darla had prepared two Memos for the meeting.

The first was what she called, Easy Changes – which are the non-controversial changes – mostly making the language gender neutral.

The second was what she called, Hard Changes – those that are more controversial because they refer to the Uniform Parentage Act of 2017 which Colorado has NOT adopted. There is quite a bit of resistance to this Act in the Family Law Section.

For the benefit of new members, Darla reviewed the Santa Fe Style Memo that we use.

Also, Darla informed us that the 2019 Revisions to the Uniform Probate Code have been further revised as of August 13, 2020. So we are going to have to review what work we already have done in light of this new 2020 Revision to see if any of the changes effect what we have don't.

> To that end, it was decided that each group that prepared a Santa Fe style Memo on a particular section or sections should review the 2020 Revisions and revise their Memo accordingly, if necessary.
>
> Also, Darla asked everyone on the committee to read through the Memo on Hard Changes to determine if there are any cross-references now to the Parentage Act which will require adjustment OR if the changes in there are an improvement to our CPC or not.
>
> > For instance, our UPC does not address the fact that a child can have more than 2 parents and more than 2 sets of grandparents. But now days with adoptions and genetic materials, it is possible to have more parents and grandparents. So some provisions regarding this situation may be beneficial to add to our CPC.

Darla asked if we felt that it would be helpful to have Kim Willoughby talk to us about the issues with the Uniform Parentage Act and with some of the new provisions suggested in the UPC Revisions. We all said yes. It has been a while since we met and worked on this, and with all the issues we have had to deal with regarding COVID, it seems like it has been years since we last discussed all this.

We also felt that it would be helpful for Kim to make a similar presentation to Statutory Revisions Committee (SRC) so that they are refreshed on the pertinent issues. And then to ask SRC for guidance on what they want us to do. This will also be helpful to SRC if the Uniform Commissioners decide to push this forward again – they already tried to do it last Spring 2020 and the Bar Association's Legislative person had to scramble to fight it.

We also discussed whether or not we should move forward with the Easy Changes, approve what we like, then get SRC to approve them, so that we have something to give to the Uniform Commissioners if they decide to try to move forward with this again. It was decided that we should do this, so we went through the items of Easy Changes that had not yet been approved, and determined as follows:

1. Under C.R.S. §15-11-302(1)(a) – Darla asked if we had previously decided to change "the other parent" to "ANOTHER parent". The answer was yes.
2. Under C.R.S. §15-11-109(1) – we approved the suggested change from "his or her estate" to "THE estate".
3. Under C.R.S. §15-12-703(1) –
    a. We decided to keep the reference to part 8;
    b. We approved the changing "A personal representative "has a duty" to "IS UNDER a duty" because we felt that there was no difference in meaning
    c. We approved the other suggested changes as they are for gender neutrality.
4. Under C.R.S. §15-12-703(2) –
    a. We decided NOT to change the word "shall" in the first sentence, to "MAY". We feel that "shall" is a more definite term than "may", and there is a difference between those words.
    b. We like the addition of "WHOSE CLAIMS HAVE BEEN ALLOWED".
    c. We approved the other suggested changes as they are for gender neutrality or updated language and have no substantive change.
5. Under C.R.S. §15-12-703(3.5) – regarding genetic material:
    a. We decided that this is NOT an EASY CHANGE – that is should be moved to the HARD CHANGES Memo, and that Darla should consult with Kim Willoughby about this situation.
    b. Bette and Carolyn did like the idea of a 6 month limit for knowledge of intent to use genetic material.
    c. Under C.R.S. §15-12-703(4) – We approved the suggested changes as they are for gender neutrality.

Finally, Darla asked if the group would be agreeable to moving the meeting to the morning of First Wednesday – since we are meeting virtually, there is no longer an issue of finding a meeting room at the Bar Association offices, and a couple of the morning committees have finished their work and are no longer meeting – plus, meeting after SRC means that we never know what time our meeting will start, and we are all tired by then. The group was amenable to trying to do this, but several members were concerned that they had other meetings in the morning on First Wednesday. It was suggested that we might want to look at another day, since we don't have to carve out drive time.

At this point, we agreed that Darla should find out what dates Kim would have time to make a presentation to us before the next First Wednesday, and then send out an email to see if we could get a consensus on a date and time for that meeting.

Minutes for 9/24/20 UPC 2019 revisions subcommittee meeting

In attendance: Darla Daniel, Bette Heller, Gina Trevey, John Husson, Gene Zuspann, Kim Willoughby, Lindsey Andrew, Georgine Kryda.

Kim Willoughby gave us a refresher on the UPC 2019 Revisions, specifically those that involve concepts in the UPA (Uniform Parentage Act) 2017, which Colorado has NOT adopted.

Note: The UPC Revisions were updated August 13, 2020, but are still referred to as "Uniform Probate Code Amendments (2019)" on the NCCUSL site, available here:

https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=23db9ca0-3f16-99cd-da87-9ee963cab400&forceDialog=0 (Word version)

Kim's presentation addressed these points:

1. Many of the UPC 2019 revisions link to definitions and sections within the UPA 2017, which Colorado does not have. The Family Law Section, along with other stakeholders, are opposed to portions of the UPA 2017.

- UPA is probably not coming to Colorado soon; Family Law hasn't gone through each provision to decide which ones they like
- Colorado's current parentage act is very outdated. We probably don't want to link our Probate Code to it.

2. Colorado's existing Probate Code is much more forward thinking than the UPA 2017, and we don't want to get rid of this. In general, we don't want to make any changes to our CPC that link to UPA 2017.

a. Example: UPA 2017 defines "defacto parent". The Colo. Probate Code already has the "functions as a parent" concept, which covers those who function as psychological parents, and is more forward-thinking, in Kim's opinion. We do not want to change this. We do not want to adopt anything that gets rid of "functions as a parent". Kim recommends that we not define or otherwise adopt any reference to "defacto parent" in our probate code.

b. We want to keep anything that refers to surrogacy as is in our existing Colo. Probate Code. This needs to stay in the CPC. We do not want to adopt surrogacy language that refers to UPA 2017, such as definitions which cross-reference to UPA 2017.

c. We don't want to adopt any of the UPC 2019 revisions that link to UPA 2017 or "other state law" to determine the definition of a parent-child relationship.

- Definitions of child/parent are better in Colorado case law than they are in UPA 2017.

- CPC provisions on reproductive assistance in CRS 15-11-119 & 120 are more forward thinking than those contained in UPA 2017.
- The issue of how many parents or grandparents a child can have is not settled in Colorado, either by statute or case law. Kim recommends that the CPC stay neutral on this issue.
- Kim felt that the changes found in UPC 2019 revisions to 2-107 and 2-113 would be OK to adopt because they are neutral on issue of how many parents a child can have.
- Whether or not we would want to allow multiple parents or grandparents is a policy issue that would need to be brought to the Statutory Revisions Committee.

Kim did not give recommendations on the sections of UPC 2019 Revisions that do not involve UPA 2017 issues, such as those regarding intestate succession (2-103).

3. Moving forward: Darla suggested that we will need to look at each section under the "Hard Changes Memo" separately to determine whether it is a revision that links to UPA 2017 or depends upon concepts in the UPA 2017.

UNIFORM PROBATE CODE AMENDM

drafted by the

NATIONAL CONFERENCE OF COMMISSIO
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENAC
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-E
ANCHORAGE, ALASKA
JULY 12-18, 2019

UNIFORM PROBATE CODE AMENDMENTS (2019)

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND, PROBATE JURISDICTION OF COURT

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PART 2. DEFINITIONS

SECTION 1-201. GENERAL DEFINITIONS.

* * *

(5) "Child" ~~includes an individual entitled to take as a child under this [code] by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant~~ means an individual of any age whose parentage is established under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law].

* * *

(32) "Parent" ~~includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this [code] by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent~~ means an individual who has established a parent-child relationship under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law].

* * *

(51) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under ~~Section 2-104 or 2-702~~ this [code]. The term includes its derivatives, such as "survives", "survived", "survivor", or "surviving".

* * *

Legislative Note to Paragraphs (5) and (32): *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The second bracketed option is for states that have enacted a parentage act other than the Uniform Parentage Act (2017). The third bracketed option is for states that do not have a statute governing the establishment of parent-child relationships. The reference to "applicable state law" includes statutory, regulatory, and case law.*

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

Legislative Note: *References to spouse or marriage appear throughout Article II. States that recognize civil unions, domestic partnerships, or similar relationships between unmarried individuals should add appropriate language wherever such references or similar references appear.*

States that do not recognize such relationships between unmarried individuals~~, or marriages between same-sex partners,~~ are urged to consider whether to recognize the spousal-type rights that partners acquired under the law of another jurisdiction in which the relationship was formed but who die domiciled in this state. Doing so would not be the equivalent of recognizing such relationships in this state but simply allowing those who move to and die in this state to retain the rights they previously acquired elsewhere. See Christine A. Hammerle, Note, Free Will to Will? A Case for the Recognition of Intestacy Rights for Survivors to a Same-Sex Marriage or Civil Union, 104 Mich. L. Rev. 1763 (2006).

A state's recognition of spousal-type rights has relevance not only for the individuals but also for their children. See Section 2-119(b).

Throughout this article, the bracketed phrase "applicable state law" includes a state's statutory, regulatory, and case law.

PART 1. INTESTATE SUCCESSION

Subpart 1. General Rules

SECTION 2-101. INTESTATE ESTATE.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this [code], except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a

member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed ~~his [or her]~~ the intestate share.

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SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.

~~(a) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:~~

~~(1) to the decedent's descendants by representation;~~

~~(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;~~

~~(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;~~

~~(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:~~

~~(A) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and~~

~~(B) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by~~

~~representation;~~

~~(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph (4).~~

~~(b) If there is no taker under subsection (a), but the decedent has:~~

~~(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or~~

~~(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.~~

(a) **[Definitions.]** In this section:

(1) "Deceased parent", "deceased grandparent", or "deceased spouse" means a parent, grandparent, or spouse who either predeceased the decedent or is deemed under this [article] to have predeceased the decedent.

(2) "Surviving spouse", "surviving descendant", "surviving parent", or "surviving grandparent" means a spouse, descendant, parent, or grandparent who neither predeceased the decedent nor is deemed under this [article] to have predeceased the decedent.

(b) **[Heirs Other Than Surviving Spouse.]** Any part of the intestate estate not passing under Section 2-102 to the decedent's surviving spouse passes to the decedent's descendants or parents as provided in subsections (c) and (d). If there is no surviving spouse, the entire intestate estate passes to the decedent's descendants, parents, or other heirs as provided in subsections (c) through (j).

(c) **[Surviving Descendant.]** If a decedent is survived by one or more descendants, any part of the intestate estate not passing to the surviving spouse passes by representation to the decedent's surviving descendants.

