Expanding State Parent Registry Laws

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I. Introduction

As with state recognized voluntary acknowledgements of parentage (VAPs) and state recognized assisted reproduction pacts (SRARPs) on childcare parentage for future or current children, state parent registries (PRs), often labeled putative paternity registries or putative father registries, embody declarations of expecting or current legal parenthood.² Yet declarations on

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² See, e.g., 2017 Uniform Parentage Act §402(a) (man must register "not later than 30 days after the birth") [hereinafter 2017 UPA], followed in Minnesota Stat. 259.52(7). Compare Montana Code 42-2-206 (not later than 72 hours after child's birth).
children in PRs often involve unilateral assertions, unlike dual parenthood declarations in VAPs. Actual parenthood under law for many PR declarants is never recognized because there are no simultaneous assertions by a second expecting or existing legal parent on the declarant’s parenthood, as with an assertion by an expecting or existing birth mother in a VAP.³

PRs are further limited.⁴ They generally provide that those who register receive notice and an opportunity to be heard in any later adoption and/or parental rights termination proceeding⁵ involving a child to be born or born to another.⁶ Thus, the expecting and existing legal parenthood interests of PR declarants are protected in only discrete settings. PRs, for example, generally do not prompt a notice/hearing opportunity in any later probate or tort proceeding containing parentage issues.⁷

³ Federal welfare subsidy requirements on VAPs, operative for states participating in TANF (once AFDC) [first set out in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-93], include the mandate that VAPs be given “full faith and credit.” 42 U.S.C. 666(a)(5)(C)(iv). Subsidy requirements operate elsewhere in family law matters, as with the Adoption and Safe Families Act, Pub. L. No. 105-89 (financial incentives for states to improve adoption rates), reviewed in Eve M. Brank, “Twenty-Five Years of the Adoption and Safe Families Act,” 58 Court Review 4 (interview with Maureen Flatley).

⁴ PRs are surveyed in Mary Beck, “A National Putative Father Registry,” 36 Capital Univ. L. Rev. 295, 339-361 (2007) (Appendix compiled by Lindsay Biesterfeld) [hereinafter Beck].

⁵ These adoption-related registries are distinct from adoption registries which facilitate information exchanges between those adopted and those who placed children for adoption. See, e.g., Oregon Rev. Stat. 109.460 and Rhode Island Gen. Laws 15-7.2-2. They are also distinct from child maltreatment registries, which can effectively bar listed "perpetrators" from certain employment opportunities. See, e.g., Colleen Henry and Vicki Lens, "Marginalizing Mothers: Child Maltreatment Registries, Statutory Schemes, and Reduced Opportunities for Employment," 24 CUNY Law Rev. 1 (2021).

⁶ 2017 UPA, at §407(a) (woman who is the "subject of a registration"). A child subject to a PR may be not yet conceived, be conceived, or be born. See, e.g., 2000 Uniform Parentage Act §402(a) ("man" registers regarding "a child he may have fathered," with registration coming before birth or within 30 days after birth) [hereinafter 2000 UPA] and 2017 UPA §402 ("man" registers in order to receive notice of a proceeding "regarding his genetic child"). As no "substantive changes" were intended in 2017, a "genetic child" should encompass an actual or possible child. 2017 UPA, at Article 4 Comment, ¶3.

⁷ In such proceedings, parentage may not have been legally determined earlier, as through birth certificates or judicial proceedings. In these proceedings, the import of an alleged parent and child relationship can arise where (a) both parent and child are alive, (b) where only an alleged parent or an alleged child is alive, or (c) where neither parent nor child are alive. As to (a) consider, e.g., a case where either an alleged parent or an alleged child is harmed by tortious conduct for which an alleged child or an alleged parent seeks damages for consortium losses.
In addition, PR opportunities are not explicitly afforded to all expecting and existing legal parents whose children are or may be subject to adoptions or parental rights termination proceedings. PR laws are often limited to "paternity" or "father" registrations even though adoption and termination proceedings can also foreclose nonpaternity and nonfather parental interests (contingent or current).

State laws should be reformed so that asserted parental rights/interests in PRs can be employed in more settings. As well, PR opportunities should be expanded to reflect the evolving legal changes recognizing increased parenthood opportunities for those with no biological or formal adoptive ties, including both women and men.  

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As to (b), consider, e.g., a case where either an alleged parent or an alleged child dies due to tortious conduct for which an alleged child or an alleged parent seeks damages for consortium losses and/or heirship recognition. See, e.g., Flintroy v. State of Louisiana, 315 So.3d 395 (La. App. 2d 2021) (putative father of deceased patient must institute paternity action within a year of child's death in order to recover wrongful death or survivor damages) and Succession of Morris, 131 So.3d 274 (La. App. 5th 2013) (putative child of deceased man must institute paternity action within a year of parent's death in order to recover Social Security benefits). The requirements for parentage in timely filed wrongful death claims by alleged parents are found in Udomeh v. Joseph, 103 So. 3d 343, 348 (La. 2012) (unwed sperm provider for a child born of consensual sex must show earlier child support and parental acknowledgment).

As to (c), consider, e.g., a case where an alleged parent and that person's alleged child perish in a single accident and where alleged family members of the decedents appear in a tort and/or a probate proceeding in order to recover damages and/or estate assets. For example, the parents of the alleged deceased parent can seek to recover for their own consortium losses arising from the parent's and alleged grandchild's death and/or to secure heirship recognition in the probating of the parent's and alleged grandchild's estate. See, e.g., Louisiana Stat. -Civil Code 2315.2(a)(2) and (4) (wrongful death action on behalf of a parent and grandparent where child and grandchild died leaving "no spouse child, parent, or sibling surviving").

8 Unilateral parent registrations explored herein differ from parental registrations of two (or perhaps more) expecting or existing legal parents. See, e.g., Katherine K. Baker, “Equality and Family Autonomy, 24 Univ. of Pennsylvania J. of Constitutional Law 412 (2021) (functional parents should only be recognized after "they have taken steps to register their relationships with the state,” instead of "getting mired in an incoherent hybrid system of genetic, marriage, contract and function the law would require everyone to acquire legal parent status in the same way").
As current state PRs often follow the suggestions of the Uniform Law Commissioners (ULC) in their 1973, 2000 (as amended in 2002), and/or 2017 Uniform Parentage Acts (UPAs)\(^9\) and the American Law Institute (ALI) in its 2000 Principles of the Law of Family Dissolution: Analysis and Recommendations (2000 ALI Principles), and should soon follow the ALI Restatement Draft on Children and the Law (ALI Restatement Draft), the ULC and ALI pronouncements on PRs will first be explored. Then, the variations and limitations in state PRs will be surveyed, demonstrating how PR uses are limited and how PR opportunities for some expecting/existing legal parents are unavailable. Finally, suggestions are offered on reforming PRs to meet both constitutional and public policy concerns. Expansions are suggested on who can utilize PRs and on where PRs will be used.

II. Uniform Acts on Parent Registries

The 1973 UPA had no model law on PRs. For adoption proceedings, it specifically required that notice be given to "a presumed father," defined as a "man" with actual or attempted marital ties, household residential ties, or parentage acknowledgment ties.\(^10\) Notice was also required to one determined to be a "father" by a court,\(^11\) as well as to "a father as to whom the child is a legitimate child" under an earlier in-state law or "under the law of another

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\(^9\) There is no "all or nothing" approach to UPAs. Thus, state parentage acts could employ the 2017 UPA outside of PRs, but the 1973 UPA approach to PRs. Infra note ___.

\(^10\) 1973 Uniform Parentage Act §24 (referencing §4(a)) [hereinafter 1973 UPA]. Under §4(a) of the 1973 UPA, a presumed father was a man who was married to, or who tried to marry, the childbearer, as well as an alleged hold out/resident parent or a voluntary paternity acknowledger.

\(^11\) 1973 UPA, at §24(2).
jurisdiction."  Similar notice requirements were recognized for state parental rights termination proceedings.  

Ostensibly absent from the 1973 UPA were significant notice protections to many biological fathers of children born to unwed childbearers who place their children for adoption. These include fathers who could not act unilaterally to assert parental interests and who could not secure cooperation in parenting from the childbearers, as by marriage, providing child support, or paternity acknowledgment. Some of these fathers were deemed in 1983 by the U.S. Supreme Court in Lehr v. Robertson to have parental opportunity interests, which could turn into constitutionally-protected childcare rights when parental opportunity interests were properly seized. 

Some notice protections were afforded to these unwed biological fathers (and other expecting or existing legal parents) in the 1973 UPA. It said that in parental rights termination proceedings, "the court shall cause inquiry to be made of the mother and any other appropriate person," including inquiries into whether "the mother was married at the time of conception . . . or any time thereafter;" the "mother was cohabiting with a man at the time of conception or birth;" the "mother received child support payments or promises of support;" or, there was a man who "formally or informally acknowledged or declared his possible paternity of the child." The

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12 1973 UPA, at §24(3).

13 1973 UPA, at §25(a).

14 Lehr v. Robertson, 463 U.S. 248, 262 (1983) ("biological connection . . . offers the natural father an opportunity that no other male possesses to develop a relationship with offspring;" when grasped by accepting "some measure of responsibility for the child’s future, he may enjoy the blessings of the parent-child relationship") [hereinafter Lehr]. But see Michael H. v. Gerald D., 491 U.S. 110 (1989) (the federal constitution does not require a state to afford a parental opportunity interest to a biological father whose child is born to someone married to another where the married couple chooses to raise the child).

15 1973 UPA, at §25(b).
1973 UPA gave a heretofore unidentified natural father six months, from entry of an order in such a proceeding, to come forward; no participation was allowed after six months, even where there was fraud, lack of actual notice or lack of subject matter jurisdiction.\textsuperscript{16}

Protection of many biological fathers was even less recognized in the 2000 UPA and the Uniform Adoption Act of 1994 (1994 UAA) than in the 1973 UPA. The 2000 UPA contains an Article on "Registry of Paternity."\textsuperscript{17} This registry scheme was designed to protect the parental opportunity interests of "a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, a child he may have fathered."\textsuperscript{18} Registration in the "agency maintaining the registry" must occur "before the birth of the child or within 30 days after the birth."\textsuperscript{19} Failure to register can lead to termination of the parental rights of a nonexempt "man" where the child has not attained one year of age at the time of termination.\textsuperscript{20} Where the child is one year of age or older, notices in adoption/termination proceedings are required for "every alleged father . . . whether or not he has registered."\textsuperscript{21} Such notices are designed to

\begin{footnotes}
\item[16] 1973 UPA, at §25(d).
\item[18] 2000 UPA, at §402(a).
\item[19] 2000 UPA, at §§ 401 and 402(a).
\item[20] 2000 UPA, at §404 (a procedure said to facilitate greatly "infant adoption," per Comment to §404). Exempted are men who have already established "a father-child relationship" under law or who commenced paternity cases before a parental rights termination proceeding was commenced. 2017 UPA, at §402(b). Exempted men do not necessarily include those who were faultless in their failures to register in a timely way. Such men, however, are specifically included in some state PR laws. See, e.g., Virginia Code 63.2-1250(c) ("mother’s fraud" extends the time for putative father registration). Exemptions for faultless fathers, in the absence of statute, can be added by precedent. See, e.g., In re Adoption of Baby Boy B., 394 S.W.3d 837, 841-844 (Ark. 2012) (while statute says biological father needs a "significant" relationship with the "minor," Arkansas Stat. 9-9-206(a)(2)(F), father’s consent was required as he was "thwarted" by the mother and had sought to establish a relationship before the child was born; other state cases were persuasive).
\item[21] 2000 UPA, at §405.
\end{footnotes}
protect "those fathers who may have had some informal or de facto relationship with the child or mother for some time," thus preventing "unilateral action to adversely affect" the alleged father's rights.\(^{22}\) Evidently, prebirth child support and postbirth childcare and child support before a child is one year old were themselves deemed insufficient to prompt an alleged father's recognized parent-child relationship in the absence of his presence on a PR.\(^{23}\) Unlike the 1973 UPA, the 2000 UPA had no provisions on court "inquiry" into paternity in parental rights termination cases.

The 2000 UPA article on PR differed a bit from the "putative father registry" law in 1983 in New York whose constitutionality was sustained in the aforenoted Lehr.\(^{24}\) Under that New York law, "persons entitled to notice" in adoption proceedings included "any person who has timely filed an unrevoked notice of intent to claim paternity of the child" placed for adoption.\(^{25}\) Such a notice was to be recorded in "a putative father registry," with requisite filing mandates including the father's "current address."\(^{26}\) The resulting record was to be provided "upon request" to "any court or authorized agency," but otherwise was not to be divulged to any other person except upon order of a court for good cause shown.\(^{27}\) The "sole purpose of notice" given

\(^{22}\) 2000 UPA, Comment to §405 (said to be based on Lehr, 463 U.S. 248).

\(^{23}\) Such early-life relationships are recognized in some state notification laws where alleged nonexempted parents of children under one year of age must receive notice even with no PR. See, e.g., the adoption notice law in Lehr, 463 U.S. at 252 n. 5, which continues in N.Y. Domestic Rel. Law 111-a(2)(e) (notice to any person openly living with the child and the child's mother and holding out the child as one's own).

\(^{24}\) Lehr, 463 U.S. at 258 and 268 (no Due Process violation and no Equal Protection violation) [hereinafter Lehr]. Three dissenters found Due Process violated. 463 U.S. at 275-276 ("grudging and crabbed approach to due process," constituting "sheerest formalism," as adoption court knew of unwed father's interest and his whereabouts before adoption was finalized).

\(^{25}\) Lehr, 463 U.S. at 251 n. 5 (citing N.Y. Dom. Rel. Law 111-a(2)(c)).

\(^{26}\) Lehr, 463 U.S. at 251 n. 4 (citing N.Y. Dom. Rel. Law 372-c(1) and (2)).

\(^{27}\) Lehr, 463 U.S. at 251 n. 4 (citing N.Y. Dom. Rel. Law 372-c(5)).
to a "putative" father was to enable him "to present evidence to the court relevant to the best interests of the child."\(^{28}\)

The ULC's 1994 UAA differs from both the 2000 UPA Registry of Paternity proposal and the 1983 "putative father registry" law in New York at issue in Lehr. The 1994 UAA requires "consent to the adoption" by certain men when a child is subject to "a direct placement of a minor for adoption by a parent or guardian," including men who were married to, or attempted to marry, "the woman who gave birth;"\(^{29}\) men who were judicially determined to be the father or who "signed a document" having the effect of establishing parentage, as long as these men reasonably provided support for and visited or communicated with the child, or married or attempted to marry the woman who gave birth;\(^{30}\) and, a man who "received the minor child into his home and openly held out the minor as his child."\(^{31}\) While recognizing that unwed biological fathers of children born of consensual sex who are placed for adoption may be "thwarted" in their attempts to parent or to establish legal parenthood,\(^{32}\) the 1993 UAA says these men "may be able to assert parental rights" during an adoption proceeding.\(^{33}\) Yet such assertions

\(^{28}\) Lehr, 463 U.S. at 251 n. 5 (citing N.Y. Dom. Rel. Law 111-a(3)).

