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DOMESTIC RELATIONS Child Custody Proceedings: Replace the Uniform Child Custody Jurisdiction Enforcement Act; Establish Updated, Uniform Procedures for Child Custody Proceedings; Provide How Courts of This State Shall Treat Indian Tribes and Foreign Countries in Child Custody Proceedings and Enforcement of Child Custody Determinations; Provide Remedies to Ensure Safety of the Child; and Provide That Disclosure of the Name and State of a Family Violence Shelter Is Sufficient

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DOMESTIC RELATIONS

Child Custody Proceedings: Replace the Uniform Child Custody Jurisdiction Enforcement Act; Establish Updated, Uniform Procedures for Child Custody Proceedings; Provide How Courts of This State Shall Treat Indian Tribes and Foreign Countries in Child Custody Proceedings and Enforcement of Child Custody Determinations; Provide Remedies to Ensure Safety of the Child; and Provide That Disclosure of the Name and State of a Family Violence Shelter Is Sufficient

CODE SECTIONS:	O.C.G.A. §§ 19-9-40 to -51, -61 to -70, -81 to -97, -101 to -104 (amended)
BILL NUMBER:	SB 118
ACT NUMBER:	28
GEORGIA LAWS:	2001 Ga. Laws 129
SUMMARY:	This Act updates the Uniform Child Custody Jurisdiction Act to include the requirements of the Hague Convention and two federal statutes enacted since the passage of the original law. The Act's primary changes include provisions for how the courts should treat Indian tribes and foreign countries with respect to a state court's jurisdiction and provisions to ensure a child's safety if a family violence situation should prevent detailed disclosure of the child's location.
EFFECTIVE DATE:	July 1, 2001

History

In 1978, Georgia enacted the Uniform Child Custody Jurisdiction Act (UCCJA).¹ Every one of the fifty states enacted this uniform law, which established consistent procedures for how courts should handle interstate child custody disputes.² Since that time, Congress has passed two statutes that impact child custody law in this area: the Parental

1. See 1978 Ga. Laws 258, § 1, at 259.

2. See Audio Recording of Senate Proceedings, Mar. 1, 2001 (remarks by Sen. Seth Harp), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

Kidnaping Prevention Act of 1980³ and the Family Violence Prevention Act.⁴ The courts in each of the fifty states had also begun interpreting the various provisions of the uniform statute, with less than uniform results.⁵ The American Law Institute created a panel and directed it to update the UCCJA to encompass the new federal statutes and the state court interpretations.⁶ The result, the Uniform Child Custody Jurisdiction Enforcement Act,⁷ has been adopted by a majority of the states.⁸ This Act repeals the UCCJA in its entirety and replaces it with the updated Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).⁹

Parental Kidnaping Prevention Act

Congress found that the laws and practices of the states yielded inconsistent results with regard to child custody proceedings because the federal system limited the states' authority and jurisdiction.¹⁰ The Parental Kidnaping Prevention Act of 1980 (PKPA) was part of the solution to federalize the child custody jurisdiction requirements found in the uniform state laws.¹¹ The PKPA had six general purposes:

- (1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;
- (2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;
- (3) facilitate the enforcement of custody and visitation decrees of sister States;
- (4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with

3. Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611, § 6 (1980) (codified as amended in 42 U.S.C. § 1073 and 28 U.S.C. § 1738A).

4. Family Violence Prevention and Services Act, 42 U.S.C. §§ 10401-10417 (1994).

5. See Telephone Interview with Sen. Seth Harp, Senate District No. 16 (Apr. 6, 2001) [hereinafter Harp Interview]; Senate Audio, *supra* note 2 (remarks by Sen. Seth Harp).

6. See Senate Audio, *supra* note 2 (remarks by Sen. Seth Harp).

7. O.C.G.A. §§ 19-9-40 to -104 (Supp. 2001).

8. See Senate Audio, *supra* note 2 (remarks by Sen. Seth Harp).

9. Compare 1978 Ga. Laws 258, § 1, at 258 (formerly found at O.C.G.A. §§ 19-9-40 to -64 (1999)), with O.C.G.A. §§ 19-9-40 to -51, -61 to -70, -81 to -97, and -101 to -104 (Supp. 2001).

10. Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611, § 6, (1980) (codified as amended in 42 U.S.C. § 1073 and 28 U.S.C. § 1738A).

11. See *id.*

harmful effects on their well-being; and (6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.¹²

The PKPA ensures that states must give “full faith and credit” to the child custody determinations of other states.¹³ The PKPA also defines terms such as “custody determination,” “home State,” and “physical custody.”¹⁴

Family Violence Prevention and Services Act

Congress made a second significant move when it enacted the domestic violence provisions affecting Indian tribes.¹⁵ This statute expanded the full faith and credit given to protection orders to encompass any orders issued or enforceable by a tribal court.¹⁶ Later sections of this complex statute mandated that the United States Postal Service promulgate regulations to protect the confidentiality of domestic violence shelters.¹⁷

SB 118

Introduction

Senator Harp of the 16th District sponsored SB 118 and introduced the bill on the Senate floor on February 7, 2001.¹⁸ The Judiciary Committee reviewed the bill and made a few amendments, but favorably reported the bill on February 26, 2001.¹⁹ The Senate adopted the Committee amendments and passed the bill on March 1, 2001.²⁰ SB 118 went to the House on March 2, 2001.²¹ The House Special Judiciary Committee reviewed the bill and reported favorably without changes on March 13, 2001.²² The House passed the bill without changes on March 21, 2001.²³ Governor Roy Barnes signed SB 118 into law on April 7, 2001.²⁴

12. *Id.*

13. *See id.*

14. *See id.*

15. Family Violence Prevention and Services Act, 42 U.S.C. §§ 10401-10417 (1994).

16. *See id.*

17. *See* 42 U.S.C. §§ 10401-10417.

18. *See* State of Georgia Final Composite Status Sheet, SB 118, Mar. 21, 2001.

19. *See id.*

20. *See id.*; Senate Audio, *supra* note 2 (voting results).

21. *See* State of Georgia Final Composite Status Sheet, SB 118, Mar. 21, 2001.

22. *See id.*

23. *See id.*; Audio Recording of House Proceedings, Mar. 21, 2001 (remarks on voting), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

24. *See* 2001 Ga. Laws 129, § 2, at 148.

Senate Judiciary Committee Amendment

One focus of the original bill was treatment of child custody situations involving family violence.²⁵ The Committee's first major amendment authorized a court to communicate with another state court concerning "any proceeding or court order in another state relating to family violence" and to consult any registry of family violence court orders concerning any party.²⁶ The Committee amendment also provided an exception to revealing the child's present physical address if the case involved a parent who had been the subject of a family violence finding in any court.²⁷ Finally, the Committee added an entire subsection which allows for sealed disclosures to the court if, after presentation of an affidavit and possibly a hearing, the court determines that the disclosure would jeopardize the health, safety, or liberty of a party or a child.²⁸

The Act

This review will outline the most significant language alterations between the UCCJA and this Act, the UCCJEA. The Act revises the entire statute, eliminating meaningful comparison between the new and old code sections. Instead, this review compares similar provisions found in any section from each version.

Code Sections 19-9-40 to -44

Section 19-9-41(12) defines a "person" as an individual, corporation, estate, company, or government.²⁹ Previously, the UCCJA did not define "person."³⁰ Section 19-9-41(13) defines a "person acting as a parent."³¹ The UCCJA allowed a person with physical custody of the child to be a person acting as a parent, but the new section defines it as a person who has physical custody or who has had physical custody for six consecutive months within one year of the commencement of child custody proceedings.³² Section 19-9-41(14) also defines "physical

25. See SB 118, as introduced, 2001 Ga. Gen. Assem.

26. See SB 118 (SCA), 2001 Ga. Gen. Assem. Compare SB 118, as introduced, 2001 Ga. Gen. Assem., with SB 118 (SCA), 2001 Ga. Gen. Assem.

