

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 400 (Delegates Dumais and Feldman)

Judiciary

Judicial Proceedings

Maryland Uniform Child Custody Jurisdiction and Enforcement Act

This bill repeals the Maryland Uniform Child Custody Jurisdiction Act (MUCCJA) and adopts the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (MUCCJEA). The bill is based upon and is substantially similar to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was drafted, approved, and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws in 1997.

Subtitle 1 – “General Provisions” and Subtitle 2 – “Jurisdiction” of the bill contain provisions relating to the jurisdiction of Maryland courts over child custody matters vis-a-vis courts of other states. These provisions are more detailed, but also more restrictive, than the provisions of current law. Subtitle 3 – “Enforcement” contains provisions relating to enforcement of child custody orders which are not contained in current law.

The bill applies only to cases filed to establish or modify child custody or motions or other requests for relief filed in existing child custody cases on or after the bill’s October 1, 2004 effective date.

Fiscal Summary

State Effect: Potential significant increase in expenditures for the Judiciary to handle the additional workload. No effect on revenues.

Local Effect: Potential increase in expenditures for circuit courts and local law enforcement agencies to comply with the bill’s requirements. Potential minimal increase in revenues. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Application and Notice

The bill states that the provisions of the Act do not govern a proceeding concerning the authorization of emergency medical care for a child and that a child custody determination made in a foreign country must be recognized and enforced under the provisions of the Act. The Act provides that the notice required for the exercise of jurisdiction as to a person outside the State may be given as provided under Maryland law for service of process or under the law of the state where service is made. The notice under the Act must be reasonably calculated to give actual notice but may be made by publication if other means are not effective and is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Appearance and Limited Immunity

The bill also provides that certain parties to child custody proceedings are not subject to personal jurisdiction in Maryland for another proceeding or purpose solely because they participated or were physically present for the purpose of participating in the child custody proceeding. However, the bill establishes when a person or party not subject to personal jurisdiction may not be immune from service of process in Maryland and the limitation on immunity provided by the bill.

Communication Between Courts and Taking Testimony in Another State

The bill provides that a Maryland court may communicate with a court in another state concerning a proceeding arising under the bill, with input from the parties and, except under limited circumstances, a record must be made of any communication between courts. A party may offer testimony of witnesses who are located in another state, including the parties and the child, by deposition or other means. A Maryland court may provide for electronic or other transmission of depositions or testimony and request another court to hold evidentiary proceedings and make evaluations.

Jurisdiction

Under the bill, a Maryland court would be given jurisdiction to make an initial child custody determination if Maryland is the home state of the child, or a court in another state does not have jurisdiction or declines to exercise jurisdiction, and if the child and at least one parent or a person acting as a parent has a significant connection with Maryland. The physical presence of, or personal jurisdiction over, a party or a child is not necessary

or sufficient to make a child custody determination. The bill establishes circumstances under which Maryland courts retain exclusive continuing jurisdiction.

Temporary Emergency Jurisdiction

The bill provides that a Maryland court has temporary emergency jurisdiction if the child is present in Maryland and has been abandoned or if the child, a sibling, or a parent of the child is subjected to or threatened with abuse. An order issued by a court with temporary emergency jurisdiction remains in effect under the bill until an order is obtained from another court with jurisdiction under the bill. Temporary emergency jurisdiction may remain effective or become a final determination under certain circumstances.

Notice, Opportunity to be Heard, and Joinder

Before a child custody determination is made under the bill, notice and an opportunity to be heard must be given to all persons entitled to notice under Maryland law. The obligation to join a party and the right to intervene as a party are governed by Maryland law as in child custody proceedings between residents of Maryland.

Simultaneous Proceedings

Except for purposes of temporary emergency jurisdiction, a Maryland court may not exercise jurisdiction under the bill if a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction under the bill unless the court of the other state determines Maryland is a more convenient forum. In a proceeding to modify a child custody determination, if a Maryland court finds that a proceeding to enforce a child custody determination has been commenced in another state, under the bill, the Maryland court may stay the modification proceeding pending the entry of an order by the court of the other state, enjoin the parties from continuing the enforcement proceeding, or proceed with the modification proceeding.

Inconvenient Forum and Jurisdiction Declined by Reason of Conduct

The bill provides that a Maryland court that has jurisdiction to make a child custody determination may decline to exercise its jurisdiction if it determines that a court of another state is a more appropriate forum if certain factors are considered. A Maryland court is required to decline to exercise its jurisdiction under specified circumstances.

Information to be Submitted to Court

The bill requires each party in the first pleading or in an affidavit to submit information relating to the child, participation in and knowledge of other proceedings, and information on any person not a party who claims or exercises custody over the child.

The information may not be disclosed to the other party or the public if a party alleges in an affidavit or sworn statement that disclosure would jeopardize the health, safety, or liberty of the disclosing party or the child.

Enforcement

The bill permits a court to enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination. The bill specifies the circumstances that require Maryland courts to recognize and enforce a child custody determination.

The bill permits a child custody determination issued by a court of another state to be registered in Maryland with or without a simultaneous request for enforcement. The bill also provides that upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from Maryland. The bill requires the court to award the prevailing party necessary and reasonable expenses for the enforcement of a child custody determination under the bill.

In cases arising under the bill or the Hague Convention on the Civil Aspects of International Child Abduction, the bill authorizes the Attorney General, under certain circumstances, to take any lawful action to locate a child, obtain the return of a child, or enforce a child custody determination.

The bill states that its provisions apply only to cases filed to establish or modify child custody or motions or other requests for relief filed in child custody cases on or after October 1, 2004.

