

2A:34-28 to 2A:34-52

LEGISLATIVE HISTORY CHECKLIST

UUSA 2A:34-28 to 2A:34-52 ("Uniform Child Custody Jurisdiction Act")

LAWS OF 1979 CHAPTER 124

Bill No. A361

Sponsor(s) Martin and Littell

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public, Safety, and Defense

Senate Judiciary

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly January 25, 1979

Senate May 7, 1979

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Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly ~~xxx~~ No

Senate Yes ~~xxx~~

Fiscal Note Yes ~~xxx~~ 9-25-78 & 1-30-79

Veto message ~~xxx~~ No

Message on signing Yes ~~xxx~~

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

See:

Uniform Child Custody Jurisdiction Act as promulgated by the National Conference of Commissioners on Uniform State Laws (attached)

1968, p. 198-218

EJ

9/1/78

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124
APPROVED 7-3-79

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 361

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen MARTIN and LITTELL

AN ACT concerning jurisdiction in child custody matters, and
supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Uniform
2 Child Custody Jurisdiction Act."

1 2. The Legislature finds that this act is necessary in order to:

2 a. Avoid jurisdictional competition and conflict with courts of
3 other states in matters of child custody which have in the past
4 resulted in the shifting of children from state to state with harmful
5 effects on their well-being;

6 b. Promote cooperation with the courts of other states to the
7 end that a custody decree is rendered in that state which can best
8 decide the case in the interest of the child;

9 c. Assure that litigation concerning the custody of a child takes
10 place ordinarily in the state with which the child and his family
11 have the closest connection and where significant evidence concern-
12 ing his care, protection, training, and personal relationships is
13 most readily available, and that courts of this State decline the
14 exercise of jurisdiction when the child and his family have a closer
15 connection with another state;

16 d. Discourage continuing controversies over child custody in the
17 interest of greater stability of home environment and of secure
18 family relationships for the child;

19 e. Deter abductions and other unilateral removals of children
20 undertaken to obtain custody awards;

21 f. Avoid relitigation of custody decisions of other states in this
22 State insofar as feasible;

23 g. Facilitate the enforcement of custody decrees of other states;
24 and

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

25 h. Promote and expand the exchange of information and other
 26 forms of mutual assistance between the courts of this State and
 27 those of other states concerned with the same child.

1 3. As used in this act:

2 a. "Contestant" means a person, including a parent, who claims
 3 a right to custody or visitation rights with respect to a child;

4 b. "Custody determination" means a court decision and court
 5 orders and instructions providing for the custody of a child, in-
 6 cluding visitation rights, and does not include a decision relating
 7 to child support or any other monetary obligation of any person;

8 c. "Custody proceeding" includes proceedings in which a cus-
 9 tody determination is one of several issues, such as an action for
 10 divorce or separation, and includes child neglect and dependency
 11 proceedings;

12 d. "Decree" or "custody decree" means a custody determina-
 13 tion contained in a judicial decree or order made in a custody pro-
 14 ceeding, and includes an initial decree and a modification decree;

15 e. "Home state" means the state in which the child immediately
 16 preceding the time involved lived with his parents, a parent, or a
 17 person acting as parent, for at least 6 consecutive months, and in
 18 the case of a child less than 6 months old the state in which the child
 19 lived from birth with any of the persons mentioned. Periods of
 20 temporary absence of any of the named persons are counted as
 21 part of the 6-month or other period;

22 f. "Initial decree" means the first custody decree concerning a
 23 particular child;

24 g. "Modification decree" means a custody decree which modifies
 25 or replaces a prior decree, whether made by the court which
 26 rendered the prior decree or by another court;

27 h. "Physical custody" means actual possession and control of a
 28 child;

29 i. "Person acting as parent" means a person, other than a
 30 parent, who has physical custody of a child and who has either
 31 been awarded custody by a court or claims a right to custody; and

32 j. "State" means any state, territory, or possession of the
 33 United States, the Commonwealth of Puerto Rico, and the District
 34 of Columbia.

1 4. a. ***[A court]*** **The Superior Court** of the State of New
 2 Jersey **[which is competent to decide child custody matters]** has
 3 jurisdiction to make a child custody determination by initial or
 3A modification decree if:

4 (1) This State (i) is the home state of the child at the time of
 5 commencement of the proceeding, or (ii) had been the child's home
 6 state within 6 months before commencement of the proceeding and

7 the child is absent from this State because of his removal or reten-
 8 tion by a person claiming his custody or for other reasons, and a
 9 parent or person acting as parent continues to live in this State; or

10 (2) It is in the best interest of the child that a court of this State
 11 assume jurisdiction because (i) the child and his parents, or the
 12 child and at least one contestant, have a significant connection with
 13 this State, and (ii) there is available in this State substantial evi-
 14 dence concerning the child's present or future care, protection,
 15 training, and personal relationships; or

16 (3) The child is physically present in this State and (i) the
 17 child has been abandoned or (ii) it is necessary in an emergency
 18 to protect the child because he has been subjected to or threatened
 19 with mistreatment or abuse or is otherwise neglected; or

20 (4) (i) It appears that no other state would have jurisdiction
 21 under prerequisites substantially in accordance with paragraphs
 22 (1), (2), or (3), or another state has declined to exercise jurisdic-
 23 tion on the ground that this State is the more appropriate forum
 24 to determine the custody of the child, and (ii) it is in the best
 25 interest of the child that this court assume jurisdiction.

26 b. Except under paragraphs (3) and (4) of subsection ***[(a)]***
 27 **a.**, physical presence in this State of the child, or of the child and
 28 one of the contestants, is not alone sufficient to confer jurisdiction
 29 on a court of this State to make a child custody determination.

30 c. Physical presence of the child, while desirable, is not a pre-
 31 requisite for jurisdiction to determine his custody.

1 5. Before a decree is made pursuant to this act, reasonable notice
 2 and opportunity to be heard shall be given **in accordance with*
 3 *the Rules Governing the Courts of the State of New Jersey** to
 4 the contestants, any parent whose parental rights have not been
 5 previously terminated, and any person who has physical custody
 6 of the child. If any of these persons is outside this State, notice
 7 and opportunity to be heard shall be given pursuant to section
 8 ***[5]* *6*** of this act.

1 6. a. Notice required for the exercise of jurisdiction over a per-
 2 son outside this State shall be given in a manner reasonably
 3 calculated to give actual notice, and may be:

4 (1) By personal delivery outside this State in the manner pre-
 5 scribed for service of process within this State;

6 (2) In the manner prescribed by the law of the place in which
 7 the service is made for service of process in that place in an action
 8 in any of its courts of general jurisdiction;

9 (3) By any form of mail addressed to the person to be served
 10 ***[and requesting a receipt]***; or

11 (4) As directed by the court.

12 b. Notice under this section shall be served, mailed, or de-
 13 livered, at least 20 days before any hearing in this State*, *or such*
 13A *other time period as directed by the court if the matter is emer-*
 13B *gent**.

14 c. Proof of service outside this State may be made by affidavit
 15 of the individual who made the service, or in the manner prescribed
 16 by the law of this State, the order pursuant to which the service
 17 is made, or the law of the place in which the service is made. If
 18 service is made by mail, proof may be a receipt signed by the
 19 addressee or other evidence of delivery to the addressee.

20 d. Notice is not required if a person submits to the jurisdiction
 21 of the court.

