A Critique of the Proposed Uniform Child Custody Jurisdiction and Enforcement Act

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Thirty years ago, the National Conference of Commissioners on Uniform State Laws created the Uniform Child Custody Jurisdiction Act ("UCCJA").[1] It was an earnest attempt to standardize the rules and procedures regarding both pre- and post-decree determination of child custody. It was also a response to some of the most fundamental problems in this area of family law such as in which jurisdiction a custody suit should be tried and which state has jurisdiction to enforce that determination. The UCCJA attempted to limit and streamline interstate child custody disputes and prevent multistate jurisdiction enforcement issues. Unfortunately, different interpretations of the Act have resulted in a hodgepodge of state interpretation of the UCCJA which has created confusion, often worse than before the UCCJA was enacted[2]. Further, the expansion of federal legislation into the area of family law, and particularly the Parental Kidnapping Prevention Act ("PKPA")[3], increased the confusion and conflict not only between the states, but between the federal statute and various state statutes. In an attempt to correct some of the unforseen problems of the UCCJA, the Uniform Commissioners in 1994 recommended that a new child custody jurisdic-

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1 UNIF. CHILD CUSTODY JURIS. ACT, 9 U.L.A. 123 (1988).

2 For example, Texas prioritized home state jurisdiction over the other jurisdictional bases, V.T.C.A., TEX. FAM. CODE ANN. §152.003 (1998), Alaska omitted the significant connection jurisdiction basis of UCCJA §3(2)(2), ALASKA STAT. §25.30.020 (1996); Arizona equated domicile with home state, ARIZ. REV. STAT. §25-433 (1997).

3 28 U.S.C.A. § 1738A (West 1994).

tion act be created. In July 1997, the final draft of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") was adopted by the National Conference of Commissioners on Uniform State Laws[4].

I. Overview

The UCCJEA clarifies two fundamental areas of child custody jurisdiction disputes. First, it prioritizes which state should have jurisdiction to resolve the dispute. It clarifies original, continuing, and modification jurisdiction of child custody determinations. It coordinates standards and communication between various jurisdictions when simultaneous proceedings occur and addresses such issues as the clean hands doctrine as well as forum non conveniens. Second, it revamps and simplifies enforcement of child custody orders in an effort to speed up the execution of child custody orders, which presently may be delayed by several months.

The Commissioners on Uniform State Laws also amended the UCCJA to conform it to related federal statutes, primarily the PKPA. The PKPA was the United States Congress's attempt to address interstate custody issues that arose after the adoption of the UCCJA by requiring states to give full faith and credit to other states' custody determinations.[5] Despite Congress's best efforts to ensure that one state would honor another state's custody determination, several discrepancies and ambiguities continued to exist between the UCCJA and the PKPA regarding determination of jurisdiction. For example, the UCCJA provides four interchangeable bases of original jurisdiction.[6] No priority was given to any of the four bases to allow a court to assume jurisdiction over the child and the cause. On the other hand, the PKPA prioritizes jurisdiction by providing that when a "home state" exists, full faith and credit will be given if and only if that

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[4] The Act was approved in February 1998 by the American Bar Association House of Delegates. It is now available for state adoption. Alaska and Oklahoma are the first to have done so. As of July 1, 1998, the Act has been introduced in California, Hawaii, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, U.S. Virgin Islands, Virginia, Washington and West Virginia.

[5] 28 U.S.C.A. § 1738A(a).

[6] U.C.C.J.A. § 3, 9 U.L.A. 143.

state and no other exercises original jurisdiction.[7] Unlike the UCCJA, the PKPA clearly provides that the state that originally issued the decree has continuing exclusive jurisdiction so long as one parent or the child remains in that jurisdiction.[8] Some jurisdictions ignored the mandate of the PKPA and assumed jurisdiction if any of the jurisdictional bases of the UCCJA were satisfied, even if the original state would be the jurisdiction of choice under the PKPA.[9] As recently as December 29, 1997, a reported case in Illinois dealt with this exact question.[10] One of the first things the UCCJEA drafters did was to prioritize home state jurisdiction.[11]

The UCCJEA overhauled the many incongruities that existed under the old Act. For example, a great deal of confusion and uncertainty developed regarding the emergency jurisdiction provisions of the UCCJA. According to the report of the Uniform Commissioners, they felt the language of the UCCJA did not specify that emergency jurisdiction may only be exercised to protect a child on a *temporary* basis until the court with jurisdiction issues a permanent order.[12] Apparently some courts interpreted the UCCJA language to provide that no time limit existed on the emergency jurisdiction, thereby allowing simultaneous proceedings and conflicting custody orders to be in place as a result of different states interpreting the term "emergency jurisdiction" differently.[13]

The emergency jurisdiction provisions predated the widespread enactment of state domestic violence act statutes. Obvi-

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7 28 U.S.C.A. § 1738A(c)(2)(A).

