

Summary of the Uniform Child Jurisdiction and Enforcement Act

Since 1969 the Uniform Child Custody Jurisdiction Act was enacted in all 50 states, the District of Columbia and the Virgin Islands. In 1980 the federal government enacted the Parental Kidnapping Prevention Act⁴, to address interstate custody problems that continued to exist after the adoption of the Uniform Child Custody Jurisdiction Act. The Parental Kidnapping Prevention Act mandates that state authorities give full faith and credit to other States' custody determinations, so long as those determinations were made in conformity with the provisions of the Parental Kidnapping Prevention Act. The Parental Kidnapping Prevention Act provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the Uniform Child Custody Jurisdiction Act. However, there are some significant differences. For example, under the Uniform Child Custody Jurisdiction Act there are four interchangeable bases of initial jurisdiction. In contrast, the Parental Kidnapping Prevention Act, prioritizes the "home state" jurisdiction by requiring that full faith and credit cannot be given to a State that exercises initial jurisdiction as a "significant connection State" when there is a "home State." In addition the Parental Kidnapping Prevention Act authorizes continuing exclusive jurisdiction in the decree State so long as one parent or the child remains in that jurisdiction. The Uniform Child Custody Jurisdiction Act did not directly address the issue.

The purpose of the Uniform Child Custody Jurisdiction and Enforcement Act is to revise the Uniform Child Custody Jurisdiction Act to bring the Uniform Child Custody Jurisdiction Act into compliance with the Parental Kidnapping Prevention Act and other federal statutes such as the Violence Against Women Act,⁵ as well as to make those changes to the Uniform Child Custody Jurisdiction Act which are necessary as a consequence of inconsistent court interpretations.

The Uniform Child Custody Jurisdiction and Enforcement Act is found in Article 5-A of the Domestic Relations Law. Former Article 5-A, the Uniform Child Custody Jurisdiction Act, was repealed effective April 28, 2002. The Uniform Child Custody Jurisdiction and Enforcement Act applies to all actions and proceedings commenced on or after April 30, 2002. However, a motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before April 30, 2002 is governed by the former Article 5-A.

Article 5-A is divided into four "Titles". Title 1 contains the "General Provisions" and includes sections 75 to 75-k of the Domestic Relations Law. Title 2 contains the "Jurisdiction" provisions and includes Sections 76 to 76-i of the Domestic Relations Law. Title 3 is the Enforcement portion of the Act and includes sections 77 to 77-p of the Domestic Relations Law.

The Uniform Child Custody Jurisdiction and Enforcement Act contains several changes from the Uniform Child Custody Jurisdiction Act, which are intended to avoid simultaneous proceedings and conflicting custody orders and bring the Uniform Child Custody Jurisdiction Act into compliance with the Parental Kidnapping Prevention Act.

The Uniform Child Custody Jurisdiction and Enforcement Act gives the "home state" priority, in order to bring it into conformity with the Parental Kidnapping Prevention Act, which requires full faith and credit only when the custody determination is made by the home State. Other state custody determinations are not entitled to Parental Kidnapping Prevention Act enforcement unless there is no home State.

The Uniform Child Custody Jurisdiction Act authorizes four independent bases of jurisdiction without prioritization. Under the Uniform Child Custody Jurisdiction Act a significant-connection custody determination may have to be enforced even if it would be denied enforcement under the Parental Kidnapping Prevention Act.

The emergency jurisdiction provisions of the Uniform Child Custody Jurisdiction Act do not specify that emergency jurisdiction may only be exercised to protect the child on a temporary basis until the court with jurisdiction issues a permanent order. Some courts have interpreted the Uniform Child Custody Jurisdiction Act language to so provide. Other courts have held that there is no time limit on the emergency jurisdiction. The emergency jurisdiction provisions predated the enactment of state domestic violence statutes, which are often invoked to keep one parent away from the other parent and the children when there is a threat of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the Uniform Child Custody Jurisdiction Act has been the subject of confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child. The Uniform Child Custody Jurisdiction Act provided no exception to the notice requirement, or to the ban on simultaneous proceedings, in emergency cases. Therefore, custody orders issued on a temporary emergency basis (e.g., child abuse orders or domestic violence orders of protection), prior to notice being given to all contestants or during the pendency of another custody proceeding in another State, are not enforceable in any other State pursuant to the Uniform Child Custody Jurisdiction Act, although they may have to be enforced under the Violence Against Women Act. The Uniform Child Custody Jurisdiction and Enforcement Act contains a separate section on emergency jurisdiction which addresses these issues.

The Uniform Child Custody Jurisdiction Act does not clearly state that the decree granting State retains exclusive continuing jurisdiction to modify that decree. As a consequence, different interpretations of the Uniform Child Custody Jurisdiction Act on continuing jurisdiction have resulted in conflicting custody decrees. Some New York courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. This divergence of views led to simultaneous proceedings and conflicting custody orders.