1 7. a. A court of this State shall not exercise its jurisdiction under
 2 this act if at the time of filing the petition a proceeding concerning
 3 the custody of the child was pending in a court of another state
 4 exercising jurisdiction substantially in conformity with this act,
 5 unless the proceeding is stayed by the court of the other state
 6 because this State is a more appropriate forum or for other reasons.

7 b. Before hearing the petition in a custody proceeding the court
 8 shall examine the pleadings and other information supplied by the
 9 parties pursuant to section ***[9]*** **10** of this act and shall consult
 10 the child custody registry established pursuant to section ***[16]***
 11 **17** of this act concerning the pendency of proceedings with
 12 respect to the child in other states. If the court has reason to
 13 believe that proceedings may be pending in another state it shall
 14 direct an inquiry to the state court administrator or other appro-
 15 priate official of the other state.

16 c. If the court is informed during the course of the proceeding
 17 that a proceeding concerning the custody of the child was pending
 18 in another state before the court assumed jurisdiction it shall stay
 19 the proceeding and communicate with the court in which the other
 20 proceeding is pending to the end that the issue may be litigated in
 21 the more appropriate forum and that information be exchanged in
 22 accordance with sections ***[19 through 22]*** **20 through 23**. If a
 23 court of this State has made a custody decree before being informed
 24 of a pending proceeding in a court of another state it shall im-
 25 mediately inform that court of the fact. If the court is informed
 26 that a proceeding was commenced in another state after it assumed
 27 jurisdiction it shall likewise inform the other court to the end that
 28 the issues may be litigated in the more appropriate forum.

1 8. a. A court which has jurisdiction under this act to make an
 2 initial or modification decree may decline to exercise its jurisdiction
 3 any time before making a decree if it finds that it is an inconvenient
 4 forum to make a custody determination under the circumstances of

5 the case and that a court of another state is a more appropriate
6 forum.

7 b. A finding of inconvenient forum may be made upon the court's
8 own motion or upon motion of a party or a guardian ad litem or
9 other representative of the child.

10 c. In determining if it is an inconvenient forum, the court shall
11 consider if it is in the interest of the child that another state assume
12 jurisdiction. For this purpose it may take into account the follow-
13 ing factors, among others:

14 (1) If another state is or recently was the child's home state;

15 (2) If another state has a closer connection with the child and
16 his family or with the child and one or more of the contestants;

17 (3) If substantial evidence concerning the child's present or
18 future care, protection, training, and personal relationships is more
19 readily available in another state;

20 (4) If the parties have agreed on another forum which is no less
21 appropriate; and

22 (5) If the exercise of jurisdiction by a court of this State would
23 contravene any of the purposes stated in section one of this act.

24 d. Before determining whether to decline or retain jurisdiction
25 the court may communicate with a court of another state and
26 exchange information pertinent to the assumption of jurisdiction
27 by either court with a view to assuring that jurisdiction will be
28 exercised by the more appropriate court and that a forum will be
29 available to the parties.

30 e. If the court finds that it is an inconvenient forum and that a
31 court of another state is a more appropriate forum, it may dismiss
32 the proceedings, or it may stay the proceedings upon condition
33 that a custody proceeding be promptly commenced in another
34 named state or upon any other conditions which may be just and
35 proper, including the condition that a moving party stipulate his
36 consent and submission to the jurisdiction of the other forum.

37 f. The court may decline to exercise its jurisdiction **where a*
38 *finding of inconvenient forum is made** under this act ***[if]***
39 **whether or not** a custody determination is incidental to an action
39A for divorce or another proceeding while retaining jurisdiction over
40 the divorce or other proceeding.

41 g. If it appears to the court that it is clearly an inappropriate
42 forum it may ***[require]*** **assess, and if not paid enter a judg-*
43 *ment against** the party who commenced the proceedings ***[to**
44 **pay]*** **for**, in addition to the costs of the proceedings in this State,
44A necessary travel and other expenses, including attorneys' fees,
45 incurred by other parties or their witnesses. Payment shall be made
46 to the clerk of the court for remittance to the proper party **or, in*

46A *the event of a judgment, shall be collected in accordance with the*
 46B *normal procedures for the collection of judgments*.*

47 h. Upon dismissal or stay of proceedings under this section the
 48 court shall inform the court found to be the more appropriate
 49 forum of this fact, or if the court which would have jurisdiction in
 50 the other state is not certainly known, shall transmit the informa-
 51 tion to the court administrator or other appropriate official for
 52 forwarding to the appropriate court.

53 i. Any communication received from another state informing
 54 this State of a finding of inconvenient forum because a court of this
 55 State is the more appropriate forum shall be filed in the custody
 56 registry of the appropriate court. Upon assuming jurisdiction the
 57 court of this State shall inform the original court of this fact.

1 9. a. If the petitioner for an initial decree has wrongfully taken
 2 the child from another state or has engaged in similar reprehensible
 3 conduct the court may decline to exercise jurisdiction if this is
 4 just and proper under the circumstances.

5 b. Unless required in the interest of the child, the court shall not
 6 exercise its jurisdiction to modify a custody decree of another state
 7 if the petitioner, without consent of the person entitled to custody,
 8 has improperly removed the child from the physical custody of the
 9 person entitled to custody or has improperly retained the child
 10 after a visit or other temporary relinquishment of physical custody.
 11 If the petitioner has violated any other provision of a custody
 12 decree of another state the court may decline to exercise its juris-
 13 diction if this is just and proper under the circumstances.

14 c. In appropriate cases a court dismissing a petition under this
 15 section may ***[charge]*** **assess, and if not paid enter a judgment*
 16 *against** the petitioner ***[with]*** **for** necessary travel and other
 17 expenses, including attorneys' fees, incurred by other parties or
 18 their witnesses. **Payment shall be made to the clerk of the court*
 19 *for remittance to the proper party, or in the event of a judgment*
 20 *shall be collected in accordance with the normal procedures for the*
 21 *collection of judgments.**

1 10. a. Every party in a custody proceeding in his first pleading
 2 or in an affidavit attached to that pleading shall give information
 3 under oath as to the child's present address, the places where the
 4 child has lived within the last 5 years, and the names and present
 5 addresses of the persons with whom the child has lived during that
 6 period. In this pleading or affidavit every party shall further
 7 declare under oath whether:

8 (1) He has participated (as a party, witness, or in any other
 9 capacity) in any other litigation concerning the custody of the
 10 same child in this or any other state;

11 (2) He has information of any custody proceeding concerning
12 the child pending in a court of this or any other state; and

13 (3) He knows of any person not a party to the proceedings who
14 has physical custody of the child or claims to have custody or
15 visitation rights with respect to the child.

16 b. If the declaration as to any of the above items is in the
17 affirmative the declarant shall give additional information under
18 oath as required by the court. The court may examine the parties
19 under oath as to details of the information furnished and as to other
20 matters pertinent to the court's jurisdiction and the disposition of
21 the case.

22 c. Each party has a continuing duty to inform the court of any
23 custody proceeding concerning the child in this or any other state
24 of which he obtained information during this proceeding.

1 11. If the court learns from information furnished by the parties
2 pursuant to section ***[9]*** *10* of this act, or from other sources
3 that a person not a party to the custody proceeding has physical
4 custody of the child or claims to have custody or visitation rights
5 with respect to the child, it shall order that person to be joined as
6 a party and to be duly notified of the pendency of the proceeding
7 and of his joinder as a party. If the person joined as a party is
8 outside that State he shall be served with process or otherwise
9 notified in accordance with the provisions of section ***[5]*** *6*
10 of this act.

