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**NEGLECTING RESPONSIBILITIES:
THE UNIFORM PROBATE CODE'S FAILURE TO
ADDRESS CHILD MALTREATMENT AND POVERTY**

*Joshua Hamlet**

When a child or adolescent passes away, parents are typically stricken with grief and unable to cope with the devastation. Unfortunately, the emotional toll is not the only challenge parents face. Some are forced to handle legal battles regarding the administration of their deceased child's estate. Since the majority of children do not have a will, state adoptions of the Uniform Probate Code dictate what happens to the child's estate during these tragedies. But what happens in the event these parents abused or neglected their child while that child was still living? While the Uniform Probate Code advises that these malevolent parents should be blocked from inheriting, it does not always work out that way in reality. Furthermore, parents from disadvantaged socioeconomic backgrounds are more likely to abuse their children—children who, in turn, die intestate, creating a never-ending cycle of abuse and legislatively-driven inheritance which fails to account for deaths following lives marked by parental abuse or neglect. It is time to revise the Uniform Probate Code to protect children who die intestate so that abusive or neglectful parents will no longer be rewarded after mistreatment.

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INTRODUCTION

Imagine the unbearable pain of losing a child from an accident or mistake of another individual. Consider having to relive that agony daily during a wrongful death suit. Just when you think the torment is ending because you procure a judgment against the defendant, your ex-spouse comes out of the woodwork and claims entitlement to the wrongful death award as the child's other natural parent. Despite evidence of your ex-spouse's failure to pay child support, anger management issues, and absence from your child's life, the court still holds that both parents share equally in the estate. This is not a fictional scenario drawn up to demonstrate a potential problem with intestate succession laws—this is Justina Nees's reality, one which exposes a critical flaw in the Uniform Probate Code's ("UPC") approach to intestate succession for abusive or neglectful parents.¹

Intestate succession is defined as "the method used to distribute property owned by a person who dies without a valid will."² Unfortunately, most people in the United States die without a will,³ leaving the default rules of intestacy to govern the division of an estate and, often, serve as "rules of law that yield to the contrary intention of the people they are designed to regulate."⁴ The West Virginia Supreme Court of Appeals poignantly summarized the purpose of intestate succession statutes in its ruling in *King v. Riffée*,⁵ noting that "the purpose of [intestate succession]

¹ *In re Estate of Fisher*, 128 A.3d 203, 209, 212 (N.J. Super. Ct. App. Div. 2015).

² *Intestate Succession*, BLACK'S LAW DICTIONARY (11th ed. 2019).

³ Michael R. McCunney & Alyssa A. DiRusso, *Marketing Wills*, 16 ELDER L.J. 33, 34 (2008); Nick DiUlio, *More Than Half of U.S. Adults Don't Have a Will, 2017 Survey Reveals*, HUFFPOST (Feb. 17, 2017, 1:21 PM), https://www.huffpost.com/entry/more-than-half-of-us-adults-dont-have-a-will-new_b_58a6086ce4b0b0e1e0e2083a; Jeffrey M. Jones, *Majority in U.S. Do Not Have a Will*, GALLUP (May 18, 2016), <https://news.gallup.com/poll/191651/majority-not.aspx>.

⁴ Thomas P. Gallanis, *Default Rules, Mandatory Rules, and the Movement for Same-Sex Equality*, 60 OHIO ST. L.J. 1513, 1515 (1999).

⁵ *King v. Riffée*, 309 S.E.2d 85, 89 (W. Va. 1983) (holding that the plaintiff who was born out of wedlock could not inherit from his natural grandfather's

statutes . . . is to provide a distribution of real and personal property that approximates what decedents would have done if they had made a will.”⁶ The specific goals of intestacy statutes are “(1) to protect the [decedent’s] financially dependent family, (2) to avoid complicating property titles and excessive subdivision of property, (3) to promote and encourage the nuclear family, and (4) to encourage the accumulation of property by individuals.”⁷ The UPC is a standard comprehensive act regulating the administration of estates, adopted in varying degrees by several states. At the time of this writing, sixteen states have enacted the UPC in its entirety, while the majority of states have adopted portions of it.⁸ Article II of the UPC outlines the default rules of intestacy succession and serves as a suggestive model, providing state legislatures with guidance on how to handle intestate estates.⁹

While theoretically favorable, the idea of default rules and communal goals surrounding the law of intestate succession has proven idealistic in practice.¹⁰ One area that tends to cause controversy involves abusive or neglectful parents’ ability to inherit from their deceased children’s estates, despite maltreatment by

estate because the relevant statute only allows adopted children to inherit from their adoptive parents).

⁶ *Id.* at 87–88.

⁷ Mary Louise Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 3 AM. B. FOUND. RES. J. 319, 324 (1978).

⁸ *Uniform Probate Code*, LEGAL INFO. INST., <https://www.law.cornell.edu/uniform/probate> (last visited Aug. 14, 2019).

⁹ See UNIF. PROBATE CODE, Art. II (UNIF. LAW COMM’N 2010).

¹⁰ See *In re Turpening v. Howard*, 671 N.W.2d 567, 569–70 (Mich. Ct. App. 2003); *Estate of McCoy ex rel. Jones v. McCoy*, 988 So. 2d 929, 933 (Miss. Ct. App. 2008); *In re Estate of Fisher*, 128 A.3d 203, 217 (N.J. Super. Ct. App. Div. 2015); see also *infra* Part II (discussing states’ interpretations of their parental-barring statutes).

those parents.¹¹ UPC section 2-114 addresses exactly that issue.¹² The UPC drafters, through this section, sought to bar abusive and neglectful parents from inheriting their children's estates.¹³ However, state courts' interpretations of their respective states' adaptations of this provision have led to confusion and conflicting holdings which sometimes allow abusive or neglectful parents to inherit from their children's estates—often sizable in the event of a wrongful death suit.¹⁴

This Note seeks to review and analyze UPC section 2-114, predominantly in the context of wrongful death suits brought on behalf of maltreated children. It contends that the provision fails to establish sufficiently specific standards for terminating parental rights, leaving courts with too much discretion in deciding whether abusive parents may inherit from their children's estates. Further, statistics from studies on individuals of low socioeconomic status indicate that the UPC's vagueness may have the effect of disproportionately disserving maltreated children from such backgrounds and compounding the harm they suffer, more so than for deceased children of higher socioeconomic status. This

¹¹ Appellees strongly contend, however, that the legislature intended that a parent who continuously abused his child physically, sexually, and mentally should not benefit financially from the child's death. We can find no basis for this conclusion, especially where there has been no termination of parental rights prior to the death of the child.

Crosby v. Corley, 528 So. 2d 1141, 1143 (Ala. 1988).

¹² UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 1969) (amended 2010).

¹³ *Id.*

¹⁴ *Wrongful-Death Action*, BLACK'S LAW DICTIONARY (11th ed. 2019) (A wrongful-death action is "a lawsuit brought on behalf of a decedent's survivors for their damages resulting from a tortious injury that caused the decedent's death."); see also Robert A. Epstein, *Appellate Division Analyzes What It Means To "Abandon" A Child "By Willfully Forsaking" Him*, FOX ROTHSCHILD LLP (Jan. 4, 2016), <https://njfamilylaw.foxrothschild.com/2016/01/articles/child-support/appellate-division-analyzes-what-it-means-to-abandon-a-child-by-willfully-forsaking-him/> (showing an example of New Jersey's attempt at wrestling with a parental-barring statute). Compare *Turpening*, 671 N.W.2d at 569–70 (holding that the allegedly neglectful parent was not entitled to the child's estate), with *Fisher*, 128 A.3d at 217 (holding that the allegedly neglectful father was entitled to the child's estate).

accidental harm can be circumvented through the imposition of more clearly defined requirements for courts that interpret this UPC provision and state legislatures that choose to codify it. It would also be beneficial to establish an organization whose mission it is to conduct more research on these issues of intestate succession and assist individuals from such backgrounds in structuring fair inheritances.

Part I of this Note discusses the history of the UPC, its intentions, and revisions made to it over time. This Part also analyzes UPC section 2-114 and the UPC's approach to abusive and neglectful parents in the context of intestate succession. Part II analyzes relevant case law that has developed around various states' adaptations of UPC section 2-114. It shows that, while courts across the country have faced similar inheritance issues regarding children who suffered maltreatment by their parents, courts have adopted different interpretations leading to drastically divergent and inconsistent results across jurisdictional lines. Part III introduces statistics and studies regarding household income and its intersection with both child maltreatment and intestacy. Additionally, it discusses wrongful death suits, as these suits are the most common situation in which circumstances relevant to section 2-114 arise. Part IV argues that this UPC provision requires revision and addresses the correlation between intestacy, poverty, and child maltreatment, refuting potential counterarguments and misconceptions regarding UPC section 2-114. Finally, Part V provides possible solutions for the problem of inheritance by abusive or neglectful parents, especially in the case of low income families, proposing a mechanism for collecting data regarding child maltreatment and socioeconomic status as well as a revised version of UPC section 2-114 with a lessened burden of proof and enumerated examples of abuse that would trigger non-inheritance.

I. HISTORY OF THE UNIFORM PROBATE CODE

To appreciate the problems with UPC section 2-114, it is important to understand its drafting history. An in-depth analysis into its background reveals that the uniform act's purpose is to ensure that a decedent's estate is passed along to somebody with whom the decedent shared an emotional connection and is

distributed on terms similar to those the decedent would have included in a will.¹⁵ However, litigation in states that have adopted the UPC in some capacity has proven that this provision is not living up to its original goal.¹⁶

A. Historical Background

During the early 1900s, due to limited transportation and the inability to communicate over long distances, it was more common for families in the United States to remain in one state than move from state to state.¹⁷ However, when transportation and technological developments led to increased mobility for families, it became common for relatives to live—and die—across state lines or on opposite sides of the nation.¹⁸ The varying state laws regarding probate procedures gave rise to issues involving conflicting state laws.¹⁹ A push for a uniform set of laws regarding family property followed, ultimately resulting in the promulgation of the UPC 1969 by the Uniform Law Commission,²⁰ the first legislative attempt at resolving inconsistent state intestacy laws and the initial step in

¹⁵ See Ronald J. Scalise, Jr., *Honor Thy Father and Mother?: How Intestacy Law Goes Too Far in Protecting Parents*, 37 SETON HALL L. REV. 171, 188 (2006).

¹⁶ See *infra* Part II.

¹⁷ Joseph J. Carroll, Comment, *Avoiding Backlash: The Exclusion of Domestic Partnership Language in the 2008 Amendments to the Uniform Probate Code and the Future for Same-Sex Intestacy Rights*, 85 TEMP. L. REV. 623, 628 (2013).

¹⁸ See *id.* The Supreme Court would even go on to solidify the right to travel from one state to another. *Saenz v. Roe*, 526 U.S. 489, 498 (1999) (“The word ‘travel’ is not found in the text of the Constitution. Yet the ‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence.” (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966))).

¹⁹ Carroll, *supra* note 17, at 628–69.

