Michael J. O'Neill *Legislative Service Commission*

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(As Introduced)

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BILL SUMMARY

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

Jurisdiction and parenting determinations

Jurisdiction

- Clarifies several provisions regarding the notice required for the exercise of jurisdiction over a person outside Ohio, eliminates the requirement that the notice be served, mailed, delivered, or last published at least 20 days before any hearing in Ohio, revises how proof of service may be made, and expressly specifies that the bill's UCCJEA provisions do not govern the enforceability of a parenting determination made without notice or an opportunity to be heard.

- Provides the exclusive jurisdictional basis for making a parenting determination by an Ohio court, revises the standard by which an Ohio court has jurisdiction to make an initial determination in a parenting proceeding, and specifies that physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a parenting determination.

- Expands the jurisdiction of the juvenile court to give the juvenile court exclusive 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 parenting determination made by a court

of another state and registered in accordance with the bill's registration provisions.

- Grants a limited immunity for personal jurisdiction in Ohio related to participation in a parenting proceeding.

- Revises the circumstances under which an Ohio court may modify a parenting determination made by a court of another state to also permit an Ohio court to modify the order 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 that has made a parenting 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.

- 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 existing joinder provisions with an obligation to join a party and provides the right to intervene as a party in a parenting proceeding under the bill's provisions is governed by Ohio law as in parenting proceedings between Ohio residents.

- In the provisions dealing with pending parenting proceedings in another state does the following: makes some clarifying changes; requires the court to determine, as opposed to "have reason to believe," that parenting proceedings are pending in another state; requires the Ohio court to stay its proceedings if proceedings are pending in another state; 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; eliminates the existing provision regarding situations in which the Ohio court is informed of a pending foreign parenting proceeding concerning the child; and contains a provision concerning parenting determination modifications.

Inconvenient forum

- Eliminates a limitation on a court's jurisdiction to permit 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 difference factors.

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

Unjustifiable conduct

- Replaces a provision prohibiting an Ohio court from exercising its jurisdiction if the petitioner has improperly removed or retained the child with a provision requiring 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 prohibition.

- 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 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 parenting 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) if the party has participated in any proceeding concerning the allocation of parental rights and responsibilities, requires the party 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 any designation of parenting time rights or that otherwise concerned visitation with the child, (5) replaces a requirement that the party provide information regarding whether the party has information of any pending parenting proceeding concerning the child with a requirement that the party 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.

- Authorizes the court, if the required information is not furnished, to stay the proceeding until the information is furnished.

- Continues the court's authority to require a person filing a pleading to give additional information, but eliminates the requirement that the court require the person to give the additional information under oath.

- 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 parenting 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.

Enforcement

Generally

- Authorizes Ohio juvenile and domestic relations courts 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 parenting determination.

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

- Authorizes an Ohio court that does not have 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 parenting determination that does not provide for a specific parenting time or visitation schedule.

Registration of foreign parenting orders

- Eliminates the express requirement that the appropriate court clerk enter into a parenting determination registry certified copies of parenting decrees of other states received for filing and certain specified communications regarding parenting proceedings, and instead requires only that the appropriate court clerk maintain a parenting determination registry with respect to parenting determinations.

- Requires an Ohio court to recognize and enforce a parenting determination of a court of another state if that state exercised jurisdiction in substantial conformity with the bill'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.

- On receipt of the required documents and information, requires the registering court to cause the parenting determination to be filed as a foreign judgment together with one copy of any accompanying documents and information, regardless of their form, 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 parenting 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 parenting determination.

Enforcement petition and hearing

- 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.

- 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 parenting determination made by a court of another state.

- Expands the enforcement relief provisions to require the court to award the prevailing party in an action to enforce a parenting 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 unless authorized by law other than the bill's UCCJEA provisions.

- 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 parenting determination.

Appeal

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

Prosecutor's 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 provisions 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 other public official.

Interaction with foreign courts

- Replaces the duty of Ohio courts to generally recognize and enforce an initial or modification decree of a court of another state with the duty requiring Ohio courts to accord full faith and credit to an order issued by another state consistent with the bill's UCCJEA provisions that enforces a parenting 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 parenting determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the bill's UCCJEA provisions 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 bill's UCCJEA provisions, but provides that an Ohio court need not apply the bill's UCCJEA provisions if the law governing parenting 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 parenting 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 parenting 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.

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

Other provisions

- In applying and construing the bill's UCCJEA provisions, 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.

