



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
CHILD GUARDIANSHIP
AND CUSTODY

[2005 SENATE BILL 112]

March 16, 2005

RL 2005-02

Special Committee on Child Guardianship and Custody

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March 16, 2005

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Special Committee on Child Guardianship and Custody recommends the following bill to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

2005 Senate Bill 112, Relating to the Uniform Child Custody Jurisdiction and Enforcement Act

2005 Senate Bill 112 relates to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). LRB-0556/1 puts the UCCJEA into Wisconsin statutory format and replaces the current Uniform Child Custody Jurisdiction Act (UCCJA-Chapter 822).

Mainly, the UCCJEA bill accomplishes two major purposes. First, it revises the law on child custody jurisdiction in light of federal enactments and almost 30 years of inconsistent case law. The UCCJEA provides clearer standards for which states can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction.

Second, the bill provides for a remedial process to enforce interstate child custody and visitation determinations. As a result, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this draft accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Child Guardianship and Custody by a May 21, 2004 mail ballot. The committee was directed to examine current state laws regarding guardianship of minors, the rights and responsibilities of guardians, and to develop proposed legislation to clarify and improve current guardianship laws.

The committee was also directed to review the provisions of the UCCJEA which has been proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and determine whether the state should replace the 1968 UCCJA with the UCCJEA.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of two Senators, five Representatives and six public members. A list of committee members is included as **Appendix 3** to this report.

Summary of Meetings

The Special Committee held three meetings at the State Capitol in Madison on the following dates:

September 22, 2004
October 20, 2004
December 14, 2004

September 22, 2004: At the first meeting, the committee heard testimony from two speakers:

John McCabe, from the NCCUSL, Legislative Director, provided an overview of the UCCJEA to the committee. He noted the UCCJEA is currently enforced in 40 states. The UCCJEA would replace the current UCCJA-Chapter 822 in Wisconsin.

Betsy Abramson, from the University of Wisconsin Law School, described guardianship generally in Wisconsin, and specifically she discussed a guardianship reform proposal developed by the Elder Law section of the State Bar of Wisconsin. The reform proposal would offer significant revisions to current Chapter 880.

October 20, 2004: On October 20, the committee met to continue their consideration of possible changes to the juvenile guardianship statutes and adoption of the UCCJEA.

The committee heard an informative presentation by **Theresa Roetter**, of Hill, Glowacki, Jaeger and Hughes, LLP, of Madison, on basic guardianship rights and responsibilities relating to children. The committee also heard testimony from **Mark Mitchell** and **John Tuohy**, of the Department of Health and Family Services (DHFS), Division of Children and Family Services. Mr. Mitchell and Mr. Tuohy presented an overview of the DHFS proposal to create a subsidized guardianship pilot program in Milwaukee to address the issues of long-term placements in adoption settings.

The committee also reviewed a draft of the UCCJEA, in anticipation of adopting the Act to update current state law on the subject. Forty other states have already adopted the UCCJEA.

The committee agreed to look more closely at the specific statutes dealing with juvenile guardianship to determine what possible changes could be adopted within the time constraints on the committee.

December 14, 2004: At this meeting, the committee considered LRB-0556/1, which puts the UCCJEA into Wisconsin statutory format and replaces the current UCCJA-Chapter 822. After reviewing LRB-0556/1, the committee decided to vote to recommend for introduction by the Joint Legislative Council the bill draft. The committee voted to recommend for introduction by the Joint Legislative Council by a vote of Ayes, 12; Noes, 0. After the vote, the committee recommended that if the Joint Legislative Council introduces the bill draft, then the bill draft should be sent to the Special Committee on State-Tribal Relations for notification purposes.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Child Guardianship and Custody.

Background

Senate Bill 112 replaces the UCCJA, enacted into current law in 1975, with the updated UCCJEA, which was approved and recommended for passage in all states by the NCCUSL in 1997.

The purpose of the UCCJEA is to standardize among the states the general procedural and jurisdictional requirements for interstate child custody matters, which under the UCCJEA include determinations relating to legal custody, physical custody, physical placement, and visitation.