\(^{29}\) 1994 UAA, at §2-401(a)(i) (child "born during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation") and (ii) (marriage attempt before minor's birth and "minor was born during attempted marriage or within 300 days after the attempted marriage was terminated") [hereinafter UAA]. A Uniform Adoption Act was first promulgated in 1953 by the National Conference of Commissioners on Uniform State Laws, was revised in 1969, and further amended in 1971.

\(^{30}\) 1994 UAA, at §2-401(a)(1)(iii).


\(^{32}\) 1994 UAA, at §2-401, Comment, ¶¶ 2-3 ("thwarted father" is a man who has been prevented from meeting his parental responsibilities "because the mother did not tell him of the pregnancy or birth, lied about her plans for the child, disappeared after the child's birth, named another man as the father, or was married to another man" whose paternity was "conclusive").

\(^{33}\) 1994 UAA, §2-401 Comment, ¶ 2.
face difficult evidentiary and other procedural hurdles under the Act, such as how will notice of the proceeding be secured and the burden to counter evidence that a "failure to terminate the relationship of parent and child would be detrimental to the child." Unlike the 1973 UPA, the 1994 UAA has no provisions on court "inquiry" into paternity.

The 2017 UPA generally follows the 2000 UPA on Registry of Paternity by limiting its import to cases in which the child is less than one year old at the time of a court hearing on adoption or parental rights termination. Further, while there are said to be no "substantive changes," the 2017 Act is described as replacing "gendered terms with gender-neutral ones where appropriate." The 2017 UPA, like the 2000 UPA, limits PR usage in troubling ways. It does not recognize, for example, prebirth expecting parent registrations by those whose sperm or egg donations prompted assisted reproduction conception, including donors who were also the spouses of those expecting to bear or bearing children. Thus, if a childbearer placed the child

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34 1994 UAA, at §3-404 Comment (section on investigations into "unknown" biological father "protects the right of the adoptee's birth mother to remain silent in response to a request to name the father or to reveal his whereabouts") and §3-707(d) (an adoption decree is not subject to challenge begun more than 6 months after the adoption decree is issued). Compare Banach v. Cannon, 812 A.2d 435, 445-446 (N.J. Super. 2002) (alleged unwed father secures court order that pregnant woman and her parents turn over information on mother's whereabouts and the child's birth; noting "an absence of reported decisions justifying this court's entry of such an order").

35 1994 UAA, at §2-401 Comment, ¶ 3 and §3-504(d)(4) and (e).

36 Supra note 32.

37 2017 UPA, at Article 4 Comment, ¶¶ 2-3 [hereinafter 2017 UPA].

38 2017 UPA, at Article 4 Comment, ¶ 3.

39 2017 UPA, at Article 4 Comment, ¶ 3.

40 2017 UPA, at §412 (the part of the 2017 UPA on the search of the state registry as part of an adoption/parental rights termination proceeding "does not apply to a child born through assisted reproduction"). This Comment to §412 was "added to clarify that individuals who have children through assisted reproduction" are not required to conduct a search of the paternity registry, which was not designed or intended to address such situations. Presumably a clarification by a sperm donor of an earlier intent, through a nonrecord agreement, to rear a child
for adoption by another person, like a new spouse, the state and its courts may act without knowing of the earlier donation or marriage relevant to legal parentage.41

As well, the 2017 UPA does not recognize expecting parent registrations by nonspurous nondonors who are consenting intended parents of children to be born to another person via nonsurrogacy assisted reproduction,42 particularly where their consents are not in a "record." Nonrecord consents can prompt parentage under the 2017 UPA through proof of an express agreement by clear-and-convincing evidence.43 The state and its courts are far less likely to know of nonrecord childcare pacts than of marriages in proceedings involving adoptions and/or parental rights terminations. Unlike the 1973 UPA, and like the 2000 UPA, the 2017 UPA contains no provisions on judicial "inquiry" into the parentage of a child involved in an adoption or termination of parental rights proceeding.44

III. Current State Laws on Parent Registries

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41 See, e.g., 1994 UAA, at §3-404(b)(1) (inquiry into a relevant marriage) and Comment to §3-404 ("This section protects the right of adoptee's birth mother to remain silent"). If it learns long after it acts, the court may be unwilling or unable to deem the nonchildbearing spouse a legal parent, as when the time to seek parentage has expired and a child's best interests will not then be served. See, e.g., 2017 UPA, at §607(a) (proceeding by a spouse, per the §204(a)(1) marital spouse presumption, cannot be brought more than two years after the child's birth where there is another presumed parent, like a hold out/resident parent, per the §204(a)(5)) and UAA, at §3-707(d) (no challenge to adoption decree more than 6 months after decree is issued).

42 2017 UPA, at §412 (the part of the 2017 UPA on the search of the state registry as part of an adoption/parental rights termination proceeding "does not apply to a child born of assisted reproduction").

43 2017 UPA, at §704(b)(1). It may be that not all intended, nonchildbearing parents noted in a "record" are also unknown to government officials involved in adoption or parental rights termination proceedings.

44 An adoption, as with many stepparent adoptions, can proceed without any court-ordered termination of parental rights.
PRs are employed by more than half of the states. The 2000 UPA noted that as of May 2000, "at least 28 states had enacted legislation creating paternity registries." The 2017 UPA recognizes that a "substantial number of legislatures" enacted paternity registries in response to the aforenoted 1983 U.S. Supreme Court decision in Lehr on the constitutional interests of unwed biological fathers in adoption placements of children born of consensual sex to unwed mothers. Current PRs go by different names, including "putative father registry," "fathers' adoption registry," and "centralized paternity registry."

In some states where the 2017 UPA is otherwise substantially enacted, the act's "Registry of Paternity" provisions are not included. In some states, PRs are employed for purposes beyond adoption proceeding notifications, as when PR information is available to state officials

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45 2000 UPA, at Article 4 Comment, §1. There is no indication that states have abandoned their PRs since 2000. State PR laws are listed on the website titled the "child welfare information gateway", found at www.childwelfare.gov/systemwidelaws (state adoption statutes). Reform efforts have been urged in states with no PR. See, e.g., Lisa Alumbaugh Kamachik, "Sex as Constrictive Notice: North Carolina’s Need for a Putative Father Registry," 42 North Carolina Central L. Rev. 192 (2020).

46 2000 UPA, at Article 4 Comment, §1 (referencing Lehr, 463 U.S. at 262, which found some constitutional paternity opportunity interest for a biological father in a child born of consensual sex to an unmarried childbearer).


48 See Minnesota Stat. 259.52(a).

49 See Oklahoma Stat. 7506-1.1(A).

and others seeking to secure child support on behalf of children\(^{51}\) or seeking only to terminate parental rights.\(^{52}\)

Like 2000 and 2017 UPAs on "Registry of Paternity," state PR laws generally address paternity declarations by putative fathers of children to be born, or born, of consensual sex to an unwed childbearer. Some laws go further, however, and they vary. In Alabama, the "putative father registry" can include the names of "any person adjudicated by a court . . . to be the father of a child born out of wedlock\(^{53}\) and any person who filed a VAP with the registry,\(^{54}\) thus going beyond declarations by men who "may have fathered a child\(^{55}\) and going beyond unilateral declarations by men regarding their "genetic" children.\(^{56}\) In Georgia, the "putative father registry" includes signed writings of "persons who acknowledge paternity of a child" and of "persons who register to indicate the possibility of paternity without acknowledging paternity.\(^{57}\)

In Louisiana, the "putative father registry" must "record the names and addresses of . . . any person adjudicated by a court" of Louisiana to be "the father of the child;" "any person who has filed with the registry an acknowledgment by authentic act;" and, any person filing "a declaration

\(^{51}\) See, e.g., Minnesota Stat. 259.52(3) ("public authority responsible for child support enforcement") and Arkansas Code 20-18-704(c) (registry information available to "a prosecuting attorney or an attorney acting on behalf of his client in litigation involving the determination of paternity or support for the child or an adoption of the child").

\(^{52}\) Montana Code 42-2-217(1) (proceedings involving both public and private actors).

\(^{53}\) Alabama Stat. 26-10C-1(a)(1) and (3). Similar is Louisiana Stat. 9:400(A) ("putative father registry"). Compare Arkansas Code 20-18-70(5) ("putative father" is a man not legally presumed or adjudicated to be the biological father) and Georgia Code 19-11-9(d)(1) ("putative father registry shall record the name . . . of any person who claims to be the biological father but not the legal father of a child").

\(^{54}\) Alabama Stat. 26-10C-1(a)(4).

\(^{55}\) 2000 UPA, at §402(a).

\(^{56}\) 2017 UPA, at §402(a).

\(^{57}\) Georgia Stat. 19-11-9(d)(2)(A) and (B). The acknowledgement seemingly encompasses a "voluntary acknowledgment of paternity" as the VAP rescission law is noted in §19-11-9(d)(4).
to claim paternity of a child." In Oklahoma, the "centralized paternity registry" is "available," inter alia, to "any person . . . adjudicated by a court of another state or territory . . . to be the father of a minor" and to any person adjudicated in Oklahoma "to be the father of a minor born out of wedlock."  

State PR laws differ in other ways. For example, there are variations in the time limits for registration. State PR laws also differ regarding when notices to registrants are required. The 2017 UPA speaks of notices of hearings on adoption or parental rights termination. In Arkansas, "the purpose of the registry is to entitle putative fathers to notice of legal proceedings pertaining to the child for whom the putative father has registered." The right to notice in Arkansas, however, is only for a putative father who has established "a significant custodial, personal, or financial relationship with the child." In Arizona, the registry is maintained for a "person who is seeking paternity, who wants to receive notice of adoption proceedings and who is the father or claims to be the father." In Montana, putative father registration yields notice of

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58 Louisiana Stat. 9:400(A)(1) and (4) and (B).

59 Oklahoma Stat. 7506-1.1(A) and (C).

60 Compare, e.g., Minnesota Stat. 259.52(7) (prebirth or within 30 days after birth); Montana Code 42-2-206 (prebirth or within 72 hours of birth); Virginia Code 63.2-1250(A) (prebirth or within 10 days after birth); and Iowa Code 144.12A(2)(a) (prebirth or "no later than the date of the filing of the petition for termination of parental rights").

61 2017 UPA, at §402(a).


64 Arizona Stat. 8-106.01(A). Similar is Florida Stat. 63.054(1) ("an unmarried biological father" registers "in order to preserve the right to notice and consent to an adoption"); 750 ILCS 50/12.1 ("putative father of a minor child who is, or is expected to be the subject of an adoption proceeding"); Indiana Code 31-19-5-4 ("putative father . . . entitled to notice of the child's adoption" if registered; presumed fathers, under 31-14-7-2, are not relieved of the registration obligation" to be entitled to "notice of an adoption").
a parental rights termination proceeding in contemplation of an adoption. Of course, there can be a parental rights termination case without a contemplated adoption, as well as a contemplated adoption without a parental rights termination case, as when there is a stepparent adoption of a child alleged otherwise to have a single legal parent who is the person who gave birth.

In New York the "putative father registry" statute requires the relevant state agency to "record" not only "a notice of intent to claim paternity of the child," but also "any person adjudicated by a court" of New York "to be the father of a child born out-of-wedlock." In Louisiana, an out of state adjudication of fatherhood for a child born out-of-wedlock must be recorded.

As noted, the 1994 UAA recognizes, but does little to address, the difficulties facing "thwarted" unwed biological fathers whose children are placed for adoption arising from their failures to receive personal notice of adoption proceedings because their identities are unknown. But some state PR laws help such fathers who desire to childrear. For example, in

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65 Montana Code 42-2-204(2).

66 Consider, e.g., one parent who wishes termination of the parental rights of another parent to shield a child from harm likely to be inflicted on the child by the other parent.

67 See, e.g., 1994 UAA, at §4-103(b)(1) ("An adoption by a stepparent does not effect: (1) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's spouse or deceased spouse"), where the adoptee's parent was theretofore the only legal parent, as with a childbearer using assisted reproductive techniques and donated sperm.


69 Louisiana Stat. 9:400(A) ("record" also mandated for any person "adjudicated . . . to be the father of the child" and a person adjudicated by a court of another state to be "the father of an out-of-wedlock child).

70 1994 UAA, at §3-404 Comment (section on investigations into "unknown" fathers "protects the right of the adoptee’s birth mother to remain silent in response to a request to name the father or to reveal his whereabouts"). See also 2000 UPA, at §402(b) (men exempted from 30 days from birth PR requirement prompting notice do not include "thwarted" fathers).
Arizona, a "putative father" is excused from the normal filing deadline where it "was not possible for him to file a notice" within 30 days after birth.\textsuperscript{71} In Virginia, the normal time limit for putative father registration does not apply to a man who was "led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) that the child died when in fact the child is alive."\textsuperscript{72}

Beyond individual state PR laws that are more sympathetic to unwed biological fathers desiring to childrear, some reformers have pushed for Congressional action that would coordinate state PRs by creating a national parent registry.\textsuperscript{73} Such a federal law proposal is envisioned to "protect the parental rights of earnest unwed fathers against interstate adoption."\textsuperscript{74}

In neither the 2000 UPA nor 2017 UPA, or in state laws generally, are there explicit recognitions of posthumous putative father registrations by related family members which could lead to so-called third-party child visitation orders benefitting the registrants, like grandparents.\textsuperscript{75}

\textbf{IV. State Parent Registry Law Exclusions}

\textbf{A. Introduction}

\textsuperscript{71} Arizona Stat. 8-106.01(B) and (E) ("lack of knowledge of the pregnancy is not an acceptable reason for failure to file").

\textsuperscript{72} Virginia Code 63.2-1250(C) (upon discovery of fraud, 10 days to register). Similar is Missouri Stat. 192.016(7) (upon discovery, 15 days to register).

\textsuperscript{73} Beck, at 298 (describing 2006 Senate bill).