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

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

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

- Specifies that the bill's UCCJEA provisions do not govern adoption proceedings or proceedings pertaining to the authorization of emergency medical care for a child.

- Makes a number of conforming changes.

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CONTENT AND OPERATION

Overview

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Child Custody Jurisdiction Act (UCCJA) was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of states' versions, however, significantly departed from the original text. In addition, almost 30 years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the Commissioners believed that the goals of the UCCJA were rendered unobtainable in many cases.

In 1997, the Commissioners promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to address these jurisdictional problems and several enforcement problems.[1] The UCCJEA has been adopted in 35 jurisdictions and is pending in 6 more (assuming L-125-1078-1 is introduced).[2]

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[1] *Under the bill, as used in the Revised Code, "Uniform Child Custody Jurisdiction and Enforcement Act" means the act addressing interstate recognition and enforcement of child custody orders adopted in 1997 by the National Conference of Commissioners on*

The bill enacts the UCCJEA in Ohio. It so doing, it largely relocates the existing UCCJA provisions from R.C. Chapter 3109. to R.C. Chapter 3127. by either renumbering the section or by repealing the existing section and enacting a new section. The bill also enacts a number of new provisions in R.C. Chapter 3127. A table describes the location of the analogous provisions in "***Relocation of sections***," below. Otherwise, in discussing the changes made by the bill, this analysis will not describe the mechanical form of the change.

Jurisdiction and parenting determinations

Notice for the exercise of jurisdiction over a person outside Ohio

(R.C. 3109.23 (repealed), 3127.01(B)(12), 3127.07, and 3127.19(A) and (B))

Existing law. Under existing law, before making a parenting decree,[3] the court[4] must give reasonable notice of the parenting proceeding[5] and opportunity to

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Uniform State Laws or any law substantially similar to the act adopted by another state (R.C.3127.01(A)).

[2] *According to the National Conference of Commissioners on Uniform State Laws, the UCCJEA has been adopted in 35 jurisdictions: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia.*

And the UCCJEA is pending in six states: Indiana, Kentucky, Massachusetts, Mississippi, New Jersey, and Ohio.

(http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-uccjea.asp, January 9, 2004.)

[3] *"Parenting decree" or "decree" in existing law means a parenting determination contained in a judicial decree or order made in a parenting proceeding, and includes an initial decree and a modification decree. "Parenting determination" means a court decision and court orders and instructions that, in relation to the parents of a child, allocates parental rights and responsibilities for the care of the child, including any designation of parenting time rights, and designates a residential parent and legal custodian of the child or that, in relation to any other person, provides for the* custody of a child, including visitation rights. *It does not include a decision relating to child support or any other monetary obligation of any person.*

be heard to the contestants, any parent whose parental rights previously have not been terminated, and any person or public agency who has physical custody[6] of the child.[7] But notice is not required if a person submits to the jurisdiction of the court.

If any of these persons or the public agency is outside Ohio, notice required for the exercise of jurisdiction over the person or public agency must be given in accordance with the Rules of Civil Procedure governing service of process within Ohio, in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general

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The bill consolidates the terms "parenting decree" and "parenting determination" within the term "parenting determination," revises the terminology in relation to custody, and includes in the definition permanent, temporary, initial, and modification orders.

Thus, under the bill, "parenting determination" means a judgment, decree, or other order of a court *that, in relation to the parents of a child, allocates parental rights and responsibilities for the care of the child, including any designation of parenting time rights, and designates a residential parent and legal custodian of the child or that, in relation to any other person, provides for the* legal custody, physical custody, or visitation with respect to a child. *The term includes permanent, temporary, initial, and modification orders but does not include an order relating to child support or other monetary obligations of an individual. (R.C. 3109.21(B) and (D) (repealed) and R.C. 3127.01(B)(10).)*

[4] *Under the bill, "court" means an entity authorized under the law of a state to establish, enforce, or modify a parenting determination (R.C. 3127.01(B)(4)).*

[5] *Under existing law, "parenting proceeding" includes proceedings in which a parenting determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.*

The bill expands the list of examples included in the definition to also include proceedings for dissolution, to determine whether a child is an abused child, to establish guardianship, to determine the existence of a parent and child relationship, to terminate parental rights, and for protection from domestic violence, in which the issue may appear. The bill specifies that the term does not include a proceeding involving juvenile delinquency or contractual emancipation, or for enforcement under the bill's UCCJEA provisions. (R.C. 3109.21(C) (repealed) and 3127.01(B)(11).)

