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SFA



BILL ANALYSIS

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Senate Bill 732 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Martha G. Scott
Committee: Families, Mental Health and Human Services

Date Completed: 11-5-01

RATIONALE

Michigan enacted the Uniform Child Custody Jurisdiction Act in 1975. This Act had been promulgated in 1968 by the National Conference of Commissioners on Uniform State Laws, in order to discourage interstate kidnapping of children by their noncustodial parents. The law operates upon principles that 1) establish jurisdiction over a child custody case in one state, and 2) protect that state's order from modification in any other state, as long as the original state retains jurisdiction over the case. In 1981, Congress adopted the Parental Kidnapping Prevention Act, "in an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act", according to the Uniform Law Commissioners. While the two statutes serve much the same purpose, some differences between them evidently confuse the adjudication and settlement of custody disputes in certain cases, and neither law governs interstate enforcement of custody orders. To address these issues, the Uniform Law Commissioners promulgated a new Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) in 1997. This Act has been adopted by some 26 states to date, and it has been suggested that Michigan do the same.

CONTENT

The bill would create the "Uniform Child-Custody Jurisdiction and Enforcement Act" and repeal the Uniform Child Custody Jurisdiction Act (MCL 600.651-600.673), effective April 1, 2002. The bill would do all of the following:

-- Establish criteria to determine Michigan's jurisdiction in an initial child-custody determination.

- Provide that a Michigan court that made a child-custody determination would have exclusive, continuing jurisdiction over the determination, until certain conditions existed.
- Specify that a Michigan court could not modify another state's child-custody determination except under certain circumstances.
- Provide for temporary, emergency jurisdiction in cases of abandonment or abuse.
- Allow a Michigan court to decline to exercise jurisdiction if another state were a more appropriate forum.
- Require Michigan courts to enforce the child-custody determination of another state that substantially complied with the proposed Act.
- Allow a Michigan court temporarily to enforce a parenting time order issued by another state's court.
- Provide that another state's child-custody determination could be registered in Michigan.
- Allow a person to file a verified application for a warrant to take physical custody of a child who was likely to be injured or removed from Michigan.
- Provide for a prosecutor or the Attorney General to enforce a child-custody determination or a case involving the Hague Convention on the Civil Aspects of International Child Abduction.
- Specify that cases arising before the bill's effective date would be handled under current law.

The bill is divided into four Articles: "General Provisions"; "Jurisdiction"; "Enforcement"; and "Miscellaneous", which are described below.

Article 1--General Provisions

The bill would not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

A child-custody proceeding that pertained to an Indian child, as defined in the Federal Indian Child Welfare Act, would not be subject to the bill to the extent that the proceeding was governed by that Federal Act. A Michigan court would have to treat a tribe and a foreign country as a U.S. state for purposes of Articles 1 and 2. ("Tribe" would mean an Indian tribe or band, or Alaskan native village, that was recognized by Federal law or formally acknowledged by a state.) A child-custody determination by a tribe or a foreign country under factual circumstances in substantial conformity with the bill's jurisdictional standards would have to be recognized and enforced under Article 3. A Michigan court would not have to apply the proposed Act, however, if a foreign country's child custody law violated fundamental principles of human rights.

("Child-custody determination" would mean a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child, including a permanent, temporary, initial, and modification order. A child-custody determination would not include an order relating to child support or other monetary obligation of an individual. "Child-custody proceeding" would mean a proceeding in which legal custody, physical custody, or parenting time with respect to a child was in issue, including a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue could appear. A child-custody proceeding would not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3.)

A child-custody determination by a Michigan court would be binding on all people who had been served under Michigan law, who had been notified under the bill, or who had submitted to the court's jurisdiction, and who had been given an opportunity to be heard. If

a question of jurisdiction were raised upon the request of a party, that question would have to be given priority on the court calendar and handled expeditiously.

Notice required for the exercise of jurisdiction when a person was out-of-state could be given under Michigan law for service of process or by the law of the state in which service was made. Proof of service could be made under the law of either state.