\textsuperscript{75} Posthumous paternity can be pursued in other settings where money, and not childcare, is at issue. See, e.g., Udomeh v. Joseph, 103 So.3d 343, 349 (La. 2012) (nonmarital biological father can pursue a wrongful death claim involving his child where there was earlier child support and parentage acknowledgment).
The 2000 and 2017 UPAs on Registry of Paternity flowed from the U.S. Supreme Court decision in Lehr v. Robertson. In that decision the Court recognized the constitutional parental opportunity interests of a man who fathered a child via consensual sex with an unmarried woman. The Court described how those interests demanded protection in an adoption proceeding involving that man's biological offspring, with adequate protections provided by paternity registry schemes. The Court later recognized no such interests, however, when a child is born of extramarital sex, though state lawmakers (via statutes or precedents) were deemed capable of providing such recognitions, as some have done.

Initially, in 1988, the UPA drafters rejected any provisions on employing paternity registries in adoption proceedings because their protections were inadequate and troublesome. Taking "a much different view," the 2000 and 2017 UPAs recommend paternity registries be used in adoption cases "in which the child is less than one year of age at the time of the court hearing." This age limit was not recognized in Lehr. The one year age limit was said to recognize "the need to expedite infant adoptions," as well as to safeguard the parent interests of "nonmarital fathers who . . . have established some relationship with the child after birth."

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76 Lehr, 463 U.S. at 265 ("The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights.")

77 Michael H. v. Gerald D., 391 U.S. 110, 129-130 (1989) ("It is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple deserving to retain a child conceived within and born into their marriage to be rebutted.") [hereinafter Michael H.].

78 See, e.g., Callender v. Skiles, 591 N.W.2d 182, 192 (Iowa 1999) (Iowa state constitutional protection) [hereinafter Callender].

79 2000 UPA, at Article 4, Comment ¶2.

80 2000 UPA, at Article 4, Comment ¶¶2-3.

81 Lehr, 463 U.S. at 250 (the child placed for adoption in Lehr was "over two years old").

82 2000 UPA, at Article 4 Comment ¶3 and 2017 UPA, at Article 4, Comment ¶3.
As noted, the UPA "Registry of Paternity" provisions extend limited protections to parents who desire notice of certain proceedings involving their children. They only apply to nonmarital "fathers" of children to be born, or born, of consensual sex.\(^{83}\) These "fathers" may register prebirth, when they are expecting legal parents, or postbirth as when they are either expecting or existing legal parents. Yet there are many other forms of expecting and existing legal parents who are generally ineligible to register, but who wish to be notified of proceedings involving their possible or actual children. These parents may not be notified if there is no PR. Beyond fathers via consensual sex, who else may need, and have the desire, to register unilaterally their parental interests in children?

B. Expecting Legal Parents

Soon-to-be parents go beyond those desiring to learn of proceedings involving their children to be born of consensual sex. Such expecting parents usually would desire notifications of proceedings involving their children, including, but not limited to, cases involving adoption and/or parental rights termination.

Future parental rights or interests arise before birth in varying ways beyond sexual encounters, including by signing voluntary parentage acknowledgments\(^{84}\) and by consenting to intended parenthood in children to be born of (surrogacy or nonsurrogacy) assisted

\(^{83}\) 2000 UPA, at §402(a) (man registers for "a child he may have fathered" and 2017 UPA, at §402(a). When a child is conceived via nonconsensual sex, a demonstrated rapist will likely have very little, if any, parental childcare interests, Pena v. Mattox, 84 F.3d 894, 900 (7th Cir. 1996), perhaps excepting consensual sex with an underage minor constituting so-called statutory rape, wherein a rapist who bears a child maintains the parental rights accorded all who give birth, as noted in Lucy O'Brien, "Mad About the Boy," N.Y. Times (8-16-1998) (Mary Kay Le Tourneau, a 36 year old school teacher, keeps child born of sex with her 13 year old student).

\(^{84}\) See, e.g., 2017 UPA, at § 304(b); New Mexico Stat. Ann. 40-11A-304(B); 13 Delaware Code 8-304(b); and Rhode Island Gen. Laws 15-8.1-304(b).
In the VAP setting, childcare rights typically arise at birth for those who properly executed prebirth acknowledgments. In some assisted reproduction settings, however, certain expecting parents are usually without childcare rights at the time of birth, having instead parental opportunity interests which may lead to childcare rights after birth if the expecting parents act in certain ways. Sometimes expecting parents have even more contingent childcare interests, as when genetic surrogacy contracts may be voided by those scheduled to give, by those who gave birth, or as when earlier VAPs are rescinded by those giving birth. Following is a more detailed review of prebirth parental interests for varying forms of expecting parents who could benefit from expanded PR opportunities.

i. Expecting Voluntary Acknowledgment Parent

85 See, e.g., 2017 UPA, at § 704(a) (consent in nonsurrogacy setting in a record "before, on, or after birth") and § 803(a) (both gestational and genetic surrogacy agreements must be executed before there is a medical procedure intended to prompt a pregnancy).

86 See, e.g., 2017 UPA, at § 304(c) (prebirth VAP "takes effect on the birth of the child").

87 The parental opportunity interests of sperm donors in children later to be born of consensual sex to those who are unmarried were recognized as constitutionally protected in Lehr, 463 U.S. at 262 ("natural father has "an opportunity . . . to develop a relationship with his offspring") [hereinafter Lehr]. Such interests as yet need not be afforded by states where there are births to those who are then married to others (or who marry others soon after birth). Michael H., 491 U.S. at 129 (1989) (four justices find that "it is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple desiring to retain a child conceived and born into their marriage to be rebutted") [hereinafter Michael H.]. State laws thus can disallow parental opportunity interests for those biologically tied to children who are born into the marriages of others where the marital couple opposes any attempt at rebutting spousal parentage, as such an approach was sanctioned by the U.S. Supreme Court when reviewing an earlier California law. Michael H., 491 U.S. at 129. Some current state laws disallow such spousal parentage rebuttals. See, e.g., Strauser v. Stahr, 726 A.2d 1052, 1052-1053 (Pa. 1999) (spousal parent presumption for husband not rebuttable by genetic father where marriage remains intact). But see Callender, 591 N.W.2d at 192 (unwed biological father had an Iowa Due Process liberty interest in parenting his biological child, so he could challenge spousal parentage over the husband's objection).

88 See, e.g., 2017 UPA, at §814(a)(2) (withdrawal of consent "any time before 72 hours after the birth").

89 See, e.g., 2017 UPA, at §308(a) (rescission of parentage acknowledgment).
For existing children, both the 1973 UPA and the 2000 UPA recognize a "man" can undertake an acknowledgment of "paternity" for a child born alive. Under the 2017 UPA, by contrast, "an alleged genetic father," an "intended" assisted reproduction (nonsurrogacy) parent, or a "presumed parent" (spousal or residency/hold out), can sign a VAP together with the "woman who gave birth." Further, a VAP can be signed under the 2017 UPA "before . . . the birth of the child," with genetic, intended or presumed parentage taking effect "on the birth of the child" where the VAP is filed prebirth. Here, VAP parentage remains contingent after birth because VAPs can be rescinded within 60 days after birth by one who earlier signed. VAPs are filed with the "state agency maintaining birth records."  

Few states to date authorize prebirth VAPs. This is unfortunate as it is a sensible public policy. The policy is best promoted, however, by a statute allowing an "alleged gamete provider," that is, either an egg or sperm provider, to sign together with "the person giving birth." Such a statute would benefit, for example, an egg donor who is an expecting parent, but who does not meet the statutory criteria on intended parentage via a "record" in a nonsurrogacy assisted reproduction setting. The Connecticut Parentage Act, effective in 2022, generally

91 2000 UPA, at §§ 204(a) and 301 (no presumption of paternity).
92 2017 UPA, at §301.
93 2017 UPA, at §304(b) and (c).
94 2017 UPA, at §308(a). There can be three signatories, at times, as where a married childbearer, a spouse, and an extramarital sexual partner all sign. See, e.g., 2017 UPA, at §303.
95 2017 UPA, at § 304(a).
97 Nonrecord parents of children born of assisted reproduction include those who executed intended parent pacts or who held out/resided with the child for the first two years of the child's life. 2017 UPA, at §704(b)(1) and (2).
follows the 2017 UPA; it fails to recognize this policy.98 A prebirth VAP statute would open more doors to childcare parentage after birth. As well, a prebirth VAP statute would serve governmental interests in securing monetary support promoting live and healthy births of future children,99 as well as in identifying and remedying harms incurred by those who excitedly awaited intended parenthood during pregnancy only to have tortious acts intervene.100

Where prebirth VAPs are authorized, PRs should be available to prebirth VAP signatories who are expecting parents, but who will not be bearing children.101 When infants are currently placed for adoption, usually PRs are searched, but not VAP records.

ii. Expecting Nonsurrogacy Assisted Reproduction Parent

Children to be born of nonsurrogacy assisted reproduction often have two expecting parents, sometimes recognized preconception, sometimes recognized only during a pregnancy,

98 Connecticut Stat. 46 b-476 (a “person who gave birth to a child and an alleged genetic parent... a presumed parent... or an intended parent... may sign an acknowledgement of parentage to establish the parentage of the child”). Elsewhere, states do not follow the 2017 UPA on prebirth VAPs. See, e.g., R.I. Code 15-8.1-302 (no VAP for “an intended parent” via assisted reproduction) and 15C Vermont Stat. 310(b)(2) (a person who is “an intended parent” is not eligible).

99 Prebirth child support orders directed at expecting legal parents are rare, if nonexistent. See Jeffrey A. Parness and Matthew Timko, “De Facto Parent and Nonparent Child Support Orders,” 67 American Univ. L. Rev. 769, 803-805 (2018) (urging broader availability). The 2017 UPA says a VAP may be signed before birth and confers on the acknowledged parents all...duties of a parent.” 2017 UPA, at §§ 304 (b) and 305 (a).

100 On tort claims involving lost parental opportunity interests, see, e.g., Summerfield v. Superior Court, 698 P. 2d 712 (Ariz. 1985) (wrongful death claim encompasses viable fetus); and Aka v. Jefferson Hosp. Assn., Inc., 42 S.W. 3d 508 (Ark. 2008) (overruling precedent and finding viable fetus is a person under wrongful death statute); Hamilton v. Scott, 97 So. 3d 728 (Ala. 2012) (wrongful death claim on behalf of previable fetus); and Dov Fox, “Reproductive Negligence,” 117 Columbia L. Rev. 2017, 2017 (reproductive wrongs include deprivations of “wanted pregnancy or parenthood”).

101 Not all signatories needed for VAPs are expecting parents, as where spouses of those carrying children conceived via extramarital sex sign VAPs in order to escape a spousal parentage presumption. See, e.g., 2017 UPA, at §303, as followed in Rhode Island Gen. Laws 15-8.1-303 and 15C Vermont Stat. 303.
and sometimes only recognized after birth. Conduct after live births of some can bar later parentage for others who were such expecting legal parents. Childcare parentage laws illustrate.

In nonsurrogacy settings, the 1973 UPA only recognized an assisted reproduction birth undertaken by a married, opposite sex couple who employed "a licensed physician" and "semen donated by a man" other than the husband.\(^{102}\) The donor here is always "treated in law as if he were not the natural father."\(^{103}\) The husband is only "treated in law as if he were the natural father" if insemination occurred "under the supervision of a licensed physician and with the consent" of the husband.\(^{104}\)

The 2000 UPA expands parentage opportunities for nonspousal donors who provide sperm,\(^{105}\) as well as for nondonor men who consent to nonsurrogacy assisted reproduction "with the intent to be the parent."\(^{106}\) Such donors and consenting nondonor men are expecting legal parents whose parentage arises when children are born.\(^{107}\) The "husband" of a "wife" who gives birth via assisted reproduction has limited opportunities to "challenge his paternity"\(^{108}\) in settings

\(^{102}\) 1973 UPA, at §5(a).

\(^{103}\) 1973 UPA, at §5(b).

\(^{104}\) 1973 UPA, at §5(a).

\(^{105}\) 2000 UPA, at §703

\(^{106}\) 2000 UPA, at §§703-704 (consent "must be in a record" that is signed).

\(^{107}\) 2000 UPA, at §703 ("a parent of the resulting child").

\(^{108}\) 2000 UPA, at §705. One opportunity involves a lack of consent, "before or after birth of the child," shown in a proceeding brought "within two years after learning of the birth." 2000 UPA, at §705(a). Another opportunity involves a challenge at any time where there was either no sperm donation or no consent; no cohabitation "since the probable time of assisted reproduction;" and no open hold out of the child as one's own. 2000 UPA, at §705(b).
where there is no resulting parentage at birth for a nonspousal sperm donor or for a nondonor man who consented to assisted reproduction with "the intent to be the parent."\(^{109}\)

The 2017 UPA further expands parentage opportunities in nonsurrogacy assisted reproduction settings. That act is "substantially similar" to the 2000 UPA; but it is updated to apply "equally to same-sex couples."\(^{110}\) Thus, an "individual" who consents to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child."\(^{111}\) Where there is a nonsurrogacy assisted reproduction birth having no such person who consented with the intent to be a parent, the spouse of the person giving birth has limited opportunities to challenge parentage.\(^{112}\)

The 2017 UPA expansion is laudable. But there is no explicit indication that PRs will automatically embody all who sign prebirth VAPs where feasible,\(^{113}\) or that those signing prebirth VAPs can also undertake PRs.

**iii. Expecting Surrogacy Assisted Reproduction Parent**

The 1973 UPA "does not deal with many complex and serious legal problems raised by the practice of artificial insemination" outside of such a practice employed by a consenting "husband" and a "wife" who act "under the supervision of a licensed physician."\(^{114}\)

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109 2000 UPA, at §703.

110 Comment preceding Article 7 of the 2017 UPA.

111 2017 UPA, at §703.

112 2017 UPA, at §705(a) (spouse "at the time of the child's birth").

113 The integration of VAP information with PR databases would provide PR safeguards in adoption cases to all who signed VAPs. VAPs typically have the same effect as judgments. See, e.g., 42 U.S.C. 666(a)(5)(D)(ii) (VAP is considered "a legal finding of paternity" in states participating in a federal program on aid to needy families with dependent children).

114 1970 UPA, at Comment to §5 and at §5(a).
The 2000 UPA recognizes that a "prospective gestational mother" may agree with "intended parents" who are a "man" and a "woman" that "the intended parents become parents of the child."\textsuperscript{115} An agreement must be validated by a court in a proceeding commenced by "the intended parents and the prospective gestational mother."\textsuperscript{116} While there is yet no pregnancy, a validated agreement may be terminated by the prospective gestational mother, her husband, or either of the intended parents.\textsuperscript{117} After pregnancy, a "court for good cause shown may terminate the gestational agreement."\textsuperscript{118} Upon the birth of a child pursuant to a validated gestational agreement, a court will issue an order "confirming that the intended parents are the parents of the child."\textsuperscript{119} A gestational agreement "that is not judicially validated is not enforceable."\textsuperscript{120} Should a prospective gestational mother deliver a child not conceived through assisted reproduction," genetic testing" is used to "determine the parentage of the child."\textsuperscript{121}

While the 2000 UPA treated comparably surrogacy agreements where the "prospective gestational mother" utilized one or two donors,\textsuperscript{122} the 2017 UPA distinguishes the requirements

\textsuperscript{115} 2000 UPA, at §801(a) (signatories also include the "husband" of the prospective gestational mother and "a donor or the donors").

