Unwed Fathers: Is Arizona Denying Their Right to Recognition as Parents?

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> The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases.[1]

Justice Stevens' recent observation suggests that the courts have a responsibility to protect the relationships between parents and their children.[2] The particular relationship the Justice addressed was the one between the unmarried father and his illegitimate child.[3] Arizona, however, apparently does not fully share Justice Stevens' concern for the father-illegitimate child relationship.[4] Indeed, the Arizona paternity statute may be unconstitutional because it fails to provide an opportunity for an unwed father to develop the constitutionally protected parent-child relationship.[5]

Until fairly recently, illegitimate children fared poorly in the Ameican legal system.[6] Early case law deemed them the children of no one, the children who could not be legitimated regardless of paternal identification or acknowledgment. They were owed no support and could inherit no

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1. Lehr v. Robertson, 103 S. Ct. 2985, 2990 (1983).
2. *Id.*
3. *Id.* at 2987. *See infra* notes 49-63 and accompanying text.
4. *See infra* notes 179-204 and accompanying text. Ironically, Arizona is extremely protective of unwed fathers who wish to adopt their children. *See infra* notes 175-178 and accompanying text.
5. *See infra* notes 56-63 and accompanying text.
6. G. DOUTHWAITE, UNMARRIED COUPLES AND THE LAW 112 (1979). *See also* H. KRAUSE, ILLEGITIMACY: LAW AND SOCIAL POLICY 1-5 (1971).

In 1979, approximately 3,494,000 live births occurred in the United States; 17.1% of these children were illegitimate. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1982-83 60, 66 (103d ed. 1982). 17.1% translates to 593,980 illegitimate children born in the United States that year.

An astronomical increase in the overall percentage of illegitimate children born has occurred since 1950, when only 4.0% of children born were illegitimate. In 1960, the figure had only risen to 5.3%. By 1970, the figure had risen to 10.7% and by 1975, to 14.2%. *Id.* at 66.

In 1979, approximately 42,200 live births occurred in Arizona. DIVISION OF ECON. AND BUS. RESEARCH, COLLEGE OF BUS. AND PUB. AD., UNIV. OF ARIZ., ARIZONA STATISTICAL ABSTRACT 18 (1979). If the 17.1% national figure holds true for Arizona, approximately 7,174 illegitimate children were born in the state in 1979.

property.[7]

Much has changed. State statutes have gone a great distance in raising illegitimate children's status toward that of legitimate children.[8] In addition, a series of Supreme Court decisions recently declared unconstitutional, on an equal protection basis, some older state laws which perpetuated traditional discrimination against illegitimate children.[9] Some aspects of illegitimate children's legal relationships with their parents have changed as well. Today, in most states, the legal relationship of illegitimate children with their mothers is no different from that of their legitimate counterparts.[10]

The legal relationship between illegitimate children and their fathers has only begun to change.[11] Historically, the law presumed these fathers irresponsible and undeserving of rights in their illegitimate offspring.[12] Therefore, the mother, the "natural guardian," had complete custody and control.[13] The states that recognized a father's rights did so only if the mother gave the child up for adoption or if she was unfit or deceased.[14] The law is beginning to recognize as invalid the proposition that all unwed fathers are unfit. Consequently, legal discrimination against unwed fathers is on the wane.

The United States Supreme Court has examined the biological father's right to develop a relationship with his illegitimate child in four cases.[15] In the process, the Court has declared unconstitutional, on due process or equal protection grounds, state statutes that deny the biological father the right to a relationship with his illegitimate child.[16] As a result, many states have had to reevaluate paternity and legitimacy statutes that govern the legal rights of the biological father.[17] These states have now adopted procedures to enable the father to assert his right to develop a relationship with his illegitimate child.[18]

The Arizona maternity/paternity statute provides no procedures to accommodate unwed fathers who want to establish a parent-child relationship.[19] While the Arizona Supreme Court has not yet ruled directly on the

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7. G. DOUTHWAITE, *supra* note 6, at 112.

8. *Id.*

9. *See, e.g.*, Trimble v. Gordon, 430 U.S. 762 (1977); Weber v. Aetna Casualty & Sur. Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968). *See also infra* notes 21-28 and accompanying text.

10. H. KRAUSE, *supra* note 6, at 5.

11. *Id.* at 71.

12. W. WEYRAUCH & S. KATZ, AMERICAN FAMILY LAW IN TRANSITION 615-16 (1983).

13. H. KRAUSE, *supra* note 6, at 28-29.

14. *Id.* at 29.

15. Lehr v. Robertson, 103 S. Ct. 2985 (1983); Caban v. Mohammed, 441 U.S. 380 (1979); Quilloin v. Walcott, 434 U.S. 246, *reh'g denied*, 435 U.S. 918 (1978); Stanley v. Illinois, 405 U.S. 645 (1972). *See infra* notes 33-63 and accompanying text.

16. *See Stanley*, 405 U.S. at 649, 657-58 (ILL. REV. STAT. ch. 37, § 702-1, 702-5 (1965), which did not include unwed fathers in the definition of parent); *Caban*, 441 U.S. at 381-82, 394 (N.Y. DOM. REL. LAW § 111, 1977 which denied unwed fathers the right to veto or consent to adoption). *See infra* notes 36-38, 43-48 and accompanying text.

17. *See, e.g.*, Guerrero v. Staglish, 400 So. 2d 190 (Fla. App. 1981); Pritz v. Chesnul, 106 Ill. App. 3d 969, 436 N.E.2d 631 (1982); Johannesen v. Pfeiffer, 387 A.2d 1113 (Me. 1978).

18. *See infra* notes 67-70 and accompanying text.

19. ARIZ. REV. STAT. ANN. § 12-846 (1982). *See infra* note 170.

statute's constitutionality, the court has discussed it in two recent decisions.[20] The trend in other states toward striking down similar statutes suggests that unwed natural fathers may soon challenge the Arizona paternity statute on the ground that it fails to provide them a forum in which to assert their constitutional right to an opportunity to develop a relationship with their illegitimate children.

This Note begins with a brief overview of the United States Supreme Court's use of the fourteenth amendment to shield illegitimate children and their legal relationships from government discrimination. A discussion of the Court's decisions dealing with the constitutional rights of natural fathers in relation to their illegitimate children follows. Various procedures for establishing paternity are then discussed, and the constitutionality of the state statutes involved is examined in light of the Court's latest decisions. The Note continues with an analysis of the Arizona paternity statute and related case law, pointing out the constitutional weaknesses of the statute. Finally, the Note concludes by suggesting means that the judiciary or legislature might adopt to avoid constitutional confrontation between the paternity statute and natural fathers' rights.

THE UNITED STATES SUPREME COURT AND THE ILLEGITIMATE CHILD

A series of Supreme Court cases challenged state statutes favoring legitimate over illegitimate children, particularly in the death or disability benefit area. In these cases, the Court held that "illegitimacy" is not a suspect classification.[21] Nevertheless, the Court found that the illegitimacy classification triggers review that is not "toothless."[22] The Court reasoned that illegitimate children are not responsible for the circumstances of their birth and that penalizing them for those circumstances is unjust.[23] Therefore, the Court made clear that statutes which weigh arbitrarily against illegitimates are an impermissible means to any government end.[24] Accordingly, illegitimate children now may recover for a mother's wrongful death[25] and, under state workmen's compensation programs, for a father's death.[26] In addition, these children can now inherit through intestate succession from both parents.[27] They are also guaranteed a reasonable time

20. Sheldrick v. Maricopa County Superior Court, 136 Ariz. 329, 666 P.2d 74 (1983); Traphagan v. Maricopa County Superior Court, 136 Ariz. 331, 666 P.2d 76 (1983). *See infra* notes 185-202 and accompanying text.

21. *See, e.g.*, Trimble v. Gordon, 430 U.S. 762 (1977); Weber v. Aetna Casualty & Sur. Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968). *See also* J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 701 (1983).

22. Trimble v. Gordon, 430 U.S. 762, 767 (1977) (plurality opinion).

23. 406 U.S. at 175.

24. *See supra* notes 21-23. *See also* J. NOWAK, *supra* note 21, at 702.

25. Levy v. Louisiana, 391 U.S. 68 (1968).

26. *Weber*, 406 U.S. 164. *But see* Mathews v. Lucas, 427 U.S. 495 (1976), upholding a statute that denied social security benefits to illegitimate children who could not prove dependency on the deceased at his death. The Court held that illegitimacy was not an impermissible classification, as Congress' purpose in enacting the statute was administrative efficiency, and case-by-case adjudication would interfere with this goal. *Id.* at 509. *See also* Lalli v. Lalli, 439 U.S. 259 (1978) (plurality opinion), which upheld a state law that denied illegitimate children the right to inherit from their father unless they had been adjudicated his children during his lifetime.

27. *Trimble*, 430 U.S. 762.

to file paternity actions for financial support.[28]

The Court has had little occasion to rule on discriminatory statutes in the mother-illegitimate child context because state laws have generally treated that relationship no differently than the legitimate relationship between mother and child.[29] An exception to this general principle was a Louisiana statute which barred a mother from suing for the wrongful death of her illegitimate child.[30] The Court's decision to strike down the statute as an unconstitutional denial of equal protection[31] eliminated the last legal distinction between mothers of legitimate children and mothers of illegitimate children.[32]

THE UNITED STATES SUPREME COURT AND THE BIOLOGICAL FATHER: THE FATHERS' RIGHTS CASES

The Supreme Court has examined and defined the biological father's right to develop a relationship with his illegitimate child in four cases.[33] The Court recognized a father's right in his illegitimate child, but held that the right exists only if the father comes forward to participate in childrearing.[34] The Court placed the responsibility on the unwed father to assert his right and to develop a relationship with his child.[35]

The Court first recognized a natural father's constitutionally cognizable right in a legal relationship with his illegitimate child in *Stanley v. Illinois*.[36] In holding that the due process clause of the fourteenth amendment entitles a biological father to a fitness hearing before his children can be taken away from him,[37] the Court recognized not only "the private interest . . . of a man in the children he has sired and raised," but also "the interest of a parent in the companionship, care, custody, and

28. Mills v. Habluetzel, 456 U.S. 91 (1982) (Texas requirement that children file paternity suits within one year of birth held denial of equal protection).

