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## Uniform Child Custody Jurisdiction Act

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## UNIFORM CHILD CUSTODY JURISDICTION ACT

A significant piece of legislation, the Uniform Child Custody Jurisdiction Act,<sup>1</sup> introduced for the second time in 1978, has been held over for consideration by the 1979 General Assembly. Passed by the Senate in 1977, the bill implementing the Act was killed in the House that year because, according to the bill's patron, Senator Joseph V. Gartlan, Jr., the short session in 1977 failed to provide sufficient time for House members to study the legislation. But Senator Gartlan is optimistic about the bill's chances in 1979 and this Comment proposes not only to explicate the major provisions of the Act but also to urge its swift passage. Designed to protect the interests of children caught in the tragic web of feuding relatives and endless custody litigation, the Act is the *sine qua non* insuring that custody determinations no longer will be circumscribed by the barbaric notion that "to the possessor belong the spoils."<sup>2</sup>

Approved in 1968 by the National Conference of Commissioners on Uniform State Laws and the American Bar Association, the Act has since been adopted in seventeen states.<sup>3</sup> Commentators have been unanimously enthusiastic<sup>4</sup> and, clearly, the Act's purposes leave little room for negativism. It is intended to: (1) avoid the jurisdictional competition which has marked many custody battles to the serious detriment of the children involved; (2) promote cooperation with courts of other states; (3) assure that custody litigation normally takes place in the state with which the child and the family have the most significant connections and where the maximum amount of evidence relating to the child's care and relationships is available; (4) discourage serial re-opening of custody disputes; (5) deter "child snatching" and other removals of children undertaken to obtain or regain custody; (6) avoid re-litigation of out-of-state custody decisions; (7) facilitate the enforcement of properly adjudicated, out-of-state custody

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1. S. B. 399, Gen. Assembly, 1978 Sess., (proposed Va. Code Ann. §§ 20-124 through 20-146). See generally 9 U.L.A. 99 (1973).

2. Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011 (1977).

3. Alaska, California, Colorado, Delaware, Florida, Hawaii, Indiana, Iowa, Maryland, Michigan, Minnesota, North Dakota, New York, Oregon, Pennsylvania, Wisconsin and Wyoming.

4. See e.g. Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969); Foster & Freed, *supra* note 2; Podell, Peck & First, *Custody to Which Parent?*, 56 MARQ. L. REV. 51 (1973); Walther, *Uniform Child Custody Jurisdiction Act*, 54 MARQ. L. REV. 161 (1971); Note, *Uniform Child Custody Jurisdiction Act: An Attempt to Stop Child Rustling*, 12 WILLAMETTE L. J. 623 (1976).

decrees; (8) promote cooperation between courts of all states concerned with the same child; (9) unify the law of adopting states.<sup>5</sup>

The basic scheme of this legislation is that one court assumes responsibility for custody decisions involving a particular child. Under normal circumstances, this court is one in the "home state" of the child. The home state is that state in which the child lived with parents, a parent, or a person acting as parent, for at least six months preceding the time involved.<sup>6</sup> The jurisdiction of the home state court continues for six months after removal of the child if a parent or person acting as parent remains in the home state.<sup>7</sup> This provision, coupled with the stipulation that physical presence of the child ". . . while desirable, is not a prerequisite for jurisdiction . . .,"<sup>8</sup> precludes the courts of any state adopting the Act from exercising custody jurisdiction in the "snatch and run" cases where one parent has removed the children from their physical custodian in the home state and seeks custody in a second state. These provisions also mean that in cases where a couple separates after living in state A for at least six months, and one spouse moves with the children to state B, the remaining spouse can file for custody in the home state, state A, within six months and the courts in state B are then precluded from acting. These provisions are consistent with the theory behind state long-arm statutes and provide that the home state nexus to the basis for adjudication of custodial status even if the child is not present.

The legislation contains a "clean hands" provision which allows a court to decline to exercise jurisdiction where the petitioner has wrongfully taken the child from another state.<sup>9</sup> Furthermore, the act mandates refusal to entertain the action where the petitioner has taken or retained the child in violation of a court decree, unless sufficient conditions exist to bring into play the Act's provision for jurisdiction by emergency, a very limited exception to the normal jurisdictional requirements.<sup>10</sup>

The major focus of the Act is to insure that custody disputes will be handled in a state where the maximum amount of evidence exists to aid the court in its determination. Thus, where there is no clear home state, the Act provides that a court may ". . . assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a

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5. S. B. 399, Gen. Assembly, 1978 Sess., § 20-124 [hereinafter cited as Bill]; 9 U.L.A. 103 § 1 (1973) [hereinafter cited as Act].

