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(As Passed by the General Assembly)

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Reps. **Gilb, Walcher, DeGeeter, Harwood, Hollister, Reidelbach, Skindell, Slaby, Widowfield, Willamowski, Allen, Aslanides, Barrett, Boccieri, Book, Carano, Carmichael, Chandler, Collier, Distel, Domenick, C. Evans, D. Evans, Hartnett, Hughes, Key, McGregor, Miller, Niehaus, Otterman, Perry, Schmidt, G. Smith, Strahorn, Wolpert**

Effective date: April 11, 2005

ACT SUMMARY

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- Replaces the Uniform Child Custody Jurisdiction Act (UCCJA) in the Revised Code with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

ISSUANCE AND MODIFICATION OF CHILD CUSTODY DETERMINATIONS

Notice of proceeding to a person outside Ohio

- Clarifies provisions regarding the notice required to exercise jurisdiction over a person outside Ohio, eliminates the requirement that the notice be provided at least 20 days before any hearing in Ohio, revises how proof of service may be made, and specifies that the UCCJEA does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

Jurisdiction to issue or modify a child custody determination

- Provides the exclusive jurisdictional basis for making a child custody determination by an Ohio court, revises the standard by which an Ohio

court has jurisdiction to make an initial determination in a child custody proceeding, and specifies that physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

- Grants an Ohio court that has made a child custody determination exclusive, continuing jurisdiction over the determination until the Ohio court or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in Ohio.

- Revises the circumstances under which an Ohio court may modify a child custody determination made by a court of another state to also permit modification if the Ohio court or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

- Grants an Ohio court temporary emergency jurisdiction if a child is present in Ohio and either the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse and enacts procedures related to orders issued in temporary emergency jurisdiction situations.

- Replaces the former joinder and intervention provisions with a statement that the obligation to join a party and the right to intervene as a party in a child custody proceeding are governed by Ohio law as in child custody proceedings between Ohio residents.

- In the provisions dealing with pending child custody proceedings in another state, does the following: (1) requires the court to determine, as opposed to "have reason to believe," that child custody proceedings are pending in another state, (2) requires the Ohio court to stay its proceedings if proceedings are pending in another state, (3) requires the Ohio court to dismiss the proceeding if the court of the other state does not determine that the Ohio court is a more appropriate forum, and (4) eliminates a provision regarding situations in which the Ohio court was informed of a pending foreign child custody proceeding concerning the child.

- Permits a court to decline jurisdiction on the grounds of inconvenient forum even after making a decree; removes express authority to raise the

issue of inconvenient forum from a guardian ad litem or other representative of the child; and authorizes an out-of-state court to request the issue of inconvenient forum be raised.

- Requires the court to consider all relevant factors when considering the issue of inconvenient forum and replaces the statutorily specified factors that the court must consider with different factors.

- Requires an Ohio court that determines it is an inconvenient forum and a court of another state is a more appropriate forum to stay the proceedings on condition that a child custody proceeding be promptly commenced in a designated state and permits the Ohio court to impose any other condition the court considers just and proper.

- Requires a court to decline to exercise its jurisdiction if it has jurisdiction because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, but provides several exceptions to this requirement.

- Authorizes a court that so declines to exercise its jurisdiction to fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct.

- Provides that, if a court so declines to exercise its jurisdiction, it generally must assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses.

Facts to be pleaded

- In the information required to be included in the first pleading of each party in a child custody proceeding does the following: (1) limits the information that must be given to information that is reasonably ascertainable, (2) expands the information to be given to include the child's present whereabouts, not just the child's address, (3) requires a party who has participated in any proceeding concerning the allocation of parental rights and responsibilities to provide information concerning the court, case number and the date of the parenting determination, if any, (4) requires the party to include information as to whether the party has participated in any other proceeding concerning a designation of parenting time rights or visitation with the child, (5) requires the party to include information as to whether the party knows of any proceedings that could affect the current proceeding, (6) requires the party, if the party

knows of any person not a party to the proceeding who has physical custody of the child or claims to have certain rights, to provide the court the name and address of that person, and (7) repeals a requirement that the party declare whether the party previously has been convicted of or pleaded guilty to certain criminal offenses.

- Replaces the requirement that the court require a person giving additional information under oath with a requirement that the person give the additional information as required by the court.

- Limits the continuing duty of each party to inform the court of certain information to information that could affect the current proceeding.

- Generally requires identifying information be sealed and not disclosed to the other party or the public if a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of identifying information.

Personal appearance by the parties

- Clarifies that the court may order any party to a child custody proceeding who is in Ohio to appear personally before the court *with or without the child*.

- Expands the court's authority to order a person to appear with the child to apply to any person who is in Ohio and has physical custody or control of the child.

- Authorizes the court to enter any orders necessary to ensure the safety of the child and of any person ordered to appear.

Immunity from personal jurisdiction

- Grants a limited immunity from personal jurisdiction in Ohio related to participation in a child custody proceeding.

ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS

Jurisdiction of juvenile court

- Expands the jurisdiction of the juvenile court by giving it original jurisdiction to (1) enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child

Abduction and (2) grant any relief normally available under the Ohio law to enforce a child custody determination made by a court of another state and registered in accordance with the act's provisions.

Registration of child custody determinations

- On receipt of the required documents and information, requires the registering court to cause the child custody determination to be filed as a foreign judgment, and requires the registering court to serve a statutorily specified notice of the registration request on certain persons and provide those persons with an opportunity to contest the registration.

- Requires a person seeking to contest the validity of a registered order to request a hearing within 30 days after service of the notice; requires a court to confirm the registered order unless the person contesting registration establishes the existence of certain circumstances; and provides that a registered child custody determination precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.

- Requires that certain persons be notified of the confirmation of the registration of a child custody determination.

Enforcement of out-of-state child custody determinations

- Requires an Ohio court to recognize and enforce a registered child custody determination of a court of another state.

- If a proceeding for enforcement is commenced in an appropriate Ohio court and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination, requires the enforcing court to immediately communicate with the modifying court and generally requires that the enforcement proceeding continue.

- Authorizes an Ohio court without jurisdiction to modify a child custody determination to issue a temporary order enforcing a parenting time or visitation schedule made by a court of another state or the parenting time or visitation provisions of another state's child custody determination that does not provide for a specific parenting time or visitation schedule.

- Prescribes the form of an enforcement petition.

- On the filing of an enforcement petition, requires the court to issue an order directing the respondent to appear in person with or without the child at a hearing and permits the court to enter any order necessary to ensure the safety of the parties and the child.

- Establishes procedures related to the enforcement hearing.

- Authorizes the petitioner to apply for the issuance of, and authorizes the court to issue, a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from Ohio.

- On a finding that a petitioner is entitled to immediate physical custody of the child, generally requires the court to issue an order authorizing the petitioner to take immediate physical custody of the child.

- Authorizes the court to draw an adverse inference if a party called to testify refuses to answer on the basis that the testimony may be self-incriminating.

- Prevents the invocation in a UCCJEA proceeding of a privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child.

Relief

- Permits an Ohio court to grant any relief normally available under Ohio law to enforce a registered child custody determination.

- Expands the enforcement relief provisions to require the court to award the prevailing party in an action to enforce a child custody determination (not simply the party entitled to custody), including a state, necessary and reasonable expenses incurred by or on behalf of the party; and prohibits the court from assessing fees, costs, or expenses against a state or a political subdivision of a state unless authorized by law other than the UCCJEA.

