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## Applying The Uniform Child Custody Jurisdiction Act

by

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On March 6, 1979, the North Carolina General Assembly ratified Senate Bill 205, "The Uniform Child Custody Jurisdiction Act,"<sup>1</sup> thus adding North Carolina to the list of thirty-four states that have enacted the uniform law.<sup>2</sup> The General Statutes Commission recommended adoption of the uniform act with only a few minor changes because of concern over the "growing problem of simultaneous lawsuits in several states in regard to the custody of the same child" and agreement with the approach taken by the National Conference of Commissioners on Uniform State Laws. In general, the Act does three things: (1) it sets forth criteria for a court to use in determining whether to take jurisdiction of a custody dispute or to defer to the court of another state; (2) it describes when a court should enforce another state's custody decree and; (3) it encourages an exchange of information between all courts involved in a custody dispute. This memorandum will first outline the goals of the Act as expressed by its drafters and then explain in some detail how its provisions operate.

### Purposes of the Act

Childsnatching. In explaining the act on the floor of the House of Representatives, Representative Ezzell described it as a bill to "put an end to childsnatching." Certainly the most dramatic evidence of the inadequacy of current interstate custody law is the fact that over 100,000 children are illegally abducted or detained by their parents or agents every year in order to relitigate custody matters.<sup>3</sup> Parents who are dissatisfied with the custody decree obtained in one state abduct or unlawfully detain their children in order to seek a more favorable decree in another state. The rule of "seize and run" clearly does not serve the best interest of the children whose lives are repeatedly disrupted.

Rather than responding to this need for stability of custody awards, courts have actually made forum-shopping much easier by broadening the grounds for assuming jurisdiction. North Carolina, for example, authorizes its district courts to exercise custody jurisdiction if a child resides, has his

domicile, or is physically present in the state.<sup>4</sup> Several states may well have jurisdiction to hear a given custody dispute under such standards and not one of these states would be required by statute to defer to any other.

One might suppose that the full-faith-and-credit clause of the U.S. Constitution would provide some measure of stability to a decree once entered. The United States Supreme Court has never held, however, that states are constitutionally obligated to give full faith and credit to custody decrees of other states. In the few custody cases that have come before the Supreme Court, the Court has limited the extent to which the clause applies to custody decrees.<sup>5</sup>

In the absence of either statutory or constitutional restraints, some custody courts have accepted jurisdiction to enter initial or modification decrees with little regard for, or knowledge of, prior or pending litigation in other jurisdictions. Thus the loser in a custody contest has had every incentive to obtain physical possession of the child, seek a court where jurisdiction could be based solely on physical presence of the child, and relitigate the custody determination.

### Philosophy of Drafters

The Commissioners on Uniform State Laws drafted the Uniform Child Custody Jurisdiction Act in 1968 to further two main goals--fully-informed custody decisions and some measure of interstate stability of decrees.<sup>6</sup>

As outlined in their prefatory note to the Act,<sup>7</sup> the Commissioners intended to (1) limit jurisdiction to the child's home state or where there are very strong contacts with the child and his family, (2) require enforcement of out-of-state decrees in many instances, (3) allow courts to decline jurisdiction if petitioners have engaged in childsnatching, (4) limit jurisdiction to modify decrees of other states by giving a jurisdictional preference to the prior court and, (5) open up direct lines of communication between courts of different states. The major premise of the Act is that one court should assume the primary responsibility for determining who is to have custody of a child and that this court should have access to all relevant information from other jurisdictions. The Act's rules for determining which court should assume jurisdiction are designed to vest jurisdiction in the court most likely to have easy access to all the relevant evidence and thus to make the best decision.

The Commissioners believed that courts were tending "to over-emphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made."<sup>8</sup> Thus the Act provides that ordinarily petitions for modification of an existing decree are to be addressed to the state making the initial decree and that decrees of sister states are to be recognized and enforced.

