

HOUSE RESEARCH

Bill Summary

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Overview

The Uniform Child Custody Jurisdiction and Enforcement Act is proposed to replace the Uniform Child Custody Jurisdiction Act, Minnesota Statutes, chapter 518A. Both the original uniform act and the proposed bill deal with procedures for interstate enforcement of child custody and visitation orders. Minnesota enacted the original uniform act in 1977. Every state has some version of that act. The new act is attended to (1) conform the law to the federal Parental Kidnaping Prevention Act, which passed after the original uniform act, (2) resolve issues raised by conflicting case law among the states interpreting the original uniform act, and (3) provide a remedial process for interstate enforcement of custody and visitation orders.

Article 1: General Provisions

1	Citation. Chapter 518D can be cited as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).
2	Definitions. Significant definitions include "child custody determination," which does not include an order relating to support or other monetary obligations.
	"Home state" means where a child and parent lived for at least six consecutive months before a child custody proceeding commenced or, in the case of a child under six months, since birth.
	"Child" has the definition in the federal Parental Kidnaping Prevention Act. The original uniform act did not define child.
	"Person" is defined to clarify that the act applies if the state brings a proceeding or has legal custody of a child affected by a proceeding.
	"Person acting as a parent" has a broader definition than under current law. It includes anyone who (1) has physical custody of the child or, has had physical custody for six consecutive months within one year immediately before a custody proceeding started and (2) has legal custody or claims a right to legal custody under the law of this state. Under current law this term does not apply to anyone

	who does not have custody at the time of the proceeding.
3	Proceedings governed by other law. Exempts from the UCCJEA: adoption and proceedings to authorize emergency medical care for a child.
4	Application to Indian tribes. Exempts Indian child custody proceedings from the UCCJEA if they are governed by the federal Indian Child Welfare Act. Requires a court in this state to treat a tribe like a state for purposes of articles 1 and 2. Provides that a tribal child custody determination made in conformity with the standards of the act must be recognized and enforced under article 3.
5	International application. Requires a court in this state to treat a foreign country as if it were a state for purposes of articles 1 and 2. Requires recognition and enforcement of a foreign country's child custody determinations, unless the child custody law of the country violates fundamental principles of human rights.
	This section is comparable to current § 518A.22.
6	Effect of child custody determination. If a court has jurisdiction of a child custody determination under the act, it binds persons served according to law or under section 8, and persons who submitted to the jurisdiction of the court and were given an opportunity to be heard. The determination is conclusive as to all decided questions of law and fact, except if the determination is modified.
	This section is comparable to current § 518A.12.
7	Priority. A question of jurisdiction under the UCCJEA raised in a custody proceeding must, upon a party's request, be given priority and handled expeditiously.
	This section is comparable to current § 518A.24.
8	Notice to persons outside the state. Allows notice to a person outside the state to be given and proof of service to be made as prescribed by the law of this state or of the state where the service is made. Notice must be in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. Notice is not required to exercise jurisdiction over a person who submits to the court.
	This section replaces current § 518A.05.
9	Appearance and limited immunity. Provides that a party to a custody proceeding is not subject to personal jurisdiction in this state for another proceeding solely because of participating in the custody proceeding, except the party is subject to the courts' jurisdiction for acts committed in this state and not related to participating in the custody proceeding. Provides that a person is not immune from service of process in this state if the person is subject to personal jurisdiction in this state on a basis other than being physically present. Provides that a person in this state who is subject to the jurisdiction of another state is not immune from service of process under the laws of that other state.
	This section is comparable to the Uniform Interstate Family Support Act, Minn. Stat. § 518C.314.
10	Communication between courts. Authorizes a court in this state to communicate with a court in another state about a proceeding under this chapter.
	Authorizes the court to allow parties to participate in the communication; or, if they are not able to do so, to give them the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
	Allows courts to communicate about scheduling and court records without informing the parties and without making a record of the communication. With this exception, courts must keep records of their communications and share them with the parties.
	Defines "record" to mean information on a tangible medium or stored electronically and retrievable in perceivable form.

11	Taking testimony in another state. A party to a custody proceeding may offer testimony of witnesses who are in another state by (1) deposition or (2) other means allowed in this state. On its own motion, a court may order testimony taken in another state and prescribe how the testimony is to be taken.
	This section is comparable to current § 518A.18.
12	Cooperation between courts. A court in this state may ask the court in another state to do any of the following: (1) hold an evidentiary hearing; (2) order a person to produce or give evidence under the procedures of that state; (3) order an evaluation regarding custody of a child involved in a pending proceeding; (4) forward a certified copy of the transcript of a hearing held in the other state; or (5) order a party to a custody proceeding or anyone having physical custody of a child to appear in a proceeding with or without a child.
	Upon request from another state, a court here will do any of the above.
	Travel and other expenses incurred under this section can be assessed against parties according to the law of this state.
	Requires a court in this state to preserve records of a custody proceeding until a child reaches age 18. Requires the court to forward the records upon request of a court or law enforcement officials from another state.
	This section differs from current § 518A.19 in that current law would allow assessing costs against the state.