The Uniform Child Custody Jurisdiction and Enforcement Act provides, in Domestic Relations Law 76, subdivision 1, except with regard to the exercise of emergency jurisdiction⁷, the exclusive jurisdictional basis for making a child custody determination by a court of this state. A court of this state has jurisdiction to make an

initial child custody determination only if:

(A) New York is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(B) a court of another state does not have jurisdiction under Domestic Relations Law, section 76, subdivision 1, paragraph

(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Domestic Relations Law, section 76-f or 76-g, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(C) all courts having jurisdiction under Domestic Relations Law, section 76, subdivision 1, paragraph (a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Domestic Relations Law, section 76-f or 76-g; or

(D) no court of any other state would have jurisdiction under the criteria specified above. More appropriate forum jurisdiction is available under Domestic Relations Law, section 76, subdivision 1, subparagraph

(a)(3) when all States with jurisdiction under Domestic Relations Law, section 76, subdivision 1, paragraphs (a)(1) and (2) determine that New York is a more appropriate forum. The determination would have to be made by all States with jurisdiction under Domestic Relations Law, section 76, subdivision 1, (a)(1) and (2). Jurisdiction would not exist in New York simply because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under Domestic Relations Law, section 76, subdivision 1, (a)(2).

If a court of this state has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court must decline to exercise its jurisdiction unless the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; a court of the state otherwise having jurisdiction under Domestic Relations Law, section 76 through 76-b determines that this state is a more appropriate forum under Domestic Relations Law, section 76-f; or no court of any other state would have jurisdiction under the criteria specified in Domestic Relations Law, sections 76 through 76-b.10 Domestic Relations Law, section 76-a addresses continuing jurisdiction which is not addressed under the Uniform Child Custody Jurisdiction Act, and caused considerable confusion, because the Parental Kidnaping Prevention Act, requires other States to give Full Faith and Credit to custody determinations made by the original

decree State pursuant to its continuing jurisdiction so long as that State had jurisdiction under its own law and remained the residence of the child or any contestant.

Domestic Relations Law, section 76-a makes the continuing jurisdiction of the original decree State exclusive so long as the child, a parent, or person acting as a parent remains in the State and there is substantial evidence concerning the child's care, protection, training and personal relations. Even if the child has acquired a new home State, the original decree State retains exclusive continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of Domestic Relations Law, section 76-a are met. If, after the child acquires a new home State, the relationship between the child and the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find a significant connection or substantial evidence, jurisdiction would no longer exist. The original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction. The only exception is under Domestic Relations Law, section 76-a, subdivision (a)(2) when the child, parents and persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding. Continuing jurisdiction of a State is not affected by all parties leaving the State after the commencement of the modification proceeding. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under section 76-a may modify that determination only if it has jurisdiction to make an initial determination under Domestic Relations Law, section 76.

The State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the inconvenient forum principles of Domestic Relations Law, section 76-f.

The Uniform Child Custody Jurisdiction and Enforcement Act provides that a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Domestic Relations Law, section 76, subdivision 1, paragraph (a) or (b) and:

The court of the other state determines it no longer has exclusive, continuing jurisdiction under Domestic Relations Law, section 76-a or that a court of this state would be a more convenient forum under Domestic Relations Law, section 76-f; or

A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the original State no longer remains the residence of the child, the parents, or any person acting as a parent. A court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Domestic Relations Law, section 76.

The Uniform Child Custody Jurisdiction and Enforcement Act includes a sweeping definition of custody proceeding that includes virtually all cases involving custody of or visitation with a child as a "custody determination."

The jurisdictional scheme of the Uniform Child Custody Jurisdiction Act was designed to promote the best interests of the children whose custody was in question by discouraging parental abduction and providing that, in general, the State with the closest connections to and the most evidence regarding a child should decide that child's custody. However, the "best interest" language in the jurisdictional sections of the Uniform Child Custody Jurisdiction Act was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination, to provide that "best interests" considerations should override jurisdictional determinations, or to provide an additional jurisdictional basis. The Uniform Child Custody Jurisdiction and Enforcement Act eliminates the term "best interests" in order to establish clarity between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

It was unclear under the Uniform Child Custody Jurisdiction Act whether Native American tribes were intended to be included under the definition of "State." This ambiguity created uncertainty as to whether child custody determinations made by Native American tribal courts were entitled to enforcement under the Uniform Child Custody Jurisdiction Act and whether Native American tribal authorities were obliged to enforce state court determinations. The New York version of the Uniform Child Custody Jurisdiction and Enforcement Act applies to tribal custody proceedings and determinations.

There was no uniform method under the Uniform Child Custody Jurisdiction Act of enforcing custody and visitation orders validly entered in another State. Despite the fact that both the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither deals with the mechanisms for enforcement.

The Uniform Child Custody Jurisdiction and Enforcement Act provides a quick remedy along the lines of habeas corpus. The Uniform Child Custody Jurisdiction and Enforcement Act also provides that the enforcing court will be able to utilize an extraordinary remedy. 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. The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Title 2 (Jurisdiction) nor the Parental Kidnapping Prevention Act allows an enforcing court to modify a custody determination.

The Uniform Child Custody Jurisdiction and Enforcement Act contains a role for public authorities in the enforcement process. If the parties know that prosecutors and law enforcement officers are available to help in securing compliance with custody determinations, they may be deterred from interfering with the exercise of rights established by court order. Most parties do not have the resources to enforce a custody

determination in another jurisdiction. The availability of the prosecutor as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition the prosecutor may have resources to draw on that are unavailable to the average litigant. The Uniform Child Custody Jurisdiction and Enforcement Act provides a permissive role for the prosecutor and law enforcement in enforcing a custody determination. It does not authorize the prosecutor to be involved in the action leading up to the making of the custody determination except when requested by the court when there is a violation of the Hague Convention on the Civil Aspects of Child Abduction or when the person holding the child has violated a criminal statute.