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Uniform Child Custody Jurisdiction and Enforcement Act: Part II

Before adjournment, the 125th Ohio General Assembly passed Substitute Senate Bill 185, replacing Ohio's current version of the Uniform Child Custody Jurisdiction Act (UCCJA) with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Consequently, R.C. 3109.21 *et seq.* has been replaced by R.C. 3127.01 *et seq.* Part I of this Article addressed the general intent of the UCCJEA and R.C. 3127.01 to R.C. 3127.18. Part II discusses the remaining sections of the UCCJEA, R.C. 3127.19 to R.C. 3127.45.

R.C. 3127.19 (Notice; Opportunity to be Heard; Joinder). This section combines current R.C. 3109.23 and R.C. 3109.28. New R.C. 3127.19(A) provides that before a child custody determination is made notice must be given¹ to all persons entitled under Ohio law to notice of a child custody proceeding, any parent whose parental rights have not been terminated, and any person having physical custody of the child.

R.C. 3127.19(B) provides that the UCCJEA does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard. This new subsection makes clear that the enforceability of temporary custody orders without notice and hearing, if issued as a protective order or temporary restraining order to protect a child from harm, are beyond the scope of the Act but will be otherwise determined by Ohio law.²

R.C. 3127.19(C) provides that the obligation to join a party and the right to intervene as a party shall be governed as otherwise provided by Ohio law for child custody proceedings between residents of the state.

R.C. 3127.20 (Simultaneous Proceedings). This section restates the simultaneous proceedings provision of current R.C. 3109.24 and resolves the issue by the prioritization of home state jurisdiction.³ The new section provides that Ohio may not exercise jurisdiction if 'at the time of the commencement of the proceeding' a child custody proceeding is pending in another state having jurisdiction under the UCCJEA unless the proceeding has been terminated or stayed because Ohio is a more convenient forum. Consequently, if there is a home state, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a state of exclusive, continuing jurisdiction, there cannot be another state with concurrent jurisdiction, and, therefore, no simultaneous proceedings.⁴ Any decision to defer to a state other than the home state is left to the home state or the state with exclusive continuing jurisdiction.

R.C. 3127.20(C) addresses the issue of simultaneous proceedings in modifications. The section authorizes the court with exclusive, continuing jurisdiction to stay the modification proceedings, enjoin the parties from continuing with the proceeding for enforcement, or 'upon the demonstration of an emergency' proceed with the modification.⁵

R.C. 3127.21 (Inconvenient Forum). This new section does not substantially modify R.C. 3109.25. The new section provides that an Ohio court which has jurisdiction to make a child custody determination may decline to exercise jurisdiction if it determines that it is an inconvenient forum and another state is a more convenient forum. The Ohio court would examine several factors in determining whether it is appropriate for another state to exercise jurisdiction, including:

- whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child

- the length of time the child has resided outside Ohio
- the distance between Ohio and the court which would assume jurisdiction
- the relative financial circumstances of the parties
- any agreement of the parties as to which state should assume jurisdiction
- the nature and location of the evidence required to resolve the litigation
- the ability of each state to decide the issue ‘expeditiously’
- the familiarity of each state with the facts and issues in the litigation.

R.C. 3127.21(C) provides that if Ohio determines that it is an inconvenient forum, it shall stay the proceedings upon condition that a child custody proceeding be ‘promptly commenced’ in another state. This is a departure from the UCCJA in which Ohio could simply dismiss the proceeding; this keeps the case from being left in limbo. Additionally, the subsection permits the Ohio court to impose any conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated state, dismissing the case if the custody proceeding is not commenced in the designated state, or resuming jurisdiction if a court of the other state declines to take the case.⁶

R.C. 3127.22 (Jurisdiction Declined by Reason of Conduct). This new section restates current R.C. 3109.26 and addresses the situation where a person attempts to invoke jurisdiction in Ohio by ‘unjustifiable conduct’ by ‘removing the child from the child’s home state, secreting the child, retaining the child, or restraining or otherwise preventing the child from returning to the child’s home state in order to prevent the other parent from commencing a child custody proceeding in the child’s home state.’ R.C. 3127.22(D). The parties may, however, acquiesce in Ohio’s jurisdiction.