Article 2: Jurisdiction

1	Initial child custody jurisdiction. Except as provided in section 4, a court in this state has jurisdiction of an initial child custody determination if:
	(1) this is the child's home state when the proceeding starts, or was the child's home state within six months before the proceeding started and the child is absent but a parent remains here; (2) no court in another state has jurisdiction, or the court in the child's home state has declined jurisdiction for reasons under sections 7 or 8, the child and at least one parent have a significant connection with this state, and substantial evidence about the child is available in this state; (3) all courts having jurisdiction under clauses (1) or (2) have declined jurisdiction for reasons under sections 7 or 8; or (4) no court would have jurisdiction under criteria specified in clauses (1), (2), or (3).
	Physical presence of, or personal jurisdiction over, a child or a party is not necessary or sufficient to make a child custody jurisdiction.
	This section is based on the original uniform act section Minn. Stat. § 518A.03 but departs in giving greater priority to home state jurisdiction; making various changes in the significant connection basis for jurisdiction, and moving emergency jurisdiction to its own section (section 4).
2	Exclusive, continuing, jurisdiction. Except as provided in section 4, a court in this state that has determined custody under sections 2 or 3 has exclusive, continuing jurisdiction until:
	(1) a court of this state determines that the child and the parents do not have a significant connection with this state and substantial evidence about the child is not available in this state; or
	(2) a court in this state or another state determines that the child and child's parents do not reside in this state.
	A court in this state that has made a custody determination but does not have exclusive, continuing jurisdiction may modify its determination only if it has jurisdiction to make an original determination under section 1.

	This section is new. There was no comparable section in the original uniform act.
3	Jurisdiction to modify determination. Except as provided in section 4, a court in this state may not modify a custody determination by a court of another state unless this state's court has jurisdiction under section 1, paragraph (a), clause (1) or (2), and the court in the other state determines (1) it no longer has exclusive, continuing jurisdiction under section 2; (2) that the court in this state would be more convenient under section 7; or (3) either of the courts determines that the child and parents do not reside in the other state.
	This is new; no comparable section in the original uniform act.
4	Temporary emergency jurisdiction. A court in this state has temporary emergency jurisdiction if (1) the child is here and has been abandoned or (2) it is necessary to protect the child because the child, a sibling, or parent is subjected to or threatened with abuse.
	Absent a previous custody determination entitled to enforcement under this chapter, and if no custody proceeding has started in a state with jurisdiction under sections 1 to 3, a custody determination under this section is in effect until an order is obtained from a court with jurisdiction under sections 1 to 3. If no custody proceeding is started in such a state, the determination made here becomes final, if it so provides and if this state becomes the child's home state.
	If there is a previous custody determination from another state entitled to enforcement under this chapter, or if one is started, an order issued in this state must specify a period that would allow the person seeking an order to go to the state that has jurisdiction. The order issued in this state would remain in effect until that time period expires, or until an order is obtained from the other state within that time period.
	If a court acting under this section is informed that a custody proceeding has started or a determination has been made by a court in a state with jurisdiction under section 1 or 3, the court here must communicate with the other court. Similarly, if a court in this state with jurisdiction under section 1 or 3 learns that a court in another state has issued an emergency decision, the court here must communicate with the other court to resolve the emergency, protect the child and parties' safety, and determine how long the temporary order should last.
	This section is based on current § 518.03.
5	Notice; opportunity to be heard; joinder. Before a custody determination is made under this chapter, notice and opportunity to be heard as provided in section 8 must be given to all persons entitled to notice under the laws of this state that apply to residents, any parent whose parental rights have not been terminated, and any person with physical custody of the child.
	This chapter does not govern a custody determination made without notice or opportunity to be heard.
	Joinder of parties and right to intervene in a custody proceeding under this chapter are governed by the law of this state that applies to proceedings between residents of the state.
	This section is similar to current §§ 518A.04 and 518A.10 with greater reliance on following state law for resident parties to a custody matter, rather than setting special rules for interstate cases.
6	Simultaneous proceedings. Except as provided in section 4 and unless the other state's court terminates or stays a proceeding because this state is a more convenient forum, a court in this state may not exercise jurisdiction if, when a proceeding commences, a proceeding about the same child has been started in another state that has jurisdiction substantially in conformity with this chapter
	Except as provided in section 4, a court in this state, before hearing a custody proceeding, must examine court documents and information supplied by the parties under section 9. If the court finds the other state has jurisdiction under this chapter, it must stay proceedings here and communicate