27. Compare SB 118, as introduced, 2001 Ga. Gen. Assem., with SBA 118 (SCA), 2001 Ga. Gen. Assem.

28. Compare SB 118, as introduced, 2001 Ga. Gen. Assem., with SBA 118 (SCA), 2001 Ga. Gen. Assem.

29. See O.C.G.A. § 19-9-41(12) (Supp. 2001).

30. Compare 1978 Ga. Laws 258, § 1, at 261 (formerly found at O.C.G.A. § 19-9-42 (1999)), with O.C.G.A. § 19-9-41(12) (Supp. 2001).

31. See O.C.G.A. § 19-9-41(13) (Supp. 2001).

32. Compare 1978 Ga. Laws 258, § 1, at 261 (formerly found at O.C.G.A. § 19-9-42(9) (1999)), with

custody.”³³ Instead of merely actual possession and control of the child, as required by the previous statute, the Act delineates that a person must establish physical care and supervision of the child.³⁴ The UCCJEA adds a section excepting emergency medical care and adoption proceedings from governance by this statute.³⁵

A notable addition in the Act is the reference to tribal and foreign courts. Sections 19-9-43 and -44, respectively, address treatment of tribal child custody determinations and foreign determinations just as if they were made by state tribunals.³⁶

Code Sections 19-9-45 to -51

Section 19-9-45 plainly states the binding authority of a state court determination on everyone subject to the laws of the state if the party has been notified in accordance with section 19-9-47.³⁷ Section 19-9-47's notice requirements are not substantively different from those listed in UCCJA section 19-9-45.³⁸ Under section 19-9-48, a party in a child custody proceeding does not subject himself to personal jurisdiction for a separate proceeding merely because of his presence at the child custody proceeding.³⁹ Subsection (b) of this section clarifies, though, that personal jurisdiction may rest on a separate basis, including any unrelated acts committed while present in the state for the child custody proceeding.⁴⁰

As brought out in the PKPA,⁴¹ the UCCJEA includes a provision in section 19-9-49 to allow courts to communicate with other state courts or national registries to check for family violence proceedings or court orders regarding any parties to the child custody proceeding.⁴² Section 19-9-50 allows parties to present out of state witness testimony by telephone, audiovisual, or electronic means.⁴³ Section 19-9-51, which

O.C.G.A. § 19-9-41(13) (Supp. 2001).

33. See O.C.G.A. § 19-9-41(14) (Supp. 2001).

34. Compare 1978 Ga. Laws 258, § 1, at 261 (formerly found at O.C.G.A. § 19-9-42(9) (1999)), with O.C.G.A. § 19-9-41(14) (Supp. 2001).

35. Compare 1978 Ga. Laws 258, § 1, at 258, with O.C.G.A. § 19-9-42 (Supp. 2001).

36. Compare 1978 Ga. Laws 258, § 1, at 258, with O.C.G.A. § 19-9-41(13) (Supp. 2001).

37. See O.C.G.A. § 19-9-45 (Supp. 2001).

38. Compare 1978 Ga. Laws 258, § 1, at 263 (formerly found at O.C.G.A. § 19-9-45 (1999)), with O.C.G.A. § 19-9-47 (Supp. 2001).

39. See O.C.G.A. § 19-9-48 (Supp. 2001).

40. See *id.*

41. Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611, § 6 (1980) (codified as amended in 42 U.S.C. § 1073 and 28 U.S.C. § 1738A).