1 12. a. The court may order any party to the proceeding who is in
2 this State to appear personally before the court. If that party has
3 physical custody of the child the court may order that he appear
4 personally with the child.

5 b. If a party to the proceeding whose presence is desired by the
6 court is outside this State, with or without the child the court may
7 order that the notice given pursuant to section ***[5]*** *6* of this
8 act include a statement directing that party to appear personally
9 with or without the child and declaring that failure to appear may
10 result in a decision adverse to that party.

11 c. If a party to the proceeding who is outside this State is
12 directed to appear under subsection b. or desires to appear person-
13 ally before the court, with or without the child, the court may re-
14 quire another party to pay to the clerk of the court travel and
15 other necessary expenses of the party so appearing and of the
16 child, if this is just and proper under the circumstances.

1 13. A custody decree rendered by a court of this State which had
2 jurisdiction pursuant to section ***[3]*** *4* of this act binds all
3 parties who have been served in this State or notified in accordance

4 with the provisions of section *~~5~~* *6* of this act or who have sub-
 5 mitted to the jurisdiction of the court, and who have been given an
 6 opportunity to be heard. As to these parties the custody decree is
 7 conclusive as to all issues of law and fact decided and as to the
 8 custody determination made unless and until that determination is
 9 modified pursuant to law, including the provisions of this act.

1 14. The courts of this State shall recognize and enforce an initial
 2 or modification decree of a court of another state which had
 3 assumed jurisdiction under statutory provisions substantially in
 4 accordance with this act or which was made under factual circum-
 5 stances meeting the jurisdictional standards of this act, so long as
 6 the decree has not been modified in accordance with jurisdictional
 7 standards substantially similar to those of this act.

1 15. a. If a court of another state has made a custody decree, a
 2 court of this State shall not modify that decree unless (1) it ap-
 3 pears to the court of this State that the court which rendered the
 4 decree does not now have jurisdiction under jurisdictional prere-
 5 quisites substantially in accordance with this act or has declined to
 6 assume jurisdiction to modify the decree, and (2) the court of this
 7 State has jurisdiction.

8 b. If a court of this State is authorized pursuant to subsection
 9 *(a)* *a.* and to section *~~8~~* *9* of this act to modify a custody
 10 decree of another state it shall give due consideration to the tran-
 11 script of the record and other documents of all previous proceedings
 12 submitted to it in accordance with section *~~22~~* *23* of this act.

1 16. a. A certified copy of a custody decree of another state may
 2 be filed in the office of the clerk of *~~any juvenile and domestic rela-~~
 3 tions court* *the Superior Court* of this State. The clerk shall
 4 treat the decree in the same manner as a custody decree of said
 5 court.

5A A custody decree so filed has the same effect and shall be enforced
 6 in like manner as a custody decree rendered by a court of this
 7 State.

8 b. A person violating a custody decree of another state, which
 9 makes it necessary to enforce the decree in this State, may be re-
 10 quired to pay necessary travel and other expenses, including
 11 attorneys' fees, incurred by the party entitled to the custody or his
 12 witnesses.

1 17. The *~~clerk of each juvenile and domestic relations court~~*
 2 *office of the Clerk of the Superior Court* shall maintain a registry
 2A *~~in which he shall enter~~* *which shall contain* the following:

3 (1) Certified copies of custody decrees of other states received
 4 for filing;

5 (2) Communications as to the pendency of custody proceedings
6 in other states;

7 (3) Communications concerning a finding of inconvenient forum
8 by a court of another state; and

9 (4) Other communications or documents concerning custody
10 proceedings in another state which may affect the jurisdiction of
11 a court of this State or the disposition to be made by it in a custody
12 proceeding.

1 18. The clerk of ***[any juvenile and domestic relations court]***
2 **the Superior Court** of this State, at the request of the court of
3 another state or at the request of any person who is affected by or
4 has a legitimate interest in a custody decree, shall certify and
5 forward a copy of the decree to that court or person.

1 19. In addition to other procedural devices available to a party,
2 any party to the proceeding or a guardian ad litem or other repre-
3 sentative of the child may adduce testimony of witnesses, including
4 parties and the child, by deposition or ***[otherwise]*** **other form*
5 *of sworn statement**, in another state. The court on its own motion
6 may direct that the testimony of a person be taken in another state
7 and may prescribe the manner in which and the terms upon which
8 the testimony shall be taken.

1 20. a. A court of this State may request the appropriate court of
2 another state to hold a hearing to adduce evidence, to order a party
3 to produce or give evidence under other procedures of that state,
4 or to have social studies made with respect to the custody of a
5 child involved in proceedings pending in the court of this State; and
6 to forward to the court of this State certified copies of the tran-
7 script of the record of the hearing, the evidence otherwise adduced,
8 or any social studies prepared in compliance with the request. The
9 cost of the services may be assessed against the parties or, if
10 necessary, ordered paid by the county wherein the child resides.

11 b. A court of this State may request the appropriate court of
12 another state to order a party to custody proceedings pending in
13 the court of this State to appear in the proceedings, and if that
14 party has physical custody of the child, to appear with the child.
15 The request may state that travel and other necessary expenses of
16 the party and of the child whose appearance is desired will be
17 assessed against another party or will otherwise be paid **to the*
18 *clerk of the court for remittance to the proper party**.

19 **c. The appearance of a party residing outside the State pursuant*
20 *to this section shall not constitute waiver of the party's right to*
21 *contest the court's jurisdiction.**

1 21. a. Upon request of the court of another state the courts of
2 this State which are competent to hear custody matters may order a
3 person in this State to appear at a hearing to adduce evidence or
4 to produce or give evidence under other procedures available in
5 this State or may order social studies to be made for use in a
6 custody proceeding in another state. A certified copy of the tran-
7 script of the record of the hearing or the evidence otherwise ad-
8 duced and any social studies prepared shall be forwarded by the
9 clerk of the court to the requesting court.

10 b. A person within this State may voluntarily give his testi-
11 mony or statement in this State for use in a custody proceeding
12 outside this State.

13 c. Upon request of the court of another state a competent court
14 of this State may*, *after a hearing*,* order a person in this State to
15 appear alone or with the child in a custody proceeding in another
16 state. The court may condition compliance with the request upon
17 assurance by the other state that travel and other necessary
18 expenses will be advanced or reimbursed.

1 22. In any custody proceeding in this State the court shall pre-
2 serve the pleadings, orders and decrees, any record that has been
3 made of its hearings, social studies, and other pertinent documents
4 until the child reaches 21 years of age. Upon appropriate request
5 of the court of another state the court shall forward to the other
6 court certified copies of any or all of such documents.

1 23. If a custody decree has been rendered in another state con-
2 cerning a child involved in a custody proceeding pending in a court
3 of this State, the court of this State, upon taking jurisdiction of the
4 case, shall request of the court of the other state a certified copy of
5 the transcript of any court record and other documents mentioned
6 in section ***[21]*** *22* of this act.

1 24. The general policies of this act extend to the international
2 area. The provisions of this act relating to the recognition and
3 enforcement of custody decrees of other states apply to custody
4 decrees and decrees involving legal institutions similar in nature
5 and to custody rendered by appropriate authorities of other na-
6 tions, if reasonable notice and opportunity to be heard were given
7 to all affected persons.

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

1 26. This act shall take effect immediately.