	with the other court. If that court does not find the court here to be a more appropriate one, the court here must dismiss the proceeding.
	In a custody modification proceeding, a court here must determine whether an enforcement proceeding has been commenced in another state. If it has, the court here may (1) stay its proceeding pending entry of an order by the other state, (2) enjoin the parties from continuing with the enforcement proceeding, or (3) proceed with the modification under conditions it considers appropriate.
	Similar to current § 518A.06.
7	Inconvenient forum. A court in this state with jurisdiction over a custody matter may decline to take jurisdiction if it determines it is an inconvenient forum and another court is more appropriate. Inconvenient forum may be raised by a party, by the court, or by request of another court.
	Before determining whether it is an inconvenient forum, a court in this state must consider whether it is appropriate for another state to exercise jurisdiction. Lists relevant factors to consider, including:
	(1) domestic violence;
	(2) how long the child has resided outside this state;
	(3) the distance between this court and the court that would otherwise take jurisdiction;
	(4) relative financial circumstances of the parties;
	(5) any agreement by the parties about which state should hear the case;
	(6) nature and location of evidence needed to resolve the case, including the child's testimony;
	(7) ability of each state's courts to decide the matter expeditiously; and
	(8) each state court's familiarity with the facts and issues in the litigation.
	If a court here determines another court is more appropriate, it (1) must stay proceedings on condition that a proceeding is started in the other state and (2) may impose just and proper conditions.
	A court in this state may decline jurisdiction under this chapter if a custody matter is incidental to marriage dissolution or another matter, while still retaining jurisdiction over the other matter.
	This section is similar to current § 518A.07.
8	Jurisdiction declined for conduct. Except as provided in section 4, a court in this state must decline to exercise jurisdiction if a person seeking it engages in unjustifiable conduct unless (1) the parents agree, (2) a court that otherwise has jurisdiction determines this state is more appropriate under section 7, or (3) no other court would have jurisdiction.
	If a court here declines jurisdiction, it may provide a remedy to ensure the child's safety and prevent the unjustifiable conduct, including staying the proceeding here until one starts in a state that has jurisdiction.
	If a court stays or dismisses a proceeding under this section, it shall assess costs; communication expenses; attorney fees; and investigative, witness, travel, and child care fees unless the party establishes the assessment would be clearly inappropriate. This chapter does not authorize assessing fees or costs against this state.
	This section is similar to current § 518A.08.
9	Information to be submitted to court. Subject to law on protecting the location of a party in certain cases, each party to a custody proceeding must give listed information about the child's current and past residences, past custody and visitation proceedings about the child, other current proceedings that could affect the case, and other persons who either have physical custody of the child or claim

	legal or physical custody rights to the child.
	Allows the court to stay the proceeding until information is provided. Allows the court to get further details of the information provided. Places on parties a continuing duty to update the court on proceedings that could affect the matter before the court.
	Permits sealing identifying information if a party states under oath that disclosure would jeopardize a child, unless the court holds a hearing and decides afterward to disclose the information in the interest of justice.
	This section is similar to current § 518A.09, except the protection of identities is a new concept.
10	Appearance of parties and child. Allows the court to order (1) a party who is in the state to appear with or without the child and (2) a party with physical custody of the child to appear with the child. Allows the court to order a party in another state to appear here with or without the child and notify the party that failure to do so may result in an adverse decision. Allows the court to issue orders for the safety of the child and of any person ordered to appear under this section. Allows the court to require a party to pay travel and other expenses if a party in another state is ordered, or desires, to appear here with or without the child.
	This section is similar to current § 518A.10.