A party to a child-custody proceeding who was not subject to personal jurisdiction in Michigan and was a responding party under Article 2, a party in a proceeding to modify a child-custody determination under Article 2, or a petitioner in an enforcement proceeding under Article 3, could appear and participate without submitting to personal jurisdiction for another proceeding or purpose. This immunity would not extend to civil litigation based on acts unrelated to the proceeding committed by an individual while present in Michigan.

A Michigan court could communicate with a court in another state concerning a proceeding arising under the bill, and the court could allow the parties to participate in that communication. Except for a communication between courts on schedules, calendars, court records, and similar matters, a record would have to be made of a communication between a Michigan court and a court in another state. The parties would have to be informed promptly of the communication and be granted access to the record.

A party to a child-custody proceeding under the bill could offer testimony of witnesses who were located in another state by deposition or other means allowable in Michigan for testimony taken in another state. A Michigan court could permit an individual in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means. Documentary evidence transmitted from another state to a Michigan court by technological means could not be excluded from evidence based on the means of transmission.

A Michigan court could request that a court of another state hold an evidentiary hearing; order a person to produce or give evidence under procedures of that state; order that an evaluation be made with respect to the

custody of a child involved in a pending proceeding; forward to the Michigan court a certified copy of the transcript of the hearing record, the evidence otherwise presented, and an evaluation prepared in compliance with the request; or order a party to a child-custody proceeding or a person having physical custody of the child to appear in the proceeding with or without the child. Upon the request of another state's court, a Michigan court also could hold a hearing or enter an order described above.

Article 2--Jurisdiction

Except for temporary emergency jurisdiction, a Michigan court would have jurisdiction in an initial child-custody determination only in the following situations:

- Michigan was the child's home state on the date the proceeding commenced, or was the home state within six months before that and the child was absent from Michigan but a parent or person acting as a parent continued to live in this State.
- Another state's court did not have jurisdiction under the above criterion or a court of the child's home state declined jurisdiction because a Michigan court was a more appropriate forum and the court found that the child and at least one parent or person acting as a parent had significant connections with Michigan, and substantial evidence was available in Michigan concerning the child's care, protection, training, and personal relationships.
- All courts having jurisdiction under the above criteria had declined to exercise jurisdiction because a Michigan court was a more appropriate forum.
- No court of another state would have jurisdiction under the above criteria.

("Home state" would mean the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before a child-custody proceeding commenced. In the case of a child under six months of age, the term would mean the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence would be considered as part of the period. "Person acting as a parent" would mean a person, other than a parent, who met both of the following criteria: 1) had physical custody of the child or had had

physical custody for six consecutive months, including a temporary absence, within one year immediately before the custody proceeding was commenced, and 2) had been awarded legal custody by a court or claimed a right to legal custody under the law of this State.)

Except as otherwise provided for temporary emergency jurisdiction, a Michigan court that made a child-custody determination consistent with the Act would have exclusive, continuing jurisdiction over the determination until either of the following occurred:

- A Michigan court determined that neither the child nor the child and one parent, nor the child and a person acting as a parent had a significant connection with Michigan and that substantial evidence was no longer available in Michigan concerning the child's care, protection, training, and personal relationships.
- A Michigan court or a court of another state determined that neither the child, nor a parent of the child, nor a person acting as the child's parent resided in Michigan.

A Michigan court could not modify a child-custody determination of another state's court unless the Michigan court had jurisdiction to make an initial child-custody determination and either of the following applied:

- The court of the other state determined that it no longer had exclusive, continuing jurisdiction or that a Michigan court would be a more convenient forum.
- A Michigan court or a court of the other state determined that neither the child, nor a parent of child, nor a person acting as a parent resided in the other state.

A Michigan court would have temporary emergency jurisdiction if a child were present in Michigan and had been abandoned or if it were necessary to protect the child because he or she, or a sibling or parent, was subjected to or threatened with mistreatment or abuse. If a Michigan court exercising temporary emergency jurisdiction were informed that a child-custody proceeding had been commenced in, or determined by, a court of another state, the Michigan court immediately would have to communicate with the other court. Likewise, if a Michigan court that had jurisdiction were informed that a

child-custody proceeding had been commenced in, or made by, a court of another state under a statute similar to the bill, the Michigan court immediately would have to communicate with that other court. The bill specifies that the purpose of communication under these provisions would be to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Except for temporary emergency jurisdiction, a Michigan court could not exercise jurisdiction under the bill, if, at the time of the proceeding commenced, a child-custody proceeding had been commenced in a court of another state having jurisdiction substantially in conformity with the Act, unless those proceedings had been terminated or were stayed because a Michigan court was a more convenient forum.

