

DRAFT  
FOR DISCUSSION ONLY

# **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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March 24-25, 2017 Drafting Committee Meeting

*VERSION 2*

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March 21, 2017

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# **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

## **TABLE OF CONTENTS**

PREFATORY NOTE.....	1
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### **ARTICLE 1**

#### **GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. ....	3
SECTION 102. DEFINITIONS.....	3
SECTION 103. SCOPE. ....	5
SECTION 104. ADOPTION OF CHILD BY CERTAIN INDIVIDUALS.....	5

### **ARTICLE 2**

#### **PROCEEDING TO ADJUDICATE NON-PARENT CHILD CUSTODY AND VISITATION**

SECTION 201. JURISDICTION.....	5
SECTION 202. STANDING. ....	5
SECTION 203. [PETITION].....	7
SECTION 204. NOTICE.....	7
SECTION 205. TEMPORARY ORDER IN PENDING PROCEEDING. ....	8
SECTION 206. PARENTAL PRESUMPTION.....	9
SECTION 207. BURDEN OF PROOF. ....	9
SECTION 208. CUSTODY.....	9
SECTION 209. VISITATION.....	10
SECTION 210. BEST INTERESTS OF CHILD. ....	10
SECTION 211. PRESUMPTION REGARDING DOMESTIC VIOLENCE, CHILD ABUSE, SEXUAL ASSAULT OR STAULKING. ....	12
SECTION 212. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	13

### **ARTICLE 3**

#### **MISCELLANEOUS PROVISIONS**

SECTION 301. FINAL ORDER. ....	13
SECTION 302. MODIFICATION. ....	14
SECTION 303. OTHER RIGHT AND REMEDY.....	14
SECTION 304. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	14
SECTION 305. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	14
SECTION 306. TRANSITIONAL PROVISION.....	14
SECTION 307. SEVERABILITY.....	14
SECTION 308. REPEALS; CONFORMING AMENDMENTS. ....	15
SECTION 309. EFFECTIVE DATE.....	15

## PREFATORY NOTE

The Non-Parental Child Custody and Visitation Act provides procedures and factors for courts to apply when asked to grant custody or visitation to non-parents. The act seeks to balance, within constitutional restraints, the interests of children, parents, and non-parents with whom the children have close relationships.

Continuation of a relationship between a child and a non-parent can be an important – and even vital – interest, both for the child and the non-parent. When deciding whether to grant relief to a non-parent, courts must, of course, consider the rights of parents. The U.S. Supreme Court has recognized a right of a fit parent to make decisions regarding the rearing of his or her child.

*Troxel v. Granville*, 530 U.S. 57, 68-69 (2000).

In 2016, the Census Bureau reported that there were 73,745,000 children in United States under age 18. Of that number, the breakdown for the children’s living arrangements was:

- Living with both parents: 50,679,000
- Living with mother only: 17,223,000
- Living with father only: 3,006,000
- Living with neither parent: 2,836,000
- Of the children living with neither parent, 1,556,000 were living with grandparents.

U.S. Census Bureau, America’s Families and Living Arrangements: 2016, Table C2, Household Relationship and Living Arrangements of Children Under 18 Years, by Age and Sex: 2016 44 available at <https://www.census.gov/hhes/families/data/cps2016C.html>

A meaningful distinction exists between children being raised by non-parents and those who are being raised by one or more parents, but have a substantial relationship with a non-parent. Therefore, this act provides guidance for courts as they adjudicate the rights of non-parents in two situations:

(1) when the child is being or has been raised by a non-parent for a specific period of time, and due to bonding and attachment issues, detriment to the child will result if custody or visitation is not granted between the child and the non-parent; and

(2) when the child has a substantial relationship with a non-parent, even though the child has not lived with the non-parent for the amount of time specified in situation 1 above, and detriment to the child will result if visitation is not granted.

A grandparent may qualify for either situation 1 or situation 2, and bracketed language allows states to provide grandparents with additional rights if the grandparent is a parent of a child who is deceased or has no contact with the child in question.

1 The main provisions of this act are:

2  
3 ☐ a right to seek custody or visitation for two categories of persons: (1) non-parents who have  
4 actually lived with the child and undertaken caretaking responsibilities for the child, and (2) non-  
5 parents who have a substantial relationship with the child. Both categories must demonstrate that  
6 denial of custody or visitation would be a detriment to the child;

7  
8 ☐ a requirement that the pleadings be verified and specify the facts on which the request for  
9 custody or visitation is based;

10  
11 ☐ A requirement of notice to: (1) any parents whose parental rights have not been previously  
12 terminated; and (2) any person having physical custody of, or visitation with, the child.