Article 3: Enforcement

1	Definitions. "Petitioner" is the party seeking (1) return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or (2) enforcement of an American custody order. "Respondent" is the party against whom enforcement is sought.
	All references to the Hague Convention are new since the original uniform act, which predated the Hague Convention.
2	Enforcement under Hague Convention. Lets a court in this state enforce an order to return a child under the Hague Convention as if it were a custody determination.
3	Duty to enforce. Provides for a court in this state to enforce the custody determination of another state that exercised jurisdiction in conformity with this chapter or under fact circumstances meeting the jurisdictional standards of this chapter.
	Lets a court in this state use either article 3 remedies or any remedies available under other state law.
4	Temporary visitation. Lets a court in this state that does not have jurisdiction to modify a custody determination issue a temporary order enforcing (1) another state's visitation schedule or (2) visitation provisions from another state that lack a specific visitation schedule. In doing so, the court must specify a time period by which a party must obtain an order from a court that has jurisdiction.
5	Registration of custody determination. Lets a custody determination from another state be registered with a court in this state without a simultaneous request for enforcement. Specifies how to register. States the receiving court's duties upon receiving a registration, including notifying anyone who has custody or visitation rights under the order. On receiving notice, the affected persons may contest registration on specified grounds: (1) that the court issuing the order lacked jurisdiction; (2) that the order was vacated, stayed, or modified; or (3) that the contesting party had a right to notice of the order but did not get notice.
	If timely contest is not made, the registration is confirmed and aspects of the order that could have been contested at that time cannot be brought up later.
6	Enforcement of registered determination. A court here may enforce but may not modify an order of another state registered in this state.

7	<p>Simultaneous proceedings. If a court hearing an enforcement proceeding learns that modification is pending in another state, it must communicate with the court in the other state. Enforcement continues unless the court here decides to stay or dismiss it after talking to other state's court.</p>
8	<p>Expedited enforcement of custody determination. Requires a petition for enforcement to be verified. Requires certified copies of all orders sought to be enforced and any order confirming registration. Specifies what a petition for enforcement must include.</p>
	<p>Requires the court to direct the respondent to appear in court with or without the child, the next business day unless impossible.</p>
9	<p>Service of petition and order. Except as provided ins section 11, service is by any method authorized by law on the respondent and on anyone who has physical custody of the child.</p>
10	<p>Hearing and order. At the hearing the court may find that petitioner is entitled to immediate physical custody of the child and so order unless the respondent establishes lack of jurisdiction in the issuing court, lack of notice to the respondent, or that the order has been vacated, stayed, or modified by a court with jurisdiction to do so.</p>
	<p>Requires the court to grant fees and other expenses under section 12.</p>
	<p>Allows the court to draw an adverse conclusion from a party's refusal to testify on grounds of self-incrimination.</p>
	<p>Prohibits invoking (1) a privilege against disclosing communication between spouses and (2) any immunity between spouses or parent and child.</p>
11	<p>Warrant to take physical custody of a child. Lets petitioner file verified application for a warrant to take physical custody of a child who is immediately likely to suffer serious physical harm or be removed from the state. Requires the petition to be heard the next business day unless impossible. States the content of a warrant. Requires it to be served on the respondent immediately after the child is taken into physical custody. Makes the warrant enforceable throughout the state. Allows the court to authorize law enforcement to enter private property, or in exigent circumstances, to make a forcible entry at any hour to take physical custody of the child.</p>
	<p>This section is entirely new substantive law.</p>
12	<p>Costs, fees, and expenses. Requires the court to award a prevailing party--including the state--costs, attorney fees, and other expenses unless the party ordered to pay establishes the award would be clearly inappropriate. Prohibits assessing costs against the state under this chapter.</p>
13	<p>Recognition. Requires a court here to give full faith and credit to another state's order consistent with this chapter, unless the order has been vacated, stayed, or modified by a court with jurisdiction under article 2.</p>
14	<p>Appeals. Allows appeals from final orders under this article according to the rules of civil procedure, rule 127. Except for a temporary emergency order, the enforcing court may not stay enforcement of a custody determination pending appeal.</p>
	<p>Sections 15 to 17 are new since the original uniform act.</p>
15	<p>Role of prosecutor. Allows a prosecutor to take any lawful action under this article or other law to locate a child, obtain return of a child, or enforce a custody determination if (1) there is an existing custody determination; (2) a court with a pending custody determination has requested it; (3) the prosecutor has a reasonable belief that a criminal statute has been violated; or (4) the prosecutor has a reasonable belief that the child was wrongfully removed or retained in violation of the Hague Convention. A prosecutor under this section acts for the court and may not represent any party.</p>
16	<p>Role of law enforcement. Lets law enforcement assist a prosecutor under this article upon request.</p>

17	Costs and expenses. Lets the court assess direct costs and expenses of the prosecution and law enforcement against a respondent who loses.
18	Repealer. Repeals Minn. Stat. chapter 518A, the current Uniform Child Custody Jurisdiction Act.
19	Instruction to the revisor. Changes a reference to chapter 518A in current law so it will reference the new uniform act.
20	Effective date. January 1, 2000 for motions and requests for relief made on or after that date.