- Authorizes the court to grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether the additional relief is appropriate.

- If the respondent is not the prevailing party, permits the court to assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers in locating the child, obtaining the return of the child, or enforcing the child custody determination.

- Permits an Ohio court to use any remedy available under Ohio law to enforce a child custody determination made by a court of another state and provides that the remedies provided in the act's enforcement provisions are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Appeal of enforcement order

- Authorizes an appeal to be taken from a final enforcement order.

Prosecutor and law enforcement actions

- Permits the prosecutor to take any lawful action to locate a child, obtain the return of a child, or enforce a parenting determination in a case arising under the UCCJEA or involving the Hague Convention on the Civil Aspects of International Child Abduction, in specified circumstances, and authorizes a law enforcement officer to take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with the prosecutor's or official's responsibilities, at the request of an authorized prosecutor or official.

INTERACTION WITH FOREIGN COURTS

- Authorizes Ohio juvenile and other courts with jurisdiction to enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

- Requires Ohio courts to accord full faith and credit to an order issued by another state consistent with the UCCJEA that enforces a child custody determination by a court of another state, unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so.

- Requires Ohio courts to treat an Indian tribe as if it were a state of the United States for the purpose of applying the UCCJEA and requires that a child custody determination made by a tribe under factual

circumstances in substantial conformity with the jurisdictional standards of the UCCJEA be recognized and enforced.

- Requires Ohio courts to treat a foreign country as if it were a state of the United States for the purpose of applying the UCCJEA, but provides that an Ohio court need not apply the UCCJEA if the law governing child custody determinations of a foreign country violates fundamental principles of human rights.

- Permits an Ohio court to communicate with a court in another state concerning a proceeding arising under the UCCJEA; generally requires the court to give the parties the opportunity to participate in the communication or, if the parties are not able to participate in the communication, be given the opportunity to present facts and legal arguments before a decision concerning jurisdiction is made.

- Permits a party to a child custody proceeding to offer testimony of witnesses who are located in another state by deposition or other means allowable in Ohio for testimony taken in another state.

- Authorizes an Ohio court to permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state and requires an Ohio court to cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

- Prohibits a court from excluding from evidence documentary evidence transmitted from another state to an Ohio court by technological means that do not produce an original writing, when that exclusion is based on an objection relating to the means of transmission.

- Regarding an order requiring a person in Ohio to appear alone or with the child in a child custody proceeding in another state, eliminates the authority of the Ohio court to condition compliance with the request on assurance by the other state that travel and other necessary expenses will be advanced or reimbursed but permits the court to assess those expenses against the parties.

- Eliminates a provision authorizing a person within Ohio to voluntarily give testimony or a statement in Ohio for use in a child custody proceeding outside Ohio.

- Expands the scope of a records sharing provision that applies to custody proceedings to make the provision apply to all child custody proceedings and eliminates a redundant records retention provision.

MISCELLANEOUS PROVISIONS

- Requires that, when applying and construing the UCCJEA, consideration be given to the need to promote uniformity of law with respect to its subject matter among states that enact a uniform child custody jurisdiction and enforcement act.

- Enacts a severability clause regarding the UCCJEA provisions and the application of the provisions to any person or circumstance.

- Specifies that a request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before the act's effective date is governed by the law in effect at the time the request was made.

- Provides that a child custody proceeding regarding an Indian child is not subject to the act's UCCJEA provisions to the extent that the proceeding is governed by the federal Indian Child Welfare Act.

- Specifies that the UCCJEA does not govern adoption proceedings or proceedings pertaining to the authorization of emergency medical care for a child.

REPORTS OF ABUSE OR NEGLECT

- Provides that, when a public children services agency (PCSA) investigates a report of abuse or neglect, a representative of the PCSA must inform the person who is the subject of the investigation of the specific allegations against the person and provides that the release of information be consistent with confidentiality restrictions and protect the rights of the person who made the report.

CASEWORKERS

- Requires that training provided to caseworkers hired by a PCSA include courses in the caseworkers' duties to protect the constitutional and statutory rights of children and families.

GRANDPARENT CAREGIVERS

- Clarifies that the juvenile court has jurisdiction over certain filings and hearings relative to powers of attorney and caretaker authorization affidavits that provides a grandparent with whom a child resides with authority over the care, custody, and control of the child.

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CONTENT AND OPERATION

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Overview

Nearly 40 years ago, the National Conference of Commissioners on Uniform State laws promulgated the Uniform Child Custody Jurisdiction Act (UCCJA), which was adopted in every state by 1981. The UCCJA was designed to discourage interstate kidnapping of children by their parents, as it was a common practice for noncustodial parents to take their children across state lines in the hope of securing a favorable custody order. In 1980, Congress enacted the

Parental Kidnapping Prevention Act (PKPA) in an effort to clarify the jurisdictional principles contained in the UCCJA. But differences between the UCCJA and the PKPA, variations in states' versions of the UCCJA, and case law interpreting these statutes over the decades have resulted in inconsistencies across jurisdictions. Additionally, neither the UCCJA nor the PKPA address interstate enforcement of custody orders.

In 1997, the Commissioners promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to reconcile the UCCJA with the PKPA and provide for interstate enforcement of custody orders.[1]

The act largely enacts the UCCJEA in Ohio. In so doing, it relocates many of the former UCCJA provisions from R.C. Chapter 3109. to R.C. Chapter 3127. by either renumbering the section or by repealing the UCCJA section and enacting a new section. The act also enacts a number of new provisions in R.C. Chapter 3127. Additionally, the act replaces the phrases "parenting determination" and "parenting proceeding,"[2] which were used under the UCCJA, with the phrases

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[1] *Under the act, as used in the Revised Code, "Uniform Child Custody Jurisdiction and Enforcement Act" means the act addressing interstate recognition and enforcement of parenting orders adopted in 1997 by the National Conference of Commissioners on Uniform State Laws or any law substantially similar to the act adopted by another state (R.C. 3127.01(A)). According to the National Conference of Commissioners on Uniform State Laws, as of March 1, 2005, the UCCJEA has been adopted in 41 jurisdictions: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia.*

And the UCCJEA was pending in five jurisdictions: Indiana, New Hampshire, South Carolina, South Dakota, and Wyoming.

(http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-uccjea.asp, last visited March 1, 2005.)

[2] *In prior law, "parenting determination" meant a court decision and court orders and instructions that, in relation to the parents of a child, allocated parental rights and responsibilities for the care for the child, including any designation of parenting time rights, and designated a residential parent and legal custodian of the child or that, in relation to any other person, provided for the custody of a child, including visitation rights. It did not include a decision relating to child support or any other monetary obligation of any person. "Parenting proceeding" included proceedings in which a parenting determination was one of several issues, such as an action for divorce or*

"child custody determination" and "child custody proceeding," respectively.[3] Otherwise, in discussing the changes made by the act, this analysis will not describe the mechanical form of the change.