13  
14 ☐ a rebuttable presumption that a fit parent's decision about custody or visitation is in the best  
15 interests of the child;

16  
17 ☐ a burden of proof on the petitioner of [clear and convincing evidence] [preponderance of  
18 evidence];

19  
20 ☐ protections for victims of domestic violence;

21  
22 ☐ a list of factors to guide the court's decision;

23  
24 ☐ a provision that a non-parent granted visitation may be ordered to pay the cost of facilitating  
25 visitation, including the cost of transportation;

26  
27 ☐ a provision that the act does not apply to children who are the subject of proceedings for  
28 guardianship, abuse, neglect, or dependency; and

29  
30 ☐ a provision that the rights and remedies of this act are not exclusive and do not preclude  
31 additional rights and remedies under laws of the state other than this act.  
32

1                   **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

2                                   **ARTICLE 1**

3   **GENERAL PROVISIONS**

4                   **SECTION 101. SHORT TITLE.** This [act] may be cited as the Non-Parental Child  
5 Custody and Visitation Act.

6                   **SECTION 102. DEFINITIONS.** In this act:

7                   (1) “Child” means an unemancipated individual who has not attained [18] years of age.

8                   (2) “Child abuse” means child abuse as defined in [cite to definition of “child abuse” in  
9 law of this state other than this [act]].

10                  (3) “Child neglect” means child neglect as defined in [cite to definition of “child neglect”  
11 in law of this state other than this [act]].

12                  (4) “Custodian” means an individual with right of custody of a child.

13                  (5) “Custody” means physical custody, legal custody, or both. The term includes joint  
14 custody or shared custody as defined by the law of this state other than this [act].

15                  (6) “Detriment to the child” means adverse effect to the child’s physical or psychological  
16 well-being, including an effect resulting from interruption of a substantial beneficial relationship  
17 with the child or removal of the child from a stable placement with a non-parent.

18                  (7) “Domestic violence” means domestic violence as defined in [cite to definition of  
19 “domestic violence” in law of this state other than this [act]].

20                  (8) “Electronic” means relating to technology having electrical, digital, magnetic,  
21 wireless, optical, electromagnetic, or similar capabilities.

22                  (9) “Legal custody” means the power to make important decisions regarding a child,  
23 including decisions regarding the child’s education, health care, and extracurricular activities.

24                  (10) “Non-parent” means an individual other than a parent.

1 (11) “Parent” means an individual recognized as a parent under law of this state other  
2 than this [act].

3 (12) “Parental responsibility” means exercising care and control of a child and making  
4 decisions regarding the health, welfare, and other needs of the child.

5 (13) “Parenting time” means parenting time as defined in [cite to definition of “parenting  
6 time” in law of this state other than this [act].]

7 (14) “Person” means an individual, estate, business or nonprofit entity, public  
8 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
9 entity.

10 (15) “Physical custody” means day-to-day care and supervision of a child.

11 (16) “Record” means information that is inscribed on a tangible medium or that is stored  
12 in an electronic or other medium and is retrievable in perceivable form.

13 (17) “Sexual assault” means sexual assault as defined in [cite to definition of “sexual  
14 assault” in law of this state other than this [act]].

15 (18) “Significant relationship” means a relationship between a parent and another  
16 individual that is ... [romantic in nature].

17 (19) “Stalking” means stalking as defined in [cite to definition of “stalking” in law of this  
18 state other than this [act]].

19 (20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
20 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
21 the United States. The term includes a federally recognized Indian tribe.

22 (21) “Substantial relationship” means a relationship in which a significant emotional  
23 bond exists between the non-parent and the child in light of the frequency of contact between the



1 non-parent and the child, the caretaking responsibilities exercised by the non-parent, and the  
2 likely impact upon the child if the relationship were to end.

3 (22) “Visitation” means the right to spend time with a child, including any overnights.

#### 4 **SECTION 103. SCOPE.**

5 (a) This [act] does not apply if the child is the subject of a proceeding [cite to law of this  
6 state other than this [act] regarding custody and visitation of a child related to guardianship of a  
7 person, abuse, neglect or dependency].

8 (b) If a child subject to a proceeding under this [act] is an Indian child as defined by the  
9 Indian Child Welfare Act, the Indian Child Welfare Act governs where applicable.

#### 10 **SECTION 104. ADOPTION OF CHILD BY CERTAIN INDIVIDUALS.**

11 (a) A [final] order of adoption of a child by a relative, stepparent, or cohabitant of a parent to  
12 the child does not preclude a non-parent from filing a petition for custody or visitation under this  
13 [act].

