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Domestic Relations; Uniform Child Custody Jurisdiction Act

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terminated by court order).

190. Ch. 599 §44 (amending NRS 127.040(1)).
191. Id. §44 (amending NRS 127.040(2)).
192. Id. §45 (amending NRS 127.070(1) and adding NRS 127.070(2)).
193. 1953 Nev. Stats. ch. 332 §7, at 557 (NRS 127.070) (amended by Ch. 599 §45).
194. Ch. 599 §45 (adding NRS 127.070(2)).
195. Id. §46 (amending NRS 127.080(1)).
196. Id. §46 (amending NRS 127.080(2)).
197. Id. §47 (amending NRS 127.140(1)).
198. Id. §47 (amending NRS 127.140(2)).
199. Id. §48 (amending NRS 127.186(1)).
200. Id.
201. Id. §48 (amending NRS 127.186(2)).
202. Id.
203. Id. §48 (amending NRS 127.186(3)).
204. Id.
205. Id. §48 (amending NRS 127.186(4)).
206. Id.
207. Id. §48 (amending NRS 127.186(5)).
208. Id. §48 (amending NRS 127.186(6)).

DOMESTIC RELATIONS; UNIFORM CHILD CUSTODY
JURISDICTION ACT

Adds to NRS Title II

Amends NRS 125.050, 125.060, 125.140

AB 115 (Committee on Judiciary); STATS 1979, Ch 85

(Effective July 1, 1979)

AB 265 (Hayes); STATS 1979, Ch 269

(Effective May 3, 1979)

Chapter 269 amends present law regarding child custody determination and adds a new chapter to NRS Title II, adopting the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJA is intended to provide uniform rules of jurisdiction over

child custody cases throughout the United States. It attempts to discourage forum shopping and self-help methods such as child stealing and kidnapping by removing the incentives for using such methods.¹ Chapters 85 and 269 also amend NRS 125.060 and 125.140 to abolish the tender years doctrine, provide for joint custody, and conform with UCCJA.

Child Custody Jurisdiction

By enacting the UCCJA Nevada has joined twenty-six states in a uniform system of jurisdictional law.² One result of the Act will be increased communication among courts of different states in determining the appropriate forum, gathering evidence, and enforcing decrees.³ Nevada has included in the Act the provisions of the Indian Child Welfare Act of 1978⁴ where applicable.

The well-being of the child involved is the primary consideration in determining the appropriate jurisdiction. In all instances the court is to consider the child's best interests.⁵ In doing so, the court must weigh the child's contacts with the forum state; maximum contacts are required rather than minimum contacts.⁶ The issue to be resolved is whether the forum state has the best access to evidence regarding the child and the child's family.⁷

The issue of jurisdiction is given calendar priority and is to be handled expeditiously.⁸ Jurisdiction may be established through the following criteria: a) the state is the child's home or was the child's home within six months preceeding commencement of the proceeding;⁹ b) it is in the child's best interest for the state to exercise jurisdiction because the family has significant connection with the state and because of the availability of evidence within the state;¹⁰ and c) the child is physically present and is abandoned or must be protected from mistreatment.¹¹ Additionally, jurisdiction may be found if no other state has jurisdiction in accordance with a, b, or c above or another state has declined to exercise jurisdiction on the ground that this state is the appropriate forum¹² and the child is not subject to exclusive jurisdiction of an Indian tribe.¹³ In California these criteria have been interpreted to be used in the alternative,¹⁴ the first two alternatives being the major bases of jurisdiction.¹⁵

Physical presence alone is not sufficient to confer jurisdiction;¹⁶ neither is it a prerequisite to jurisdiction.¹⁷ However, the court may not exercise its jurisdiction if it finds that a similar proceeding is pending in another state.¹⁸ The

court must stay or dismiss its own proceeding until it can communicate with the other court and determine the appropriate forum.¹⁹ The court may also refuse to exercise its jurisdiction when it finds that the petitioner has wrongfully removed or retained the child from its proper home²⁰—the "clean hands" doctrine.²¹ Costs may be assessed against the petitioner in this case.²²

Jurisdiction over a divorce proceeding will not ensure jurisdiction over the child custody proceeding between the same parties. The court may refuse to exercise jurisdiction over the child custody award and still retain jurisdiction over the divorce proceeding.²³

In order to discourage forum-shopping by a party seeking a favorable modification of the custody decree, the UCCJA provides for continuing jurisdiction over all proceedings.²⁴ Another state's court may not modify the original court's decree unless the original court no longer has jurisdiction under the criteria listed above or has declined to assume jurisdiction.²⁵ The modifying court must also have jurisdiction.²⁶