8 28 U.S.C.A. § 1738A(d).

9 In re the Marriage of Tatham, 688 N.E.2d 864, (Ill. App. Ct. 1997); In re the Marriage of Levy, 434 N.E.2d 400 (Ill. App. Ct. 1982) *c.f.*, In re Marriage of Miche, 476 N.E.2d 774 (Ill. App. Ct. 1985).

10 In re the Marriage of Tatham, 688 N.E.2d at 869.

11 UNIF. CHILD CUSTODY JURIS. AND ENFORCEMENT ACT § 104 (Proposed Draft 1997) [hereinafter U.C.C.J.E.A.].

12 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT at 5 (Feb. 22, 1997) (Sixth draft, with prefatory notes and comments).

13 Webster v. Webster, 1997 Ala. Civ. App. LEXIS 960 (Dec. 5, 1997); In the Matter of Appeal in Pima County Juvenile Action No. J-78632, 711 P. 2d 1200 (Ariz. Ct. App. 1985); Moore v. Richardson, 964 S.W.2d 377 (Ark. 1988); Trothier v. Trothier, 1996 Conn. Super. Ct. LEXIS 3019 (Nov. 7, 1996); Renno v. Renno, 580 So.2d 945 (La. Ct. App. 1991).

ously, as more states enacted such statutes, a pressing need grew to update the language of the UCCJA to conform the Act to the realities of society. Most state domestic violence statutes contain a provision that allows secretion of the protected party's locale from the alleged abuser. Obviously, it is impossible to both give notice of a petition regarding custody in a particular jurisdiction and secrete the local of one party from the other. If so motivated, an abuser literally could lie in wait and attack the victim on the way to or from the courthouse. The UCCJA requires that notice be given to the non-possessory parent of the child *prior* to entry of any custody orders.[14] Without prior notice to that parent, the custody order, even if issued on an emergency basis, would not be enforceable in any other state under the UCCJA.[15] The UCCJEA attempts to close this rather gaping hole by recognizing provisions of state protection in domestic abuse proceedings. The UCCJEA allows an order to be enforceable in other states, even if the notice of the proceeding is given after the entry of the emergency order.[16]

Another primary purpose of the UCCJEA was to clarify the concept of exclusive continuing jurisdiction to the original decree granting state. The UCCJA failed to state explicitly that the original state retained exclusive jurisdiction to *modify* the decree until all of the litigants and the child were no longer present. Despite what would appear to be the clear language of the UCCJA, various states interpreted that language differently.[17] Some states took a literal interpretation, stressing that the state of original jurisdiction maintained jurisdiction until the last contestant left the state regardless of how many years the child has been living outside of the state or how tenuous the child's connection to the state had become.[18] Other states took the view that their jurisdiction would continue only until the child was es-

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14 U.C.C.J.A. § 4, 9 U.L.A. 208.

15 U.C.C.J.A. § 3(a)(3), 9 U.L.A. 144.

16 U.C.C.J.E.A. § 204.

17 *Compare* Whitfield v. Whitfield, 519 So.2d 546 (Ala. Civ. App. 1987) *with* Payne v. Weker, 917 S.W.2d 201 (Mo. Ct. App. 1996).

18 Whitfield v. Whitfield, 519 So.2d 546; Mark L. v. Jennifer S., 506 N.Y.S.2d 1020 (N.Y. Fam. Ct. 1986); Welborn-Hosler v. Hosler, 870 S.W.2d 323 (Tex. Ct. App. 1994); In re Marriage of Pedowtiz, 179 Cal. App. 3d 992 (5th Dist., 1986).

tablished in a new state.[19] Again, this lead to either simultaneous proceedings occurring or conflicting custody orders being issued.