ISSUANCE AND MODIFICATION OF CHILD CUSTODY DETERMINATIONS

Notice of proceeding to a person outside Ohio

(R.C. 3109.23 (repealed), 3127.07 and 3127.19(A) and (B))

Under prior law, a court generally was required to give reasonable notice of a parenting proceeding and an opportunity to be heard to the contestants, any parent whose parental rights previously have not been terminated, and any person or public agency with physical custody[4] of the child. If any of these persons or the public agency was outside Ohio, notice had to be given (1) in accordance with the Ohio Rules of Civil Procedure governing service of process within Ohio, (2) in the manner prescribed by the law of the place in which the service was made for service of process in that place in an action in any of its courts of general jurisdiction, or (3) as directed by the court, including publication, if other means of notification were ineffective. This notice had to be served, mailed, delivered, or last published at least 20 days before any hearing in Ohio. Proof of service outside Ohio could be made by affidavit of the individual who made the service or in the manner prescribed by the Ohio Rules of Civil Procedure governing service of process within Ohio, the law of the place in which the service was made, or the

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separation, and included child neglect and dependency proceedings. (R.C. 3109.21(B) and (C) (repealed by the act).)

[3] *Under the act, "child custody determination" means a judgment, decree, or court order that provides for legal custody, physical custody, parenting time, or visitation with respect to a child. A child custody determination includes an order allocating parental rights and responsibilities, but does not include an order or the portion of an order relating to child support or other monetary obligations of an individual. "Child custody proceeding" means a proceeding in which legal custody, physical custody, parenting time, or visitation with respect to a child is an issue. "Child custody proceeding" may include a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights, or protection from domestic violence. The phrase does not include proceedings regarding juvenile delinquency, contractual emancipation, or for enforcement under the UCCJEA. (R.C. 3127.01(B)(3) and (4).)*

[4] *Under prior law, "physical custody" meant actual possession and control of a child. Under the act, "physical custody" means the physical care and supervision of a child. (R.C. 3109.21(H) (repeal) and 3127.01(B)(14).)*

order pursuant to which the service was made. If service was by mail, proof could be a receipt signed by the addressee or other evidence of delivery to the addressee.

The act requires that notice be given to specified persons and be given in a manner reasonably calculated to give actual notice. It replaces the duty to give notice to the "contestants"[5] with a duty to give notice to all persons entitled to notice under Ohio law as in parenting proceedings between Ohio residents and expands the definition of "person" to include governmental agencies, eliminating the need to specify that a public agency having physical custody of the child be notified.[6]

The act eliminates a requirement that the notice be served, mailed, delivered, or last published at least 20 days before any hearing in Ohio and replaces a provision describing how proof of service may be made with a statement providing that proof of service may be made in the manner prescribed by the Rules of Civil Procedure or Juvenile Rules, as appropriate, or by the law of the state in which the service is made. Finally, the act specifies that the UCCJEA does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

Jurisdiction to issue a child custody determination

Initial jurisdiction

(R.C. 3109.22 (repealed) and 3127.15)

Under the UCCJA, an Ohio court with jurisdiction to make a parenting determination was not permitted to exercise that jurisdiction unless one of the following applied:

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[5] *Under prior law, "contestant" meant a parent of a child who claimed a right to be the residential parent and legal custodian of the child or claimed parenting time rights with respect to the child, or a person, other than a parent of a child, who claimed a right to custody or visitation rights with respect to the child. The act repeals this definition. (R.C. 3109.21(A) (repealed).)*

[6] *Under the act, "person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity (R.C. 3127.01(B)(12)).*

(1) Ohio was the home state[7] of the child at the time of commencement of the proceeding, or Ohio had been the child's home state within six months before commencement of the proceeding but the child was absent from Ohio because of the child's removal or retention by a parent who claimed a right to be the residential parent and legal custodian of a child or by any other person claiming custody or was absent from Ohio for other reasons, and a parent or person acting as parent[8] continued to live in Ohio;

(2) It was in the best interest of the child that an Ohio court assume jurisdiction because the child and the child's parents, or the child and at least one contestant, had a significant connection with Ohio, and substantial evidence concerning the child's present or future care, protection, training, and personal relationships was available in Ohio;

(3) The child was physically present in Ohio and either had been abandoned[9] or it was necessary in an emergency to protect the child because the child had been subjected to or threatened with mistreatment or abuse or was otherwise neglected or dependent;

(4) It appeared that no other state would have jurisdiction or a court in another state declined to exercise jurisdiction on the ground that Ohio was the

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[7] *Under prior law, "home state" meant the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six 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 were counted as part of the six-month or other period (R.C. 3109.21(E), repealed by the act).*

[8] *Under prior law, the term "person acting as parent" meant a person, other than a parent, who met both of the following criteria: (1) the person had physical custody of a child, and (2) the person either had been awarded custody by a court or claimed a right to custody.*

The act expands the first criterion to also include a person who has had physical custody of the child for a period of six consecutive months, including any temporary absence from the child, within one year immediately before the commencement of a child custody proceeding. The act limits the second criterion; under the act, the custody must be legal custody*, and a person claiming a right to legal custody must claim that right* under Ohio law. *(R.C. 3109.21(I) (repealed) and 3127.01(B)(13).)*

[9] *Under the act, "abandoned" means the parents of a child have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact with the child after that 90-day period (R.C. 3127.01(B)(1)).*

more appropriate forum to make a parenting determination relative to the child, and it was in the best interest of the child that the Ohio court assume jurisdiction.

Under former law, the physical presence in Ohio of the child, or of the child and one of the contestants, generally was insufficient to confer jurisdiction on an Ohio court to make a parenting determination relative to the child. But physical presence of the child, while desirable, was not a prerequisite for jurisdiction to make a parenting determination relative to the child.

The act specifies new jurisdictional provisions that provide the exclusive jurisdictional basis for making a child custody determination by an Ohio court. Under the act, except in temporary emergency jurisdiction situations, an Ohio court has jurisdiction to make an initial determination[10] in a child custody proceeding only if one of the following applies:

(1) Ohio is the child's home state on the date the proceeding was commenced, or was the child's home state within six months before the proceeding was commenced and the child is absent from Ohio but a parent or person acting as a parent continues to live in Ohio.

(2) A court of another state does not have jurisdiction under paragraph (1) or a court of the child's home state has declined to exercise jurisdiction on the basis that Ohio is the more appropriate forum and both of the following are the case: (a) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with Ohio other than mere physical presence, and (b) substantial evidence is available in Ohio concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that an Ohio court is the more appropriate forum to determine the custody of the child under the act's inconvenient forum provisions.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

The act specifies that physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination. In addition, the act enacts new provisions concerning emergency jurisdiction. (See below under "***Temporary emergency jurisdiction***.")

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[10] *Under prior law, "initial decree" meant the first parenting decree concerning a particular child. The act changes the name of this term to "initial determination." (R.C. 3109.21(F) (repealed) and 3127.01(B)(8).)*

Continuing jurisdiction

(R.C. 3127.16)

Generally, the act provides that an Ohio court that has made a child custody determination consistent with the provisions described in "***Initial jurisdiction***" and "***Modification jurisdiction***," below, has exclusive, continuing jurisdiction over the determination until the Ohio court or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in Ohio.