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

[7] *Under the bill, "child" means an individual who has not attained 18 years of age (R.C. 3127.01(B)(2)).*

jurisdiction, or as directed by the court, including publication, if other means of notification are ineffective. This notice must be served, mailed, delivered, or last published at least 20 days before any hearing in Ohio.

Proof of service outside Ohio may be made by affidavit of the individual who made the service or in the manner prescribed by the Rules of Civil Procedure governing service of process within Ohio, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

The bill. The bill makes the following changes:

(1) While existing law requires *reasonable* notice be given to specified persons, the bill only requires that notice be given to specified persons.

(2) The bill replaces the duty to give notice to the "contestants"[8] with a duty to give notice to "all persons entitled to notice under Ohio law as in parenting proceedings between Ohio residents." Also, the bill expands the definition of "person" to include governmental agencies and so eliminates the existing express requirement that notice be given to a public agency having physical custody of the child.[9]

(3) The bill eliminates the existing requirement that the notice be served, mailed, delivered, or last published at least 20 days before any hearing in Ohio.

(4) The bill replaces the existing 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 by the law of the state[10] in which the service is made.

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

[9] *Under the bill, "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).)*

[10] *Under the bill, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States (R.C. 3127.01(B)(15)).*

(5) The bill expressly specifies that the bill's UCCJEA provisions do not govern the enforceability of a parenting determination made without notice or an opportunity to be heard.

Jurisdiction

(R.C. 2151.23(A)(16) and (17), 3109.22 (repealed), and R.C. 3127.15)

Existing law. Under existing law, no Ohio court that has jurisdiction to make a parenting determination relative to a child is permitted to exercise that jurisdiction unless one of the following applies:

(1) Ohio is the home state[11] of the child at the time of commencement[12] of the proceeding, or Ohio had been the child's home state within six months before commencement of the proceeding and the child is absent from Ohio because of the child's removal or retention by a parent who claims a right to be the residential parent and legal custodian of a child or by any other person claiming custody or is absent from Ohio for other reasons, and a parent or person acting as parent[13] continues to live in Ohio;

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[11] *Under existing law, "home state" means 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 are counted as part of the six-month or other period.*

The bill changes the point for determining the six-month period from being the state in which the child lives with a parent, etc., for at least six consecutive months immediately preceding the time involved, *to being the state in which the child so lived for at least six consecutive months* immediately preceding the commencement of a parenting proceeding. *(R.C. 3109.21(E) (repealed) and 3127.01(B)(5).)*

[12] *Under the bill, "commencement" means the filing of the first pleading in a proceeding (R.C. 3127.01(B)(3)).*

[13] *Under existing law, the term "person acting as parent" means a person, other than a parent, who meets both of the following criteria: (1) the person has physical custody of a child, and (2) the person either has been awarded custody by a court or claims a right to custody.*

The bill 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 parenting proceeding. The bill limits the second criterion; under the bill, the custody

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

(3) The child is physically present in Ohio and either has been abandoned[14] or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent;

(4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2), or (3), or a court in another state has declined to exercise jurisdiction on the ground that Ohio is the more appropriate forum to make a parenting determination relative to the child, and it is in the best interest of the child that the Ohio court assume jurisdiction.

Except as provided in paragraphs (3) and (4), physical presence in Ohio of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on an Ohio court to make a parenting determination relative to the child. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to make a parenting determination relative to the child.

The bill. The bill reformulates these jurisdictional provisions and provides the exclusive jurisdictional basis for making a parenting determination by an Ohio court. Under the bill, except in temporary emergency jurisdiction situations, an Ohio court has jurisdiction to make an initial determination[15] in a parenting 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.

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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).)*

[14] *Under the bill, "abandoned" means left without provision of reasonable and necessary care or supervision (R.C. 3127.01(B)(1)).*

[15] *Under existing law, "initial decree" means the first parenting decree concerning a particular child. The bill changes the name of this term to "initial determination." (R.C. 3109.21(F) (repealed) and 3127.01(B)(6).)*

(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 bill'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 bill also specifies that physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a parenting determination. In addition, the bill replaces the provision in paragraph (3) in "***Existing law***," above, with the provisions described below under "***Temporary emergency jurisdiction***."

