

HB

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 335

Revision Date (Note if correction) _____ Dept. Affected Law
 Title "...replacing the Uniform Child Custody Jurisdiction BRU Civil Division
Act with the Uniform Child Custody Jurisdiction and Enforcement . . Component Human Services
 Sponsor House HESS Committee
 Requester House HESS Committee Component Serial No. 2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 335 replaces the current Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act. This bill primarily concerns custody disputes between private parties, and will not impact the Department of Law.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner *Bruce M. Botelho* Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 1/26/98
 Date 1/26/98

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January 28, 1998

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Honorable Con Bunde, Chair
House HESS Committee
Alaska State Legislature
Room 104, State Capitol
Juneau, Alaska 99811

HAND DELIVERED

Re: HB 335 (Uniform Child Custody Jurisdiction and Enforcement Act)

Dear Representative Bunde:

I understand that HB 335 is scheduled for a hearing in your committee tomorrow, January 29. I will not be able to attend the hearing, but wanted to make sure that you knew of my support for this bill.

As I'm sure you already know, this bill revises the 1968 Uniform Child Custody Jurisdiction Act, which was adopted in every state. That act and this revision are products of the National Conference of Commissioners on Uniform State Laws. Besides generally updating the original Act and addressing issues that have been litigated under it, this new version brings the substance of the old one into compliance with the federal Parental Kidnapping Prevention Act. A major feature of this revision is its limitation of child custody jurisdiction to one state, thus greatly streamlining the procedures and avoiding complications that negatively affect the children and their families. Another major feature is this version's addition of enforcement provisions for child custody orders.

It is anticipated that this revision will sweep the country as the original version did. Therefore, it is necessary for Alaska to keep up with developments in the law and to provide this protection to our children and families.

Therefore, I strongly urge a "do pass" recommendation from your committee. Thank you for considering these comments.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Honorable Con Bunde
January 28, 1998

Page 2

CC: Pat Porchot, Legislative Director, Governor's Office
Rest of Alaska's ULC Delegation:
Deborah E. Behr
Tamara Brandt Cook
W. Grant Callow
L.S. (Jerry) Kurtz, Jr.
Jay A. Rabinowitz

**Sectional Summary of
HB 335
(Replace Uniform Child Custody
Jurisdiction Act (UCCJA) with the
Uniform Child Custody Jurisdiction
and Enforcement Act (UCCJEA))**

Section 1. Makes technical amendments to replace existing UCCJA section numbers with the new UCCJEA section numbers.

Section 2. Enacts the Uniform Child Custody Jurisdiction Act.

Article 1. Jurisdiction.

Proposed AS 25.30.300. Sets mandatory standards for initial child custody jurisdiction of the Alaska court. Places a priority for "home state" of a child to assume jurisdiction over the child custody case. Existing UCCJA provides for independent and concurrent bases of jurisdiction.

Proposed AS 25.30.310. Sets standards for exclusive, continuing jurisdiction to make a child custody determination.

Proposed AS 25.30.320. Sets standards for the Alaska court's jurisdiction to modify a child custody determination.

Proposed AS 25.30.330. Sets standards for the Alaska court to exercise temporary emergency jurisdiction in extraordinary circumstances. Requires communication with the other state to resolve the emergency, protect the safety of the parties, and determine a period for the temporary order.

Proposed AS 25.30.340. Provides standards for notice and opportunity to be heard to parents and other specified persons in a child-custody proceeding. Alaska law governs who is entitled to notice. Recognizes that Alaska law governs obligations to join persons as parties and rights of persons to intervene as a party.

Proposed AS 25.30.350. Concerns procedures for simultaneous proceedings in courts of different states.

Proposed AS 25.30.360. Establishes procedures for an Alaska court to decline jurisdiction if the Alaska court determines that it is an inconvenient forum for the child custody determination and that a court of another state is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties.

Proposed AS 25.30.370. Sets standards for an Alaska court to decline jurisdiction because of wrongful conduct, such as kidnapping a child.