For other decisions striking down statutes on the basis of discrimination against illegitimates, *see* Jimenez v. Weinberger, 417 U.S. 628 (1974) (state's denial of social security benefits to illegitimate children born after worker father had been disabled held not reasonably related to government interest); Gomez v. Perez, 409 U.S. 535 (1973) (state's denial of father's support for illegitimate children violates equal protection); New Jersey Welfare Rights Org. v. Cahill, 411 U.S. 619 (1973) (state's denial of welfare benefits to families with illegitimate children violates equal protection). *See also* Clark, *Constitutional Protection of the Illegitimate Child?* 12 U.C.D. L. REV. 383 (1979) for a discussion of the Court's inconsistent treatment of illegitimate children's rights.

29. H. KRAUSE, *supra* note 6, at 71.

30. *Id.*

31. Glona v. American Guarantee & Liability Ins. Corp., 391 U.S. 73 (1968). Justice Douglas said the law "creates an open season on illegitimates in the area of automobile accidents [giving] a windfall to tortfeasors." *Id.* at 75.

32. H. KRAUSE, *supra* note 6, at 71.

33. Lehr v. Robertson, 103 S. Ct. 2985 (1983); Caban v. Mohammed, 441 U.S. 380 (1979); Quilloin v. Walcott, 434 U.S. 246, *reh'g denied*, 435 U.S. 918 (1978); Stanley v. Illinois, 405 U.S. 645 (1972). *See infra* notes 34-63 and accompanying text.

34. *Stanley*, 405 U.S. 654-55; *Quilloin*, 434 U.S. at 256; *Caban*, 441 U.S. at 392-93.

35. *Lehr*, 103 S. Ct. at 2993.

36. 405 U.S. 645 (1972). Peter Stanley lived with the mother of his three children on and off for eighteen years. At the mother's death, Illinois instituted dependency proceedings to make the children wards of the state. Stanley argued that he should not lost his children unless the state determined that he was an unfit parent. *Id.*

37. *Id.* at 658.

management of his or her children."[38]

Although *Stanley* recognized the biological father's constitutionally protected right in his illegitimate children, the Court first defined the nature and limits of that right in *Quilloin v. Walcott*.[39] The *Quilloin* Court denied a biological father who had visited his son intermittently over an eleven year period the right to veto his son's adoption by the child's mother and her husband.[40] While affirming *Stanley*, the Court decided that because Quilloin had never exercised significant responsibility for the daily needs and education of his child,[41] the state's interest in the welfare of the child outweighed Quilloin's rights as a father.[42]

In *Caban v. Mohammed*,[43] the Court faced an issue it had left open in *Quilloin*: whether a biological non-custodial father who played a substantial role in raising his illegitimate child could block his child's adoption.[44] The natural father in *Caban* challenged the constitutionality of a New York statute that denied him the right to veto or consent to his illegitimate children's adoption.[45] In holding that the statute unconstitutionally discriminated against unwed fathers who had helped raise their offspring,[46] the Court distinguished *Quilloin*. Referring to *Quilloin*, the Court declared, "[w]here the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause precludes the state from withholding from him the privilege of vetoing the adoption of that child."[47] The *Caban* Court recognized, however, that when the natural father participates in child-rearing his relationship with his illegitimate child deserves constitutional protection.[48]

In *Lehr v. Robertson*,[49] the Court further delineated the class of natu-

38. *Id.* at 651.

39. 434 U.S. 246, *reh'g denied*, 435 U.S. 918 (1978). *See* Weinhaus, *Substantive Rights of the Unwed Father: The Boundaries Are Defined*, 19 J. FAM. L. 445 (1980-81).

40. 434 U.S. at 246, 256.

41. *Id. See also* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 85 (Supp. 1979). Professor Tribe believes the *Quilloin* Court's decision evidences its prejudice against unwed fathers who do not seek custody of their children. *Id.* at 86.

42. *Quillion*, 434 U.S. at 254-55.

43. 441 U.S. 380 (1979). Much has been written about the *Stanley*, *Quilloin*, *Caban* trilogy. It would be redundant and not within the scope of this Note to cover the same area. *See* Weinhaus, *supra* note 39; Comment, Caban v. Mohammed: *Extending the Rights of Unwed Fathers*, 46 BROOKLYN L. REV. 95 (1979); Note, *Limiting the Boundaries of* Stanley v. Illinois: Caban v. Mohammed, 57 DEN. L.J. 671 (1980); *Developments in the Law—The Constitution and the Family*, 93 HARV. L. REV. 1156 (1980); *Supreme Court Review*— Caban v. Mohammed, Parham v. Hughes 7 HASTINGS CONST. L.Q. 445, 459 (1980); Note, *Putative Fathers: Unwed, but No Longer Unprotected*, 8 HOFSTRA L. REV. 425 (1980); Note, *Equal Protection for Unmarried Parents*, 65 IOWA L. REV. 679 (1980); Note, *Equal Protection and the Putative Father: An Analysis of* Parham v. Hughes and Caban v. Mohammed, 34 S.W.L.J. 717 (1980); Note, *The Rights of Fathers of Non-Marital Children to Custody, Visitation, and to Consent to Adoption*, 12 U.C.D. L. REV. 412 (1979); Note, *Unwed Fathers: An Analytical Survey of Their Parental Rights and Obligations*, 1979 WASH. U.L.Q. 1029; Casenote, *Constitutional Law—Equal Protection*—Caban v. Mohammed, 29 EMORY L.J 833 (1980).

44. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 85 (Supp. 1979).

45. 441 U.S. at 385. Caban had lived with his children for several years, and even after he no longer did, he visited them every week.

46. *Id.* at 394.

47. *Id.* at 392.

48. *Id.* at 389.

49. 103 S. Ct. 985 (1983).

ral fathers who deserve constitutional protection. In *Lehr*, the natural father of an illegitimate two year old challenged a New York statute which he claimed denied him notice and a hearing before his child's adoption.[50] The father had neither supported the mother nor offered to marry her.[51] Most importantly, he had not signed the "putative father registry,"[52] which recorded the names and addresses of those who intended to claim paternity.[53] Registration guaranteed a putative father notice of a pending adoption.[54] The Court held that because the father had not taken advantage of the procedure provided by the state for asserting his parental rights, the state statute did not violate the natural father's due process or equal protection rights.[55]

The *Lehr* Court divided the natural fathers' rights cases into two classes: those of the *Stanley/Caban* type, where the parent-child relationship actually exists, and those of the *Quilloin/Lehr* type, where that relationship has not been developed.[56] The Court found a fundamental diifference between a father's mere biological relationship with his child and a father's developed relationship and thereby distinguished fathers whose rights are constitutionally protected from those whose rights are not protected.[57] An unwed father who comes forward to participate in raising his child demonstrates a full commitment to parenting.[58] His relationship with his child "acquires substantial protection under the due process clause . . . [but] the mere existence of a biological link does not merit equivalent constitutional protection."[59]

The biological link is nevertheless important because it establishes the

50. *Id.* at 2987. New York had adopted the statute, N.Y. SOC. SERV. LAW § 372-C (McKinney 1983) after the *Stanley* decision.

51. *Id.* at 2987-88. For the first time in the fathers' rights cases, the Court emphasized that the father had not offered to marry the mother. The Court later noted the importance of marriage in our society. *Id.* at 2991 (citing Hafen, *The Constitutional Status of Marriage, Kinship and Sexual Privacy—Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463 (1983)).

52. 103 S. Ct. at 2988.

53. *Id.* at 2987, n.4. Lehr did not record his claim to fatherhood but did spend two years trying to establish a relationship with his daughter, while the mother thwarted his efforts by hiding. *Id.* at 2997. Lehr finally located the mother and daughter with the help of a detective agency and retained counsel who threatened to bring legal action. Perhaps in response, the natural mother and her husband filed for adoption. One month later, Lehr filed a "visitation and paternity petition." Only when Lehr received notice of a change of venue motion did he learn that adoption proceedings had commenced. Four days later, his attorney informed the adoption judge that Lehr was seeking a stay of the adoption proceeding. The judge, however, had already signed the adoption order. *Id.* at 2989.

54. *Id.* at 2987-88. *See supra* note 50.

55. *Id.* at 2995.

56. *Id.* at 2993. The relationships that Quilloin and Lehr had with their children were alike only in the fact that neither Quilloin nor Lehr grasped the opportunity to establish a developed relationship. The relationships differed in that Quilloin had intermittent contact with his son over an eleven year period. Lehr had no contact with his daughter.

57. *Id.* at 2992, 2993.

58. *Id.* at 2993. The Court in *Lehr* indicates that Lehr could have come forward by signing the putative father registry. Signing guaranteed Lehr notice and was within his control. *Id.* at 2995. The dissent argued that the majority was guilty of the "sheerest formalism" when it refused the father a hearing because he chose the paternity and visitation route to inform the state of his parental claim and not the putative fathers' registry route. *Id.* at 3000.