6. Bill § 20-125 (5); Act § 2 (5).

7. Bill § 20-126 (A) (1); Act § 3 (a) (1).

8. Bill § 20-126 (C); Act § 3 (c).

9. Bill § 20-131 (A); Act § 8 (a).

10. Bill §§ 20-126 (A) (3), -131 (B); Act §§ 3 (a) (3), 8 (b).

significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships . . . ."<sup>11</sup>

Where possibilities exist for conflicting jurisdiction under the Act, the doctrines of priority in time<sup>12</sup> and *forum non conveniens*<sup>13</sup> are applied. The Act also provides for courts to render full assistance to each other by providing documents,<sup>14</sup> testimony in deposition form,<sup>15</sup> social histories,<sup>16</sup> or by ordering the appearance of any necessary parties.<sup>17</sup>

Two important factors of the legislation are its provisions making a custody decree rendered under proper jurisdictional requirements binding on all parties served in this state or notified under the Act<sup>18</sup> and its provisions for recognition and enforcement of out-of-state custody decrees rendered under proper jurisdictional requirements.<sup>19</sup> This interstate recognition of custody decrees rendered under the Act's jurisdictional requirements meets the minimum contacts test outlined by the Supreme Court whether the custody action is viewed as one *in personam* or *in rem*<sup>20</sup> and fairness standards are insured by the Act's provisions for notice.<sup>21</sup>

One of the major impediments to stable, permanent custody decisions has been the notion that custody is a status freely modifiable. Thus, custody decrees have been viewed as non-final and in no way subject to foreign enforcement under the full faith and credit clause of the Constitution.<sup>22</sup> The sections providing for recognition and enforcement of foreign custody decrees, together with that disallowing modification of the custody decrees properly rendered in other states unless the foreign court has declined to exercise jurisdiction to modify, would change the trend of case law in Virginia and across the country and afford children the stability so necessary to healthy development. Most experts agree that ". . . poor parental models are easier to adapt to than ever shifting ones,"<sup>23</sup> and advocate that

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11. Bill § 20-126 (A) (2); Act § 3 (a) (2).

12. Bill § 20-129; Act § 6.

13. Bill § 20-130; Act § 7.

14. Bill §§ 20-140, -145; Act §§ 17, 22.

15. Bill § 20-141; Act § 18.

16. Bill § 20-142; Act § 19.

17. Bill §§ 20-142, -143; Act §§ 19, 20.

18. Bill § 20-135; Act § 12.

19. Bill § 20-136; Act § 13.

20. See *Shaffer v. Heitner*, 97 S. Ct. 2569 (1977).

21. Bill § 20-128; Act § 5.

22. *May v. Anderson*, 345 U.S. 528, 535 (1953) (the dissenter, Jackson, J., emphasized that the majority's approach reduced ". . . the law of custody to a rule of seize-and-run." *Id.* at 542); *Osborne v. Osborne*, 215 Va. 205, 207 S.E.2d 875 (1974).

23. A. Watson, *PSYCHIATRY FOR LAWYERS* 197 (1968).

custody decisions once made should be immutable for at least one or two years.<sup>24</sup> The Act does not provide any escape hatch for having custody decisions changed unless the child's situation amounts to an emergency but if the experts are correct, a somewhat inadequate but permanent parental figure may be less harmful to a child than the confusion resulting from even infrequent custody changes.

This legislation represents a major step toward protecting our children in a society of increasing mobility and shifting family relationships. A workable substitute for self-help, its adoption will mark a maturing of our legal system. It not only covers such cases as the famous Mellon snatches<sup>25</sup> but also the more prevalent separation, divorce, parental death and abandonment situations. It will prevent children from being pawns in a game of parental revenge or the victims of punitive custody decrees, "awarded" to one parent because the other has defied a court order with the "dignity of the court" taking precedence over the interests of the child.<sup>26</sup> If the welfare of the child is truly of paramount importance in custody litigation, then we should heed the experts and end the judicial trend of easy modification of custody decrees. Such a change will have the effect of increasing the care used and the sense of responsibility felt by the judge in each case. The mandates for cooperation among courts of the various states where the evidence exists will insure that the judge has the full facts before him. Can we offer our children anything less?

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24. See R. Levy, *UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS* (1969); ALLEN, FERSTER & J. RUBIN, *READINGS ON LAW AND PSYCHIATRY* 319-22 (1968).

25. After a separation in Pennsylvania awarding custody to the father, Mrs. Mellon, in 1974, illegally removed the children to New York and, in 1976, was given custody by a New York court. Shortly thereafter, Mr. Mellon engineered a spectacular heist of the children, including armed agents and private planes. See *N.Y. Times*, March 21, 1976, at 1, col. 7.

26. Bodenheimer, *supra* note 4, at 1238-39.