(d) **[Surviving Parent.]** If a decedent is not survived by a descendant but is survived by one or more parents, any part of the intestate estate not passing to the surviving spouse is distributed as follows:

(1) The intestate estate or part is divided into as many equal shares as there are:

(A) surviving parents; and

(B) deceased parents with one or more surviving descendants, if any, as determined under subsection (e).

(2) One share passes to each surviving parent.

(3) The balance of the intestate estate or part, if any, passes by representation to the surviving descendants of the decedent's deceased parents, as determined under subsection (e).

(e) **[When Parent Survives: Computation of Shares of Surviving Descendants of Deceased Parent.]** The following rules apply under subsection (d) to determine whether a deceased parent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased parents also are descendants of one or more surviving parents and none of those surviving parents has any other surviving descendant, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased parents have the same surviving descendants and none of those deceased parents has any other surviving descendant, those deceased parents are deemed to be one deceased parent with surviving descendants.

(f) **[Surviving Descendant of Deceased Parent.]** If a decedent is not survived by a descendant or parent but is survived by one or more descendants of a parent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased parents.

(g) **[Surviving Grandparent.]** If a decedent is not survived by a descendant, parent, or descendant of a parent but is survived by one or more grandparents, the intestate estate is distributed as follows:

(1) The intestate estate is divided into as many equal shares as there are:

(A) surviving grandparents; and

(B) deceased grandparents with one or more surviving descendants, if any, as determined under subsection (h).

(2) One share passes to each surviving grandparent.

(3) The balance of the intestate estate, if any, passes by representation to the surviving descendants of the decedent's deceased grandparents, as determined under subsection (h).

(h) **[When Grandparent Survives: Computation of Shares of Surviving Descendants of Deceased Grandparent.]** The following rules apply under subsection (g) to determine whether a deceased grandparent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased grandparents also are descendants of one or more surviving grandparents and none of those surviving grandparents has any other surviving descendant, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased grandparents have the same surviving descendants and none of those deceased grandparents has any other surviving descendant, those deceased grandparents are deemed to be one deceased grandparent with surviving descendants.

(i) **[Surviving Descendant of Deceased Grandparent.]** If a decedent is not survived by a descendant, parent, descendant of a parent, or grandparent but is survived by one or more descendants of a grandparent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased grandparents.

(j) **[Surviving Descendant of Deceased Spouse.]** If a decedent is not survived by a descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent but is survived by one or more descendants of one or more deceased spouses, the intestate estate passes by representation to the surviving descendants of the deceased spouse or spouses.

SECTION 2-104. REQUIREMENT OF SURVIVAL BY 120 HOURS; ~~INDIVIDUAL IN GESTATION~~ GESTATIONAL PERIOD; PREGNANCY AFTER DECEDENT'S DEATH.

(a) **[Definitions.]** In this section:

(1) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(2) "Gestational period" means the time between the start of a pregnancy and birth.

~~(a)~~(b) **[Requirement of Survival by 120 Hours; ~~Individual in Gestation~~ Gestational Period; Pregnancy After Decedent's Death.]** For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection ~~(b)~~(c), the following rules apply:

(1) An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent

by 120 hours, it is deemed that the individual failed to survive for the required period.

(2) ~~An individual in gestation at the decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth.~~ If the decedent dies during a gestational period that results in the birth of an individual who lives at least 120 hours after birth, that individual is deemed to be living at the decedent's death. If it is not established by clear and convincing evidence that the individual lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

(3) If the decedent dies before the start of a pregnancy by assisted reproduction resulting in the birth of an individual who lives at least 120 hours after birth, that individual is deemed to be living at the decedent's death if [the decedent's personal representative, not later than [6] months after the decedent's death, received notice or had actual knowledge of an intent to use genetic material in the assisted reproduction and]:

(A) the embryo was in utero not later than [36] months after the decedent's death; or

(B) the individual was born not later than [45] months after the decedent's death.

~~(b)~~(c) **[Section Inapplicable if Estate Would Pass to State.]** This section does not apply if its application would cause the estate to pass to the state under Section 2-105.

Legislative Note: *A state enacting this section should consider enacting a provision akin to Section 3-703(d). Such a provision might be expanded to require a personal representative, when notifying potential devisees or heirs of the personal representative's appointment, to inquire whether a devisee or heir has knowledge of an intent to use genetic material in assisted reproduction. A state also should consider requiring the personal representative to indicate that a devisee or heir who has such information must give written notice to the personal representative within a designated time.*

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SECTION 2-106. REPRESENTATION.

(a) **[Definitions.]** In this section:

(1) "Deceased descendant", "deceased parent", ~~or~~ "deceased grandparent", or "deceased spouse" means a descendant, parent, ~~or~~ grandparent, or spouse who either predeceased the decedent or is deemed under this [article] to have predeceased the decedent ~~under Section 2-104~~.

(2) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed under this [article] to have predeceased the decedent ~~under Section 2-104~~.

(b) **[Decedent's Descendants.]** If, under Section 2-103~~(a)(1)~~(c), all or part of a decedent's intestate estate ~~or a part thereof~~ passes ~~"~~by representation~~"~~ to the decedent's surviving descendants, the estate or part ~~thereof~~ is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

~~(c) **[Descendants of Parents or Grandparents.]** If, under Section 2-103(a)(3) or (4), a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the deceased~~

~~parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.~~

(c) **[Descendants of Parent When Parent Survives.]** If a decedent is survived by one or more parents and, under Section 2-103(d) and (e), the balance of the decedent's intestate estate or part passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the balance passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(d) **[Descendants of Parent When No Parent Survives.]** If a decedent is not survived by a parent and, under Section 2-103(f), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(e) **[Descendants of Grandparent When Grandparent Survives.]** If a decedent is survived by one or more grandparents and, under Section 2-103(g) and (h), the balance of the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the balance passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(f) **[Descendants of Grandparent When No Grandparent Survives.]** If a decedent is not survived by a grandparent and, under Section 2-103(i), the decedent's intestate estate passes

by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(g) **[Descendants of Deceased Spouse.]** If a decedent is survived by descendants of one or more deceased spouses and, under Section 2-103(j), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased spouses, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

SECTION 2-107. ~~KINDRED OF HALF BLOOD~~ INHERITANCE WITHOUT REGARD TO NUMBER OF COMMON ANCESTORS IN SAME GENERATION. ~~Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.~~ An heir inherits without regard to how many common ancestors in the same generation the heir shares with the decedent.

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SECTION 2-109. ADVANCEMENTS.

(a) If an individual dies intestate as to all or a portion of ~~his [or her]~~ the estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

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SECTION 2-113. INDIVIDUAL RELATED TO DECEDENT THROUGH ~~TWO LINES~~ MORE THAN ONE LINE. An individual who is related to ~~the~~ a decedent through ~~two lines~~ more than one line of relationship is entitled to only a single share based on the relationship that would entitle the individual to the ~~larger~~ largest share. The individual and the individual's descendants are deemed to have predeceased the decedent with respect to a line of relationship resulting in a smaller share.

SECTION 2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) 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 law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is ~~treated as if the parent~~ deemed to have predeceased the child.

(c) Except as otherwise provided in Section 2-119(b), the termination of a parent's parental rights to a child has no effect on the right of the child or a descendant of the child to inherit from or through the parent.

Subpart 2. Parent-Child Relationship

SECTION 2-115. DEFINITIONS. In this [subpart]:

(1) "Adoptee" means an individual who is adopted.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(3) "De facto parent" means an individual who is adjudicated on the basis of de facto parentage under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law] to be a parent of a child.

~~(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.~~

~~(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.~~

~~(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under [insert applicable state law], the term means only the man for whom that relationship is established.~~

~~(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.~~

~~(7) "Genetic parent" means a child's genetic father or genetic mother.~~

~~(8) "Incapacity" means the inability of an individual to function as a parent of a child~~

~~because of the individual's physical or mental condition.~~

~~(9)~~(4) "Relative" means a grandparent or a descendant of a grandparent.

Legislative Note to Paragraph (3): *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing de facto parentage. The third bracketed option is for states that do not have a statute governing de facto parentage.*

SECTION 2-116. ~~EFFECT OF PARENT-CHILD RELATIONSHIP~~ SCOPE.

~~Except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this [subpart], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.~~ The rules in this [subpart] concerning a parent-child relationship apply for the purpose of intestate succession.

SECTION 2-117. NO DISTINCTION BASED ON MARITAL STATUS OF PARENT. ~~Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.~~ A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

SECTION 2-118. ~~ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS~~ PARENT-CHILD RELATIONSHIP ESTABLISHED THROUGH ADOPTION OR DE FACTO PARENTAGE.

(a) **[Parent-Child Relationship ~~Between Adoptee and Adoptive Parent or Parents~~ Established Through Adoption.]** A parent-child relationship exists between an adoptee and the adoptee's adoptive parent.

~~(b) **[Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent.]** For purposes of subsection (a):~~

~~(1) an individual who is in the process of being adopted by a married couple when~~

~~one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and~~

~~(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.~~

~~(c) **[Child of Assisted Reproduction or Gestational Child In Process of Being Adopted.]** If, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2).~~

(b) **[Parent-Child Relationship Established Through De Facto Parentage.]** A parent-child relationship exists between an individual and the individual's de facto parent.

SECTION 2-119. ~~ADOPTEE AND ADOPTEE'S GENETIC PARENTS~~ EFFECT OF ADOPTION; EFFECT OF DE FACTO PARENTAGE.

~~(a) **[Parent-Child Relationship Between Adoptee and Genetic Parents.]** Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.~~

~~(b) **[Stepchild Adopted by Stepparent.]** A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:~~

~~(1) the genetic parent whose spouse adopted the individual; and~~

~~(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.~~

~~(c) **[Individual Adopted by Relative of a Genetic Parent.]** A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.~~

~~(d) **[Individual Adopted After Death of Both Genetic Parents.]** A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.~~

~~(e) **[Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted.]** If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child's parent or parents under Section 2-120 or 2-121 are treated as the child's genetic parent or parents for the purpose of this section.~~

(a) **[Definitions.]** In this section:

(1) "Parent before the adjudication" means an individual who is a parent of a child:

(A) immediately before another individual is adjudicated a de facto parent of the child; or

(B) immediately before dying, or being deemed under this [article] to have died, and before another individual is adjudicated a de facto parent of the child.

(2) "Parent before the adoption" means an individual who is a parent of a child:

(A) immediately before another individual adopts the child; or

(B) immediately before dying, or being deemed under this [article] to have died, and before another individual adopts the child.

(b) **[Effect of Adoption on Parent Before the Adoption.]** A parent-child relationship does not exist between an adoptee and an individual who was the adoptee's parent before the adoption unless:

(1) otherwise provided by [court order or] law other than this [code]; or

(2) the adoption:

(A) was by the spouse of a parent before the adoption;

(B) was by a relative or the spouse or surviving spouse of a relative of a parent before the adoption; or

(C) occurred after the death of a parent before the adoption.