59. *Id.* at 2993. In his dissent, Justice White argued that the mere fact of a biological relationship creates an interest deserving protection, thereby entitling the putative father to the fundamentals of due process notice and hearing. *Id.* at 2997, 2999.

father's right to develop a relationship which merits constitutional protection.[60] *Lehr* implies that the biological father must have access to processes through which he can grasp his opportunity to develop a father-child relationship.[61] States must provide such processes so that a father does not have to rely on the mother's cooperation in order to assert his constitutional interest.[62] The *Quilloin* and *Lehr* decisions indicate, however, that, once the state provides the process, the onus is on the father to assert his right or to risk losing it.[63]

STATE COURTS AND THE FATHER: THE CONSTITUTIONAL RIGHT TO A FORUM

The Supreme Court insists that before a natural father's right in his child merits constitutional protection, the father must assert the right and establish a relationship with his child.[64] At the state level, the father's ability to assert his right presupposes a state forum which gives him the opportunity to develop the relationship.[65]

The various state procedures for establishing paternity form four classes, according to the method provided for giving the father standing to assert his parental rights.[66] The first class includes the eight states which have adopted the Uniform Parentage Act.[67] The second class, represented in this Note by New York, has statutes that allow fathers to bring paternity actions.[68] The third class includes states with voluntary legitimation pro-

60. *Lehr*, 103 S. Ct. at 2993-94.

61. For a complete discussion of Lehr and the opportunity interest, see Buchanan, *The Constitutional Rights of Unwed Fathers Before and After Lehr v. Robertson*, 45 OHIO ST. J. 313 (1984). Buchanan also indicates that the constitutional opportunity interest is not open-ended. The biological father must promptly grasp his opportunity or it is lost. *Id.* at 352-53, 364.

The state does not have to do much for the father, as *Lehr* itself indicates. New York's minimal provision of a putative father registry was sufficient. The Court found Lehr's failure to sign the registry to be evidence that he did not intend to develop a relationship with his daughter. *See* 103 S. Ct. at 2995.

62. *See* Buchanan at 361-62. In *Lehr*, the mother's unilateral decision to prevent the father from establishing a relationship with his child did not prevent him from signing the putative father registry. *See* 103 S. Ct. at 2995.

63. Georgia and New York provide processes through which fathers can assert their right. In Georgia, Quilloin could have married the mother or legitimated his son. 434 U.S. at 249. In New York, Lehr could have signed the registry. 103 S. Ct. at 2994, 2995.

64. Lehr v. Robertson, 103 S. Ct. at 2995.

65. *See infra* notes 67-70 and accompanying text.

66. A discussion and analysis of each of the fifty states' paternity procedures is not within the scope of this Note. The particular state paternity statutes that are discussed were chosen solely because of state case law highlighting constitutional issues.

For a discussion of state statutes dealing not only with paternity, but with other family-related laws, *see* G. DOUTHWAITE, *supra* note 6. *See also* Note, *Unwed Fathers: An Analytical Survey of Their Parental Rights and Obligations*, 1979 WASH. U.L.Q. 1029, 1057-58 (1979), listing state legitimation statutes; Casenote, *"Children Born of the Marriage"—Res Judicata Effect on Later Support Proceedings*, 45 MO. L. REV. 307, 308 n.5 (1980), which catalogues each state's paternity statutes.

67. CAL. CIV. CODE §§ 7000-7021 (West 1983); COLO. REV. STAT. §§ 19-6-101 to 19-6-129 (1973); HAWAII REV. STAT. §§ 581-1 through 584-26 (1976); MINN. STAT. ANN. §§ 257.51 to 257.74 (West 1982); MONT. CODE ANN. §§ 40-6-101 to 40-6-131 (1980); N.D. CENT. CODE §§ 14-17-01 to 14-17-26 (1981); WASH. REV. CODE ANN. §§ 26.26.010 to 26.26.905 (Supp. 1983); WYO. STAT. §§ 14-2-101 to 14-2-120 (1977).

68. N.Y. JUD. LAW § 522 (McKinney 1983).

cedures.[69] The final group includes states which do not provide fathers with standing to bring paternity actions, but which allow them to seek declaratory relief.[70]

GROUP I: STANDING TO ASSERT PATERNITY THROUGH THE UNIFORM PARENTAGE ACT

The Uniform Parentage Act (U.P.A.)[71] is primarily concerned with

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69. DEL. CODE ANN. tit. 13, § 1301 (1981); LA. CIV. CODE ANN. ART. 200 (West Supp. 1983); MD. EST. & TRUST CODE ANN. § 1-208 (Supp. 1982); MICH. STAT. ANN. § 27.51111 (West 1980); MO. REV. STAT. § 453.060 (Vernon Supp. 1983); NEV. REV. STAT. § 13-109 (1977); N.H. REV. STAT. ANN. § 460.29 (1983); OKLA. STAT. ANN. tit. 10, § 55 (West 1966); TEX. FAM. CODE ANN. §§ 13.01 through 13.24 (Vernon Supp. 1984); UTAH CODE ANN. § 78-30-12 (1977).

70. ARK. STAT. ANN. §§ 34-702 to 703 (repealed 1981 and replaced by § 34-716 to -717, which allows any man alleging fatherhood of an illegitimate child to petition for paternity determination); FLA. STAT. ANN. § 742.011 (West Supp. 1983); ILL. ANN. REV. STAT. ch. 40 § 1351 (Smith-Hurd 1980); ME. REV. STAT. ANN. tit. 19 §§ 271-287 (1981); MASS. GEN. LAWS ANN. ch. 273 §§ 11-19 (1980); 42 PA. CONS. STAT. ANN. §§ 6741-80 (Purdon 1982); WIS. STAT. ANN. §§ 52.23, 52.25 (repealed 1981 and replaced by §§ 764.45, 767.455 (West Supp. 1983), which now allows the alleged father to bring a paternity action).

71. UNIF. PARENTAGE ACT, 9A U.L.A. 581 (1979) [hereinafter U.P.A.]. The relevant sections read as follows:

Section 1. [*Parent and Child Relationship Defined.*]

As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 2. [*Relationship Not Dependent on Marriage.*]

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Section 3. [*How Parent and Child Relationship Established.*]

The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

Section 4. [*Presumption of Paternity.*]

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage,

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(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; or

(5) he acknowledges his paternity of the child in a writing filed with the [approriate court or Vital Statistics Bureau], which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the [appropriate court or Vital Statistics Bureau].

Section 6. [*Determination of Father and Child Relationship; Who May Bring Action: When Action May Be Brought.*]

(a) A child, his natural mother, or a man presumed to be his father under Paragraph (1), (2), or (3) f Section 4(a), may bring an action

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a)

(b) Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under Paragraph (4) or (5) of Section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 4 may be brought by the child, the mother or personal representative of the child, the [appropriate state agency], the per-

children's and parents' rights to establish a relationship with each other.[72] Under the U.P.A., the right extends equally to parents and children, regardless of the parents' marital status.[73] Accordingly, the U.P.A. provides statutory procedures for parental identification.[74] The procedures for establishing maternal descent are necessary for the unusual case where the mother's identity is unknown.[75] The bulk of the U.P.A., however, is devoted to means of identifying the often unknown father of the illegitimate child.[76]

The U.P.A. protects a natural father's constitutional right to a forum by allowing a natural father to bring an action to determine that a father-child relationship indeed exists.[77] Fathers who establish paternity in U.P.A. states are entitled to the same custody and visitation rights as any other parent and thus may establish a developed relationship with their children.[78] The courts recognize the strong interest fathers have in visiting their children[79] and grant the privilege in the children's best interest even if the mother objects.[80] Hence, the natural father's standing to assert his paternity is the necessary prerequisite to his developing the constitutionally protected parent-child relationship.[81]

The U.P.A. does not solve all of the standing problems for the putative father, however. If a man is presumed to be a child's father because he and the mother are married when the child is born,[82] any other man alleging paternity can be denied standing because of the presumption of paternity in the woman's husband.[83] Both Wyoming and Colorado have

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sonal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

Each of the eight states that has adopted the U.P.A. has its own modified version of the Act. 9A U.L.A. 581 (1979).

72. Krause, *The Uniform Parentage Act*, 8 FAM. L.Q. 1, 8 (1974).

73. U.P.A. § 2, 9A U.L.A. 588. See *supra* note 71.

74. 9A U.L.A. 581 (1979).

75. *Id.*

76. *Id. See supra* note 71.

77. U.P.A. § 6C, 9A U.L.A. 594. *See* W.R.S. v. E.R., 588 P.2d 379 (Colo. App. 1978) for an example of how the U.P.A. protects a father's right to a forum. Here, the putative father filed a paternity suit in 1974 which was dismissed because he did not have standing to bring the action under Colorado law. The father's attempt to file for declaratory relief was also dismissed. In 1977, after passage of the U.P.A., the Colorado appeals court allowed the father to file a paternity action. *Id.* at 380.

78. *See, e.g.*, Gadbois v. Superior Court of Santa Clara County, 126 Cal. App. 3d 653, 179 Cal. Rptr. 19 (1981); Donald J. v. Evna M., 81 Cal. App. 2d 929, 147 Cal. Rptr. 15 (1978); Griffith v. Gibson, 73 Cal. App. 3d 465, 142 Cal. Rptr. 176 (1977).

79. *Gadbois*, 126 Cal. App. 3d at 666, 179 Cal. Rptr. at 22. The parent's interest is so strong that the court may grant visitation rights to the father whose paternity suit is pending. *Id.*

80. *Griffith*, 73 Cal. App. 3d at 469, 470, 142 Cal. Rptr. at 181, 182.