42. See O.C.G.A. § 19-9-49 (Supp. 2001).

43. See *id.*

outlines what a court of this state may request an appropriate court of another state to do, mirrors the UCCJA section 19-9-59.⁴⁴

Code Sections 19-9-61 to -70

Section 19-9-61 establishes the court's jurisdiction for initial child custody determinations.⁴⁵ The UCCJEA alters previous jurisdiction by adding an exception for emergency jurisdiction if the child is subjected to threats, mistreatment, or abuse.⁴⁶ This exception is detailed in section 19-9-64(a).⁴⁷ The jurisdiction also requires that the child and the child's parents have a stronger connection to the state than formerly required—something “other than mere physical presence.”⁴⁸ Section 19-9-62 ensures that the court retains exclusive jurisdiction of the child custody proceeding until that court determines that the initial basis for a jurisdictional determination is no longer valid (state residency, significant state connection, or evidence in the state of the child's care, protection, training, and personal relationships).⁴⁹

The remainder of Part II of the Act retains most of the original UCCJA language.⁵⁰ Some alterations include the addition in section 19-9-67 of whether family violence has occurred and is likely to continue as a relevant factor to be considered in determining whether the court is an inconvenient forum.⁵¹ These factors were previously listed in UCCJA section 19-9-47.⁵² Finally, section 19-9-68 provides that a court may remedy an unsafe situation to prevent the repetition of unjustifiable conduct if the court determines it must decline to exercise jurisdiction because of prior unjustifiable conduct.⁵³ Sections 19-9-69 and -70 do not make any substantive changes to the existing law.⁵⁴

44. Compare 1978 Ga. Laws 258, § 1, at 271 (formerly found at O.C.G.A. § 19-9-59 (1999)), with O.C.G.A. § 19-9-51 (Supp. 2001).

45. See O.C.G.A. § 19-9-61 (Supp. 2001).

46. Compare 1978 Ga. Laws 258, § 1, at 262 (formerly found at O.C.G.A. § 19-9-43 (1999)), with O.C.G.A. § 19-9-61 (Supp. 2001).

47. See O.C.G.A. § 19-9-64(a) (Supp. 2001).

48. Compare 1978 Ga. Laws 258, § 1, at 262 (formerly found at O.C.G.A. § 19-9-43 (1999)), with O.C.G.A. § 19-9-61 (Supp. 2001).

49. See O.C.G.A. § 19-9-62 (Supp. 2001).

50. Compare 1978 Ga. Laws 258, § 1, at 262 (formerly found at O.C.G.A. § 19-9-43 (1999)), with O.C.G.A. § 19-9-63 to -70 (Supp. 2001).

51. Compare 1978 Ga. Laws 258, § 1, at 265 (formerly found at O.C.G.A. § 19-9-47 (1999)), with O.C.G.A. § 19-9-67 (Supp. 2001).

52. See 1978 Ga. Laws 258, § 1, at 265 (formerly found at O.C.G.A. § 19-9-47 (1999)).

53. Compare 1978 Ga. Laws 258, § 1, with O.C.G.A. § 19-9-68 (Supp. 2001).

54. Compare 1978 Ga. Laws 258, § 1, with O.C.G.A. § 19-9-69, -70 (Supp. 2001).

Code Sections 19-9-81 to -97

Part III of the Act begins with section 19-9-81, and relates to child custody proceedings arising from an order for the return of a child under the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention").⁵⁵ Essentially, the sections reflect the UCCJEA's desire to treat foreign countries similar to states in the jurisdiction, recognition, and enforcement of child custody determinations and modifications.⁵⁶ Section 19-9-83 mandates that the courts recognize and enforce any determinations made in substantial conformity with this statute, but section 19-9-84 allows a state court to make temporary modifications to ensure the child's safety or to clarify nonspecific visitation terms.⁵⁷

Section 19-9-85 addresses child custody determination registration requirements.⁵⁸ This section allows a person to bring a determination from another state's court for registry in the superior court with a request letter, two copies of the original determination (one certified copy), and the names and addresses of the registrant and any parents or persons acting as parents with custody or visitation.⁵⁹ All parties must be notified and bring any objections within twenty days from service of registration notice.⁶⁰ Section 19-9-86 grants whatever relief would normally be available under state law to enforce a registered child custody determination.⁶¹ If a modification proceeding is ongoing, the court must communicate with the court responsible for the possible modification before continuing with enforcement under section 19-9-87.⁶²