Proposed AS 25.30.380. Specifies the information for parties to a child custody proceeding to submit to the Alaska court. Information includes child's address for the last five years and other proceedings that could affect the current proceeding. Each party has a responsibility to keep the information current with Alaska court. The section allows the court to protect the information against disclosure to protect the health, safety, or liberty of a party or child.

Proposed AS 25.30.390 Concerns the requirements of appearance of the parties and child in child-custody proceedings. This represents no major change to existing UCCJA.

Article 2. Enforcement.

Proposed AS 25.30.400. Allows an Alaska court to enforce an order made under the Hague Convention as if the order was a child custody determination.

Proposed AS 25.30.410. Requires an Alaska court to enforce an out-of-state order if the order was issued in substantial conformity with this chapter.

Proposed AS 25.30.420. Allows an Alaska court to issue a temporary visitation order to enforce a visitation schedule in an out-of-state order or to make provisions under the original order that did not have a specific visitation schedule (i.e., reasonable visitation). This order may include make-up or substitute visitation.

Proposed AS 25.30.430. Sets simple procedures for requesting registration of out-of-state child custody determinations. Allows a person seeking to contest the validity of a registered order to request a hearing on specified grounds.

Proposed AS 25.30.440. Allows Alaska court to grant relief for a registered out-of-state child custody determination that is available in Alaska court. A registered out-of-state order is not modifiable by Alaska court unless an Alaska court would have jurisdiction to modify it under this chapter.

Proposed AS 25.30.450. Requires Alaska court enforcing an out-of-state order to communicate to another state court if the Alaska court determines that a proceeding to modify the out-of-state order is pending.

Proposed AS 25.30.460. Sets out procedure and requires an Alaska court to give expedited enforcement of an out-of-state child custody determination. Provides procedures for a hearing and limited defenses to enforcement of the out-of-state order.

Proposed AS 25.30.470. Establishes that Alaska law sets procedures for service of petition for enforcement and order under the chapter.

Proposed AS 25.30.480. Establishes the scope of inquiry of Alaska court in enforcing an out-of-state child custody determination order. If a child would be endangered by enforcement of the order, the Alaska court could assume emergency jurisdiction under other provisions of the chapter.

Proposed AS 25.30.490. Establishes an exceptional remedy in emergency situations to allow the Alaska court to issue a warrant to take physical custody of the child, if the child is immediately likely to suffer serious physical harm or be removed from Alaska.

Proposed AS 25.30.500. Allows the Alaska court to award prevailing party costs, fees, and expenses to the extent authorized by court rules, unless the other party establishes that the award would be clearly inappropriate.

Proposed AS 25.30.510. Requires Alaska courts to enforce and not modify enforcement orders issued by other states.

Proposed AS 25.30.520. Authorizes court calendar priority for appeals of enforcement orders to the extent allowed for other civil appellate cases. Precludes the Alaska enforcing court from staying an enforcement order pending appeal, unless the Alaska court enters a temporary emergency order because of risk of serious mistreatment or abuse of the child.

Proposed AS 25.30.590. Provides definitions for petitioner and respondent.

Article 3. Miscellaneous Provisions.

Proposed AS 25.30.800. Lists proceedings governed by other law than UCCJEA, such as adoptions.

Proposed AS 25.30.810. Provides procedures for international applications of this chapter to child custody determinations and foreign countries if the child custody law of the foreign country does not violate fundamental principles of human rights.

Proposed AS 25.30.820. Defines the binding effect of a child custody determination under this chapter made by an Alaska court.

Proposed AS 25.30.830. Establishes a priority for expedited court consideration of a jurisdiction issue in a child custody proceeding.

Proposed AS 25.30.840. Provides standards for notice to persons outside of Alaska for Alaska court to have jurisdiction over the child custody proceeding.