81. *See supra* notes 61-63 and accompanying text.

82. U.P.A. § 4(a)(1), 9A U.L.A. 590.

83. U.P.A. § 4(b), 9A U.L.A. 591. This is not to say that all U.P.A. presumptions work against the putative father; several are actually very helpful. One such presumption allows him to acknowledge paternity with the Bureau of Vital Statistics, and then, with the mother's consent, to add his name to the birth certificate. *See supra* note 71. Another makes the putative father the presumed father if he receives the child into his home. *Id.* A third permits the father to acknowledge paternity in writing with the Bureau of Vital Statistics. The putative father becomes the presumed father when the mother is notified, if she does not dispute the claim. *Id.*

addressed the constitutionality of denying alleged fathers standing to rebut the marital presumption.[84] The Wyoming Supreme Court decided against the natural father,[85] and Colorado held in his favor.[86]

The Wyoming court construed the legislative purpose in adopting the U.P.A. as legitimation of the child and preservation of the family unit.[87] Once the family unit is established, the child is legitimated.[88] Thus, the court interpreted an alleged father's initiation of paternity proceedings not as a means of legitimating the child, but as an attempt to destroy the family unit.[89] The court reasoned that to allow standing under these circumstances would invite action by those who wanted to break up families.[90] Consequently, Wyoming denies unwed fathers a forum in which to establish paternity if the child has a conflicting interest in an already-established relationship.[91]

Conversely, the Colorado Supreme Court reasoned that children have the right to know their parentage and that a claiming father has the right to establish paternity.[92] Under the U.P.A., moreover, married women have the right to file paternity actions against men not their husbands, regardless of the effect on existing family units.[93] Denial of that same right to men would be impermissible gender-based discrimination.[94] Therefore, the Colorado court accorded the putative father standing to seek a declaration that he fathered a child born during the mother's marriage to another.[95]

GROUP II: STANDING TO ASSERT PATERNITY BY STATUTE

New York's statute is representative of the various state provisions that provide a forum in which acknowledged or putative fathers may initiate paternity proceedings.[96] The purpose of these paternity proceedings is the determination of fatherhood.[97] Therefore, the fact that the mother

84. A v. X, Y, and Z, 641 P.2d 1222 (Wyo. 1982); R. McG. and C.W. v. J.W. and W.W., 615 P.2d 666 (Colo. 1980).

85. A v. X, Y, and Z, 641 P.2d at 1227.

86. R. McG. v. J.W., 615 P.2d at 672.

87. A v. X, Y, and Z, 641 P.2d at 1225.

88. *Id.*

89. *Id.*

90. *Id.* The Chief Justice, however, labeled the opinion a "blatant denial of due process" because it denied the biological father his constitutional right to a hearing to establish his father-child relationship. *Id.* at 1234, 1235 (Rose, C.J., dissenting).

91. Buchanan, *supra* note 61, indicates that biological fathers may lose their opportunity interest if they do not act quickly. A child may form a relationship with another man who is performing the custodial duties of the father, and thus the natural father will lose his rights. *Id.* at 364-65. The Wyoming court's approach is that the natural father never has an opportunity interest even though the child has an existing family relationship. A v. X, Y, and Z, 641 P.2d at 1225.

92. R. McG. v. J.W., 615 P.2d at 672. *See also* Note, R. McG. & C.W. v. J.W. & W.W.: *The Putative Father's Right to Standing to Rebut the Marital Presumption of Paternity*, 76 N.W.U.L. L. REV. 669 (1981).

93. R. McG. v. J.W., 615 P.2d at 671.

94. *Id.*

95. *Id.* at 672.

96. N.Y. JUD. LAW § 522 (McKinney 1983). *See also* ARK. STAT. ANN. § 34-716 (Supp. 1983); WIS. STAT. ANN. § 767.45 (West 1981).

97. Joye v. Schechter, 112 Misc. 2d 172, 446 N.Y.S.2d 884, 887-88 (1982).

refuses to acknowledge the father, does not need support, and is not likely to become a public charge is immaterial.[98]

Once the natural father establishes paternity, he then has the opportunity to develop a constitutionally protected relationship with his child.[99] He can petition for visitation privileges to maintain that relationship;[100] New York courts have long recognized that an adjudicated father is entitled to visitation rights.[101] The courts deny visitation privileges only when evidence shows that the visits are detrimental to the child.[102] Visitation rights are so important that an unwed father will retain the privilege notwithstanding his poor work record and subsequent failure to support his children.[103] Even an alcoholic father who has completed paternity procedures is entitled to supervised visitation, absent a showing of detriment to the child.[104]

GROUP III: STANDING TO ASSERT PATERNITY THROUGH LEGITIMATION PROCEDURES

Several states allow natural fathers to legitimate their children by assertion or acknowledgment.[105] Most of these states require only minimal conduct on the fathers' part.[106] These legitimation statutes provide a procedure whereby natural fathers may establish an opportunity to develop a constitutionally protected parent-child relationship.[107] The legitimation states disagree, however, on the constitutionality of denying putative fathers standing to rebut the marital presumption and to pursue legitimation proceedings.[108]

Legitimation By Acknowledgment

Historically, the purpose of legitimation statutes was to provide illegitimate children with the same inheritance rights that legitimate children enjoyed.[109] Recently, in recognition of fathers' rights, courts have broadly

98. *Id. But see In re* Kordek v. Wood, 108 Misc. 2d 434, 437 N.Y.S.2d 631 (1981). The *Kordek* court found no need to allow a putative father to establish paternity if the child was adequately supported. *Id.* at 436, 437 N.Y.S.2d at 633. The *Joye* court "respectfully but totally, rejects that decision." 112 Misc. 2d at 175, 446 N.Y.S.2d at 887.

99. *See supra* notes 67-70 and accompanying text.

100. Parker v. Ford, 89 A.D.2d 806, 453 N.Y.S.2d 465, 466 (1982).

101. *See, e.g., In Re* June B. v. Edward L., 69 A.D.2d 612, 419 N.Y.S.2d 514 (1979); *In re* Pierce v. Yerkovich, 80 Misc. 2d 613, 363 N.Y.S.2d 403 (1974); Anonymous v. Anonymous, 34 A.D.2d 942, 312 N.Y.S.2d 348 (1970).

102. *Parker*, 89 A.D.2d at 807, 453 N.Y.S.2d at 466.

103. Chirumbolo v. Chirumbolo, 75 A.D.2d 992, 429 N.Y.S.2d 112 (1980).

104. *Parker*, 89 A.D.2d at 807, 453 N.Y.S.2d at 466. The trial court labeled the father "unfit" and a "drunkard." The appeals court held, however, that a parent's undesirable characteristics do not defeat his visitation rights unless his actions are detrimental to the child. *Id.*

105. *See supra* note 69.

106. In Nebraska, for example, a father must demonstrate a familial relationship with his child. Cox v. Hendricks, 208 Neb. 23, 302 N.W.2d 35 (1981).

107. The fathers' right to establish a relationship is itself constitutionally protected. *See supra* notes 60-63 and accompanying text.

108. *See supra* notes 81-94. *See also infra* notes 116-21 and accompanying text.

109. Slade v. Dennis, 594 P.2d 898, 899 (Utah 1979). Legitimation statutes continue to protect illegitimate children. *See, e.g.*, Davis v. Schweicker, 553 F. Supp. 158 (D. Md. 1982) (illegitimate child held entitled to surviving child benefits because decedent father had acknowledged child); *In*

construed legitimation statutes to allow fathers to assert rights in a relationship with their children after legitimation.[110] Thus, some legitimation states give fathers who legitimate their children and receive them into their homes,[111] or who demonstrate a familial relationship with the children,[112] standing to ask for visitation rights. These states thereby confer on fathers much more than the bare right to establish their identities.[113]

New Hampshire is similar to other legitimation-by-acknowledgment states in giving fathers who succeed in legitimating their children standing to pursue the benefits of a legal parent-child relationship.[114] The New Hampshire Supreme Court emphasized the importance of the parent-child relationship when it recognized that non-custodial parents have an inherent state constitutional right to a continuing relationship with their illegitimate children.[115] Accordingly, the New Hampshire court has held that the authority to grant visitation is not merely legislative; a man denied the right to visit his child is entitled to a remedy which the courts must supply.[116]

A problem arises in the legitimation-by-acknowledgment states for the natural father whose child is already presumed the legitimate offspring of the natural mother's husband.[117] Putative fathers in this situation have tried to establish parent-child relationships by bringing custody or visitation suits on the premise that the child's lineage must be established before the suit can be settled.[118] Some courts respond by giving the natural father standing to rebut the presumption of the child's legitimacy with clear and convincing evidence of his paternity.[119] This procedure gives the father the opportunity to establish contact and to develop a relationship with his child.[120] Other courts deny the putative father standing even though they recognize his constitutional interest in his child.[121] Courts that deny standing simply find that the state's interest in preserving an already-existing family unit outweighs the putative father's right.[122]

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re Swarer, 566 P.2d 126 (Okla. 1977) (death benefits awarded to minor child because father publicly acknowledged child and received him into his home for visits).

110. *See, e.g.*, Cox v. Hendricks, 208 Neb. 23, 302 N.W.2d 35 (1981); Slade v. Dennis, 594 P.2d 898 (Utah 1979).

111. *Slade*, 594 P.2d at 900.