On a related topic, the UCCJA never defined the term "relinquishment of jurisdiction."[20] In several instances one state erroneously assumed jurisdiction after believing that the original state had relinquished it.[21] Also, according to the Commissioners, some courts declined jurisdiction after only informal contact between the states with little or no notice to the contestants or opportunity for the parties to be heard.[22]

Another major change from the UCCJA to the UCCJEA was the elimination of the concept of "best interest" from consideration of the jurisdictional requirements. The drafters thought "the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that 'best interest' consideration should override jurisdictional determinations or provide an additional jurisdictional basis."[23] By eliminating the best interest test from the jurisdiction section, the drafters attempted to delineate clearly between jurisdictional standards and substantive standards relating to the custody and visitation of children. Whether this was a prudent idea remains to be seen.

The other major area in which the UCCJEA updates, clarifies and corrects some of the failings of the UCCJA is enforcement. Despite the best efforts of the interpreters of UCCJA a hodgepodge of enforcement remedies still exist that vary from state to state. Some states require the filing of a petition to enforce, others require a petition for rule to show cause, and still

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19 Dyer v. Surratt, 456 S.E.2d 510 (Ga. Ct. App. 1995); Schneider v. Schneider, 555 N.E.2d 196 (Ind. Ct. App. 1990); Payne v. Weker, 917 S.W.2d 201 (Mo. Ct. App. 1996); Dennis v. Dennis, 366 N.W.2d 474 (N.D. 1985); *but see* Roby v. Nelson, 562 So.2d 375 (Fla. Dist. Ct. App. 1990).

20 U.C.C.J.A. § 2, 9 U.L.A. 133.

21 *C.f.,* Sebeniecher v. Corl, 567 So.2d 321 (Ala. Civ. App.) *reh'g overruled*, 1990 Ala. Civ. App. LEXIS 259 (May 2, 1990); Williams v. Goss, 438 S.E.2d 670 (Ga. Ct. App. 1993). *But see* Long v. Long, 439 N.W.2d 523 (N.D. 1989).

22 *See* Chaddick v. Monopoli, 677 So.2d 347 (Fla. Dist. Ct. App. 1996); *c.f.*, Schneider v. Schneider, 555 N.E.2d 196; Matthews v. Riley, 649 A.2d 231 (Vt. 1994).

23 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *supra* note 14 at 5.

others suggest that a writ of *habeas corpus* is the appropriate remedy to enforce out-of-state custody or visitation violations.[24] The lack of uniformity between the states created several problems, most notable of which was to unreasonably delay visitation rights, thereby, at times, rendering the noncustodial parent's right to visitation useless.

The Commissioners attacked this problem head on. The UCCJEA limits a court's inquiry as to whether a court granting the decree had jurisdiction (of the parties and the subject matter) and complied with due process in rendering the original custody decree.[25] After that inquiry, the Act *requires* the court to order the appearance of the respondent, with or without the child.[26] (The UCCJA merely grants the court discretion to order the respondent to appear before it.[27]) The UCCJEA also allows an enforcing court to issue a warrant to take physical possession of the child if it is concerned that the parent with physical custody of the child will flee or harm the child. Finally, the proposed Act includes a role for prosecutors and law enforcement officers in enforcing custody determinations.[28]

While the UCCJEA makes substantial headway, it does not resolve all of the problems of the UCCJA, and, in some circumstances, creates a whole new set of ambiguities. The discussion

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[24] *See* Chaddick v. Monopoli, 677 So.2d at 347, (wherein Florida court discussed petition to enforce custody/visitation order); In re E.Q.B., 617 A.2d 199 (D.C. 1992) (using writ of *habeas corpus* to enforce Florida custody order); Bull v. Bull, 311 N.W.2d 768 (Mich. Ct. App. 1981) (using writ of *habeas corpus* to enforce Georgia custody order); Adriance v. Adriance, 478 A.2d 16 (Pa. Super. Ct. 1984) (using writ of *habeas corpus* to enforce Pennsylvania custody order); Gild v. Holmes, 680 So. 2d 326 (Ala. Civ. App. 1996) (using petition for rule nisi to enforce visitation order); Alush v. Alush, 527 N.E.2d 66 (Ill. App. Ct. 1988) (use of petition for rule to show cause for violation of Israeli divorce decree relating to custody and visitation).

[25] U.C.C.J.E.A. § 303, 306, 308.

[26] U.C.C.J.E.A. § 210.

[27] U.C.C.J.A. § 11.