### Operation of the Act

Initial Custody Determination or Modification of N.C. Decree. The central provision of the Act is G.S. Section 50A-3, which sets out six circumstances in which a North Carolina court is authorized (but not required) to accept jurisdiction of a custody matter. Thus if a petitioner asks a North

Carolina court to make the initial determination of who is to acquire custody of a child or asks the court to modify its own previous decree, the court should first examine the case in light of G.S. Section 50A-3.

The first basis for assuming jurisdiction [Section 50A-3(1)(i)] is that North Carolina is the home state of the child at the time of commencement of the proceeding. The term "home state" is defined in the Act<sup>9</sup> as the state where the child lived with parents, a parent, or a person acting as parent for at least six consecutive months immediately preceding the time involved. If a child is less than six months old, his "home state" is the state where he has lived since birth.

The second basis for assuming jurisdiction [Section 50A-3(1)(ii)] is that North Carolina had been the child's home state within six months before commencement of the proceeding, the child is now absent from North Carolina, and a parent or person acting as parent continues to live here. The Commissioners' objective was to protect the parent whose spouse leaves the state and takes the child with him. This jurisdictional basis gives the parent left in North Carolina six months to start custody proceedings here.

Suppose a family has moved frequently, living less than six months in several states, or suppose a parent whose spouse and child have left North Carolina decides to move out of state. Under these circumstances, neither of the jurisdictional tests of Section 50A-3(1) would be met. In these cases, an alternative possibility for jurisdiction is available under Section 50A-3(2). This test is met when it is in the child's best interest that North Carolina assume jurisdiction because the child and at least one contestant have a "significant connection" with the state and there is available here "substantial evidence" concerning the child's present or future care, protection, training, and relationships. The Act's drafters were worried about this jurisdictional basis. Although they felt compelled to include it in order to cover a number of fact situations, they noted that this section "more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes."<sup>10</sup> They stressed that jurisdiction is to be assumed only if there is maximum, not minimum, contact with the state, that fleeting presence of the child in the state does not confer jurisdiction, and that the child's interest, not the parent's, is controlling.

The fourth jurisdictional basis, [Section 50A-3(3)] exists only when a child present in North Carolina has been abandoned or subjected to mistreatment or abuse, or is neglected or dependent. The drafters described this as "extraordinary jurisdiction . . . reserved for extraordinary circumstances."<sup>11</sup>

Suppose that under a particular fact situation, no state appears to have jurisdiction to decide custody. In that event, under Section 50A-3(4), North Carolina may assume jurisdiction if assumption of jurisdiction serves the child's best interest. North Carolina may also base jurisdiction on the fact that another state has declined to hear the case because it considered North Carolina a more appropriate forum. Thus Section 50A-3(4) reduces the possibility that a litigant would be denied jurisdiction in every forum he petitioned.



Having noted the six circumstances in which a North Carolina court may assume jurisdiction, it is important to note what will not confer jurisdiction on a court. Submission of all parties to the forum does not provide sufficient grounds, nor does physical presence of the child. Thus if California residents brought their child into North Carolina seeking a custody decree, neither their consent nor the presence here of the child would confer jurisdiction on a North Carolina court.

### Simultaneous Proceedings

Examination of the jurisdictional grounds listed in G.S. Section 50A-3 suggests that in some cases more than one state will be authorized to hear the dispute. How does the Act determine which of the states with jurisdiction actually accepts the case? In general a first-in-time rule applies.<sup>12</sup> If at the time the petition is filed in North Carolina, another custody petition concerning the same child is pending in a state exercising jurisdiction in conformity with the Act, North Carolina<sup>13</sup> is forbidden to accept the case unless the other court stays its proceedings. Courts are to consult the parties and their pleadings and the child custody registry (to be established under other provisions of the Act) to discover if proceedings are pending in another state. If a North Carolina court accepts jurisdiction but learns during its proceedings that a petition had previously been filed elsewhere, it is to stay its proceeding and communicate with the other court<sup>14</sup> in order to determine which court is the more appropriate forum.