\textsuperscript{116} 2000 UPA, at §802(a).

\textsuperscript{117} 2000 UPA, at §806(a).

\textsuperscript{118} 2000 UPA, at §806(b) (cause is left undefined, per Comment to §806).

\textsuperscript{119} 2000 UPA, at §807(a) (notice filed with court by the intended parents) and §807(c) (notice filed with court by the gestational mother or the appropriate state agency).

\textsuperscript{120} 2000 UPA, at §809(a).

\textsuperscript{121} 2000 UPA, at §807(b).

\textsuperscript{122} 2000 UPA, at §801(a) (written agreement including "a donor or the donors").
for gestational (i.e., two donors)\textsuperscript{123} and genetic (i.e., one donor)\textsuperscript{124} surrogacy. Some requirements for enforceable pacts are comparable,\textsuperscript{125} while others differ, with genetic surrogacy having more stringent requirements.\textsuperscript{126}

The 2017 UPA does not require, as does the 2000 UA,\textsuperscript{127} that all surrogacy agreements be validated by a court in a proceeding containing all the relevant parties.\textsuperscript{128} Rather, a surrogacy agreement, gestational or genetic, "must be in a record signed by each party."\textsuperscript{129} But, a genetic surrogacy agreement is usually only enforceable when validated by a court "before assisted reproduction."\textsuperscript{130}

Importantly, the 2017 UPA authorized genetic and gestational surrogacy agreements involving "one or more intended parents,"\textsuperscript{131} as compared to 2000 UPA surrogacy agreements that encompassed "intended parents."\textsuperscript{132}

\textsuperscript{123} 2017 UPA, at §801(2) (woman using "gametes that are not her own").

\textsuperscript{124} 2017 UPA, at §801(1) (woman using "her own gamete").

\textsuperscript{125} See, e.g., 2017 UPA, at §§802(a)(1-5) (21 years old, previously gave birth, and independent legal representation) and 803 (process for executing an agreement).

\textsuperscript{126} Compare, e.g., 2017 UPA, at § 814(a)(2) (genetic surrogate may withdraw consent any time before 72 hours after the birth) to 2017 UPA, at §808(a) (termination of agreement "any time before an embryo transfer").

\textsuperscript{127} 2000 UPA, at § 802(a).

\textsuperscript{128} The relevant parties include each intended parent, the surrogate and the surrogate's spouse, if there is one. 2017 UPA, at § 803(3).

\textsuperscript{129} Id.

\textsuperscript{130} 2017 UPA, at §§ 816(a) and 813(a). Exceptions include when all parties agree to validation after assisted reproduction has occurred. 2017 UPA, at § 816(a). See also 2017 UPA, at §§ 816(d) and 818.

\textsuperscript{131} 2017 UPA, at §801(3).

\textsuperscript{132} 2000 UPA, at §801(a).
Significant, as well, is the effective characterization in the 2017 UPA of an intended parent or intended parents in a genetic surrogacy setting as legal parents only after 3 days following the surrogate giving birth, since the surrogate has 72 hours to withdraw consent to the surrogacy agreement. Upon the genetic surrogate's withdrawal of consent within the 3 day period, the surrogate establishes a "parent-child relationship" as the surrogate is "the individual" who gave birth to the child.

But some intended parents may also establish a "parent-child relationship" even upon such withdrawals. Thus an intended parent who is a sperm provider can become a legal parent upon birth if the sperm provider, with the genetic surrogate, signed a parentage acknowledgment before birth and the VAP remains unrescinded and unchallenged.

There are laudable goals in the 2017 UPA. But, there is no PR protection available to all expecting legal parents.

C. Existing Legal Parents

Like expecting legal parents, existing legal parents usually wish to learn of adoption/parental rights termination proceedings involving their children. Are there existing legal parents who may not learn because the PR processes and the applicable notice laws in adoption/parental rights cases would not reach parentage that is established or alleged beyond court judgments and PRs?

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133 2017 UPA, at §814(a)(2).

134 2017 UPA, at §§ 815(c) (upon withdrawal, "parentage of the child" is determined under Articles 1-6) and 201(1) (parent-child relationship for individual who gives birth).

135 2017 UPA, at §§ 815(c) (upon withdrawal, "parentage of the child" is determined upon Articles 1-6), 201(5) (parent-child relationship for individual who acknowledges parentage), 301 (woman giving birth and "alleged genetic father may sign acknowledgment), 304(b) and (c) (acknowledgment signed before birth becomes effective at birth), and 308-309 (procedures for rescission and challenge).
As with expecting legal parents, assisted reproduction pacts can prompt existing legal childcare parentage, that is, childcare parentage in those who have met the applicable standards even though formal state recognitions may not yet have followed, as in a court judgment, a birth certificate, or a VAP. Further, both so-called residency/hold parentage and de facto parentage doctrines can prompt existing legal parents, again in the childcare setting where there may not yet be formal state recognition. Here, however, there is no significant opportunity for prebirth expecting legal parentage as the childcare parent standards on hold/out and de facto parenthood generally require parental-like actions following birth.136

i. Existing Voluntary Acknowledgment Parent

All UPAs recognize childcare parentage in those who have undertaken a VAP of a child then alive.137 With VAPs, there are actual consents to parentage by those who did not give birth.

The 1973 UPA recognizes “a man is presumed to be the natural father of a child” if “he acknowledges his paternity in a writing” filed with the state which is not disputed by the person giving birth “within a reasonable time after being informed.”138 Rebuttal of such a presumption occurs only with “clear and convincing evidence of no biological ties,” along with “a court decree establishing paternity of the child by another man.”139

The 2000 UPA recognizes no parentage presumption for a VAP signor.140 It does

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136 See, e.g., Ex Parte Z.W.E., 335 So.3d 650 (Ala. 2021) (no residency/hold out parentage based upon parental-like acts before a child's birth) [hereinafter Z.W.E.].

137 The 2017 UPA also recognizes prebirth VAPs that take effect at birth. 2017 UPA, at § 304(b) and (c).


139 1973 UPA, at §4(b).

140 2000 UPA, at §204(a).
recognize the person giving birth and “a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man’s paternity.” 141 That UPA declares a VAP can be rescinded within 60 days of its effective date by a “signatory.” 142 Thereafter, a signatory can commence a court case to “challenge” the VAP, but only on “the basis of fraud, duress, or material mistake of fact,” and then only within two years of the VAP filing.143

The 2017 UPA also recognizes nonpresumptive parent-child relationships through VAPs.144 Parentage establishments can be undertaken by an expanded field of VAP signatories, including those who claim to be “an alleged genetic father” of the child born of sex,145 a presumed parent due to an alleged or actual marriage to the person giving birth; a presumed parent due to a holding out of the child as one’s own while residing in the same household with the child “for the first two years of the life of the child;”146 and, an "intended parent" in a nonsurrogacy, assisted reproduction setting.147 Under the 2017 UPA, a VAP is the equivalent of

141 2000 UPA, at §301. The accompanying Comment indicates that “a sworn assertion of genetic parentage of the child” is needed though not “explicitly” required by federal welfare subsidy statutes that often prompt state VAP laws, a federal statutory “omission” that is corrected in the 2000 UPA. The Comment also recognizes a male sperm donor may undertake a VAP in an assisted reproduction setting where his “partner” is the birth mother.


143 2000 UPA, at §308(a).

144 2017 UPA, §201 (5). Some marital parentage presumptions, including marriages occurring after birth, can be prompted by parentage assertions in records filed with the state. 2017 UPA, at §204(a)(c)(i).

145 2017 UPA, at §301.

146 2017 UPA, at §§301 and 204(a).

147 2017 UPA, at §§301 and 703. Unlike earlier UPAs, VAPs may be signed "before" birth. 2017 UPA, at §304(c).
an adjudication of parentage of the child.\textsuperscript{148}

As with the 2000 UPA, under the 2017 UPA signatories may rescind VAPs within 60 days of their effective date.\textsuperscript{149} Challenges may proceed thereafter, “but no later than two years after the effective date” and “only on the basis of fraud, duress or material mistake of fact.”\textsuperscript{150}

While nonsignatory VAP challenges may be pursued within “two years after the effective date of the acknowledgement,” challenges will only be sustained when the child’s “best interest” will be served.\textsuperscript{151} Nonsignatory challengers are limited. Nonsignatories with standing include the child; a parent under the 2017 UPA; “an individual whose parentage is to be adjudicated;” an adoption agency; and a child support, or other authorized, governmental agency.\textsuperscript{152}

The 2017 UPA expressly recognizes that VAPs may be undertaken by those who know there are no biological ties to the children whom they acknowledge. This is new, and revolutionary. The 2017 UPA allows circumvention of formal adoption laws and the safeguards they provide for children, including background checks and best interest findings. A Comment to the 2000 UPA laments that the federal statutes guiding state VAP laws do not expressly “require that a man acknowledging paternity must assert genetic paternity;” it indicates that the 2000

\textsuperscript{148} 2017 UPA, at § 302(a)(3). Compare Arkansas Code 20-18-702(a) (within the Department of Health there is a Putative Father Registry which can entitle signing putative fathers "to notice of legal proceedings pertaining to the child for whom the putative father has registered;") but the "rights" do not attach until the putative father establishes "a significant custodial, personal, or financial relationship with the child").

\textsuperscript{149} 2017 UPA, at §308(a)(1). The effective date of a VAP signed prebirth is the day the child is born. 2017 UPA, at §304(c).

\textsuperscript{150} 2017 UPA, at §309 (a).

\textsuperscript{151} 2017 UPA, at §§309(b) and 610(b)(1) and (2).

\textsuperscript{152} 2017 UPA, at §§610(b) and 602. Thus, the parents or siblings of an alleged biological father of a child born of consensual sex seemingly cannot challenge a VAP.
UPA was “designed to prevent circumvention of adoption laws by requiring a sworn statement of genetic parentage of the child.”

Thus, in 2017, the UPA policy on VAPs changed dramatically. The change not only circumvents formal adoption laws, but seemingly can prompt constitutional issues involving, at the least, so-called as applied challenges.

Current state laws reflect the varied VAP policies of the different UPAs. Only a few states have extended VAP authority to an identified same-sex female couple where a child is born of consensual sex. VAP opportunities are not, and in many states could not be, extended to an identified same-sex male couple where one of the men conceived a child born of sex, at least where the person giving birth continues to be a parent and where there cannot be three legal parents.

153 2000 UPA, Comment to Article 3.

Challenges would be founded on the innocent losses of the constitutional parental opportunity interests of unwed sperm donors where children are born of consensual sex to unwed persons and where donors never eschewed, and, in fact, embraced their own actual or potential parenthood. See Lehr, 463 U.S. at 262 (“opportunity . . . to develop a relationship with his offspring; paternity registry scheme “might be thought procedurally inadequate” if it was “likely to omit many responsible fathers” and “qualification for notice were beyond the control of an interested putative father”), as urged in Jeffrey A. Parness, “The Constitutional Limits on Custodial and Support Parentage By Consent,” 56 Idaho L. Rev. 421, 465-478 (2020) [hereinafter Constitutional Limits].


155 In California there can be three parents under law. California Family Code 7612(c). But one such parent cannot be a parent via a VAP. California Family Code 7612(c) and 7611 (voluntary parentage acknowledgment does not prompt presumed parentage).
State VAP statutes today only sometimes involve parentage presumptions. With or without presumptions, \textsuperscript{157} VAP statutes typically recognize that signed and state-filed parentage declarations establish childcare parentage for signors who are not persons giving birth.

Sometimes VAPs operate without alleged biological ties. \textsuperscript{158} VAPs also operate without formal adoptions. State VAP laws also vary in their disestablishment standards, though all norms, due to federal welfare subsidy mandates, must conform to the federal Social Security Act. \textsuperscript{159}

VAP statutes most often are employed by one giving birth and another person who seeks to establish legal parenthood. \textsuperscript{160} VAPs are typically distinguished from birth certificate recognitions of childcare parents encompassing those married to persons giving birth, who frequently are presumed parents, but who never undertake VAPs. \textsuperscript{161} VAP parents who also


\textsuperscript{158} In Alaska and Nevada, the VAP forms do not speak to biological ties. The signing man indicates only that he is the “father.” Alaska Bureau of Vital Stat., Form No. 06-5376 VS Form 16, Affidavit of Paternity (rev. Jan. 2009) and Nevada Declaration of Paternity, Nevada Vital Records, Form No. NSPO, Declaration of Paternity (rev. July 2008). In Vermont, a woman residing with a birth mother for the first two years of a child’s life is eligible to sign a VAP. 15C Vermont Stat. 301(a)(4) and 401(a)(4). In Wyoming and Washington, there is no explicit requirement that the signing man affirm a belief in biological ties, though the signor elsewhere is referred to as the “natural father.” Vital Records Servs., State of Wyoming, Affidavit Acknowledging Paternity and Washington Paternity Affidavit, Ctr. For Health Stat., Wash. Dep’t. of Health, Form No. DOH/CHS 021 (rev. Sept. 2007). The foregoing VAP forms, and others later referenced, are on file with the author, who assembled them while writing For Those Not John Edwards. Generally, see Cacioppo, at 489-491.


\textsuperscript{160} But see In re Sebastian, 879 N.Y.S. 2d 677 (N.Y. Surr., N.Y. 2009) (suggesting woman whose ova was used by her partner to bear a child born of assisted reproduction might employ the voluntary acknowledgment process).

\textsuperscript{161} See, e.g., Castillo v. Lazo, 386 P. 3d 839 (Ariz. App. 2d 2016) (birth certificate naming husband is not “equivalent” to a VAP).
reside and hold out children as their own differ from residency/hold out parents who never undertake VAPs, since a VAP is more difficult to challenge than is a residency/hold out parentage.

Only in some states must information as to any completed genetic testing accompany VAPs; may forms be used by residents for out-of-state births; must there be witnesses or notaries; and, must forms require parental or guardian consent when a signing persons who gave birth is young.