Proposed AS 25.30.850. Establishes participation in a custody proceeding does not, by itself, give the Alaska court jurisdiction over any issue for which personal jurisdiction is required. Establishes limited immunity for certain individuals while present in Alaska to participate in the proceeding.

Proposed AS 25.30.860. Establishes standards for communication between courts concerning a proceeding arising under this chapter.

Proposed AS 25.30.870. Establishes standards for taking testimony in another state for the child custody proceeding. Recognizes electronic means as an appropriate method for taking the testimony in another state.

Proposed AS 25.30.880. Establishes standards for cooperation between courts on child custody proceedings covered by this chapter and preservation of court records.

Article 4. General Provisions.

Proposed AS 25.30.901. Allows the court to give consideration to promote uniformity of the law in applying and construing the chapter.

Proposed AS 25.30.903. Provides a severability clause to allow remainder of chapter to remain effective, if a provision is found invalid.

Proposed AS 25.30.909. Provides definitions for key terms.

Section 3. Amends the statutory short title to reflect the Uniform Child Custody Jurisdiction and Enforcement Act.

Section 4. Repeals provisions of Uniform Child Custody Jurisdiction Act.

Section 5. Provides notice of provisions to amend Rule 4 Alaska Rules of Civil Procedure regarding service in certain court actions.

Section 6. Provides notice of provisions to amend Rule 62, Alaska Rules of Civil Procedures and Rule 205, Alaska Rules of Appellate Procedures, by prohibiting a stay, pending appeal, under certain circumstances.

Section 7. Provide an applicability section for the chapter to address new motions in child custody proceedings.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 17, 1997

TONY KNOWLES, GOVERNOR

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Honorable Mike Miller
Honorable Gail Phillips
Alaska State Capitol
Juneau, Alaska 99801

Dear President Miller and Speaker Phillips:

On behalf of Alaska's delegation to the National Conference of Commissioners on Uniform State Laws, I submit this year's annual report.

I. HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

In August, 1892, the first National Conference of Commissioners on Uniform State Laws (ULC) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the ULC. The Territory of Alaska joined the conference that year.

The ULC is a confederation of states. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

II. THE OPERATION OF THE ULC

The National Conference is convened as a body once a year. It meets for a period of eight days, usually in mid-summer. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is

ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

A small staff located in Chicago operates the national office of the ULC. The national office handles meetings arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only seven people.

The ULC maintains relationships with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

III. ANNUAL MEETING

The 1997 annual meeting of the National Conference of Commissioners on Uniform State Laws was held July 25 - August 1 in Sacramento, California. The meeting attendees considered draft Acts amending Articles 2 and 9 of the Uniform Commercial Code; proposed new Article 2B of the Uniform Commercial Code; Uniform Interstate Child Custody Jurisdiction and Enforcement Act; Uniform Principal and Income Act; Uniform Management of Public Employee Retirement Systems Act; and Uniform Guardianship and Protective Proceedings Act. (See attached short summaries briefly describing each Act.)

The conference approved the Uniform Interstate Child Custody Jurisdiction and Enforcement Act; the Uniform Principal and Income Act; the Uniform Management of Public Employment Retirement Systems Act; and the Uniform Guardianship and Protective Proceedings Act. Alaska commissioners served on the Uniform Instate Child Custody Jurisdiction and Enforcement Act Committee and Uniform Principal and Income Act Committee.

This work will benefit many Alaskans, since the state's enactment of the Uniform Acts will aid interstate commerce and investment and the enforcement of visitation orders across state lines. Also, the work will aid in the resolution of legal issues arising from electronic commerce, especially transactions made over the internet. Alaska business should benefit directly from the conference work in making these transactions more easily legally enforced. These issues have been of interest to the Alaska State Legislature and the executive branch.