Modification jurisdiction

(R.C. 3109.31 (repealed) and 3127.17)

Under prior law, if a court of another state issued a parenting decree, an Ohio court could not modify that decree, unless it appeared to the Ohio court that the court that rendered the decree no longer had jurisdiction under jurisdictional prerequisites substantially in accordance with the UCCJA, or declined to assume jurisdiction to modify the decree, and the Ohio court had jurisdiction.[11]

Under the act, except in temporary emergency situations, an Ohio court may not modify a child custody determination made by a court of another state unless the Ohio court has jurisdiction to make an initial determination under paragraph (1) or (2) described under "***Initial jurisdiction***," above, and one of the following applies:

(1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction or that an Ohio court would be a more convenient forum.

(2) The Ohio court or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Temporary emergency jurisdiction

(R.C. 3109.22(A)(3) (repealed) and 3127.18)

Prior law permitted an Ohio court that had jurisdiction to make a parenting determination to exercise that jurisdiction if the child was physically present in Ohio and had been abandoned or the exercise of jurisdiction was necessary in an

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[11] *An Ohio court was required to give due consideration to all documents of previous proceedings.*

emergency to protect the child because the child had been subjected to or threatened with mistreatment or abuse or was otherwise neglected or dependent. The act grants an Ohio court temporary emergency jurisdiction if a child is present in Ohio and either the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

If there is no previous child custody determination that is entitled to be enforced under the UCCJEA and a child custody proceeding has not been commenced in a court of a state having jurisdiction, a child custody determination made under the act's temporary emergency jurisdiction provisions remains in effect until an order is obtained from a court of a state having jurisdiction. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction, a child custody determination made under the act's temporary emergency jurisdiction provisions becomes a final determination, if it so provides and Ohio becomes the home state of the child.

If there is a previous child custody determination that is entitled to be enforced under the act, or a child custody proceeding has been commenced in a court of a state having jurisdiction, any order issued by an Ohio court under the act's temporary emergency jurisdiction provisions must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having non-emergency jurisdiction. The Ohio order remains in effect until an order is obtained from the other state within the period specified or until the period expires.

An Ohio court that has been asked to make a child custody determination under the act's temporary emergency jurisdiction provisions, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having non-emergency jurisdiction, must immediately communicate with the other court. An Ohio court that is exercising non-emergency jurisdiction, on being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under that state's temporary emergency jurisdiction provisions, must immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Other jurisdictional concerns

Obligation to join a party and the right to intervene as a party in a proceeding

(R.C. 3109.28 (repealed) and 3127.19(C))

Under prior law, if the court learned that a person who was not a party to the parenting proceeding had physical custody of the child, claimed to be a parent of the child with parental rights and responsibilities for the care of the child and had been designated the residential parent and legal custodian of the child, claimed to be any other person with custody of the child, or claimed to have parenting time rights or visitation rights with respect to the child, it was required to order that person to be joined as a party and be duly notified of the pendency of the proceeding and of the person's joinder as a party. If the person joined as a party was outside Ohio, the person had to be served with process or otherwise notified in accordance with the UCCJA.

The act instead provides that the obligation to join a party and the right to intervene as a party in a child custody proceeding under the UCCJEA is governed by Ohio law as in child custody proceedings between Ohio residents.

Pending proceedings in another state

(R.C. 3109.24 (repealed) and 3127.20)

Former law prohibited an Ohio court from exercising its jurisdiction, if at the time of filing the petition a parenting proceeding concerning the child was pending in a court of another state exercising jurisdiction substantially in conformity with Ohio's version of the UCCJA, unless the other court stayed its proceeding because Ohio was a more appropriate forum or for other reasons. Before hearing the petition in a parenting proceeding, the court was required to examine the pleadings and other information supplied by the parties and consult the Child Parenting and Custody Registry concerning the pendency of parenting proceedings in other states with respect to the child. If the court had reason to believe that parenting proceedings may be pending in another state, it had to direct an inquiry to the state court administrator or other appropriate official of the other state.

If an Ohio court was informed during the course of a parenting proceeding that a parenting proceeding concerning the child was pending in a court of another state before the court assumed jurisdiction, the Ohio court had to stay its proceeding and communicate with the court in which the other proceeding was pending for the purpose of litigating the issue in the more appropriate forum and to

ensure that certain information was exchanged. If an Ohio court made a parenting decree before being informed of a pending proceeding in a court of another state, it immediately had to inform that court. If an Ohio court was informed that a proceeding was commenced in another state after it assumed jurisdiction, the Ohio court had to inform the other court for the purpose of litigating the issues in the more appropriate forum.

The act permits the Ohio court to exercise its jurisdiction when a foreign child custody proceeding was pending at the time the Ohio proceeding is commenced if that proceeding has been terminated. It eliminates the requirement that the court consult the Child Parenting and Custody Registry before hearing the petition in a child custody proceeding. The act provides that if the court *determines* that a child custody proceeding is pending in a court in another state *having jurisdiction substantially in accordance with the UCCJEA*, the Ohio court must *stay its proceeding* and communicate with the court of the other state. *If the court of the other state does not determine that the Ohio court is a more appropriate forum, the Ohio court must dismiss the proceeding*. The act eliminates a provision regarding situations in which the Ohio court is informed of a pending foreign parenting proceeding concerning the child.

Under the act, in a proceeding to modify a child custody determination, an Ohio court must determine whether a proceeding to enforce the determination has been commenced in another state. If one has, the court may do any of the following: (1) stay the proceeding for modification pending the decision on enforcement, (2) enjoin the parties from continuing with the proceeding for enforcement, or (3) in an emergency, proceed with the modification under conditions the court considers appropriate.

Finally, the act exempts temporary emergency proceedings from its provisions concerning pending proceedings.

Inconvenient forum

(R.C. 3109.25 (repealed) and 3127.21)

Under prior law, a court that had jurisdiction to make an initial or modification decree could decline to exercise its jurisdiction at any time *before making a decree* if it found that (1) it was an inconvenient forum to make a parenting determination under the circumstances *of the case* and (2) a court of another state was a more appropriate forum. A finding of inconvenient forum could be made on the court's own motion or motion of a party *or a guardian ad litem or other representative of the child*. The act no longer limits the court to declining jurisdiction on inconvenient forum grounds only before it issues a decree, removes the express authority of a guardian ad litem or other

representative of the child to raise the issue of inconvenient forum, and authorizes another court to request that the issue be raised.

In determining whether it is an inconvenient forum, the court was required under prior law to consider whether it was in the interest of the child that another state assume jurisdiction. The court could take into account, but was not limited to considering, any of the following factors:

(1) Whether another state currently or recently was the child's home state;

(2) Whether another state had a closer connection with the child and the child's family or with the child and one or more of the contestants;

(3) Whether substantial evidence concerning the child's present or future care, protection, training, and personal relationships was more readily available in another state;

(4) Whether the parties agreed on another forum that was no less appropriate.

Under the act, before determining whether it is an inconvenient forum, an Ohio court must consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court must allow the parties to submit information and consider all relevant factors, including the following:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside Ohio;

(3) The distance between the Ohio court and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

Under prior law, before determining whether to decline or retain jurisdiction, the court could communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court for the purpose of assuring that jurisdiction was exercised by the more appropriate court and that a forum was available to the parties. While the act does not include a new provision directly parallel to this provision, the provisions described in "***Interaction with courts in other states--Communication with courts in other states***," below, appear to accomplish a similar purpose.