²⁰ *Id.* at 629; see *About Us*, UNIFORM L. COMMISSION, <https://www.uniformlaws.org/aboutulc/overview> (last visited Aug. 14, 2019) (“The Uniform Law Commission [“ULC”] . . . provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”).

creating a more uniform system.²¹ The UPC 1969 only addressed intestate succession, pay-on-death accounts, and wills.²²

The next major revision to the UPC came in 1990.²³ Few changes were made to the articles regarding probate procedure, but substantial changes were made to Article II, which covers intestate succession, testate succession, and nonprobate transfers.²⁴ Today, the UPC 1990 has been enacted in full in sixteen states,²⁵ while all but a few of the remaining states have adopted it in part.²⁶

B. *The Parent's Right to Inherit and the Parental Bar*

Article II of the UPC, titled “Intestacy, Wills, and Donative Transfers,” provides the general rules for these categories²⁷ and was developed with “public policy and family relationships” in mind.²⁸ UPC section 2-103 discusses the share of an intestate estate that heirs other than a surviving spouse receive.²⁹ Section 2-103(a)

²¹ Carroll, *supra* note 17, at 629–30.

²² UNIF. PROBATE CODE, Art. II-III (UNIF. LAW COMM'N 1969) (amended 2010).

²³ Carroll, *supra* note 17, at 630.

²⁴ See UNIF. PROBATE CODE, Art. II, Prefatory Note (UNIF. LAW COMM'N 1990); see also Carroll, *supra* note 17, at 630–31 (“[T]he 1990 UPC aimed to refine the 1969 Uniform Probate Code’s intestacy provisions so that the intestacy scheme reflected the realities of modern families and the wishes of decedents who lived in such families.” (internal quotation marks and citation omitted)).

²⁵ The sixteen states that have adopted the UPC in its entirety are Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. *Probate Code*, UNIFORM L. COMMISSION, <https://www.uniformlaws.org/committees/community-home?CommunityKey=a539920d-c477-44b8-84fe-b0d7b1a4cca8> (last visited Aug. 14, 2019) (States that prefer not to adopt the entire UPC can individually enact “acts on guardianships and conservatorships, powers of attorney, non-probate transfers on death, estate tax apportionment, and disclaimers of property interests.”); *Uniform Probate Code*, *supra* note 8.

²⁶ *Uniform Probate Code*, *supra* note 8 (“In addition, numerous states have adopted the Uniform Probate Code in an incomplete form.”).

²⁷ UNIF. PROBATE CODE, Art. II, Prefatory Note (UNIF. LAW COMM'N 2010).

²⁸ UNIF. PROBATE CODE, Art. II, Part 1, gen. cmt. (UNIF. LAW COMM'N 2010).

²⁹ *Id.* § 2-103.

dictates the order in which the intestate estate is passed in the event that there is no spouse, such that the first party to take the intestate estate is the decedent's descendant(s).³⁰ If there is no surviving descendant, the estate goes to the decedent's parents.³¹

However, UPC section 2-114 sets forth circumstances wherein a parent is barred from inheriting, making particular note of the potential for parental abuse.³² The provision states:

A parent is barred from inheriting from or through a child of the parent if: (1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or (2) the child died before reaching [eighteen] years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.³³

The comment to section 2-114 provides further clarification regarding when a parent's rights can be terminated:

Subsection (a)(2) addresses a situation in which a parent's parental rights were not actually terminated. Nevertheless, a parent can still be barred from inheriting from or through a child if the child died before reaching [eighteen] years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this [code], but only if those parental rights could have been terminated on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.³⁴

³⁰ *Id.* § 2-103(a).

³¹ *Id.*

³² *Id.* § 2-114.

³³ *Id.* § 2-114(a).

³⁴ *Id.* § 2-114 cmt.

Taken together, sections 2-103(a) and 2-114 appear to assume that it is in the public's best interest for a child's estate to go to his or her parents, given the improbability of a child being married or having heirs.³⁵ However, this raises the question of why parents are better suited than siblings or other "collaterals," such as cousins, to take a child's estate after their death.³⁶ The drafters of the 1946 Model Probate Code treated siblings and parents equally when it came to inheritance, under the belief that succession "express[es] what the typical intestate would have wished had he expressed his desires in the form of a will or otherwise."³⁷ However, when the UPC was created in 1969, the drafters chose to only award a child's estate to his or her parents³⁸ on the rationale that "the estate of a minor is likely to have been derived from his parents or grandparents."³⁹ The drafters also considered parents to typically be "geographically and emotionally closer to the decedent" and, therefore, "more deserving" of the inheritance.⁴⁰

Despite the drafters' belief that parents are the most deserving of their child's estate, section 2-114 imposes a limitation on their ability to inherit.⁴¹ If the UPC tries to pass property along in a way that the decedent would have desired, it follows that an unsupportive, neglectful, or abusive parent⁴² should be unable to inherit.⁴³ However, while the UPC's section 2-114 makes a bona

³⁵ See *id.* §§ 2-103(a), 2-114(a).

³⁶ See Scalise, Jr., *supra* note 15, at 188.

³⁷ *Id.* (quoting MODEL PROBATE CODE 22 cmt (1946)).

³⁸ *Id.*

³⁹ William F. Fratcher, *Toward Uniform Succession Legislation*, 41 N.Y.U. L. REV. 1037, 1049 (1966).

⁴⁰ Scalise, Jr., *supra* note 15, at 189.

⁴¹ See UNIF. PROBATE CODE § 2-114(a) (UNIF. LAW COMM'N 1969) (amended 2010).

⁴² For purposes of this Note, the terms "abusive," "neglectful," "unsupportive," and other terms of similar import refer to the general category of parents who maltreat their child unless specifically addressing a particular case of abuse, neglect, or non-support.

⁴³ See § 2-114(a);

The explanation provided for this approach was that it was both the approach "commonly provided in statutes," and the distribution that most closely tracks the purpose of the intestacy rules, i.e., to "express what the typical intestate would have

fide attempt to ensure that these parents are unable to inherit in the event of their child's untimely death, the provision incorporates a somewhat vague burden of proof and fails to provide a sufficiently clear definition of maltreatment.⁴⁴

The 1969 version of the UPC only provided that “[i]nheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child.”⁴⁵ It was not until 2008 that section 2-114 was revised, barring parents who had their parental rights judicially terminated or parents who, with “clear and convincing evidence,” *could have* had their parental rights terminated before their child's death.⁴⁶ Fitting squarely in line with the drafters' intent, it precludes parents with whom the child did not have a legal relationship and parents who could have had their legal relationship terminated on the basis of maltreatment.⁴⁷

Additionally, by adding a “clear and convincing evidence” standard, the drafters imposed an intermediate burden of proof between *preponderance of the evidence* and *beyond a reasonable doubt*.⁴⁸ The burden of proof falls on “the party seeking to terminate parental rights.”⁴⁹ Given the drafters' belief that parents are emotionally closer to their child than other relatives are, this evidentiary standard and burden of proof helps ensure that a loving bond existed, rather than one riddled with abuse or neglect.⁵⁰

Despite the drafters' sound intentions with the 2008 revision of section 2-114, they opened the door to litigation surrounding

wished had he expressed his desires in the form of a will or otherwise.”

Scalise, Jr., *supra* note 15, at 188 (quoting MODEL PROBATE CODE § 22 cmt (1946)).

⁴⁴ See § 2-114(a).

⁴⁵ UNIF. PROBATE CODE § 2-114(c) (UNIF. LAW COMM'N 1969) (amended 1990, 2010).

⁴⁶ See UNIF. PROBATE CODE § 2-114(a)(2) (UNIF. LAW COMM'N 2010).

⁴⁷ See *id.*

⁴⁸ *Clear and Convincing Evidence*, LEGAL INFO. INST, https://www.law.cornell.edu/wex/clear_and_convincing_evidence (last visited Aug. 14, 2019).

⁴⁹ *In re Estate of Fisher*, 128 A.3d 203, 215 (N.J. Super. Ct. App. Div. 2015).

⁵⁰ § 2-114(a); see Scalise, Jr., *supra* note 15, at 188.

parents' desire to inherit from their child's estate.⁵¹ By failing to clarify aspects of the new provision—such as what constitutes nonsupport and what qualifies as sufficient evidence—the UPC serves as an incoherent model for states that allows abusive or neglectful parents to inherit, thereby promoting injustice and violating the entire purpose of the uniform act.⁵²

II. PROBLEMS WITH THE UPC'S PARENTAL-BARRING PROVISION AND STATES' ADOPTIONS THEREOF

While the drafters of the UPC tried to combat potential problems through multiple amendments over time, issues have inevitably arisen with regard to intestacy, leaving the doors open for courts to broadly read the UPC or UPC-derivative statutes and make critical decisions grounded in disparate interpretations.⁵³ The UPC's lack of specificity in both its burden of proof and definitions of maltreatment has allowed courts too much discretion in their interpretation, permitting some neglectful or abusive parents to inherit from their children's estates.⁵⁴ The latitude of the courts' discretion, combined with the ambiguous wording of UPC section 2-114, creates excessive uncertainty that must be resolved to provide deceased children and former victims of parental abuse with the justice they deserve.⁵⁵

⁵¹ § 2-114(a); *see infra* Part II.

⁵² *See infra* Part II.

⁵³ *See In re Turpening v. Howard*, 671 N.W.2d 567, 569 (Mich. Ct. App. 2003); *Estate of McCoy ex rel. Jones v. McCoy*, 988 So. 2d 929, 933 (Miss. Ct. App. 2008); *Perry v. Williams*, 70 P.3d 1283, 1286 (N.M. Ct. App. 2003).

⁵⁴ *See* § 2-114; *see also Crosby v. Corley*, 528 So. 2d 1141, 1143 (Ala. 1988) (allowing an allegedly abusive parent to inherit because there was no termination of parental rights prior to the child's death); *In re Estate of Fisher*, 128 A.3d 203, 215–16 (N.J. Super. Ct. App. Div. 2015) (allowing an allegedly neglectful parent to inherit because of a distinction between having “abandoned” and “willfully forsak[en]” the child).

⁵⁵ *See* § 2-114; *see also Turpening*, 671 N.W.2d at 569–70 (looking at the language of a parental-barring statute to determine whether a parent can inherit); *McCoy*, 988 So. 2d at 932–33 (holding that an incarcerated parent “in fact refused to support” his daughter because he made no attempt to provide financial support no matter how minimal and that emotional support is irrelevant under the statute);

A. *Michigan and Mississippi Cases as Examples of Disparate Interpretations of Nearly Identical Parental-Bar Provisions Modeled After the UPC*

In the case of *In re Turpening v. Howard*, the Michigan Court of Appeals interpreted language from the state's parental-barring statute, Michigan Compiled Laws section 700.2114(4)—its version of UPC section 2-114.⁵⁶ For thirty years, Respondent Russell Howard neglected his now-deceased daughter Dawn Marie Turpening, claiming he did not know she existed “despite evidence to the contrary.”⁵⁷ Specifically, the decedent's grandmother testified that she had asked Howard to support Dawn Marie's mother, but he refused to do so.⁵⁸ The court looked to Michigan Compiled Laws section 700.2114(4), which provides that “[i]nheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.”⁵⁹ For a natural parent to be considered for intestate succession, both prongs must be satisfied such that (1) the parent “must show that he openly held the decedent out as his child, and (2) [he must show] that he did not refuse to support [the child].”⁶⁰ Since this was a case of first impression, the issue before the court involved analysis of the phrases (1) “openly treated the child as his” and (2) “has not refused to support the child.”⁶¹ The court attempted to interpret the statute's intent and the definitions of its language according to the Michigan

Perry, 70 P.3d at 1285 (determining whether prior state case law “correctly states the law” to decide whether a neglectful parent can inherit).