The focus of the section is on the unjustified conduct of the person seeking to invoke the jurisdiction in Ohio. A technical illegality is insufficient to trigger this section; e.g., domestic violence victims might not be charged with unjustifiable conduct in the process of fleeing.⁷ An inquiry would be made into the circumstances of the flight.

R.C. 3127.23 (Information to be Submitted to the Court). This new section essentially carries over the pleading requirements of R.C. 3109.27 with some changes. The required affidavit shall provide information regarding the child’s present address ‘or whereabouts’ and the addresses where the child has lived for the past five years ‘if reasonably ascertainable.’ R.C. 3127.23(A). The reporting requirement of any participation in a parenting proceeding shall include the court, case number and date of the child custody determination, if any. R.C. 3127.23(A)(1).

The provision requiring the affidavit to provide information concerning any parenting proceeding has been expanded to ‘[w]hether the party knows of any proceedings that could affect the current proceeding, including proceedings for enforcement of child custody determinations, proceedings relating to domestic violence or protection orders, proceedings to adjudicate the child as an abused, neglected, or dependent child, proceedings seeking termination of parental rights, and adoptions, and, if so, the court, the case number, and the nature of the proceeding.’ R.C. 3127.23(A)(2).

The prior requirement of R.C. 3109.27(A)(4) requiring a statement regarding whether the party has been convicted of or pleaded guilty to any criminal offense involving child neglect or abuse has been eliminated.

Finally, a new subsection has been added to permit the sealing of the identifying information if ‘the health, safety, or liberty of a party would be jeopardized’ by the disclosure. R.C. 3127.23(D).

R.C. 3127.24 (Appearance of Parties and Child). This new section carries over the provisions of R.C. 3109.29 with the addition that the court may order a party to appear with the child. Additionally, the court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear. R.C. 3127.24(C).⁸

Enforcement provisions are codified beginning with R.C. 3127.31.

R.C. 3127.31 (Definitions). Petitioner and respondent are defined as persons seeking enforcement of an order for the return of a child under a child custody determination or the Hague Convention on the Civil Aspects of International Child Abduction.⁹

R.C. 3127.32 (Enforcement under Hague Convention). This new provision provides that a juvenile court or other court of appropriate jurisdiction may enforce an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

R.C. 3127.33 (Duty to Enforce). This new section is based, in part, upon current R.C. 3109.32(A) in that an Ohio court shall recognize and enforce a child custody determination of another state if that state exercised jurisdiction in substantial conformity with the UCCJEA and has not been modified.

R.C. 3127.33(B) states that an Ohio court may use any remedy available under Ohio law to enforce a child custody determination of another state and that UCCJEA remedies are cumulative and do not affect the availability of other remedies to enforce a child custody determination.¹⁰

R.C. 3127.34 (Temporary Parenting Time or Visitation). This new section provides that an Ohio court that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing a parenting time or visitation order made by another court or may enforce the parenting time or visitation provisions of a child custody determination of another state that did not provide a specific schedule. Such temporary order shall be for a period that the court ‘considers adequate’ to allow a petitioner to obtain an order from the court having jurisdiction.

R.C. 3127.35 (Registration of Child Custody). This new section provides a registration procedure for child custody determinations which replaces that current procedure provided for in R.C. 3109.33 and R.C. 3109.32(A). This provision permits a clerk of a juvenile or other court with jurisdiction to register a child custody determination with or without a simultaneous request for enforcement¹¹ upon receipt of all of the following¹²:

- a letter or other document requesting that the child custody determination be registered
- two copies, including one certified copy, of the determination sought to be registered and a statement under oath that the order has not been modified
- the name and address of the person seeking registration and any parent who is designated the residential parent and legal custodian of the child or to have parenting time with the child or any person acting as a parent who has been awarded custody or visitation.