IV. ACTIVITIES OF THE ALASKA COMMISSIONERS

A. The Alaska Commissioners are:

The Honorable Jay Rabinowitz (retired chief justice of Alaska Supreme Court and life member of the ULC)

Art Peterson (lawyer, private practice, and life member of the ULC)

Jerry Kurtz (lawyer, private practice)

Grant Callow (lawyer, private practice)

Deborah Behr (lawyer, Assistant Attorney General)

B. The Alaska associate member is Tamara Brandt Cook (lawyer, Director of Division of Legislative Legal and Research Services)

C. The ULC committee assignments for Commissioners from Alaska are:

Art Peterson - member of paternity Act drafting committee; member of family law study committee; and member of legislative committee

Deborah Behr - member of enforcement of custody and visitation laws stand-by committee; and member of family law study committee

Jerry Kurtz - member of principal and income stand-by committee; and member of pension funds study committee

Grant Callow - member of committee to reverse Uniform Rules of Evidence; and member of ULC committee on scope and program

Jay Rabinowitz - member of native law study committee

Hon. Mike Miller
Hon. Gail Phillips

November 17, 1997
Page 4

- D. Alaska Commissioners hold regular telephone conference meetings during the year.
- E. Alaska Commissioners attending the 1997 ULC Annual Meeting in Sacramento were:

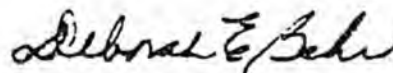
Art Peterson
Jerry Kurtz
Grant Callow
Deborah Behr

- F. In the year 1997, the Alaska Commissioners made several legislative appearances, in person or by teleconference, to explain HB 178 - Uniform Commercial Code, article 5 (letters of credit); SB 154 - Uniform Family Support Act amendments; and SB 198 - Uniform Partnership Act.

V. Recommendation for Passage During 1998 Legislative Session:

The Alaska Uniform Law commissioners are recommending passage during the 1998 legislative session of the following matters: (A) update of the Uniform Partnership Act (SB 198); (B) the Uniform Commercial Code, article 5 (HB 178); and (C) Uniform Child Custody Jurisdiction and Enforcement Act.

Sincerely,



Deborah E. Behr
Alaska Uniform Law Commissioner

DEB:ng

Attachment

cc: Gene N. Lebrun, President
National Conference of Commissioners
on Uniform State Laws

National Conference of Commissioners on **U**niform State Laws

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Chicago, Illinois 60611
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NEW UNIFORM STATE LAW AIMS AT OVERCOMING OBSTACLES TO ENFORCING CHILD CUSTODY DETERMINATIONS Uniform Enactment Nationwide Crucial to Its Effectiveness

When state legislatures around the country were enacting the original Uniform Child Custody Jurisdiction Act (UCCJA) in the late 1970s and early 1980s, the hope was that uniformity nationwide would eliminate interstate parental child-snatching. UCCJA was designed to prevent a fairly common legal standoff of the day, whereby one parent gained legal custody of a child in one state, and the other parent managed to take the child to a "haven state" in search of a court willing to change the initial lawful custody order.

The quest to curb parental child-snatching was intensified in 1980 with the signing of the Parental Kidnapping Prevention Act (PKPA) by President Carter. This federal law was primarily meant to give states the basic rules for them to recognize child custody decisions made under the UCCJA as part of their constitutional obligations under the "full faith and credit" clause of the U.S. Constitution.

By 1983 UCCJA, a product of the Uniform Law Commissioners (ULC), had been enacted in all 50 states, the District of Columbia, and Puerto Rico. Despite some difference with the PKPA, these statutes have been effective at eliminating the kind of forum shopping in child custody cases that plagued the courts in prior decades. Yet according to a study by the U.S. Department of Justice, in 1988 the abductors of 163,200 children—nearly one half of an estimated 354,100 children abducted by parents or family members in the U.S. that year—took the children across state lines, concealed them, or prevented contact.

Among the obstacles enabling parents to obtain conflicting custody orders from courts in different states has been a lack of uniformity in state enactments of the UCCJA and court opinions interpreting that statute. In addition, some unfortunate differences between the PKPA and the UCCJA have hindered effective child custody orders.