Finally, the bill expands the jurisdiction of the juvenile court to give the juvenile court exclusive original jurisdiction to do both of the following:

(1) To enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) (see **COMMENT**);

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

Limitations on jurisdiction

(R.C. 3127.08)

Under the bill, a party to a parenting proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a parenting 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 parenting proceeding. This immunity does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the bill's UCCJEA provisions 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.

Jurisdictional questions to be handled expeditiously

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

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

Modification of a foreign parenting determination

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

Existing law. If a court of another state has made a parenting decree, an Ohio court may not modify[16] that decree, unless it appears to the Ohio court that the court that rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with the UCCJA, or has declined to assume jurisdiction to modify the decree, and the Ohio court has jurisdiction.

If an Ohio court is authorized to modify a parenting decree of another state, it must give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with R.C. 3109.36(B).

The bill. Under the bill, except in temporary emergency situations, an Ohio court may not modify a parenting 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 "***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.

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[16] *Under existing law, "modification decree" means a parenting decree that modifies or replaces a prior decree, whether made by the court that rendered the prior decree or by another court. The bill changes the name of this term to "modification" and expands the scope of the definition to include a parenting determination that supersedes or is otherwise made after a determination concerning the same child. (R.C. 3109.21(G) (repealed) and 3127.01(B)(9).)*

(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.

Continuing jurisdiction

(R.C. 3127.16)

Generally, under the bill an Ohio court that has made a parenting determination consistent with the provisions described in "***Jurisdiction***" and "***Modification of a foreign parenting determination***," above, 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.

Temporary emergency jurisdiction

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

Existing law. Under existing law, an Ohio court that has jurisdiction to make a parenting determination relative to a child is permitted to exercise that jurisdiction if the child is physically present in Ohio and either has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.

The bill. The bill 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 parenting determination that is entitled to be enforced under the bill's UCCJEA provisions and a parenting proceeding has not been commenced in a court of a state having jurisdiction, a parenting determination made under the bill's temporary emergency jurisdiction provisions remains in effect until an order is obtained from a court of a state having jurisdiction. If a parenting proceeding has not been or is not commenced in a court of a state having jurisdiction, a parenting determination made under the bill'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 parenting determination that is entitled to be enforced under the bill, or a parenting proceeding has been commenced in a court of a state having jurisdiction, any order issued by an Ohio court under the bill'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 parenting determination under the bill's temporary emergency jurisdiction provisions, on being informed that a parenting proceeding has been commenced in, or a parenting 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 parenting proceeding has been commenced in, or a parenting 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.

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

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

Under existing law, if the court learns from information furnished by the parties or from other sources that a person who is not a party to the parenting proceeding has physical custody of the child, claims to be a parent of the child with parental rights and responsibilities for the care of the child and has been designated the residential parent and legal custodian of the child, claims to be any other person with custody of the child, or claims to have parenting time rights or visitation rights with respect to the child, it must 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 is outside Ohio, the person must be served with process or otherwise notified in accordance with the UCCJA.

The bill instead simply provides that obligation to join a party and the right to intervene as a party in a parenting proceeding under the bill's UCCJEA provisions is governed by Ohio law as in parenting proceedings between Ohio residents.

Pending parenting proceedings in another state

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

Existing law. An Ohio court may not exercise 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 proceeding is stayed by the court of the other state because Ohio is a more appropriate forum or for other reasons.

Before hearing the petition in a parenting proceeding, the court must examine the pleadings and other information supplied by the parties under the existing provisions described in "***Facts to be pleaded***," below, and must consult the Child Parenting and Custody Registry concerning the pendency of parenting proceedings with respect to the child in other states. If the court has reason to believe that parenting proceedings may be pending in another state, it must direct an inquiry to the state court administrator or other appropriate official of the other state.

If an Ohio court is 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 must stay the proceeding and communicate with the court in which the other proceeding is pending for the purpose of litigating the issue in the more appropriate forum and to ensure that information is exchanged in accordance with R.C. 3109.34 to 3109.36. If an Ohio court has made a parenting decree before being informed of a pending proceeding in a court of another state, it immediately must inform that court of the fact. If an Ohio court is informed that a proceeding was commenced in another state after it assumed jurisdiction, the Ohio court must inform the other court for the purpose of litigating the issues in the more appropriate forum.

The bill. The bill makes the following changes:

(1) The bill specifically excepts temporary emergency situations.

(2) The bill permits the Ohio court to exercise its jurisdiction when a foreign parenting proceeding was pending at the time the Ohio proceeding is commenced if that proceeding has been terminated.