To serve the best interest of the child and because evidence concerning the child and family is often located in another state, the court has broad investigatory powers. It has the power to initiate evidence gathering and the taking of testimony²⁷ and may request an out-of-state court to do the same when the evidence is located in that state.²⁸ It may direct the personal appearance of a party within the state, along with the child if that party has custody.²⁹ The court may issue an arrest warrant to compel a party's appearance.³⁰ Failure of a party to appear may also result in a decision adverse to that party.³¹ The court may request a court of another state to order the personal appearance of a party within that state.³² When the court learns of a person who has or claims to have custody or visitation rights, it must order that person joined as a party in order to avoid relitigation of issues.³³

Although the full faith and credit clause of the U.S. Constitution may not require recognition of out-of-state custody decrees,³⁴ this Act makes recognition and enforcement a matter of state law.³⁵ Therefore, in Nevada and other states which have adopted the UCCJA, the final decree of a state having jurisdiction under the Act will be recognized and enforced.³⁶ Furthermore, if a certified copy of a custody decree is filed in the clerk's office of a district court of another state, the decree will have the same effect and must be enforced as though rendered by a court of that state.³⁷ The clerk of every district court must maintain a registry for

copies of other states' decrees and other communications regarding custody proceedings.³⁸

The general policies of the Act are extended to custody proceedings in other nations as well as other states.³⁹

Custody Determinations

NRS 125.060 and 125.140 have been amended to abolish the tender years doctrine, provide for joint custody, and conform with the UCCJA. The statutes are amended twice: the first amendment (Ch. 269) became effective May 3, 1979, the second amendment (Ch. 85) became effective July 1, 1979.

The first amendment (Ch. 269) of NRS 125.060 and 125.140 abolishes the tender years doctrine and provides for joint custody.⁴⁰ Previously, custody of a "young" child was awarded to the mother, unless she was deemed unfit.⁴¹ As a result of the amendment, the sole consideration in awarding custody is in the best interests of the child; no preference is given to either parent as mother or father.⁴² Under NRS 125.140, joint custody may be awarded if the court decided it is in the best interests of the child.⁴³ Joint custody gives both parents legal responsibility for the control of the child and divides physical custody of the child between them.⁴⁴ Thus, the child will usually have two homes, sometimes in different states. As between states which have enacted UCCJA, this should pose no problem; however, enforcing the decree in other states may be difficult. The statute appears flexible enough to apply to many situations. For example, both joint legal custody and joint physical custody could be granted in some cases, while in other cases, physical custody might be awarded to only one parent and legal custody awarded to both parents. The application of this statute will depend, of course, upon the arrangement most suitable for the child.⁴⁵

The second amendment (Ch. 85) changes NRS 125.060 and 125.140 to conform with the UCCJA. Previously under NRS 125.060, if a child was likely to be removed from or concealed within the country by one of the parties, the court could immediately arrange for the child's custody.⁴⁶ Now, the court may make preliminary child custody orders whenever the child is likely to be removed from or concealed within the state.⁴⁷ Because the child's presence in the state is not required for jurisdiction under the UCCJA,⁴⁸ the removal of the child should not affect the Nevada court's jurisdiction. The requirement that the child be removed

by one of the parties to the action has been deleted.⁴⁹ Now it appears that the court may make preliminary child custody orders when anyone removes the child from the state. This situation would probably arise when a relative or friend of a party steals the child.

Previously preliminary child custody orders (NRS 125.060)⁵⁰ and orders regarding property interests (NRS 125.050)⁵¹ were enforced by the same methods—attachment, commitment, and security. Chapter 85 deletes the provision specifying attachment, commitment, and security as enforcement methods.⁵² To conform with the UCCJA, Chapter 85 amends NRS 125.060 to allow the use of arrest warrants to enforce preliminary child custody orders.⁵³ In addition, Chapter 85 broadens the court's powers to enforce orders regarding property interests (NRS 125.050), allowing the court to make any orders necessary to preserve the status quo.⁵⁴

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FOOTNOTES

1. See Commissioner's Prefatory Note, Uniform Child Custody Jurisdiction Act, 9 U.L.A. (1979). See generally Uniform Child Custody Jurisdiction Act, 9 U.L.A. (1979) for a discussion of the implications of the UCCJA.
2. See Table of Jurisdictions Wherein Act Has Been Adopted, Uniform Child Custody Jurisdiction Act, 9 U.L.A. (1979).
3. 1979 Nev. Stats. ch. 85 (hereinafter "Ch. 85") §§8 ¶3, 9 ¶4, 14, 18, 21, 22 (adding to NRS Ch. 11).
4. 25 U.S.C. §§1901 to 1963, inclusive (1978).
5. See e.g., Ch. 85, §§ 3 ¶12, 9 ¶3, 10 ¶2 (adding to NRS Ch. 11).
6. Id. §5 (adding to NRS Ch. 11).
7. Commissioner's Note, Uniform Child Custody Jurisdiction Act §3, 9 U.L.A. (1979).
8. Ch. 85 §26 (adding to NRS Ch. 11).
9. Id. §5 ¶1(a) (adding to NRS Ch. 11).
10. Id. §5 ¶1(b) (adding to NRS Ch. 11).
11. Id. §5 ¶1(c) (adding to NRS Ch. 11).