112. *Cox*, 208 Neb. at 23, 302 N.W.2d at 35 (1981). *See also* Note, Cox v. Hendricks: *Rights of an Unwed Father*, 13 CREIGHTON L. REV. 296 (1981).

113. *See, e.g.*, *Cox*, 208 Neb. at 26, 302 N.W.2d at 38 (court allows unwed father visitation in child's best interest); *Slade*, 594 P.2d at 901 (courts deny parent visitation only in extraordinary circumstances).

A father's failure to acknowledge paternity in this group of states may deprive him of any relationship with the child. For example, without public acknowledgment the father may lose his *Stanley* right to notice and a hearing before the child can be put up for adoption. State *ex rel.* T.A.B. v. Corrigan, 600 S.W.2d 87 (Mo. App. 1980).

114. Locke v. Ladd, 399 A.2d 962 (N.H. 1979).

115. *Id.* at 965.

116. *Id.*

117. *See, e.g.*, F. v. R., 430 A.2d 1075 (Del. Supr. 1981); Raleigh v. Watkins, 293 N.W.2d 789 (Mich. App. 1980).

118. *Raleigh*, 293 N.W.2d at 790.

119. *Id.* at 790, 791.

120. *Id.* at 792.

121. F. v. R., 430 A.2d at 1078.

122. *Id.* at 1079.

Texas: Standing To Assert Paternity

In Texas, paternity must be established through involuntary or voluntary legitimation proceedings unless the child's parents marry or attempt to marry before the child's birth.[123] Any person with an interest in the child may bring involuntary legitimation proceedings, but usually the child's mother or the Department of Human Resources does so.[124] It is not certain whether fathers have standing to bring involuntary legitimation proceedings.[125] A putative father may, however, seek to establish a parent-child relationship through voluntary legitimation,[126] which requires either the mother's consent or a finding that legitimation is in the child's best interest.[127] If the father cannot prove legitimation is best for his child, his petition for paternity fails.[128]

If the court permits legitimation, the father automatically has every interest that any other parent has.[129] He has equal rights with the natural mother[130] and may even gain custody if he desires it and can prove it is in the child's best interest.[131] If the father is not permitted legitimation, however, he loses the right to attempt to establish a relationship.

The Texas Supreme Court has upheld the Texas statute against claims that it violates biological fathers' constitutional due process and equal protection rights.[132] The statute protects the natural fathers' due process rights, in the court's view, because all fathers have a chance to establish themselves as parents.[133] As to the equal protection claim, the court held that the state has a substantial interest in protecting the child's best interests and encouraging the unwed mother to care for her unborn child.[134] The state accomplishes this end by assuring the mother that her wishes concerning the child's placement will not, without her consent or a court's determination of the child's best interests, be subject to the father's wishes.[135] Consequently, the court found that the "slight legislative distinction" favoring the mother was substantially related to the state's important objective.[136]

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123. TEX. FAM. CODE ANN. §§ 12.02, 13.01-13.09 (Vernon 1975). *See generally* Knisely & Spevey, *Paternity Determinations in Texas: Five Years Under Chapter 13 of the Texas Family Code*, 20 S. TEX. L.J. 465 (1979).

124. Knisely, *supra* note 123, at 476.

125. *See infra* note 139.

126. *In re* Baby Girl S, 625 S.W.2d 261 (Tex. App. 1982).

127. TEX. FAM. CODE ANN. §§ 13.21-13.24 (Vernon Supp. 1983). *See supra* note 122.

128. *See, e.g.*, *In re* C.D.V., 589 S.W.2d 543, 546 (Tex. Civ. App. 1979) (proven natural father, a convicted felon serving time in the penitentiary, denied legitimation). *See also In re* Baby Girl S, 625 S.W.2d 261 (Tex. App. 1982) (discussed *infra* notes 137-39 and accompanying text).

129. *In re* T.E.T., 603 S.W.2d 793, 798 (Tex. 1980).

130. *Id.*

131. Shockome v. Hernandez, 587 S.W.2d 535, 537 (Tex. App. 1979).

132. *In re* T.E.T., 603 S.W.2d 793 (Tex. 1980); *In re* K, 535 S.W.2d 168 (Tex. 1976).

133. *In re* T.E.T., 603 S.W.2d at 796.

134. *Id.* at 797; *In re* K, 535 S.W.2d at 171. *But see* Comment, *In re* K, 8 ST. MARY'S L.J. 392 (1976) (arguing that the court overlooked the fact that the father was prevented from establishing a relationship with his newborn).

135. *In re* T.E.T., 603 S.W.2d at 797.

136. *Id.* Ironically, however, if an unwed father in Texas is involuntarily declared the father, he automatically has all the rights of any parent. *In re* T.E.T., 603 S.W.2d at 796. On the other hand, the unwed father who pursues legitimation because he wants the rights and responsibilities

Nonetheless, in 1982, one young father, denied the right to legitimate his child, argued that the Texas courts' discretionary role in legitimation proceedings violated the fourteenth amendment.[137] Once again, a Texas court upheld the statute.[138] However, the father pursued his claim to the United States Supreme Court, which may ultimately decide whether the Texas legitimation statutes sufficiently protect the biological father's constitutional right to develop a relationship with his child.[139]

GROUP IV: STANDING TO ASSERT PATERNITY THROUGH DECLARATORY JUDGMENT ACTION

A fourth class of states neither gives putative fathers standing to assert paternity nor provides procedures for legitimation by acknowledgment or voluntary legitimation.[140] In this respect, the statutes in these states are similar to the Arizona paternity statute.[141] Natural fathers in these states have challenged the constitutionality of the statutes because they fail to provide a forum for establishing paternity, and courts have generally responded by finding that the fathers are constitutionally entitled to a forum.[142] These courts give fathers the opportunity to establish parent-child relationships by permitting them to bring declaratory judgment actions.[143]

Wisconsin was one of the first states to address the forum issue.[144] The only parties with standing to file paternity suits and thereby establish illegitimate children's paternity in that state had been mothers and the district attorney.[145] The Wisconsin Supreme Court recognized, however, that a putative father's constitutional right to establish paternity includes access to a legal forum with due process procedures.[146] The court found declaratory judgment an appropriate vehicle for establishing parentage because it would terminate the paternity controversy and could further establish the father's visitation, care, and support obligations.[147]

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of parenthood may be denied any rights at all if the court decides legitimation is not in the child's best interests. TEX. FAM. CODE ANN. §§ 13.21 to 13.24 (Vernon Supp. 1983).

137. *In re* Baby Girl S., 625 S.W.2d 261 (Tex. App. 1982). The court denied voluntary legitimation to this father, who suffered from grand mal seizures. He testified, "All I can say is I love my daughter and I want her, and she's blood, and I just can't see letting her go when I want to raise her myself." *Id.* at 262.

138. *Id.* at 263-64.

139. The United States Supreme Court agreed in January 1983 to hear the case on the father's petition, *sub nom.* Kirkpatrick v. Christian Homes of Abilene, Inc., 74 L.Ed. 2d 991 (1983). In June 1983, however, the Court vacated its grant of certiorari and remanded the case to the Texas courts to decide if the father has standing to legitimate his child under involuntary legitimation provisions. 76 L.Ed. 2d 337 (1983). If the Texas courts allow the father to legitimate his child, the courts' discretionary role in voluntary proceeding will become moot, as all putative fathers will have standing to bring paternity suits. If Kirkpatrick has no recourse under the Texas involuntary legitimation statute, the Supreme Court presumably will once again agree to consider the Texas statute's constitutionality.

140. *See supra* note 70.

141. Arizona once had a procedure for legitimation by acknowledgment. *See infra* note 181 for discussion of the repealed statute.

142. *See infra* notes 144-61 and accompanying text.

143. *Id.*

144. Slawek v. Stroh, 72 Wis. 2d 295, 215 N.W.2d 9 (1974).

145. *Id.* at 300, 215 N.W.2d at 14.

146. *Id.*

147. *Id.* at 302, 215 N.W.2d at 16. Wisconsin's Declaratory Judgment Act is similar to that in

Florida's paternity statute allows only mothers to file paternity suits.[148] When putative fathers originally petitioned for declaratory judgments of paternity, the Florida courts refused to grant them standing.[149] To justify their decisions, the courts declared that the legislature intended to limit standing to mothers.[150] Absent any legislative revision, therefore, the father had no right to have himself declared the father of his child.[151]

Two years later, however, the Florida Supreme Court reconsidered standing when a putative father challenged the paternity statute as a violation of equal protection and a denial of court access under the Florida constitution.[152] The court upheld the statute's validity but further considered the father's claim that he was unconstitutionally denied a forum to assert his rights in his children.[153] It held that a father who helped to raise and support his illegitimate child could bring a declaratory judgment suit to adjudicate his paternity.[154]

In Arkansas, putative fathers challenged the constitutionality of a similar paternity statute which permitted only mothers to sue.[155] The Arkansas Supreme Court held that a putative father was entitled to bring a declaratory judgment action to determine his paternity and visitation rights.[156] It recognized that fathers' basic rights in their illegitimate children include the right to petition for visitation.[157] Shortly after the decision, the Arkansas legislature decided that the state's failure to allow a putative father a cause of action to establish paternity violated equal pro-

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39 states, including Arizona. "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *See* UNIF. DECLARATORY JUDGMENT ACT, 12 U.L.A. 111 (1975).

The Wisconsin father, however, no longer needs the Declaratory Judgment Act. In 1981, Wisconsin amended its paternity statute to allow alleged fathers to bring paternity actions. WIS. STAT. ANN. § 767.45 (West 1981).