The UCCJEA has been adopted in 40 other states to date. Most notably, Iowa, Illinois, Michigan, and Minnesota have already adopted the UCCJEA. You can view a copy of the UCCJEA at: <http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm>.

Description

Senate Bill 112 relates to the UCCJEA. With respect to child custody proceedings and orders, the UCCJEA does all of the following:

- Specifies what notice is sufficient for a court to have jurisdiction over a person who is outside the state and specifies to whom notice must be given before a court may make a child custody determination.
- Authorizes a court of one state to communicate with a court of another state concerning a child custody proceeding in one of those states and to request the court of the other state to perform various functions, such as ordering an evaluation, holding an evidentiary hearing, and forwarding a transcript of a hearing.
- Specifies the circumstances under which a court of a state has jurisdiction to make an initial child custody determination, such as when the state is the home state of the child.
- Authorizes temporary emergency jurisdiction to make a child custody determination if the child is present in the state and has been abandoned or is being subjected to or threatened with mistreatment or abuse.
- Specifies how long a court that made a child custody determination has exclusive, continuing jurisdiction over the determination, such as until a court of that or another state determines that the child and the child's parents no longer reside in the state.
- Specifies the circumstances under which a court that made a child custody determination has jurisdiction to modify that determination and the circumstances under which a court has jurisdiction to modify a child custody determination made by a court of another state.

- Specifies that a court may decline to exercise its jurisdiction to make a child custody determination if it is an inconvenient forum.
- Provides procedures for a court to follow with respect to a child custody proceeding if a child custody proceeding already has been commenced in another state.
- Specifies basic information that must be included in the first pleading in a child custody proceeding and the persons whom the court may require to appear in a child custody proceeding.
- Imposes a duty on a court to recognize and enforce a child custody determination made by another court if that other court exercised jurisdiction in conformity with UCCJEA standards.
- Provides defenses for a respondent when a court orders that a petitioner may take immediate physical custody of a child.
- Authorizes a court to issue a warrant that directs law enforcement to take immediate physical custody of a child if the court finds that the child is imminently likely to suffer serious physical harm or be removed from the state.

In general, the UCCJEA under the bill provides clearer standards for original jurisdiction in child custody proceedings and more complete standards for jurisdiction to modify child custody determinations, than does the UCCJA under current law. In addition, the UCCJEA adds standards for continuing jurisdiction over child custody determinations for temporary emergency jurisdiction over child custody matters, and for enforcement of child custody determinations.

Appendix 1

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Child Guardianship and Custody and the Joint Legislative Council on the proposal that was approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature:

Special Committee Votes

At its December 14, 2004 meeting, the Special Committee voted as follows on its recommendation:

- LRB-0556/1, relating to the Uniform Child Custody Jurisdiction and Enforcement Act: Ayes, 12 (Sens. Lasee and Jauch; Reps. Albers, Nass, Nischke, Wood, and Ziegelbauer; and Public Members Albrecht, Donegan, Cardo Gorsuch, Kasperek, and Seger); Noes, 0; and Absent, 1 (Public Member Klug).

Joint Legislative Council Votes

At its March 9, 2005 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

- Introduction by the Joint Legislative Council of LRB-0556/1 passed by a vote of Ayes, 18 (Reps. Wieckert, Ainsworth, Freese, Gard, Huebsch, Kaufert, Nischke, Pocan and Schneider; and Sens. Lasee, Brown, Decker, Grothman, Miller, Risser, Robson, Schultz and Zien); Noes, 0; and Excused, 4 (Reps. Kreuser and Travis; and Sens. Fitzgerald and Kapanke).

The proposal that the Joint Legislative Council voted to introduce was subsequently introduced as 2005 Senate Bill 112.

