

UNIFORM CHILD CUSTODY JURISDICTION ACT

1968 ACT

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Be it enacted

§ 1. [Purposes of Act; Construction of Provisions]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is

rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

COMMENT

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

§ 2. [Definitions]

As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, *Domestic Relations* 576-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.

§ 3. [Jurisdiction]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a 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; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4)(i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

COMMENT

Paragraphs (1) and (2) of subsection (a) establish the two major bases for jurisdiction. In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 and 7 are used to assure that only one state makes the custody decision.

"Home state" is defined in section 2(5). A 6-month period has been selected in order to have a definite and certain test which is at the same time based on a reasonable assumption of fact. See Ratner, *Child Custody in a Federal System*, 62 Mich.L.Rev. 795, 818 (1964) who explains:

"Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home."

Subparagraph (ii) of paragraph (1) extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. The main objective is to protect a parent who has been left by his spouse taking the child along. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. See also subsection (c).

Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test. The first situation arises, for example, when a family has moved frequently and there is no state where the child has lived for 6 months prior to suit, or if the child has recently been removed from his home state and the person who was left behind has also moved away. See paragraph (1), last clause. A typical example of alternative jurisdiction is the case in which the stay-at-home parent chooses to follow the departed spouse to state 2 (where the child has lived for several months with the other parent) and starts proceedings there. Whether the departed parent also has access to a court in state 2, depends on the strength of the family ties in that state and on the applicability of the clean hands provision of section 8. If state 2, for example, was the state of the matrimonial home where the entire family lived for two years before moving to the "home state" for 6 months, and the wife returned to state 2 with the child with the consent of the husband, state 2 might well have jurisdiction

upon petition of the wife. The same may be true if the wife returned to her parents in her former home state where the child had spent several months every year before. Compare *Willmore v. Willmore*, 273 Minn. 537, 143 N.W.2d 630 (1966), cert. denied 385 U.S. 898 (1966). While jurisdiction may exist in two states in these instances, it will not be exercised in both states. See sections 6 and 7.

Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be an intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.

Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than to proliferate it. The first clause of the paragraph is important: jurisdiction exists only if it is in the child's interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction. See *Clark, Domestic Relations* 578 (1968).

Paragraph (3) of subsection (a) retains and reaffirms parens patriae jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See *Application of Lang*, 9 App.Div.2d 401, 193 N.Y.S.2d 763 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subsequent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

§ 4. [Notice and Opportunity to be Heard]

Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft sec. 69 (1967); and compare *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

§ 5. [Notice to Persons Outside this State; Submission to Jurisdiction]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court [including publication, if other means of notification are ineffective].

(b) Notice under this section shall be served, mailed, or delivered, [or last published] at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

COMMENT

Section 2.01 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) and *Schroeder v. City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See *Mullane v. Central Hanover Bank and Trust Co.*, supra; and see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Rev. 241, 277, 286-87. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices in addition

to the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

§ 6. [Simultaneous Proceedings in Other States]

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this State has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

§ 7. [Inconvenient Forum]

(a) A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 84 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (e) is derived from Wis.Stat. Ann., sec. 262.19(1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis.Stat. Ann., sec. 262.20. Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as G.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

§ 8. [Jurisdiction Declined by Reason of Conduct]

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the

circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 Mich.L.Rev. 345 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See Fain, *Custody of Children*, *The California Family Lawyer* I, 539, 546 (1961); *Ex Parte Mullins*, 26 Wash.2d 419, 174 P.2d 790 (1946); *Crocker v. Crocker*, 122 Colo. 49, 219 P.2d 311 (1950); and *Leathers v. Leathers*, 162 Cal.App.2d 768, 328 P.2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the well being of the child, it is often not applied. See *Smith v. Smith*, 135 Cal.App.2d 100, 286 P.2d 1009 (1955) and *In re Guardianship of Rodgers*, 100 Ariz. 269, 413 P.2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the husband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated-both husband and wife as a rule have a right to custody until a court determination is made-but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention refusal of jurisdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare *Smith v. Smith* and *In Re Guardianship of Rodgers*, *supra*; and see *In Re Walter*, 228 Cal.App.2d 217, 39 Cal.Rptr. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection (b) makes refusal of jurisdiction entirely discretionary in this situation because it depends

on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.

§ 9. [Information under Oath to be Submitted to the Court]

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

§ 10. [Additional Parties]

If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this State he shall be served with process or otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

§ 11. [Appearance of Parties and the Child]

[(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.]

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorizes the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision-not only in their juvenile court laws-may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalize the expense if this is appropriate under the circumstances.

§ 12. [Binding Force and Res Judicata Effect of Custody Decree]

A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from

support actions (see section 2(2) supra), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 79 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with *May v. Anderson*, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221 (1953), which relates to interstate recognition rather than in-state validity of custody decrees. See Ehrenzweig and Louisell, Jurisdiction in a Nutshell 76 (2d ed. 1968); and compare Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L.Rev. 183, 195 (1957). On *May v. Anderson*, supra, see comment to section 13.

