

Date: February 26, 2018

To: Nonparental Child Custody and Visitation Act Drafting Committee

From: Debra Lehrmann, Chair; Barbara Atwood, Vice-Chair; Jeff Atkinson, Reporter

Re: New Draft for Upcoming Drafting Committee Meeting

Our next and final drafting committee meeting is March 9-10, 2018, at the Kimpton Hotel Monaco in Chicago. The attached draft reflects decisions reached during our conference call of February 12, 2018, and additional edits designed to achieve greater clarity. We thank Commissioners Harry Tindall and Jack Davies for their close reading of the draft and their valuable suggestions. This memo briefly explains the revisions and identifies drafting choices the committee must make at the upcoming meeting. For your convenience, we are also attaching a redline document that shows the changes from the conference call draft.

Title of Act: The word “nonparental” is not used anywhere in the Act except the title. We suggest a new title that is less cumbersome and uses words that actually appear in the Act: **Nonparent Custody and Visitation Act.**

Section 2(7) (Definitions): Three phrases are bracketed: “Detriment to the child,” “Harm to the child,” and “[significant] adverse effect on the child’s emotional, psychological, or physical well-being.” During the conference call we agreed that the Drafting Committee would choose one of the three phrases to use in the Act. The requirement of showing detriment or harm is relevant to nonparents who have a substantial relationship with a child. Just to remind you, some commissioners favor the term “harm,” and others favor “detriment.” During the conference call, a suggestion was made that we dispense with using either term and simply use our definition in the Act. Also, a suggestion has been made that, whatever approach we choose, we should add the term “significant” as a modifier of “adverse effect.” We need to decide this issue once and for all.

Section 3(b)(3) (Scope): Some changes have been made to the bracketed language to clarify that the reference is to *state-initiated* abuse and neglect proceedings.

Section 5(b) (Standing): During the conference call, we agreed to leave the preliminary phrase bracketed, with a decision about whether to include that language pending further consideration at the drafting committee meeting. To remind you, the concern here is to avoid having two hearings on the merits.

Section 8(4) (Appointment; Interview of Child; Court Services): The language has been tweaked to make clear that evaluations should assess the effect on the child of the grant or denial of the requested custody or visitation.

Section 10 (Parental Presumption) New language has been added to make clear that the parental presumption, once rebutted, remains rebutted for further proceedings under the Act unless a nonparent with visitation rights is seeking custody of the child.

Section 11 (Elements of Action): This section is substantially revised to include the elements for both the nonparent who is a consistent caretaker and the nonparent who has a substantial relationship with the child. In other words, the provisions of former Sections 11 and 12 have now been combined in one section. We believe that including both categories in one section is an improvement, since that section now contains the core proof requirements of the Act. No substantive change is intended.

Section 13 (Agreement): This is a new section on agreements, but it provides the same substantive standard used in the modification section: the court should approve the agreement unless the court finds it to be contrary to the best interest of the child.

We look forward to seeing everyone at the drafting committee meeting!