Under prior law, if the court found that it was an inconvenient forum and that a court of another state was more appropriate, it *was permitted to* dismiss the proceedings, or stay the proceedings on the condition that a custody proceeding promptly be commenced in another named state or on any other conditions that would be just and proper, including the condition that a moving party stipulate the party's consent and submission to the jurisdiction of the other forum. Under the act, in such a situation, the Ohio court *is required to* stay the proceedings on the condition that a child custody proceeding promptly be commenced in another designated state and *is permitted to* impose any other condition the court considers just and proper.

Continuing law authorizes the court to decline to exercise its jurisdiction if a parenting determination is incidental to an action for divorce or another proceeding, while retaining jurisdiction over the divorce or other proceeding. The act does not substantially change this provision, though it expands it to apply to child custody determinations, rather than just parenting determinations.

The act also repeals law that provided that, if it appeared to the court that it clearly was an inappropriate forum, the court could require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in Ohio, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. But the act appears to incorporate this provision within the provisions described under "***Enforcement of out-of-state determinations--Enforcement order, testimonial privileges, and relief***," below.

Finally, under prior law, on dismissal or stay of proceedings under the inconvenient forum provisions, the court was required to inform the court found to be the more appropriate forum of this fact, or, if the court that would have jurisdiction in the other state was not known with certainty, had to transmit the information to the clerk of the court for forwarding to the appropriate court. Any communication received from another state informing Ohio of a finding of inconvenient forum because an Ohio court was the more appropriate forum had to be filed in the Parenting and Custody Registry of the appropriate court. On assuming jurisdiction, the Ohio court was required to inform the original court of this fact. The act repeals this provision, and while it does not enact a directly

parallel new provision, the provisions described in "***Interaction with courts in other states--Communication with courts in other states***," above, appear to accomplish a similar purpose.

Unjustifiable conduct

(R.C. 3109.26 (repealed) and 3127.22)

Under prior law, if the petitioner for an initial decree had wrongfully taken the child from another state or engaged in similar conduct, the court could decline to exercise jurisdiction, if just and proper under the circumstances. Unless required in the interest of the child, the law also prohibited the court from exercising its jurisdiction to modify a parenting decree of another state if the petitioner, without consent of either the parent who was designated the residential parent and legal custodian or another person entitled to custody, improperly removed the child from the physical custody of that person or improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner violated any other provision of a parenting decree of another state, the court could decline to exercise its jurisdiction, if just and proper under the circumstances. In appropriate cases, a court so dismissing a petition could charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

Under the act, except in temporary emergency situations, if an Ohio court has jurisdiction under the UCCJEA because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct,[12] the court must decline to exercise its jurisdiction unless one of the following applies:

(1) The parents and all persons acting as parents have agreed to the exercise of jurisdiction.

(2) A court of the state otherwise having jurisdiction determines that Ohio is a more appropriate forum.

(3) No court of any other state would have jurisdiction.

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[12] *The act defines "unjustifiable conduct" as conduct by a parent or that parent's surrogate that attempts to create jurisdiction in Ohio 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 parenting proceeding in the child's home state (R.C. 3127.22(D)).*

If an Ohio court declines to exercise its jurisdiction, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction.

If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction due to unjustifiable conduct, it must assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against the state of Ohio or an Ohio political subdivision unless authorized by law other than the UCCJEA.

Jurisdictional questions to be handled expeditiously

(R.C. 3127.06, relocated from R.C. 3109.37)

Under the act, on the request of a party to a child custody proceeding that raises a question of existence or exercise of jurisdiction under the UCCJEA, the question must be given calendar priority and handled expeditiously. This provision is relocated but not substantively changed.

Facts to be pleaded

(R.C. 3127.23, relocated from 3109.27)

Under continuing law, each party in a child custody proceeding, in the party's first pleading or in an affidavit attached to that pleading, must give information under oath as to the child's present address, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period. Under the act, the information that must be given is limited to information that is reasonably ascertainable and includes information as to the child's present whereabouts.

In this pleading or affidavit, continuing law requires each party to also include certain information:

(1) Under continuing law, each party must include information regarding whether the party has participated as a party, a witness, or in any other capacity in any other litigation, in Ohio or any other state, that concerned the allocation, between the parents of the same child, of parental rights and responsibilities for the care of the child and the designation of the residential parent and legal custodian of the child or that otherwise concerned the custody of the same child.

The act additionally requires the party to include information as to whether the party has participated in any other proceeding concerning any designation of parenting time rights or that otherwise concerned visitation with the child. If the party has participated in any such proceeding, the act requires the party to provide information concerning the court, case number, and the date of the child custody determination, if any.

(2) Under prior law, each party was required to include information regarding whether the party had information of any parenting proceeding concerning the child pending in an Ohio court or a court of any other state. The act replaces this requirement with the requirement that the party also include information as to whether 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.

(3) Under continuing law, each party must include information regarding whether the party knows of any person who is not a party to the proceeding and (a) has physical custody of the child, or (b) claims to be a parent designated the residential parent and legal custodian of the child, to have parenting time rights with respect to the child, or to be a person other than a parent who has custody or visitation rights with respect to the child. Under the act, if the party knows of such a person, the party also must provide the names and addresses of that person.

(4) Under prior law, each party was required to include information regarding whether the party previously had been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously had been determined, in a case in which a child had been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication. The act eliminates this provision.

Under prior law, if the pleading declared the party to have the above information, the court could require the declarant to give additional information *under oath*. The act replaces the requirement that the declarant give the additional information under oath with a requirement that the declarant give the information as required by the court. The act revises the continuing duty of each party to inform the court of any parenting proceeding concerning the child of which the party obtained information during the proceeding to limit the scope of this duty to information regarding pending child custody proceedings that could affect the current proceeding.

Finally, under the act, if a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public, unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, and liberty of the party or child and determines that the disclosure is in the interests of justice.

Personal appearance by the parties

(R.C. 3127.24, relocated from 3109.29)

Under continuing law, the court may order any party to a parenting proceeding who is in Ohio to appear personally before the court. If that party has physical custody of the child, the court may order that the party appear personally with the child.

If a party to a parenting proceeding whose presence is desired by the court is outside Ohio with or without the child, the court may order that the notice given include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party. If a party to a parenting proceeding who is outside Ohio is directed to appear or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other necessary expenses for the appearance of the party and the child who are outside Ohio, if this is just and proper under the circumstances.

The act clarifies that the court may order any party to a child custody proceeding who is in Ohio to appear personally before the court *with or without the child*. The act also expands the court's authority to order a person to appear with the child: under prior law, this authority was limited to a *party* who was in Ohio and who had physical custody of the child; the act expands this authority to apply to any *person* who is in Ohio and who has physical custody *or control* of the child.

The act authorizes the court to enter any orders necessary to ensure the safety of the child and of any person ordered to appear. The act also clarifies that the travel expenses the court may require a party to pay must be reasonable and necessary.

Immunity from personal jurisdiction

(R.C. 3127.08)

Under the act, a party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in Ohio for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the child custody proceeding. This immunity does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the UCCJEA that are committed by an individual while present in Ohio.

A person who is subject to personal jurisdiction in Ohio on a basis other than physical presence is not immune from service of process in Ohio. A party present in Ohio who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS

Jurisdiction of juvenile court

(R.C. 2151.23(B)(8) and (9))

The act expands the jurisdiction of the juvenile court to include original jurisdiction to do both of the following:

(1) Enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention);[13]

(2) To grant any relief normally available under Ohio law to enforce a child custody determination made by a court of another state and registered in accordance with the act's provisions.

