

Approved: February 3, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 25, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Tony Powell - excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Paul Davis, Kansas Bar Association
Greg Debacker, National Congress for Men & Children

Hearings on **HB 2488 - enacting the Uniform Child Custody Jurisdiction & Enforcement Act**, were opened.

Jill Wolters, Office of Revisor of Statutes, explained that the Uniform Child Custody Jurisdiction Act (UCCJA) hasn't been revised since it was enacted in 1979. She covered the differences between **HB 2488 & SB 382**. **SB 382** would make the following changes in the Uniform Child Custody Jurisdiction Act:

- ▶ Would make clear that the home state jurisdiction trumps all others;
- ▶ Makes it clear that emergency orders are temporary orders;
- ▶ Provides that the state continues jurisdiction as long as one parent continues to live in that state;
- ▶ Provides a record of communication between the courts
- ▶ and, awards fees and costs against the non-prevailing party

To date 14 states have enacted the revisions, with nine others introducing bills addressing the proposed changes.

Paul Davis, Kansas Bar Association, appeared on behalf of Ron Nelson. He stated that the Bar Association supports the revisions proposed in **SB 382** so the laws would be uniform across the United States. (Attachment 1)

Greg Debacker, National Congress for Men & Children, commented that parents rights are not only a State issue but an International issue, due to the child who is in the United States while his father remains in Cuba. He proposed amendments to **HB 2488**. (Attachment 2)

The Chairman announced that the committee would not be working **HB 2488** but would wait until **SB 328** arrived in the committee and would work the senate bill.

Hearings on **HB 2488** were closed.

The committee meeting adjourned at 4:15 p.m. The next meeting is scheduled for January 26, 2000.



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TESTIMONY OF RONALD W. NELSON,

Rose & Nelson, Overland Park, Kansas

Mr. Chairman and Members of the Committee: My name is Ronald W. Nelson. I am a lawyer engaged in private practice in Overland Park, Kansas with approximately 85% of my practice in the area of family law. I am the President Elect of the Kansas Bar Association Family Law Section and I am the Vice Chair of the Child Custody Committee of the American Bar Association Family Law Section. I have written a number of articles and presented seminars on various areas of domestic law, including articles on the Uniform Child Custody Jurisdiction and Enforcement Act. The Kansas Bar Association favors the passage of the Uniform Child Custody Jurisdiction and Enforcement Act.

In 1966 the National Council of Commissioners on Uniform State Laws (a national organization composed of representatives of all 50 states) recommended passage of the Uniform Child Custody Jurisdiction Act. This original recommendation for passage was made “[t]o remedy this intolerable state of affairs [existing at that time] where self-help and the rule of ‘seize-and-run’ prevail rather than the orderly process of the law. . . .” Prefatory Note, Uniform Child Custody Jurisdiction Act, 9 U.L.A. 117 (Part I, 1988). This Act was enacted into law by the state of Kansas in 1978. 1978 Kan. Sess. Laws, Ch. 231. Since the original recommendation by the Uniform Laws Commission, all fifty states have enacted the UCCJA, with Massachusetts being the last state to enact the UCCJA effective December 21, 1983. Mass.Gen.Laws Ann. Ch. 209B, §§1-14.

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Attachment 1

Since its enactment, the UCCJA has provided a significant improvement in the way in which jurisdictional disputes have been handled in the states' courts resulting in greater predictability of which state should handle custody disputes and significantly impacting on the practice in existence before passage of the UCCJA of a parent running from state to state to state trying to find a court in which a stay behind parents right could be negatively effected.

As a result of various national studies showing conflicts in interpretation of the UCCJA by various states, as well as significant federal laws that impacted on the Act which had been enacted after the original draft of the UCCJA, the Family Law Committee of NCCUSL determined in 1994 that the Act needed to be revised to ensure consistency and resolve conflicts. Over the next three years, drafting committees worked on revisions to the original UCCJA. At its annual meeting in 1997, the National Conference of Commissioners on Uniform State Laws approved a major revision of the Uniform Child Custody Jurisdiction Act. The revision, titled the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) modifies and supplements the existing UCCJA in a few different ways:

First, it revises the law on child custody jurisdiction in light of significant federal laws which have been enacted since the original drafting date, including the Parental Kidnapping Prevention Act (28 U.S.C. 1738A), the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.), the International Child Abduction Remedies Act (42 U.S.C. § 11601, et seq.), and other significant Acts.

Secondly, the UCCJEA revises the law in consideration of over thirty years of contradictory case law. Over the time since the original UCCJA was enacted some states' courts

have read various important provisions of the Act in diametric opposition to the way in which the Uniform Laws Commission originally anticipated. In some cases, those conflicting interpretations have led to situations in which two states have exercised jurisdiction over the same child although that is exactly the situation the Act sought to avoid. As a result, the Uniform Laws Commission has modified Article 2 of the Act so that it provides a more clear way in which a determination can be made of which State is to exercise original jurisdiction over a child-custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction (which the Kansas Legislature foresaw as a needed addition by adding K.S.A. 38-1335 in 1980). Other aspects of the Article harmonize the law on what happens when simultaneous proceedings occur, application of the “clean hands” doctrine, and rules regarding “inconvenient forum.”