⁵⁶ *Turpening*, 671 N.W.2d at 568. “This is a case of first impression. MCL 700.2114(4) and Michigan case law do not define the phrases ‘openly treated the child as his, or ‘has not refused to support the child.’ To determine the statute's intent, the specific language of the statute must be examined.” *Id.* (quoting MICH. COMP. LAWS ANN. § 700.2114(4) (West 2019)); *Case of First Impression*, BLACK'S LAW DICTIONARY (11th ed. 2019) (A “case of first impression” is “[a] case that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction.”).

⁵⁷ *Turpening*, 671 N.W.2d at 569.

⁵⁸ *Id.*

⁵⁹ *Id.* at 568 (quoting § 700.2114(4)).

⁶⁰ *Id.*

⁶¹ *Id.* (citing § 700.2114(4)).

Compiled Laws⁶² but was unsuccessful in reaching an interpretive conclusion.⁶³

The court then looked to other states' interpretations of similar statutes.⁶⁴ On the first prong regarding openly treating the child as the parent's: the Court of Appeals of Utah determined that its own statute's requirement that the parent "openly held the decedent out as his child" required that a father "held the child out to the public or his family as his own, developed a custom of visiting the child at the mother's home, or accepted the child into his home for occasional brief visits."⁶⁵ Similarly, the Mississippi Supreme Court in *Bullock v. Thomas* held that "to acknowledge a child from time to time as one's own is not synonymous with openly treating the child as [one's] own."⁶⁶ Given these standards, in a case like *Turpening*, Howard's nonexistent relationship with his daughter would not rise to the level necessary to be classified as treating his child as his own.⁶⁷

To determine the meaning of the second prong regarding refusal to support the child, the court in *Turpening* heard Howard's argument that the Michigan court adopt the Supreme Court of Alabama's approach in *House v. Campbell*.⁶⁸ In *Campbell*, the

⁶² *Id.*; see also MICH. COMP. LAWS § 700.1201 (2019) ("This act shall be liberally construed and applied to promote . . . the following: (a) To simplify and clarify the law concerning the affairs of decedents, [and] . . . (d) To make the law uniform among the various jurisdictions, both within and outside of this state."); § 700.2114(4) (requiring a parent to "openly treat" the child as his or hers and requiring the parent to not refuse the child support in order to be allowed to inherit); MICH. COMP. LAWS § 722.602(a) (2019) (defining "child" as "a person under 18 years of age"); MICH. COMP. LAWS § 722.622(f) (2019) (defining "child" also as "a person under 18 years of age").

⁶³ The court in *Turpening* looked to the definition of "child" as defined in MCL 700.1103(f), but it had no relevance to the issue at hand. The court then turned to the definition of "child" under the Child Abuse and Neglect Prevention Act and the Child Protection law, but once again was unable to reach a conclusion. *Turpening*, 671 N.W.2d at 568.

⁶⁴ *See id.*

⁶⁵ *Id.* at 568–59 (quoting *Estate of Scheller v. Pessetto*, 783 P.2d 70, 75 (Utah Ct. App. 1989)).

⁶⁶ *Id.* at 569 (citing *Bullock v. Thomas*, 659 So. 2d 574, 577 (Miss. 1995)).

⁶⁷ *Id.* at 568–69.

⁶⁸ *Id.* at 569.

Alabaman court made a distinction between a “refusal” to provide support and a “failure” to do so, where a “refusal” involves an act of will, a decision to not support, whereas a “failure” could be an act of “inevitable necessity.”⁶⁹ The probate court found that Howard *refused* to support the decedent rather than having *failed* to do so.⁷⁰ Howard contended that the only way he could have been required to support the child would have been if the mother filed for child support.⁷¹ The Michigan court rejected his argument, stating that a father can support his child without a court ordering him to do so⁷² and decided that Howard’s actions amounted to a refusal to support the decedent child:

The decedent’s grandmother testified at length that she asked respondent [Howard] on numerous occasions to help the decedent’s mother with support of the decedent. Each time respondent denied that the decedent was his child. Following the court’s definition of “refuse,” which is to deny, the probate court was correct in interpreting respondent’s denial as a refusal on his part to support the decedent.⁷³

Ultimately, the court decided that the Michigan statute is clear, and since Howard did not present evidence proving that he supported or treated his daughter as his own while she was alive, he was unable to inherit upon her death.⁷⁴

Similarly, Mississippi also attempted to decode its parental-barring statute.⁷⁵ In *Estate of McCoy ex rel. Jones v. McCoy*, the Mississippi Court of Appeals asked whether incarcerated father Irvin McCoy “refused or neglected support” to his daughter Jakayla.⁷⁶ While McCoy was serving a nine-year sentence for selling cocaine, Jakayla tragically drowned in a neighbor’s pool and

⁶⁹ *Id.* (citing *House v. Campbell*, 628 So. 2d 448, 450 (Ala. 1993)).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 569–70.

⁷⁵ See *Estate of McCoy ex rel. Jones v. McCoy*, 988 So. 2d 929, 932–33 (Miss. Ct. App. 2008).

⁷⁶ *Id.* at 932; see MISS. CODE ANN. § 91-1-15(3) (West 2019).

died.⁷⁷ Following Jakayla's death, her mother Erika Jones filed a wrongful death suit, ultimately leading to a \$100,000 settlement.⁷⁸ Jones filed for a determination of her daughter's heirs at law in order to disinherit McCoy.⁷⁹ The Chancery Court examined Mississippi Code section 91-1-15(3)(d), which states in relevant part, "The natural father of an illegitimate and his kindred shall not inherit: (i) from or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child."⁸⁰ The court ultimately ruled that, since McCoy did not refuse or neglect to support Jakayla, he was able to inherit from his daughter.⁸¹ The chancellor reasoned that, because McCoy was not a free man, it rendered him unable to support Jakayla, drawing the same distinction between "refusing" and "failing" as in *Bullock*.⁸²

However, the Court of Appeals reversed the decision, holding that McCoy still could have tried to support his daughter using the monetary donations he was given by family members while incarcerated, even if they did not comprise a significant sum.⁸³ McCoy tried to argue that he supported Jakayla in other ways, including: (1) "providing companionship to [Jones] throughout the majority of her pregnancy with Jakayla, and by babysitting [Jakayla's half-brother], (2) by allowing Jones and Jakayla to visit him in prison, (3) by requesting that his parents take care of Jakayla, and (4) by asking his mother to purchase an outfit for Jakayla to be pictured in."⁸⁴ However, the appellate court rejected any possibility of accepting emotional support as adequate support under the statute, stating, "We find it highly unlikely that the Legislature contemplated the 'non-financial support' listed above as 'supporting the child.'"⁸⁵ The Court of Appeals held that monetary support is the

⁷⁷ *McCoy*, 988 So. 2d at 930.

⁷⁸ *Id.* at 930–31.

⁷⁹ *Id.* at 930.

⁸⁰ § 91-1-15 (West 2019); *McCoy*, 988 So. 2d at 931–32.

⁸¹ *McCoy*, 988 So. 2d at 930.

⁸² *Id.* at 932.

⁸³ *Id.* at 932–33.

⁸⁴ *Id.* at 932.

⁸⁵ *Id.* at 933.

preferred method of child support, even when a parent is incarcerated.⁸⁶

The disparate outcomes in Michigan and Mississippi came from inconsistent interpretations of the statutory language, despite the states having nearly identical parental-barring statutes, both modelled after the UPC.⁸⁷ Divergent outcomes like those in *Turpening* and *McCoy* are a consequence of a lack of specificity in the UPC's model language—a flaw which permits inconsistent decisions nationwide and subverts the goal of achieving the UPC drafters' intent uniformly across the state courts. It is the lack of a clear definition or example of “nonsupport” or “inactions” in section 2-114 that forces state courts to look to other sources in determining whether or not a parent is barred from inheriting, creating problematic vagueness that can lead to these drastically different conclusions.⁸⁸

B. Courts Are Excessively Deferential in Parental-Barring Inheritance Cases

Moreover, both *Turpening* and *McCoy* automatically dismiss or accept certain arguments without explanation.⁸⁹ For instance, the court in *McCoy* had no issue rejecting the idea that “non-financial support” could constitute “support[ing] the child;” the majority simply provided that it did not believe the legislature would consider otherwise.⁹⁰ However, a further look into the Mississippi Code

⁸⁶ *See id.*

⁸⁷ *See* UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 2010); *see also In re Turpening v. Howard*, 671 N.W.2d 567, 568–70 (Mich. Ct. App. 2003) (holding that a neglectful parent could not inherit based on the “clear” meaning of the statute despite the “lack of guidance” under Michigan law); *McCoy*, 988 So. 2d at 933 (holding that an incarcerated father could not inherit because of a distinction between “refusing to support” and a “failure to support”).

⁸⁸ *See Turpening*, 671 N.W.2d at 569–70; *McCoy*, 988 So. 2d at 933.

⁸⁹ *Turpening*, 671 N.W.2d at 570 (“Here, the statute’s meaning is clear that a natural parent is barred from inheriting except if the natural parent ‘openly treated the child as his’ and ‘has not refused to support the child.’” (citation omitted)); *McCoy*, 988 So. 2d at 933 (“We find it highly unlikely that the Legislature contemplated the ‘non-financial support’ listed above as ‘supporting the child.’”).

⁹⁰ *McCoy*, 988 So. 2d at 933.

sections governing trusts and estates suggests a different conclusion.⁹¹

The court in *McCoy* was properly concerned with Mississippi Code section 91-1-15, discussing descent among illegitimates,⁹² because McCoy was the illegitimate father of Jakayla.⁹³ However, section 91-1-15 does not define “support,” nor does it allude to what the legislature intended support to mean.⁹⁴ The court failed to consider other sections of the Code to explore the legislature’s *true* intent.⁹⁵ Mississippi Code section 93-15-121 governs the grounds for termination of parental rights for “natural parents.”⁹⁶ While there is some discussion of financial-related support such as “clothing, shelter or medical care,” there is recognition of aspects related to emotional support.⁹⁷ It provides that a parent’s rights may be terminated if the parent “failed to exercise reasonable visitation or communication with the child;” was convicted of offenses such as rape, sexual battery, or exploitation of the child; or if “the parent’s abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent.”⁹⁸ These factors are more concerned with the child’s mental well-being than with financial support, which should at least merit a discussion

⁹¹ See MISS. CODE ANN. § 91-1-15 (West 2019); MISS. CODE ANN. § 93-15-121 (West 2019).