14 (b) A [final] order issued under this [act] entered into prior to commencement of the  
15 proceedings listed in (a) remains in effect and is not superseded by a [final] order in that proceeding  
16 unless modified.

### 17 **ARTICLE 2**

#### 18 **PROCEEDING TO ADJUDICATE NON-PARENT**

#### 19 **CHILD CUSTODY AND VISITATION**

20 **SECTION 201. JURISDICTION.** Subject to section 103(b), a court only has  
21 jurisdiction to determine custody or visitation under this [act] if the court has jurisdiction under  
22 [cite to this state’s Uniform Child Custody Jurisdiction and Enforcement Act].

#### 23 **SECTION 202. STANDING.**

24 (a) A proceeding to adjudicate custody or visitation may be maintained by a non-parent

1 who:

2 (1) Has assumed a caretaking role while residing with the child for [6 months] or  
3 more, including temporary absences, ending not more than 90 days preceding the date of the  
4 filing of the petition,

5 (2) Has a substantial relationship with the child and denial of custody or visitation  
6 would result in a detriment to the child, or

7 (3) Is a grandparent of a child who is the parent of the child who is the subject of  
8 the proceeding, and the grandparent's child:

9 (A) Has been incarcerated in jail or prison during the 3 months preceding  
10 the filing of the petition;

11 (B) Has been found by a court to be incompetent;

12 (C) Is dead; or

13 (D) Does not have actual or court-ordered access to the child;

14 (b) A proceeding to adjudicate custody or visitation may not be maintained by:

15 (1) A parent whose parental rights to the child have been terminated under law of  
16 this state other than this [act] or of another state;

17 (2) A spouse or a person who has a significant relationship with a parent and is  
18 living with the parent. (DHL: should we define significant relationship?)

19 (c) The court shall determine standing on the basis of pleadings and affidavits under  
20 Section 203 unless the court determines that a hearing is necessary to determine disputed facts.  
21 The court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to  
22 determine disputed facts that are necessary and material to the issue of standing.

1           **SECTION 203. [PETITION].**

2           (a) The petition [must be verified by the petitioner] [accompanied by a signed affidavit  
3 based on knowledge and belief] and must specify the facts upon which the action is based,  
4 including:

5                   (1) the duration and the nature of the relationship between the non-parent and the  
6 child, including the period of time, if any, that the non-parent and the child have resided together  
7 and a description of the caretaking that the non-parent provided;

8                   (2) the content of any agreement entered between the parties regarding caretaking  
9 for the child and custody, visitation, or other contact with the child;

10                  (3) information about whether any compensation was provided to the non-parent  
11 in exchange for care of the child and the amount thereof;

12                  (4) a description of any attempts by the non-parent to obtain custody, visitation or  
13 other contact with the child;

14                  (5) the information required by [cite to Section 209 of this state's Uniform Child  
15 Custody Jurisdiction and Enforcement Act];

16                  (6) reasons why a continuing relationship between the non-parent and the child is  
17 in the best interests of the child; and

18                  (7) reasons why denial of custody or visitation to the non-parent and the child  
19 would result in a detriment to the child.

20           (b) If an agreement between the parties regarding the relationship between the non-parent  
21 and the child exists and is in writing, a copy of the agreement must be attached to the pleading.

22           **SECTION 204. NOTICE.** The non-parent must provide notice of the petition to the  
23 following individuals, who must be made parties to the proceeding:

1 (a) Any parent whose parental rights have not been previously terminated under law of  
2 this state other than this act or of another state; and

3 (b) Any person having physical or legal custody of, or visitation with, the child.

4 **SECTION 205. TEMPORARY ORDER IN PENDING PROCEEDING.**

5 (a) On motion of a party or motion of the court, [and after opportunity for hearing], the  
6 court may issue a temporary order. Sections 101 through 204 and 206 through 307 apply to  
7 temporary orders issued under this [section].

8 (b) To the extent available to determine custody of or visitation of a child under the law  
9 of this state other than this act, the court may issue an order in a proceeding under this act:

10 (1) Appointing a child's attorney, a guardian ad litem, a child's representative, or  
11 similar individual;

12 (2) Requiring mediation or other forms of alternative dispute resolution between  
13 the parties to the proceeding, unless a party who has been the victim of domestic violence by  
14 another party to the proceeding objects to participating in an alternative form of dispute  
15 resolution [unless the court can issue an order adequately protecting during the alternative form  
16 of dispute resolution the safety of the party who was victim of domestic violence];

17 (3) Ordering an evaluation or home study of the relevant circumstances; and

18 (4) Allocating payment among the parties of fees for services ordered under  
19 paragraphs (1) through (3) listed in this section.