Perhaps the most important inclusion in the UCCJEA and the only significant addition, however, is to be found in Article 3 which provides for an expedited process to enforce child custody and visitation determinations. This Article, for the first time, sets forth a simple and uniform method by which a existing orders of child custody, residency or visitation can be enforced. This Article is based on the provisions of the Hague Convention on International Child Abduction and sets forth strong means for enforcement of those Orders.

The 1999 Interim Judiciary Committee passed out the Uniform Child Custody Jurisdiction and Enforcement Act with various additions necessary to modify all laws affected by child custody jurisdiction issues, making clear (as is intended by the UCCJEA, and as has been found applicable by the Kansas Supreme Court) that actions for guardianship, child in need of care, determination of parentage, and other similar matters are included.

In the Interim Committee hearings, it was suggested that some additional jurisdictional provisions be added to the adoption statutes since the UCCJEA specifically excludes adoptions from its coverage. The reason for this exclusion is because NCCUSL also has recommended for passage a Uniform Adoption Act that includes jurisdictional provisions specific to adoptions. The suggested additions to the Act in the Interim Committee sought to incorporate provisions from the Uniform Adoption Act since, without any addition, the UCCJEA would exclude adoption (see UCCJEA Section 203), but the Kansas Adoption statutes do not include any independent jurisdictional provisions.

In reviewing the various proposals, it appears the Kansas Legislature has two alternatives in dealing with this situation:

First, and easiest, the Legislature could simply remove the exclusion of adoption for the Act. This would be accomplished merely by deleting subsection (a) of UCCJEA 103. This is probably the easiest and best way to deal with this issue. If this is the choice of the Legislature, then Section 103 of the Act (as included in SB282) should be amended as follows:

35 New Sec. 3. (UCCJEA 103). This act does not govern ~~an adoption~~
36 ~~proceeding or~~ a proceeding pertaining to the authorization of emergency
37 medical care for a child. ~~Jurisdiction for adoptions shall be governed by~~
38 ~~K.S.A. 59-2127, and amendments thereto.~~

If this choice is selected, K.S.A. 59-2127(a) can be deleted in total.

Secondly, the Legislature could include modified provisions of the Uniform Adoption Act into the Act. The Interim Committee incorporated the jurisdictional provisions of the UAA into the UCCJEA. However, in reviewing those provisions, it appears there are some additional modifications that need to be made to coordinate those sections with the federal Parental Kidnapping Prevention Act. Those are as follows:

13 Sec. 45. K.S.A. 59-2127 is hereby amended to read as follows: 59-
14 2127. ~~(a) If the basis for venue in an agency adoption is subsection (b)(3)~~
15 ~~of K.S.A. 59-2126 and the petitioner does not reside in Kansas and the~~
16 ~~child to be adopted did not reside in Kansas prior to receipt of custody~~
17 ~~by the agency, the court shall determine whether or not to exercise its~~
18 ~~jurisdiction under this act based on the best interests of the child. For~~
19 ~~this purpose the court shall consider the following factors:~~
20 ~~— (1) if another state recently was the child's or mother's home state;~~
21 ~~— (2) if another state has a closer connection with the child or the child's~~
22 ~~adoptive or genetic parent or parents;~~
23 ~~— (3) if substantial evidence concerning the child's present or future~~
24 ~~care, protection, training and personal relationships is more readily avail-~~
25 ~~able in another state;~~
26 ~~— (4) the unavailability of placement opportunities for such child within~~
27 ~~the state of Kansas; and~~
28 ~~— (5) any other factor the court deems relevant in its determination of~~
29 ~~whether or not to exercise its jurisdiction.~~

30 (a) *Except as otherwise provided in subsections (b) and (c), a court*
31 *of this state has jurisdiction over a proceeding for the adoption of a minor*
32 *commenced under this act if:*

33 (1) *Immediately before commencement of the proceeding, the minor*
34 *lived in this state with a parent, a guardian, a prospective adoptive parent,*
35 *or another person acting as parent, for at least six consecutive months,*
36 *excluding periods of temporary absence, or, in the case of a minor under*
37 *six months of age, the minor lived in this state from birth with any of*
38 *those individuals and there is available in this state substantial evidence*
39 *concerning the minor's present or future care;*

40 (2) *a court of another state does not have jurisdiction under paragraph (1), or a*
court of the home state of the child has declined to exercise jurisdiction on the ground that
this state is the more appropriate forum under section 19 or 20 and amendments thereto,
and immediately before commencement of the proceeding, the pro-

41 *spective adoptive parent lived in this state for at least six consecutive*
42 *months, excluding periods of temporary absence, and there is available in*
43 *this state substantial evidence concerning the minor's present or future*