Now, after two years of drafting and deliberation, the Uniform Law Commissioners have approved a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) that is available for enactment by every state legislature. Uniform enactment nationwide is crucial to its effectiveness.

"The new law significantly eliminates the conflicts and problems which surround interstate custody and visitation cases," say Marian P. Opala, chairman of the drafting committee. UCCJEA erases the differences between its predecessor UCCJA and the PKPA and other federal statutes, and

makes changes necessary after almost 30 years of inconsistent court interpretations.

Most importantly, it covers new territory as well, including provisions for enforcing interstate custody orders, an issue the original UCCJA did not address. The enforcement provisions are aimed at the continuing problems of child abduction, concealment and evasion when parents and families are at war with each other.

The original act authorized four different bases for jurisdiction, and did not provide for home state priority. Like the federal law, the new act prioritizes home state jurisdiction, defining it as the state in which a child lived with a parent, or a person acting as parent, for at least six consecutive months immediately before the beginning of a child custody proceeding. If there is more than one child custody order, therefore, the one from the child's home state is the one that gets enforced.

The new act further provides that a state which makes the initial custody determination has continuing exclusive jurisdiction, so long as a party to the original custody determination remains in that state. Continuing exclusive jurisdiction was not a provision in the original UCCJA, although the federal PKPA later recognized the concept. The order of a state with continuing exclusive jurisdiction is entitled to be enforced in every other state. No other state can modify the order unless the first state relinquishes jurisdiction to the courts of another state, because they can do a better job of adjudication.

UCCJEA also clarifies how and when emergency jurisdiction should be used, allowing a court to take temporary jurisdiction (e.g. child abuse orders or domestic violence orders of protection) even though it does not have grounds for taking permanent jurisdiction. This provision extends the emergency jurisdiction provision of the UCCJA to include abuse of a parent or sibling of an abducted child as grounds.

New to the UCCJEA is an expedited process to enforce interstate child custody and visitation determinations. As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children (1993)*, neither the UCCJA nor the PKPA provides for enforcement of child custody orders. It was assumed that local law would be adequate for enforcement of out-of-state orders. Time has proved the error of that assumption.

Drafters of the new act recognized the need for swift enforcement for a left-behind parent who seeks to have a child custody order enforced. If enforcement does not happen quickly, the child may be lost permanently. Drafters chose an extremely swift remedy along the lines of habeas corpus: the child must be produced before the court. And if the enforcing court is concerned that the parent will flee or harm the child, a warrant to take physical possession of the child is available.

In this and other respects, the act accomplishes for custody and visitation determination the same certainty that has occurred in interstate child support law with the promulgation of the Uniform Interstate Family Support Act.

The UCCJEA also establishes the option of a role for public prosecutors and law enforcement in the civil enforcement of child custody and visitation determinations.

The ULC, officially called the National Conference of Commissioners on Uniform State Laws, is now in its 106th year. The organization is comprised of more than 300 lawyers, judges, law professors, legislators, and other state officials, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft proposals for uniform and model laws and work toward their enactment in the state legislatures. Since 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, the Uniform Partnership Act, and the Uniform Controlled Substances Act.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- A Summary -

INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. This Act was designed to defeat kidnapping of children by non-custodial parents, who took their children from state to state in the hope of finding a court that would issue a favorable custodial order modifying or contradicting the court order that made them non-custodial parents. This practice was perceived as wide-spread in the decades before the promulgation of this important Uniform Act. The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort, largely, to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, there is much congruity between the two acts, but enough differences to confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions).. Although resolution of jurisdictional problems has greatly diminished the problem of parental kidnapping, this destructive practice has by no means ceased to exist. States initiated criminal penalties for parental kidnapping, but such drastic measures have failed to eliminate the practice. Criminal penalties are, perhaps, too draconian and therefore little used. So the salutary steps taken in 1968 and 1981 need to be further augmented.