(c) **[Effect of De Facto Parentage on Parent Before the Adjudication.]** Except as otherwise provided by a court order [under Uniform Parentage Act (2017) Section 613], an adjudication that an individual is a child of a de facto parent does not affect a parent-child relationship between the child and an individual who was the child's parent before the adjudication.

Legislative Note: *The bracketed language in subsection (c) is for states that have enacted the Uniform Parentage Act (2017).*

SECTION 2-120. ~~CHILD~~ INDIVIDUAL CONCEIVED BY ASSISTED REPRODUCTION BUT NOT ~~CHILD~~ BORN TO GESTATIONAL ~~CARRIER~~ OR GENETIC SURROGATE. Except as otherwise provided under Section 2-121, parentage of an individual conceived by assisted reproduction is determined under [cite to Uniform Parentage Act (2017) Article 7 other than Section 708(b)(2)][cite to equivalent provisions of state's

parentage act][applicable state law].

~~(a) **[Definitions.]** In this section:~~

~~(1) "Birth mother" means a woman, other than a gestational carrier under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.~~

~~(2) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.~~

~~(3) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:~~

~~(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;~~

~~(B) the birth mother of a child of assisted reproduction; or~~

~~(C) an individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.~~

~~(b) **[Third-Party Donor.]** A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.~~

~~(c) **[Parent-Child Relationship with Birth Mother.]** A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.~~

~~(d) **[Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime by His Wife for Assisted Reproduction.]** Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.~~

(e) **[Birth Certificate: Presumptive Effect.]** A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

(f) **[Parent-Child Relationship with Another.]** Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(2) in the absence of a signed record under paragraph (1):

(A) functioned as a parent of the child no later than two years after the child's birth;

(B) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(C) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

(g) **[Record Signed More than Two Years after the Birth of the Child: Effect.]** For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth

mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached [18] years of age.

(h) **[Presumption: Birth Mother is Married or Surviving Spouse.]** For the purpose of subsection (f)(2), the following rules apply:

(1) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B).

(2) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).

(i) **[Divorce Before Placement of Eggs, Sperm, or Embryos.]** If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

(j) **[Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.]** If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (f).

(k) **[When Posthumously Conceived Child Treated as in Gestation.]** If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:

~~(1) in utero not later than 36 months after the individual's death; or~~

~~(2) born not later than 45 months after the individual's death.~~

~~***Legislative Note:*** *States are encouraged to enact a provision requiring genetic depositories to provide a consent form that would satisfy subsection (f)(1). See Cal. Health & Safety Code § 1644.7 and .8 for a possible model for such a consent form.*~~

Legislative Note: *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The reason for excluding Section 708(b)(2) is given in the Comment, especially Examples 1 and 2. The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing parent-child relationships created by assisted reproduction. The third bracketed option is for states that do not have a statute governing parent-child relationships created by assisted reproduction. The reference to "applicable state law" includes statutory, regulatory, and case law.*

SECTION 2-121. ~~CHILD~~ INDIVIDUAL BORN TO GESTATIONAL ~~CARRIER~~ OR GENETIC SURROGATE. Parentage of an individual conceived by assisted reproduction and born to a gestational or genetic surrogate is determined under [cite to Uniform Parentage Act (2017) Article 8 other than Sections 810(b)(2) and 817(b)(2)][cite to equivalent provisions of state's parentage act][applicable state law].

~~(a) **[Definitions.]** In this section:~~

~~(1) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).~~

~~(2) "Gestational carrier" means a woman who is not an intended parent and gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.~~

~~(3) "Gestational child" means a child born to a gestational carrier under a gestational agreement.~~

~~(4) "Intended parent" means an individual who entered into a gestational~~

~~agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.~~

~~(b) **[Court Order Adjudicating Parentage: Effect.]** A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.~~

~~(c) **[Gestational Carrier.]** A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:~~

~~(1) designated as a parent of the child in a court order described in subsection (b);~~ ~~or~~

~~(2) the child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.~~

~~(d) **[Parent-Child Relationship With Intended Parent or Parents.]** In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:~~

~~(1) functioned as a parent of the child no later than two years after the child's birth; or~~

~~(2) died while the gestational carrier was pregnant if:~~

~~(A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth;~~

~~(B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or~~

(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

(c) **[Gestational Agreement After Death or Incapacity.]** In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:

(1) a record signed by the individual which considering all the facts and circumstances evidences the individual's intent; or

(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.

(f) **[Presumption: Gestational Agreement After Spouse's Death or Incapacity.]** Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:

(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;

(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and

(3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.

~~(g) **[Subsection (f) Presumption Inapplicable.]** The presumption under subsection (f) does not apply if there is:~~

~~(1) a court order under subsection (b); or~~

~~(2) a signed record that satisfies subsection (e)(1).~~

~~(h) **[When Posthumously Conceived Gestational Child Treated as in Gestation.]** If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:~~

~~(1) in utero not later than 36 months after the individual's death; or~~

~~(2) born not later than 45 months after the individual's death.~~

~~(i) **[No Effect on Other Law.]** This section does not affect law of this state other than this [code] regarding the enforceability or validity of a gestational agreement.~~

Legislative Note: *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The reason for excluding Sections 810(b)(2) and 817(b)(2) is given in the Comment, especially in Examples 1 and 2. The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing parent-child relationships created by assisted reproduction. The third bracketed option is for states that do not have a statute governing parent-child relationships created by assisted reproduction. The reference to "applicable state law" includes statutory, regulatory, and case law.*

* * *

PART 2. ELECTIVE SHARE OF SURVIVING SPOUSE

* * *

SECTION 2-201. DEFINITIONS. In this [part]:

* * *

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent~~, whether or not he [or she]~~

~~then had the capacity to exercise the power,~~ held a power to create a present or future interest in ~~himself [or herself]~~ the decedent, ~~his [or her]~~ the decedent's creditors, ~~his [or her]~~ the decedent's estate, or creditors of ~~his [or her]~~ the decedent's estate, whether or not the decedent then had the capacity to exercise the power.~~, and~~ The term includes a power to revoke or invade the principal of a trust or other property arrangement.

* * *

(9) "Transfer", as it relates to a transfer by or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent,

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent, and

(C) an exercise, release, or lapse of a general power of appointment that the decedent ~~created in himself [or herself] and~~ reserved or of a power described in Section 2-205(2)(B) that the decedent conferred on a nonadverse party.

* * *

PART 3. SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

* * *

SECTION 2-302. OMITTED CHILD.

(a) **[Parent-Child Relationship Established After Execution of Will.]** Except as provided in subsection (b), if a testator becomes a parent of a child after the execution of the testator's will and fails to provide in ~~his [or her]~~ the will for ~~any of his [or her] children born or adopted after the execution of the will~~ the child, the omitted ~~after-born or after-adopted~~ child receives a share in the estate as follows:

(1) If the testator had no child living when ~~he [or she]~~ the testator executed the will, ~~an~~ the omitted ~~after-born or after-adopted~~ child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to ~~the other~~ another parent of the omitted child and that parent survives the testator and is entitled to take under the will.

(2) If the testator had one or more children living when ~~he [or she]~~ the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, ~~an~~ the omitted ~~after-born or after-adopted~~ child is entitled to share in the testator's estate as follows:

(A) The portion of the testator's estate in which the omitted ~~after-born or after-adopted~~ child is entitled to share is limited to devises made to the testator's then-living children under the will.

(B) The omitted ~~after-born or after-adopted~~ child is entitled to receive the share of the testator's estate, as limited in subparagraph (A), that the child would have received had the testator included all omitted ~~after-born and after-adopted~~ children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(C) To the extent feasible, the interest granted ~~an~~ the omitted ~~after-born or after-adopted~~ child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(D) In ~~satisfying~~ the satisfaction of a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(b) **[Intentional Omission of Child; Provision for Child Outside Will.]** Neither subsection (a)(1) nor subsection (a)(2) applies if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted ~~after-born or after-adopted~~ child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(c) **[Omission of Child Believed Dead.]** If at the time of execution of the will the testator fails to provide in ~~his [or her]~~ the will for a living child solely because ~~he [or she]~~ the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted ~~after-born or after-adopted~~ child.

(d) **[Abatement.]** In ~~satisfying~~ the satisfaction of a share provided by subsection (a)(1), devises made by the will abate under Section 3-902.

* * *

PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

* * *

SECTION 2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION; EXCEPTIONS.

(a) **[Definitions.]** In this section:

~~(1) "Adoptee" has the meaning set forth in Section 2-115.~~

(1) "Assisted reproduction" has the meaning set forth in Section 2-115.

~~(2) "Child of assisted reproduction" has the meaning set forth in Section 2-120.~~

(2) "De facto parent" has the meaning set forth in Section 2-115.

(3) “Distribution date” means the time when an immediate or a postponed class gift is to take effect in possession or enjoyment.

~~(4) “Functioned as a parent of the adoptee” has the meaning set forth in Section 2-115, substituting “adoptee” for “child” in that definition.~~

~~(5) “Functioned as a parent of the child” has the meaning set forth in Section 2-115.~~

~~(6) “Genetic parent” has the meaning set forth in Section 2-115.~~

~~(7) “Gestational child” has the meaning set forth in Section 2-121.~~

(4) “Gestational period” has the meaning set forth in Section 2-104.

(5) “In-law” includes a stepchild.

~~(8)~~(6) “Relative” has the meaning set forth in Section 2-115.

(b) **[Terms of Relationship.]** ~~A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under Section 2-701, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of conceived by assisted reproduction or a gestational child does not apply to a child of conceived by assisted reproduction or a gestational child.~~ Except as otherwise provided in subsections (c) and (d), a class gift in a governing instrument which uses a term of relationship to identify the class members is construed in accordance with the rules for intestate succession.

(c) **[~~Relatives by Marriage~~ In-Laws.]** ~~Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage,~~ A class gift in a governing instrument excludes in-laws unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that ~~relatives by marriage~~ in-laws were intended to be included.

~~(d) **[Half-Blood Relatives.]** Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.~~

~~(e) **[Transferor Not Genetic Parent.]** In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of that genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached [18] years of age.~~

~~(f) **[Transferor Not Adoptive Parent.]** In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:~~

~~(1) the adoption took place before the adoptee reached [18] years of age;~~

~~(2) the adoptive paren[t was the adoptee's stepparent or foster parent; or~~

~~(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age.~~

(d) **[Transferor Not Parent.]** In construing a governing instrument of a transferor who is not a parent of an individual, the individual is not considered the child of the parent unless:

(1) the parent, a relative of the parent, or the spouse or surviving spouse of the parent or of a relative of the parent performed functions customarily performed by a parent before the individual reached [18] years of age; or

(2) the parent intended to perform functions under paragraph (1) but was prevented from doing so by death or another reason, if the intent is proved by clear and convincing evidence.