148. FLA. STAT. ANN. § 742.011 (West Supp. 1983). In Perez v. Stevens, 362 So. 2d 998 (Fla. Dist. Ct. App. 1978), the court noted that historically only a mother could initiate a paternity proceeding because the paternity suit's purpose was to force the father to support the child. *Id.* at 999.

149. Ford v. Loeffler, 363 So. 2d 23 (Fla. Dist. Ct. App. 1978); Perez v. Stevens, 362 So. 2d 998 (Fla. Dist. Ct. App. 1978).

150. *Perez*, 362 So. 2d at 999.

151. *Id.*

152. Kendrick v. Everheart, 390 So. 2d 53, 55 (Fla. 1980).

153. *Id.* at 56, 57. The court found the paternity statute constitutional because its purpose was paternal support for the child. The statute denied the father nothing because he can merely support his child and fulfill the statute's purpose. *Id.*

154. *Id.* at 61. *Ford v. Loeffler* was overruled to the extent that it was inconsistent with this decision. *Id.*

Recently, a Florida court faced with another equal protection challenge to the paternity statute declared the statute unconstitutional. Guerrero v. Staglish, 400 So. 2d 190 (Fla. Dist. Ct. App. 1981). The appeals court disagreed, holding that the father's right to bring a declaratory judgment suit ensured the statute's constitutionality. *Id.* at 191. For the time being, then, Florida joins a number of states which grant putative fathers standing to assert parental rights through declaratory judgment.

Some Florida fathers can legitimate their children without going to court. In Johnson v. Knight, 424 So. 2d 166 (Fla. App. 1983), the court held that, after the natural mother's death, the natural father does not have to go through a judicial proceeding to establish his paternity because the mother can no longer contest his paternity.

155. ARK. STAT. ANN. § 34-702 (repealed 1981).

156. Roque v. Frederick, 614 S.W.2d 667 (Ark. 1981).

157. *Id.* at 670.

tection.[158] Consequently, it amended its statute to extend standing to putative fathers.[159]

It appears that most declaratory judgment states[160] agree with the Arkansas Supreme Court's conclusion that "the law has changed because it must. Whatever wrongs the parents did are no fault of the child, and whatever wrong the parents did should not forever deny them the privileges that other parents enjoy."[161]

Once a father establishes paternity in the declaratory judgment states, he has the opportunity to develop a constitutionally protected relationship with his child.[162] Massachusetts, for example, originally granted the natural father standing to petition for visitation rights after he had established paternity only if he had supported the child and was acknowledged by the mother.[163] Recently, however, the Massachusetts court extended standing to bring declaratory action for visitation rights to any man asserting fatherhood even where the mother denies his paternity.[164] The court simply determines paternity before addressing the visitation issue.[165] The Massachusetts court reasoned that recognizing the father's right to visit his child but denying him a forum to assert that right when the mother refuses to acknowledge him raises significant constitutional problems.[166]

Arizona: Standing to Establish Paternity

There are no illegitimate children in Arizona; every child is the legitimate offspring of its natural parents.[167] The natural parents have the duty to support and educate the child.[168] Children born out of wedlock in Arizona have various legal remedies which help them assert their right to parental support. A child or his guardian may bring an action to establish identity or parentage.[169] A child's mother or the state may initiate pater-

158. ARK. STAT. ANN. § 34-716 to 717 (1983).

159. *Id.*

160. Other state courts have found that declaratory judgment actions are appropriate for fathers who wish to establish paternity but are not permitted standing under state statutes. *See* Pritz v. Chesnul, 106 Ill. App. 3d 969, 62 Ill. Dec. 605, 436 N.E.2d 631 (1982); Normand v. Barker, 385 Mass. 851, 434 N.E.2d 631 (1982); Gardner v. Rothman, 370 Mass. 79, 345 N.E.2d 370 (1976); Johannesen v. Pfeiffer, 387 A.2d 1113 (Me. 1978); McGarrity v. Mengel, 429 A.2d 1162 (Pa. Super. 1981).

161. *Roque*, 714 S.W.2d at 669.

162. *See, e.g.*, *Roque*, 614 S.W.2d 667, 669 (Ark. 1981); *Pritz*, 106 Ill. App. 3d 969, 62 Ill. Dec. 605, 436 N.E.2d 631 (1982); *Normand*, 385 Mass. 851, 434 N.E.2d 631 (1982).

163. *Gardner*, 370 Mass. 79, 345 N.E.2d 370 (1976).

164. *Normand*, 385 Mass. 851, 434 N.E.2d 631 (1982).

165. *Id.* at 853, 434 N.E.2d at 633.

166. *Id.* The court noted that although the right of visitation is not absolute, *Stanely* may indicate it is at least constitutionally based. *Id.* at n.1.

167. ARIZ. REV. STAT. ANN. § 8-601 (Supp. 1983). The legislature's purpose in passing the statute was to accord equal protection to illegitimate children in the context of intestate succession. *Id.* Although the children remain the legitimate offspring of both natural parents, they must still establish their father's paternity in order to inherit from the father. Until then, children born out of wedlock are children of the mother only. If the parents marry or if paternity is adjudicated before the death of the father, or by clear and convincing evidence after his death, children may inherit from their father. *Id.* § 14-2109 (1975).

168. *Id.* § 8-601 (Supp. 1983).

169. *Id.* § 12-621 (1982).

nity proceedings.[170] A child's father or the state may bring maternity proceedings.[171] These proceedings are intended to compel support for the child.[172]

Arizona concurs with the proposition espoused by other jurisdictions: parents have a fundamental right to custody and control of their children.[173] The state's cognizance of this fundamental right gives parents the full benefit of due process and equal protection before the parent-child relationship terminates.[174] When parents divorce, for example, the state

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170. *Id.* § 12-841 to 851 (1973).

171. *Id.* Only the pertinent sections of the statute are here included.

MATERNITY AND PATERNITY

ARTICLE 3. MATERNITY AND PATERNITY PROCEEDINGS

§ 12-841 Courts and Civil Proceedings Title 12 § 12-841. *Jurisdiction*

The superior court shall have exclusive original jurisdiction in proceedings to establish maternity or paternity. All such proceedings shall be civil actions

§ 12-843. *Persons who may originate proceedings*

Proceedings to establish the maternity or paternity of a child or children and to compel support under this article may be commenced by any of the following:

1. The mother.
2. The father.
3. The guardian or best friend of a child or children born out of wedlock
4. A public welfare official or agency of the county where the child or children reside or may be found.

§ 12-846. *Complaint*

A. Paternity proceedings are commenced by the filing of a verified complaint by the county attorney in the name of the state alleging that a woman is delivered of a child or children born out of lawful wedlock or pregnant with a child conceived out of wedlock and alleging that the defendant is the father of the child or children.

B. The proceedings may also be commenced by the filing or a verified complaint by the mother, with the mother as plaintiff, or by the guardian or best friend of a child or children born out of wedlock. In any action in which the state is not the plaintiff, the state may intervene and be named as coplaintiff.

C. Maternity proceedings are commenced by filing of a verified complaint by the county attorney in the name of the state alleging that a woman is delivered of a child or children born out of lawful wedlock and alleging that such woman as defendant is the mother of the child or children.

D. The proceeding may also be commenced by the filing of a verified complaint by the father, with the father as plaintiff or by the guardian or best friend of a child or children born out of wedlock. In any action in which the state is not the plaintiff, the state may intervene and be named as coplaintiff.

172. *Id.* § 12-843. In construing the statute, Skaggs v. State, 24 Ariz. 191, 207 P. 877 (1922) indicates that the paternity statute's purpose is to enforce the father's obligation to support his children born out of wedlock. *Id.* at 194, 207 P. at 880.

In 1973, the legislature added "maternity" as another proceeding that could be brought under this article. Whether the proceedings are for paternity or maternity, the purpose remains the same: to compel support from the parent against whom the action is brought. ARIZ. REV. STAT. ANN. § 12-843 (1982). The support purpose is also evident in the statutory provision for judgment for child maintenance payments. *Id.* § 12-849.

The Arizona Court of Appeals notes that "[t]he state's main goal in a paternity suit is to divest itself of responsibility in supporting the child through various welfare programs." Bill v. Gossett, 132 Ariz. 518, 523, 647 P.2d 649, 654 (1982).

173. *See, e.g.*, Appeal in Gila County Juvenile Action No. J-3824, 130 Ariz. 530, 637 P.2d 740 (1981) (although the state has a strong interest in future well-being of children and can intrude into the parent-child relationship to terminate parental rights, parents' right to custody and control is fundamental). *See also supra* notes 79, 100, 107, 144, 156.