Upon receipt the clerk must serve notice of the registration request to the persons named and to provide them an opportunity to contest the registration. A person seeking to contest the registration must request a hearing within thirty days after service of the notice. At the hearing the order shall be confirmed unless it is demonstrated that the issuing court did not have jurisdiction, the order has been vacated, stayed, or modified by a court of jurisdiction, or notice was not properly given. Confirmation of the child custody determination precludes further contest of the determination.

R.C. 3127.36 (Enforcement of Registered Determination). This new section provides that a registered child custody determination can be enforced as if it were a determination of an Ohio court but remains a custody determination of the state that issued it.

R.C. 3127.37 (Simultaneous Proceedings). This new section provides that if a proceeding for enforcement is commenced in Ohio and the Ohio court determines that a proceeding to modify is pending in another state having jurisdiction to modify, the enforcing Ohio court shall immediately communicate with the other court and that the enforcement proceeding shall continue unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.¹³

R.C. 3127.38 (Expedited Enforcement of Child Custody Determinations). Another new section, R.C. 3127.38, sets forth the process for enforcement proceedings. A petition for enforcement must be verified. All orders sought to be enforced and any order confirming registration must be attached to the petition. A petition for enforcement of a child custody determination shall state all of the following:

- whether the court that issued the child custody determination identified the jurisdictional basis for its order and what that basis was
- whether the determination for which enforcement is sought has been vacated, stayed, or modified
- whether any proceeding has been commenced that could affect the current proceeding, including enforcement, domestic violence, and abuse, neglect and dependency actions, and adoptions
- the present physical address of the child and the respondent if known
- whether relief other than immediate physical possession and attorneys fees is requested, such as a request for assistance from law enforcement officials
- if the child custody determination has been registered and confirmed.

Upon the filing of a petition, the court must issue an order directing the respondent to appear in person with or without the child. ‘If possible, the hearing must be held on the next judicial day after service of the order. If holding the hearing on that date is impossible, the court shall hold the hearing on the first judicial day possible.’ R.C. 3127.38(C). An order issued under this section must state that at the hearing the court may order that the petitioner make take immediate physical custody of the child and that the respondent may be required to pay fees, costs, and expenses unless the respondent appears and establishes either of the following:

- that the determination has not been registered and that either the issuing state did not have jurisdiction or the determination has been vacated, stayed or modified by a court with jurisdiction, or
- that the determination was registered and confirmed but has been vacated, stayed or modified by a court with jurisdiction.

R.C. 3127.39 (Service of Petition and Order). This new section provides that the petition and order shall be served according to the Ohio Rules of Civil Procedure.

R.C. 3127.40 (Hearing and Order). Similar to R.C. 3127.38, this new section provides that the court shall order that the petitioner shall take immediate physical custody of the child unless the respondent establishes that the determination was not registered or if it was, that it has been vacated, stayed or modified, or that proper notice had not been given. Additionally, the section provides that if a party called to testify in an enforcement proceeding invokes his or her privilege against self-incrimination, the court may draw an adverse inference from the refusal to testify. Moreover, a defense of inter-spousal privilege or a defense of immunity based upon the relationship of husband and wife or parent and child may not be invoked.¹⁴

R.C. 3127.41 (Warrant to Take Physical Custody of Child). This new section provides that a petitioner may also file a verified application for issuance of a warrant to take physical custody of the child if the child ‘is imminently likely to suffer serious physical harm or be removed from this state.’ R.C. 3127.41(A). The court may issue such an order upon the testimony of the

petitioner and another witness. ‘If possible, the court shall hear the petition on the next judicial day after the warrant is executed.’ R.C. 3127.41(B). The warrant shall do all of the following:

- specify the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based
- direct law enforcement officials to take physical custody of the child immediately
- provide for the placement of the child pending final relief.