20 (c) A temporary order issued under this section has no presumptive effect and is not  
21 determinative when the court considers a petition for another order under this [act].

22 (d) A non-parent granted temporary visitation under subsection (a) may be ordered to pay  
23 the cost of facilitating visitation with the child, including the cost of transportation.

1           **SECTION 206. PARENTAL PRESUMPTION.**

2           (a) A [fit and custodial] parent's decision about a request for custody or visitation by a  
3 non-parent is presumed to be in the best interests of the child.

4           (b) A non-parent may rebut the presumption under subsection (a) that the parent's  
5 decision is correct if the court finds by [clear and convincing evidence] [a preponderance of the  
6 evidence] that the elements set out in 208 or 209 have been met.

7           (c) A [petitioner] is not required to prove the unfitness of a parent of the child to rebut the  
8 presumption described herein.

9           **SECTION 207. BURDEN OF PROOF.** A non-parent has the burden to prove by [a  
10 preponderance of the evidence/clear and convincing evidence] the elements of the action  
11 required under this chapter.

12          **SECTION 208. CUSTODY.** The court may grant custody of a child to a non-parent,  
13 including a grandparent, upon proof that:

14          (a) The non-parent and the child have resided together for [6 months] or more, including  
15 temporary absences;

16          (b) The non-parent has consistently engaged in caretaking of the child during the period  
17 of time that the child and the non-parent have resided together;

18          (c) The non-parent has accepted caretaking responsibilities without expectation of  
19 financial compensation;

20          (d) A parent or custodian of the child:

21                  (1) supported the relationship between the non-parent and the child, or

22                  (2) failed to exercise parental responsibility;

23          (e) Denial of custody to the non-parent will result in a detriment to the child; and

1 (f) The appointment is in the best interest of the child.

2 **SECTION 209. VISITATION.**

3 (a) The court may order visitation:

4 (1) Between a non-parent, including a grandparent, and a child upon proof that:

5 (A) A substantial relationship exists between the non-parent and the child;

6 (B) Denial of visitation will result in a detriment to the child; and

7 (C) Visitation is in the best interest of the child.

8 (2) Between a grandparent and the child upon proof that:

9 (A) the parent who is the child of the grandparent:

10 (i) has been incarcerated in jail or prison during the 3 months  
11 preceding the filing of the petition;

12 (ii) has been found by a court to be incompetent;

13 (iii) is dead; or

14 (iv) does not have actual or court-ordered access to the child; and

15 (B) Denial of visitation will result in a detriment to the child; and

16 (C) Visitation is in the best interest of the child.

17 (b) Upon proof of the elements set out in Section 208 or 209, a non-parent may be  
18 granted visitation notwithstanding an adjudication that the non-parent is not granted custody  
19 under Section 208.

20 **SECTION 210. BEST INTERESTS OF CHILD.**

21 (a) The court shall consider the following factors in determining whether the grant of  
22 custody or visitation to a non-parent would be in the best interests of the child:

23 (1) The nature, extent and quality of the relationship between the non-parent and

1 the child, including:

2 (A) the caretaking activities undertaken by the non-parent;

3 (B) whether the non-parent has a kinship relationship with the child;

4 (C) the frequency and continuity of contact between the non-parent and  
5 the child, including the period of any disruption in the contact and the reasons for the disruption;

6 (2) The nature, extent, and quality of the relationship between the child and any  
7 parent, including any periods of physical absence by the parent;

8 (3) The views of the child, weighed in light of the child's age and maturity;

9 (4) The willingness of the parties to facilitate a positive relationship between the  
10 child, the parties and family members of the child, except upon proof by a parent or custodian  
11 that:

12 (A) The non-parent has engaged in domestic violence, child abuse, sexual  
13 assault or stalking against a parent, the child, a sibling of the child, or a custodial guardian of the  
14 child; and

15 (B) A continuing relationship between the child and the non-parent will  
16 negatively affect the health or safety of a parent, the child, a sibling of the child, or a custodial  
17 guardian of the child.