### Declining Jurisdiction

Suppose a North Carolina court has jurisdiction under Section 50A-3 and is the first court to be petitioned. Will it necessarily accept jurisdiction? The Act describes two circumstances in which such a court may decline to hear the case. Under Section 50A-7, a court may decline if it considers itself an inconvenient forum and another state a more appropriate forum. If the North Carolina court decides that another state has a closer connection with the case and that more of the relevant information is available there, it may dismiss the case or stay its proceedings. It must notify the more appropriate forum of its action in order to assure that the case will be accepted by that forum.

The second reason for declining jurisdiction is set out in Section 50A-8. This section is a codification of the "clean hands doctrine." If a petitioner's conduct has been objectionable (i.e., he comes into court without "clean hands") the court, in exercising its inherent equity powers, may decline jurisdiction. The goal of the section is to reduce the incentive to engage in childsnatching.

Section 50A-8 describes three circumstances involving wrongful conduct. In two of the circumstances the court may decline jurisdiction; in the other, the court must decline unless the child's interest requires otherwise. The discretionary circumstances are: (1) a petitioner for an initial decree has wrongfully taken the child from the state; or (2) a petitioner seeking modification of another state's decree has violated some provision of the decree but has not illegally abducted or retained the child. The one circumstance in which the Act requires a court to decline jurisdiction is when a petitioner seeking modification of an out-of-state decree has improperly removed the child from the person entitled to custody or improperly retained him after a visit. "Wrong-

fully" as used in this section does not mean that a legal right has necessarily been violated, but merely that the conduct is so objectionable that a court cannot hear the petition in good conscience.

In summary, a North Carolina court petitioned to make the initial custody determination or to modify its own decree should first determine if jurisdictional grounds exist under Section 50A-3. If they do, the court should then assure itself that no proceedings involving this child are currently pending elsewhere. Finally, the court should consider declining jurisdiction if another state seems to be a more appropriate forum or if the petitioner has engaged in reprehensible conduct.

#### Modification of Decree Entered by Another State

Section 50A-14 sets forth standards to be used in deciding whether a North Carolina court should modify another state's custody decree. North Carolina has jurisdiction to modify an out-of-state decree only if three tests are met. First, the court which rendered the decree must not now have jurisdiction over the case according to the standards of the Act or it must have declined to assume jurisdiction. Second, North Carolina must meet the jurisdictional standards of Section 50A-3 (discussed earlier). Third, the petitioner must not have improperly removed or retained the child without consent of the person entitled to custody. If these three tests are met, North Carolina is authorized to modify the decree but is required to give "due consideration" to the transcript of the record and documents of previous proceedings.

Several aspects of Section 50A-14 need to be emphasized. The basic philosophy of the section is that petitions for modification should be addressed to the state which entered the decree whenever that state has sufficient contact with the case at the time modification is sought to satisfy Section 50A-3.<sup>15</sup> Jurisdiction shifts from that state only if all involved persons have moved away or contact with the state has become negligible for some other reason.

It is important to note that a court may have jurisdiction to modify its own decree even if its original assumption of jurisdiction did not satisfy the Act's standards.<sup>16</sup> If the state that entered the decree meets the Act's jurisdictional standards at the time of the petition for modification, North Carolina must not modify the out-of-state decree. Suppose, for example, a petitioner asks North Carolina to modify a decree entered by a Tennessee court. Inquiry reveals that jurisdiction for the initial Tennessee decree was based solely on physical presence of the child in Tennessee and so did not satisfy the Act's standards. At the time of the petition for modification, however, Tennessee is clearly the child's "home state" and thus meets the test of section 50A-3. In such a case, North Carolina is prohibited from modifying the decree.