~~(g)~~(e) **[Class-Closing Rules.]** The following rules apply for purposes of the class-closing rules:

~~(1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.~~

(1) If a particular time is during a gestational period that results in the birth of an individual who lives at least 120 hours after birth, the individual is deemed to be living at that time.

~~(2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.~~

(2) If the start of a pregnancy resulting in the birth of an individual occurs after the death of the individual's parent and the distribution date is the death of the parent, the individual is deemed to be living on the distribution date if [the person with the power to appoint

or distribute among the class members received notice or had actual knowledge, not later than [6] months after the parent's death, of an intent to use genetic material in assisted reproduction and] the individual lives at least 120 hours after birth, and:

(A) the embryo was in utero not later than [36] months after the deceased parent's death; or

(B) the individual was born not later than [45] months after the deceased parent's death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

(4) An individual who is in the process of being adjudicated a child of a de facto parent when the class closes is treated as a child of the de facto parent when the class closes, if the parentage is subsequently established.

Legislative Note: *A state should consider enacting a provision requiring a fiduciary, when notifying beneficiaries of the fiduciary's appointment, to inquire whether a beneficiary has knowledge of an intent to use genetic material in assisted reproduction. A state also should consider requiring the fiduciary to indicate that written notice must be given to the fiduciary within a designated time.*

If a state has not enacted the Uniform Parentage Act (2017), it should consider adding the following language as a new subsection in this section:

A class gift in a governing instrument of a transferor who is not the de facto parent of an individual is not construed to treat the individual as the child of the de facto parent if:

(1) the de facto parent opposed being adjudicated a parent; or

(2) the de facto parent or the individual died before the proceeding to adjudicate parentage was commenced.

In a state that has enacted the Uniform Parentage Act (2017), no such provision relating to involuntary or posthumous de facto parentage is needed.

* * *

PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

*** * ***

SECTION 2-802. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, ~~he [or she]~~ the individual is married to the decedent at the time of death. A decree of separation that does not terminate the ~~status of spouse~~ marriage is not a divorce for purposes of this section.

(b) For purposes of [Parts] 1, 2, 3, and 4 of this [article], and of Section 3-203, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as spouses;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

* * *

SECTION 2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE, AND BENEFICIARY DESIGNATIONS.

(a) **[Definitions.]** In this section:

* * *

(3) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate ~~himself [or herself]~~ the decedent in place of ~~his [or her]~~ the killer and whether or not the decedent then had capacity to exercise the power.

* * *

(b) **[Forfeiture of Statutory Benefits.]** An individual who feloniously and intentionally kills the decedent forfeits all benefits under this [article] with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed ~~his [or her]~~ the intestate share.

* * *

(f) **[Wrongful Acquisition of Property.]** A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from ~~his [or her]~~ the killer's wrong.

SECTION 2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

(a) **[Definitions.]** In this section:

* * *

(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the ~~status of spouse~~ marriage is not a divorce for purposes of this section.

* * *

(4) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of ~~his [or her]~~ the ~~individual's~~ marriage to ~~his [or her]~~ the divorced individual's former spouse.

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by ~~blood, adoption,~~ application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity and who, after the divorce or annulment, is not related to the divorced individual by ~~blood, adoption,~~ application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity.

(6) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of ~~his [or her]~~ the divorced individual's former spouse or relative of the

former spouse, whether or not the divorced individual was then empowered to designate ~~himself [or herself]~~ the divorced individual in place of ~~his [or her]~~ the former spouse or ~~in place of his [or her] former spouse's~~ relative of the former spouse and whether or not the divorced individual then had the capacity to exercise the power.

(b) **[Revocation Upon Divorce.]** Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(A) disposition or appointment of property made by a divorced individual to ~~[his or her]~~ the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,

* * *

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

* * *

PART 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

* * *

SECTION 3-703. GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE.

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate

of the decedent in accordance with the terms of any probated and effective will and this [code], and as expeditiously and efficiently as is consistent with the best interests of the estate. ~~He~~ The personal representative shall use the authority conferred by this [code], the terms of the will, if any, and any order in proceedings to which ~~he~~ the personal representative is party for the best interests of successors to the estate.

(b) A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning ~~his~~ the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this [code].

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at ~~his~~ death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as ~~his~~ the decedent had immediately prior to death.

(d) A personal representative may not be surcharged for a distribution that does not take

into consideration the possibility of posthumous pregnancy unless the personal representative[, not later than [6] months after the decedent's death,] received notice or had actual knowledge of an intent to use genetic material in assisted reproduction.

Legislative Note to Subsection (d): *The bracketed language is provided if a state wishes to impose a time-limit on the receipt of notice.*

LASS MOSES RAMP & COOPER LLC

Steven C. Lass ■ Marie Avery Moses ■ Jerremy M. Ramp ■ Patricia A. Cooper
Katharine Elena Lum ■ MariaJose Delgado ■ Terrance R. Kelly, *Of Counsel*

MEMORANDUM

To: Colorado Uniform Law Commission

From: Marie Avery Moses

Date: December 9, 2019

Re: Analysis of Uniform Parentage Act (2017)

I am writing this memo in my individual capacity, as the Colorado Bar Association has not taken a formal position on the UPA (2017). Rather, this memo reflects concerns regarding the Uniform Parentage Act (2017) as have been expressed within the Family Law Section's Legislative Committee and Executive Council.

I have been asked to address the following general questions regarding the UPA (2017).

a) Identify which goals of the UPA (2017) are already covered by existing case law and note whether such case law is subject to challenge or conflicting interpretation.

b) Which policy provisions of UPA (2017) are problematic or harmful?

I will analyze these questions with respect to each of the stated goals of the UPA, as stated with respect to both the 2002 and 2017 versions of the Uniform Act because there is overlap between those two versions.

At the conclusion of this memo, I will address the separate question of:

> Does Colorado's existing law regarding parentage adequately balance competing interests and set forth clear standards for resolving conflicting presumptions of parentage?

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ANALYSIS OF STATED GOALS OF THE UPA (2002 & 2017)

1) Permitting a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court. (2002)

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105(1)(e) and §19-4-105(2)(b).

Under existing Colorado law, individuals are able to establish parentage by the following avenues:

1) By the mother by proof of her having given birth to the child or by any other proof specified in the UPA; (§19-4-104)

2) By the father pursuant to the provisions of the UPA (§19-4-104)

3) By an adoptive parent by proof of adoption. (§19-4-104)

The UPA (as it presently exists in Colorado) establishes the following **"presumptions of parentage"**—which permit those individuals to make a legal claim of parentage. If there are "competing presumptions of parentage" (meaning that there are more than 2 individuals that claim to be the child's legal parent), the court resolves those competing presumptions to select the child's two legal parents. (C.R.S. §19-4-105)

1) the party and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated; (NOTE: This "marriage" presumption would apply to same sex couples.)

2) After the child's birth, the party and the child's natural mother have married each other, **and**

a) the party has **acknowledged parentage** of the child in writing filed with the court or registrar of vital statistics; OR

b) with the party's consent, the party is **named as the child's parent on the child's birth certificate**; OR

c) the party is **obligated to support the child** under a written voluntary promise or by court order.

3) While the child is under the age of majority, the party receives the child into his home and openly holds out the child as his natural child;

4) **The party acknowledges his or her parentage of the child in a writing filed with the court or registrar of vital statistics**, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding. If another party is presumed under this section to be the child's parent, acknowledgment may be effected only with the written consent of the presumed parent or after the presumption has been rebutted. **Acknowledgments become legal findings of parentage 60 days after their execution.**

5) The genetic tests results show that the alleged parent is not excluded as the probable parent and that the probability of his parentage is ninety-seven percent or higher.

2) Creates a paternity registry. (2002)

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES.

According to the UPA (2017) official comments, "signing a registry entitles the registrant to notice of and a right to oppose the adoption of an infant child; signing a paternity registry is *not* a means of establishing parentage."

However, the provisions of Section 4 of the UPA (2017) go further than just providing an avenue for receiving notice of potential adoption of infants.

Specifically, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, his genetic child **MUST REGISTER** in the registry of paternity established by Section 401 not later than 30 days after the birth of the child.

If the man **DOES NOT REGISTER**, he is **not entitled to notice** of a potential termination of parental rights or adoption of his genetic child under 1 year of age. (See UPA (2017) Section 404 and Section 410).

This Registry places far too great a burden on unsuspecting biological fathers and serves as a mechanism to deny biological parents rights to their children without notice. This is denial of due process to the parent and the child. Further, this is contrary to existing Colorado law, which requires notice, reasonable efforts to locate and identify parents before terminating parental rights, and an opportunity to be heard in termination and adoption proceedings. (See, e.g., C.R.S. §19-3-603; C.R.S. §19-3-604(1)(a)(II); C.R.S. §19-5-105).

3) Includes provisions governing genetic testing. (2002)

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105(1)(f), §19-4-112 and §19-4-117.

I am unaware of any deficiencies in this area of existing Colorado law.

4) Includes rules for determining the parentage of children whose conception was not the result of sexual intercourse (assisted reproduction). (2002)

Question: Is this Goal already adequately covered by Colorado law?

Answer: NO. While Colorado Law does currently address assisted reproduction (C.R.S. §19-4-106), this is an area that could be improved. I do not believe that the FLS has any specific concerns regarding Section 7 of UPA (2017).

It is my understanding that due to technological changes, an update to this area of Colorado law may be warranted. In addition, current Colorado law only recognizes "assisted reproduction" which is undertaken with a doctor's supervision. I am aware of children that have been born through assisted reproduction which was not supervised by a doctor. Colorado law should be updated to address non-medical forms of assisted reproduction.

5) Authorizes surrogacy agreements (2002) and updates those provisions (2017).

Question: Is this Goal already adequately covered by Colorado law?

Answer: NO. It is my understanding that practitioners that specialize in surrogacy work believe that it would be helpful to enact Sections 801 to 812.

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES. It is my understanding that practitioners that specialize in surrogacy work have significant concerns with Sections 813 to 818 governing "genetic surrogacy" also known as "traditional surrogacy."

I am unable to provide more specific feedback on these points, but understand that Laura Koupal (303-861-3020) and Seth Grob (303-679-8266) are experts in this area of practice.

6) Seeks to ensure the equal treatment of children born to same-sex couples. These changes include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction articles to make them gender-neutral.

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105 (broad presumptions) and C.R.S. §19-4-122 and §19-4-125 (gender neutral).

It is established law in Colorado that a child may have two legal parents that are both of the same gender. See *In re Parental Responsibilities of A.R.L.*, 318 P.3d 581, 582 (Colo. App. 2013) which held, "in the context of a same-sex relationship, a child may have two mothers under the UPA—a biological mother and a presumptive mother."

I am attaching *A.R.L.* to this memo, because it is the case which most clearly pronounces the following regarding Colorado's existing UPA:

1) UPA extends the parent-child relationship to all children equally, regardless of the parents' marital status.

2) The parent-child relationship includes the mother and child relationship and the father and child relationship.