174. Webb v. Charles, 125 Ariz. 558, 611 P.2d 562 (Ct. App. 1980). In *Webb*, a court commissioner's decision to award physical custody of a child to the maternal grandmother instead of the natural father was remanded. The court noted that before the state can deprive parents of the fundamental right to raise their children, it must strictly comply with the statutes involved and preserve due process and equal protection. *Id.* at 561, 611 P.2d at 565.

grants visitation rights to the non-custodial parent to ensure frequent and continuing parent-child contact.[175]

In the adoption context, at least, Arizona recognizes that unwed fathers have the same parental rights as other natural parents. The state must have the consent of the unwed father before his child can be adopted.[176] No adoption can succeed without the father's consent, absent a showing of unfitness.[177] If the father is unknown, the state must make a reasonable effort to locate him in order to obtain his consent.[178] When the mother relinquishes custody, Arizona gives automatic custody to any unwed father who desires it, even if prospective adoptive parents exist.[179]

It is not clear that Arizona extends these same rights to the natural father who wants to establish both his paternity and a parent-child relationship. Unlike other states, Arizona has not adopted the Uniform Parentage Act[180] or set up a procedure to allow fathers to establish paternity. Thus, fathers must look elsewhere for a forum in which they can assert their right to a parent-child relationship.[181]

Arizona Case Law: Natural Fathers and Their Children

Relatively few recent Arizona cases deal with paternity proceedings or fathers' rights. There is indeed "a dearth of Arizona case law dealing with the question of exactly whose rights are represented and adjudicated when one . . . of the statutorily authorized persons initiates a paternity suit . . . ."[182] The Arizona courts have decided that minors may bring suit to establish parentage even after the settlement of a previous paternity action which reserved judgment on the parentage issue.[183] On the other hand, a minor in Arizona is not permitted to bring a paternity action after dismissal with prejudice of a paternity suit brought on the child's behalf by the county attorney.[184]

Arizona has accorded some recognition to the right of the father of a non-marital child to a father-child relationship. If both the natural mother and acknowledged natural father are fit, and if each wants custody, the court may award custody on a gender-neutral basis to the parent who

175. ARIZ. REV. STAT. ANN. § 25-337 (1983). The non-custodial parent is denied visitation only if the court finds the visits would endanger the child's physical, mental, moral, or emotional health. *Id.*

176. *Id.* § 8-106(A)(1) (Supp. 1983).

177. *In re* Appeal in Pima County, Adoption of B-6355 and H-533, 118 Ariz. 111, 575 P.2d 310 (1978); *In re* Adoption of Baby Boy, 106 Ariz. 195, 472 P.2d 64 (1970).

178. ARIZ. REV. STAT. ANN. § 8-106(A) (Supp. 1983).

179. *Id.* § 8-106(A)(1) (Supp. 1983). In Arizona, a natural parent's rights are good as against the whole world. Clifford v. Woodford, 83 Ariz. 257, 320 P.2d 452 (1957).

180. *See supra* note 67.

181. *See supra* notes 68-69. Arizona needs no procedure for legitimation by acknowledgment or voluntary legitimation because all children are legitimate. Prior to 1973, section 8-103 of the Arizona Revised Statutes permitted a putative father to file a certificate of parental acknowledgment to legitimate his child. This section was repealed with the adoption in 1975 of section 8-601 (1975), which legitimated all children.

182. Bill v. Gossett, 132 Ariz. 518, 522, 647 P.2d 649, 653 (App. 1982).

183. Backora v. Balkin, 14 Ariz. App. 569, 485 P.2d 292 (1971).

184. *Bill*, 132 Ariz. at 523-24, 647 P.2d at 654-55.

serves the child's best interests.[185] Only recently, however, have natural fathers who are not acknowledged by the mothers claimed a right to a relationship with their children. In so doing, two putative fathers attempted to use the Arizona paternity statute to establish their parentage.

In *Sheldrick v. Maricopa County Superior Court*[186] and *Traphagan v. Maricopa County Superior Court*,[187] the Maricopa County Attorney brought paternity suits on behalf of putative fathers to have their fatherhood adjudicated. Both natural mothers denied the alleged fathers' paternity and filed petitions for special action.[188] The Arizona Supreme Court found the superior court had abused its discretion in each case by not dismissing the complaints.[189]

In *Sheldrick*, petitioner Cheryl Sheldrick had a child in January 1982.[190] Sheldrick had once lived with Michael Stenger, but he moved out before the child was born. Stenger's name was not on the child's birth certificate, and he did not pay childbirth expenses or child support. Desiring to establish his fatherhood and initiate a relationship with the child he alleged was his, Stenger had the Maricopa County Attorney being a paternity action on his behalf. Sheldrick moved to dismiss the complaint on the ground that the county attorney had no authority to represent a father attempting to establish his paternity. The court denied the motion, and Sheldrick petitioned for special action.[191]

Traphagan involves somewhat similar facts.[192] Donna Traphagan had a child in May 1982. The baby's birth certificate did not identify the father, and the mother paid for all childbirth expenses. Mahmud Moghadam, claiming to be the child's father, had the Maricopa County Attorney file a paternity suit against Traphagan, who denied Moghadam's paternity.[193] The Maricopa County Superior Court denied Traphagan's motion to dismiss.[194] Traphagan filed for special action,[195] and the

185. Orezza v. Ramirez, 19 Ariz. App. 405, 507 P.2d 1017 (1972). The Orezza child lived with the mother for six years and then with the father for three years. The father was given custody because he and his wife could better provide for the child and because the child was happy and well adjusted.

186. 136 Ariz. 329, 666 P.2d 74 (1983).

187. 136 Ariz. 331, 666 P.2d 76 (1983).

188. *Sheldrick*, 136 Ariz. at 330, 666 P.2d at 75; *Traphagan*, 136 Ariz. at 332, 666 P.2d at 76.

189. *Sheldrick*, 136 Ariz. at 331, 666 P.2d at 76; *Traphagan*, 136 Ariz. at 333, 666 P.2d at 78.

190. The facts of *Sheldrick* are set forth in 136 Ariz. at 330, 666 P.2d at 75.

191. Petitioner's attorney argued that, under section 12-846 of the Arizona Revised Statutes, the county attorney may enter a paternity action only on behalf of the mother where the father is the defendant. The county attorney has no authority to bring such an action representing the father against the mother as defendant. Petitioner's Memorandum of Points and Authorities in Support of Petition For Special Action at 6.

192. The facts of *Traphagan* are set forth in 136 Ariz. 332, 666 P.2d at 77.

193. Traphagan claimed the child bore no racial resemblance to Moghadam, who she claimed only wanted to establish paternity in order to seek U.S. citizenship. *Id.* However, blood test excluded the man Traphagan claimed was the father and indicated a 99.99% probability that Moghadam was the father. Respondents' Response to Petition for Special Action at 1.

194. *Traphagan*, 136 Ariz. at 332, 666 P.2d at 77.

195. Opposing the petitioner's special action, the county attorney argued that the father, represented by the state, was a proper party to bring the paternity action. The county attorney argued that the state has a legitimate interest in imposing a legal obligation of child support on two parents to prevent the child from becoming a public charge in the future. Here, if Moghadam's

supreme court granted her petition.[196]

In *Sheldrick*, the Arizona Supreme Court considered two issues: whether a father may affirmatively assert his parentage under the paternity statute, and whether a county attorney, empowered to enforce and establish a duty of child support, may bring a paternity action on behalf of a putative father.[197] In deciding the first issue, the court held that the statute does not allow anyone to bring a paternity action against the mother.[198] The court also rejected the county attorney's argument that he was empowered to bring a paternity action on behalf of the father to establish a duty of child support.[199] The court found that the putative father would have to be joined as a defendant in the action because the duty of child support would be enforced against him.[200] Such joinder, however, would result in a suit on behalf of the putative father against the putative father. The statute does not permit such collusive suits. The supreme court therefore held that the trial court had abused its discretion in not dismissing the suit on procedural grounds.[201]

Traphagan, affirming *Sheldrick*, again held that a father may not affirmatively assert his parentage under the paternity statute.[202] *Traphagan* likewise held that the county attorney, although empowered to establish child support obligations, may not bring a paternity action, pursuant to the paternity statute, on behalf of the putative father.[203]

Given the supreme court's interpretation of the Arizona statute, it is unclear what putative fathers like Michael Stenger or Mahmud Moghadam can do to establish paternity. No putative father has yet challenged the constitutionality of the Arizona statute for its failure to provide a legal forum. However, the trend in other states toward striking down similar statutes[204] and *Lehr v. Robertson's* implicit requirement of a state forum[205] suggest that the Arizona courts soon may address the paternity

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paternity was established, he would be legally obligated to support the child, thus fulfilling the state's interest. Respondents' Response to Petition for Special Action at 4.

196. *Traphagan*, 136 Ariz. at 333, 666 P.2d at 78.

197. *Sheldrick*, 136 Ariz. at 330, 666 P.2d at 75.

198. *Id.* at 331, 666 P.2d at 76.

199. Section 12-2456 of the Arizona Revised Statutes authorizes the county attorney to represent any party seeking to establish or enforce a child support duty. Petitioner's attorney argued, however, that the general language of section 12-2456 is controlled by the specific language of section 12-846 of the Arizona Revised Statutes. Petitioner's Memorandum of Points and Authorities in Support of Petition for Special Action at 5.

200. *Sheldrick*, 136 Ariz. at 331, 666 P.2d at 76.

201. *Id.*

202. *Traphagan*, 136 Ariz. at 332, 666 P.2d at 77.

203. *Id.* at 332-33, 666 P.2d at 77-78. The only additional issue the court addressed was the county attorney's argument that the "public welfare official" or "county agency" authorized by section 12-843 of the Arizona Revised Statutes to initiate suit included the county attorney. The court held that the statute provided that the mother, guardian, best friend, and appropriate county welfare agency were the only parties permitted to bring a paternity action. *Id.*

Compare Slawek v. Stroh, 62 Wis. 2d 295, 215 N.W.2d 9 (1974) (dissenting opinion). The putative father had asked the county attorney to commence parternity proceedings, but he declined. The dissent argued that unless the suit was against the child's best interest, the county attorney had a clear duty to initiate proceedings when the mother refused to prosecute. *Id.* at 306. 215 N.W.2d at 24. *See supra* notes 158-61 and accompanying text.

204. *See supra* notes 144-59 and accompanying text.

205. *See supra* notes 61-63 and accompanying text.

statute's constitutionality.