[28] The participation of prosecutors and law enforcement occurs in enforcing custody determinations is permissive and not mandatory. The Drafting Committee included a role for public authorities to encourage parties to abide by the terms of custody determinations. The drafters believed if the parties know that prosecutors and law enforcement officers are available to help in securing compliance with custody determinations, they will be deterred from interfering with the exercise of rights established by court orders.

below will point out some of the more serious shortcomings of the UCCJEA. It is not meant to be an analysis of each section of the Act. Indeed, much of the Act is either very well constructed or merely a restatement of current law.

II. Ambiguities in UCCJEA.

A. *Article I, General Provisions*

Article I of the UCCJEA sets out, among other things, the definitions, international application of the Act, binding force, and priority of the Act.

1. *Section 101. Definitions*

"Child" is defined as "an individual who has not attained 18 years of age."[29] This definition appears problematic in that it fails to include a child not otherwise emancipated. An emancipated child may no longer be considered a child subject to a custody or visitation order.

"Home State" is defined as "the State in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately before the commencement of a child custody proceeding."[30] In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A problem exists where the child lived in a number of states during the preceding six months. It is unclear whether the determination will be one of significant connections or some other basis.

"Person acting as parent" is

> A person other than a parent, including a state or private agency having supervision or placement authority with respect to the child who: (i) has physical custody of a child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately preceding the commencement of a child custody proceeding; and (ii) has been awarded legal custody by a court or claims a right to legal custody under state law.[31]

A problem exists for persons claiming a "right to legal custody under state law." A *claim* to legal custody under state law is

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29 U.C.C.J.E.A. § 101(1).
30 U.C.C.J.E.A. § 101(6).
31 U.C.C.J.E.A. § 101(12).

vague and may encourage those who otherwise would not be able to allege the basic factors necessary to meet even a *prima facie* right to custody. For example, a relative could argue he or she meets the definition of person acting as parent even though that relative is only able to do so because the custodial parent died while living with the relative.

Also, an ambiguity appears to exist in the timing of the definition. If a state agency has "physical custody" for six months and the child is then removed from the state for an additional six months, would the agency have the ability to seek a permanent placement of the child so long as a petition was brought within the year specified?

2. *Section 103. International application of Act*

Section 103 provides that child custody determinations made under factual circumstances in substantial conformity with the jurisdictional standards of this Act will be recognized and enforced if there has been reasonable notice and opportunity to be heard.[32] A court may refuse to apply this Act when the child custody law of the other country ignores basic principles relating to the protection of human rights and fundamental freedoms.[33]

It appears unclear what standards will be utilized to determine whether basic principles are ignored by other countries. For example, do non-signatory countries to the Hague Convention qualify as countries who have ignored basic principles relating to the protection of human rights and fundamental freedoms?[34] In addition, the effect of this section is minimized by the Drafting Committee's position to limit the scope of inquiry to the child-custody law of the foreign country and not other aspects of the legal system. A foreign country may allow notice and opportunity to be heard but may also ignore basic principles relating to equal protection of human rights. For instance, in many countries, women still only enjoy a fraction of the rights enjoyed by men. The drafters have specifically taken no

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[32] U.C.C.J.E.A. § 103(a).

[33] U.C.C.J.E.A. § 103(b).

[34] 42 U.S.C.A. § 11601. The Hague Convention is a mechanism for the return of a child who is wrongfully removed from one contracting country to another contracting country. The complete text of the Hague Convention can be found at 51 Fed. Reg., 10,494 et seq. (1996).

position as to what laws relating to child custody would violate fundamental freedoms and have left the determination to a case-by-case analysis.[35]

3. *Section 106. Notice to persons outside of state*

Notice required for the exercise of jurisdiction when a person is outside the state must be given "in a manner reasonably calculated to give actual notice" and "may be given as prescribed by the law of this State" or "in the manner prescribed by the law of another State" in which service is made for personal service of process.[36]

The local law of either state may not take into account that the other party is hundreds of miles away. A provision should be included to protect persons who may require additional time to be served. Also, the rules of service of the second state may not meet the minimum requirements to acquire jurisdiction in the state where the hearing will be held. How can a court hold a hearing when it would lack the necessary personal jurisdiction under its own rules?

4. *Section 108. Communication between courts*

Section 108 requires a record of communications between courts. The record *may* consist of "[n]otes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a recording of another electronic communication between the courts or a record made by one or more courts after the communication."[37] To maintain consistency and avoid confusion, the record should detail the decision, if any, and the reasons behind the decision.