15 with the child in a custody proceeding in another state. The court
 16 may condition compliance with the request upon assurance by the
 17 other state that travel and other necessary expenses will be
 18 advanced or reimbursed.

1 22. In any custody proceeding in this State the court shall pre-
 2 serve the pleadings, orders and decrees, any record that has been
 3 made of its hearings, social studies, and other pertinent documents
 4 until the child reaches 21 years of age. Upon appropriate request
 5 of the court of another state the court shall forward to the other
 6 court certified copies of any or all of such documents.

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 4 case, shall request of the court of the other state a certified copy of
 5 the transcript of any court record and other documents mentioned
 6 in section 21 of this act.

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 2 area. The provisions of this act relating to the recognition and
 3 enforcement of custody decrees of other states apply to custody
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 2 person or circumstance is held invalid, its invalidity does not affect
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 4 without the invalid provision or application, and to this end the
 5 provisions of this act are severable.

1 26. This act shall take effect immediately.

STATEMENT

This bill, the "Uniform Child Custody Jurisdiction Act," was first developed in 1968 by the National Commissioners of Uniform State Laws, and offered to the states for consideration. Since then, ten states, including California and Michigan, have enacted it into law.

Without legislation such as this, a distressing absence of uniform policy among the states concerning child custody decrees will continue to harm children. When a child is not clearly the responsibility of any one parent, relative or guardian the child may be the

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object of a legal tug-of-war for custody. He or she may be repeatedly moved from state to state before a custody case comes to court. Even when a court renders a decree, the party which loses may abduct the child in an unguarded moment and seek a more favorable judgment in another state. The party deprived of the child may then resort to the same tactic to recover the child. As a result, the child suffers from an absence of security, stability and continuity of affection.

In most states today this state of affairs is encouraged by a lack of statutory law and by unsettling and confusing judicial decisions. There is no certainty as to which state has jurisdiction when persons seeking custody of a child approach the courts of several states simultaneously or successively. There is no certainty as to whether a custody decree rendered in one state is entitled to recognition and enforcement in another; nor as to when one state may alter a custody decree of a sister state.

This uniform act seeks to bring order to the existing state of confusion regarding child custody decrees. Underlying its provisions is the idea that to avoid jurisdictional conflicts, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child.

This act is not a reciprocal law. It can be put into operation regardless of enactment by other states.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 361

STATE OF NEW JERSEY

DATED: APRIL 26, 1979

Assembly No. 361 the "Uniform Child Custody Jurisdiction", was promulgated in 1968 by the National Commissioners of Uniform State Laws. Since then, at least twenty-eight states have enacted it into law. The following is a brief section by section description of the provisions of Assembly No. 361:

SECTION 1:

Title.

SECTION 2:

Sets forth the aims and purposes of the act. They include: the avoidance of jurisdictional conflict and competition between states over custody matters; assure that custody litigation takes place in the State with which the child and the family has its closest connection and which can best decide the case in the interest of the child; discourage continuing custody controversies; deter abductions undertaken to obtain custody awards; avoid relitigation of custody decisions; facilitate enforcement of custody decrees of other states and promote the exchange of information and assistance between states with regard to custody matters.

SECTION 3:

Definitions.

SECTION 4:

Sets forth the circumstances in which New Jersey would exercise jurisdiction over a child custody dispute. Those circumstances being: (1) New Jersey is the home state of the child at the commencement of the proceeding or New Jersey was the child's home state within 6 months before commencement of the proceeding and the child has been removed from New Jersey by a parent or person claiming custody and another parent or person claiming custody continues to live in New Jersey; or

(2) It is in the best interest of the child that New Jersey assume jurisdiction because the child and his parents or the child and at least one contestant has a significant connection with New Jersey and there

is available in New Jersey substantial evidence relating to the child's background; or

(3) The child is present in New Jersey and either has been abandoned or is in need of emergency protection; or

(4) No other state would have the required jurisdictional prerequisite as stated above or another state has declined to exercise jurisdiction citing New Jersey as the appropriate forum and it is in the best interest of the child that New Jersey assume jurisdiction.

Section 4 also provides that except under 3 or 4 of the above, the physical presence of the child or one of the contestants in New Jersey is not sufficient by itself to confer jurisdiction and somewhat conversely, that the presence of the child is not a prerequisite for New Jersey's assumption of jurisdiction.

SECTION 5:

Provides that prior to the issuance of a custody decree, notice must be given, in addition to the parties, to any parent whose rights have not been terminated and to any person having physical custody of the child.

SECTION 6:

States the methods by which persons who are outside of New Jersey must be given notice and how proof of such notice may be established. Twenty days notice must be given before any custody hearing except in emergent situations. Notice is not required if a person submits to New Jersey's jurisdiction.

SECTION 7:

Provides that New Jersey shall not assume jurisdiction over a custody dispute if it discovers that a custody proceeding is pending in a court of another state if that state is exercising jurisdiction substantially in conformity with this act.

SECTION 8:

States that a New Jersey court shall decline jurisdiction over a child custody case if the court determines that New Jersey is an inconvenient forum and that another state is a more appropriate forum. The following factors should be considered by a court in determining whether New Jersey is an inconvenient forum:

- (1) Another state is or recently was the child's home state;
- (2) Another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (3) Substantial evidence concerning the child's case history is more readily available in another state;
- (4) The parents have agreed to another appropriate forum; and
- (5) The exercise of jurisdiction by New Jersey would run counter to purposes stated in section 2.

Also under section 8, if there is a finding that New Jersey is clearly an inappropriate forum, costs including travel and attorneys fee may be leveled against the party who commenced the proceedings (see subsection g.)

SECTION 9:

Provides that if the petitioner seeking a custody degree or the modification of another state's custody degree has improperly removed the child from another state, New Jersey may decline jurisdiction. As in section 8, costs may be assessed against the petitioner.

SECTION 10:

Sets forth the information which parties to a custody proceeding must provide. The required information includes the child's residential background and the history of any prior custody proceedings.

SECTION 11:

Requires the court to join as a party to a custody proceeding any person having physical custody of the child or any person who claims to have custody or visitation rights.

SECTION 12:

Allows the court to order any person whether in or outside of New Jersey to appear personally with or without the child at a custody proceeding. The court may also require that if the person ordered to appear is from out of state that another party pay that person's expenses.

SECTION 13:

States that a custody degree binds all parties who have been served or notified in accordance with the provisions of this act or who have submitted to the jurisdiction of the court issuing the degree.

SECTION 14:

States that New Jersey will recognize and enforce the custody decree of another state as long as that state assumed jurisdiction in accordance with the provisions of this act and as long as such decree has not been modified in accordance with the provisions of this act.

SECTION 15:

Provides that New Jersey shall not modify another state's custody degree unless that other state does not now meet the jurisdictional requirements of this act and New Jersey does have jurisdiction.

SECTION 16:

Provides for the filing of other states' custody decree in the Superior Court. Section 16 also provides that any person who violates another state's custody decree forcing enforcement of that decree in New Jersey, be required to pay the expenses including attorney's fees of the party entitled to custody.

SECTION 17:

Requires the clerk of the Superior Court to maintain a registry containing copies of out of state custody decrees and other communications and documents relating to custody proceedings.

SECTION 18:

Permits the Superior Court to forward copies of custody decrees to other states and to persons affected by those decrees.

SECTION 19:

Allows a party to take testimony of the child, another party, or witness residing outside of New Jersey, by means of deposition or other form of sworn statement.

