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UNIFORM NONPARENT CUSTODY AND VISITATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Post April 5, 2018 Conference Call

Without Prefatory Note, Reporter's Notes, and Comments

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ON UNIFORM STATE LAWS

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April 9, 2018

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UNIFORM NONPARENT CUSTODY AND VISITATION ACT

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1 **UNIFORM NONPARENT CUSTODY AND VISITATION ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Nonparent
3 Custody and Visitation Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Child” means an unemancipated individual who is less than [18] years of age.

6 (2) “Compensation” means wages or other remuneration paid in exchange for care of the
7 child. The term does not include reimbursement of expenses for care of the child, such as
8 payment for food, clothing, and medical expenses.

9 (3) “Custody” means physical custody, legal custody, or both. The term includes joint
10 custody or other arrangement whereby two or more persons share custody.

11 (4) “Harm to a child” means significant adverse effect on a child’s physical, emotional, or
12 psychological wellbeing.

13 (5) “Individual” means a natural person of any age.

14 (6) “Legal custody” means the right to make significant decisions regarding a child,
15 including decisions regarding the child’s education, health care, or scheduled activity.

16 (7) “Nonparent” means an individual other than a parent of a child. The term includes a
17 grandparent, sibling, or stepparent of the child.

18 (8) “Parent” means an individual recognized as a parent under law of this state other than
19 this [act].

20 (9) “Person” means an individual, estate, business or nonprofit entity, public corporation,
21 government or governmental subdivision, agency, or instrumentality, or other legal entity.

22 (10) “Physical custody” means day-to-day care and supervision of a child.

23 (11) “Record” means information that is inscribed on a tangible medium or that is stored
24 in an electronic or other medium and is retrievable in perceivable form.

1 (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
3 the United States. The term includes a federally recognized Indian tribe.

4 (13) "Visitation" means the right to spend time with a child that may include an
5 overnight.

6 **SECTION 3. SCOPE.**

7 (a) Except as provided in subsection (b), this [act] applies to a proceeding in which a
8 nonparent seeks custody of or visitation with a child.

9 (b) This [act] does not apply to a proceeding:

10 (1) between nonparents, unless a parent is a party to the proceeding;

11 (2) pertaining to custody of or visitation with an Indian child as defined in the
12 Indian Child Welfare Act, 25 U.S.C. Section 1903, to the extent that the proceeding is governed
13 by the Indian Child Welfare Act;

14 (3) pertaining to a child who is the subject of an ongoing proceeding in any state
15 [regarding guardianship of the person or] regarding an allegation by a government entity that the
16 child is abused, neglected, dependent, or otherwise in need of care.

17 (4) to a claim of a nonparent seeking custody of or visitation with a child based
18 solely on the nonparent having served as a foster parent to the child.

19 (c) An individual whose parental rights concerning a child have been terminated may not
20 maintain an action under this [act] as to that child.

21 (d) Relief is not available during the effective period of a custody or visitation order
22 entered under the Uniform Deployed Parents Custody and Visitation Act or other order dealing

1 with custody of or visitation with a child of a deployed parent. A custody or visitation order
2 entered before a parent was deployed remains in effect unless modified.

3 **Legislative Note:** *In subsection (b)(3), the phrase “guardianship of the person” is in brackets to*
4 *give the enacting state an option to include the phrase in the list of proceedings that are*
5 *excluded from coverage under the act. If a state’s guardianship law allows a court to order*
6 *visitation to a nonparent, the proceedings involving guardianship of the person of a child should*
7 *be included in the list of proceedings not covered by this act. However, if the guardianship law*
8 *of the state does not provide for a court to order visitation with a child to a nonparent, the*
9 *phrase “guardianship of the person” should not be included in subsection (b)(3) to allow court*
10 *to order visitation of a child who is the subject of a guardianship proceeding.*

11
12

SECTION 4. ELEMENTS OF ACTION.

13 (a) A court may order custody or visitation for a nonparent if the nonparent proves that:

14 (1) the nonparent meets the requirements of a consistent caretaker of the child

15 under subsection (b) or

16 (2) has a substantial relationship with the child under subsection (c)

17 and that an order for custody or visitation to the nonparent is in the best interest of the child.