Section 19-9-88 outlines the requirements for a petition under this part, which include certified copies of all related orders sought to be enforced; statements about the court's basis for jurisdiction; whether the court has stayed, vacated, or modified the determination; whether any other proceedings exist which would affect the child custody determination; whether the party requires any additional relief or assistance; and the present physical address of the child and respondent, unless disclosure is barred by a court's finding of family violence.⁶³ The

55. See O.C.G.A. § 19-9-81 (Supp. 2001).

56. Previously, reference to "foreign" courts was limited to out of state courts. Compare 1978 Ga. Laws 258, § 1, at 269 (formerly found at O.C.G.A. § 19-9-53 (1999)), with O.C.G.A. §§ 19-9-81 to -97 (Supp. 2001).

57. See O.C.G.A. §§ 19-9-83, -84 (Supp. 2001).

58. See *id.* § 19-9-85.

59. See *id.*

60. See *id.*

61. See *id.* § 19-9-86.

62. See *id.* § 19-9-87.

63. See O.C.G.A. § 19-9-88 (Supp. 2001).

section provides for a special disclosure only to the court to protect the health, safety, and liberty of the child or any other party.⁶⁴ Finally, subsections (d) and (e) authorize the court to issue an order for a hearing upon the filing of a petition.⁶⁵ The order must state the time and place of the hearing and advise the respondent that the petitioner may take immediate physical custody of the child, unless the respondent can establish a deficiency with the child custody determination's registration or enforcement.⁶⁶ Under section 19-9-90, the respondent has an opportunity to present the same exceptions to rebut a finding for the petitioner, including a safety-based emergency.⁶⁷ If the child is likely to suffer serious physical harm, section 19-9-91 provides for the immediate issuance of a warrant enforceable throughout the state.⁶⁸

Section 19-9-92 awards all necessary and reasonable costs to the prevailing party, but the court may not assess costs to the state.⁶⁹ Under section 19-9-93, the full faith and credit clause still applies in this part of the Act.⁷⁰ Section 19-9-94 prevents courts from staying enforcement proceedings, unless the court enters a temporary emergency order under section 19-9-64.⁷¹ Finally, sections 19-9-95 and -96 provide that the district attorney may bring any lawful action, including use of law enforcement officers to locate a child or party, and assess costs to the respondent if the respondent does not prevail.⁷²

Code Sections 19-9-101 to -104

Part IV of the Act reemphasizes the need for uniformity in application and interpretation of the statute in section 19-9-101.⁷³ Section 19-9-102 highlights that the law in effect at the time governs any motions or other

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.* § 19-9-90.

68. *See id.* § 19-9-91.

69. Compare 1978 Ga. Laws 258, § 1, at 271 (formerly found at O.C.G.A. § 19-9-59 (1999)), with O.C.G.A. § 19-9-92 (Supp. 2001).

70. *See* O.C.G.A. § 19-9-92 (Supp. 2001).

71. *See id.* §§ 19-9-64, -94.

72. *See id.* §§ 19-9-95, -96.

73. *See* Harp Interview, *supra* note 5; Senate Audio, *supra* note 2 (remarks by Sen. Seth Harp).

requests for relief made before July 1, 2001.⁷⁴ Sections 19-9-103 and -104 provide that this article does not affect Code section 19-13-23⁷⁵ and that this article supersedes Article 2 of this chapter.⁷⁶

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74. See O.C.G.A. § 19-9-102 (Supp. 2001).

75. See O.C.G.A. § 19-13-23 (1999). This section concerns confidentiality of family violence shelters. See *id.*

76. Compare 1978 Ga. Laws 258, § 1, at 258 (formerly found at O.C.G.A. § 19-9-20 to -24 (2000)), with O.C.G.A. § 19-9-40 to -104 (Supp. 2001).