

**SUBJECT:** Adoption of the Uniform Child Custody Jurisdiction and Enforcement Act

**COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended

**VOTE:** 9 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt

0 nays

**WITNESSES:** For — Bree Buchanan, Texas Council on Family Violence; Victor H. Negrón, Jr.

Against — None

On — Deanna Tidwell; Charles G. Childress; Harry Tindall, Uniform Law Commission

**BACKGROUND:** Texas uses the Uniform Child Custody Jurisdiction Act (UCCJA) as codified in Chapter 152 of the Family Code. The UCCJA was promulgated by the Uniform Law Commissioners in 1968 and adopted by every state. The goal was to make child-custody jurisdiction laws uniform from state to state. However, varying interpretations of the full faith and credit clause of the U.S. Constitution by state courts led to confusion, which allowed noncustodial parents to take their children across state lines to avoid the enforcement of custody orders by the home state.

To remedy this problem, Congress enacted the Parental Kidnapping Prevention Act (PKPA), 28 U.S. 1738a and 1738b, in 1981. The PKPA clarifies some UCCJA provisions, but it conflicts with the UCCJA in regard to jurisdiction. The PKPA gives first priority to the child's home state and grants continuing, exclusive jurisdiction to the state exercising jurisdiction until all parties have left that state.

The UCCJA does not give first priority to the child's home state but simply provides that any other state must honor a legitimate exercise of jurisdiction until the basis for that exercise of jurisdiction no longer exists.

In an effort to end inconsistent application of child-custody jurisdiction laws, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in 1997. The commissioners also added uniform standards for child custody and visitation enforcement to regularize state laws in those areas.

**DIGEST:**

CSHB 797 would replace the Uniform Child Custody Jurisdiction Act as codified in Texas with the Uniform Child Custody Jurisdiction and Enforcement Act. The major changes would be first priority for the child's home state in determining jurisdiction, continuing exclusive jurisdiction for the state taking jurisdiction, limited temporary emergency jurisdiction, and enforcement of custody and visitation decrees from outside Texas.

CSHB 797 would require that other states defer to the child's home state in taking jurisdiction over a child custody dispute. "Home state" would be defined as the state where the child has lived with a parent for at least six months before the child custody proceeding begins. Under the current law that the bill would repeal, home-state status is only one of four possible bases for jurisdiction. The other bases are a significant connection between the state and the parties to a proceeding, emergency jurisdiction in cases where the child is present in the state and the child's welfare is threatened or the child is abandoned, and presence of the child when there is no other state with a sound basis for taking jurisdiction.

CSHB 797 would give the state continuing and exclusive jurisdiction over a child custody matter once the state has exercised jurisdiction. Any change in jurisdiction would have to come from the presiding state's own determination that jurisdiction should end. Under the current law that the bill would repeal, jurisdiction can end once the initial basis for jurisdiction ceases to exist as determined by any state.

CSHB 797 would allow for temporary emergency jurisdiction when the child, a parent, or a sibling was threatened or the child was abandoned. It would limit the jurisdiction to the time necessary to get an order from the state with proper jurisdiction, presumably the child's home state. The current provision for temporary emergency jurisdiction that would be repealed allows a state to take jurisdiction when the child is present in the state and the child's welfare is threatened or the child has been abandoned. The temporary emergency jurisdiction can be extended into ongoing jurisdiction.

HB 797 would establish procedures for enforcing out-of-state visitation or custody orders. Out-of-state custody orders could be registered like civil judgments to allow enforcement through court contempt powers. The court could order the party with the child to bring the child to an immediate hearing, similar to a habeas corpus hearing, where the court would rule with respect to enforcement. The bill would allow law enforcement officers and prosecutors to help enforce custody orders by taking possession of the child where there is danger or by taking any other lawful action to enforce a custody order.

CSHB 797 would take effect September 1, 1999, and would apply to child custody proceedings beginning on or after that date.

**SUPPORTERS  
SAY:**

Texas should adopt the UCCJEA just as it adopted the UCCJA. The evolutionary changes represented by CSHB 797 are necessary to keep Texas' child-custody jurisdiction and enforcement laws in harmony with those of the rest of the nation. Adopting the UCCJEA via CSHB 797 also would bring Texas into line with the federal PKPA.

The current law leaves to individual state courts too many determinations based on vague criteria like "the best interests of the child." Parental kidnappings happen because the guidelines for jurisdiction and enforcement are not clear-cut and allow states to exercise jurisdiction when another state might be more appropriate.

CSHB 797 would change jurisdiction and enforcement only for interstate purposes. It would not change the way that Texas makes its custody determinations and enforces them within the state.

The continuing and exclusive jurisdiction provision would not be overly restrictive because the state with jurisdiction could always release jurisdiction, or a Texas court could take jurisdiction if it found that none of the parties still resided in the state with jurisdiction.

Alaska and Oklahoma already have adopted the UCCJEA, and 10 other states, including Texas, are considering adoption this year. Texas should be at the forefront of this family law reform. Texans played a substantial role in drafting the UCCJEA and helped ensure that particular needs of this state were taken into consideration.

OPPONENTS  
SAY:

The continuing and exclusive jurisdiction provision would be too rigid. The state with current jurisdiction would have to be contacted and release its jurisdiction even if only one of the parties still resided there. This problem could be complicated further if the party remaining in the state were in prison or were difficult to contact.

Texas should wait and see how the UCCJEA works in other states rather than be one of the first states to adopt it.

NOTES:

The committee substitute changed some definitions in the original bill to fit Texas practice and added Sec. 152.002 as a conflict-of-law provision. It also modified Sec. 152.209 to prevent information given by a parent from being subject to local confidentiality laws, since the bill otherwise provides for the information to be sealed if its release would put a child or other party in jeopardy.