Notwithstanding any statutorily-designated “conclusive” status, VAPs can be rescinded by signatories within sixty days. After sixty days, VAPs can only be challenged in court on the basis of fraud, duress, or material mistake of fact. For states participating in federal welfare subsidy programs, these standards are required by the federal Social Security Act. Yet, current state precedents reflect significant interstate variations in the fraud, duress, and mistake guidelines, with no Congressional or federal court movement to unify state VAP challenge standards.

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162 See, e.g., 15C Vermont Stat. 301 (a)(4) and 401 (a)(4) (a presumed hold out/residency parent may, but need not, sign a VAP).

163 For example, under both the 2000 and 2017 UPA a VAP usually cannot be challenged more than 60 days after signing unless no more than two years have passed and there is shown "fraud, duress, or material mistake of fact." 2000 UPA, at §308 and 2017 UPA, at §309(a). For residency/hold out parentage, a proceeding "to adjudicate the parentage of a child" having such a presumed parent must be commenced within 2 years after a child's birth, with no showing of fraud or the like. 2000 UPA, at §607(a) and 2017 UPA, at §608(a).

164 The varying state forms are reviewed in For Those Not John Edwards, at 63-87.


166 On such variations, see, e.g., Jeffrey A. Parness and David A. Saxe, “Reforming the Processes for Challenging Voluntary Acknowledgments of Paternity,” 92 Chicago-Kent L. Rev. 177 (2017) [hereinafter Reforming VAPs].
Beyond fraud, duress, and mistake, there are other differences in state VAP challenge laws. For example, there are varied time limits on VAP challenges. Even with fraud, duress or mistake, challenges must be commenced within a year in Massachusetts,\(^{167}\) within two years in Delaware,\(^{168}\) and within four years in Texas.\(^{169}\) In Utah, a statutory challenge may be made “at any time” on the ground of fraud or duress, but only within four years for material mistake of fact.\(^{170}\) Where there are no written time limits, (often quite broad) trial court discretion reigns.\(^{171}\) Further, there are interstate differences in whether a successfully challenged VAP eliminates past child support arrearages.\(^{172}\)

Importantly, particularly for nonsigning sperm providers with children born of consensual sex, there are some laws on the circumstances beyond fraud, duress and mistake that can be used to challenge VAPs. Consider challenges by nonsigning sperm providers who did not know that others were signing VAPs alongside those giving birth, and who did not know of, and did not reasonably foresee, for some time, their “potential parentage.” In Vermont, such a sperm

\(^{167}\) Mass. Gen. Laws 209C(11)(a). See also State v. Smith, 392 P.3d 68 (Kan. 2017) (one year (after birth) limit on signatory challenges applied though there were found technical violations (e.g., no proper notarizations) of the statute).


\(^{169}\) Texas Family Code 160.308(1).


\(^{171}\) See, e.g., Matter of Neal, 184 A.3d 90 (N.H. 2018) (sustainable exercise of trial court discretion where a 2009 VAP was challenged by male signatory in 2015 after a 2012 paternity test revealed that he was not the biological father; challenge brought in November, 2015, after child contact was cut off in March, 2014).

\(^{172}\) See, e.g., Adler v. Dormio, 872 N.W. 2d 721 (Mich. App. 2015) (reviewing Michigan laws on when responsibility for arrearages may be eliminated).
provider may challenge a VAP within two years after discovery of “potential parentage,” as in cases where there was “concealment” of the pregnancy and/or of the birth even though there was no fraud, duress, or mistake.\textsuperscript{173} Elsewhere, “concealment” of a pregnancy and/or of a live birth by the person giving birth (and, at times, others) may not extend the time for a sperm provider to challenge a VAP due to strict repose periods.\textsuperscript{174}

Finally, again particularly important for nonsigning sperm providers (and their family members), state laws vary on which nonsignatories can challenge VAPs. In Vermont, a challenge is available to “a person not a signatory.”\textsuperscript{175} Elsewhere, nonsignatory standing to challenge a VAP is far more limited, as with laws recognizing only certain types of challengers, like children and governments.\textsuperscript{176}

There are several constitutional issues under current VAP laws. As to the gendered terms, what is added by describing a signor as a mother or a woman, rather than as the person giving birth? What is added by describing a signor as a father or a man, or as a mother or a woman, rather than as an actual or possible gamete provider? Gamete provider laws would recognize the interests of both sperm and egg providers where genetic ties are important.\textsuperscript{177}

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{173} 15C Vermont Stat. 308(b).

\textsuperscript{174} See, e.g., Reforming VAPs, at 198-200 (also noting that VAP challenges within the relevant time limits may be foreclosed by laches or estoppel).

\textsuperscript{175} 15C Vermont Stat. 308(b).

\textsuperscript{176} See, e.g., Reforming VAPs, at 188-194. While the 2017 UPA expressly recognizes a VAP may be challenged by a nonsignatory, 2017 UPA at §§309(b) and 610 (proceeding “brought by an individual other than the child”), the 2000 UPA only explicitly recognizes signatory challenges, 2000 UPA at §308(a). And see 1973 UPA at §§4(a)(5) and 6(b) (“any interested party may sue to disestablish an acknowledged father”).

\textsuperscript{177} On the need for VAP availability for egg donors, see, e.g., Feinberg, at 101-103 (female couples who have children with donated sperm employed in assisted reproduction settings). A more progressive law is Vermont Stat. tit. 15C, 301(a)(4) and 401(a)(1) (person married to one bearing a child can undertake a VAP).
\end{footnotesize}
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Thus, VAPs should encompass those who undertake voluntary parentage acknowledgment, not voluntary paternity acknowledgment, a distinction recognized in the 2017 UPA. Yet the 2017 UPA unfairly differentiates between an "alleged genetic father" who can sign a VAP for a child born of sex to another and an alleged genetic mother who cannot sign a VAP for a child delivered by another if she has not undertaken a "record" of intent to parent a child born of assisted reproduction.\footnote{2017 UPA, at §301 (while recognizing the availability of VAPs for identified females, the provision fails to recognize expressly VAPs for such unmarried females who have contributed eggs leading to children delivered by others; these egg donors also do not qualify as "intended" parents of children born to their partners who delivered the children where there is no effective consent under §704; for such consent, a "record" is needed, though there may be actual consent). In nonsurrogacy assisted reproduction settings, the written "record" of consent must contain the signature of the person giving birth and the other intended parent, and can be executed "before, on, or after the birth of the child." 2017 UPA, at §704(a). In the absence of such a "record," an individual can prove "consent to parentage" by "proving by clear-and-convincing evidence of the existence of an express agreement entered into before conception" as to "intended" parentage. 2017 UPA, at §704(b)(1). Where an egg donor cannot prove a preconception express agreement, as when disputed by the person about to give or giving birth with whom the donor is no longer partnered, and cannot then undertake a VAP, as the former partner will not sign, the donor may seek an adjudication as a genetic parent, but may have to compete with another individual claiming parenthood with the person who gave birth. 2017 UPA, at §§607 and 613. By contrast to the "record" needed by an egg donor, an "alleged genetic father" can undertake a VAP before birth, establishing parentage effective at birth, without any other "record." 2017 UPA, at §§ 201(a)(5), 301 and 304(b).}

These issues aside, the VAP laws are troublesome as they differ from PRs. Only PRs might be searched during an adoption/parental rights termination proceeding. Thus, during adoption proceedings there are statutory mandates that PR records are investigated, with no accompanying mandates on VAP record searches.\footnote{See, e.g., Ohio Rev. Code 3107.63 and 3107.64 ("putative father registry" search); Virginia Code 63.2-1252 (A) ("Birth Father Registry" search); Montana Code 42-2-217 ("Putative Father Registration" search); and Indiana Code 31-19-5-16 ("Putative Father Registry" search).}

\textbf{ii. Existing Nonsurrogacy Assisted Reproduction Parent}

The 1973 UPA does not deal with the "many complex and serious problems raised by the practice of artificial insemination."\footnote{1973 UPA, at §5 at Comment.} It does, however, address "one fact situation that occurs
frequently,"181 a "consent" by a husband to the artificial insemination of his wife with "semen donated by a man not her husband." Here, the husband is to be "treated in law as if he were the natural father" where the consent was in writing and "signed by him and his wife," with certification undertaken and then filed by the supervising "licensed physician" with state governmental officials.182 The husband is a nonpresumptive spousal parent. The semen donor who is not the husband is to "be treated in law as if he were not the natural father."183

In response to the increasing numbers of children born of assisted reproduction, both the 2000 and the 2017 UPA contain distinct articles on nonsurrogacy and surrogacy births. In nonsurrogacy settings, the 2017 UPA “is substantially similar” to the 2000 UPA, with the “primary changes… intended to update the article so that it applies equally to same-sex couples.”184 The 2017 UPA recognizes that a sperm donor is not always a parent of a child conceived by assisted reproduction.185 For there to be two legal parents, a consent to parentage must be signed by the person giving birth and "an individual who intends to be a parent," though the "record" need not be certified by a physician.186 Seemingly, "consent in a record" can be undertaken "before, on, or after birth of the child."187 The lack of this form of consent does not foreclose

181 1973 UPA, at §5 at Comment.
182 1973 UPA, at §5(a) (all papers and records pertaining to the insemination are to be kept confidential, though subject to inspection pursuant to a court order "for good cause shown").
183 1973 UPA, at §5(b).
184 2017 UPA, at Comment preceding §701.
185 2017 UPA, at §§702-704.
186 2017 UPA, at §704(a).
187 2017 UPA, at §704(b).
childcare parentage for an intended parent where there is clear-and-convincing evidence of an "express agreement" between the individual and the person giving birth "entered before conception." As well, the lack of such consent or agreement does not foreclose an individual's parentage where the child was held out as the individual's own in the child's first two years.

The nonparental status of one married to a person giving birth to a child born by assisted reproduction, even if a gamete donor, may be established by a showing of a lack of consent, of any agreement, and of holding out of the child as one’s own.

The nonsurrogacy parentage norms in the UPAs are now reflected in some U.S. state

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188 2017 UPA, at §704(b)(1). It is clear why an “express agreement” undertaken postconception does not prompt comparable childcare parentage. Here, there is much greater certainty that a child will be born so that an agreement is far less speculative. Perhaps instead of a postconception agreement, the 2017 UPA contemplated a prebirth VAP, as it recognizes an "intended parent" can sign a VAP. Yet, an "intended parent" under the 2017 UPA in many states has no prebirth VAP access as the states follow the 1973 UPA or 2000 UPA which only authorize postbirth (paternity) VAPs. 1973 UPA, at §4(b) ("paternity" acknowledgment "of the child" in a "writing filed with" the state, which is not disputed by "the mother") and 2000 UPA, at §301 ("man claiming to be the genetic father of the child" signs together with the "mother of a child").

189 2017 UPA, at §704(b)(2).

190 2017 UPA, at §705.
Childcare parentage for intended parents in nonsurrogacy settings often involve express consents. There could be, but there generally are no, state-required forms guiding such consents. In California, however, in nonsurrogacy settings there are statutorily-recommended consent forms that may be used. Regardless of the nonsurrogacy parentage norms, state-formulated consent forms should be made available, as informed consent would be better assured and there would be greater certainty regarding party intentions. Such forms would be comparable to the

191 American state statutes include Texas Family Code 160.7031 (fatherhood for unwed man, intending to be father, who provides sperm to licensed physician and consents to the use of that sperm for assisted reproduction by an unwed woman, where consent is in a record signed by man and woman and kept by the physician); N.H. Rev. Stat. 5-C:30(I)(b)(unwed mother has sperm donor “identified on birth record” where “an affidavit of paternity” has been executed); 13 Delaware Code 8-704(a)(“Consent by a woman and a man who intends to be a parent of a child born to the woman by assisted reproduction must be in a record signed by the woman and the man.”); Wyoming Stat. 14-2-904(a)(like Delaware); and New Mexico Stat. 40-11A-703(“A person who provides eggs, sperm, or embryos for or consents to assisted reproduction as provided in Section 704 ["record signed . . . before the placement"] . . . with the intent to be the parent of a child is a parent of the resulting child”).

192 Precedents include Shineovich v. Shineovich, 214 P.3d 29(Or. App. 2009) (to avoid constitutional infirmity, assisted reproduction statute as written solely for married opposite sex couple applied to same sex domestic partners); Jason P. v. Danielle S., 171 Cal. Rptr. 3d 789 (Cal. App. 2d 2014)(though the statute (both pre2011 and post 2011) indicated explicitly a lack of paternity for this particular semen donor when his unwed partner delivered a child conceived via assisted reproduction, the statute on presumed parentage for one (either male or female) who receives a child into the home and openly holds out the child as one’s own natural child can support – in certain circumstances – legal paternity for the semen donor); Ramey v. Sutton, 362 P.3d 217 (Okl. 2015) (unwritten preconception agreement prompts in loco parentis childcare status for former lesbian partner of birth mother, though she contributed no genetic material); and In re Brooke S.B. v. Elizabeth A.C.C., 61 N.E. 3d 488 (N.Y. 2016) (agreement between lesbian partners can prompt parentage in non-birth mother) [hereinafter Brooke S.B.].

193 The laws are reviewed, and critiqued, in Deborah H. Forman, “Exploring the Boundaries of Families Created with Known Sperm Donors: Who’s In and Who’s Out?”, 19 Univ. of Pennsylvania J. of Law and Social Change 41 (2016).


195 California Family Code 7613.5(d) (forms on assisted reproduction pacts by two married or by two unmarried people, where signatories may or may not have used their own genetic material to prompt a pregnancy).

196 I urged that such forms be created in "Formal Declarations of Intended Childcare Parentage," 92 Notre Dame L. Rev. Online Supplement 87 (March 30, 2017) [hereinafter Formal Declarations].
required forms for VAPs.\textsuperscript{197}

As with VAPs for children born of sex, is there anything important added by employing terms like husband, wife, man and woman in nonsurrogacy assisted reproduction parent laws? There are sperm and egg donors (not intended parents) and providers (intended parents), as well as consenting, agreeing, and residing individuals. How parents and nonparents are gender-identified, publicly or personally, should not impact legal analyses implementing public policies on childcare parentage in nonsurrogacy cases, whatever they are.

And, as with VAPs, there can be state-filed records, as with court judgments, indicating parentage of children born of nonsurrogacy assisted reproduction. Like VAPs, inquiries into those records may not be required in adoption/parental rights termination cases.