(3) The bill eliminates the existing requirement that the court consult the Child Parenting and Custody Registry before hearing the petition in a parenting proceeding.

(4) Under existing law, if the court *has reason to believe* that parenting proceedings may be pending in another state, it must direct an inquiry to the court administrator or other appropriate official of the other state. Under the bill, if the court *determines* that a parenting proceeding is pending in a court in another state *having jurisdiction substantially in accordance with the bill's UCCJEA provisions*, 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*.

(5) The bill eliminates the existing provision regarding situations in which the Ohio court is informed of a pending foreign parenting proceeding concerning the child.

(6) The bill contains a provision concerning parenting determination modifications. Under the bill, in a proceeding to modify a parenting determination, an Ohio court must determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a parenting determination has been commenced in another state, the court may do any of the following: (a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement, (b) enjoin the parties from continuing with the proceeding for enforcement, and (c) proceed with the modification under conditions the court considers appropriate.

Inconvenient forum

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

Jurisdiction. Under existing law, a court that has jurisdiction to make an initial or modification decree may decline to exercise its jurisdiction any time *before making a decree* if it finds that it is an inconvenient forum to make a parenting determination under the circumstances *of the case* and that a court of another state is a more appropriate forum. A finding of inconvenient forum may 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 bill relocates the provisions regarding a modification decree to the provisions discussed under "***Modification of a foreign parenting determination***," above. The bill also does not limit the court from declining jurisdiction on inconvenient forum grounds to times before it has issued the decree and removes express authority to raise the issue of inconvenient forum from a guardian ad litem or other representative of the child and authorizes another court to request the issue be raised.

Standard. Under existing law, in determining whether it is an inconvenient forum, the court must consider whether it is in the interest of the child that another state assume jurisdiction. For this purpose the court may take into account, but is not limited to, any of the following factors:

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

(2) Whether another state has 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 is more readily available in another state;

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

Under the bill the court must consider all relevant factors, including statutorily specified factors. The bill specifies different factors than those in existing law. Thus, under the bill, 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 must 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.

Communication with other courts. Under existing law, before determining whether to decline or retain jurisdiction, the court may 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 is exercised by the more appropriate court and that a forum is available to the parties. While

the bill does not enact 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.

Actions/remedies. Under existing law, if the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it *may* dismiss the proceedings, or *may* stay the proceedings on condition that a custody proceeding be promptly commenced in another named state or on any other conditions that may 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 bill, in such a situation, the Ohio court *must* stay the proceedings on condition that a parenting proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

Existing 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 bill does not substantially change this provision.

The bill also repeals an existing provision providing that, if it appears to the court that it clearly is an inappropriate forum, the court may 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. The bill appears to incorporate this provision within the provisions described under "***Enforcement of out-of-state parenting determinations--Enforcement order, testimonial privileges, and relief***," below.

Finally, under existing law, on dismissal or stay of proceedings under the inconvenient forum provisions, the court must 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 is not known with certainty, must 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 is the more appropriate forum must be filed in the Parenting and Custody Registry of the appropriate court. On assuming jurisdiction, the Ohio court must inform the original court of this fact. The bill repeals this provision, and while it does not enact a new provision directly parallel to this 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)

Existing law. Under existing law, if the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar conduct, the court may decline to exercise jurisdiction, if this is just and proper under the circumstances.

Unless required in the interest of the child, existing law also prohibits the court from exercising its jurisdiction to modify a parenting decree of another state if the petitioner, without consent of the parent who is designated the residential parent and legal custodian or another person entitled to custody, has improperly removed the child from the physical custody of the parent who is designated the residential parent and legal custodian or another person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a parenting decree of another state, the court may decline to exercise its jurisdiction, if this is just and proper under the circumstances.

In appropriate cases, a court so dismissing a petition may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

The bill. Under the bill, except in temporary emergency situations, if an Ohio court has jurisdiction under the bill's UCCJEA provisions because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct,[17] 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.

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 parenting proceeding is commenced in a court having jurisdiction.

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[17] *The bill does not define "unjustifiable conduct."*

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 unless authorized by law other than the bill's UCCJEA provisions.