18 (5) The child's adjustment to the child's current and proposed home, school, and  
19 community;

20 (6) The mental and physical health of the child and the parties, including alcohol  
21 or drug abuse by the child or the parties, unless the mental or physical health of the parties may  
22 not be considered unless those factors relate to harm caused to the child;

23 (7) A history or threat of child abuse, child neglect, domestic violence, sexual

1 assault, or stalking towards a parent, the child, a sibling of the child, or a custodial guardian of  
2 the child by:

3 (A) A party or

4 (B) An individual with whom a party has a kinship or significant  
5 relationship. (DHL: Should significant relationship be defined?)

6 (8) The reasons for the parties' positions regarding the proceedings;

7 (9) Any agreement among the parties regarding custody or visitation;

8 (10) The applicable factors in [insert citation to laws of the state regarding  
9 custody and visitation]; and

10 (11) Any other relevant factor affecting the best interests of the child.

11 (b) The court shall not consider whether a child is home schooled in determining the best  
12 interest of the child.

13 **SECTION 211. PRESUMPTION REGARDING DOMESTIC VIOLENCE, CHILD**  
14 **ABUSE, SEXUAL ASSAULT OR STALKING.**

15 (a) It is presumed that it is not in the best interests of a child to grant custody or visitation  
16 of a child to a non-parent if the non-parent, or an individual residing with the non-parent, has  
17 committed any of the following conduct against the other parent of the child, the child, siblings  
18 of the child, custodial guardian [, a member of the previous family of the non-parent, or an  
19 individual residing with the non-parent of the child]:

20 (1) domestic violence;

21 (2) child abuse;

22 (3) child neglect;

23 (4) sexual assault; or



1 (5) stalking.

2 (b) The presumption established in subsection (a) is rebuttable by showing that the  
3 petitioner and persons residing with the petitioner do not pose a danger to the child and that it is  
4 in the best interests of the child to grant custody or visitation.

5 (c) To establish the presumption described in subsection (a), the court may not consider  
6 the non-parent, or person residing with the non-parent, to have committed the conduct if:

7 (1) a criminal charge regarding the conduct is still pending before a [trial] court of  
8 this state or another jurisdiction; or

9 (2) the allegation regarding the conduct is still pending before a [trial] court in a  
10 civil proceeding under this [act], another law of this state, or law of another jurisdiction.

11 **SECTION 212. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When  
12 making a decision under this [act], the court shall make findings of fact and conclusions of law  
13 on the record in support of its decision.] (DHL: Discuss whether this should be omitted.  
14 Separation of powers issue.)

## 15 **ARTICLE 3**

### 16 **MISCELLANEOUS PROVISIONS**

#### 17 **SECTION 301. FINAL ORDER.**

18 (a) In a proceeding under this [act], as part of a final order, the court may make any of the  
19 following orders:

20 (1) A non-parent granted visitation may be ordered to pay the cost of facilitating  
21 visitation with the child, including the cost of transportation.

22 (2) The court may allocate and order payment of attorney fees, including interim  
23 fees, and costs among the parties to a proceeding.

1 (b) The authority of a non-parent given custody of a child under this [act] to petition for  
2 and receive support of the child is governed by law other than this [act].

3 **SECTION 302. MODIFICATION.** If a petition is filed to modify an order for custody  
4 or visitation entered under this [act], the court shall decide whether to modify under [cite to the  
5 law of this state other than this [act] for modification of a custody, visitation, or parenting time  
6 order applicable to a dispute between parents].

7 **SECTION 303. OTHER RIGHT AND REMEDY.** A right and remedy under this  
8 [act] is not exclusive and does not preclude an additional right and remedy under law of this state  
9 other than this [act] [, including the Uniform Deployed Parents Custody and Visitation Act [or  
10 other state law dealing with custody of and visitation with children of deployed parents]].

11 **SECTION 304. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
12 applying and construing this uniform act, consideration must be given to the need to promote  
13 uniformity of the law with respect to its subject matter among states that enact it.

14 **SECTION 305. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
15 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the  
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
17 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
19 U.S.C. Section 7003(b).

20 **SECTION 306. TRANSITIONAL PROVISION.** This [act] applies to an action  
21 pending and a proceeding commenced before effective date of this [act] with respect to an issue  
22 on custody or visitation of a non-parent of a child on which a judgment has not been issued.

23 **SECTION 307. SEVERABILITY.** If any provision of this [act] or its application to

1 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
2 applications of this [act] which can be given effect without the invalid provision or application,  
3 and to this end the provisions of this [act] are severable.

4 **SECTION 308. REPEALS; CONFORMING AMENDMENTS.**

5 (a) . . . .

6 (b) . . . .

7 (c) . . . .

8 **SECTION 309. EFFECTIVE DATE.** This [act] takes effect . . . .