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[13] *The Hague Convention is a civil legal mechanism available to parents seeking the return of, or access to, their child. The countries that are party to the Hague Convention have agreed to secure the prompt return of children wrongfully removed or retained in any party nation and ensure that rights of custody and access are respected in other party nations. The Convention was incorporated unto United States law in 1988 and is in force between the United States and 60 other countries.*

Registration of child custody determinations

(R.C. 3109.32(A) and 3109.33 (repealed); 3127.33(A) and 3127.35(A))

Law repealed by the act required the clerk of each court that rendered a parenting decree to maintain a parenting and custody registry in which the clerk had to enter the following: (1) certified copies of parenting decrees of other states received for filing, (2) communications regarding pending parenting proceedings in other states, (3) communications concerning a finding of inconvenient forum by a court of another state, and (4) other communications or documents concerning parenting proceedings in another state that could affect the jurisdiction of an Ohio court or the disposition to be made by it in a parenting proceeding. At the request of the court of another state or at the request of any person who was affected by or had a legitimate interest in a parenting decree, the clerk had to certify and forward a copy of the decree to that court or person. Until modified, a parenting decree filed with the clerk of court had the same effect and had to be enforced as a parenting decree rendered by an Ohio court.

The act permits a child custody determination issued by a court of another state to be registered in Ohio by sending to the clerk of an Ohio juvenile court or other Ohio court with jurisdiction all of the following:

(1) A letter or other document requesting that the child custody determination be registered;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that, to the best of the knowledge and belief of the person seeking registration, the order has not been modified;

(3) Except in temporary emergency jurisdiction situations, the name and address of the person seeking registration, any parent who is designated the child's residential parent and legal custodian or to have parenting time with respect to the child, or any person acting as a parent who has been awarded custody or visitation in the child custody determination;

(4) An advance deposit or fee established by the court.

Under the act, an Ohio court must recognize and enforce a child custody determination of a court of another state if that state exercised jurisdiction in substantial conformity with the act's UCCJEA provisions or the determination was made under factual circumstances meeting the jurisdictional standards of those provisions and the determination has not been modified.

Filing of the child custody determination and notice of the registration request

(R.C. 3127.35(B) and (C))

Under the act, on receipt of the required documents and information, the registering court must cause the child custody determination to be filed as a foreign judgment together with one copy of any accompanying documents and information, regardless of their form. The registering court also must serve notice of the registration request on the child's residential parent and legal custodian, any parent who has parenting time with respect to the child, or any person acting as a parent who has been awarded custody or visitation in the child custody determination, and provide them with an opportunity to contest the registration in accordance with this provision.

The notice must state all of the following: (1) that the registered child custody determination is enforceable as of the date of the registration in the same manner as a child custody determination issued by an Ohio court, (2) that a hearing to contest the validity of the registered determination must be requested within 30 days after service of notice, and (3) that failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

Contesting the validity of a registered order

(R.C. 3127.35(D))

The act requires a person seeking to contest the validity of a registered order to request a hearing within 30 days after service of the notice. At that hearing, the court must confirm the registered order unless the person contesting registration establishes one of the following circumstances:

(1) The court that issued the child custody determination did not have jurisdiction.

(2) The child custody determination has been vacated, stayed, or modified by a court having jurisdiction to do so.

(3) The person contesting registration was entitled to notice of the child custody proceeding for which registration is sought, but no adequate notice was given.

Confirmation of registered child custody determination

(R.C. 3127.35(E) and (F))

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed under the act as a matter of law and the person requesting registration and all persons served with notice of the registration must be notified of the confirmation. Confirmation of a registered child custody determination, whether by operation of law or after notice and hearing, precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.

Enforcement of out-of-state child custody determinations, generally

(R.C. 3127.36(B))

Under the act, an Ohio juvenile court and each other Ohio court with jurisdiction (hereafter "an appropriate Ohio court") must recognize and enforce, but may not modify except in accordance with the act's provisions, a registered child custody determination of a court of another state.

Enforcement when pending modification proceedings exist

(R.C. 3127.37)

Under the act, if a proceeding for enforcement is commenced in an appropriate Ohio court and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination, the enforcing court must immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Temporary orders to enforce parenting time or visitation

(R.C. 3127.34)

The act permits an Ohio court that does not have jurisdiction to modify a child custody determination to issue a temporary order enforcing either of the following:

(1) A parenting time or visitation schedule made by a court of another state;

(2) The parenting time or visitation provisions of a child custody determination of another state that does not provide for a specific parenting time or visitation schedule.

If an Ohio court issues an order of this nature, it must specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Form of enforcement petition

(R.C. 3127.38(A) and (B))

The act requires a petition for enforcement to be verified. All orders sought to be enforced and any order confirming registration must be attached to the petition. The orders attached to the petition must be the original or a certified copy, whichever a court requires.

A petition for enforcement of a child custody determination must state all of the following:

(1) Whether the court that issued the child custody determination identified the jurisdictional basis it relied on in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under the UCCJEA and, if so, the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced 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;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials, and, if so, the relief sought;

(6) If the child custody determination has been registered and confirmed, the date and place of registration.

Order to appear

(R.C. 3127.38(C) and (D))

On the filing of a petition, the act requires the court to issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and 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 must hold the hearing on the first judicial day possible. The court may extend the date of the hearing at the request of the petitioner.

The order must state the time and place of the hearing and advise the respondent that at the hearing the court will issue an order authorizing the petitioner to take immediate physical custody of the child and requiring the respondent to pay fees, costs, and expenses. The order also must advise the respondent that the court may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

(1) That the child custody determination has not been registered and confirmed and that one of the following circumstances applies: (a) the issuing court did not have jurisdiction, (b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so, or (c) the respondent was entitled to notice of the child custody proceeding for which enforcement is sought, but no adequate notice was given.

(2) That the child custody determination for which enforcement is sought was registered and confirmed but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so.

Service of petition and order to appear

(R.C. 3127.39)

Except when the petitioner applies for the issuance of a warrant to take physical custody of the child, the act requires that the petition and order be served on respondent and any person who has physical custody of the child by any method authorized by the Rules of Civil Procedure.

Warrant to take physical custody of the child

(R.C. 3127.41)

Under the act, on the filing of the enforcement petition, the petitioner may file a verified application for the 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 Ohio.

If the court, on the testimony of the petitioner or another witness, finds that the child is imminently likely to suffer serious physical harm or be removed from Ohio, it may issue a warrant to take physical custody of the child. If possible, the court must hear the petition on the next judicial day after the warrant is executed, or, if that is not possible, on the first judicial day possible. The application for the warrant must include the statements required in an enforcement petition (see "***Form of enforcement petition***," above).

The warrant must do all of the following:

(1) Specify the facts on which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately.[14]

(3) Provide for the placement of the child pending final relief.[15]

The act requires that the respondent be served with the petition, warrant, and order immediately after the child is taken into physical custody. The warrant is enforceable throughout Ohio.