#### Enforcement of Out-of-State Decree

Different rules govern petitions seeking enforcement (as compared to modification) of out-of-state decrees. Section 50A-13 describes the two circumstances under which North Carolina must recognize and enforce an out-of-state decree. First, North Carolina must recognize a decree from a state that has adopted the Uniform Act or has jurisdictional requirements substantially like the Act. Second, North Carolina must enforce the decree if, on the facts of the particular case, the state rendering the decree met the Act's jurisdictional standards.

Applying section 50A-13 will sometimes be difficult. Decrees from states that have adopted the Act pose little problem; they are enforceable in North Carolina merely by virtue of coming from those particular states. Suppose, however, the North Carolina court is asked to enforce a decree entered by a Tennessee court (where the Uniform Act has not been adopted). Under Section 50A-13, North Carolina must enforce that decree if Tennessee has statutes "substantially in accordance" with the Act or if, looking at the relationship between Tennessee and the case, Tennessee would have had jurisdiction according to the Act's standards.

Thus the North Carolina court must first examine the law of Tennessee relating to custody jurisdiction and decide if it is in accordance with the uniform act. Suppose it is not. Then the court must decide whether, in light of the particular facts of this case, Tennessee could have satisfied the uniform act's jurisdictional standards if the Act had been in effect there.

Several aspects of Section 50A-13 need highlighting. Suppose petitioner seeks enforcement of a California decree (California has adopted the Act), and respondent objects that the California court that entered the decree failed to apply the Act correctly. Should the North Carolina court reexamine the California court's decision to accept jurisdiction? Assuming that the respondent received notice and an opportunity to appear in the California litigation, North Carolina is apparently required to recognize and enforce the decree, even if California erred in applying the Act [see Commissioners' Note, 9 Uniform Laws Ann. 120]. The respondent's recourse is to appeal the California decision in California. When asked to enforce an out-of-state decree, North Carolina seems authorized to examine the correctness of the foreign court's assumption of jurisdiction only if the state that entered the decree does not have statutory jurisdictional requirements substantially like the Act.

It is important to note that Section 50A-13 is not an exclusive list of the circumstances under which North Carolina is authorized to recognize out-of-state decrees. The section mandates that N.C. courts give full faith and credit to foreign decrees in three circumstances, and leaves the N.C. court free to exercise discretionary recognition in all other circumstances. Thus a court can never violate Section 50A-13 by deciding to recognize a decree.

#### Notice and Opportunity to Be Heard

No custody decree can bind a party who has not had adequate notice and opportunity to be heard. The Act codifies this constitutional requirement in several sections (50A-4, -5, and -12) and makes it clear that a party may always contest enforcement of a decree on the grounds that these due process requirements were ignored. Regardless of where the decree was entered, a North Carolina court asked to enforce the decree must assure itself that notice was given in a manner reasonably calculated to give actual notice and that reasonable time was afforded to enable the parties to appear.

#### Sources of Information Available to the Court

In order to apply the Act's jurisdictional rules, a custody court will need a great deal of information about the child and the parties seeking custody. The goal of the Act's drafters was to enable a court 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." Numerous provisions of the Act are designed to increase the relevant information available to the court.

Section 50A-9 requires a party, in his first pleading or in an attached affidavit, to give information under oath about the child's present address, places where the child has lived during the last five years, names and addresses of persons with whom the child has lived during the last five years, any previous or pending litigation concerning the child, and the names of other persons with an interest in the child. The availability of these facts should aid the court in deciding whether or not to assume jurisdiction.

Once a court has assumed jurisdiction, several other provisions make fact-finding easier. Section 50A-11 allows the court to order any party to appear personally (and to bring the child if the party has current physical custody). The court may notify the party in the order that failure to obey will result in a decision adverse to that party. If the circumstances suggest that an out-of-state party will be unfairly burdened by this requirement, the court can order his travel costs to be paid by the opposing party.

Rather than requiring an out-of-state party to come to North Carolina, the court may use Section 50A-19 to request assistance from a court in the state where the party resides. This section authorizes a North Carolina court to request another state's court to hold a hearing, to order the production of evidence, and to forward certified copies of the transcript to North Carolina. Section 50A-20 creates a reciprocal duty for North Carolina courts to respond to such requests from other states.

