

MEMORANDUM

TO: Drafting Committee for the Nonparental Child Custody and Visitation Act

FROM: Debra Lehrmann, Chair
Jeff Atkinson, Reporter

DATE: October 9, 2017

RE: List of issues for discussion at Drafting Committee Meeting

This memo presents a list of issues that will be discussed at the October 13 – 14 Drafting Committee meeting. The list is based on the issues described in the “Reporter’s Notes” to the September 21 draft and on memos which have been circulated in the last three weeks. Committee members can raise additional issues for discussion.

At the end of this memo, is a list the documents that have been sent to the committee. The documents also have been posted on the ULC website:
<http://uniformlaws.org/Committee.aspx?title=Nonparental%20Child%20Custody%20and%20Visitation%20Act>

The order of issues is generally presented chronologically relative to the draft – although some issues may be discussed out of sequence because a committee member may be able to attend only the Friday session.

List of Issues for Discussion

1. Insertion of the word “civil” [law] in definitions of “child abuse” and “child neglect”, as well as in the definition of “domestic violence.” Sections 102(2), (3), (7) [i.e., clarifying that the cross-references to state law to is to the state’s civil law – not criminal law].
2. Scope [Section (103)] – Multiple issues:
 - A. Delete the phrase “over objection of a parent” in subparagraph (a) (“This act governs a proceeding in which a nonparent seeks custody of or visitation with a child over the objection of a parent.” Reason: to make sure parent and nonparent are allowed to enter agreed orders.)
 - B. In subparagraph (c), should the act not apply to an individual who parental rights have been terminated?

- C. In subparagraph (c), should the act apply or not apply to children who are the subject of guardianship proceedings? (Perhaps a legislative note about having the act apply or not apply based on whether the state's law for guardianship of minors laws allow a court to order visitation for a nonparent)
 - D. In subparagraph (c), does the wording of the ICWA provision meet our needs? ("This [act] does not apply: . . . (3) to an Indian child, to the extent that a proceeding concerning the child is governed by the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1923;")
 - E. In subparagraph (c) [or another subsection], should we have a provision which provides: "This [act] does not apply: . . . (5) to the right of a former foster parent to seek custody of or visitation with a child .]
3. Should the act contain a section (or subsections) regarding "Effect of Adoption of Child" (Section 104). See Issues memo of October 6.
 4. Compensation to consistent caretakers (Sections 106 & 112):
 - A. Should we change the language regarding the requirement that the nonparent "has acted as a consistent caretaker of the child without expectation of financial compensation." The Reporter's Note describes the issue and lists options.
 - B. Should the lack-of-compensation requirement (however it is phrased) also apply to those seeking custody or visitation based on "substantial relationship"/"detriment"?
 5. Should the sections Standing and Elements (Section 106 & 112) track the UCCJEA language which requires the six-consecutive-month period be "immediately before commencement of a child custody proceeding"?
 6. In the sections on Standing, Petition, and Elements (Section 106, 107 & 112), should the act contain Legislative Notes regarding using the word "harm" instead of "detriment."? See memos – one each from Cathy Sakimura and the Reporter.
 7. Should the act provide that notice be given to "the child, if the child is at least 12 years of age"? (Section 108(3))

8. Should the section on “Parental Presumption” (Section 111) contain added provisions (or Comment) regarding the applicable presumption when parents differ about a nonparent’s request for visitation or custody? See issues memo of October 6, topic #1 (which has an incorrect boldface caption).
9. Should the section on “Elements” (Section 112(a)) add the bracketed phrase: “(a) A court may grant custody or visitation to a nonparent [who has standing under this [act]] if the nonparent proves by clear-and-convincing evidence that:”?
10. Should the section on “Elements” (Section 112) add the two subparagraphs:
[(b) A court may grant visitation to a nonparent who commenced a proceeding seeking custody.]
[(c) A court may grant custody to a nonparent who commenced a proceeding seeking visitation.]?
11. Should the act provide a more flexible standard for allowing grandparents to seek and obtain visitation? (Section 106 & 112 and perhaps elsewhere)
12. Domestic violence issues:
 - A. Should we have the domestic violence provisions [113(4) & 114(a)] apply regardless of against whom the acts of domestic violence (or related offenses) were committed – or should we retain the list of applicable victims?
 - B. To overcome a presumption regarding domestic violence, should the burden be preponderance of the evidence or clear and convincing evidence? (Section 114(b))
 - C. Should the section on domestic violence presumption, have alternative language that applies a state’s existing law? (Section 114, Alternative B)
13. In the section on “Cost of Facilitating Visitation” (Section 117), should there be text or comment that this section does not cover attorney’s fee. (Attorney’s fees are in Section 119.)
14. In the section on “Attorney’s Fees” (Section 119), should we retain the bracketed language (without brackets): “In a proceeding under this [act], the court may allocate and order payment of attorney’s fees, including interim fees, and costs among the parties to a proceeding [, except that a parent may not be ordered to pay the fees and

costs of another party unless the parent asserted a position without merit in the proceeding].

15. Should we revisit the issue of whether the act should have separate standards for seeking custody versus visitation? (See appendix at end of draft of act, pages 28 & 29)

Documents that have been sent to the committee for this meeting (via Lucy Grelle), and the dates on which they were sent:

1. Draft of the act – Sept. 21
2. Compare-draft of act (compared to Annual Meeting draft) – Sept. 21
3. Comments from Cathy Sakimura – Aug. 25
4. Reporter's response to Comments from Cathy Sakimura – Sept. __ [?]
5. Memo on three issues from Reporter – Oct. 6
6. PowerPoint on Defacto Parentage – Oct. 9
7. This memo with list of 15 issues for discussion – Oct. 9

As noted, the documents also have been posted on the ULC website:

<http://uniformlaws.org/Committee.aspx?title=Nonparental%20Child%20Custody%20and%20Visitation%20Act>