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE

Senate President

2259 Lasee Road

De Pere, WI 54115

Co-Chair

STEVE WIECKERT

Representative

1702 S. Irma Street

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3732 North 40th Street

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JON ERPENBACH

Minority Leader

2385 Branch St.

Middleton, WI 53562

FRED A. RISSE

5008 Risser Road

Madison, WI 53705

ALBERTA DARLING

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River Hills, WI 53217

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N6627 County Road E

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President Pro Tempore

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REPRESENTATIVES

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DAN SCHOOFF

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Speaker Pro Tempore

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MICHAEL LEHMAN

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297 Roosevelt Street

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Speaker

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DAVID TRAVIS

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Waukegan, WI 53597

DEAN KAUFERT

1360 Alpine Lane

Neenah, WI 54956

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

Co-Chair

ALAN LASEE

Senate President

2259 Lasee Road
De Pere, WI 54115

Co-Chair

STEVE WIECKERT

Representative

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Appleton, WI 54914

SENATORS

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Eau Claire, WI 54701

DAN KAPANKE

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DALE SCHULTZ

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Richland Center, WI 53581

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GLENN GROTHMAN

111 South 6th Avenue
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JUDY ROBSON

Minority Leader
2411 E. Ridge Road
Beloit, WI 53511

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Majority Leader
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West Salem, WI 54669

MARK POCAN

309 North Baldwin St.
Madison, WI 53703

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Appendix 3

Child Guardianship and Custody

Senator Alan J. Lasee, **Chair**
2259 Lasee Road
De Pere, WI 54115-9663

Representative Stephen L. Nass
421 Maple Street
Palmyra, WI 53156-9664

Senator Robert Jauch
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Poplar, WI 54864

Representative Robert F. Ziegelbauer
PO Box 325
Manitowoc, WI 54221-0325

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Patti Seger
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Representative Jeffrey Wood
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STUDY ASSIGNMENT: The committee is directed to examine current state laws regarding guardianship of minors, the rights and responsibilities of guardians, and to develop proposed legislation to clarify and improve current guardianship laws.

The committee also will review the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act which has been proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and determine whether the state should replace the 1968 Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act.

13 MEMBERS: 2 Senators, 5 Representatives, and 6 Public Members.

LEGISLATIVE COUNCIL STAFF: Russ Whitesel, Senior Staff Attorney, Philip Cardis, Staff Attorney, and Rachel Veum, Support Staff.

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

December 14, 2004 Meeting

- LRB-0556/1, Uniform Child Custody Jurisdiction and Enforcement Act

October 20, 2004 Meeting

- 2003 Wisconsin Act 130, relating to legal custody in an action affecting the family
- Act Memo, 2003 Wisconsin Act 130, Legal Custody in an Action Affecting the Family; Effect of Abuse, prepared by Don Salm, Legislative Council staff (3-13-2004)
- Section 48.023, Stats., Guardianship
- Section 48.977, Stats., Guardians for Children in Need of Protective Services (CHIPS)
- Section 48.978, Stats., Standby Guardians for Children
- LRB-3592/1, Uniform Child Custody Jurisdiction and Enforcement Act
- Memo, from Mark S. Mitchell, Manager, Child Welfare Policy Development Section, bureau of Programs and Policies, Division of Children and Family Services, DHFS, DHFS Presentation to Guardianship and Custody Study Committee (10-14-04)
- Summary, Subsidized Guardianship Program Requirements
- Excerpt, Wisconsin Subsidized Guardianship Waiver, Excerpt from Federal Waiver Terms and Conditions (9-04)
- Summary, Wisconsin Subsidized Guardianship Program (9-04)
- 2003 Senate Bill 488
- Testimony, Wisconsin Juvenile Guardianships, presented by Theresa L. Roetter, Hill, Glowacki, Jaeger & Hughes, LLP

September 22, 2004 Meeting

- Handout, Uniform Child Custody Jurisdiction and Enforcement Act (1997), drafted by the National Conference of Commissioners on Uniform State Laws
- Handout, A Few Facts About the Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Law Commissioners, The National Conference of Commissioners on Uniform State Laws (2002)
- Handout, Summary Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Law Commissioners, The National Conference of Commissioners on Uniform State Laws (2002)
- Handbook, Understanding Guardianships: A Handbook for Guardians, Published and copyrighted by the State Bar of Wisconsin's Consumer Protection Committee (2003) [for committee members only]. [The handbook is available from the State Bar of Wisconsin, 5302 Eastpark Blvd., Madison, WI 53718 (telephone: (608) 257-3838).]