The authors strongly believe that any communication between courts *must* be recorded verbatim (either electronically or stenographically) and be available for transcription. To allow a court to "make a record" could be interpreted to mean a brief notation on the docket of the case. When dealing with matters as critical as the venue of a custody petition, both parties must have the opportunity to have an appellate review of the entire process.

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35 U.C.C.J.E.A. § 103(b) (Comment).
36 U.C.C.J.E.A. § 106.
37 U.C.C.J.E.A. § 108(b).

5. *Section 109. Taking testimony in another state*

This section provides that a court, on its own motion, may order that the testimony of a person be taken in another state and prescribe the manner in which and the terms upon which the testimony is taken.[38] This language should be amended to make clear that a party, as well as the court, is able to make a motion.

6. *Section 110. Cooperation between courts*

Travel and other necessary expenses incurred in obtaining cooperation between the courts may be assessed against the parties.[39] This language is vague and provides no guidance as to when and on what basis these expenses may be assessed. For example, will it be based on ability to pay, merit, fault, a combination of all three or some completely different basis?

B. *Article II, Jurisdiction*

This area still remains rife for multiple interpretation and confusion. Also, and more important, at least one clear conflict exists between various sections of Article II.

1. *Section 201. Initial child custody determination*

Section 201 governs when a court of "this state" may exercise jurisdiction. It prioritizes home state jurisdiction by providing that a court has jurisdiction to make an initial child custody determination only if:

> (1) this State is the home State of the child. . .
>
> (2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction. . .
>
> (i) the child and the child's parents, or the child and at least one parent or person acting as a parent have a *significant connection* with this State, other than mere physical presence; and
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> (ii) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships; or

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38 U.C.C.J.E.A. § 109.

39 U.C.C.J.E.A. § 110(c).

> (3)(i) all courts having jurisdiction under paragraphs (1) or (2) have declined to exercise jurisdiction. . .or (ii) no State would have jurisdiction under paragraphs (1) or (2).[40]

One problem is no factors are set out to assist a court in determining significant connections. It is unclear whether present or recent litigation alone in the state is sufficient to create a significant connection. Is a dissolution proceeding significant if only one party resides in the state? What if all of the parties' assets are located in another state? Are other family members within the state a significant connection if neither party has recently lived within the state for any extended period of time? Guidance appears to be necessary to prevent protracted litigation. This provision should include a list of factors for the court to consider when determining jurisdiction of an initial custody determination.

2. *Section 202. Exclusive, continuing jurisdiction*

Section 202 states that a court of a state which has made a child custody determination consistent with the other provisions of the Act has exclusive, continuing jurisdiction until that court (or another appropriate intrastate court) determines otherwise.

Exclusive, continuing jurisdiction *will* end if:

> (i) it is no longer the home state of the child (or residence of the child or a parent); or
>
> (ii) or the child and at least one person acting as a parent no longer have a significant connection with this State and substantial evidence is no longer available in this State concerning the child's care, protection, training and personal relationships; or
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> (iii) another State would be a more convenient forum.[41]

This language in subsection 202(a)(1)(i) appears to promote forum shopping. Here, exclusive, continuing jurisdiction may be lost by a determination that the original decree state is no longer the child's home state. The passage of time may be the only requirement to initiate a modification proceeding in another state if the child no longer resides in the original jurisdiction state, even though the child may have a significant connection with that state. This is because the language of the UCCJEA is conjunc-

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40 U.C.C.J.E.A. § 201 (emphasis added).

41 U.C.C.J.E.A. § 202(a).

tive in that it provides jurisdiction continues until the original decree state is no longer the home state *or* no longer maintains significant connection with the parties or child. A decision in one state should not be subject to modification by another state unless something other than the passage of time occurs.

Subsection 202(a)(1)(ii) provides the first state may no longer have exclusive, continuing jurisdiction if it determines the child, the child's parents, or the child and at least one person acting as parent no longer have a significant connection nor substantial evidence within this state. This implies that the first state may have continuing, but not exclusive jurisdiction. Guidance should be provided as to which state has jurisdiction where two or more states have significant connections.

Section 202(a)(2) is problematic in that the language of this subsection does not succinctly reflect the drafter's comments that *all* parties must leave the state before another state may determine whether jurisdiction continues. It could be interpreted to mean that a state loses exclusive jurisdiction if the child and one parent no longer have "significant connection" with the state, even if the other parent remains a resident of the original state.