More importantly, parentage can also arise in nonsurrogacy assisted reproduction settings where there are no state-filed records.\textsuperscript{198} Here too, inquiries beyond PRs are needed, though difficult factual disputes might arise.\textsuperscript{199}

\textbf{iii. Existing Surrogacy Assisted Reproduction Parent}

\textsuperscript{197}See, e.g., For Those Not John Edwards, at 63-87 (reviewing similarities and differences in state-generated VAP forms). At times, some written parentage acknowledgments operate though state-generated forms were not utilized. See, e.g., District of Columbia Code 16-909(a)(4) (presumption that a man is the father of a child if he “has acknowledged paternity in writing”); New Mexico Stat. 40-11A-204(A)(4)(c) (a man is presumed to be the father of a child that “he promised in a record to support... as his own” if he married the birth mother after the child’s birth); and Kansas Stat. 23-2208(a)(4) (a man is presumed to be the father of a child if he “notoriously or in writing recognizes paternity of the child,” including but not limited to acts in accordance with the voluntary acknowledgement statutes).

\textsuperscript{198}See, e.g., 2017 UPA, at §704(b).

\textsuperscript{199}Consider 2017 UPA, at §704(b)(1) ("clear and convincing evidence” of an express agreement to parent) and §704(b)(2) (hold out/residency for “the first two years of the child’s life”).
As to surrogacy, the 1973 UPA is silent.\footnote{1973 UPA, at §5 at Comment (while addressing husband-wife pacts on assisted reproduction where the wife bears the child and intends to parent, the Act "does not deal with many complex and serious legal problems raised by the practice of artificial insemination").} The 2017 UPA, like the 2000 UPA, distinguishes between genetic ("traditional") and gestational surrogacy.\footnote{2017 UPA, at Comment preceding §801.} Their surrogacy provisions are limited to instances of assisted reproduction births.\footnote{2000 UPA, at § 801(a)(i) ("agrees to pregnancy by means of assisted reproduction") and 2017 UPA, at § 801(3) (surrogacy agreement on pregnancy "through assisted reproduction"). This is not to say there are no instances of surrogacy undertaken through consensual sex. See, e.g., K.B. v. M.S.B., 2021 BCSC 1283 (British Columbia Sup. Ct.) (parentage action by person who gave birth against sperm provider and spouse).} Unlike the 2000 UPA, the 2017 UPA does not propose that all surrogacy agreements be validated by a court order prior to any medical procedures.\footnote{2017 UPA, at Comment preceding §808.} The 2017 UPA imposes differing requirements for the two surrogacy forms, however, with “additional safeguards or requirements on genetic surrogacy agreements,”\footnote{Id. at Comment preceding § 801. The common safeguards or requirements for all surrogacy pacts are found in id. at §§ 802-807. See also 2017 UPA, at §§ 808-812 (special requirements for gestational surrogacy agreements) and 813-818 (special requirements for genetic surrogacy agreements).} as only they involve a woman giving birth while “using her own gamete.”\footnote{Id. at § 801(1). Gestational surrogacy covers births to a woman who uses "gametes that are not her own." Id. at § 801(2). The special rules for gestational surrogacy pacts are found in id. at §§ 808-812, while the special rules for genetic surrogacy pacts are found in id. at §§ 813-818.} The 2017 UPA recognizes there can be "one or more intended parents"\footnote{2017 UPA, at §801(3).} in surrogacy settings.

The common requirements for the two forms of surrogacy pacts include signatures in a record, "attested by a notarial officer or witnesses;" independent legal counsel for all signatories; and execution before implantation.\footnote{2017 UPA, at §803(6), (7) and (9). Thus, by definition, a person who may become pregnant through sex cannot agree to be a surrogate, as cannot a person who is pregnant and only agrees to surrogacy postpregnancy. 2017} Special provisions for gestational surrogacy pacts include
an opportunity for "party" termination "before an embryo transfer" and opportunity for a prebirth court order declaring parentage vesting at birth. Special provisions for genetic surrogacy pacts include the general requirement that "to be enforceable," an agreement must be judicially validated "before assisted reproduction" upon a finding that "all parties entered into the agreement voluntarily" and understood its terms; that a genetic surrogate may withdraw consent "in a record" at any time before 72 hours after the birth; and that a genetic surrogate cannot be ordered by a court to "be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures."

UPA surrogacy parentage norms are now reflected both in state statutes and precedents untethered to statutes. Certain provisions of the 2017 UPA have been enacted in a few

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208 2017 UPA, at §§808(a) and 811(a).
209 2017 UPA, at §813(a) and (b).
210 2017 UPA, at §814(a)(2). Genetic and gestational surrogates have both been recognized, however, as having federal constitutional parental opportunity interests under Lehr, 463 U.S. at 261-62. Matter of Schnitzer, 493 P.3d 1071 (Or. App. 2021).
211 2017 UPA, at §818(b).
212 See, e.g., Washington Rev. Stat. 26.26A.715 (gestational and genetic surrogacy pacts). In New Hampshire, which veers from the 2017 UPA, before insemination pursuant to a surrogacy contract that will be deemed "lawful," N.H. Rev. Stat. 168-B:16(I), a court "shall" be petitioned for "judicial preauthorization," N.H. Rev. Stat. 168-B:21(I). Requirements include that the "intended mother" is "psychologically unable to bear a child without risk to her health or to the child’s health;" the "intended father" "provided a gamete;" and either the intended mother or surrogate provided the ovum. Authorization is permitted only where the "surrogacy contract is in the best interest of the intended child." N.H. Rev. Stat. 168-B:23(III)(d).
213 Precedents recognizing judicial discretion to enforce surrogacy arrangements include In re Paternity of F.T.R., 833 N.W. 2d 634, at ¶73 (Wis. 2013) (enforcing surrogacy pact between two couples as long as child’s best interests were served, while urging the legislature to “consider enacting legislation regarding surrogacy” to insure “the courts and the parties understand the expectations and limitations under Wisconsin law”) [hereinafter F.T.R.]; In re Baby, 447 S.W.3d 807 (Tenn. 2014) (“traditional surrogacy contracts do not violate public policy as a general rule” where surrogate artificially inseminated with sperm of intended father, who was not married to intended mother); In re Amadi, 2015 WL 1956247 (Tenn. App. 2015) (gestational surrogate for married couple is placed on
states.\textsuperscript{214} Elsewhere, there operate major sections of the 2000 UPA on surrogacy.\textsuperscript{215} As yet, there are no state required or suggested forms, though there are suggested forms for nonsurrogacy assisted reproduction births in California.\textsuperscript{216} New mandates on required forms or an increased availability of suggested forms would significantly diminish the number of disputes over consents to parentage, nonparentage, and conditions of pregnancy.\textsuperscript{217}

In surrogacy settings, there are potentially court records on surrogacy pacts. Clearly, here a record search beyond PRs is warranted and the failure here to undertake a PR regarding such a pact should serve as no barrier to notice/participation in adoption/parental rights termination cases.

\textbf{iv. Existing Residency/Hold Out Parent}

All UPAs recognize childcare parentage in some who have resided with living children whom they held out as their own. To date, no UPA (and no state law) has recognized


\textsuperscript{215} See, e.g., Utah Code Ann. 78B-15-801 (similar to 2000 UPA).

\textsuperscript{216} See California Family Code 7613.5.

\textsuperscript{217} Formal Declarations, at 104. Also see Guardianship of Keanu, 174 N.E. 3d 1228, 1230 (Mass. App. 2021) (court recognizes a need for legislation on surrogacy pacts given "the risks of an informal surrogacy").
residency/hold out parentage where there is common residency with, and support of, expecting legal parents (i.e., those pregnant or those awaiting formal adoption approval).\textsuperscript{218}

The 1973 UPA is quite different than the later UPAs on residency/hold out parents.

The 1973 Uniform Parentage Act has this parentage presumption:

(a) A man is presumed to be the natural father of the child if...
(4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.\textsuperscript{219}

The 2000 Uniform Parentage Act altered the presumption. It says:

(a) A man is presumed to be the father of a child if: ...
(5) for the first two years of the child’s life, he resided in the same household with the child and openly held out the child as his own.\textsuperscript{220}

The 2017 Uniform Parentage Act altered again the presumption. It says:

(a) An individual is presumed to be a parent of a child if: …
(2) the individual resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and openly held out the child as the individual’s child.\textsuperscript{221}

The 2000 ALI Principles of the Law of Family Dissolution (ALI Principles) also recognize forms of residency/hold out parents. One form, like the 2000 and 2017 UPAs but with a different name, encompasses “a parent by estoppel” who “lived with the child since the child’s birth” while holding out and accepting full and permanent responsibilities as parent as part of a

\textsuperscript{218} See, e.g., Z.W.E., 335 So. 3d at 657.

\textsuperscript{219} 1973 UPA, at §4(a)(4).

\textsuperscript{220} 2000 UPA, at §204(a)(5).

\textsuperscript{221} 2017 UPA, at §204(a)(2).
prior co-parenting agreement with the child’s legal parent (or, if there are two legal parents, both parents) to raise a child together each with full parental rights and responsibilities.\textsuperscript{222}

Many current state laws reflect the policies of these proposed laws. Yet only a few legislatures to date have expressly extended the policies beyond publicly identified opposite sex couples.\textsuperscript{223} Nevertheless, residency/hold out parentage can be made available to an identified female partner of one giving birth due to equality demands.\textsuperscript{224} Residency/hold out parentage is generally unavailable to a partner of a man who is a parent at birth where the person giving birth remains a legal parent and where state laws disallow three custodial parents.\textsuperscript{225}

There are varying state laws reflecting the distinct UPA approaches to residency/hold out parents. In California, following the 1973 UPA, a man is “presumed to be the natural father of a child” if he “received the child into his home and openly holds out the child as his natural

\textsuperscript{222} 2000 ALI Principles, at §2.03(1)(b)(iii) (further requiring a finding of serving the child’s best interests) [hereinafter 2000 ALI Principles].


\textsuperscript{224} See, e.g., Elisa B. v. Superior Court, 117 P.3d, 660, 670 (Cal. 2005) (finding former unwed lesbian partner a child support parent under California statutory law on presumed natural hold out fathers) and Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951, 972 (Vt. 2006) (upon dissolution of civil union of lesbian couple, both women are custodial parents as statute making husband the presumed “natural parent” of a child born to his wife was applicable via a second statute saying that civil union and married couples shall have the “same” rights, 15 Vt. Stat. 308(4) and 1204(f)). Similar equality mandates operate when there is common law, rather than statutory, hold out parentage. See, e.g., Wendy G-M. v. Erin G-M., 985 N.Y.S. 2d 845 (N.Y. Sup. Monroe Cty., 2014). See also Nancy D. Polikoff, “From Third Parties to Parents: The Case of Lesbian Couples and Their Children,” 77 Law and Contemporary Problems 195, 212-219 (2014) (even where statutes only explicitly recognize residency/hold out parentage for men, women are sometimes deemed parents under the statutes).

\textsuperscript{225} In California, though, there can be three legal parents, including the birth mother, her spouse, and a residency/hold out parent. See California Family Code 7612(c) (three parents where recognition of only two parents “would be detrimental to the child”). Compare C.G. v. J.R. 130 So.3d 776, 782 (Fla. App. 2d 2014) (Florida law does not support enforcement of an agreement on sharing child custody which was entered into by the married birth mother, her spouse, and the biological father of a child born of sex).
There is no explicit requirement that a man who holds out a child as “his natural child” needs to have any beliefs about his actual biological ties. Thus, California cases have recognized as presumed parents those who knew there were no biological ties, but who acted in the community as if there were. Elsewhere, there are state laws recognizing residency/hold out parentage only for those who raise children from birth, following the 2017 UPA.

There are other interstate variations in residency/hold out parentage. Some state laws do not require receipt into the home. Some laws more explicitly require existing legal parents to agree to such matters as residency or hold outs by nonparents who can later morph into new childcare parents, on equal footing with existing legal parents.

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227 See, e.g., In re Jesusa V., 85 P.3d 2, 15 (Cal. 2004) (both Paul (also the husband) and Heriberto (also the biological father) were each judicially declared to be “presumed” California fathers because each had received Jesusa V. into his home and held her out as his natural child) [hereinafter Jesusa V.]. See also Barnes v. Cypert, 2006 Cal. App. Unpub. LEXIS 10543 (Cal. App. 5th) (birth mother’s uncle is a presumed parent) and In re Jerry P., 95 Cal. App. 4th 793, 816 (Cal. App. 2d 2002) (presumed residency/hold out parent need not have, or even claim to have, biological ties).

228 How long an alleged residency/hold out parent must so act is determined on a case-by-case basis. See, e.g., In re J.B., 2019 WL 1451304 (Cal. App. 2d 2019) (two day holdout is insufficient for presumed parent status).

229 See, e.g., Texas Code 160.204(a)(5) (man is a presumed father if “during the first two years of the child’s life, he continuously resided in the household in which the child resided and he represented to others that the child was his own”) and Wash. Code 26.26.116(2) (similar). Compare Montana Code 40-6-105(d)(1) (person is presumed the natural father if “while the child was under the age of majority,” the person “receives the child into the person’s home and openly represents the child to be the person’s natural child”).

230 See, e.g., N.J. Stat. 9:17-43(a)(4) (either receives into his home or “provides support for the child”) and Delaware Code tit. 13, 8-201(c) (“parental role” and “bonded and dependent relationship . . . that is parental in nature”).

231 See, e.g., D.C. Code 16-831.01(1) (single parent’s “agreement” to same household residency for one wishing to be deemed a de facto parent) and 15C Vermont Stat. 401 (a)(4) (presumed residency/hold out parent if in child’s first 2 years, where “another parent” of child jointly held child out as presumed parent’s child). Compare N.J. Stat. 9:17-43(a)(4) and (5) and 9:17-40 (a man can be “presumed to be the biological father of a child on equal footing.
State laws also vary on the circumstances allowing, and the standing available to present, a challenge to residency/hold out parentage. Consider challenges by nonresident sperm providers who did not know, and could not reasonably have known, that the circumstances of residency/hold out parentage was being undertaken by a nonparent together with an existing legal parent (often the person giving birth). In Vermont, such a provider may challenge a hold out/residency parentage within two years of “discovering the potential genetic parentage” where there was no earlier actual or reasonably assumed knowledge of the potential due to “material misrepresentation or concealment.” 232 Elsewhere, there are different time limits, 233 as well as the unavailability of “concealment” as a condition of extending the normal time limits for challenging residency/hold out parents. 234

No state follows the 2000 ALI Principles on parentage by estoppel, where a co-parenting pact with a potential residency/hold out parent must be undertaken by, if there are two, both existing legal parents. 235 Yet, the 2000 ALI Principles are wise since one existing legal parent, with the unwed birth mother, if he “openly holds out the child as his natural child” and either “receives the child into his home” or “provides support for the child”).

232 15C Vermont Stat. 401(a)(4) and 402(b)(2).