3) UPA reflects the legislature's intent to allow a man or woman to prove paternity or maternity based upon considerations other than biology or adoption.

4) And while most of the reported decisions focus on presumed fathers, the §19-4-105(1)(d) "holding out" provision applies with equal force to women seeking to demonstrate presumptive mother status.

5) Nothing in the UPA prohibits a child from having two same-sex parents.

6) The prerogative of a child to claim the love and support of two parents does not evaporate simply because the parents are the same sex. It applies to all children, regardless of whether they were conceived during a heterosexual or same-sex relationship. Thus, we conclude that a child who is born during a same-sex relationship can have two legal parents of the same sex, if the nonbiological parent can demonstrate presumptive parenthood under the UPA.

Although Colorado's current version of the UPA does speak in terms of "mothers" and "fathers," C.R.S. §19-4-122 and §19-4-125 provide that those terms should be used interchangeably and that the provisions for the establishment of the father-child relationship should also apply to the establishment of the mother-child relationship.

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES.

First, the UPA (2017) has a more narrow definition of "presumptive parents" in two respects:

1) Current Colorado law's "holding out" presumption only requires that "[w]hile the child is under the age of majority, the party receives the child into his home and openly holds out the child as his natural child."

   By contrast, UPA 2017 has a more restrictive definition: "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."

In other words, an individual can only take advantage of the "holding-out" presumption if the individual lived with the child for the first two years of the child's life.

Under current Colorado law, there are no such age or duration requirements for "holding out."

The FLS strongly disagrees with narrowing this holding-out presumption in this manner.

2) Under the UPA (2017), there is no "presumption" based on genetics. While parentage can certainly be established based on genetics (See UPA (2017) Section 607), genetic parentage is on different footing than the other types of parentage. Colorado law currently does not treat a presumption based on genetics any differently than a presumption based on marriage or holding-out. The FLS is concerned that genetic parents would be placed in a different category under the UPA (2017).

Second, the UPA (2017) has a two-year statute of limitation for a "presumed parent" to be removed as a child's legal parent. This is contrary to existing Colorado law which allows a spouse to contest his or her parentage as part of divorce proceedings. In other words, a husband only has 2 years to challenge his parentage of a child. If he waits until after the child is 2 years old, he is unable to escape being forever held to be the child's legal parent.

Third, Colorado law currently allows for a child to have only two "legal" parents. A child may also have numerous "psychological" parents with parenting time and decision-making rights (pursuant to C.R.S. §14-10-123) if the child has established bonded parent-child relationships with other individuals, but a child can only have two "legal" parents. It is not known whether the Colorado Uniform Law Commission is recommending "Alternative A" (only 2 legal parents) or "Alternative B" (more than 2 legal parents) to Section 613. Without this information, it is difficult to appreciate additional public policy concerns regarding the UPA (2017).

7) Includes a provision for the establishment of a de facto parent as a legal parent of a child.

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. C.R.S. §19-4-105(1)(d) (hold child out as your own) and C.R.S. §14-10-123 and In the Interest of E.L.M.C., 100 P.3d 546 (Colo. App. 2004) (establishing rights of psychological parents to exercise parenting time and decision-making authority).

Under Colorado's current version of the UPA, an individual has a presumption of legal parentage if that person has ever held the child out as that individual's natural child and the child has lived in that person's home. This is a very broad presumption of parentage, available to many individuals.

In contrast, to be entitled to claim legal parentage as a "de facto" parent, an individual must establish **all** of the following:

1) the individual resided with the child as a regular member of the child's household for a significant period;

2) the individual engaged in consistent caretaking of the child;

3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

4) the individual held out the child as the individual's child;

5) the individual established a bonded and dependent relationship with the child which is parental in nature;

6) another parent of the child fostered or supported the bonded and dependent relationship; **and**

7) continuing the relationship between the individual and the child is in the best interest of the child.

Accordingly, eligibility for *de facto* parentage is much narrower than eligibility for "holding-out" parentage under C.R.S. §19-4-104(1)(d) and eligibility for "psychological" parentage under C.R.S. §14-10-123. Thus, it is not clear what this factor adds to Colorado's existing law (particularly if Colorado maintains the existing scheme of only allowing a child to have two legal parents).

8) Precludes establishment of a parent-child relationship by the perpetrator of a sexual assault that resulted in the conception of the child.

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §14-10-124(4) and C.R.S. §19-5-105.5.

Colorado Law (C.R.S. §14-10-124(4)) expressly requires the court to consider whether a child was conceived through sexual assault when allocating parenting time and decision-making authority.

When a claim of conception by sexual assault has been made to the court, prior to allocating parenting time and decision-making responsibility, the court shall consider:

> "whether one of the parties has committed an act of sexual assault resulting in the conception of the child, which factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed sexual assault and the child was conceived as a result of the sexual assault, there is a rebuttable presumption that it is not in the best interests of the child to allocate sole or split decision-making authority to the party found to have committed sexual assault or to allocate mutual decision-making between a party found to have committed sexual assault and the party who was sexually assaulted with respect to any issue.
>
> And, if one of the parties is found by a preponderance of the evidence to have committed sexual assault resulting in the conception of the child, whether it is in the best interests of the child to prohibit or limit the parenting time of that party with the child.
>
> And, the court shall consider, as the primary concern, the safety and well-being of the child and the abused party.
>
> In formulating or approving a parenting plan in sexual assault cases, the court shall consider imposing numerous conditions on parenting time that ensure the safety of the child and of the abused party.

Additionally, in 2013 & 2014, the Colorado General Assembly passed C.R.S. §19-5-105.5 which provides for the **termination of parent-child legal relationship** upon a finding that the child was conceived as a result of sexual assault

***Question**: Is this policy provision of the UPA (2017) problematic or harmful?*

***Answer**: POTENTIALLY.*

The UPA (2017) only contains one section which addresses orders regarding children conceived through sexual assault (Section 614). That section provides:

> 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 parentage**.

But, this section does not apply if the man had previously been adjudicated the father or if the man has developed a bonded relationship with the child. The UPA (2017) requires that the sexual assault be established by **clear and convincing evidence**. This is a higher standard than Colorado's existing best interest statute (C.R.S. §14-10-124(4)). Additionally, a woman must file a pleading making an allegation of sexual assault conception not later than two years after the birth of the child.

It is possible that these provisions could be seen as limiting the ability of a woman to TERMINATE the parental rights of the father pursuant to C.R.S §19-5-105.5.

9) Includes Article 9 – that addresses the right of children born through assisted reproductive technology to access medical and identifying information regarding any gamete providers.

***Question**: Is this Goal already adequately covered by Colorado law?*

***Answer**: NO. It is my understanding that such provisions would be useful.*

CONCLUSION:

Question: Does Colorado's existing law regarding parentage adequately balance competing interests and set forth clear standards for resolving conflicting presumptions of parentage?

Answer: Colorado's existing law regarding parentage does a *better* job of balancing competing interests and providing clear standards for resolving competing presumptions of parentage than the procedures created under the UPA (2017).

Discussion:

Colorado's existing UPA treats all presumptions of parentage as having equal weight before the court. There is no presumption that is superior to other presumptions. In other words, there is no preference given to individuals that claim parentage based on genetics, marriage, acknowledgment, adoption, or "holding-out." And, because Colorado's "holding-out" presumption is broader than the "holding-out" presumption in the UPA (2017), it is preferred.

In contrast, the UPA (2017) creates different systems of resolving parentage claims that differ based on whether the claims of parentage are based on a(n):

Genetic Parent (Section 607);
Presumed Parent (Section 608);
De Facto Parent (Section 609);
Acknowledged Parent (Section 610);
Adjudicated Parent (Section 611);
Child of Assisted Reproduction (Section 612); or
Parent Failed to Register (Section 402).

It is of concern that the UPA (2017) provides different requirements (burdens of proof and statutes of limitation) for resolving parentage disputes which depend on the types of individuals involved.
For example, a presumed (or acknowledged) parent cannot be removed as a legal parent after the child is 2 years old. Does that mean that, in a state with only 2 legal parents, a biological father cannot assert parentage to a 3 year old child? Children under the age of 1 year old can be adopted without notice to the "non-registered" biological parent. Additionally, a *de facto* parent must establish the child's best interests by "clear and convincing" evidence. This is a greater burden of proof than that required by a spouse, or "holding-out" parent.

Section 613 of the UPA (2017) provides standards for resolving competing parentage claims, but it is very difficult to understand. For example, it is nearly impossible to determine how Section 613 would apply to a 6 year old child if there is a birth mother (who lived with the child for the first two years—thereby also becoming a presumed

parent), a genetic father and the genetic father's wife that has also lived with and held the child out as her own for ages 3 to 6. Under existing Colorado law, these three competing presumptions of parentage would be resolved under a "best interests" standard. We honestly do not know how the presumptions would be resolved under the UPA (2017), particularly given the different statutes of limitation.

Colorado law (C.R.S. §19-4-105 and interpreting cases—specifically *N.A.H. v. S.L.S.*, 9 P.3d 354 (Colo. 2000), *People ex rel. C.L.S.*, 313 P.3d 662 (Colo. App. 2011) and *In the Interests of S.N.L.*, 284 P.3d 147 (Colo. App. 2011) is clear.

Competing presumptions of parentage are resolved, regardless of gender or marriage status, based on the following set of factors:

> 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. . . . In determining which of two or more conflicting presumptions should control, based upon the weightier considerations of policy and logic, the court shall consider all pertinent factors, including but not limited to the following:
>
> (I) The length of time between the proceeding to determine parentage and the time that the presumed parent was placed on notice that he/she might not be the genetic parent;
>
> (II) The length of time during which the presumed parent has assumed the role of parent of the child;
>
> (III) The facts surrounding the presumed parent's discovery of his/her possible non-parentage;
>
> (IV) The nature of the parent-child relationship;
>
> (V) The age of the child;
>
> (VI) The relationship of the child to any presumed parent;
>
> (VII) The extent to which the passage of time reduces the chances of establishing the parentage of another individual and a child support obligation in favor of the child; and

(VIII) Any other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed parent(s) or the chance of other harm to the child.

The current statutory scheme, as developed by established and non-ambiguous case law, establishes a gender-neutral, balanced, and easy to understand process for determining competing claims of parentage in Colorado. To the extent that the General Assembly has any concerns regarding the use of gendered terms such as mother, father, man, woman, paternity or maternity, those concerns can be resolved by maintaining the existing statutory scheme, while utilizing gender neutral terms such as individual, spouse and parentage.

UPC 2019 Revisions – Hard Changes

Updated version with new comments 8-13-20

UNIFORM PROBATE CODE AMENDMENTS (2019)

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND, PROBATE JURISDICTION OF COURT

*** * ***

PART 2. DEFINITIONS

SECTION 1-201. GENERAL DEFINITIONS.