This section should also reflect, as set out in the comments, that exclusive, continuing jurisdiction is not lost just because all parties leave the state after commencement of the modification proceeding. Obviously, if a petition to modify is commenced in a second state immediately after the parties move to that state, most of the important information, such as child protection agency reports, medical and school reports, etc. is still in the first state.

3. *Section 203. Modification of child custody determination*

Section 203 is troublesome in that it creates a situation in which the modification state is authorized to determine the original decree state has lost jurisdiction. This language is found in subsection 203(a):

> (a) Subject to Section 204, a court of this State may not modify a child-custody determination made by a court of another State [or tribe] unless:
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> (1) the court of the other State [or tribe] determines (i) it no longer has exclusive, continuing jurisdiction under Section 202 or determines that a court of this State would be more a convenient forum

> under Sections 207 and (ii) a court of this State determines that it has jurisdiction under the standards of Section 201(a)(1) or (2); or
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> (2) a court of this State or a court of the other State [or tribe] determines (i) that the other State [or tribe] no longer remains the residence of the child nor a parent or a person acting as a parent and (ii) a court of this State determines that it has jurisdiction under the standards of Section 201(a)(1) or (2).[42]

This subsection directly conflicts with Sections 201 and 202 of Article II. Indeed the drafters comment that Section 203:

> "[P]rohibits a court from modifying a custody determination made consistently with this Act by another state unless the Court of that state determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this state would be a more convenient forum under Section 207 or 208."[43]

If the purpose of Section 202 was to grant *exclusive*, continuing jurisdiction to one state, it should not be possible for a second state to make any determination regarding jurisdiction of the first state. That question should be resolved by the state that originally had exclusive continuing jurisdiction.

By creating a situation in which the second state may determine the first state no longer remains a residence of the child nor a person acting as a parent, the possibility exists for two states to make differing decisions. Only one state, the original decree state, should be able to determine it has or will exercise jurisdiction. A myriad of possibilities quickly come to mind how different interpretations of a child's (or parent's) residence could occur. For example, one parent accepts an out of state work assignment and the other parent moves with the children to a second state, or, a person leaves the state for medical reasons. Military service is also not addressed.

4. *Section 204. Temporary emergency jurisdiction*

Ambiguity exists in the following subsection 204(a) as to the circumstances which trigger an emergency.

> A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a

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42 U.C.C.J.E.A. § 203.

43 U.C.C.J.E.A. § 203 (Comment).

> sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.[44]

The failure to clarify the meaning of "mistreatment" creates uncertainty because many differing interpretations of mistreatment may exist. Does mistreatment mean threat of litigation, verbal threats or threats which a party should reasonably know could not be carried out? Can a court assume emergency jurisdiction over *the children* when a parent is subjected to verbal abuse assuming one could define what verbal abuse is?[45] What if the verbal abuse was in response to either physical or verbal abuse by the parent who left the jurisdiction? It appears a court could be rewarding a person for his or her own misconduct. Most important, why should a second state have any jurisdiction over a child when *no* allegations have been made that *the child* has been a victim of any form of threat or abuse?

Subsection 204(c) sets forth two different options for the length of time a temporary determination may remain in force.[46]

The first option requires an emergency order to remain in force until a court of a state with jurisdiction under Section 201-203 makes a child custody determination which is entitled to enforcement. The second option provides that a temporary determination made under this section remains in effect for a stated period of time "but no longer than 90 days." The first option prevents a litigant from having to return to court simply to con-

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44 U.C.C.J.E.A. § 204.

45 Statistics reveal that children who live in a household where a parent in the household is a victim of domestic violence are abused fifteen times the national average, *The Violence Against Women Act of 1990: Harings on S. 2754 Before the Senate Comm. on the Judiciary*, S.Rep No. 545, 101st Cong. 2d Sess. 37 (1990), and that child abuse takes place in 70% of the households where domestic violence is also present.

46 [(c) An temporary determination made under this section remains in force until a court of a State [or Tribe] with jurisdiction under Section 201-203 makes a child-custody determination that is entitled to be enforced under this [Act]. The determination may be an original child-custody determination, a determination that modifies or confirms a prior child-custody determination or an order determining that another State would be a more appropriate forum Section 207 or any other appropriate order.] [(c) A temporary determination made under this section remains in effect for the period stated in the order. The period stated in the order shall be the period that the tribunal deems necessary for the person seeking to order to obtain an order from the State having jurisdiction under Sections 201-203, but no longer than 90 days.]

tinue a temporary emergency order while allowing time for the court with jurisdiction under Section 201-203 to supersede the temporary determination.