SECTION 20:

Permits New Jersey to request that another state hold hearings; order a party to give or produce evidence or conduct social studies with respect to the child subject to the custody proceedings. Section 20 also permits New Jersey to request that another state order a person to appear in New Jersey and if that party has physical custody of the child to appear with the child.

SECTION 21:

Section 21 is the converse of section 20. Allows another state to request that New Jersey hold hearings, etc. (see above)

SECTION 22:

Requires records of custody proceedings to be preserved until the child reaches 21 years of age.

SECTION 23:

Requires that if a custody decree has been rendered in another state, that our courts obtain a transcript of the proceeding which resulted in that decree, upon assuming jurisdiction over a custody proceeding involving the same child.

SECTION 24:

Makes the policies of this act applicable in international situations.

SECTION 25:

Severability Clause.

SECTION 26:

Effective Date.

FISCAL NOTE TO
ASSEMBLY, No. 361

STATE OF NEW JERSEY

DATED: SEPTEMBER 25, 1978

Assembly Bill No. 361 is designated the "Uniform Child Custody Jurisdiction Act." It prescribes jurisdiction in child custody matters.

The Department of Human Services has reviewed this legislation and states that as they understand the bill, its enactment would have no fiscal impact on the Department or the Division of Youth and Family Services.

The Judiciary has also reviewed this legislation and feels that it is fair to conclude that no additional expenses will be incurred by enactment of this legislation.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

FISCAL NOTE TO
ASSEMBLY, No. 361
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JANUARY 30, 1979

The Official Copy Reprint of Assembly Bill No. 361 is designated the "Uniform Child Custody Jurisdiction Act". It prescribes jurisdiction in child custody matters.

The Judiciary has reviewed this legislation and has estimated that the total cost estimate for implementing this act is approximately \$116,000.00.

The Office of Fiscal Affairs feels that the cost estimate supplied by the Judiciary is too high. A more reasonable estimate of additional costs incurred as a result of passage of this legislation would be \$40,000.00. Of this amount, approximately \$15,000.00 would be borne by the State and approximately \$25,000.00 would be borne by county governments.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

FROM THE OFFICE OF THE GOVERNOR .

JULY 3, 1979

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

PAT SWEENEY

Governor Brendan Byrne today signed the following bills into law in a public ceremony in his office:

A-361, sponsored by Assemblyman Harold Martin (D-Bergen), which establishes a method for resolving jurisdictional conflicts between New Jersey courts and courts in other states in child custody litigation, and provides for the recognition and enforcement of child custody decrees.

Designated the "Uniform Child Custody Jurisdiction Act", the purpose of the bill is to prevent parental "forum shopping" and "kidnapping" of their children and to eliminate relitigation of child custody awards.

A-1674, sponsored by Assemblywoman Greta Kiernan (D-Bergen), which addresses the needs of the middle-aged woman who has spent most of her adult life working in the home and who now, because of divorce or the death of her spouse, must re-enter the job market.

Under provisions in this bill, the Division on Women will work to identify and provide technical assistance to community organizations which seek to provide for displaced homemakers' job counseling services, job training, health education and counseling, financial management, educational services, legal counseling and referral, outreach and information services. The Division will make a continuous study of the needs of displaced homemakers and recommend effective programs and services to meet those needs, while putting eligible people in touch with the available programs.

S-3005, sponsored by Senator Matthew Feldman (D-Bergen), which designates "The Teterboro Aviation Hall of Fame and Museum" as "The Aviation Hall of Fame and Museum of New Jersey." Atlantic Aviation, Inc., a private concern, provides space for the museum of Teterboro Airport. No state funding has been requested, the museum is merely seeking a change in title.

(~~SECRET~~)

UNIFORM CHILD CUSTODY JURISDICTION ACT

SECTION 1. [Purposes of Act; Construction of Provisions.]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

COMMENT

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

SECTION 2. [Definitions.] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, *Domestic Relations* 576-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.

Paragraph (3) of subsection (a) retains and reaffirms *parens patriae* jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See *Application of Lang*, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subsequent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

1 SECTION 4. [*Notice and Opportunity to be Heard.*] Before
2 making a decree under this Act, reasonable notice and opportunity
3 to be heard shall be given to the contestants, any parent whose pa-
4 rental rights have not been previously terminated, and any person
5 who has physical custody of the child. If any of these persons is
6 outside this State, notice and opportunity to be heard shall be given
7 pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See *Restatement of the Law Second, Conflict of Laws*, Proposed Official Draft sec. 69 (1967); and compare *Armstrong v. Manzo*, 380 U.S. 515, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

1 SECTION 5. [*Notice to Persons Outside this State; Submission*
2 *to Jurisdiction.*]

3 (a) Notice required for the exercise of jurisdiction over a person
4 outside this State shall be given in a manner reasonably calculated
5 to give actual notice, and may be:

6 (1) by personal delivery outside this State in the manner
7 prescribed for service of process within this State;

8 (2) in the manner prescribed by the law of the place in which
9 the service is made for service of process in that place in an
10 action in any of its courts of general jurisdiction;

11 (3) by any form of mail addressed to the person to be served
12 and requesting a receipt; or

13 (4) as directed by the court [including publication, if other
14 means of notification are ineffective].

15 (b) Notice under this section shall be served, mailed, or de-
16 livered, [or last published] at least [10, 20] days before any hear-
17 ing in this State.

18 (c) Proof of service outside this State may be made by affidavit
19 of the individual who made the service, or in the manner prescribed
20 by the law of this State, the order pursuant to which the service
21 is made, or the law of the place in which the service is made. If
22 service is made by mail, proof may be a receipt signed by the
23 addressee or other evidence of delivery to the addressee.

24 (d) Notice is not required if a person submits to the jurisdiction
25 of the court.

COMMENT

Section 2.01 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S. Ct. 552, 94 L. Ed. 865 (1950) and *Schroeder v. City of New York*, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See *Mullane v. Central Hanover Bank and Trust Co.*, *supra*; and see *Hazard, A General Theory of State-Court Jurisdiction*, 1965 *Supreme Court Rev.* 241, 277, 286-87. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices *in addition to* the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

1 SECTION 6. [*Simultaneous Proceedings in Other States.*]

2 (a) A court of this State shall not exercise its jurisdiction under
3 this Act if at the time of filing the petition a proceeding concerning
4 the custody of the child was pending in a court of another state
5 exercising jurisdiction substantially in conformity with this Act,
6 unless the proceeding is stayed by the court of the other state
7 because this State is a more appropriate forum or for other reasons.

8 (b) Before hearing the petition in a custody proceeding the court
9 shall examine the pleadings and other information supplied by the
10 parties under section 9 and shall consult the child custody registry

11 established under section 16 concerning the pendency of pro-
12 ceedings with respect to the child in other states. If the court has
13 reason to believe that proceedings may be pending in another state
14 it shall direct an inquiry to the state court administrator or other
15 appropriate official of the other state.

16 (c) If the court is informed during the course of the proceeding
17 that a proceeding concerning the custody of the child was pending
18 in another state before the court assumed jurisdiction it shall stay
19 the proceeding and communicate with the court in which the other
20 proceeding is pending to the end that the issue may be litigated in
21 the more appropriate forum and that information be exchanged in
22 accordance with sections 19 through 22. If a court of this state has
23 made a custody decree before being informed of a pending pro-
24 ceeding in a court of another state it shall immediately inform that
25 court of the fact. If the court is informed that a proceeding was
26 commenced in another state after it assumed jurisdiction it shall
27 likewise inform the other court to the end that the issues may be
28 litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

1 SECTION 7. [*Inconvenient Forum.*]

2 (a) A court which has jurisdiction under this Act to make an
3 initial or modification decree may decline to exercise its jurisdiction
4 any time before making a decree if it finds that it is an inconve-
5 nient forum to make a custody determination under the circum-
6 stances of the case and that a court of another state is a more
7 appropriate forum.