* * *

(5) "Child" ~~includes an individual entitled to take as a child under this [code] by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant~~ means an individual of any age whose parentage is established under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law].

Commented [DD1]: Recommendation: Do not adopt.

* * *

(32) "Parent" ~~includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this [code] by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent~~ means an individual who has established a parent-child relationship under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law].

Commented [DD2]: Recommendation: Do not adopt.

* * *

Legislative Note to Paragraphs (5) and (32): *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The second bracketed option is for states that have enacted a parentage act other than the Uniform Parentage Act (2017). The third bracketed option is for states that do not have a statute governing the establishment of parent-child relationships. The reference to "applicable state law" includes statutory, regulatory, and case law.*

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

Legislative Note: *References to spouse or marriage appear throughout Article II. States that recognize civil unions, domestic partnerships, or similar relationships between unmarried individuals should add appropriate language wherever such references or similar references appear.*

States that do not recognize such relationships between unmarried individuals~~, or marriages between same-sex partners,~~ are urged to consider whether to recognize the spousal-type rights that partners acquired under the law of another jurisdiction in which the relationship was formed but who die domiciled in this state. Doing so would not be the equivalent of recognizing such relationships in this state but simply allowing those who move to and die in this state to retain the rights they previously acquired elsewhere. See Christine A. Hammerle, Note, Free Will to Will? A Case for the Recognition of Intestacy Rights for Survivors to a Same-Sex Marriage or Civil Union, 104 Mich. L. Rev. 1763 (2006).

A state's recognition of spousal-type rights has relevance not only for the individuals but also for their children. See Section 2-119(b).

Throughout this article, the bracketed phrase "applicable state law" includes a state's statutory, regulatory, and case law.

PART 1. INTESTATE SUCCESSION

Subpart 1. General Rules

SECTION 2-101. INTESTATE ESTATE.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this [code], except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class

to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed ~~his [or her]~~ the intestate share.

Commented [DD3]: Recommendation: This is a minor change to 15-11-101: Consider at next meeting.

*** * ***

SECTION 2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.

~~(a) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:~~

~~(1) to the decedent's descendants by representation;~~

~~(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;~~

~~(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;~~

~~(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:~~

~~(A) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and~~

~~(B) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's~~

~~maternal grandparents or either of them if both are deceased, the descendants taking by representation;~~

~~(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph (4).~~

~~(b) If there is no taker under subsection (a), but the decedent has:~~

~~(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or~~

~~(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.~~

(a) **[Definitions.]** In this section:

(1) "Deceased parent", "deceased grandparent", or "deceased spouse" means a parent, grandparent, or spouse who either predeceased the decedent or is deemed under this [article] to have predeceased the decedent.

(2) "Surviving spouse", "surviving descendant", "surviving parent", or "surviving grandparent" means a spouse, descendant, parent, or grandparent who neither predeceased the decedent nor is deemed under this [article] to have predeceased the decedent.

(b) **[Heirs Other Than Surviving Spouse.]** Any part of the intestate estate not passing under Section 2-102 to the decedent's surviving spouse passes to the decedent's descendants or parents as provided in subsections (c) and (d). If there is no surviving spouse, the entire intestate estate passes to the decedent's descendants, parents, or other heirs as provided in subsections (c)

Commented [DD4]: Recommendation: Ask for volunteers to review this section against C.R.S. 15-11-103 and discuss at future meeting.

through (j).

(c) **[Surviving Descendant.]** If a decedent is survived by one or more descendants, any part of the intestate estate not passing to the surviving spouse passes by representation to the decedent's surviving descendants.

(d) **[Surviving Parent.]** If a decedent is not survived by a descendant but is survived by one or more parents, any part of the intestate estate not passing to the surviving spouse is distributed as follows:

(1) The intestate estate or part is divided into as many equal shares as there are:

(A) surviving parents; and

(B) deceased parents with one or more surviving descendants, if any, as determined under subsection (e).

(2) One share passes to each surviving parent.

(3) The balance of the intestate estate or part, if any, passes by representation to the surviving descendants of the decedent's deceased parents, as determined under subsection (e).

(e) **[When Parent Survives: Computation of Shares of Surviving Descendants of Deceased Parent.]** The following rules apply under subsection (d) to determine whether a deceased parent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased parents also are descendants of one or more surviving parents and none of those surviving parents has any other surviving descendant, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased parents have the same surviving descendants and none of those deceased parents has any other surviving descendant, those deceased parents are

deemed to be one deceased parent with surviving descendants.

(f) **[Surviving Descendant of Deceased Parent.]** If a decedent is not survived by a descendant or parent but is survived by one or more descendants of a parent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased parents.

(g) **[Surviving Grandparent.]** If a decedent is not survived by a descendant, parent, or descendant of a parent but is survived by one or more grandparents, the intestate estate is distributed as follows:

(1) The intestate estate is divided into as many equal shares as there are:

(A) surviving grandparents; and

(B) deceased grandparents with one or more surviving descendants, if any, as determined under subsection (h).

(2) One share passes to each surviving grandparent.

(3) The balance of the intestate estate, if any, passes by representation to the surviving descendants of the decedent's deceased grandparents, as determined under subsection (h).

(h) **[When Grandparent Survives: Computation of Shares of Surviving Descendants of Deceased Grandparent.]** The following rules apply under subsection (g) to determine whether a deceased grandparent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased grandparents also are descendants of one or more surviving grandparents and none of those surviving grandparents has any other surviving descendant, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased grandparents have the same surviving descendants and none of those deceased grandparents has any other surviving descendant, those deceased

grandparents are deemed to be one deceased grandparent with surviving descendants.

(i) **[Surviving Descendant of Deceased Grandparent.]** If a decedent is not survived by a descendant, parent, descendant of a parent, or grandparent but is survived by one or more descendants of a grandparent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased grandparents.

(j) **[Surviving Descendant of Deceased Spouse.]** If a decedent is not survived by a descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent but is survived by one or more descendants of one or more deceased spouses, the intestate estate passes by representation to the surviving descendants of the deceased spouse or spouses.

SECTION 2-104. REQUIREMENT OF SURVIVAL BY 120 HOURS; ~~INDIVIDUAL IN GESTATION~~ GESTATIONAL PERIOD; PREGNANCY AFTER DECEDENT'S DEATH.

Commented [DD5]: Recommendation: Do not adopt this section. Existing CPC 15-11-104 and 15-11-121(11) already cover these topics. See comment below.

(a) **[Definitions.]** In this section:

(1) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(2) "Gestational period" means the time between the start of a pregnancy and birth.

~~(a)~~(b) **[Requirement of Survival by 120 Hours; ~~Individual in Gestation~~ Gestational Period; Pregnancy After Decedent's Death.]** For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection ~~(b)~~(c), the following rules apply:

(1) An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.

(2) ~~An individual in gestation at the decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth.~~ If the decedent dies during a gestational period that results in the birth of an individual who lives at least 120 hours after birth, that individual is deemed to be living at the decedent's death. If it is not established by clear and convincing evidence that the individual lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

(3) If the decedent dies before the start of a pregnancy by assisted reproduction resulting in the birth of an individual who lives at least 120 hours after birth, that individual is deemed to be living at the decedent's death if [the decedent's personal representative, not later than [6] months after the decedent's death, received notice or had actual knowledge of an intent to use genetic material in the assisted reproduction and]:

(A) the embryo was in utero not later than [36] months after the decedent's death; or

(B) the individual was born not later than [45] months after the decedent's death.

Commented [DD6]: CPC 15-11-104 **together with** 15-11-120(11) accomplish the same thing they are doing here in paragraphs (2) and (3). We don't need to make these changes.

~~(b)~~(c) **[Section Inapplicable if Estate Would Pass to State.]** This section does not apply if its application would cause the estate to pass to the state under Section 2-105.

Legislative Note: *A state enacting this section should consider enacting a provision akin to Section 3-703(d). Such a provision might be expanded to require a personal representative, when notifying potential devisees or heirs of the personal representative's appointment, to inquire whether a devisee or heir has knowledge of an intent to use genetic material in assisted*

reproduction. A state also should consider requiring the personal representative to indicate that a devisee or heir who has such information must give written notice to the personal representative within a designated time.

* * *

SECTION 2-106. REPRESENTATION.

(a) **[Definitions.]** In this section:

(1) "Deceased descendant", "deceased parent", ~~or~~ "deceased grandparent", or "deceased spouse" means a descendant, parent, ~~or~~ grandparent, or spouse who either predeceased the decedent or is deemed under this [article] to have predeceased the decedent ~~under Section 2-104~~.

(2) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed under this [article] to have predeceased the decedent ~~under Section 2-104~~.

(b) **[Decedent's Descendants.]** If, under Section 2-103~~(a)(1)~~(c), all or part of a decedent's intestate estate ~~or a part thereof~~ passes ~~"~~by representation~~"~~ to the decedent's surviving descendants, the estate or part ~~thereof~~ is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

~~(c) **[Descendants of Parents or Grandparents.]** If, under Section 2-103(a)(3) or (4), a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the~~

Commented [DD7]: Recommendation: Ask for volunteers to review this section against C.R.S. 15-11-106 and discuss at future meeting.

~~decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.~~

(c) **[Descendants of Parent When Parent Survives.]** If a decedent is survived by one or more parents and, under Section 2-103(d) and (e), the balance of the decedent's intestate estate or part passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the balance passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(d) **[Descendants of Parent When No Parent Survives.]** If a decedent is not survived by a parent and, under Section 2-103(f), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(e) **[Descendants of Grandparent When Grandparent Survives.]** If a decedent is survived by one or more grandparents and, under Section 2-103(g) and (h), the balance of the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the balance passes to those descendants as if they were

the decedent's surviving descendants under subsection (b).

(f) **[Descendants of Grandparent When No Grandparent Survives.]** If a decedent is not survived by a grandparent and, under Section 2-103(i), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(g) **[Descendants of Deceased Spouse.]** If a decedent is survived by descendants of one or more deceased spouses and, under Section 2-103(j), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased spouses, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

* * *

SECTION 2-107. ~~KINDRED OF HALF BLOOD~~ INHERITANCE WITHOUT REGARD TO NUMBER OF COMMON ANCESTORS IN SAME GENERATION. ~~Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.~~ An heir inherits without regard to how many common ancestors in the same generation the heir shares with the decedent.

Commented [DD8]: Recommendation: Review against 15-11-107 and consider at next meeting. Kim W. felt this language could be adopted - it is neutral on the issue of how many parents a child may have.

* * *

SECTION 2-113. INDIVIDUAL RELATED TO DECEDENT THROUGH ~~TWO~~ ~~LINES~~ MORE THAN ONE LINE. An individual who is related to ~~the~~ a decedent through ~~two lines~~ more than one line of relationship is entitled to only a single share based on the relationship

Commented [DD9]: Recommendation: Review against 15-11-113 and consider at next meeting. Kim W. felt this language could be adopted - it is neutral on the issue of how many parents a child may have.

that would entitle the individual to the ~~larger~~ largest share. The individual and the individual's descendants are deemed to have predeceased the decedent with respect to a line of relationship resulting in a smaller share.