⁹² § 91-1-15(1)(c) (“‘Illegitimate’ means a person who at the time of his birth was born to natural parents not married to each other and said person was not legitimized by subsequent marriage of said parents or legitimized through a proper judicial proceeding.”).

⁹³ *McCoy*, 988 So. 2d at 931–32; see § 91-1-15(3).

⁹⁴ § 91-1-15.

⁹⁵ See *McCoy*, 988 So. 2d at 929.

⁹⁶ MISS. CODE ANN. § 93-15-121 (West 2019); see § 91-1-15(1) (“‘Natural parents’ means the biological mother or father of the illegitimate.”).

⁹⁷ § 93-15-121(d).

The parent has failed to exercise *reasonable visitation or communication* with the child; . . . The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under § 43-21-603, or a series of physically, *mentally, or emotionally abusive* incidents, against the child.

§ 93-15-121(e), (g) (emphasis added).

⁹⁸ § 93-15-121(e)–(f), (h).

about whether the legislature intended “non-financial support” to be deemed support in *any* parental-barring suit.⁹⁹

Additionally, the comment to UPC section 2-114 specifically references Mississippi Code section 93-15-103 as a statute that “provid[es] the grounds for termination of parental rights,” making it a relevant consideration for the court in determining whether McCoy’s rights were terminated.¹⁰⁰ While these findings do not constitute definitive proof that section 91-1-15 is meant to consider non-financial support, they warrant a discussion about whether McCoy’s compassion for his daughter should be relevant in determining support. Assuming McCoy’s examples of non-financial support are true, an argument can be made that he was “openly treating the child as his” and had a valid basis to inherit from Jakayla’s estate.¹⁰¹

Further blurring the reasoning applied to statutory interpretation is that courts sometimes accept certain contentions as truthful with little reasoning to support them.¹⁰² In *Turpening*, the Michigan Court of Appeals looked to the Michigan Compiled Laws “to simplify and clarify the law concerning the affairs of decedents.”¹⁰³ It is well established that, if a statute is clear and unambiguous, courts are bound to apply it as it is written.¹⁰⁴ The majority in *Turpening* decided that the statute was clear: because the father provided no evidence of treating his daughter “as his own,” he was

⁹⁹ See *id.*; see also *McCoy*, 988 So. 2d at 933 (rejecting the idea that the legislature intended for a non-financial interpretation).

¹⁰⁰ UNIF. PROBATE CODE § 2-114, cmt (UNIF. LAW COMM’N 2010).

¹⁰¹ MISS. CODE ANN. § 91-1-15 (West 2019); see also *McCoy*, 988 So. 2d at 932 (discussing a father trying to support his daughter through non-financial means such as visitation).

¹⁰² See Mathilde Cohen, *When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach*, 72 WASH. & LEE L. REV. 483, 484 (2015) (arguing that “judges sometimes have reasons not to give reasons”); Richard A. Posner, *Judicial Opinion Writing: Judges’ Writing Styles (And Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1447 (1995) (“In thinking about a case, a judge might come to a definite conclusion yet find the conclusion indefensible when he tries to write an opinion explaining and justifying it.”).

¹⁰³ See *In re Turpening v. Howard*, 671 N.W.2d 567, 569 (Mich. Ct. App. 2003).

¹⁰⁴ *Id.* (citing *In re Messer Trust*, 579 N.W.2d 73, 76–77 (Mich. 1998)).

barred from inheriting from his daughter.¹⁰⁵ It is paradoxical that the Michigan court held that this statute was clear and unambiguous after several pages of discussion attempting to interpret it.¹⁰⁶ In fact, if the statute were as clear as the court held it to be, it likely would not have been challenged in a debate over its true meaning. Because this was a case of first impression¹⁰⁷ the court's blind acceptance of the statute's meaning now serves as the basis for any future cases that arise around this topic.¹⁰⁸ Irrespective of the court's decision, one thing is clear: this state's court came to a conclusion it may not have come to if the UPC provided state legislatures with clearer guidance on parental support.

The current ambiguities allow courts significant power and discretion when interpreting these statutes, which can lead to inconsistent results. It is exactly this inconsistency that undermines the UPC's goal of "uniformity among state family property laws" and prevents justice for the decedents.¹⁰⁹

C. Some Parental-Bar Statutes Allow Courts to Implement Heightened Standards, Making Termination of Parental Rights Difficult

Some states have chosen to amend their state-level adaptations of UPC section 2-114 to include a mental state requirement for the alleged abuser, making it more difficult for the moving party to terminate the other's parental rights.¹¹⁰ This requirement raises the moving party's burden of proof, imposing significant obstacles on the termination of parental rights and frustrating the purpose of UPC

¹⁰⁵ See *id.* at 569–70 (citing MICH. COMP. LAWS § 700.2114(4) (West 2019)).

¹⁰⁶ See *id.* 568–70 (“Here, the statute’s meaning is clear that a natural parent is barred from inheriting except if the natural parent ‘openly treated the child as his’ and ‘has not refused to support the child.’” (citation omitted)).

¹⁰⁷ *Id.* at 568.

¹⁰⁸ See *In re Bierkle v. Umble*, 314 Mich. App. 667, 647–75 (Mich. Ct. App. 2016); *In re Estate of Casey v. Keene*, 306 Mich. App. 252, 259 (Mich. Ct. App. 2014); *In re Daniels Estate*, 837 N.W.2d 1, 4 (Mich. Ct. App. 2013).

¹⁰⁹ Carroll, *supra* note 17, at 629–30.

¹¹⁰ *In re Estate of Fisher*, 128 A.3d 203, 214 (N.J. Super. Ct. App. Div. 2015).

section 2-114 by ignoring what can reasonably be understood as the decedent's wishes.¹¹¹

The New Jersey precedent of *In re Estate of Fisher* allows a court to set a high standard as a barrier to blocking a parent's recovery.¹¹² There, fifteen-year old Michael Fisher II passed away allegedly due to a wrongful act by his physicians.¹¹³ Michael had a congenital heart murmur and collapsed while playing hockey, even though a cardiologist approved "unrestricted" activity three weeks prior to the incident.¹¹⁴ His parents Michael Fisher, Sr. and Justina Nees had separated in 2001 and were eligible to share equally in their child's estate in accordance with New Jersey Statute section 3B:5-4(b).¹¹⁵ After their son's death, Nees filed a complaint to bar Fisher from inheriting because New Jersey Statute section 3B:5-14.1 precludes the parent of a decedent from inheriting through intestate succession if "[t]he parent refused to acknowledge the decedent or *abandoned* the decedent when the decedent was a minor *by willfully forsaking the decedent*."¹¹⁶ In her complaint, Nees alleged that Fisher abandoned his son after their divorce and failed to pay child support.¹¹⁷ The trial court barred Fisher from inheriting because the evidence showed his actions and inactions constituted "willful forsaking" as required by the statute.¹¹⁸

On appeal, the Superior Court of New Jersey, Appellate Division, reversed.¹¹⁹ Citing various cases and New Jersey

¹¹¹ Compare N.J. STAT. ANN. § 3B:5-14.1(b)(1) (West 2019), with UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 2010).

¹¹² *Fisher*, 128 A.3d at 216–17.

¹¹³ *Id.* at 206–08.

¹¹⁴ Martin Deangelis, *Dennis Township Teen Dies While Playing Hockey; Medical Condition May Have Contributed*, PRESS ATLANTIC CITY (Sept. 26, 2010), https://www.pressofatlanticcity.com/communities/upper_capemay/dennis-township-teen-dies-while-playing-hockey-medical-condition-may/article_fa01ae12-c8da-11df-8ffc-001cc4c002e0.html.

¹¹⁵ N.J. STAT. ANN. § 3B:5-4(b) (West 2019); *Fisher*, 128 A.3d at 207–08.

¹¹⁶ N.J. STAT. ANN. § 3B:5-14.1 (West 2019) (emphasis added); *Fisher*, 128 A.3d at 207–08.

¹¹⁷ § 3B:5-14.1; *Fisher*, 128 A.3d at 208.

¹¹⁸ *Fisher*, 128 A.3d at 208–09.

¹¹⁹ *Id.* at 217.

inheritance statutes,¹²⁰ the court established that a party moving to bar a parent from inheritance must demonstrate by a preponderance of the evidence that the non-moving parent “through his or her unambiguous and intentional conduct, has clearly manifested a settled purpose to permanently forego all parental duties and relinquish all parental claims to the child.”¹²¹ The lower court judge had only focused on actions which determined that Fisher “abandoned” his son, concluding that he made intentional actions to do so.¹²² However, the appellate court explained:

[T]hat is only part of the test under New Jersey Statute section 3B:5-14.1(b)(1). As we hold in this opinion, the issue is whether Fisher clearly manifested a settled purpose to *permanently* forego *all* parental duties and relinquish *all* parental claims to the child. That purpose was not demonstrated here.¹²³

Nees’s evidence “did not preponderate in favor of a finding that [the father] ‘abandoned’ his son ‘by willfully forsaking him.’”¹²⁴ Facing the high standard that imposed a more burdensome mental state, Nees’s success in the lower court was reversed, and Fisher was permitted to inherit.¹²⁵

Cases such as *Fisher* demonstrate the vital role that the burden of proof plays in determining parents’ ability to inherit from their child’s estate.¹²⁶ While the UPC only requires “clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated” to bar inheritance, New Jersey takes a harsher stance that involves the abusive parent’s “unambiguous and intentional conduct” and “clear manifest[ation

¹²⁰ See § 3B:5-14.1(b)(1); N.J. STAT. ANN. § 9:6-1 (West 2019); *State v. N.I.*, 793 A.2d 760, 768 (N.J. Super. Ct. App. Div. 2002) (defining “forsaking” as “permanent giving up or relinquishment of the child”); *State v. Burden*, 315 A.2d 43, 45 (N.J. Super. Ct. App. Div. 1974) (defining “willfully” as “intentionally or purposely as distinguished from inadvertently or accidentally”).

¹²¹ *Fisher*, 128 A.3d at 214.

¹²² *Id.* at 208–09.

¹²³ *Id.* at 216.

¹²⁴ *Id.*

¹²⁵ *Id.* at 209, 214, 217.