8 (b) A finding of inconvenient forum may be made upon the

9 court's own motion or upon motion of a party or a guardian ad
10 litem or other representative of the child.

11 (c) In determining if it is an inconvenient forum, the court shall
12 consider if it is in the interest of the child that another state assume
13 jurisdiction. For this purpose it may take into account the follow-
14 ing factors, among others:

15 (1) if another state is or recently was the child's home state;

16 (2) if another state has a closer connection with the child and
17 his family or with the child and one or more of the contestants;

18 (3) if substantial evidence concerning the child's present or
19 future care, protection, training, and personal relationships is
20 more readily available in another state;

21 (4) if the parties have agreed on another forum which is no
22 less appropriate; and

23 (5) if the exercise of jurisdiction by a court of this state
24 would contravene any of the purposes stated in section 1.

25 (d) Before determining whether to decline or retain jurisdiction
26 the court may communicate with a court of another state and
27 exchange information pertinent to the assumption of jurisdiction
28 by either court with a view to assuring that jurisdiction will be
29 exercised by the more appropriate court and that a forum will be
30 available to the parties.

31 (e) If the court finds that it is an inconvenient forum and that
32 a court of another state is a more appropriate forum, it may dis-
33 miss the proceedings, or it may stay the proceedings upon condition
34 that a custody proceeding be promptly commenced in another
35 named state or upon any other conditions which may be just and
36 proper, including the condition that a moving party stipulate his
37 consent and submission to the jurisdiction of the other forum.

38 (f) The court may decline to exercise its jurisdiction under this
39 Act if a custody determination is incidental to an action for divorce
40 or another proceeding while retaining jurisdiction over the divorce
41 or other proceeding.

42 (g) If it appears to the court that it is clearly an inappropriate
43 forum it may require the party who commenced the proceedings to
44 pay, in addition to the costs of the proceedings in this State, nec-
45 essary travel and other expenses, including attorneys' fees, incurred
46 by other parties or their witnesses. Payment is to be made to the
47 clerk of the court for remittance to the proper party.

48 (h) Upon dismissal or stay of proceedings under this section the
49 court shall inform the court found to be the more appropriate
50 forum of this fact, of if the court which would have jurisdiction in
51 the other state is not certainly known, shall transmit the informa-

tion to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 84 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (c) is derived from Wis. Stat. Ann., sec. 262.19 (1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis. Stat. Ann., sec. 262.20. Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as C.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

1 SECTION 8. [Jurisdiction Declined by Reason of Conduct.]

2 (a) If the petitioner for an initial decree has wrongfully taken
3 the child from another state or has engaged in similar reprehensible
4 conduct the court may decline to exercise jurisdiction if this is
5 just and proper under the circumstances.

6 (b) Unless required in the interest of the child, the court shall
7 not exercise its jurisdiction to modify a custody decree of another
8 state if the petitioner, without consent of the person entitled to

9 custody, has improperly removed the child from the physical
10 custody of the person entitled to custody or has improperly re-
11 tained the child after a visit or other temporary relinquishment
12 of physical custody. If the petitioner has violated any other
13 provision of a custody decree of another state the court may
14 decline to exercise its jurisdiction if this is just and proper under
15 the circumstances.

16 (c) In appropriate cases a court dismissing a petition under
17 this section may charge the petitioner with necessary travel and
18 other expenses, including attorneys' fees, incurred by other parties
19 or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 Mich. L. Rev. 345 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See Fain, *Custody of Children*, The California Family Lawyer I, 539, 546 (1961); *Ex Parte Mullins*, 26 Wash. 2d 419, 174 P. 2d 790 (1946); *Crocker v. Crocker*, 122 Colo. 49, 219 P. 2d 311 (1950); and *Leathers v. Leathers*, 162 Cal. App. 2d 768, 328 P. 2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the wellbeing of the child, it is often not applied. See *Smith v. Smith*, 135 Cal. App. 2d 100, 286 P. 2d 1009 (1955) and *In re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the husband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated—both husband and wife as a rule have a right to custody until a court determination is made—but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention refusal of jurisdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare *Smith v. Smith* and *In Re Guardianship of Rodgers*, *supra*; and see *In Re Walker*, 228 Cal. App. 2d 217, 39 Cal. Rptr. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection

(b) makes refusal of jurisdiction entirely discretionary in this situation because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.

1 SECTION 9. [*Information under Oath to be Submitted to the*
2 *Court.*]

3 (a) Every party in a custody proceeding in his first pleading
4 or in an affidavit attached to that pleading shall give information
5 under oath as to the child's present address, the places where the
6 child has lived within the last 5 years, and the names and present
7 addresses of the persons with whom the child has lived during
8 that period. In this pleading or affidavit every party shall further
9 declare under oath whether:

10 (1) he has participated (as a party, witness, or in any other
11 capacity) in any other litigation concerning the custody of the
12 same child in this or any other state;

13 (2) he has information of any custody proceeding concerning
14 the child pending in a court of this or any other state; and

15 (3) he knows of any person not a party to the proceedings
16 who has physical custody of the child or claims to have custody
17 or visitation rights with respect to the child.

18 (b) If the declaration as to any of the above items is in the
19 affirmative the declarant shall give additional information under
20 oath as required by the court. The court may examine the parties
21 under oath as to details of the information furnished and as to
22 other matters pertinent to the court's jurisdiction and the dis-
23 position of the case.

24 (c) Each party has a continuing duty to inform the court of any
25 custody proceeding concerning the child in this or any other state
26 of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

1 SECTION 10. [*Additional Parties.*] If the court learns from in-
2 formation furnished by the parties pursuant to section 9 or from
3 other sources that a person not a party to the custody proceeding
4 has physical custody of the child or claims to have custody or

5 visitation rights with respect to the child, it shall order that person
6 to be joined as a party and to be duly notified of the pendency of
7 the proceeding and of his joinder as a party. If the person joined
8 as a party is outside this State he shall be served with process or
9 otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

1 SECTION 11. [*Appearance of Parties and the Child.*]

2 [(a) The court may order any party to the proceeding who is in
3 this State to appear personally before the court. If that party has
4 physical custody of the child the court may order that he appear
5 personally with the child.]

6 (b) If a party to the proceeding whose presence is desired by the
7 court is outside this State with or without the child the court may
8 order that the notice given under section 5 include a statement
9 directing that party to appear personally with or without the child
10 and declaring that failure to appear may result in a decision
11 adverse to that party.

12 (c) If a party to the proceeding who is outside this State is di-
13 rected to appear under subsection (b) or desires to appear person-
14 ally before the court with or without the child, the court may
15 require another party to pay to the clerk of the court travel and
16 other necessary expenses of the party so appearing and of the child
17 if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorizes the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision—not only in their juvenile court laws—may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalize the expense if this is appropriate under the circumstances.