12. Id. §5 ¶1(d) (adding to NRS Ch. 11).
13. Id. §5 ¶1(e) (adding to NRS Ch. 11).
14. In re the Marriage of Schwander, 79 Cal.App. 3d 1013, 1018, 145 Cal.Rptr. 325, 328 (1978).
15. Smith v. Superior Court of San Mateo County, 68 Cal.App.3d 457, 464, 137 Cal.Rptr. 348, 352 (1977).
16. Ch. 85 §5 ¶2 (adding to NRS Ch. 11).
17. Id. §5 ¶3 (adding to NRS Ch. 11).
18. Id. §8 ¶1 (adding to NRS Ch. 11).
19. Id. §8 ¶3 (adding to NRS Ch. 11).
20. Id. §10 ¶1 (adding to NRS Ch. 11).
21. Ehrenzweig, Interstate Recognition of Custody Decrees, 51 Mich. L. Rev. 345, 357-373 (1953); Commissioner's Note, Uniform Child Custody Jurisdiction Act §8, 9 ULA (1979).
22. Ch. 85 §10 ¶3 (adding to NRS Ch. 11).
23. Id. §9 ¶6 (adding to NRS Ch. 11). See also In re the Marriage of Ben-Yehoshua, 91 Cal.App.3d 259, 154 Cal.Rptr. 80 (1979); Commissioner's Note, Uniform Child Custody Jurisdiction Act §3(a) (2), 9 U.L.A. (1979).
24. Ch. 85 §16 (adding to NRS Ch. 11).
25. Id. §16 ¶1(a) (adding to NRS Ch. 11).
26. Id. §16 ¶1(b) (adding to NRS Ch. 11).
27. Id. §§11 ¶2, 20 (adding to NRS Ch. 11).
28. Id. §§20, 21 (adding to NRS Ch. 11).
29. Id. §13 ¶1 (adding to NRS Ch. 11).
30. Id. §13 ¶2 (adding to NRS Ch. 11).
31. Id. §13 ¶3 (adding to NRS Ch. 11).
32. Id. §22 ¶3 (adding to NRS Ch. 11).
33. Id. §12 (adding to NRS Ch. 11).
34. The United States Supreme Court has so far avoided resolving the issue. See e.g., Ford v. Ford, 371 U.S. 187, 192 (1962); Commissioner's Note, Uniform Child Custody Jurisdiction Act §13, 9 U.L.A. (1979).
35. Ch. 85 §15 (adding to NRS Ch. 11).
36. Id.
37. Id. §17 ¶1 (adding to NRS Ch. 11).
38. Id. §18 (adding to NRS Ch. 11).

39. Id. §25 (adding to NRS Ch. 11). See In re the Marriage of Ben-Yehoshua, 91 Cal.App.3d 259, 154 Cal.Rptr. 80 (1979) for an example of the application of this provision.
40. 1979 Nev. Stats. ch. 269 (hereinafter "Ch. 269") (amending NRS 125.140(1)).
41. Peavey v. Peavey, 85 Nev. 571, 573, 460 P.2d 110, 111 (1969).
42. Ch. 269 §2 (amending NRS 125.140(1)).
43. Id.
44. See Bodenheimer, Progress Under the UCCJA and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modification, 65 CALIF. L. REV. 978 (1977) for a discussion of the implications of joint custody.
45. See Neal v. Neal, 92 Cal.App.3d 834, 838-844, 155 Cal.Rptr. 157, 158-163 (1979) for a discussion of the distinction between legal and physical custody in a joint custody award.
46. 1953 Nev. Stats. ch. 114 §1, at 116 (NRS 125.060(1)).
47. Ch. 85 §28 (amending NRS 125.060(1)).
48. Id. §5 ¶3 (adding to NRS Ch. 11).
49. Id. §28 (amending NRS 125.060(1)).
50. 1953 Nev. Stats. ch. 114 §1, at 116 (NRS 125.060).
51. NCL §9463 (NRS 125.050).
52. Ch. 85 §28 (amending NRS 125.060(2)).
53. Id.
54. Ch. 85 §27 (amending NRS 125.050).

DOMESTIC RELATIONS; NON-PARENT VISITATION RIGHTS

Adds to NRS Chapter 123

AB 231 (Westall); STATS 1979, Ch. 224

Chapter 224 amends NRS Chapter 123 to allow reasonable visitation rights to the parents, grandparents and children of the deceased parent or divorced parent without custody of a minor child.¹ They may petition for these rights in the district court in the county where the child resides.² The district court may grant visitation rights in a divorce decree or upon a petition filed after the divorce or death of the parent of an unmarried minor child.³ Visitation rights will be granted only when in