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[14] *If the court finds on the basis of the testimony of the petitioner or another witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour. (R.C. 3127.41(E).)*

[15] *The court may impose conditions on the placement of a child to ensure the appearance of the child and the child's custodian (R.C. 3127.41(F)).*

Enforcement order

(R.C. 3127.40(A))

Unless the court issues a temporary emergency order, on a finding that a petitioner is entitled to immediate physical custody of the child, the court must issue an order authorizing the petitioner to take immediate physical custody of the child unless the respondent establishes either of the following:

(1) That the child custody determination has not been registered and confirmed and that one of the following circumstances applies: (a) the issuing court did not have jurisdiction, (b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so, or (c) the respondent was entitled to notice of the child custody proceeding for which enforcement is sought, but no adequate notice was given.

(2) That the child custody determination for which enforcement is sought was registered and confirmed but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so.

Testimonial privileges

(R.C. 3127.40(C) and (D))

If a party called to testify in the enforcement proceeding refuses to answer on the basis that the testimony may be self-incriminating, the act authorizes the court to draw an adverse inference from the refusal. Also, a privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under the UCCJEA.

Relief

(R.C. 3109.32(B) (repealed), 3127.33(B), 3127.36(A), 3127.40(B), 3127.42, and 3127.47)

Under prior law, a person violating a parenting decree of another state which made it necessary to enforce the decree in Ohio could be required to pay necessary travel and other expenses, including attorney's fees, incurred by the parent who is designated the residential parent and legal custodian or that parent's witnesses or by any other party entitled to custody or that party's witnesses.

The act permits an Ohio juvenile court or other court with jurisdiction to grant any relief normally available under Ohio law to enforce a registered child

custody determination made by a court of another state. Under the act, the court must award the prevailing party in an action to enforce a child custody determination, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate. The court is prohibited from assessing fees, costs, or expenses against a state or a political subdivision of a state unless authorized by law other than the UCCJEA.

The court also may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether the additional relief is appropriate.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers in locating the child, obtaining the return of the child, or enforcing the child custody determination.

The act authorizes an Ohio court to use any remedy available under Ohio law to enforce a child custody determination made by a court of another state. The remedies provided in the act's enforcement provisions are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Appeal of enforcement order

(R.C. 3127.44)

An appeal may be taken from a final enforcement order under the act. The Ohio Supreme Court must, by rule, provide for expedited appellate review of these cases. Unless the court enters a temporary emergency order, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Prosecutor and law enforcement actions

(R.C. 3127.45 and 3127.46)

In a case arising under the UCCJEA or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action,[16] including resort to an enforcement proceeding or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is any of the following:

[16] *The prosecutor acts on behalf of the court and may not represent any party.*

(1) An existing child custody determination;

(2) A request to locate a child, obtain the return of a child, or enforce a child custody determination from a court in a pending child custody proceeding;

(3) A reasonable belief that a criminal statute has been violated;

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention.

At the request of a prosecutor or other appropriate public official acting under this authority, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with the prosecutor's or official's responsibilities.

INTERACTION WITH FOREIGN COURTS

Hague Convention orders treated as child custody determinations

(R.C. 3127.32)

Under the UCCJEA, an Ohio juvenile court or other court with jurisdiction may enforce an order for the return of a child made under the Hague Convention as if it were a child custody determination.

Full faith and credit, Indian tribes, and foreign countries

(R.C. 3109.30(B) (repealed), 3127.03(B) and (C), 3127.04, and 3127.43)

Under prior law, Ohio courts was required to recognize and enforce an initial or modification decree of a court of another state if that court assumed jurisdiction under statutory provisions substantially in accordance with the UCCJA or if the decree was made under factual circumstances meeting the jurisdictional standards of the UCCJA, so long as the decree was not modified in accordance with jurisdictional standards substantially similar to those of the UCCJA.

The act instead contains a more general provision requiring Ohio courts to accord full faith and credit to an order issued by another state consistent with the UCCJEA that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so.

The act requires Ohio courts to treat an Indian tribe as if it were a state of the United States for the purpose of applying the UCCJEA. And, a child custody

determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA must be recognized and enforced under the act's recognition provisions.

Similarly, the act requires Ohio courts to treat a foreign country as if it were a state of the United States for the purpose of applying the UCCJEA. A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA generally must be recognized and enforced under the act's recognition provisions. But, an Ohio court need not apply the UCCJEA if the law governing child custody determinations of a foreign country violates fundamental principles of human rights.

Communication with courts in other states

(R.C. 3127.09)

Under the act, an Ohio court may communicate with a court in another state concerning a proceeding arising under the UCCJEA. The court may give the parties the opportunity to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision concerning jurisdiction is made. Generally, a record must be made of communications under these provisions.[17] But, communication between courts concerning scheduling, calendars, court records, and similar matters may occur without informing the parties; a record does not need to be made of these communications.

Out-of-state witnesses and evidence

(R.C. 3127.10)

The act permits a party to a child custody proceeding to offer testimony of witnesses who are located in another state by deposition or other means allowable in Ohio for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms on which the testimony is taken.

Additionally, the act authorizes an Ohio court to permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location

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[17] *For the purposes of these provisions, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and retrievable in perceivable form.*

in that state. An Ohio court must cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

Documentary evidence transmitted from another state to an Ohio court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Authority to request out-of-state court to perform certain actions

(R.C. 3109.34 (repealed), 3109.35 (repealed), and 3127.11(A), (B), and (C))

Under continuing law modified by the act, an Ohio court may request that the appropriate court of another state do any of the following: (1) hold a hearing to adduce evidence, (2) order a party to produce or give evidence under other procedures of that state, or (3) have social studies made with respect to the allocation of parental rights and responsibilities for the care of a child involved in parenting proceedings pending in the Ohio court, with respect to the designation of a parent as the residential parent and legal custodian of the child, and with respect to granting custody of the child to any other person. The Ohio court may also request that the other court forward to the Ohio court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, paid from the county treasury and taxed as costs in the case.

An Ohio court also could ask the appropriate court of another state to order a party to parenting proceedings pending in the Ohio court to appear in the proceedings, and if that party had physical custody of the child, to appear with the child. The request could state that travel and other necessary expenses of the party and of the child whose appearance was desired would be assessed against another party or would otherwise be paid. The act maintains this authority but no longer expressly permits the Ohio court to include a statement concerning the assessment of travel expenses, although the court can still assess them.

Similar to prior law, on request of a court of another state, the act authorizes an Ohio court to hold a hearing or enter an order described above. Regarding an order requiring a person in Ohio to appear alone or with the child in a parenting proceeding in another state, the act eliminates provisions authorizing the Ohio court to condition compliance with the request on assurance by the other state that travel and other necessary expenses will be advanced or reimbursed although the court may still assess those expenses against the parties.

Finally, the act eliminates law authorizing a person within Ohio to voluntarily give testimony or a statement in Ohio for use in a child custody

proceeding outside Ohio and law expressly permits persons to adduce testimony in another state.

Records to be kept, exchanged between courts

(R.C. 3109.36 (repealed) and R.C. 3127.11(D))

In any custody proceeding in Ohio, former law required the court to preserve the pleadings, orders and decrees, any record that had been made of its hearings, social studies, and other pertinent documents until the child reached 18 years of age. On appropriate request of the court of another state, the court had to forward to the other court certified copies of any or all of such documents. The act eliminates the express requirement that the court retain the records until the child reaches 18 years of age, as existing records retention policies require that records be retained for a longer period.[18]

The act eliminates a provision under which, if a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in an Ohio court, the Ohio court on taking jurisdiction of the case had to request that the foreign court send to the Ohio court a certified copy of the transcript of any court record and other documents mentioned in the preceding paragraph. But the court may make such a request pursuant to the authority granted under "***Communications with courts in other states***," above.