Parenting determination is binding

(R.C. 3109.30(A) (repealed) and 3127.05)

Under existing law, a parenting decree rendered by an Ohio court that exercises its jurisdiction in conformity with Ohio version of the UCCJA binds all parties who have been served in Ohio or notified in accordance with Ohio's version of the UCCJA, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the parenting decree is conclusive as to all issues of law and fact decided and as to the parenting determination made, unless and until that determination is modified pursuant to law. The bill relocates this provision and updates its terminology but does not make substantive changes.

Facts to be pleaded

(R.C. 3127.23, relocated from 3109.27)

Under existing law, each party in a parenting 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. The bill limits the information that must be given to information that is reasonably ascertainable and expands the information to be given to include information as to the child's present whereabouts.

In this pleading or affidavit, existing law requires each party to also include all of the following information:

(1) 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 bill 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 participation in any such proceeding, the bill requires the party to provide information concerning the court, case number, and the date of the parenting determination, if any.

(2) Whether the party has information of any parenting proceeding concerning the child pending in an Ohio court or a court of any other state.

The bill 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 parenting determinations, proceedings relating to domestic violence or protective 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) 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 bill, if the party knows of such a person, the party must provide the names and addresses of that person.

(4) Whether the party previously has 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 has been determined, in a case in which a child has 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 bill eliminates this provision.

Under the bill, if this required information is not furnished, the court, on motion of a party or its own motion, may stay the proceeding until the information is furnished.

Under existing law, if the pleading declares the party to have the above information, the court may require the declarant to give additional information

under oath. The bill eliminates the requirement that the declarant give the additional information under oath.

The bill 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 that could affect the current proceeding.

Finally, under the bill, 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)

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

The bill authorizes the court to enter any orders necessary to ensure the safety of the child and of any person ordered to appear. The bill also clarifies that the expenses the court may require a party to pay are to be paid to the clerk of the court.

Enforcement

Hague Convention orders treated as parenting determinations

(R.C. 3127.32)

Under the bill's UCCJEA provisions, as between a parent and a nonparent, an Ohio juvenile court or, as between parents, a domestic relations division of an Ohio court of common pleas, may enforce an order for the return of a child made under the Hague Convention as if it were a parenting determination. (See **COMMENT**)

Enforcement remedies available

(R.C. 3127.33(B))

An Ohio court may use any remedy available under Ohio law to enforce a parenting determination made by a court of another state under the bill. The remedies provided in the bill's enforcement provisions are cumulative and do not affect the availability of other remedies to enforce a parenting determination.

Temporary orders

(R.C. 3127.34)

The bill 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 parenting determination of another state that does not provide for a specific parenting time or visitation schedule. If an Ohio court makes an order of this nature, it must specify in the order a period that it considers adequate to allow the petitioner[18] to obtain an order

[18] *As used in the bill's enforcement provisions, "petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention (see* ***COMMENT****) or enforcement of a parenting determination (R.C. 3127.31(A)).*

from a court having jurisdiction. The order remains in effect until an order is obtained from the other court or until the period expires.

Creation of parenting determination registry

(R.C. 3109.33 (repealed) and 3127.35(A))

Existing law requires the clerk of each court that renders a parenting decree to maintain a parenting and custody registry in which the clerk must enter the following:

(1) Certified copies of parenting decrees of other states received for filing;

(2) Communications as to the pendency of parenting proceedings in other states;

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

(4) Other communications or documents concerning parenting proceedings in another state that may 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 is affected by or has a legitimate interest in a parenting decree, the clerk must certify and forward a copy of the decree to that court or person.

The bill instead simply requires the appropriate Ohio court clerk to maintain a parenting determination registry.[19]

Registration of out-of-state parenting determinations

(R.C. 3109.32(A) (repealed) and 3127.33(A) and 3127.35(B))

Existing law permits a certified copy of a parenting decree of another state to be filed in the office of the clerk of any Ohio court that renders parenting decrees. The clerk must treat the decree in the same manner as a parenting decree of an appropriate Ohio court. Until modified, a parenting decree so filed has the same effect and must be enforced in like manner as a parenting decree rendered by an Ohio court.

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[19] *Here, "appropriate Ohio court clerk" means the clerk of each Ohio juvenile court with respect to parenting determinations involving a parent and a nonparent, and the clerk of each domestic relations division of an Ohio court of common pleas with respect to parenting determinations involving two parents.*

The bill permits a parenting determination issued by a court of another state to be registered in Ohio with or without a simultaneous request for enforcement by sending to the clerk of an Ohio juvenile court all of the following:

(1) A letter or other document requesting that the parenting 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 and 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 parenting determination sought to be registered.