1 SECTION 12. [*Binding Force and Res Judicata Effect of Custody*
2 *Decree.*] A custody decree rendered by a court of this State which
3 had jurisdiction under section 3 binds all parties who have been
4 served in this State or notified in accordance with section 5 or who
5 have submitted to the jurisdiction of the court, and who have been
6 given an opportunity to be heard. As to these parties the custody
7 decree is conclusive as to all issues of law and fact decided and as
8 to the custody determination made unless and until that determi-
9 nation is modified pursuant to law, including the provisions of this
10 Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from support actions (see section 2(2) *supra*), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 79 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with *May v. Anderson*, 345 U.S. 528, 73 S. Ct. 810, 97 L. Ed. 1221 (1953), which relates to interstate recognition rather than in-state validity of custody decrees. See Ehrenzweig and Louisell, Jurisdiction in a Nutshell 76 (2d ed. 1965); and compare Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 195 (1957). On *May v. Anderson*, *supra*, see comment to section 13.

Since a custody decree is normally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

1 SECTION 13. [*Recognition of Out-of-State Custody Decrees.*]
2 The courts of this State shall recognize and enforce an initial or
3 modification decree of a court of another state which had assumed
4 jurisdiction under statutory provisions substantially in accordance
5 with this Act or which was made under factual circumstances
6 meeting the jurisdictional standards of the Act, so long as this
7 decree has not been modified in accordance with jurisdictional
8 standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 828 (1964).

Although the full faith and credit clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognize and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, *supra*. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, *Ford v. Ford: Full Faith and Credit to Child Custody Decrees?* 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognize and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in *May v. Anderson*, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 79 and comment thereto, p. 298 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in *May v. Anderson*; and compare Clark, Domestic Relations 323-26 (1968), Goodrich, Conflict of Laws 274 (4th ed. by Scoles, 1964); Stumberg, Principles of Conflict of Laws 325 (3rd ed. 1963); and Comment, The Puzzle of Jurisdiction in Child Custody Actions, 33 U. Colo. L. Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, Interstate Recognition of Custody Decrees, 51 Mich. L. Rev. 345, 370 (1953). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See *Berlin v. Berlin*, 21 N.Y. 2d 371, 235 N.E. 2d 109 (1967); and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953); Compare *Moniz v. Moniz*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

1 SECTION 14. [*Modification of Custody Decree of Another State.*]

2 (a) If a court of another state has made a custody decree, a

3 court of this State shall not modify that decree unless (1) it ap-
4 pears to the court of this State that the court which rendered the
5 decree does not now have jurisdiction under jurisdictional prere-
6 quisites substantially in accordance with this Act or has declined to
7 assume jurisdiction to modify the decree and (2) the court of this
8 State has jurisdiction.

9 (b) If a court of this State is authorized under subsection (a)
10 and section 8 to modify a custody decree of another state it shall
11 give due consideration to the transcript of the record and other
12 documents of all previous proceedings submitted to it in accordance
13 with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare *Ratner, Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 821-2(1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6-1/2 months (3-1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See *Clark, Domestic Relations* 322-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare *Bregle v. Hurst*, 408 S. W. 2d 418 (Ky. 1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 8(b) and state 1 would have modification jurisdiction in any event under section 3(a) (4). Compare *Crocker v. Crocker*, 122 Colo. 49, 219 P. 2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction now, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the

decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also *Sharpe v. Sharpe*, 77 Ill. App. 295, 222 N.E. 2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcripts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant" says Paulsen, *Appointment of a Guardian in the Conflict of Laws*, 45 Iowa L. Rev. 212, 226 (1960). See also Ehrenzweig, *the Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings*, 64 Mich. L. Rev. 1, 6-7 (1965); and Ratner, *Legislative Resolution of the Interstate Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act*, 38 S. Cal. L. Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what conditions it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

1 SECTION 15. [*Filing and Enforcement of Custody Decree of* 2 *Another State.*]

3 (a) A certified copy of a custody decree of another state may be
4 filed in the office of the clerk of any [District Court, Family Court]
5 of this State. The clerk shall treat the decree in the same manner
6 as a custody decree of the [District Court, Family Court] of this
7 State. A custody decree so filed has the same effect and shall be
8 enforced in like manner as a custody decree rendered by a court of
9 this State.

10 (b) A person violating a custody decree of another state which
11 makes it necessary to enforce the decree in this State may be
12 required to pay necessary travel and other expenses, including
13 attorneys' fees, incurred by the party entitled to the custody or
14 his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognized are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to

modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, *Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 832-33 (1964).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 *Armstrong*, California Family Law 328 (1936 Suppl.), and *Crocker v. Crocker*, 195 F. 2d 236 (1952).

1 SECTION 18. [*Registry of Out-of-State Custody Decrees and*
2 *Proceedings.*] The clerk of each [District Court, Family Court]
3 shall maintain a registry in which he shall enter the following:
4 (1) certified copies of custody decrees of other states received
5 for filing;
6 (2) communications as to the pendency of custody proceedings
7 in other states;
8 (3) communications concerning a finding of inconvenient
9 forum by a court of another state; and
10 (4) other communications or documents concerning custody
11 proceedings in another state which may affect the jurisdiction of
12 a court of this State or the disposition to be made by it in a
13 custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 35 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

1 SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk
2 of the [District Court, Family Court] of this State, at the request
3 of the court of another state or at the request of any person who is
4 affected by or has a legitimate interest in a custody decree, shall
5 certify and forward a copy of the decree to that court or person.

1 SECTION 18. [*Taking Testimony in Another State.*] In addition
2 to other procedural devices available to a party, any party to the

3 proceeding or a guardian ad litem or other representative of the
4 child may adduce testimony of witnesses, including parties and
5 the child, by deposition or otherwise, in another state. The court
6 on its own motion may direct that the testimony of a person be
7 taken in another state and may prescribe the manner in which and
8 the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 326 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, *The Interstate Child and Uniform Legislation: A Plea for Extrajudicial Proceedings*, 64 Mich. L. Rev. 1 (1965). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

1 SECTION 19. [*Hearings and Studies in Another State; Orders to*
2 *Appear.*]

3 (a) A court of this State may request the appropriate court of
4 another state to hold a hearing to adduce evidence, to order a party
5 to produce or give evidence under other procedures of that state,
6 or to have social studies made with respect to the custody of a child
7 involved in proceedings pending in the court of this State; and to
8 forward to the court of this State certified copies of the transcript
9 of the record of the hearing, the evidence otherwise adduced, or any
10 social studies prepared in compliance with the request. The cost
11 of the services may be assessed against the parties or, if necessary,
12 ordered paid by the [County, State].

13 (b) A court of this State may request the appropriate court of
14 another state to order a party to custody proceedings pending in
15 the court of this State to appear in the proceedings, and if that
16 party has physical custody of the child, to appear with the child.
17 The request may state that travel and other necessary expenses
18 of the party and of the child whose appearance is desired will be
19 assessed against another party or will otherwise be paid.

COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

1 SECTION 20. [*Assistance to Courts of Other States.*]

2 (a) Upon request of the court of another state the courts of this
3 State which are competent to hear custody matters may order a
4 person in this State to appear at a hearing to adduce evidence or
5 to produce or give evidence under other procedures available in
6 this State [or may order social studies to be made for use in a
7 custody proceeding in another state]. A certified copy of the tran-
8 script of the record of the hearing or the evidence otherwise ad-
9 duced [and any social studies prepared] shall be forwarded by the
10 clerk of the court to the requesting court.

11 (b) A person within this State may voluntarily give his testi-
12 mony or statement in this State for use in a custody proceeding
13 outside this state.