Since a custody decree is normally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

§ 13. [Recognition of Out-of-State Custody Decrees]

The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see Ratner, Child Custody in a Federal System, 62 Mich.L.Rev. 795, 828 (1964).

Although the full faith and credit clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognize and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, supra. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, *Ford v. Ford: Full Faith and Credit to Child Custody Decrees?* 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognize and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in *May v. Anderson*, 345 U.S. 528, 73

S.Ct. 840, 97 L.Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 79 and comment thereto, p. 298 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in *May v. Anderson*; and compare Clark, *Domestic Relations* 323-26 (1968), Goodrich, *Conflict of Laws* 274 (4th ed. by Scoles, 1964); Stumberg, *Principles of Conflict of Laws* 325 (3rd ed. 1963); and Comment, *The Puzzle of Jurisdiction in Child Custody Actions*, 38 U.Colo.L.Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, *Inter-state Recognition of Custody Decrees*, 51 Mich.L.Rev. 345, 370 (1953). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See *Berlin v. Berlin*, 21 N.Y.2d 371, 235 N.E.2d 109 (1967); and *Stout v. Pate*, 120 Cal.App.2d 699, 261 P.2d 788 (1953); Compare *Moniz v. Moniz*, 142 Cal.App.2d 527, 298 P.2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

§ 14. [Modification of Custody Decree of Another State]

(a) If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S.Ct. 903, 91 L.Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare Ratner, *Child Custody in a Federal System*, 62 Mich.L.Rev. 795, 821-2 (1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6 1/2 months (3 1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See Clark, *Domestic Relations* 322-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare *Bregle v. Hurst*, 408 S.W.2d 418 (Ky.1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 8(b) and state 1 would have modification jurisdiction in any event under section 3(a)(4). Compare *Crocker v. Crocker*, 122 Colo. 49, 219 P.2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction now, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also *Sharpe v. Sharpe*, 77 Ill.App. 295, 222 N.E.2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcripts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant" says Paulsen, *Appointment of a Guardian in the Conflict of Laws*, 45 Iowa L.Rev. 212, 226 (1960). See also Ehrenzweig, *the Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings*, 64 Mich.L.Rev. 1, 6-7 (1965); and Ratner, *Legislative Resolution of the Interstate Custody Problem: A reply to Professor Currie and a Proposed Uniform Act*, 38 S.Cal.L.Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what conditions it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

§ 15. [Filing and Enforcement of Custody Decree of Another State]

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any [District Court, Family Court] of this State. The clerk shall treat the decree in the same manner as a custody decree of the [District Court, Family Court] of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognized are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, *Child Custody in a Federal System*, 62 Mich.L.Rev. 795, 832-33 (1964).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 *Armstrong*, California Family Law 328 (1966 Suppl.), and *Crocker v. Crocker*, 195 F.2d 236 (1952).

§ 16. [Registry of Out-of-State Custody Decrees and Proceedings]

The clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:

- (1) certified copies of custody decrees of other states received for filing;
- (2) communications as to the pendency of custody proceedings in other states;
- (3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 35 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only

those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

§ 17. [Certified Copies of Custody Decree]

The Clerk of the [District Court, Family Court] of this State, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

§ 18. [Taking Testimony in Another State]

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 326 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extralittigious Proceedings, 64 Mich.L.Rev. 1 (1965). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

§ 19. [Hearings and Studies in Another State; Orders to Appear]

(a) A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State; and to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].

(b) A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings, and if that party has physical custody

of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

§ 20. [Assistance to Courts of Other States]

(a) Upon request of the court of another state the courts of this State which are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State [or may order social studies to be made for use in a custody proceeding in another state]. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced [and any social studies prepared] shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this State may voluntarily give his testimony or statement in this State for use in a custody proceeding outside this State.

(c) Upon request of the court of another state a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 18 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02(b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

§ 21. [Preservation of Documents for Use in Other States]

In any custody proceeding in this State the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches [18, 21] years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

§ 22. [Request for Court Records of Another State]

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19 and 14(b).

§ 23. [International Application]

The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare *Application of Lang*, 9 App.Div.2d 401, 193 N.Y.S.2d 763 (1959) and *Swindle v. Bradley*, 240 Ark. 903, 403 S.W.2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognized and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare *Restatement of the Law Second, Conflict of Laws, Proposed Official Draft*, sections 10, 92, 98, and 109(2) (1967). Compare also *Goodrich Conflict of Laws 390-93* (4th ed., Scoles, 1964).

[§ 24. [Priority]]

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

§ 25. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 26. [Short Title]

This Act may be cited as the Uniform Child Custody Jurisdiction Act.

§ 27. [Repeal]

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

§ 28. [Time of Taking Effect]

This Act shall take effect