233 Compare, e.g., 2017 UPA, at §§204(a)(2) (residence/hold out in child’s first two years) 204(b), and 608(b) (presumption rebuttal usually must be presented before the child turns two) to 1970 UPA, at §4(a)(4) (residence/hold out where child is “under the age of majority”) and 6(b) (rebuttal of residency/hold out parentage may be brought “at any time” by an “interested party”).

234 Compare, e.g., 2017 UPA, at §§204(a)(2), 204(b) and 608(b) (two year limit on challenging residency/hold out parentage of an “individual” does not operate when the individual is “not a genetic parent, never resided with the child, and never held out the child as the presumed parent’s child”); 2000 UPA at §§204(a)(5), 204(b), and 607(b) (two year limit on actions to disprove earlier determined presumed residency/hold out parentage in a “man” does not operate when there was, in fact, no cohabitation or sexual intercourse during the probable time of conception and the presumed parent never openly held out the child as his own); and 1970 UPA, at §§4(a)(4) and 6(b) (presumed residency/hold out parentage can be challenged “at any time”).

as in a formal adoption, generally has no agency/common authority to surrender the parental childcare rights of a second existing legal parent.\textsuperscript{236}

\textbf{v. Existing De Facto Parent}

The 2017 UPA, but neither of its UPA predecessors, expressly recognizes "de facto" parenthood as a form of parentage for those without biological or formal adoption ties.\textsuperscript{237} Such parenthood is dependent upon meeting far more explicit terms to gain childcare interests than the terms underlying residency/hold out parentage.\textsuperscript{238} For de facto parentage, an existing legal parent must have "fostered or supported" a "bonded and dependent relationship" between the child and a nonparent which is "parental in nature;"\textsuperscript{239} the nonparent must have held out the child as the nonparent's own child and undertaken "full and permanent" parental responsibilities;\textsuperscript{240} and, the nonparent must have "resided with the child as a regular member of the child's household for a significant period of time."\textsuperscript{241}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{236} See, e.g., Constitutional Limits, at 461-478. See also E.N. v. T.R., 255 A.3d 1, (Md. 2021) (each existing legal parent must consent to a third party de facto parent relationship unless nonconsenting parent is unfit or there are exceptional circumstances) and Martin v. MacMahan, 264 A.3d 1224, 1234 (Maine 2021) (following E.N., because "to hold otherwise would potentially allow the unilateral actions of one legal parent to cause an unconstitutional dilution of another legal parent's rights").
\item \textsuperscript{237} The term "de facto" parent did not originate in the 2017 UPA. The Comment to the Act indicates its de facto parentage standard was modeled on Maine and Delaware statutes. 2017 UPA, at Comment to §609. The term was also employed in the 2000 ALI Principles. 2000 ALI Principles, at § 203(1). See also ALI Restatement of the Law: Children and the Law, Tentative Draft No. 3 (April 16, 2021), at 251, Appendix B (§1.72 on de facto parentage is one of the "black letter" sections approved by membership).
\item \textsuperscript{238} Expecting legal parents are foreclosed under the 2017 UPA from being bound to any agreements on de facto parentage for children to be born of sex later, as the model law requires, e.g., "a bonded and dependent relationship with the child." 2017 UPA, at §609(d)(5). Thus, there is not recognized a possible "bonded and dependent relationship" with a fetus, a fertilized egg, or some child of sex yet unconceived.
\item \textsuperscript{239} 2017 UPA, at §609(d)(5) and (6).
\item \textsuperscript{240} 2017 UPA, at §609(d)(4) and (3).
\item \textsuperscript{241} 2017 UPA, at §609(d)(1).
\end{itemize}
\end{footnotesize}
Of particular note on de facto parentage in the 2017 UPA is the limit on who can commence a proceeding to establish such parentage. Commencement may only be undertaken by an "individual" who is "alive" and who "claims to be a de facto parent of the child." 242

The 2000 ALI Principles243 and a 2021 ALI Draft of a Restatement of the Law: Children and the Law244 also recognize forms of "de facto" parentage for those without biological or formal adoption ties. Each of the forms requires both residence and consent by an existing legal "parent." But only the 2000 Principles further recognize a “parent by estoppel.” 245 Under the 2000 ALI Principles, a "parent by estoppel" is “not a legal parent,” but is an individual who must have lived with the child, without an obligation to pay child support and without "a reasonable, good-faith belief" of biological ties, and who did so with either "a prior co-parenting agreement with the child's legal parent (or, if there are two legal parents, both parents)" or "an agreement with the child's parent (or, if there are two legal parents, both parents)." 246


243 2000 ALI Principles, at §§2.03(1)(c) and 3.02(1)(c) (requirements include residence with the child, as well as "the agreement of a legal parent to form a parent-child relationship" unless the legal parent completely fails, or is unable, to perform caretaking functions").

244 September 8, 2021 ALI Restatement of the Law: Children and the Law, at §1.72(a) (requirements include residence with the child, as well as establishing that "a parent consented to and fostered the formation of the parent-child relationship") [hereinafter 2021 ALI Draft].

245 Under the 2000 ALI Principles, a legal parent, a parent by estoppel and a de facto parent each has standing to pursue/participate in an action involving judicial allocation of custodial and decisionmaking responsibility for a child. 2000 ALI Principles, at §2.04(1). A “legal parent” is “an individual who is defined as a parent under other state law.” 2000 ALI Principles, at §2.03(1)(a).

246 2000 ALI Principles, at §2.03(1)(b).
The 2000 ALI Principles recognize a “de facto parent” is one who is “other than a legal parent or a parent by estoppel” and who lived with and cared for the child for at least two years under an “agreement of a legal parent to form a parent-child relationship.”\(^{247}\) A de facto parent, unlike a legal parent or a parent by estoppel, has no presumptive right to “an allocation of decisionmaking responsibility for the child.”\(^{248}\) Further, a de facto parent has no presumptive right of “access to the child’s school and health-care records to which legal parents have access by other law.”\(^{249}\)

The ALI Restatement Draft describes a de facto parent as a third party who establishes that he/she "lived with the child for a significant period of time;" was "in a parental role" long enough that he/she established "a bond and dependent relationship . . . parental in nature;" he/she had no "expectation of financial compensation;" and, "a parent" consented to third party's parental-like role.\(^{250}\) So, the ALI Restatement Draft, but not the 2000 Principles, invite a

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\(^{247}\) 2000 ALI Principles, at §2.03(1)(c). Alternatively, a de facto parent is one who is other than a legal parent or a parent by estoppel and who lived with and cared for the child for at least two years “as a result of a complete failure or inability of any legal parent to perform caretaking functions.” Id. Precedents predating the 2000 ALI Principles recognize the concept of de facto parentage in different settings. See, e.g., In re Kieshia E., 859 P.2d 1290, 1296 (Cal. 1993) (standing of a de facto parent in a juvenile delinquency proceeding); In re Dependency of J.H., 815 P.2d 1380, 1384 (Wash. 1991) (in a delinquency case, permissive intervention, not intervention as of right, is available to some foster parents claiming de facto (or psychological) parent status); and In re B.G., 523 P.2d 244, 254 n. 21 (Cal. 1974) (not resolving whether a de facto parent may have the same rights of notice, hearing or counsel as have natural parents in Juvenile Court Law proceedings under due process or equal protection principles). The Reporter’s Notes to the 2000 ALI Principles observes the “law that most closely approximates the criteria for a ‘de facto’ parent relationship is that of Wisconsin” where visitation (but not custody) may be awarded “to an individual who has formed a ‘parent-like relationship’ with a child.” §2.03, at Comment c.

\(^{248}\) 2000 ALI Principles, at §209(2).

\(^{249}\) 2000 ALI Principles, at §209(4).

\(^{250}\) 2021 ALI Draft, at § 1.72(a) (proof by clear and convincing evidence is required).
childcare parentage designation adversely impacting the childcare interests of an existing and nonconsenting parent.\textsuperscript{251} 

Before and since the 2017 UPA, the 2000 ALI Principles, and the ALI Draft Restatement, there are state statutes and common law precedents on nonmarital, nonbiological, and nonadoptive childcare parentage similar to the suggested de facto parent norms. For example, before 2017 there were quite comparable Maine and Delaware statutes\textsuperscript{252} as well as a less comparable Wisconsin Supreme Court precedent,\textsuperscript{253} that were utilized by the drafters of the 2017 UPA.\textsuperscript{254} Since 2017, a few states have statutorily recognized 2017 UPA de facto parenthood.\textsuperscript{255} 

On occasion, state statutes recognize both residency/hold out and de facto parents. Thus the Maine Parentage Act, effective in 2016, provides for presumed parents who resided since


\textsuperscript{252} Maine Rev. Stat. tit. 19-a, 1891 and Delaware Code tit. 13, 8-201(c).

\textsuperscript{253} In re Custody of H.S.H.-K., 533 N.W. 2d 419 (Wis. 1995) (parental-like relationship can prompt visitation rights when in child’s best interests) [hereinafter H.S.H.-K.] There are common law precedents elsewhere. In 2008 the South Carolina Supreme Court, adopting a Wisconsin high court analysis, determined that a nonparent was eligible for psychological parent status if a four-prong test was met. Marquez v. Caudill, 656 S.E.2d 737 (S.C. 2008) (following H.S.H.-K., 533 N.W. at 435-436, which set out norms for nonparent child visitation orders). See also Conover v. Conover, 146 A.3d 433, 446-447 (Md. 2016) (using H.S.H.-K. in recognizing de facto parent doctrine). And in 2009, a federal appeals court noted that the Mississippi Supreme Court had long recognized that a person standing “in loco parentis,” meaning “one who has assumed the status and obligations of a parent without a formal adoption,” has the same “rights, duties and liabilities” as a natural parent. First Colony Life Ins. Co. v. Sanford, 555 F.3d 177 (5th Cir. 2009) (relying on, inter alia, Favre v. Medders, 128 So.2d 877, 879 (Miss. 1961)). By contrast, in some U.S. states where there are no de facto parent statutes, courts choose not to develop precedents because any new de facto parentage norms are the responsibility of state legislators. See, e.g., More Principled Allocations, at 479. For a forceful argument on the need for continuing the common law “equitable parenthood doctrine” even where there are statutes, see Jessica Feinberg, “Whither the Functional Parent? Revisiting Equitable Parenthood Doctrines in Light of Same-Sex Parents’ Increased Access to Obtaining Formal Legal Parent Status,” 83 Brooklyn L. Rev. 55 (2017).

\textsuperscript{254} 2017 UPA, at Comment to §609.

birth with a child for at least 2 years and “assumed personal, financial, or custodial responsibilities,” as well as for de facto parents who, inter alia, resided with the child “for a significant period of time,” established with the child “a bonded and dependent relationship,” and “accepted full and permanent responsibilities as a parent . . . without expectation of financial compensation.” Similarly, there are both residency/hold out and de facto parents in Delaware, Washington, and Vermont.

V. Reforming State Parent Registry Laws

A. Introduction

Given the limits in current PR laws and the (r)evolution in expecting and existing legal parentage, PR law reforms are needed. Changes are necessary regarding those afforded PR opportunities and PR uses.

As to PR opportunities, state laws should encompass more fully expecting and existing legal parents. Thus, PRs should be available to those who assert expecting legal parentage as prebirth VAP signors or those who assert existing legal parentage as intended parents of children born of assisted reproduction.

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256 19-A Maine Rev. Stat. c. 61, 1881 (3) (eff. 7-1-16).

257 19-A Maine Rev. Stat. c. 61, 1891 (3) (eff. 7-1-16).

258 Del. Code tit. 13, 8-204 (a) (5) (presumed residency/hold out parent) and Del. Code tit. 13, 8-201 (c) (de facto parent).


260 15C Vermont Stat. 401(a)(1) (presumed residency/hold out parent after the first two years) and 501(a) (de facto parent).

261 PRs should be effective upon execution (and not later, as upon recording). See, e.g., Porter v. Porter, 2021 WL 5858403, ___ So.3d ___ (Alabama 2021) (marital status upon execution of marriage document, not upon its recording).
As to PR uses, state laws should be employed in parentage cases beyond adoptions and parental rights termination proceedings. Possible uses of PR registrants include in tort and probate proceedings. If there is a continuing absence of federal legislation, more cooperative interstate efforts should be undertaken, at least in adoption and termination of parental rights settings. In multistate conduct cases, interstate travel should not cause a subversion of the goals underlying PRs on protecting the familial interests of parents and children.

**B. Expanding PR Opportunities**

As noted, current state parent registry laws typically do not provide registrations of parental intentions or parental-like actions by varying types of expecting and existing legal parents. Whether parental interests under law are contingent, as with intended parents under genetic surrogacy pacts, or established, as with VAPs and spousal parentage, these parents should be afforded the opportunity to utilize PRs in order to protect their interests in later cases involving their parental interests.

For contingent legal parentage arising from a genetic surrogacy pact, there may be one or more intended parents who should be able to register so that notice is given, at the least, regarding any adoption proceeding initiated by the surrogate right at birth. These pacts prompt existing legal parentage for intended parents after the expiration of the time for a surrogate's decision to rescind consent to parental rights termination.

Similarly, VAPs prompt contingent parentage when signed before birth. Prebirth VAPs prompt existing legal parentage at birth, though such parentage may be later rescinded or challenged. VAP signatories should be able to utilize PRs.
Some legal parentage forms only operate postbirth. For example, to date residency/hold out parentage cannot arise solely due to prebirth acts.\textsuperscript{262} Comparably, de facto parent-child relationships cannot arise between an expecting parent and a future child. But after birth, these parentage forms can encompass both expecting (i.e., residency with child since birth, but for a bit less than two years) and existing (i.e., residency with child since birth and for over two years) legal parenthood.

How might expanded PR opportunities be afforded a broader range of expecting and existing legal parents? To start, expanded opportunities should be afforded for unilateral (i.e., one person) registrations. As noted, current PR laws chiefly operate for unwed biological fathers of children to be born, or born, of consensual sex who wish to be notified when their children are subject to adoption/parental rights termination proceedings. Who else should be able to register oneself?

Unilateral PR registration should be available to an expecting or existing legal parent whose child will be/has been born to a genetic surrogate who may no longer wish parental interests and who places the child for adoption.\textsuperscript{263}

Similarly, unilateral PR registration should be available to those who signed VAPs which make them expecting or existing legal parents, including, at times, signatories without biological ties arising from consensual sex.\textsuperscript{264}

\textsuperscript{262} See, e.g., Z.W.E., 335 So.3d at 657

\textsuperscript{263} See, e.g., 2017 UPA, at § 814(a)(2) (genetic surrogate has only 72 hours after a child’s birth to withdraw consent to intended parentage in another).