Under the bill, an Ohio court must recognize and enforce a parenting determination of a court of another state if that state exercised jurisdiction in substantial conformity with the bill'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 and notice

(R.C. 3127.35(C) and (D))

Under the bill, on receipt of the required documents and information, the registering court must cause the parenting 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 persons named in paragraph (3) under "***Registration and right to enforcement--The bill***," above, 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 parenting determination is enforceable as of the date of the registration in the same manner as a parenting 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 parenting 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(E))

The bill 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 issuing court[20] did not have jurisdiction.

(2) The parenting determination sought to be registered 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 parenting proceeding for which registration is sought, but no adequate notice was given.

Confirmation of registered parenting determination

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

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed under the bill as a matter of law and the person requesting registration and all persons served under the provisions described in "***Registration***," above,[21] must be notified of the confirmation. And, confirmation of a registered parenting 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 parenting determinations, generally

(R.C. 3127.36)

Under the bill, an Ohio juvenile court with respect to a proceeding involving a parent and a nonparent, or the domestic relations division of an Ohio court of common pleas with respect to a parenting proceeding involving two parents (hereafter "an appropriate Ohio court") must recognize and enforce, but

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[20] *Under the bill, "issuing court" means the court that makes a parenting determination for which enforcement is sought under the bill's UCCJEA provisions (R.C. 3127.01(B)(7)).*

[21] *The cross reference here should be to R.C. 3127.35(B)(3), not R.C. 3127.35(B)(2).*

may not modify except in accordance with the bill's provisions, a registered parenting determination of a court of another state.

Enforcement when pending modification proceedings exist

(R.C. 3127.37)

Under the bill, 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.

Form of enforcement petition

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

The bill requires a petition for enforcement to be verified under the bill. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition, but a copy of a certified copy of an order may be attached instead of the original.

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

(1) Whether the court that issued the parenting 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 bill's UCCJEA provisions 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 parenting determinations, proceedings relating to domestic violence or protective 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,[22] 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 parenting 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 bill 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 parenting 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 parenting 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 parenting proceeding for which enforcement is sought, but no adequate notice was given.

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[22] *As used in the bill's enforcement provisions, "respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention (see* ***COMMENT****) or enforcement of a parenting determination (R.C. 3127.31(B)).*

(2) That the parenting 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 bill 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 bill, on the filing of the enforcement petition, the petitioner may file a verified application for the issuance of a warrant[23] 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. 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.

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[23] *Under the bill, "warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child (R.C. 3127.01(B)(17)).*

(3) Provide for the placement of the child pending final relief. The court may impose conditions on the placement of a child to ensure the appearance of the child and the child's custodian.

The bill 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.

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 parenting 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 parenting 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 parenting 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 bill 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 bill's UCCJEA provisions.

Relief

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

Under existing law, a person violating a parenting decree of another state which makes it necessary to enforce the decree in Ohio may 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 his witnesses or by any other party entitled to the custody or his witnesses.

The bill permits an Ohio juvenile court to grant any relief normally available under Ohio law to enforce a registered parenting determination made by a court of another state. Under the bill, the court must award the prevailing party in an action to enforce a parenting 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 unless authorized by law other than the bill's UCCJEA provisions.

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 parenting determination.

Appeal of enforcement order

(R.C. 3127.44)

An appeal may be taken from a final enforcement order under the bill. 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 parenting determination pending appeal.

Prosecutor and law enforcement actions

(R.C. 3127.45 and 3127.46)

In a case arising under the bill's UCCJEA provisions or involving the Hague Convention, the prosecutor may take any lawful action,[24] including resort to an enforcement proceeding or any other available civil proceeding, to locate a

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

child, obtain the return of a child, or enforce a parenting determination if there is any of the following:

(1) An existing parenting determination;

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

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 existing law, Ohio courts must 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 has not been modified in accordance with jurisdictional standards substantially similar to those of the UCCJA.

The bill 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 bill's UCCJEA provisions that enforces a parenting 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 bill requires Ohio courts to treat an Indian tribe[25] as if it were a state of the United States for the purpose of applying the UCCJEA. And, a parenting determination made by a tribe under factual circumstances in substantial

[25] *Under the bill, "tribe" means an Indian tribe or Alaskan Native village that is recognized by federal or state law (R.C. 3127.01(B)(16)).*

conformity with the jurisdictional standards of the bill's UCCJEA provisions must be recognized and enforced under the bill's recognition provisions.