¹²⁶ *Id.* at 214–15.

of] a settled purpose to permanently forego all parental duties determined by a preponderance of the evidence.”¹²⁷ The UPC drafters should implement a lower burden of proof such that states would be dissuaded from deviation or implementation of more burdensome requirements like those in New Jersey that neglect a decedent’s implied desires.¹²⁸

*D. Some Parental-Bar Statutes Fail to Direct Courts
Regarding the Appropriate Standard of Proof*

Not all courts choose to impose a higher standard of proof to prevent one parent from inheriting.¹²⁹ In *Perry v. Williams*, the Court of Appeals of New Mexico specifically declined to use a heightened burden of proof when making a decision about the formal termination of parental rights.¹³⁰ In this case, Wanda Perry’s fourteen-year-old son Curtis died of leukemia after which she obtained a \$463,332 settlement from a wrongful death claim against the University of New Mexico Hospital.¹³¹ Perry petitioned to terminate the father Zollie Williams’s parental rights on grounds of abandonment and neglect because Williams paid less than \$200 in child support throughout Curtis’s life and had little contact with his child.¹³² New Mexico has codified the UPC’s parental-barring provision¹³³ as Annotated Statutes of New Mexico section 45-2-114,¹³⁴ which the court cited as evidence that New Mexico has a public policy against rewarding parents who neglect their children.¹³⁵ Williams contended that the trial court failed to use the

¹²⁷ *Fisher*, 128 A.3d at 214–15; see UNIF. PROBATE CODE § 2-114(a) (UNIF. LAW COMM’N 2010).

¹²⁸ See *Fisher*, 128 A.3d at 215; Carroll, *supra* note 17.

¹²⁹ See *Perry v. Williams*, 70 P.3d 1283, 1286 (N.M. Ct. App. 2003).

¹³⁰ *Id.*

¹³¹ *Perry*, 70 P.3d at 1284.

¹³² *Id.* at 1284–85.

¹³³ Compare N.M. STAT. ANN. § 45-2-114 (West 2019), with UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 1993).

¹³⁴ § 45-2-114.

¹³⁵ The Probate Code prohibits a natural parent from inheriting through a child if that parent has not openly treated the child as the parent’s own and has refused to support the child. It is

standard of “clear and convincing evidence” in their ruling against his recovery, but the appellate court dismissed that argument based on prior New Mexico common law¹³⁶ and the legislature’s intent,¹³⁷ which were enough to bar Williams’s chance at recovery.¹³⁸

Perry represents the end of the spectrum opposite that of *Fisher* in meeting burden of proof requirements in inheritance cases.¹³⁹ If the goal of intestacy statutes is truly “to provide a distribution of real and personal property that approximates what decedents would have done had they made a will,”¹⁴⁰ then the UPC’s standard should be less demanding (such as a preponderance of the evidence standard) to facilitate proving that maltreatment was inflicted on the decedent prior to death. New Jersey used a preponderance of the evidence standard in combination with a stricter mental state, creating an

therefore readily seen that New Mexico does not look favorably upon parents who do not support their children, and it does not allow those parents to profit through probate from a child’s death.

Perry, 70 P.3d at 1289 (internal citation omitted).

¹³⁶ See *Dominguez v. Rogers*, 673 P.2d 1338, 1342 (N.M. Ct. App. 1983) (“Proof of natural-parent status is not necessarily sufficient for recovery under the wrongful death statute.”).

¹³⁷ Our task in this case is to determine whether the language in *Dominguez* correctly states the law. In doing so, we strive to implement the Wrongful Death Act in the manner intended by the legislature. We do so against a backdrop of the New Mexico common law, as well as the common law and statutes from other jurisdictions. In addition, we have a wealth of recent statutory changes that express our legislature’s view on the public policy issues raised by this case. Our holding that *Dominguez* is well supported and consistent with legislative intent is sufficient for us to affirm the trial court’s ruling barring Father’s recovery on the facts of this case, which are undisputed and unchallenged. Thus, we need not address in detail Father’s arguments about . . . clear and convincing evidence.

Perry, 70 P.3d at 1286.

¹³⁸ *Id.*; see also *Dominguez*, 673 P.2d at 1339 (1983) (“We hold that the wrongful death statute does not confer on appellant an unconditional right to intervene.”).

¹³⁹ See *supra* Section II.C (explaining that New Jersey used a burdensome mental state to block a parent from inheriting).

¹⁴⁰ *King v. Riffe*, 309 S.E.2d 85, 87–88 (W. Va. 1983); see *Clear and Convincing Evidence*, *supra* note 48.

environment far more permissive of neglectful parents' inheritances and demonstrative of heightened difficulties in establishing that a parent has relinquished parental rights.¹⁴¹ In contrast, New Mexico declined to apply the clear and convincing evidence standard.¹⁴² The UPC is focused on creating a uniform standard, but its goal is constrained by the disparate burdens states impose on moving parties.¹⁴³

While New Mexico's approach of rejecting a clear and convincing evidence standard succeeded in blocking a neglectful father from inheriting from his child's estate, the court failed to provide a rationale for its decision, setting precedent that another court could potentially cite to *allow* an abusive or neglectful parent to inherit.¹⁴⁴ For example, while the Court of Appeals of New Mexico rejected a higher standard without much rationale, another court could, likewise, use this as persuasive authority to reject a lower standard, still providing little rationale, allowing an abusive parent to inherit.¹⁴⁵ As a nationally recommended model for the states,¹⁴⁶ the UPC should be clarified and further recommendations should be implemented in order to make the intestacy process easier for courts and more fair to litigants.

III. TARGETS OF INTESTACY AND MALTREATMENT

As Article II of the UPC concerns intestacy,¹⁴⁷ it is important to recognize which groups of people typically die intestate. The results of studies analyzing the relationships between various demographics and intestacies show that individuals who are young and those with lower incomes are much more likely to die

¹⁴¹ See *In re Estate of Fisher*, 128 A.3d 203, 216–17 (N.J. Super. Ct. App. Div. 2015). Compare N.J. STAT. ANN. § 3B:5-14.1 (West 2019), with UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 2010).

¹⁴² *Perry*, 70 P.3d at 1286.

¹⁴³ *Id.* at 1284–85; *Fisher*, 128 A.3d at 217; Carroll, *supra* note 17, at 624–25.

¹⁴⁴ See *Perry*, 70 P.3d at 1287.

¹⁴⁵ See *id.*

¹⁴⁶ Carroll, *supra* note 17, at 624–25.

¹⁴⁷ UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 1990) (amended 2010).

intestate.¹⁴⁸ Furthermore, studies have shown a correlation between low socioeconomic status¹⁴⁹ and child maltreatment,¹⁵⁰ and that accidents¹⁵¹ are one of the leading causes of death for younger individuals in the United States.¹⁵² While it is critical to note that this information is not causally linked,¹⁵³ it shows that younger individuals of a lower socioeconomic level are more likely to be impacted by the effects of section 2-114 of the UPC due to patterns

¹⁴⁸ See Fellows et al, *supra* note 7, at 338 (1978); Alyssa A. DiRusso, Comment, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 QUINN. PROB. LAW J. 36, 51–52 (2009).

¹⁴⁹ See *Measuring Socioeconomic Status and Subjective Social Status*, AM. PSYCHOL. ASS'N, <https://www.apa.org/pi/ses/resources/class/measuring-status> (last visited Aug. 14, 2019); see also *Poverty Guidelines*, OFF. ASSISTANT SECRETARY FOR PLAN. & EVALUATION, <https://aspe.hhs.gov/poverty-guidelines> (last visited Aug. 14, 2019) (showing that socioeconomic status is a collective measure of variables including education, income, occupation, family size, and relationships). For purposes of this Note, unless otherwise specified, “socioeconomic status” is a measurement of income, educational attainment, and occupational prestige. Individuals with “low socioeconomic status” are those who completed the least amount of schooling, fall below the poverty threshold (as of February 1, 2019, the poverty guideline for a single head of household is \$12,490), and are unemployed. *Id.*

¹⁵⁰ See JOHN ECKENRODE ET AL., INCOME INEQUALITY AND CHILD MALTREATMENT IN THE UNITED STATES 453 (2014), https://pdfs.semanticscholar.org/7cb9/1ffc316bfd9b87b3d0ba5a41c3113c80ce7.pdf?_ga=2.143286448.440197508.1566493486-202153602.1566493486; U.S. DEP'T OF HEALTH & HUMAN SERVS, ADMIN. FOR CHILDREN & FAMILIES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS 11–12 (2010), https://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf.

¹⁵¹ See SHERRY L. MURPHY, B.S. ET AL., DEATHS: FINAL DATA FOR 2015 43 (2017), https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf (defining, for purposes of this study, “accidents” across multiple categories: motor vehicle accidents; falls; accidental discharge of firearms; accidental drowning and submersion; accidental hanging, strangulation, and suffocation; accidental exposure to smoke, fire, and flames; and accidental poisoning and exposure to noxious substances).

¹⁵² *Id.* at 1–2.

¹⁵³ DiRusso, *supra* note 148, at 51 (2009) (“The data also reveal a very strong correlation between testacy and age.”); see ECKENRODE ET AL., *supra* note 150, at 454 (“This study is the first to demonstrate that increases in income inequality are associated with increases in child maltreatment rates at the county level.”).

of maltreatment and accidental deaths among these demographics, giving rise to the likelihood of both wrongful death actions and parental-barring motions.¹⁵⁴

A. *Effect of Age on Intestacy*

Research in a 2009 study on intestacy among various demographics demonstrated that older individuals are more likely to have wills than younger individuals.¹⁵⁵ Specifically, fewer than 7% of individuals under the age of thirty in the study's population had a will, compared with the 87% of those over the age of seventy,¹⁵⁶ suggesting that younger individuals are not as concerned about estate planning as older generations.¹⁵⁷ Similarly, younger people may not be not as worried about death simply because of their age and their estates' limited sizes.¹⁵⁸ No matter the reason, there is evidence that younger individuals are much more likely to die intestate compared to their older counterparts.¹⁵⁹

B. *Income's Effect on Intestacy and the Importance of Wrongful Death Actions*

Like older individuals, individuals with higher incomes are also less likely to die intestate than those with lower incomes.¹⁶⁰ A 1978 study¹⁶¹ revealed that only 38.8% of those with a family income

¹⁵⁴ See UNIF. PROBATE CODE § 2-114(c) (UNIF. LAW COMM'N 2010).

¹⁵⁵ DiRusso, *supra* note 148, at 51–52.

¹⁵⁶ *Id.* at 52.

¹⁵⁷ *Id.* at 54.

¹⁵⁸ Alessandra Malito, *Young and Single? You Still Need a Will*, MKT. WATCH (Aug. 4, 2017, 6:12 AM), <https://www.marketwatch.com/story/young-and-single-you-still-need-a-will-2017-08-02> (“You don’t need a house or kids to have these documents As a generation, millennials are often maligned for being bad with money and reluctant to grow up—but they still probably need a will.”).

¹⁵⁹ DiRusso, *supra* note 148, at 52.

¹⁶⁰ *Id.* at 50.