\textsuperscript{264} Not all VAP laws expressly require nonbirthgiving signatories to have biological ties. See, e.g., 2017 UPA, at § 301 (“woman who gave birth and . . . an . . . intended parent” [under Article on assisted reproduction] may sign a VAP). Generally, see Note, Jennifer P. Schrauth, “She’s Got to be Somebody’s Baby: Using Federal Voluntary Acknowledgments to Prove the Legal Relationship of Married Same-Sex Mothers and Their Children Conceived Through Artificial Insemination,” 107 Iowa L. Rev. 903 (2022).
Further, unilateral PR registrations should be available to those who reasonably believe they have achieved existing legal parent interests in certain children due to hold out/residency or de facto parent laws (or similar doctrines like parentage by estoppel or equitable adoptive parentage).\textsuperscript{265}

Further, bilateral PR registrations (i.e., two or more persons) should be available to those who have shared parental interests in a child to be born or born to a surrogate; to those with shared parental interests due to their joint executions of VAPs; and to those who reasonably believe one of the registrants has achieved existing parental interests due, for example, to hold out/residency parent, de facto parent, or comparable parentage norms.\textsuperscript{266}

Expanding PR registrations would facilitate later factfinding in legal parenthood disputes requiring determinations of parental-like acts/intentions. Recognitions of earlier parent registrations by a nonbirthgiver need not be dispositive, but would certainly aid courts in resolving difficult questions of who/what/where and how.

**C. Expanding PR Uses**

In recognizing more PR opportunities for both expecting and existing legal parents, state PR laws could be used in cases beyond formal adoption and/or termination of parental rights. Their expanded coverage should also be facilitated by more interstate cooperation, as through compacts. The result would be that in legal parentage cases involving multistate conduct,

\textsuperscript{265} As children can be placed for adoption long after their birth, there can be existing legal parentage in nonbirthgivers due to their parental-like relationships developed after birth. See, e.g., 2017 UPA, at §§ 204(a)(2) (hold out/residency parent for first two years of child’s life) and 609 (de facto parent).

\textsuperscript{266} While in the surrogacy setting two signors have similar parental interests (as expecting or existing legal parents), in the latter two settings, where there is typically a living child, usually one signor is an existing legal parent while the other signor is an expecting legal parent.
parentage would be more fairly and properly determined in accordance with relevant state policy interests and private expectations.

i. Beyond Adoption/Parental Rights Proceedings

Legal parentage issues can first arise in proceedings beyond adoption and parental rights termination. Here too, PR registrations can aid courts in protecting alleged and actual parental interests. In probate, the estates of children who die intestate typically are distributed to parents (and perhaps others). Parentage here is sometimes said by statute to be guided by the state UPA, which can recognize parentage not dependent upon biology, marriage or adoption. Locating such parents can be facilitated if PR registrations are available to probate courts. Where a state's probate laws do not reference the UPA on parenthood, there may still be parentage in probate that is not dependent upon biology, marriage or adoption. In Illinois, such parentage is unavailable in the childcare setting; but an "equitable adoption" doctrine operates in the probate setting.267 A PR registration by an alleged equitable adoptive parent would facilitate a just resolution of a probate case in Illinois.

In probate, outside Illinois state laws vary on whether some or all of an estate of an intestate decedent can pass to a biological, or nonbiological, nonmarital child who was never formally adopted.268 In California, a child can pursue estate distribution by providing clear and convincing evidence that the decedent “openly held out the child as his own,” even if

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267 In re Scarlett Z.-D., 28 N.E.3d 776, 792 (Ill. 2015).

268 Laws on the effects of posthumous conception on heirship in probate proceedings involving intestate decedents are reviewed in Comment, Alexis C. Mejia, "A Piece of You and I: Posthumous Conception and Its Implications on Texas Estates Law," 13 Estate Planning and Community Property L.J. 509, 515-526 (2021). In Illinois, when a self-identified or publicly identified man dies with a will, nonmarital children born of sex can challenge the will even where the children were earlier adopted by the spouse of the person giving birth. In re Estate of Snodgrass, 784 N.E. 2d 431, 432 (Ill. App. 4th 2003).
“grudgingly” and even if the decedent would not have wanted the child to inherit. A child in California whose genetically-related parent dies intestate may not be able to recover from an estate if the parent had not “openly” held out the child as one's own. In Tennessee, a nonmarital child may be able to recover in the event of an intestate biological father’s death as the statute requires only clear and convincing proof of “paternity.” In an Alabama case, a child could not recover from an intestate biological father’s estate where the child already had a presumed father under law (then, a husband) who had not disclaimed his paternity. And in Georgia, though there may have been no presumed childcare parentage in a spouse because there were no biological ties, that spouse's parentage for estate distribution purposes could be established posthumously, via that spouse's “virtual adoption” of the natural child of the spouse who gave birth.

Relatedly, in a veteran’s benefits case, a federal court found that the governing agency regulation required “a biological relationship” between the deceased veteran and the child in

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271 Tenn. Code 31-2-105(a)(2)(B)(a similar paternity finding is not made when the nonmarital child dies intestate and the biological father or his "kindred" seek to inherit). See Walton v. Young, 950 S.W.2d 956, 959 (Tenn. 1997) (on the need for "clear and convincing" evidence of paternity).


273 Sanders v. Riley, 770 S.E. 2d 570 (6a. 2015) (even where the child had developed, later in her life, a relationship with her biological father). On the contours of equitable adoption in probate, see also In re Estate of Ford, 200 A.3d 1207 (D.C. App. 2019) (child must prove by clear and convincing evidence that decedent who died intestate "objectively and subjectively stood in the shoes" of a parent).
order for the child to recover from the deceased veteran’s estate.\textsuperscript{274} Here, evidently, the death of a veteran, who was a de facto or presumed parent on equal footing with the birth mother in childcare and child support settings under state law, would not prompt a recognition of a parental loss for the child for federal veteran benefit purposes.

In tort, postdeath parentage determinations are sometimes required in statutory wrongful death/survival actions. Consider a case where an alleged parent has died as a result of the wrongful act or omission of another; the parentage of a child has not yet been determined legally (as is often the case with a nonmarital child whose biological parent dies not long after the child’s birth),\textsuperscript{275} and a surviving child of the decedent, upon proof of parentage, can recover for his or her own losses, as well as possibly receive additional money, including survival action damages recovered by the decedent’s estate via intestate succession laws (benefitting a surviving child of a decedent who dies without a will). In Alaska, when a man dies as a result of the “wrongful act or omission of another,” the decedent’s personal representative may sue the wrongdoer under a single statute “exclusively for the benefit of the decedent’s spouse and children, or other dependents.” Damages can cover “loss of contributions for support,” “loss of consortium,” and “loss of prospective training or education,” as well as “medical and funeral expenses.”\textsuperscript{276} Thus, damages go for injuries incurred by the decedent prior to death, like hospital bills where recovery goes to the decedent’s estate, as well as for injuries incurred by the


\textsuperscript{275} Distinct are statutory issues dividing two types of parents. See, e.g., Estate of Elkins v. Pelayo, 2022 WL 1123227 (E.D. Calif. 2022) (stepchildren recover in wrongful death of stepparent only if they lived in the decedent’s household for 180 days preceding the death, per Cal. Code Civ. P. 377.60).

decedent’s child after death, like the loss of prospective training and education. While the Alaska statute does not define “children,” PRs could supply helpful information on who is a decedent’s offspring.

In the Delaware wrongful death/survival setting, there is only a remedy for certain nonmarital children, including children whose parentage by a deceased parent has been “judicially determined” or where parentage was acknowledged or “openly and notoriously recognized” by the decedent before the decedent’s death.\(^{277}\) A PR registration could be such an acknowledgment.

In Idaho, a deceased man’s “illegitimate child” is only included in the wrongful death statute if “the father has recognized a responsibility for the child’s support.”\(^{278}\) Thus, biological ties alone may not support wrongful death claims for all alleged biological children of deceased parents whose estates recover on survival claims. Again, PRs would help.

There are sometimes separate wrongful death and survival statutes. In Louisiana, under one statute the “surviving spouse and child or children of the deceased, or either the spouse or the child or children,” can pursue a survival action on behalf of an injured person who dies, where any recovery inures to the decedent’s estate and is “heritable.”\(^{279}\) A second statute recognizes a wrongful death claim on behalf of certain persons for damages they personally sustained as a result of the death of another. Claimants include the surviving child or children of

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\(^{277}\) 10 Delaware Code 3724(f). Somewhat comparable is Greenfield v. Daniels, 51 So. 3d 421 (Fla. 2010) (child born into intact marriage may recover in survival action for the death of a nonmartial biological father who “acknowledged responsibility for support”).

\(^{278}\) Idaho Code 5-311(b).

\(^{279}\) Louisiana Stat. art. 2315.1.
the deceased.280 Postdeath parentage determinations are necessary here.281 PRs would be helpful when disputes arise.

A 2014 Mississippi Supreme Court decision demonstrates statutory language can prompt differences in applying varying death statutes covering injury claims. In it, an “in loco parentis child” was deemed ineligible for recovery for the wrongful death of a parent, although such a child could recover under either the workers’ compensation statute or the federal Longshoremen's and Harbor Workers’ Compensation Act.282 While such distinctions seem irrational,283 PRs would help resolve parentage issues.

Where wrongful death legislation does not expressly address child recoveries for parental deaths, judicial precedents can recognize such claims. Thus in Connecticut, an executor or administrator of an estate may recover "just damages" from one "legally at fault" for "injuries resulting in death."284 This has been read to allow "filial consortium" claims for children arising in loco parentis. 280 Louisiana Stat. art. 2315.2. See also In re Estate of Panec, 864 N.W. 2d 219, 225 (Neb. 2015) (wrongful death and survival claims are “distinct” though they are “frequently joined in a singly action” by a decedent’s personal representative).

281 There are comparable postdeath parentage settings akin to, but distinct from, torts. For example, postdeath parentage determinations are required in cases where there is a need to decide whether a nonmarital child of a deceased worker is entitled to workers’ compensation benefits. See, e.g., Uninsured Employers’ Fund v. Bradley, 241 S.W.3d 741 (Kty. App. 2007). See also Doe v. County of Los Angeles, 2021 WL 1627486 (C.D. Calif. 2021) (federal law claim for child's loss of alleged parent caused by defendants is sustained where there is proof of the decedent's "ongoing involvement" and "participation in child-rearing activities").

282 Smith v. Smith, 130 So. 3d 508, 510-512 (Miss. 2014). The wrongful death statute only referenced the children's "blood" parents or adoptive parents, not "in loco parentis" parents. Id. at 511-512 (Miss. Code 11-7-13). The other two laws explicitly referenced in loco parentis children. Id. at 512 (Miss. Code 71-3-3(1) and 33 U.S.C. 902(14)).


from parental deaths. PR registrations can be employed to benefit children of deceased or injured PR registrants in common law cases.

**ii. Enhancing Interstate Cooperation**

Interstate sharing of PR information would enhance the fairness in legal parentage determinations involving multistate conduct, be they in adoption, parental rights termination, tort or probate cases. Enhancement can be accomplished through a national parent registry scheme created by Congress or by an interstate compact on sharing PR information which standardizes registration opportunities while respecting interstate differences in legal parentage norms, as exist in such realms as surrogacy assisted reproduction, de facto, and residency/hold out parenthood.

A national parent registry scheme applicable in formal adoption proceedings has been considered for some time. In the 109th Congress, a proposed Senate bill, set forth by Senator Landrieu in 2006, would have encouraged-not mandated-all states "to develop compatible registries communicating with a national database." It was founded on Congressional spending authority and was tied to federal subsidies. In the 112th Congress, Senator Landrieu circulated a discussion draft of a bill that would establish a National Responsible Father

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286 Beside parent-child issues in tort cases, there can be issues as to who is in the “immediate family” of a decedent entitled to recover. See, e.g., Greene v. Esplanade, 36 N.Y.3d 513 (2021) (grandmother of qualifies). Here too, PR registrations would help.


288 Beck, at 299.

289 Beck, at 298-299. Congressional spending authority had been utilized to prompt states to undertake VAP schemes under Social Security Act norms. See, e.g., Reforming VAPs, at 179-180.
Registry, not unlike the registry in the 2006 proposal, that would assure "possible" fathers of state actions involving child "placement," including pending adoption cases.\(^{290}\)

While helpful in child placement proceedings wherein parentage establishments/disestablishments must first be considered, such proposed registries would not assist those involved in parentage disputes outside the child placement context, as in tort, probate, and child support cases. Federal voluntary PR requirements that go far beyond child placement proceedings, however, might operate in unchartered waters, perhaps overreaching the Spending Clause authority of Congress.

An interstate compact would not have the benefit of providing new federal subsidies to participating states. But it could extend its reach beyond child placement to tort, probate, and child support settings. Traditionally, these settings have been recognized as within state (not federal or local governmental) authority. A current interstate compact could serve as a model for interstate cooperation on PRs.

**VI. Conclusion**

As with state recognized voluntary acknowledgements of parentage and state recognized assisted reproduction pacts on childcare parentage for future or current children, state parent registries, often labeled putative paternity registries or putative father registries, embody declarations of expecting or current legal parenthood. Yet declarations about children in parent registries involve unilateral assertions, unlike dual parenthood declarations in voluntary parent acknowledgments and assisted reproduction pacts. Actual parenthood for many parent registry

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\(^{290}\) Discussion Draft, presented by Senator Landrieu (copy available from author; thanks to Mary Beck for the help).
declarants is uncertain because there are no simultaneous assertions by a second interested expecting or existing legal parent on the parenthood of the registering parent.

Parent registries are further limited. They generally provide that those who register receive notice and an opportunity to be heard in any later adoption and/or parental rights termination proceeding involving a child to be born or born to another. Thus, the expecting and existing legal parenthood interests of those who declare parentage are protected in only some settings. For example, PR declarations generally do not prompt a notice/hearing opportunity in any later probate or tort proceeding containing parentage issues.

In addition, parent registry opportunities are not explicitly afforded to all expecting and existing legal parents whose children are or may be subject to adoptions or parental rights terminations. Parent registry laws are often limited to "paternity" or "father" registrations even though adoption and termination proceedings can also foreclose nonpaternity and nonfather parental interests (contingent or current).

State parent registry laws should be reformed so that more expecting and existing legal parents can assert parental rights/interests. In such reforms, registry opportunities should be expanded to reflect the legal changes recognizing increased parenthood opportunities and parenthood for those with no biological, marital or formal adoptive ties. Further, parent registry laws should be reformed so that they are consulted in cases with nonchildcare parentage disputes, as in probate and tort.