18 (b) A nonparent is a consistent caretaker if the nonparent without expectation of

19 compensation:

20 (1) lived with the child for a significant period not less than 12 months, unless the

21 court finds a compelling reason to shorten the 12-month requirement;

22 (2) regularly exercised care of the child;

23 (3) made decisions regarding the child solely or in cooperation with a parent or

24 other custodian of the child; and

25 (4) established a bonded and dependent relationship with the child with the

26 express or implied consent of a parent of the child, except that consent of a parent is not required

27 if no parent has been able or willing to perform parenting functions.

28 (c) A nonparent has a substantial relationship with a child if:

1 (1) the nonparent:
2 (A) is a grandparent or another individual with a familial relationship with
3 the child by blood or law; or
4 (B) formed a relationship with the child without expectation of
5 compensation;

6 (2) a significant emotional bond exists between the nonparent and child; and
7 (3) denial of custody or visitation would result in harm to the child.

significant adverse effect on child's physical, emotional & psychological well-being

8 **SECTION 5. PRESUMPTION FOR PARENTAL DECISION.**

9 (a) In an initial proceeding, a decision by a parent regarding a request for custody or
10 visitation by a nonparent is presumed to be in the best interest of the child.

11 (b) A nonparent has the burden to rebut the presumption under Subsection (a) by proving
12 by clear-and-convincing evidence the requirements of Section 4. Proof of unfitness of a parent is
13 not required to rebut the presumption in Subsection (a).

14 (c) Except as provided in Subsection (d), if a nonparent rebuts the presumption under
15 Subsection (a) in an initial proceeding, the presumption remains rebutted for further proceedings.

16 (d) If a nonparent who has been granted an order of visitation requests an order of
17 custody in a modification proceeding, the nonparent must rebut the presumption under
18 Subsection (a) as in an initial proceeding.

19 **SECTION 6. JURISDICTION.** A proceeding must be commenced in the court having
20 jurisdiction to determine custody or visitation under [cite to this state's Uniform Child Custody
21 Jurisdiction and Enforcement Act].

22 **SECTION 7. VERIFIED [PETITION].**

23 (a) A nonparent who files a [petition] for custody or visitation shall verify the [petition]

1 under penalty of perjury and allege facts under Subsection (b) sufficient to make a prima facie
2 showing that:

3 (1) the nonparent meets the requirements of a consistent caretaker of the child
4 under Section 4(b) or

5 (2) has a substantial relationship with the child under Section 4(c).

6 (b) The verified petition must allege specific facts, including:

7 (1) the duration and nature of the relationship between the nonparent and the
8 child, including the period, if any, the nonparent lived with the child and the caretaking provided
9 for the child by the nonparent;

10 (2) the content of any agreement between the parties to the proceeding regarding
11 caretaking for the child and custody, visitation, or other contact with the child;

12 (3) a description of any previous attempt by the nonparent to obtain custody,
13 visitation, or other contact with the child;

14 (4) the extent to which the parent is willing to permit the nonparent to have
15 custody, visitation, or other contact with the child;

16 (5) information about any compensation or expectation of compensation provided
17 to the nonparent in exchange for caretaking of the child;

18 (6) the information required to establish the court's jurisdiction under [cite to this
19 state's Uniform Child Custody Jurisdiction and Enforcement Act];

20 (7) the basis for the allegation that the requested custody or visitation is in the best
21 interest of the child, applying the factors in Section 12;

22 (8) if the nonparent alleges the existence of a substantial relationship under
23 Section 4(c), the basis for the allegation that denial of custody or visitation to the nonparent

1 would result in harm to the child; and

2 (9) the relief sought.

3 (c) If an agreement described in subsection (a)(2) is in a record, the nonparent must attach
4 a copy of the agreement to the [petition].

5 **SECTION 8. SUFFICIENCY OF [PETITION].**

6 (a) The court shall determine based on the [petition] under Section 7 whether the
7 nonparent has pled a prima facie case that the nonparent:

8 (1) meets the requirements of a consistent caretaker of the child under Section
9 4(b), or

10 (2) has a substantial relationship with the child under Section 4(c).

11 (b) If the court determines that the [petition] fails to have pleaded a prima facie case
12 under Subsection (a), the court shall dismiss the petition.

13 **SECTION 9. NOTICE.** On commencement of a proceeding, the nonparent shall give
14 notice to:

15 (1) each parent of the child who is the subject of the proceeding;

16 (2) any person having custody of the child;

17 (3) any individual having court-ordered visitation with the child; and

18 (4) any attorney, guardian ad litem, or similar representative appointed for the child.

