

# THE NEW UNIFORM NONPARENT CUSTODY AND VISITATION ACT: WHAT LAWYERS, JUDGES, AND CUSTODY EVALUATORS NEED TO KNOW

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# CURRENT LAW AND ELEMENTS OF THE NONPARENT ACT

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# CURRENT STATUTORY LAW

- ▶ **General visitation statutes (nonparents)**
  - ▶ **Statutes for specific categories**  
(grandparents, stepparents, siblings, de facto parents )
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# STATUTES BASED ON EVENTS

- ▶ **Death of parent**
  - ▶ **Divorce or separation**
  - ▶ **Child born out of wedlock**
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# DRAFTING COMMITTEE REJECTED SPECIFIC EVENT APPROACH

Not sufficient nexus to what is best for child

- ▶ See, e.g., *Dorr v. Woodard* (ME 2016)  
(death of parent)
- ▶ *D.P. v. G.J.P.* (PA 2016) (separation)

(p. 4 of Act, commentary)

# COMMON CHANGES TO STATE LAW POST-TROXEL

- ▶ Presume parent's decision correct
  - ▶ Burden of proof on nonparent
  - ▶ Burden by clear and convincing evidence
  - ▶ Require showing of harm
  - ▶ Specific statutes for de facto parents
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# KEY ELEMENTS OF NONPARENT ACT

- ▶ Covers disputes between nonparents and parents
- ▶ (not cover disputes between nonparent and nonparent)

Section 3

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# TWO CATEGORIES OF NP MAY SEEK CUSTODY OR VISITATION


- ▶ **Consistent caretakers**
- ▶ **NPs with substantial relationship who show harm if relief not granted**

**Section 4**

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# ELEMENTS OF “CONSISTENT CARETAKER”

1. Lived with child not less than 12 months, unless court finds good cause;
  2. Regularly exercised care;
  3. Made day-to-day decisions
- 
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# ELEMENTS (CONTINUED)

4. Bonded and dependent relationship with consent of parent
5. No expectation of financial compensation

Section 4

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# COMPARISON OF “CONSISTENT CARETAKER” AND “DE FACTO PARENT”

- ▶ Both involve living with child and substantial caregiving, but “consistent caretaker” is more flexible
- ▶ Consistent caretaker does not require:
  - holding out child as his or her own
  - assuming full & permanent responsibility

# ELEMENTS OF SUBSTANTIAL RELATIONSHIP

- ▶ Significant emotional bond
- ▶ No expectation of financial compensation (although relative can receive compensation)
- ▶ Denial of custody or visitation would result in harm to child

Section 4

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# PRESUMPTION IN FAVOR OF PARENT

- ▶ Burden on NP to rebut by c & c evidence
- ▶ Proof of unfitness not required

Section 5

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# SPECIFICITY IN PLEADINGS

- ▶ NP needs prima facie case
- ▶ Court can dismiss case without it

Sections 7 & 8

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# BEST INTEREST FACTORS

- ▶ **Quality of relationships**
- ▶ **Views of child**
- ▶ **Harmful conduct by party or person living with party**
- ▶ **Reference to other state laws**

**Section 12**

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# PRESUMPTION RELATED TO DV

- ▶ Presume not order custody or visitation if DV or related offenses
- ▶ Can rebut presumption by c & c evidence

Section 13

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# APPOINTMENTS; COURT SERVICES

- ▶ **Appoint attorney or GAL**
- ▶ **Interview of child by the court**
- ▶ **Mediation**
- ▶ **Evaluation**

**Section 10**

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# MODIFICATION OF ORDERS

- ▶ Preponderance of evidence
- ▶ Substantial change + best interest
- ▶ If modifying visitation to custody, higher standard

Section 15

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# EXAMPLES

- ▶ For NP to obtain custody or visitation: Raising child several years, or substantial caregiving
- ▶ Positive relationship and seeing child occasionally usually not enough

Cases discussed on pp. 15 -16