Establishing Paternity in Arizona: The Alternatives

A putative father in Arizona may have alternatives to action under the paternity statute to establish his paternity. He could file a maternity action, file for custody, or petition for declaratory judgment.

A father has standing to file a maternity action against the mother.[206] A putative father filing a maternity suit would charge the mother with her maternity and claim that she is not only denying his visitation rights but also denying the child a paternal relationship.

The Arizona Supreme Court's insistence on a plain reading of the paternity statute[207] creates problems for the putative father who hopes to use a maternity suit to establish his paternity. First, the issue in a maternity suit is maternity, not paternity. Second, while the statute allows a father to bring a maternity suit against the mother, it says nothing about extending the privilege to a man who has not proven his paternity.[208] Finally, the purpose of the maternity/paternity statute is to compel support for the child, not to establish parental status.[209] The putative father would in effect be bringing an action to compel the mother to support the child, which she is probably doing anyway.[210] Since the child is being supported, the court may well reason that the purpose of the statute has already been effected and dismiss the suit.

A second possible route for the putative father is the custody suit. The putative father can argue that he is a "parent" and therefore has standing to bring a custody action within the meaning of the custody statute.[211] The court would determine the child's paternity before ruling on

206. ARIZ. REV. STAT. ANN. § 12-846(D) (1982).

207. *See Sheldrick*, 136 Ariz. at 331, 666 P.2d at 76.

208. ARIZ. REV. STAT. ANN. § 12-846(D). The Arizona Revised Statutes do not define "father." "Parent" is defined in several different sections. ARIZ. REV. STAT. ANN. § 8-501 (Supp. 1983), Child Welfare and Placement, defines parents as the natural or adoptive parents; ARIZ. REV. STAT. ANN. § 8-531 (1974), Termination of the Parent-Child Relationship, defines parent as the natural or adoptive mother or father of the child; ARIZ. REV. STAT. ANN. § 14-1201 (1975), Decedents' Estates, defines a parent as any person entitled to take, or who would be entitled to take, if the child died without a will; ARIZ. REV. STAT. ANN. § 15-1801 (Supp. 1983), Classification of Students for Tuition Purposes, defines parent as the person's father or mother, or if one has custody, that parent.

209. *See supra* note 172.

210. In both *Sheldrick* and *Traphagan* the mothers indicated that they were capable of supporting their children without any outside assistance. *Sheldrick*, 136 Ariz. at 330, 666 P.2d at 75; *Traphagan*, 136 Ariz. at 332, 666 P.2d at 77.

211. ARIZ. REV. STAT. ANN. § 25-331 (Supp. 1983). Natural fathers of illegitimate children have succeeded with custody suits. *See, e.g.*, Caruso v. Superior Court of Pima County, 100 Ariz. 167, 412 P.2d 463 (1966). When the natural mother gave up her rights in her child, the natural father filed a certificate of parental knowledgment stating that he was willing and able to take care of his child. The court ruled that the father was entitled to custody. *Id.* at 169, 173 421 P.2d at 464, 467.

If procedure poses a problem for the unwed father seeking custody, he could petition for a writ of habeas corpus. ARIZ. REV. STAT. ANN. § 13-4121 (1978). *See also* Webb v. Charles, 125 Ariz. 558, 611 P.2d 562 (Ct. App. 1980). The Webbs married after their child was born. At the mother's death the grandmother kept the child. When the natural father petitioned for habeas corpus to obtain custody, the grandmother alleged that Webb was not the father. The court of appeals found habeas corpus the proper vehicle to determine Webb's paternity and right to cus-

the custody issue.[212]

If the father does not want custody, but only the opportunity to establish a parent-child relationship, he might take one of two positions. After requesting custody, he could offer to allow the mother to retain custody if he were granted visitation rights. Alternately, the father could argue unconvincingly for outright custody, knowing the court will grant him visitation rights when he loses.[213]

Unwed fathers have successfully used the custody action where they actually wanted custody,[214] but the procedure is as yet untried by fathers seeking only a paternity determination and visitation privileges. The courts may deny the action to unwed fathers who have no intention of taking custody since the purpose of the statute is custody determination.[215]

Perhaps the best possible route for the putative father to establish paternity in Arizona is the petition for declaratory judgment.[216] The putative father would rely on other states' decisions that declaratory actions are proper vehicles for establishing paternity.[217] Nevertheless, an Arizona court may be reluctant to allow declaratory actions in paternity cases. Courts permit declaratory judgments when it is clear that granting them will terminate the controversy.[218] Those courts which allow fathers to use declaratory judgment actions to determine paternity, dispite the possibility of continuing controversy over visitation and support obligations, do so

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tody. *Id.* at 560, 561, 661 P.2d at 564, 565. *But see* Smart v. Cantor, 117 Ariz. 539, 574 P.2d 27 (1977), where the court noted that while habeas corpus is a procedural way to bring a custody suit, the real issue is the child's interest and welfare. If the parents' rights are being adjudicated, the court will follow the procedure in section 25-331(D) and (E) of the Arizona Revised Statutes, the custody statute. *Smart*, 117 Ariz. at 541, 574 P.2d at 29.

Other states allow the petition for habeas corpus to be used by parents of non-marital children in custody determinations. *See, e.g.*, Pi v. Delta, 400 A.2d 709 (Conn. 1978) (father of illegitimate children has standing to maintain petition for habeas corpus to determine custody of minor children); People *ex rel.* Irby v. Dubois, 41 Ill. App. 3d 609, 354 N.E.2d 562 (1976) (custody with unwed father was in the children's best interests after mother unsuccessfully filed habeas corpus petition to have father return two children). *But see* Slawek v. Stroh, 65 Wis. 2d 295, 215 N.W.2d 9, 15 (1974) (habeas corpus can be used in custody cases but is not designed to provide the continuing jurisdiction needed for custody, visitation, and care of the child).

212. *See, e.g.*, Webb v. Charles, 125 Ariz. 558, 611 P.2d 562 (Ct. App. 1980); Orezza v. Ramirez, 19 Ariz. App. 405, 507 P.2d 1017 (1972). In *Orezza*, the mother petitioned for custody of a child who lived three of his nine years with his father. The father asked for determination of paternity and custody. After establishing the father's paternity, the court awarded him custody in the child's best interest. *See also* Raleigh v. Watkins, 293 N.W.2d 789 (Mich. App. 1980) (paternity is the first issue to be decided when putative father brings paternity suit).

213. ARIZ. REV. STAT. ANN. § 25-337 (Supp. 1983) emphasizes the right of the child to continuing and frequent visits with the non-custodial parent. Courts grant visitation to the non-custodial parent unless the visits will harm the child. *Id.*

Neither Michael Stenger in *Sheldrick* nor Mahmud Moghadam in *Traphagan* wanted custody. Stenger, however, wanted to have a relationship with the child he alleged was his; visitation is one way he could establish this relationship.

214. *See supra* note 211. *But see In re* Custody of Myer, 100 Ill. App. 3d 27, 55 Ill. Dec. 358, 426 N.E.2d 333 (1981), where the court found that an unmarried parent who brought a custody proceeding could use it to adjudicate only visitation rights.

215. *See* ARIZ. REV. STAT. ANN. § 25-331 (Supp. 1983).

216. *See* ARIZ. REV. STAT. ANN. § 12-1831 (1982) (Declaratory Judgment Statute). *See supra* note 147 for the text of the Uniform Declaratory Judgment Act, which § 12-1831 codifies in Arizona.

217. *See supra* notes 144-66 and accompanying text.

218. *See* ARIZ. REV. STAT. ANN. § 12-1835 (1982). The Arizona statute requires termination of the controversy. *See supra* note 147.

because no other forum exists for a paternity determination.[219] Thus, Arizona fathers will likely have to convince the court that their constitutional interest in pursuing a father-child relationship outweighs the possibility of continued conflict.

Finally, a putative father seeking to establish paternity might look to the legislature for relief. The legislature could pass the Uniform Parentage Act, which would protect the rights of both parents and their children.[220] Failing that, the legislature might reconsider its repeal of the statute that allowed putative fathers to file certificates of parental acknowledgment.[221] The purpose of the statute would no longer be legitimation of the child, as that is not necessary in Arizona,[222] but provision of a vehicle through which unwed fathers could establish paternity. The statute should require that the others receive notice. If the mothers objected to the acknowledgment, the father would have standing to pursue the matter in court.

CONCLUSION

The United States Supreme Court has recognized that natural fathers have constitutionally protected rights in their children. These rights are protected, however, only if the father has an actual relationship with his child. The father's ability to establish a relationship with his child may be frustrated by state laws. A state's denial of a legal forum in which the father can establish a relationship with his child violates due process.

States have settled on various alternatives to give the father standing to pursue his right to a relationship with his child. Eight states have adopted the Uniform Parentage Act. Others permit a father to bring a paternity action or legitimation proceeding. A final group gives the father standing to bring a declaratory judgment action.

Arizona has not yet provided fathers a forum in which to establish paternity, but soon it may have to designate one. The attacks on statutes in other states indicate that Arizona's putative fathers may soon challenge the constitutionality of the Arizona paternity statute under which they are denied standing. Arizona should provide these fathers a forum, either judicially or legislatively, in which to establish their paternity. Only this will protect their constitutional right to develop a relationship with their children.

219. *See* Gardner v. Rothman, 370 Mass. 79, 345 N.E.2d 370, 372 (1976); Slawek v. Stroh, 62 Wis. 2d 9, 215 N.W.2d 9, 16 (1974).

220. *See supra* note 71.

221. ARIZ. REV. STAT. ANN. § 8-103 (repealed 1973).

222. *See supra* note 181.