19 **SECTION 10. APPOINTMENT; INTERVIEW OF CHILD; COURT SERVICES.**

20 To the extent authorized by law of this state in other family law proceedings, the court may:

21 (1) appoint an attorney, guardian ad litem, or similar representative for a child;

22 (2) interview the child;

23 (3) require mediation or other form of alternative dispute resolution between the parties

1 to the proceeding, but a party who has been the victim of domestic violence, sexual assault,
2 stalking, or other crime against the person by another party to the proceeding may not be
3 required to participate in alternative dispute resolution [unless reasonable procedures are in place
4 to protect the party from a risk of harm, harassment, or intimidation];

5 (4) order an evaluation, investigation, or other assessment of the child's circumstances
6 and the effect on the child of ordering or denying the requested custody or visitation; and

7 (5) allocate payment between the parties of a fee for a service ordered under this section.

8 *Legislative Note: The brackets in subsection (3) should be removed and the phrase "unless*
9 *reasonable procedures are in place to protect the party from risk of harm [injury], harassment,*
10 *or intimidation" should be included in the section in a state that requires mediation of custody*
11 *and visitation cases, including a case involving an allegation of domestic violence. If a state does*
12 *not require mediation in those circumstances, delete the phrase and the brackets.*

13
14 **SECTION 11. EMERGENCY ORDER.** On finding that a party or a child who is the
15 subject of a proceeding is in danger of imminent harm, the court may expedite the proceeding
16 and may issue an emergency order.

17 **SECTION 12. BEST INTEREST OF CHILD.** In determining whether an order of
18 custody or visitation to a nonparent is in the best interest of a child, the court shall
19 consider:

20 (1) the nature and extent of the relationship between the child and parent;

21 (2) the nature and extent of the relationship between the child and nonparent;

22 (3) the views of the child, considering the age and maturity of the child;

23 (4) past or present conduct by a party or individual living with a party which poses a risk

24 to the physical, emotional, or psychological well-being of the child;

25 (5) the likely effect on the relationship between the child and the parent of ordering

26 custody or visitation to the nonparent; [REPORTER'S NOTE: The committee will discuss

1 *proposals to delete #5 or to utilize different phrasing.]*

2 (6) the applicable factors in [insert citation to law of this state other than this [act]
3 pertaining to factors considered in custody or visitation disputes between parents]; and

4 (7) any other factor affecting the best interest of the child.

5 *Legislative Note: The applicable factors referenced in Subsection 6 would include factors used*
6 *to decide "parenting time" if that is the term used in the state's statutes.*

7
8 **SECTION 13. PRESUMPTION ARISING FROM CHILD ABUSE, CHILD**
9 **NEGLECT, DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

10 (a) In a proceeding under this [act], the court shall presume that ordering custody or
11 visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent
12 or an individual living with the nonparent has committed any of the following: child abuse, child
13 neglect, domestic violence, sexual assault, stalking, or a comparable offense in violation of the
14 law of this state or other state.

15 (b) A finding that an offense specified in Subsection (a) was committed must be based
16 on:

17 (1) evidence of a judgment of conviction or final judgment in a civil proceeding
18 entered after notice and opportunity to be heard; or

19 (2) proof sufficient to establish by a preponderance of the evidence that the act
20 was committed.

21 (c) A nonparent may rebut the presumption established in subsection (a) by proving by
22 clear-and-convincing evidence that ordering custody or visitation to the nonparent will not
23 endanger the health, safety, or welfare of the child who is the subject of the proceeding.

24 *Legislative Note: As an alternative to Section 13, a state may wish to amend existing state law*
25 *concerning presumptions and rebuttal of presumptions applicable to a dispute between parents.*
26 *The same types of presumptions and criteria for rebuttal of presumptions would apply to*

1 *nonparents seeking custody or visitation.*

2
3 **SECTION 14. ORDER OF CUSTODY OR VISITATION.**

4 (a) In a proceeding in which a nonparent seeks custody, the court may order:

5 (1) sole or primary custody to the nonparent;

6 (2) joint custody to the nonparent and a parent or other party; or

7 (3) visitation to the nonparent.

8 (b) In a proceeding in which a nonparent seeks only visitation, the court may not order
9 custody to the nonparent seeking visitation.