Another source of information is the registry of out-of-state decrees. Section 50A-16 requires the clerk of each superior court to keep a registry containing exemplified copies of out-of-state decrees received for filing, and communications from other states' courts concerning pending custody proceedings or their determination that North Carolina is a more convenient forum in which to litigate a matter. Section 50A-21 requires all pleadings, orders, decrees, documents, and any record made to be kept by the court until the child reaches 18.

### Summary

The enactment of the Uniform Child Custody Jurisdiction Act requires that North Carolina courts carefully consider the decision to accept jurisdiction of a custody matter. If petitioner seeks enforcement of an out-of-state decree, a North Carolina court must enforce the decree if it comes from a state with statutory standards like the Act or if, according to the Act, jurisdictional grounds existed for the decree. If petitioner seeks modification of an out-of-state decree, a North Carolina court must not modify unless the state that rendered the decree does not now meet the Act's standards. If petitioner seeks an initial custody determination or modification of a North Carolina decree, a North Carolina court is authorized to accept the case only if one of the six circumstances set out in Section 50A-3 is applicable.

## FOOTNOTES

1. N.C. Sess. Laws 1979, Ch. 110.
2. Appendix A contains a list of the states that have adopted the Act.
3. See 123 CONG. REC. H 54 (daily ed. Jan. 4, 1977) (remarks of Rep. Moss).
4. N.C. Gen. Stat. § 50-13.5(c).
5. In 1946, the U.S. Supreme Court held in New York ex rel. Halvey v. Halvey, 330 U.S. 610, that a New York court was not bound by a Florida custody decree since custody decrees have no res judicata effects in Florida. Justice Douglas held that "so far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the decree, New York may do." 330 U.S. 614. Then in 1953, the Court held that a state is not required by the Full Faith and Credit Clause to enforce an out-of-state custody decree if obtained without personal jurisdiction. May v. Anderson, 345 U.S. 528 (1953).
6. 9 Uniform Laws Ann. 99.
7. Id. at 101.
8. Id. at 100.
9. N.C. Sess. Laws 1979, Ch. 110 § 1 (to be codified as N.C. Gen. Stat. § 50A-2(5)).
10. Commissioners' Note, 9 Uniform Laws Ann. 108.
11. Id.
12. N.C. Sess. Laws 1979, Ch. 110 § 1 (to be codified as N.C. Gen. Stat. § 50A-6).
13. Id. (to be codified as § 50A-6(a)).
14. Id. (to be codified as § 50A-6(c)).
15. Commissioners' Note, 9 Uniform Laws Ann. 122.
16. Id.
17. Commissioners' Prefatory Note, 9 Uniform Laws Ann. 102.



## Appendix A

### Table of Jurisdictions that have Adopted the Act

<u>Jurisdiction</u>	<u>Effective Date</u>
Alaska	7-1-1977
Arizona	
Arkansas	
California	1-1-1974
Colorado	7-1-1973
Connecticut	10-1-1978
Delaware	4-19-1976
Florida	10-1-1977
Georgia	1-1-1979
Hawaii	
Idaho	7-1-1977
Indiana	8-1-1977
Iowa	7-1-1977
Kansas	1-1-1979
Louisiana	10-1-1978
Maryland	7-1-1975
Michigan	
Minnesota	4-1-1977
Missouri	
Montana	7-1-1977
Nebraska	
New Jersey	
New York	9-1-1978
North Carolina	7-1-1979
North Dakota	7-1-1969
Ohio	10-25-1977
Oregon	10-5-1973
Pennsylvania	7-1-1977
Rhode Island	7-1-1978
South Dakota	
Virginia	
Washington	
Wisconsin	5-28-1976
Wyoming	3-7-1973

Sources: 9 Uniform Laws Ann. 28 (Supp. 1978)  
5 Family Law Reporter 2073, 2435, and 2454.