The respondent is to be served with the petition, warrant, and order immediately after the child is taken into physical custody.

The section further provides that the warrant is enforceable throughout the state of Ohio and may authorize law enforcement officials to enter private property, including forcible entry, at any hour to take physical custody of the child. R.C. 3127.41(E).

R.C. 3127.42 (Costs, Fees, and Expenses). Similar to current R.C. 3109.32(B), this new section provides that a court shall award the prevailing party necessary and reasonable expenses, including attorney fees, investigation fees, travel expenses and child care ‘unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.’

R.C. 3127.43 (Recognition and Enforcement). This provision requires that a court of this state accord full faith and credit to an order issued by another state consistent with the UCCJEA unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so.

R.C. 3127.44 (Appeals). An appeal may be taken from a final order in an enforcement proceeding under rules to be promulgated by the Ohio Supreme Court for expedited appellate review. Unless a court issues a temporary emergency order pursuant to R.C. 3127.18, the enforcing court may not stay an order enforcing a child custody order pending appeal.

R.C. 3127.45 (Role of Prosecutor). In a UCCJEA or Hague Convention case, the county prosecutor may take any ‘lawful action’ to locate a child, obtain the return of a child, or enforce a child custody determination based upon any of the following:

- if there is an existing child custody determination
- if there is a request to locate or obtain the return of a child or enforce a child custody determination
- if there is a reasonable belief that a criminal statute has been violated
- if there is a reasonable belief that a child has been removed or retained in violation of the Hague Convention.

Footnotes

- ¹ Notice is to be given pursuant to new R.C. 3127.07. See Uniform Child Custody Jurisdiction and Enforcement Act: Part I, 16 *DRJO* 93 (November/December 2004).
- ² Comment to Section 205 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- ³ New R.C. 3127.15. See, Part I of this Article. See Uniform Child Custody Jurisdiction and Enforcement Act: Part I, 16 *DRJO* 93 (November/December 2004).
- ⁴ Comment to Comment to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- ⁵ In a deviation from the Uniform Act, Ohio added the limitation of ‘upon the determination of an emergency’ to R.C. 3127.20(C)(3).

- 6 Comment to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- 7 Comment to Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- 8 If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another state pursuant to R.C. 3127.10.
- 9 Such enforcement remedies are made under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C.A. 11601 *et seq.* implementing the Hague Convention on the Civil Aspects of International Child Abduction.
- 10 The UCCJEA makes a state's duty to enforce and not modify a child custody determination of another state consistent with the provisions of the Parental Kidnapping Prevention Act (PKPA), 29 U.S.C.A. 1738. Therefore, custody determinations made by a state pursuant to the UCCJA that would be enforceable under the PKPA would be enforceable under the UCCJEA. However, if a state custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, that determination would not be enforceable under the UCCJEA. Thus, a custody determination made by a 'significant connection' jurisdiction when there is a home state is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home state. Even though such a determination would be enforceable under the UCCJA under its four concurrent bases of jurisdiction, it would not be enforceable under the UCCJEA. This carries out the policy of the PKPA of strongly discouraging a state from exercising its concurrent 'significant connection' jurisdiction under the UCCJA when another state could exercise 'home state jurisdiction. Comment to Section 303 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- 11 This may be of importance in international cases because the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced before sending the child to the United States for visitation.
- 12 This process is similar to the requirements for registration of a child support order pursuant to The Uniform Interstate Family Support Act (UIFSA), R.C. 3115.39 *et seq.*
- 13 The ultimate decision rests with the state having exclusive, continuous jurisdiction unless there is no state having exclusive, continuous jurisdiction in which case the decision rests with the state that would have jurisdiction to modify. Comment to Section 307 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), National Conference of Commissioners on Uniform State Laws.
- 14 There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for assumption of emergency jurisdiction under R.C. 3127.18.

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