Current Law: MUCCJA provides bases for taking jurisdiction over a child custody dispute. These are the child's home state, significant connection between the state and parties to a child custody dispute, emergency jurisdiction when the child is present and the child's welfare is threatened, and presence of the child in the event there is no other state with another sound basis for taking jurisdiction. "Taking jurisdiction" generally means the ability of a court to summon the parties to come before it to adjudicate the dispute regardless of where the parties reside.

MUCCJA generally provides that the home state of the child is the best state to take jurisdiction, but that once a court takes jurisdiction on another acceptable basis, that state should be able to proceed without delay to determine if some other state has home state status.

MUCCJA provides that any state that is not the home state of the child will defer to the home state, if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken for a period of time to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none exists, to a state with another ground for jurisdiction.

MUCCJA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, the state retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state.

MUCCJA provides for temporary emergency jurisdiction that can be continuing jurisdiction if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. Additionally, MUCCJA includes enforcement provisions and requires a state to enforce a custody or visitation order from another state that conforms substantially to MUCCJA.

Background: UCCJEA was adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1997 for enactment by state legislatures. The provisions of the Act would repeal the current MUCCJA.

In 1968, NCCUSL promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this uniform act designed to discourage interstate kidnapping of children by noncustodial parents. In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for a similar purpose.

There are two main differences between the Acts. First, PKPA gives first priority to the home state of the child in determining which state may exercise jurisdiction over a child custody dispute, which is not the case in UCCJA. Second, PKPA provides that once a state has exercised jurisdiction, that state retains continuing, exclusive jurisdiction until every party to the dispute has exited that state. UCCJA, however, provides that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists.

NCCUSL has indicated that in practice, the two Acts tend to work together for the most part, but the differences may confuse the adjudication and settlement of child custody disputes in certain cases. Additionally, NCCUSL notes that neither UCCJA nor PKPA address interstate enforcement of child custody orders (including visitation provisions).

All 50 states, the District of Columbia, and the Virgin Islands have enacted a version of the initial UCCJA. According to NCCUSL, at this time 35 states have adopted UCCJEA.

State Fiscal Effect: Child custody disputes are handled by the circuit courts. Due to a lack of codified procedures, there is a lack of uniformity throughout the State in the way that these types of matters are handled especially in the area of enforcement. Some of the procedures set forth in the bill may already be carried out to an extent by some of the circuit courts.

To the extent that the bill's procedures are not already being followed, however, the State could incur costs to comply. For example, the bill requires courts to maintain a registry of out-of-state child custody determinations that have been submitted by parents or custodians. Upon receipt of an out-of-state child custody determination, the registering court is required to send a specified notice to interested parties informing them of their right to contest the validity of the registration. If the validity of the registration is contested, the court must hold a hearing. In addition, the bill provides for the filing of petitions for enforcement of child custody determinations. Upon the filing of such a petition, the court is required to issue a show cause order and to schedule a hearing on the next judicial day after service of the order, if possible. A petitioner may also file an application for issuance of a warrant to take physical custody of a child, pursuant to which a court may issue a warrant and instruct law enforcement to obtain the child. The court must hold a hearing on the next judicial day after the warrant is executed, if possible.

Compliance with these and other requirements of the bill could result in an increase in the Judiciary's workload. General fund expenditures could increase, perhaps significantly, to provide training to masters, judges, and law enforcement. The Judiciary expects the minimal costs for training masters and judges to be about \$10,000, with additional costs for law enforcement training. General fund expenditures could increase by an unknown amount to reimburse other states for their expenses in enforcing Maryland child custody orders.

Local Revenues: Revenues received by circuit courts could increase if this bill results in more filings for which fees are charged.

Local Expenditures: Compliance with the requirements of the bill could result in increased administrative and other expenses for the circuit courts. For example, the bill requires that any substantive communication between a Maryland judge and a court of another state about a child custody matter must be recorded or transcribed. Courts would therefore be required to ensure that there are speaker phones and recording devices or court reporters for these conversations which are currently not usually recorded. In addition, under the bill, a court may allow a witness to testify by telephone, audiovisual means, or other electronic means. Courts could incur substantial additional costs associated with such off-site testimony. The Judiciary advises that it could cost approximately \$6,000 to equip all 24 circuits with an audio "conference link" system capable of presenting witness testimony by electronic means.

There would also be increased administrative costs for courts in connection with the registry required by the bill. However, the registry could conceivably result in savings for the courts to the extent that it enables custodial parents to retrieve their children without resorting to litigation in Maryland. In fiscal 2003, Maryland circuit courts heard 129,057 family and juvenile cases. Divorce and annulment and “other domestic” cases comprised 60,306 of that total. While not all circuits track the involvement of children in family cases, Baltimore City did report that in fiscal 2003, about 57% of its family cases involved children.

The bill also requires a court to preserve all files and records relating to a child custody proceeding until the child reaches the age of 18. This provision could present a major storage problem for circuit courts many of which lack significant additional storage space.

To the extent that local law enforcement is called upon more frequently to assist in obtaining physical custody of children, expenditures for local law enforcement agencies could also increase. At the request of the Attorney General, enforcement of custody responsibilities could involve international child custody orders under the Hague Convention.

Additional Comments: The specificity of the bill could result in efficiency savings for the Judiciary, in that it would provide courts with guidance in how to proceed in child custody disputes.

Additional Information

Prior Introductions: This bill is substantially similar to HB 907 of the 2002 session, HB 910 of the 2001 session, and HB 512 of the 2000 session, all of which were withdrawn after hearings by the Judiciary Committee. Another substantially similar bill, HB 310 of the 1998 session, received an unfavorable report from the Judiciary Committee.

Cross File: SB 269 (Senator Grosfeld) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

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