MISCELLANEOUS PROVISIONS

Application and construction, severability, applicable laws

(R.C. 3127.51, 3127.52, and 3127.53)

In applying and construing the UCCJEA, the act requires that consideration be given to the need to promote uniformity of law with respect to its subject matter among states that enact a uniform child custody jurisdiction and enforcement act.

If any provision of the UCCJEA or its application to any person or circumstance is held invalid, the act provides that the invalidity does not affect other provisions or applications of the UCCJEA that can be given effect without the invalid provision or application, and to this end the UCCJEA provisions are severable.

A motion or other request for relief made in a parenting or child custody proceeding or to enforce a parenting or child custody determination that was

[18] *Sup. R. 26.03(H)(3).*

commenced before the act's effective date is governed by the law in effect at the time the motion or other request was made.

Interaction with other laws

(R.C. 3127.02 and 3127.03(A))

Under the act, a child custody proceeding that pertains to an Indian child, as defined in the federal Indian Child Welfare Act, is not subject to the UCCJEA to the extent that the proceeding is governed by that act.

The act also specifies that the UCCJEA does not govern adoption proceedings or proceedings pertaining to the authorization of emergency medical care for a child.

Conforming changes

(R.C. 2111.06, 2151.23(F)(1), 2151.27(E), 2152.021(D), 3109.04(A), and 3127.06 (relocated from R.C. 3109.37))

The act makes a number of conforming changes to reflect the amendments made by the act.

Relocation of sections

The act relocates sections 3109.27, 3109.29, and 3109.37 to R.C. Chapter 3127., as enacted by the act. It repeals sections 3109.21 to 3109.26, 3109.28, and 3109.30 to 3109.36 of the Revised Code, generally enacts analogous provisions in R.C. Chapter 3127., and enacts additional provisions in that chapter.[19]

REPORTS OF ABUSE OR NEGLECT

(R.C. 2151.421(F)(1))

Continuing law provides for both the mandatory and discretionary reporting of suspected abuse or neglect of a child. When such a report is made, the public children services agency (PCSA) is generally required to conduct an investigation of the report. With limited exception, reports of abuse or neglect are confidential (R.C. 2151.421(A)(1)(a), (B), (F)(1), and (H)(1)). The act requires that, when a representative of the PCSA makes initial contact with the person being investigated, the person must be informed of the specific complaints or allegations against the person. The act provides that the release of information must be

[19] *See* **COMMENT** *for tables showing the sections relocated by the act.*

consistent with continuing law regarding the confidentiality of reports of abuse or neglect. Further, the act requires that the information be given in a manner that protects the rights of the person who made the report.

CASEWORKERS

(R.C. 5153.122)

Continuing law generally requires that each caseworker hired by a PCSA complete at least 90 hours of in-service training during the first year of employment. This training must incorporate several courses, including courses in recognizing and preventing child abuse and neglect, investigating cases, and providing services to children and families. The act further requires that this training include instruction regarding the caseworkers' duties to protect the constitutional and statutory rights of children and families. Specifically, the training must include instruction regarding the limitations placed on caseworkers by the federal constitutional protection against unreasonable searches and seizures.[20]

GRANDPARENT CAREGIVERS

(R.C. 2151.23(B)(7))

In certain circumstances, continuing law permits the execution of a power of attorney or caretaker authorization affidavit to provide a grandparent with whom a child resides authority over the care, physical custody, and control of the child (R.C. 3109.52 and 3109.65). These documents must be filed with the appropriate juvenile court (R.C. 3109.74). If a second or subsequent power of attorney or caretaker authorization affidavit is executed regarding the same child, the juvenile court with which the document is filed must hold a hearing to determine whether the affidavit or power of attorney is in the child's best interest (R.C. 3109.76 and 3109.77). The act clarifies that the juvenile court has original jurisdiction to receive these filings, conduct the hearings, and make the determinations relevant to these documents.

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[20] *The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."*

COMMENT

The following table shows the relocation of Revised Code sections as a result of adopting the UCCJEA and which sections are new enactments under the UCCJEA:

Former section number	New section number
3109.21	3127.01
3109.22	3127.15
3109.22(A)(3)	3127.18
3109.23	3127.01(B)(12), 3127.07, and 3127.19(A)
3109.24	3127.20
3109.25	3127.21
3109.26	3127.22
3109.27	3127.23
3109.28	3127.19(C)
3109.29	3127.24
3109.30(A)	3127.05
3109.30(B)	3127.43
3109.31	3127.17
3109.32(A)	3127.33(A) and 3127.35(B)
3109.32(B)	3127.40, 3127.42, and 3127.47
3109.33	3127.35(A)
3109.34	3127.11(A), (B), and (C)
3109.35	3127.11(A), (B), and (C)
3109.36	3127.11(D)
3109.37	3127.06

Former section number	New section number
--	3127.02
--	3127.03
--	3127.04
--	3127.08
--	3127.09
--	3127.10
--	3127.16
--	3127.31
--	3127.32
--	3127.33(B)
--	3127.34
--	3127.35(C) to (G)
--	3127.36
--	3127.37
--	3127.38
--	3127.39
--	3127.41
--	3127.44
--	3127.45
--	3127.46
--	3127.51
--	3127.52
--	3127.53

The following table shows the new sections under the UCCJEA and the analogous sections, if any, under prior law:

New section number	Former section number
3127.01	3109.21
3127.01(B)(12)	3109.23
3127.02	--
3127.03	--
3127.04	--
3127.05	3109.30(A)
3127.06	3109.37
3127.07	3109.23
3127.08	--
3127.09	--
3127.10	--
3127.11(A), (B), and (C)	3109.34 and 3109.35
3127.11(D)	3109.36
3127.15	3109.22
3127.16	--
3127.17	3109.31
3127.18	3109.22(A)(3)
3127.19(A) and (B)	3109.23
3127.19(C)	3109.28
3127.20	3109.24
3127.21	3109.25
3127.22	3109.26
3127.23	3109.27
3127.24	3109.29
3127.31	--

New section number	Former section number
3127.32	--
3127.33(A)	3109.32(A)
3127.33(B)	--
3127.34	--
3127.35(A)	3109.33
3107.35(B)	3109.32(A)
3127.35(C) to (G)	--
3127.36	--
3127.37	--
3127.38	--
3127.39	--
3127.40	3109.32(B)
3127.41	--
3127.42	3109.32(B)
3127.43	3109.30(B)
3127.44	--
3127.45	--
3127.46	--
3127.47	3109.32(B)
3127.51	--
3127.52	--
3127.53	--

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-21-04	p.	1421
Reported, S. Health, Human Services, &Aging	05-21-04	p.	1986
Passed Senate (33-0)	05-25-04	pp.	1993-1994
Reported, H. Juvenile & Family Law	11-18-04	p.	2290
Passed House (87-0)	12-01-04	pp.	2335-2336
Senate concurred in House amendments (30-0)	12-07-04	pp.	2387-2388

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