¹⁶¹ Fellows et al., *supra* note 7, at 338.

under \$8,000 had a will,¹⁶² while 65.4% of those with family income over \$25,000 had a will.¹⁶³ It has remained true that those with higher incomes are more likely to have a will than those of lower income levels, as shown by a 2009 study by Professor of Law Alyssa A. DiRusso.¹⁶⁴ Her study demonstrated that only 18.5% of people with an income of \$25,000 or less had a will, whereas 40.4% of people who had wills had incomes over \$100,000.¹⁶⁵ This testacy status difference was found to be statistically significant and the most dramatic at lower income levels.¹⁶⁶ In other words, as income increased, the disparity between income levels was not as striking—and while there was little discrepancy between the middle and high income groups, there was a significant difference between the lowest income individuals and those in the middle or high-income groups.¹⁶⁷

Some individuals with lower incomes may die without a will because they struggled to get by at those income levels, never mind save up enough money to pass anything down to an heir.¹⁶⁸ However, if the individual were to die due to the acts of another, the family members of the decedent could bring a wrongful death suit to recover damages.¹⁶⁹ In 2015, accidents or unintentional injuries were the fourth leading cause of death, with a total of 146,571 accidental deaths in the United States.¹⁷⁰ Of these deaths, 1,235 were of children between ages one and four; 1,518 were of children between five and fourteen; and 12,514 were of those between ages fifteen and twenty-four.¹⁷¹ These statistics put accidents as the leading cause of death amongst these age groups, constituting 45.6%

¹⁶² Note that \$8,000 as of December 1978 has the same buying power as \$29,883.01 in October 2018. *CPI Inflation Calculator*, BUREAU LAB. STATS., <https://data.bls.gov/cgi-bin/epicalc.pl> (last visited Aug. 14, 2019).

¹⁶³ See Fellows et al., *supra* note 7.

¹⁶⁴ DiRusso, *supra* note 148, at 50.

¹⁶⁵ *Id.* at 51.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See Fellows et al., *supra* note 7, at 338; DiRusso, *supra* note 148, at 50.

¹⁶⁹ *Wrongful-Death Action*, *supra* note 14.

¹⁷⁰ MURPHY ET AL., *supra* note 151, at 6.

¹⁷¹ *Id.* at 33.

of total accidental or unintentional deaths in the United States.¹⁷² Information about awards and settlements is scattered; many wrongful death cases are settled before they reach trial, perhaps to avoid the emotional distress associated with litigation.¹⁷³ For example, unarmed eighteen-year-old Michael Brown was killed by an officer in Ferguson, Missouri; his family reached a \$1.5 million wrongful death settlement against the city.¹⁷⁴ In San Jose, California, fifteen-year-old Audrie Pott committed suicide after bullying by her classmates, leading to a \$950,000 wrongful death settlement.¹⁷⁵ Even if someone's personal estate is limited—presumably as a child's would be—there is still potential for a wrongful death suit's conclusion with immense disbursements.¹⁷⁶

C. Correlation Between Income and Maltreatment

It is critical to examine the children who face maltreatment by their parents to understand the discrepancies among abuse patterns at different socioeconomic levels. A 2018 study done by the U.S. Department of Health and Human Services examining child maltreatment cases between 1990 and 2016 revealed the erratic nature of these cases, increasing during some time periods and decreasing during others.¹⁷⁷ The number of child maltreatment cases peaked around 1994, with an average of fifteen incidents per 1,000

¹⁷² See *id.* at 36.

¹⁷³ Catherine J. Byerly, *Wrongful Death Claims and Settlements*, ANNUITY (Aug. 28, 2018), <https://www.annuity.org/structured-settlements/wrongful-death-claims/>.

¹⁷⁴ *Michael Brown's Family Receives \$1.5 Million Settlement in Wrongful Death Lawsuit*, CBS NEWS (June 23, 2017, 2:50 PM), <https://www.cbsnews.com/news/michael-brown-ferguson-missouri-settlement-wrongful-death-lawsuit/>.

¹⁷⁵ Julia Prodis Sulek, *San Jose: Boys in Audrie Pott Case Apologize in Wrongful-Death Lawsuit Settlement*, MERCURY NEWS (April 3, 2015, 7:42 AM), <https://www.mercurynews.com/2015/04/03/san-jose-boys-apologize-in-wrongful-death-lawsuit-settlement-over-girls-suicide/>.

¹⁷⁶ See *supra* notes 174–175.

¹⁷⁷ See *Child Maltreatment*, CHILD TRENDS, <https://www.childtrends.org/indicators/child-maltreatment> (last visited Aug. 14, 2019).

children.¹⁷⁸ Between 2005 and 2006, approximately three million children under the age of eighteen were either “physically abused, sexually abused, physically neglected, or emotionally abused.”¹⁷⁹ In 2015, the National Children’s Alliance reported that approximately 700,000 children are abused in the United States each year.¹⁸⁰ Incident rates have been on the rise since 2012.¹⁸¹ As of 2017, the incidence rate was about nine incidents per 1,000 children.¹⁸²

According to a study conducted by professors at Cornell University, higher income inequality corresponds with higher rates of child maltreatment.¹⁸³ The Fourth National Incidence Study examined the link between socioeconomic status and child maltreatment.¹⁸⁴ The study analyzed socioeconomic status in terms of a combination of “household income, household participation in any poverty program, and parents’ education.”¹⁸⁵ If a household was in the lowest tier of any one of these indicators, it was deemed to be one of low socioeconomic status.¹⁸⁶ When compared to their higher socioeconomic status counterparts, it was revealed that children in low socioeconomic households were three times more likely to be abused and almost seven times as likely to be neglected.¹⁸⁷ The researchers hypothesized that these results were related to income inequality’s “negative impact on health and well-being for both adults and children” but noted that there has not been a study specifically examining the association of income inequality with

¹⁷⁸ *Id.*

¹⁷⁹ ECKENRODE ET AL., *supra* note 150, at 455.

¹⁸⁰ *National Statistics on Child Abuse*, NAT’L CHILD. ALLIANCE (2014), <https://www.nationalchildrensalliance.org/media-room/nca-digital-media-kit/national-statistics-on-child-abuse/>.

¹⁸¹ *See Child Maltreatment*, *supra* note 177.

¹⁸² *Id.*

¹⁸³ ECKENRODE ET AL., *supra* note 150, at 454.

¹⁸⁴ U.S. DEP’T OF HEALTH & HUMAN SERVS, ADMIN. FOR CHILDREN & FAMILIES, *supra* note 150, at 11.

¹⁸⁵ *See id.* at 12.

¹⁸⁶ *Id.* (“Household income below \$15,000 a year, parents’ highest education level less than high school, or any member of the household a participant in a poverty program, such as TANF, food stamps, public housing, energy assistance, or subsidized school meals.”).

¹⁸⁷ ECKENRODE ET AL., *supra* note 150, at 455.

child maltreatment.¹⁸⁸ Overall, while there has not been a conclusive study done in this area, these statistics reveal that individuals who are younger, as well as those from lower socioeconomic backgrounds, are more at risk of dying intestate,¹⁸⁹ from an accident,¹⁹⁰ and suffering from parental maltreatment during their lives.¹⁹¹ This, in turn, can give rise to a situation where UPC section 2-114's influence is triggered and state courts are forced to wrestle with the effects of an imperfect uniform act.¹⁹²

IV. MISCONCEPTIONS ABOUT THE EFFECTIVENESS OF THE PARENTAL BAR AND COUNTERARGUMENTS

Despite all of these powerful statistics,¹⁹³ the unsettled case law,¹⁹⁴ and disturbing correlations that show a plausible connection between child maltreatment and accidental deaths at varying socioeconomic levels,¹⁹⁵ advocates of the current UPC might argue that it is effective as drafted and there is no need for revision.¹⁹⁶ While this may be true with regard to certain provisions of the UPC, there are clearly circumstances where abusive or neglectful parents are still able to inherit despite provisions like section 2-114.¹⁹⁷ Therefore, to effectuate a policy that respects children who die intestate after suffering years of parental abuse or neglect, a revision

¹⁸⁸ *Id.*

¹⁸⁹ DiRusso, *supra* note 148, at 52–54.

¹⁹⁰ MURPHY ET AL., *supra* note 151, at 28. *See generally* William S. Nersesian, et al., *Childhood Death and Poverty: A Study of All Childhood Deaths in Maine, 1976 to 1980*, 75 PEDIATRICS 41 (1985) (noting that children from lower socioeconomic backgrounds were at a higher risk of accidental deaths).

¹⁹¹ ECKENRODE ET AL., *supra* note 150, at 454–55.

¹⁹² *See supra* Part II.

¹⁹³ *See supra* Sections III.A & III.B.

¹⁹⁴ *See supra* Part II.

¹⁹⁵ *See supra* Section III.C.

¹⁹⁶ *See* Joe C. Foster, Jr., *A Michigan Lawyer's View on Michigan Probate Reform*, 12 PROB. L.J. OHIO 32, 32 (2001) (“The [UPC] . . . as enacted in Michigan, works. Decedents’ estates are probated faster, cheaper, more simply and with more privacy, using informal proceedings, and going to court only when there is a dispute or guidance is needed.”).

¹⁹⁷ *See* Crosby v. Corley, 528 So. 2d 1141, 1143 (Ala. 1988); *In re Estate of Fisher*, 128 A.3d 203, 217 (N.J. Super. Ct. App. Div. 2015).

that considers the disparate impacts of socioeconomic status and the need for a clear burden of proof is necessary.¹⁹⁸

A. “Bad” Parents are Successfully Barred from Inheriting in Many Cases

There are instances where courts bar parents from inheriting in the event they maltreated their child before their untimely death.¹⁹⁹ Therefore, UPC section 2-114 has been successful in limited circumstances in fulfilling its purpose of barring these types of parents from inheriting. However, cases that allow “bad parents” to inherit are not simply outliers.²⁰⁰ It is hard to consider these rulings outliers when they occur time and time again across various states.²⁰¹ While, admittedly, decisions in favor of abusive or neglectful parents are not common, they still feed into the legal maxim of “hard cases mak[ing] bad law.”²⁰² In other words, complex cases such as these force judges into making difficult decisions, which can have negative consequences on the future by setting improper precedent.²⁰³ For example, the court in *Estate of*

¹⁹⁸ See *supra* Parts II & III.

¹⁹⁹ See *supra* Section II.A.

²⁰⁰ UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 2010); see Scalise, Jr., *supra* note 15, at 192 (“Instead, the purpose is to [e]nsure the acceptance of parental obligations for the child and to punish those who fail to do so. Bad parent statutes affirmatively cut off inheritance rights even after one has established the parental link.”); see also *Crosby*, 528 So. 2d at 1143 (allowing a father accused of physical, mental, and sexual abuse of his daughter to share in the proceeds of a wrongful death settlement); *Fisher*, 128 A.3d at 217 (allowing a father who allegedly abandoned his son to inherit from his son’s estate).

²⁰¹ See *Crosby*, 528 So. 2d at 1143; *Fisher*, 128 A.3d at 217.

²⁰² *Northern Sec. Co. v. United States*, 193 U.S. 197, 400 (1904) (“Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment.”).

