

HOUSE BILL ANALYSIS

HB 1962

Title: An act relating to the uniform child custody jurisdiction and enforcement act.

Brief Description: Adopting the uniform child custody jurisdiction and enforcement act.

Sponsors: Representatives Constantine and Carrell.

Brief Summary of Bill

- Replaces the current Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act.
- Clarifies when a state has jurisdiction over a custody proceeding involving parents residing in different states.
- Creates procedures and remedies for the enforcement of other states' custody orders.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

I. Uniform Child Custody Jurisdiction Act (UCCJA)

The UCCJA is based on model statutes developed and approved by the National Conference of Commissioners on Uniform State Laws. The conference adopted the UCCJA in 1968. The purposes of the UCCJA are, among other things, to avoid conflict between states regarding custody cases, promote cooperation and communication between states, and deter child abductions.

A. Jurisdiction

The UCCJA provides four bases for which a state may claim jurisdiction over a case to establish a custody order when not all the parties live in the same state. Jurisdiction under the UCCJA generally focuses on the child, as opposed to only on the residential status of the petitioning parent. The UCCJA does not explicitly state which basis for jurisdiction should be favored. A state may obtain jurisdiction over a child custody dispute if:

- (1) the state is the home state of the child at the time the custody proceeding was filed, and the child has resided in the state for the previous six consecutive months;
- (2) it is in the child's best interest because the child has significant connections with the state (more than just the physical presence of the child in the state is required);
- (3) the child is present in the state and has been abandoned, or in need of protection because of mistreatment, neglect, or abuse; or
- (4) no other state has jurisdiction, or another state declines jurisdiction.

A state may decline jurisdiction if it is an inconvenient forum, and another state would be a more appropriate forum. The court should consider the child's best interest and may take into account factors such as: if another state has become the child's home state; the child has closer connections with another state; evidence for the custody proceeding is more available in another state; or both parents have agreed on another forum.

A state may also decline to take jurisdiction if the person seeking jurisdiction in that state has taken the child there without permission or engaged in similar reprehensible conduct.–

B. Modification

A state may not modify another state's custody order unless the issuing state no longer has jurisdiction or declines to assume jurisdiction to modify the order, and the state modifying the order meets the jurisdictional requirements for issuing an initial order. Based on this strict standard of modification, there generally cannot be concurrent jurisdiction between states to modify an order.

C. Filing and Enforcing Foreign Custody Orders

A custody order issued from another state may be filed in the superior court of this state. The order is treated as if it were issued from this state and enforced in the same manner. An order from another state is not entitled to full faith and credit if the parties were not given reasonable notice and an opportunity to be heard.

II. Federal Parental Kidnapping Prevention Act (PKPA)

In 1980, Congress passed the PKPA, which was designed to work together with the UCCJA and to encourage states that have not adopted the UCCJA to do so.

The PKPA requires states to give full faith and credit to child custody orders issued by other states when the issuing state had jurisdiction based on the requirements of the PKPA. The PKPA jurisdictional requirements are similar to the UCCJA jurisdictional requirements, with a few exceptions.

Unlike the UCCJA, the PKPA placed priority on the child's home state. The PKPA also authorizes continuing exclusive jurisdiction in the state that issued the initial order, as long as one parent or the child resides in that state, and that state has jurisdiction over the order under its own laws. When there are conflicts between the UCCJA and the PKPA, the federal act controls.

Summary of Bill:

The UCCJA is repealed and replaced with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which was developed and approved by the National Conference of Commissioners on Uniform State Laws in 1997. The UCCJEA is similar to the UCCJA and retains many of the same provisions. The UCCJEA makes changes mainly in the jurisdiction provisions and in establishing enforcement provisions.

A. Jurisdiction

The jurisdictional provisions in the UCCJEA are consistent with the PKPA. The UCCJEA gives priority regarding jurisdiction to the child's home state. Full faith and credit cannot be given to a custody order from a state with jurisdiction based on significant connection when there is a home state.

The UCCJEA establishes when a state has continuing exclusive jurisdiction over custody matters. The state that issued the initial order remains the state with continuing exclusive jurisdiction until: (a) the child, the child's parent or any person acting as a parent no longer has any significant connection with the state, and substantial evidence is no longer available regarding the child's care, protection, training, and personal relationships in that state; or (b) the child and the parents no longer reside in the issuing state.

A state may not modify a custody order issued by another state unless the issuing state no longer has continuing exclusive jurisdiction or declines jurisdiction.

When determining whether it is an inconvenient forum for jurisdiction, the state may consider such factors as whether domestic violence has occurred and which state could best protect the parties and the child.

A person who participates in a custody proceeding in this state under the UCCJEA will not be subject to personal jurisdiction for any other proceeding because of his or her presence in this state.

B. Temporary Emergency Jurisdiction

A state's ability to obtain jurisdiction based on an emergency is clarified. The UCCJEA specifically allows a state to obtain jurisdiction temporarily when the child is present in the state, and is abandoned or needs protection because the child, or a sibling, or parent is subjected to mistreatment or abuse. The emergency custody order lasts until an order is obtained from a state having jurisdiction over the custody proceedings. The emergency custody order may become a final order if that state becomes the child's home state and there is no other existing custody order, and no custody proceeding is filed in the state that would have jurisdiction. The UCCJEA defines emergency— in conformance with the PKPA.

C. Enforcement

Procedures are established for the enforcement of custody orders under the UCCJEA. A court must enforce a registered order as if it were issued in this state. When registering another state's custody order in this state, the registering court must send notice to the parties and provide the parties with an opportunity to contest the registration. A hearing to contest the registration must be requested within 20 days of the notice. Challenge to the registration could be based on the issuing court's lack of jurisdiction, or a vacation, stay, or modification of the order being registered, or lack of notice to the person contesting the registration.

To seek enforcement of an order, a party must file a petition with the court stating certain information. The court must issue an order requiring the respondent to appear in person, with or without the child, at a hearing on the next judicial day or the first available judicial day.

If the court finds that the petitioner has the right to take immediate custody of the child, the court must issue an order granting petitioner immediate custody. The court may not enforce the custody order if the respondent establishes that the custody order is not registered and that either the issuing court lacked jurisdiction, or the order has been vacated, stayed, or modified, or the respondent did not receive proper notice of the proceedings before the order was issued. If the custody order is registered, the court still may not enforce the order if the respondent shows that the order has been vacated, stayed, or modified.

Procedures are established for the court to issue a warrant for the physical custody of the child when the child is likely to suffer serious physical harm or be removed from

the state. The prosecutor and law enforcement may become involved in enforcement under certain circumstances.

D. Miscellaneous Provisions

Upon request of a party, a court must give priority to a jurisdictional question under the UCCJEA. When courts in different states communicate with each other regarding custody proceedings, the courts must allow the parties to participate in the communication.

The UCCJEA applies to child custody proceedings pertaining to an Indian child if the federal Indian Child Welfare Act does not apply. Courts must treat a tribe as if it were a state under the UCCJEA.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research