14 (c) Upon request of the court of another state a competent court
15 of this State may order a person in this State to appear alone or
16 with the child in a custody proceeding in another state. The court
17 may condition compliance with the request upon assurance by the
18 other state that travel and other necessary expenses will be
19 advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 18 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02 (b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

1 SECTION 21. [*Preservation of Documents for Use in Other*
2 *States.*] In any custody proceeding in this State the court shall
3 preserve the pleadings, orders and decrees, any record that has been
4 made of its hearings, social studies, and other pertinent documents

5 until the child reaches [18, 21] years of age. Upon appropriate
6 request of the court of another state the court shall forward to the
7 other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

1 SECTION 22. [*Request for Court Records of Another State.*] If
2 a custody decree has been rendered in another state concerning a
3 child involved in a custody proceeding pending in a court of this
4 State, the court of this State upon taking jurisdiction of the case
5 shall request of the court of the other state a certified copy of the
6 transcript of any court record and other documents mentioned in
7 section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19, and 14(b).

1 SECTION 23. [*International Application.*] The general policies of
2 this Act extend to the international area. The provisions of this
3 Act relating to the recognition and enforcement of custody decrees
4 of other states apply to custody decrees and decrees involving legal
5 institutions similar in nature to custody rendered by appropriate
6 authorities of other nations if reasonable notice and opportunity
7 to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare *Application of Lang*, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959) and *Swindle v. Bradley*, 240 Ark. 903, 403 S.W. 2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognized and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare *Restatement of the Law Second, Con-*

1 [SECTION 24. *Priority.*] Upon the request of a party to a cus-
2 tody proceeding which raises a question of existence or exercise of
3 jurisdiction under this Act the case shall be given calendar priority
4 and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

1 SECTION 25. *Severability.* If any provision of this Act or the
2 application thereof to any person or circumstance is held invalid,
3 its invalidity does not affect other provisions or applications of the
4 Act which can be given effect without the invalid provision or
5 application, and to this end the provisions of this Act are severable.

1 SECTION 26. *Short Title.* This Act may be cited as the Uniform
2 Child Custody Jurisdiction Act.

1 SECTION 27. *Repeal.* The following acts and parts of acts are
2 repealed:
3 (1)
4 (2)
5 (3)

1 SECTION 28. *Time of Taking Effect.* This Act shall take
2 effect. . . .

MODEL CHOICE OF FORUM ACT

PREFATORY NOTE

This Act has a twofold purpose, to state the circumstances in which a court: (1) should exercise jurisdiction which has been granted it by the defendant's consent, or (2) should refrain from exercising existing jurisdiction because of an agreement by the parties that suit should be brought in another state.

The consent of a person is a well recognized basis for the exercise of judicial jurisdiction over him. This jurisdiction is customarily exercised by a court even in the absence of express statutory authority. A court, however, should not exercise jurisdiction which is based on consent, if to do so would result in injustice or in substantial inconvenience to the parties. This has been recognized by statutes in many states which regulate the circumstances in which jurisdiction may be exercised by reason of consent contained in a cognovit or arbitration clause or in a clause appointing an agent for the service of process. Section 2 states the circumstances in which jurisdiction should be exercised over a person on the basis of consent in other situations.

Section 3 states the circumstances in which a court should refrain from exercising jurisdiction because the parties had agreed that suit should be brought in another state. The rule announced is essentially the same as that laid down by the New York and Pennsylvania courts and by those of England. *Export Insurance Co. v. Mitsui*, 26 A.D. 2d 436, 274 N.Y.S. 2d 977 (1st Dept't. 1966); *Central Contracting Co. v. Maryland Casualty Co.*, 376 F. 2d 341 (3d Cir. 1966); *Central Contracting Co. v. C. E. Youngdahl & Co.*, 418 Pa. 122, 209 A. 2d 810 (1965); *The Fehmarn*, [1957] 1 W.L.R. 815, *aff'd*, [1958] 1 W.L.R. 159 (C.A.). This section should clarify the status of agreements limiting the place of suit, since these agreements are of doubtful efficacy in some states. The agreements serve several purposes. To the extent that they are effective, they provide a useful device to insure that suit on an existing or future controversy will be brought in a convenient place for the trial of the action. The agreements also provide a natural complement of a choice-of-law clause. An agreement that suit on a contract should be brought only in the state which has been designated as the state whose law should be applied to determine the validity and effect of the contract provides perhaps the best insurance that the chosen law will be correctly applied. For a court is more likely to apply its own law correctly than would the courts of another state. Suit in the state of the chosen law would also obviate the difficulties frequently involved in proving the law of another state.

UNIFORM CHILD CUSTODY JURISDICTION ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alaska	1977, c. 61	7-1-1977	AS 25.30.010 to 25.30.910.
Arizona	1978, c. 16	4-21-1978 ^o	A.R.S. §§ 8-401 to 8-424.
California	1973, c. 693	1-1-1974	West's Ann.Civ.Code §§ 5150 to 5174.
Colorado	1973, c. 163	7-1-1973	C.R.S. '73; 14-13-101 to 14-13-126.
Connecticut	1978, P.A. 78-113	10-1-1978	
Delaware	60 Del.Laws, c. 369	4-19-1976	13-Del.C. §§ 1901 to 1925.
Florida	1977, c. 77-433	10-1-1977	West's F.S.A. §§ 61.1302 to 61.1348.
Georgia	1978, p. 258	1-1-1979	Code, §§ 74-501 to 74-525.
Hawaii	1973, c. 88		HRS §§ 583-1 to 583-26.
Idaho	1977, c. 214	7-1-1977	I.C. §§ 5-1001 to 5-1025.
Indiana	1977, H. 1040	8-1-1977	IC 31-1-11.6-1 to 31-1-11.6-24.
Iowa	1977, c. 139	7-1-1977	I.C.A. §§ 598A.1 to 598A.25.
Kansas	1978, c. 231	1-1-1979	
Louisiana	1978, No. 513	10-1-1978	LSA-R.S. 13:1700 to 13:1724.
Maryland	1975, c. 265	7-1-1975	Code 1957, art. 16, §§ 134 to 207.
Michigan	1975, P.A. 297	12-14-1975 ^o	M.C.L.A. §§ 600.651 to 600.673.
Minnesota	1977, c. 8	4-1-1977	M.S.A. §§ 518A.01 to 518A.25.
Montana	1977, c. 537	7-1-1977	R.C.M.1977, §§ 61-401 to 61-425.
New York	1977, c. 493	9-1-1978	McKinney's Domestic Relations Law, §§ 75-a to 75-z.
North Dakota	1969, c. 154	7-1-1969	NDCC 14-74-01 to 14-14-26
Ohio	1977, SB 135	10-25-1977	R.C. §§ 3109.21 to 3109.37.
Oregon	1973, c. 375	10-5-1973	ORS 109.700 to 109.930.
Pennsylvania	1977, No. 20	7-1-1977	11 P.S. §§ 2301 to 2325.
Rhode Island		7-1-1978	
South Dakota	1978, c. 190		SDCL 26-5-5 to 26-5-52.
Washington	1979, c. 98	6-7-1979	RCWA 26.—.
Wisconsin	1975, c. 283	5-28-1976	W.S.A. 822.01 to 822.25.
Wyoming	1973, c. 240	3-7-1973	W.S.1977, §§ 20-5-101 to 20-5-125.

^o Date of approval.

Historical Note

The Uniform Child Custody Jurisdiction Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1968.

Commissioners' Prefatory Note

There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the