10 **SECTION 15. MODIFICATION OF CUSTODY OR VISITATION.**

11 (a) On [motion], the court may modify a final order of custody or visitation under this
12 [act] on a showing by a preponderance of the evidence that:

13 (1) a [substantial] [material] and [continuing] change in circumstance has
14 occurred relevant to the custody or visitation of the child who is the subject of the order; and

15 (2) modification is in the best interest of the child under Section 12.

16 (b) Except as otherwise provided in Subsection (c), if a [motion] is filed to modify an
17 order of visitation to obtain an order of custody, the nonparent must rebut the presumption as
18 provided under Section 5.

19 (c) On agreement of the parties, the court may modify an order of custody or visitation,
20 unless the court finds that the agreement is not in the best interest of the child who is the subject
21 of the order.

22 **Legislative Note:** In subsection (a)(1), a state may wish to select the words used in state law
23 governing modification of custody or parenting time in actions between parents.
24

1 **[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When

2 issuing a final order of custody or visitation, the court shall make findings of fact and
3 conclusions of law on the record in support of its decision or, if the petition is dismissed under
4 Section 8, state the reasons for the dismissal.]

5 *Legislative Note: A state should omit this section if the requirement or lack of requirement of*
6 *making findings of fact and conclusions of law is governed by court rule rather than statute or*
7 *the state requires findings of fact and conclusions of law in all proceedings involving family law.*
8

9 **SECTION 17. EFFECT OF ADOPTION OF CHILD BY RELATIVE OR**

10 **STEPPARENT.** If a child is adopted by a relative of the child or stepparent of the child, an
11 order of custody or visitation to a nonparent remains valid and is not changed by the adoption
12 unless modified, after notice to all parties to the proceeding, by the court that issued the order or
13 the court that entered the order of adoption.

14 **SECTION 18. COST OF FACILITATING VISITATION.** The court may issue an

15 order allocating responsibility between the parties for payment of the expense of facilitating
16 visitation with a child, including the cost of transportation.

17 **SECTION 19. AUTHORITY OF NONPARENT TO RECEIVE SUPPORT FOR**

18 **CHILD.** The authority of a court to award child support payable to a nonparent given custody is
19 governed by law other than this [act].

20 **SECTION 20. OTHER RIGHT OR REMEDY.** This [act] does not preclude the

21 recognition of an additional right or remedy for a [de facto parent] [psychological parent]
22 [individual acting in loco parentis] under law of this state other than this [act]. [*REPORTER'S*

23 *NOTE: There may be one or more alternatives to this section, including from Harry Tindall.]*

24 *Legislative Note: A state may select the term or terms applicable to the state.*

1 **SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 **SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
5 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
6 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
7 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
8 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
9 Section 7003(b).

10 **SECTION 23. TRANSITIONAL PROVISION.** This [act] applies to a proceeding
11 commenced before, on, or after [the effective date of this [act]] in which a final order for custody
12 or visitation has not been granted.

13 **[SECTION 24. SEVERABILITY.** If any provision of this [act] or its application to
14 any person or circumstance is held invalid, the invalidity does not affect other provisions or
15 applications of this [act] which can be given effect without the invalid provision or application,
16 and to this end the provisions of this [act] are severable.]

17 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
18 *decision by the highest court of this state stating a general rule of severability.*

19
20 **SECTION 25. REPEALS; CONFORMING AMENDMENTS.**

- 21 (a)
- 22 (b)
- 23 (c)

24 *Legislative Note: When enacting this act, a state should repeal: (1) existing general statutes, if*
25 *any, regarding visitation for a grandparent, stepparent, sibling, and other nonparent; and (2)*
26 *statutes, if any, regarding a custody dispute between a nonparent and a parent.*

1 When enacting this act, a state should not repeal: (1) the state's Uniform Deployed Parents
2 Custody and Visitation Act or other state law dealing with custody of and visitation with a child
3 of a deployed parent; (2) law regarding guardianship of a minor; (3) law regarding a child in
4 custody of the state, including a child in foster care; and (4) law providing specific rights and
5 remedies for a de facto parent.
6

7 **SECTION 26. EFFECTIVE DATE.** This [act] takes effect

Monday afternoon 2 PM
May 7th
Worland, Community Center

electronic copy
+ 20 copies

Brian