²⁰³ Furthermore, while at times judges need for their work the training of economists of statesmen, and must act in view of their foresight of consequences, yet, when their task is to interpret and apply the words of a statute, their function is merely academic to begin with—to read English intelligently—and a consideration of consequences comes into play, if at all,

McCoy ex rel. Jones v. McCoy stated that it did not believe the legislature viewed non-financial support as “supporting the child” in accordance with the Mississippi statute.²⁰⁴ Going forward, this precedent may prevent inheritance by a loving father who emotionally supports his child but does not have the economic means to support him or her financially.²⁰⁵ Therefore, decisions that allow “bad” parents to inherit and those that deny perhaps good parents from inheriting, though they may be few in number, still have a ripple effect on the states that the UPC should address through increased clarity in its text and comments.²⁰⁶

*B. Few Abused Children Die with Substantial Estates,
Making This an Uncommon but Important Issue*

For section 2-114 of the UPC to take effect, the child must have (a) died (b) before the age of eighteen and (c) faced maltreatment²⁰⁷ from a parent “immediately before the child’s death.”²⁰⁸ While this may be considered a rare circumstance, *it still happens*.²⁰⁹ And not only does it happen, but the resulting decisions have worked in favor

only when the meaning of the words used is open to reasonable doubt.

Id. at 401.

²⁰⁴ *Estate of McCoy v. ex rel Jones v. McCoy*, 988 So. 2d 929, 933 (Miss. Ct. App. 2008).

²⁰⁵ *See id.* at 933.

²⁰⁶ *See Crosby v. Corley*, 528 So. 2d 1141, 1143 (Ala. 1988); *In re Estate of Fisher*, 128 A.3d 203, 217 (N.J. Super. Ct. App. Div. 2015); *see also Northern Sec. Co.*, 193 U.S. at 400 (representing the legal maxim that “great cases like hard cases make bad law”).

²⁰⁷ UPC § 2-114 specifies that there must be “clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.” UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 2010).

²⁰⁸ *See id.*

²⁰⁹ *See McCoy*, 988 So. 2d at 933 (Miss. Ct. App. 2008); *In re Turpening v. Howard*, 671 N.W.2d 567, 570 (Mich. Ct. App. 2003); *Fisher*, 128 A.3d at 214–15.

of the abusive or neglectful parent.²¹⁰ Statistics can help shine a light on the possible real-life numbers of these circumstances: in 2015, there were 4,044 accidental deaths in the United States for children ages fourteen and younger with 12,514 deaths of those between ages fifteen and twenty-four.²¹¹ While the National Vital Statistics Report does not break down this age group by individual years, making it uncertain how many minors between the ages of fifteen and seventeen die from accidents, one can extrapolate from the data that there are several thousand accidental deaths of children under the age of eighteen.²¹² Furthermore, a separate National Vital Statistics Report revealed that there was a recent increase in injury-related deaths²¹³ between 2013 and 2016 of individuals between the ages of ten and nineteen.²¹⁴ Taken together, it is evident that the several thousands of accidental child deaths each year may be increasing, which can invoke UPC section 2-114 and its progeny if any of these additional children were subjected to maltreatment before their untimely deaths.²¹⁵ This becomes even more concerning given the potential rise in child maltreatment cases, which may present a serious issue if there is overlap between the increasing accidental child death population and increasing child maltreatment population.²¹⁶

²¹⁰ See *Crosby*, 528 So. 2d at 1144; *Fisher*, 128 A.3d at 217.

²¹¹ See MURPHY ET AL., *supra* note 151, at 33.

²¹² See *id.*

²¹³ “Injury deaths” are organized by injury intent, which are classified as unintentional, suicide, homicide, undetermined, and legal intervention/war. See MURPHY ET AL., *supra* note 151, at 48.

²¹⁴ SALLY C. CURTIN, M.A. ET AL., RECENT INCREASES IN INJURY MORTALITY AMONG CHILDREN AND ADOLESCENTS AGED 10–19 YEARS IN THE UNITED STATES: 1999–2016 1 (2018), https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_04.pdf.

²¹⁵ See UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N amended 2010); CURTIN ET AL., *supra* note 214, at 1; MURPHY ET AL., *supra* note 151, at 33–34.

²¹⁶ See CURTIN ET AL., *supra* note 214, at 1; see also Kimberly Key, *Why is Child Abuse on the Rise?*, PSYCHOL. TODAY (Nov. 10, 2016), <https://www.psychologytoday.com/us/blog/counseling-keys/201611/why-is-child-abuse-the-rise> (There has been a “recent uptick” in child abuse in the United States.); *Child Maltreatment*, *supra* note 177 (Certain types of maltreatment are on the rise, such as “the proportion with reported neglect [which has] increased from 49 percent in 1990 to 75 percent in 2017.”).

Some research has confirmed a connection between socioeconomic status and accidental deaths among children. A study from Maine found that children who were on social welfare programs “had an overall death rate 3.1 times greater” than those who were not involved with these programs.²¹⁷ Specifically, these lower-income children were 2.6 times more likely to die in an accidental death than their counterparts.²¹⁸ This type of study has been replicated in other parts of the country as well. A North Carolina study found similar results, comparing families eligible to receive Aid to Families with Dependent Children (“AFDC”) with those not eligible.²¹⁹ This study revealed that children in families eligible for AFDC were “3.1 times more likely to suffer death from unintentional injuries, 2.3 times more likely to die from drowning . . . and 1.4 times more likely to suffer a motor-vehicle fatality.”²²⁰ These statistics demonstrate that children of lower socioeconomic backgrounds are at a greater risk of accidental death, which can mean a stronger likelihood of triggering section 2-114 and a wrongful death suit.

Further, it can be argued that, even if the population size of maltreated minors that die accidentally is potentially increasing,²²¹ the cost of a lawsuit may outweigh the size of an individual decedent’s estate.²²² However, this is not always the case, especially in the event of a wrongful death action.²²³ These lawsuits can have enormous payouts, which would substantially increase the size of

²¹⁷ Nersesian et al., *supra* note 190.

²¹⁸ *Id.*

²¹⁹ Melvin D. Nelson, Jr., MBA, *Socioeconomic Status and Childhood Mortality in North Carolina*, 82 AM. J. PUB. HEALTH 1131, 1131 (1992).

²²⁰ *Id.* at 1131; *see also* Juhee Hong et al., *Parental Socioeconomic Status and Unintentional Injury Deaths in Early Childhood: Consideration of Injury Mechanisms, Age at Death, and Gender*, 42 ELSEVIER 313, 313 (2010) (“[T]he risks of childhood injury deaths from traffic accidents, falls, and fire/burns were associated with the [socioeconomic status] of the parents.”).

²²¹ *See* CURTIN ET AL., *supra* note 214, at 1; *see also* Key, *supra* note 216 (noting the “recent uptick” in child abuse in the United States); *Child Maltreatment*, *supra* note 177 (indicating how “reported neglect increased from 49 percent in 1990 to 75 percent in 2017”).

²²² *See* Jonathan T. Molot, *How U.S. Procedure Skews Tort Law Incentives*, 73 IND. L.J. 59, 69 (1997).

²²³ *See supra* Section III.D.

the estate for the decedent's heirs.²²⁴ Therefore, depending on the circumstances of the child's death, even if the estate is relatively small, a wrongful death action could substantially alter its size, making it worth pursuing, even by parents who never supported their children in the first place.²²⁵

C. Correlation Does Not Imply Causation

The various statistics on intestacy, child maltreatment, and accidental deaths show correlations between variables, not causal relationships.²²⁶ Even though individuals with lower incomes typically die intestate, it cannot be said that the lower income *causes* intestacy.²²⁷ Likewise, while many children who face maltreatment tend to be from families of lower socioeconomic status, that does not imply that lower socioeconomic status *leads* to maltreatment.²²⁸ Without a causal link, it cannot definitively be said that UPC section 2-114 actually has a greater negative impact on lower income families by being more permissive of abusive or neglectful parents' inheritances.²²⁹ However, it remains true that children from low socioeconomic backgrounds suffer greater rates of abuse and neglect than those of a higher socioeconomic status;²³⁰ that children from these backgrounds are more likely to die intestate than those from higher socioeconomic backgrounds who are more likely to have wills;²³¹ that children of lower socioeconomic status are at a

²²⁴ See *supra* Section III.B.

²²⁵ *Id.*

²²⁶ See *supra* Part III.

²²⁷ DiRusso, *supra* note 148, at 50.

²²⁸ See ECKENRODE ET AL., *supra* note 150, at 454 (demonstrating that "increases in income inequality are *associated* with increases in child maltreatment rates at the county level" (emphasis added)).

²²⁹ UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM'N 2010); see *supra* Part III.

²³⁰ ECKENRODE ET AL., *supra* note 150, at 454–55.

²³¹ DiRusso, *supra* note 148, at 50.

greater risk of dying accidentally;²³² and that 2-114 is likely to play a relevant part in subsequent inheritance proceedings.²³³

While it is true that the studies cited in this Note only demonstrate *associations* between variables, these relationships still show important connections, and it is possible that they can be explained by the same phenomena.²³⁴ For example, there is a positive correlation between age and testacy, as well as between income and testacy.²³⁵ These two points can be explained by multiple factors including a general increase in wealth from childhood levels during adulthood,²³⁶ the increased need or desire for a will as one gets older and closer to death,²³⁷ and the potentially high costs associated with a lawyer drafting a will.²³⁸ These correlations are logically coherent and track human nature. Younger individuals most likely do not create wills because they are either not concerned about death at their age or do not hold the same values about estate planning as older generations.²³⁹ Because wills can be costly, it is understandable that having a higher income would allow somebody to afford the lawyer's fees involved in drafting a will.²⁴⁰

²³² Nelson, Jr., *supra* note 219, at 1131; *see also* Hong et al., *supra* note 220 (confirming that “the risks of childhood injury deaths from traffic accidents, falls, and fire/burns were associated with the [socioeconomic status] of the parents.”).

²³³ § 2-114; *see supra* Part III.

²³⁴ Saul McLeod, *Correlation*, SIMPLY PSYCHOL., <https://www.simplypsychology.org/correlation.html> (last updated 2018) (“Correlation means association—more precisely it is a measure of the extent to which two variables are related.”); *see supra* Part III.

²³⁵ DiRusso, *supra* note 148, at 51–52.

²³⁶ Emmie Martin, *Here's How Much the Average American Earns at Every Age*, CBNC (Aug. 24, 2017, 11:30 AM), <https://www.cnn.com/2017/08/24/how-much-americans-earn-at-every-age.html>.

²³⁷ DiRusso, *supra* note 148, at 53–54 (“There is a good argument that estate planning is most critical in the years between young married life and empty nesthood, in the time during which people have financial dependents, particularly young children.”).

²³⁸ Megan Leonhardt, *4 Things You Should Know Before You Make Your Own Will*, MONEY (Aug. 17, 2016), <http://time.com/money/4443349/do-it-yourself-will/> (“For a larger, more complex estate, with federal estate tax considerations and specific trusts or entities such as family limited partnerships, the price tag will be \$1,000 or more.”).

²³⁹ *See* DiRusso, *supra* note 148, at 53–54.