* * *

SECTION 2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) 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 law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is ~~treated as if the parent~~ deemed to have predeceased the child.

(c) Except as otherwise provided in Section 2-119(b), the termination of a parent's parental rights to a child has no effect on the right of the child or a descendant of the child to inherit from or through the parent.

Commented [DD10]: Recommendation: Ask for volunteers to review this section against C.R.S. 15-11-114 and 15-11-119 and discuss at future meeting. I recall Gordon had an interest in this section.

Subpart 2. Parent-Child Relationship

SECTION 2-115. DEFINITIONS. In this [subpart]:

Commented [DD11]: Recommendation: Do not adopt any of these changes, all of which link to UPA 2017/other state law definitions of parent-child.

(1) "Adoptee" means an individual who is adopted.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(3) "De facto parent" means an individual who is adjudicated on the basis of de facto parentage under [cite to Uniform Parentage Act (2017)][cite to state's parentage act][applicable state law] to be a parent of a child.

~~(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.~~

~~(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.~~

~~(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under [insert applicable state law], the term means only the man for whom that relationship is established.~~

~~(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.~~

~~(7) "Genetic parent" means a child's genetic father or genetic mother.~~

~~(8) "Incapacity" means the inability of an individual to function as a parent of a child~~

~~because of the individual's physical or mental condition.~~

~~(9)~~(4) "Relative" means a grandparent or a descendant of a grandparent.

Legislative Note to Paragraph (3): *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing de facto parentage. The third bracketed option is for states that do not have a statute governing de facto parentage.*

SECTION 2-116. ~~EFFECT OF PARENT-CHILD RELATIONSHIP~~ SCOPE. ~~Except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this [subpart], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.~~ The rules in this [subpart] concerning a parent-child relationship apply for the purpose of intestate succession.

Commented [DD12]: Recommendation: Ask for volunteer(s) to review against C.R.S. 15-11-116 and discuss at future meeting. I am not sure we need to change anything.

SECTION 2-117. NO DISTINCTION BASED ON MARITAL STATUS OF PARENT. ~~Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.~~ A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

Commented [DD13]: Recommendation: Ask for volunteer(s) to review against C.R.S. 15-11-117 and discuss at future meeting. I am not sure we need to change anything.

SECTION 2-118. ~~ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS~~ PARENT-CHILD RELATIONSHIP ESTABLISHED THROUGH ADOPTION OR DE FACTO PARENTAGE.

(a) **[Parent-Child Relationship ~~Between Adoptee and Adoptive Parent or Parents~~ Established Through Adoption.]** A parent-child relationship exists between an adoptee and the adoptee's adoptive parent.

Commented [DD14]: Recommendation: Do not adopt any of these changes, all of which link to UPA 2017/other state law definitions of parent-child.

~~(b) **[Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent.]** For purposes of subsection (a):~~

~~(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and~~

~~(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.~~

~~(c) **[Child of Assisted Reproduction or Gestational Child In Process of Being Adopted.]** If, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2).~~

(b) **[Parent-Child Relationship Established Through De Facto Parentage.]** A parent-child relationship exists between an individual and the individual's de facto parent.

SECTION 2-119. ~~ADOPTEE AND ADOPTEE'S GENETIC PARENTS~~ EFFECT OF ADOPTION; EFFECT OF DE FACTO PARENTAGE.

~~(a) **[Parent-Child Relationship Between Adoptee and Genetic Parents.]** Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.~~

Commented [DD15]: Recommendation: Do not adopt any of these changes, all of which link to UPA 2017/other state law definitions of parent-child.

~~(b) **[Stepchild Adopted by Stepparent.]** A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:~~

~~(1) the genetic parent whose spouse adopted the individual; and~~

~~(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.~~

~~(c) **[Individual Adopted by Relative of a Genetic Parent.]** A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.~~

~~(d) **[Individual Adopted After Death of Both Genetic Parents.]** A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.~~

~~(e) **[Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted.]** If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child's parent or parents under Section 2-120 or 2-121 are treated as the child's genetic parent or parents for the purpose of this section.~~

(a) **[Definitions.]** In this section:

(1) "Parent before the adjudication" means an individual who is a parent of a child:

(A) immediately before another individual is adjudicated a de facto parent of the child; or

(B) immediately before dying, or being deemed under this [article] to have died, and before another individual is adjudicated a de facto parent of the child.

(2) "Parent before the adoption" means an individual who is a parent of a child:

(A) immediately before another individual adopts the child; or

(B) immediately before dying, or being deemed under this [article] to have died, and before another individual adopts the child.

(b) **[Effect of Adoption on Parent Before the Adoption.]** A parent-child relationship does not exist between an adoptee and an individual who was the adoptee's parent before the adoption unless:

(1) otherwise provided by [court order or] law other than this [code]; or

(2) the adoption:

(A) was by the spouse of a parent before the adoption;

(B) was by a relative or the spouse or surviving spouse of a relative of a parent before the adoption; or

(C) occurred after the death of a parent before the adoption.

(c) **[Effect of De Facto Parentage on Parent Before the Adjudication.]** Except as otherwise provided by a court order [under Uniform Parentage Act (2017) Section 613], an adjudication that an individual is a child of a de facto parent does not affect a parent-child relationship between the child and an individual who was the child's parent before the adjudication.

Legislative Note: *The bracketed language in subsection (c) is for states that have enacted the Uniform Parentage Act (2017).*

SECTION 2-120. ~~CHILD~~ INDIVIDUAL CONCEIVED BY ASSISTED REPRODUCTION BUT NOT ~~CHILD~~ BORN TO GESTATIONAL ~~CARRIER~~ OR GENETIC SURROGATE. Except as otherwise provided under Section 2-121, parentage of an individual conceived by assisted reproduction is determined under [cite to Uniform Parentage Act (2017) Article 7 other than Section 708(b)(2)][cite to equivalent provisions of state's parentage act][applicable state law].

~~(a) **[Definitions.]** In this section:~~

~~(1) "Birth mother" means a woman, other than a gestational carrier under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.~~

~~(2) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.~~

~~(3) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:~~

~~(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;~~

~~(B) the birth mother of a child of assisted reproduction; or~~

~~(C) an individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.~~

~~(b) **[Third-Party Donor.]** A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.~~

~~(c) **[Parent-Child Relationship with Birth Mother.]** A parent-child relationship exists~~

Commented [DD16]: Recommendation: Do not adopt any of these changes, all of which link to UPA 2017/other state law definitions of parent-child.

between a child of assisted reproduction and the child's birth mother.

(d) **[Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime by His Wife for Assisted Reproduction.]** Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

(e) **[Birth Certificate: Presumptive Effect.]** A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

(f) **[Parent-Child Relationship with Another.]** Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(2) in the absence of a signed record under paragraph (1):

(A) functioned as a parent of the child no later than two years after the child's birth;

(B) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or

~~other circumstances; or~~

~~(C) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.~~

~~(g)~~ **~~[Record Signed More than Two Years after the Birth of the Child: Effect.]~~** ~~For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached [18] years of age.~~

~~(h)~~ **~~[Presumption: Birth Mother is Married or Surviving Spouse.]~~** ~~For the purpose of subsection (f)(2), the following rules apply:~~

~~(1) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B).~~

~~(2) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).~~

~~(i)~~ **~~[Divorce Before Placement of Eggs, Sperm, or Embryos.]~~** ~~If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.~~

~~(j)~~ **~~[Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.]~~** ~~If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs,~~

~~sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (f).~~

~~(k) **[When Posthumously Conceived Child Treated as in Gestation.]** If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:~~

~~(1) in utero not later than 36 months after the individual's death; or~~

~~(2) born not later than 45 months after the individual's death.~~

~~***Legislative Note:*** *States are encouraged to enact a provision requiring genetic depositories to provide a consent form that would satisfy subsection (f)(1). See Cal. Health & Safety Code § 1644.7 and .8 for a possible model for such a consent form.*~~

Legislative Note: *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The reason for excluding Section 708(b)(2) is given in the Comment, especially Examples 1 and 2. The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing parent-child relationships created by assisted reproduction. The third bracketed option is for states that do not have a statute governing parent-child relationships created by assisted reproduction. The reference to "applicable state law" includes statutory, regulatory, and case law.*

SECTION 2-121. ~~CHILD~~ INDIVIDUAL BORN TO GESTATIONAL ~~CARRIER~~ OR GENETIC SURROGATE. Parentage of an individual conceived by assisted reproduction and born to a gestational or genetic surrogate is determined under [cite to Uniform Parentage Act (2017) Article 8 other than Sections 810(b)(2) and 817(b)(2)][cite to equivalent provisions of state's parentage act][applicable state law].

Commented [DD17]: Recommendation: Do not adopt any of these changes, all of which link to UPA 2017/other state law definitions of parent-child.

~~(a) **[Definitions.]** In this section:~~

~~(1) "Gestational agreement" means an enforceable or unenforceable agreement~~

~~for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (c).~~

~~(2) "Gestational carrier" means a woman who is not an intended parent and gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.~~

~~(3) "Gestational child" means a child born to a gestational carrier under a gestational agreement.~~

~~(4) "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.~~

~~(b)~~ **~~[Court Order Adjudicating Parentage: Effect.]~~** ~~A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.~~

~~(c)~~ **~~[Gestational Carrier.]~~** ~~A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:~~

~~(1) designated as a parent of the child in a court order described in subsection (b); or~~

~~(2) the child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.~~

~~(d)~~ **~~[Parent-Child Relationship With Intended Parent or Parents.]~~** ~~In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:~~

~~(1) functioned as a parent of the child no later than two years after the child's~~

~~birth; or~~

~~(2) died while the gestational carrier was pregnant if:~~

~~(A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth;~~

~~(B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or~~

~~(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.~~

~~(e) **[Gestational Agreement After Death or Incapacity.]** In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:~~

~~(1) a record signed by the individual which considering all the facts and circumstances evidences the individual's intent; or~~

~~(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.~~

~~(f) **[Presumption: Gestational Agreement After Spouse's Death or Incapacity.]** Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence~~

~~of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:~~

~~(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;~~

~~(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and~~

~~(3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.~~

~~(g) **[Subsection (f) Presumption Inapplicable.]** The presumption under subsection (f) does not apply if there is:~~

~~(1) a court order under subsection (b); or~~

~~(2) a signed record that satisfies subsection (e)(1).~~

~~(h) **[When Posthumously Conceived Gestational Child Treated as in Gestation.]** If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:~~

~~(1) in utero not later than 36 months after the individual's death; or~~

~~(2) born not later than 45 months after the individual's death.~~

~~(i) **[No Effect on Other Law.]** This section does not affect law of this state other than this [code] regarding the enforceability or validity of a gestational agreement.~~

Legislative Note: *The first bracketed option is for states that have enacted the Uniform Parentage Act (2017). The reason for excluding Sections 810(b)(2) and 817(b)(2) is given in the Comment, especially in Examples 1 and 2. The second bracketed option is for states that have enacted a parentage act, other than the Uniform Parentage Act (2017), governing parent-child relationships created by assisted reproduction. The third bracketed option is for states that do not have a statute governing parent-child relationships created by assisted reproduction. The*

reference to "applicable state law" includes statutory, regulatory, and case law.