In 1997, the Uniform Law Commissioners have drafted a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. These two broad strokes will make kidnapping by non-custodial parents much more difficult.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state, significant connection between state and some contestants to a dispute, emergency jurisdiction when the child is present and the child's welfare is threatened; and presence of the child in the event there is no other state with another sound basis for taking jurisdiction. It was always assumed the great majority of disputes would be resolved in the child's home state, but the home state has no particular priority over any other state with one of the other bases for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

From the beginning the state that is the home state of the child was thought to be the state with the best information for adjudicating the child's custody in the best interests of the child. But it was also assumed that once a court took jurisdiction on any acceptable basis, that state should be able to proceed without spending contestants' time and money while sorting out the issue of which state has the best access to the evidence before adjudicating the dispute.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than the other jurisdictional grounds, that it should always be the priority ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if one of the grounds for taking jurisdiction ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remained there.

TEMPORARY EMERGENCY JURISDICTION

Under the UCCJA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" of the child. If the child is present in a state and there is evidence of abandonment or abuse to or mistreatment of the child, that state can take jurisdiction under the UCCJA.

The UCCJEA provides for temporary emergency jurisdiction, that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees in any form in which they issue has been frustrating. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction, therefore, will have its order enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the enforcement of any civil order from another state in an enacting state. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing, the next judicial day unless impossible, for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court for disposition.

If there is danger to a child or if it appears that the child will be removed from the enforcing jurisdiction, a petition may also be filed for a warrant to take physical custody of the child along with

a petition for an expedited proceeding. If the warrant issues, law enforcement officers will serve the warrant and obtain physical custody of the child.

CONCLUSION

It is not possible to cover all the details of the UCCJEA in a short summary. The best that it can do is point out the impact of major provisions. The UCCJEA does much more to update and streamline the original UCCJA, which was promulgated in 1968. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be adopted in all the states as soon as possible.

WHY STATES SHOULD ADOPT THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The Uniform Child Custody Jurisdiction Act (UCCJA), approved by the Uniform Law Commissioners (ULC) in 1968 and the law in every state, has been revised. The new act, the Uniform Child Custody Jurisdiction and Enforcement Act, goes much further than simply updating the UCCJA. It also contains provisions on the enforcement of custody orders, an issue the original UCCJA did not address, and it eliminates differences between the uniform act and the federal Parental Kidnapping Prevention Act.

There are a number of reasons why every state should adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

ENHANCED RULES FOR CUSTODY DETERMINATIONS

- *Updated Home State Provisions.* The new act gives prioritization to the home state as a ground for taking jurisdiction.
- *Continuing Exclusive Jurisdiction.* A new provision has been added which provides that a state which makes the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. A state with continuing exclusive jurisdiction is the only state which can modify a custody order. If it determines that another state has a more significant connection to the child, it may relinquish its authority.
- *Emergency Jurisdiction.* The new act clarifies the provisions regarding emergency jurisdiction, allowing a court to take jurisdiction even though it is not the home state, if the child is present in the state and has been abandoned, or is subjected to or threatened with mistreatment or abuse. An order issued by a court with emergency jurisdiction is temporary.

NEW ENFORCEMENT PROVISIONS

- *Expedited Enforcement Hearings.* At an enforcement hearing, a petitioner only needs to show a certified copy of the custody determination to be enforced, evidence of a violation by the respondent, and show the remedy sought. The court will then decide whether the remedy sought should be granted.
- *Enhanced Court Remedies.* If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Duty to Enforce. The new act provides that a court has the duty to enforce a custody determination of another state. However, a child custody order of another state is not subject to modification.

UNIFORMITY

This act will provide uniformity of law, necessary in a time when the mobility of the American public makes it imperative to have laws regarding child custody determinations uniform from state to state.

Lack of uniformity muddies the child custody waters in many ways: it increases the costs of the enforcement action; it decreases the lack of certainty of outcome; and it often turns enforcement of a child custody or visitation order into a long and drawn out process. Every state should act quickly to adopt the Uniform Child Custody Jurisdiction and Enforcement Act.