²⁴⁰ *See* Leonhardt, *supra* note 238.

Regardless of the explanation, the relationships between intestacy, child maltreatment, and accidental deaths need not be causally connected to demonstrate a valuable link.²⁴¹ Understanding these correlations is critical for ensuring justice for abused or neglected individuals who die intestate by preventing their abusers from benefitting financially from their deaths.²⁴²

V. SOLUTIONS

While the UPC may have been enacted to create a more uniform system and resolve intestacy related problems,²⁴³ in practice, it has failed to adequately address the issue of parental inheritance following years of child maltreatment.²⁴⁴ Moving forward, the Uniform Law Commission should take steps to revise the UPC, such as providing state legislatures with a more descriptive and less controversial provision that will ensure abusive or neglectful parents are unable to benefit from the pain they cause.²⁴⁵ A more detailed provision will leave less room for court interpretation, thereby creating a more even and straightforward approach to handling these cases.²⁴⁶

A. *A Push for More Research*

Before addressing some of the potential revisions that should be made to UPC section 2-114, the first step to resolving these issues is to gather more information and research regarding the individuals involved. As pointed out, the relationships between age and testacy, income and testacy, and income and child maltreatment are correlations, not causal connections.²⁴⁷ Because the UPC contains the default intestacy rules and UPC section 2-114 specifically deals

²⁴¹ See *supra* Part III.

²⁴² See *supra* Part IV.

²⁴³ See *supra* Section I.A.

²⁴⁴ See *supra* Part II.

²⁴⁵ See *About Us*, *supra* note 20 (“The [ULC] . . . provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”).

²⁴⁶ See *supra* Section II.B.

²⁴⁷ See *supra* Part III.

with the estates of maltreated children, researchers must conduct studies to examine the relationships between age, income, testacy, maltreatment, and wrongful deaths to determine if there are causal connections between any of them.²⁴⁸ Since the majority of states require individuals to be at least eighteen years old to write a will²⁴⁹ and most child deaths occur because of accidents,²⁵⁰ it would be useful to know how many of these accidental deaths happen to children who faced maltreatment at the hands of a parent.

The challenge now is finding a way to obtain information regarding child accidental deaths and children who were abused or neglected. The 2014 American Academy of Pediatrics Study relied on information from the National Child Abuse and Neglect Data System (“NCANDS”), which collects data from the fifty states, the District of Columbia, and Puerto Rico regarding cases of abuse and neglect.²⁵¹ Additionally, the National Vital Statistics System is an intergovernmental network that collects vital statistics in the United States.²⁵² If these two groups worked together to establish a new organization, they could form a joint force to collect more detailed information about decedents’ demographics that researchers could utilize to draw more associations or causal connections and formulate a cohesive policy around parental treatment and inheritance. If such research were to reveal a connection between accidental deaths and children of abuse or neglect, then policymakers could focus on protecting these individuals from further maltreatment. Organizations like NCANDS could then relay this information to Congress and child abuse protection agencies²⁵³

²⁴⁸ See UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 2010); Carroll, *supra* note 17, at 630–31.

²⁴⁹ Willing Staff, *The Legal Requirements of a Will*, WILLING, <https://willing.com/learn/legal-requirements-of-a-will.html> (last updated Oct. 2018).

²⁵⁰ See MURPHY ET AL., *supra* note 151, at 33–34.

²⁵¹ See ECKENRODE ET AL., *supra* note 150, at 455; NCANDS, CHILD.’S BUREAU, <https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/ncands> (last updated June 12, 2019).

²⁵² *National Vital Statistics System*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/nvss/index.htm> (last reviewed Oct. 3 2018).

²⁵³ For instance, non-profit organizations such as Childhelp exist “to meet the physical, emotional, educational, and spiritual needs of abused, neglected and

to safeguard these children from further harm. Until these relationships are further examined, researchers must continue to study these connections, as posited by the American Academy of Pediatrics study.²⁵⁴

B. *Setting a Standard for the Burden of Proof*

UPC section 2-114 sets forth the following burden of proof: “clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.”²⁵⁵

Some states such as New Mexico adopted the exact wording of UPC section 2-114,²⁵⁶ as seen in *Perry v. Williams*, where the Court of Appeals disregarded the “clear and convincing evidence” standard and simply decided that the legislature’s intent and prior precedent aimed to prevent neglectful parents from inheriting.²⁵⁷ Alternatively, other states such as New Jersey have enacted similar but inexact versions of the UPC.²⁵⁸ The resulting cases’ divergent outcomes can be blamed, at least in part, on the nonuniform language of these intestacy statutes across states.²⁵⁹

The UPC should also incorporate an approach like that of Mississippi’s statute, where specific examples of neglect, abuse, and maltreatment are provided in order to show situations where parental rights should be terminated.²⁶⁰ UPC section 2-114 states,

at-risk children.” *The Childhelp Approach to Ending Child Abuse*, CHILDHELP, <https://www.childhelp.org/childhelp-approach/> (last visited Aug. 14, 2019).

²⁵⁴ See ECKENRODE ET AL., *supra* note 150, at 454.

²⁵⁵ UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 2010).

²⁵⁶ See N.M. STAT. ANN. § 45-2-114 (West 2019).

²⁵⁷ *Perry v. Williams*, 70 P.3d 1283, 1287–89 (N.M. Ct. App. 2003).

²⁵⁸ See N.J. STAT. ANN. § 3B:5-14.1 (West 2019).

²⁵⁹ Compare *Perry*, 70 P.3d at 1287, with *In re Estate of Fisher*, 128 A.3d 203, 217 (N.J. Super. Ct. App. Div. 2015).

²⁶⁰ (a) The parent has been medically diagnosed by a qualified mental health professional with severe mental illness or deficiency that is unlikely to change in a reasonable period of time[;] . . . (f) The parent’s abusive or neglectful conduct has

“parental rights of the parent could have been terminated . . . on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child,” but it does not define any of these terms.²⁶¹ If the UPC drafters were to provide examples of definitive circumstances in which parental rights could be terminated, states would be pressured to revise their respective parental-bar statutes to provide such specific examples, and courts would be unable to be as deferential as they were in *Perry*.²⁶²

C. Revising the Act

Based on the foregoing issues regarding the clarification of terms and need for a lower burden of proof for the parent moving to terminate parental rights, UPC section 2-114 should be revised to read:

A parent is barred from inheriting from or through a child of the parent if: (1) the parent’s parental rights were terminated and the parent-child relationship was not judicially reestablished; or (2) the child died before reaching [eighteen] years of age and *a preponderance of the evidence demonstrates* that immediately before the child’s death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child *including, but not limited to, (A) missed or minimal child support payments, (B) a medical diagnosis or testimony from a health professional that the parent*

caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and child; (h)(i) The parent has been convicted of any of the following offenses against any child: 1. Rape of child under Section 97-3-65; 2. Sexual battery of a child under Section 97-3-95(c); 3. Touching a child for lustful purposes under Section 97-5-23.

MISS. CODE ANN. § 93-15-121(a)–(h)(i) (West 2019).

²⁶¹ UNIF. PROBATE CODE § 2-114 (UNIF. LAW COMM’N 2010).

²⁶² See *Perry*, 70 P.3d at 1290.

is unable to care for the child, or (C) the parent suffers from habitual alcoholism or drug addiction, or has been imprisoned due to involvement with drugs, inhibiting or preventing their ability to parent.

This revised language lowers the burden of proof from “clear and convincing evidence” to “preponderance of the evidence” and would prevent unjust inheritances that arose in prior case law with more descriptive examples of maltreatment. This could have prevented the court deciding *In re Turpening v. Howard* from going through an entire statutory language analysis.²⁶³ Because a preponderance of the evidence standard likely would have been satisfied in *Turpening* by the evidence that the father knew his daughter existed, he could have been barred from recovery from the start.²⁶⁴ Section (2)(C) of the revised UPC provision could have set an example for states to avoid the issue in *Estate of McCoy ex rel Jones v. McCoy*, since the father there was sentenced to nine years in jail for selling cocaine.²⁶⁵ If New Jersey adopted this revised version, the standard would still be preponderance of the evidence, but the harsher mental state requiring a “clearly manifested . . . settled purpose to permanently forego all parental duties,” an improperly difficult mental state to prove, would be eliminated.²⁶⁶ The court in *Perry* could have come out with the same result by a more direct means better reflective of the UPC’s intent by using a preponderance of the evidence standard rather than an analysis of precedent and legislative intent.²⁶⁷ There, the father’s nominal child support payments and minimal contact with his son would have been enough to bar him from recovery under this standard.²⁶⁸

While no revisions or additions can possibly anticipate every issue that might arise under this UPC provision, this proposed

²⁶³ *In re Turpening v. Howard*, 671 N.W2d 567, 568–69 (Mich. Ct. App. 2003).

²⁶⁴ *Id.* at 560.

²⁶⁵ *Estate of McCoy ex rel. Jones v. McCoy*, 988 So. 2d 929, 930 (Miss. Ct. App. 2008).

²⁶⁶ *In re Estate of Fisher*, 128 A.3d 203, 214–15 (N.J. Super. Ct. App. Div. 2015).

²⁶⁷ *Perry v. Williams*, 70 P.3d 1283, 1285–88 (N.M. Ct. App. 2003).

²⁶⁸ *Id.* at 1284–85.

version is more forward-looking and anticipates courts' inevitable participation in child intestate succession. By providing examples of maltreatment, state legislatures and, subsequently, state courts will have a better description and greater understanding of scenarios where a "bad" parent should be barred from inheriting. The combination of this revised act, a new agency to work to prevent child maltreatment, and both a push for more research and new methods for collecting this research will serve the public's best interest and hinder abusive or neglectful parents from committing atrocities and then reaping the monetary awards from their victims' estates.

CONCLUSION

The Uniform Law Commission created the UPC to recommend a model to improve state laws regarding the succession of property when the owner dies.²⁶⁹ Unfortunately, UPC section 2-114, governing the parent-child relationship, fails in practice for its lack of specificity and needs to be revised to prevent future lawsuits from arising that may result in a "bad parent" inheriting from his or her child's estate.²⁷⁰ Statistics surrounding those who unfortunately need to turn to parental-barring statutes in these circumstances reveal that this problem of abusive or neglectful parent inheritance exists and prompts a need for more research on the subject in order to explore these correlations further to ensure that no particular demographic faces disproportionately greater instances of unjust parental inheritance.²⁷¹ The creation of a new organization to conduct the proposed research will help determine if state statutes modelled after UPC section 2-114 are disproportionately affecting disadvantaged socioeconomic groups, and the provided revisions to the uniform act will equip states with a clearer method of preventing any further injustices from occurring. If the goal of intestate succession is truly to comply with the wishes of the decedent,²⁷² it

²⁶⁹ Carroll, *supra* note 17, at 624–25.

²⁷⁰ See *supra* Part II.

²⁷¹ See *supra* Parts III, IV, & V.

²⁷² See *supra* Introduction.

is time to ensure that abusers do not benefit from the victims of their maltreatment.