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PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

SECTION 2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION; EXCEPTIONS.

(a) **[Definitions.]** In this section:

~~(1) "Adoptee" has the meaning set forth in Section 2-115.~~

(1) "Assisted reproduction" has the meaning set forth in Section 2-115.

~~(2) "Child of assisted reproduction" has the meaning set forth in Section 2-120.~~

(2) "De facto parent" has the meaning set forth in Section 2-115.

(3) "Distribution date" means the time when an immediate or a postponed class gift is to take effect in possession or enjoyment.

~~(4) "Functioned as a parent of the adoptee" has the meaning set forth in Section 2-115, substituting "adoptee" for "child" in that definition.~~

~~(5) "Functioned as a parent of the child" has the meaning set forth in Section 2-115.~~

~~(6) "Genetic parent" has the meaning set forth in Section 2-115.~~

~~(7) "Gestational child" has the meaning set forth in Section 2-121.~~

(4) "Gestational period" has the meaning set forth in Section 2-104.

(5) "In-law" includes a stepchild.

~~(8)~~(6) "Relative" has the meaning set forth in Section 2-115.

Commented [DD18]: Recommendation: Ask for volunteer(s) to review this section against C.R.S. 15-11-705 and discuss at future meeting.
- We do not want to delete existing CPC definitions of adoptee, functioned as a parent, genetic parent, or gestational child.
- We do not want to adopt definitions of de facto parent or gestational period.
- We already have a definition of "child of assisted reproduction" – and we are not adopting their version of 2-115.
- Consider the new definition of "in-law" that includes a stepchild, and whether we want to go in this direction for class gifts.

(b) **[Terms of Relationship.]** ~~A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under Section 2-701, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of conceived by assisted reproduction or a gestational child does not apply to a child of conceived by assisted reproduction or a gestational child.~~ Except as otherwise provided in subsections (c) and (d), a class gift in a governing instrument which uses a term of relationship to identify the class members is construed in accordance with the rules for intestate succession.

(c) **[~~Relatives by Marriage~~ In-Laws.]** ~~Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage,~~ A class gift in a governing instrument excludes in-laws unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that ~~relatives by marriage~~ in-laws were intended to be included.

~~(d) **[Half-Blood Relatives.]** Terms of relationship in a governing instrument that do not differentiate relationships by the half-blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.~~

~~(e) **[Transferor Not Genetic Parent.]** In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of that genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached [18] years of age.~~

~~(f) **[Transferor Not Adoptive Parent.]** In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:~~

~~(1) the adoption took place before the adoptee reached [18] years of age;~~

~~(2) the adoptive paren[t was the adoptee's stepparent or foster parent; or~~

~~(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached [18] years of age.~~

(d) **[Transferor Not Parent.]** In construing a governing instrument of a transferor who is not a parent of an individual, the individual is not considered the child of the parent unless:

(1) the parent, a relative of the parent, or the spouse or surviving spouse of the parent or of a relative of the parent performed functions customarily performed by a parent before the individual reached [18] years of age; or

(2) the parent intended to perform functions under paragraph (1) but was prevented from doing so by death or another reason, if the intent is proved by clear and convincing evidence.

~~(g)~~(e) **[Class-Closing Rules.]** The following rules apply for purposes of the class-closing rules:

~~(1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.~~

(1) If a particular time is during a gestational period that results in the birth of an individual who lives at least 120 hours after birth, the individual is deemed to be living at that time.

~~(2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.~~

(2) If the start of a pregnancy resulting in the birth of an individual occurs after the death of the individual's parent and the distribution date is the death of the parent, the individual is deemed to be living on the distribution date if [the person with the power to appoint or distribute among the class members received notice or had actual knowledge, not later than [6] months after the parent's death, of an intent to use genetic material in assisted reproduction and] the individual lives at least 120 hours after birth, and:

(A) the embryo was in utero not later than [36] months after the deceased parent's death; or

(B) the individual was born not later than [45] months after the deceased parent's death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

(4) An individual who is in the process of being adjudicated a child of a de facto

parent when the class closes is treated as a child of the de facto parent when the class closes, if the parentage is subsequently established.

Legislative Note: *A state should consider enacting a provision requiring a fiduciary, when notifying beneficiaries of the fiduciary's appointment, to inquire whether a beneficiary has knowledge of an intent to use genetic material in assisted reproduction. A state also should consider requiring the fiduciary to indicate that written notice must be given to the fiduciary within a designated time.*

If a state has not enacted the Uniform Parentage Act (2017), it should consider adding the following language as a new subsection in this section:

A class gift in a governing instrument of a transferor who is not the de facto parent of an individual is not construed to treat the individual as the child of the de facto parent if:

(1) the de facto parent opposed being adjudicated a parent; or

(2) the de facto parent or the individual died before the proceeding to adjudicate parentage was commenced.

In a state that has enacted the Uniform Parentage Act (2017), no such provision relating to involuntary or posthumous de facto parentage is needed.

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PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

SECTION 2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

(a) **[Definitions.]** In this section:

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by ~~blood, adoption,~~ application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity and who, after the divorce or annulment, is not related to the divorced individual by ~~blood, adoption,~~ application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity.

Commented [DD19]: Recommendation: Ask for volunteer(s) to review this section against C.R.S. 15-11-804(1)(e). We are not adopting UPA 2017 rules for parent-child relationships. But what does "affinity" mean?

UPC SECTION 3-703. GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE.

3-703(d):

(d) A personal representative may not be surcharged for a distribution that does not take into consideration the possibility of posthumous pregnancy unless the personal representative [, not later than [6] months after the decedent's death,] received notice or had actual knowledge of an intent to use genetic material in assisted reproduction.

Legislative Note to Subsection (d): *The bracketed language is provided if a state wishes to impose a time-limit on the receipt of notice.*

Commented [DD20]: Recommendation: Ask for volunteer(s) to review this against C.R.S. 15-12-703(3.5) and discuss at future meeting. We do not want to adopt the "posthumous pregnancy" language that invokes UPA 2017 concepts – but there was some discussion previously about the merits of a 6-month time limit, which is not in 15-12-703.

Proposed revisions to C.R.S. 15-12-703: ASK KIM W.

(3.5) A personal representative ~~shall~~ MAY not be surcharged for A DISTRIBUTION THAT DOES NOT ~~distributions made that do not~~ take into consideration THE POSSIBILITY OF POSTHUMOUS PREGNANCY ~~the possible birth of a posthumously conceived child~~ unless THE PERSONAL REPRESENTATIVE, [NOT LATER THAN 6 MONTHS AFTER THE DECEDENT'S DEATH], RECEIVED NOTICE OR HAD ACTUAL KNOWLEDGE OF AN INTENT TO USE GENETIC MATERIAL IN ASSISTED REPRODUCTION ~~prior to such distribution~~:

~~(a) The personal representative has received notice or has actual knowledge that there is an intention to use an individual's genetic material to create a child or has received written notice that there may be an intention to use an individual's genetic material to create a child; and~~

~~(b) The birth of the child could affect the distribution of the decedent's estate.~~

MEMORANDUM

To: ULC Commissioners
From: Thomas P. Gallanis, Executive Director, JEB-UTEA
Date: May 10, 2019
Re: Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC) was promulgated exactly fifty years ago. In the ensuing half-century, the UPC's intestacy provisions underwent significant revisions in 1990 and in 2008.

The 1990 revisions took note of the multiple-marriage society and the rise in blended families. A significant fraction of the population married more than once, with stepchildren and children by previous marriages. The 1990 revisions responded to these developments by adjusting the intestate share of the surviving spouse when one or more of the decedent's descendants were not descendants of the surviving spouse, or vice versa.

The 1990 revisions also introduced a new system of representation for calculating the intestate shares of certain heirs other than the surviving spouse: the system known as per capita at each generation. Unlike the traditional system of *per stirpes* representation, which produces vertical equality among the stirps, per capita at each generation produces horizontal equality: the decedent's surviving children inherit the same share as each other, the decedent's surviving grandchildren who take in place of the decedent's predeceased children inherit the same share as each other, and so on. The 1990 revisions applied this system of representation to the decedent's descendants, the decedent's parents, and the descendants of the decedent's parents.

The UPC was further revised in 2008 in order to respond to the rise of assisted reproduction as a means of creating parent-child relationships. New provisions were added to the UPC to clarify the inheritance rights of children of assisted reproduction.

Beyond intestate succession, the 1990 and 2008 UPC revisions also amended Section 2-705, which supplies default rules of construction for the interpretation of class gifts in governing instruments—for example, a class gift in a will or trust instrument to "descendants" or "issue." These default rules of construction rely heavily, though not exclusively, on the rules for intestate succession.

The promulgation of the Uniform Parentage Act (2017) [UPA (2017)] necessitates a new round of revisions to the UPC's intestacy and class-gift provisions. In part, the UPA (2017) enables the simplification of the UPC. This is because the UPA (2017) contains detailed provisions on the creation of parent-child relationships including by assisted reproduction; many of these provisions can be incorporated by reference into the UPC, thereby greatly simplifying the UPC, especially Sections 2-120 and 2-121. The UPA (2017) also embraces a functional approach to parentage—the doctrine of de facto parentage—which needs to be incorporated into the UPC's intestacy and class-gift provisions. The UPA (2017) also opens the door to the possibility that a child may have more than two parents, hence more than two sets of grandparents.

The 2019 revisions to the UPC achieve five principal objectives:

(1) Blended families are taken into account not only in Section 2-102 (Share of Spouse), as in the 1990 revisions, but also in Section 2-103 (Share of Heirs Other Than Surviving Spouse).

(2) The per-capita-at-each-generation system of representation is incorporated throughout Section 2-103. Heirs in a generation closer to the decedent are favored compared to heirs in a more remote generation; heirs in a given generation are treated equally.

(3) Outdated terms are removed. Examples include the references to a decedent's "maternal" and "paternal" grandparents in the former version of Section 2-103, references to relatives of the "half blood" or "whole blood" in the former version of Section 2-107, and references to "genetic" parents in the former versions of Sections 2-117 through 2-119.

(4) The rules in the UPA (2017) governing parent-child relationships created by assisted reproduction are incorporated by reference.

(5) The intestacy and class-gift provisions are restructured to incorporate the innovations in the UPA (2017), such as the codification of the doctrine of de facto parentage and the recognition that a child may have more than two parents and, therefore, more than two sets of grandparents.