1 care;

2 (3) a court of another state does not have or has declined to exercise jurisdiction
3 under paragraphs (1) or (2) and the agency that placed the minor for adoption is located in
4 this
5 state and either it is in the best interest of the minor that a court of this state
6 assume jurisdiction because:

7 (A) The minor and the minor's parents, or the minor and the pro-
8 spective adoptive parent, have a significant connection with this state;
9 and/or

10 (B) there is available in this state substantial evidence concerning the
11 minor's present or future care;

12 (4) a court of another state does not have or has declined to exercise jurisdiction
13 under paragraphs (1), (2) or (3) and the minor and the prospective adoptive parent are
14 physically pres-
15 ent in this state and the minor has been abandoned or it is necessary in
16 an emergency to protect the minor because the minor has been subjected
17 to or threatened with mistreatment or abuse; or

18 (5) all courts having jurisdiction under paragraph (1), (2), (3) or (4)
19 have declined to exercise jurisdiction on the ground that a court of this
20 state is the more appropriate forum to determine the custody of the child.

21 (b) A court of this state may not exercise jurisdiction over a proceed-
22 ing for adoption of a minor if at the time the petition for adoption is filed
23 a proceeding concerning the custody or adoption of the minor is pending
24 in a court of another state exercising jurisdiction substantially in conform-
25 ity with the uniform child custody jurisdiction act, or the uniform child
26 custody jurisdiction and enforcement act, or this act unless the proceeding
27 is stayed by the court of the other state.

28 (c) If a court of another state has issued a decree or order concerning
29 the custody of a minor who may be the subject of a proceeding for adop-
30 tion in this state, a court of this state may not exercise jurisdiction over a
31 proceeding for adoption of the minor unless:

32 (1) The court of this state finds that the court of the state which issued
33 the decree or order:

34 (A) Does not have continuing jurisdiction to modify the decree or order
35 under jurisdictional prerequisites substantially in accordance with the
36 uniform child custody jurisdiction act, or the uniform child custody ju-
37 risdiction and enforcement act, or has declined to assume jurisdiction to
38 modify the decree or order, or

39 (B) does not have jurisdiction over a proceeding for adoption sub-
40 stantially in conformity with subsection (a)(1) through (4) or has declined
41 to assume jurisdiction proceeding for adoption; and

42 (2) the court of this state has jurisdiction over the proceeding.

43 (d) Before determining whether or not to exercise its jurisdiction
the court may communicate with a court of another state and exchange
information pertinent to the assumption of jurisdiction by either court
with a view to assuring that jurisdiction will be exercised by such court
of another state and that a forum will be available to the parties.

1 ~~(c)~~(e) If the court determines not to exercise its jurisdiction, it may
2 dismiss the proceedings, or it may stay the proceedings upon condition
3 that an adoption proceeding be promptly commenced in another named
4 state or upon any other conditions which may be just and proper.

By adding these provisions, the language complies with the provisions of the federal
Parental Kidnapping Prevention Act by including a preference for “home state” jurisdiction and
an order for acceptance of jurisdiction if not home state.

The state of Kansas has other business pertaining to parents rights, aka child custody, that is far more important to spend time on than HB2488 and UCCJEA, namely House Substitute for SB 150.

This bill, HB 2488, needs much work, and many amendments.
See also the Docking Institute Report on the Kansas Citizen Justice Initiative.

Page 1 lines 29 and 31---strike the words neglect, abuse, and domestic violence.

These issues belong in criminal court, and heresay is allowed in civil court. Punishment for perjury in civil court is next to non-existent. Judges allow heresay and there are Law Journal articles and books pertaining to this at Washburn Law Library.

Page 6 & 7 New Sec. 16---strike entire section, in particular lines 34 thru 38 on p.6 and lines 27 and 28 on p.7.

Can you imagine the legal bills of trying to prove your innocence in a foreign state or country. It used to be innocent until proven guilty. This needs to be kept in the home state, otherwise we will continue to see even more flight from this state, with Kansas children in tow. Just as no other state should have jurisdiction over alleged criminal charges in Kansas, we should not have jurisdiction over alleged criminal charges in other states. With the Census taking place, can we afford to lose more children.

Page 8 & 9 New Sec. 19 entire section in particular line 43 on p. 8 and line 1 on p.9.

Page 10 New Sec. 21---strike entire section.
Proceedings do not equal guilt. Due process of law is demanded by the Constitution.

Page 16 New Sec. 33 (e)---

Page 18 line 17---change "age of 21 years" to "age of 18 years"

Page 22---custody to "parental rights and duties"

Page 23 line 1 (A) Joint "Shared" "parental rights and duties"

Page 23 line 18 change visitation to "parenting time"

Page 25 Line 12---Maintenance.

Include "Maintenance to be paid until such time as the recipient of the maintenance remarries or co-habitates with another partner."

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House Judiciary
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Attachment 2