While it may be impossible to draft language which covers all scenarios, the first option creates a set of problems. If the emergency order stays in effect until the original (and proper) state makes a determination, what happens if no petition is filed in the original state? Or, what if the original state orders contact between the child and non-possessing parent for some purpose (such as visitation or allowing an expert to complete an evaluation)? At that point no determination has been made; but if the second state has issued a no contact order, the original state's ruling could be ignored by the parent while present in the second state.

C. *Article III, Enforcement*

Article III governs the enforcement provisions of the proposed UCCJEA. Under the UCCJA, no uniform mechanisms exist to enforce custody and visitation orders validly entered in another state. To encourage swift enforcement, the drafters limited the scope of inquiry to whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. The critique of this Article is limited to issues surrounding clarification of this Article and not to the underlying philosophy of the drafters.

1. *Section 302. Scope; temporary visitation.*

Section 302 provides that a court of this state, which does not have jurisdiction to modify a child-custody determination, may:

> (1) issue a temporary order enforcing a visitation schedule made by a court of another State [or tribe];
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> (2) issue an temporary order enforcing the visitation provisions of a child-custody determination of another State [or tribe] that does not provide for a specific visitation schedule. A temporary order issued under this subsection remains in force for the time stated in the order [The period stated shall be the period necessary for the person seeking the order to obtain an order from the State [or tribe] having jurisdiction under [Article 2], but no longer than 90 days]. [or until it is super-

> seded by a order made by a State [or tribe] with jurisdiction under [Article 2] to modify the custody determination.][47]

The question remains as to how long this order should remain in effect. Two options are provided as with Section 204. The option which should be adopted allows the temporary order to remain in effect until it is superseded by an order from the court with jurisdiction under the Act. Again, this simplifies matters by allowing either party time to obtain a superseding order without repeated returns to the court issuing the temporary order.

2. *Section 306. Petition and order*

Section 306 allows a court to issue an order directing the respondent to appear with or without the child at a hearing to enforce a child-custody determination *on the next business day following service of process* (or a later date if requested by petitioner).[48] This provision appears unnecessarily rigid for respondents hundreds of miles away. The court must consider the practical realities of time and travel. It may not be possible to appear the next day. Will a person be held in contempt of court for failing to appear due to circumstances beyond the individual's control? What if service is effected in the evening? A respondent may not be able to obtain representation in such a small time frame.

3. *Section 314. Role of law Enforcement*

Section 314 authorizes law enforcement officials to assist in locating a child and enforcing a custody determination *when requested to do so by a prosecutor or appropriate public official*.[49] However, time may not always allow for the securing of a prosecutor or public official in an unfamiliar state. Section 314 should also allow private individuals to request the assistance of law enforcement if they have the appropriate order from the petitioner's own state. Such an order could include a request for law enforcement assistance along with findings that the child-custody decree was issued in a court with jurisdiction under the Act, that the person against whom the decree is being enforced had rea-

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47 U.C.C.J.E.A. § 302(c).
48 U.C.C.J.E.A. § 306(c).
49 U.C.C.J.E.A. § 314.

sonable notice, and that the decree was not subsequently modified, superseded or stayed.

III. Conclusion

While the UCCJEA makes great headway in resolving problems and conflicts within the UCCJA and other related statutes, it does not completely remedy all the problems of the old Act. Some changes appear necessary to make the new Act consistent with the goal of prioritizing jurisdiction and encouraging swift enforcement. For example, forum shopping may still be a problem under the exclusive, continuing jurisdiction provision.[50] The decree state must determine it is no longer the home state before exclusive, continuing jurisdiction may end. Since a court is not required to consider significant connections, it is still easy for litigants to introduce chameleonic arguments that a child does or does not reside in a particular state. In addition, precious time may still be lost when a litigant in a strange state does not know the necessary language or how to contact the necessary officials who are required to interpret another court's custody order. While all the concerns may not materialize into actual, litigated issues, some amendments are necessary to minimize future litigation.

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50 U.C.C.J.E.A. § 202(a).