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

Communication with courts in other states

(R.C. 3127.09)

Under the bill, an Ohio court may communicate with a court in another state concerning a proceeding arising under the UCCJEA. The court must 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. Communication between courts concerning scheduling, calendars, court records, and similar matters may occur without informing the parties. The parties must be informed promptly of communication concerning court records and be granted access to those records. A record must be made of a communication under these provisions. The parties must be informed promptly of the communication and granted access to the record. 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.

Out-of-state witnesses and evidence

(R.C. 3127.10)

In addition to other procedures available to a party, the bill permits a party to a parenting proceeding to offer testimony of witnesses who are located in another state, including testimony of the parties and the child, 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.

An Ohio court may 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. 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.

Request out-of-state court to perform certain actions

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

Existing law. Under existing law, 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 the custody of the child in 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 may 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 has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

In addition to other procedural devices available to a party, any party to a parenting proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct 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 will be taken.

Similarly, on request of a court of another state, the bill 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 Ohio court may condition compliance with the

request on assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. Existing law also states that a person within Ohio may voluntarily give testimony or a statement in Ohio for use in a parenting proceeding outside Ohio.

The bill. The bill's UCCJEA provisions are substantially similar, with the following differences:

(1) Regarding a request that the appropriate court of another state order a party to parenting proceedings pending in the Ohio court to appear in the proceedings, the bill eliminates the authority of the Ohio court to include in the request a statement that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

(2) Similarly, regarding an order requiring a person in Ohio to appear alone or with the child in a parenting proceeding in another state, the bill 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.

(3) The bill eliminates the provision authorizing any party to a parenting proceeding or a guardian ad litem or other representative of the child to adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. (This topic is covered under "***Out-of-state witnesses and evidence***," above.)

(4) The bill eliminates the existing provision authorizing a person within Ohio to voluntarily give testimony or a statement in Ohio for use in a parenting proceeding outside Ohio.

Records to be kept, exchanged between courts

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

In any custody proceeding in Ohio, existing law requires the court to preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. On appropriate request of the court of another state, the court must forward to the other court certified copies of any or all of such documents. This changes the scope of this provision to apply to parenting proceedings instead of custody proceedings.

The bill eliminates an existing 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 must 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.

Other provisions

Application and construction, severability, applicable laws

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

In applying and construing the bill's UCCJEA provisions, consideration must 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 bill's UCCJEA provisions or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill's UCCJEA provisions that can be given effect without the invalid provision or application, and to this end the bill's UCCJEA provisions are severable.

A motion or other request for relief made in a parenting proceeding or to enforce a parenting determination that was commenced before the bill'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 bill, a parenting proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to the bill's UCCJEA provisions to the extent that the proceeding is governed by the Indian Child Welfare Act.

The bill also specifies that the bill's UCCJEA provisions do 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 bill makes a number of conforming changes to reflect the amendments made by the bill.

Relocation of sections

The bill renumbers sections 3109.27, 3109.29, and 3109.37 to R.C. Chapter 3127., as enacted by the bill. The bill 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.

Existing provisions to new provisions

The following table shows the relocation of existing Revised Code sections and which sections are new enactments:

Existing 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)

Existing section number	New section number
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
--	3127.02
--	3127.03
--	3127.04
--	3127.08
--	3127.09
--	3127.10
--	3127.16
--	3127.31

Existing section number	New section number
--	3127.32
--	3127.33(B)
--	3127.34
--	3127.35(C) to (G)
--	3127.36
--	3127.37
--	3127.38
--	3127.39
--	3127.41

Existing section number	New section number
--	3127.44
--	3127.45
--	3127.46
--	3127.51
--	3127.52
--	3127.53

New provisions to existing provisions

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

New section number	Existing 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

New section number	Existing section number
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	--
3127.32	--
3127.33(A)	3109.32(A)
3127.33(B)	--

New section number	Existing section number
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	--

COMMENT

The objects of the Hague Convention on the Civil Aspects of International Child Abduction are to secure the prompt return of children wrongfully removed to or retained in any contracting nation and to ensure that rights of custody and of access under the law of one contracting nation are effectively respected in other contracting nations. Under the Convention, contracting nations are required to take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose, they are required to use the most expeditious procedures available.[26]

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-21-04	p. 1421

s0185-i-125.doc/kl

[26] *(http://travel.state.gov/hague_childabduction.html, January 16, 2004)*