In a proceeding to modify a child-custody determination, a Michigan court would have to determine whether a proceeding to enforce the determination had been commenced in another state. If so, the Michigan court could do any of the following:

- Stay the proceeding for modification pending the entry of an order of another state's court enforcing, staying, denying, or dismissing the proceeding for enforcement.
- Enjoin the parties from continuing with the proceeding for enforcement.
- Proceed with the modification under conditions it considered appropriate.

A Michigan court that had jurisdiction under the bill could decline to exercise that jurisdiction at any time, if it determined that it was an inconvenient forum under the circumstances and that a court of another state was a more appropriate forum. The issue of inconvenient forum could be raised upon the motion of a party, the court's own motion, or the request of another court.

In determining whether it was appropriate for another state's court to exercise jurisdiction, a Michigan court would have to consider all relevant factors, including the following:

- Whether domestic violence had occurred and was likely to continue and which state could best protect the parties and the child.
- The length of time the child had resided outside of Michigan.
- The distance between the Michigan court and the court in the state that would

assume jurisdiction.

- The parties' relative financial circumstances.
- An agreement by the parties as to which state should assume jurisdiction
- The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- The familiarity of the court of each state with the facts and issues of the pending litigation.

If a Michigan court determined that it was an inconvenient forum and that another state's court was a more appropriate forum, it would have to stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and could impose any other condition the court considered just and proper.

Article 3--Enforcement

Article 3 could be invoked to enforce a child-custody determination and/or an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction.

A Michigan court that did not have jurisdiction to modify a child-custody determination could issue a temporary order enforcing either a parenting time schedule made by a court of another state or the parenting time provisions of a child-custody determination of another state that did not provide for a specific parenting time schedule.

A Michigan court would have to recognize and enforce a child-custody determination of a court of another state if that court exercised jurisdiction that was in substantial conformity with the bill or the determination were made under factual circumstances meeting its jurisdictional standards and had not been modified under the bill.

A child-custody determination issued by a court of another state could be registered in Michigan, with or without a simultaneous request for enforcement, if all of the following were sent to the circuit court:

- A letter or other document requesting registration.

- Two copies, including one certified copy, of the child-custody determination sought to be registered and a statement under penalty of perjury that, to the best of the knowledge and belief of the person seeking registration, the child-custody determination had not been modified.
- Except as otherwise provided under the bill for purposes of confidentiality, the name and address of the person seeking registration and of each parent or person acting as a parent who had been awarded custody or parenting time in the child-custody determination sought to be registered.

Upon receiving these documents, the registering court would have to cause the child-custody determination to be filed as a foreign judgment, and notify each of the named people and give them an opportunity to contest the registration.

A person seeking to contest the validity of a registered child-custody determination would have to request a hearing within 21 days after service of the notice. At that hearing, the court would have to confirm the registered child-custody determination unless the person contesting registration established one of the following:

- The issuing court did not have jurisdiction under Article 2.
- The child-custody determination sought to be registered had been vacated, stayed, or modified by a court of a state having jurisdiction under Article 2.
- The person contesting registration was entitled to notice in the proceedings before the court that issued the child-custody determination in question, but notice of those proceedings was not given in accordance with the bill.

If a proceeding for enforcement were commenced in Michigan and a Michigan court determined that a proceeding to modify the child-custody determination had been commenced in another state having jurisdiction to modify the determination, the enforcing court immediately would have to communicate with the modifying court. The proceeding for enforcement would continue unless the enforcing court, after consultation with the modifying court, stayed or dismissed the proceeding.

A petition for enforcement under Article 3 would have to be verified. A certified copy of

a child-custody determination sought to be enforced and of the order confirming registration, if any, would have to be attached to the petition. Upon the filing of a petition, the court would have to issue an order directing the respondent to appear with or without the child at a hearing and could enter any order necessary to ensure the safety of the parties and the child. The court would have to hold the hearing on the first judicial day possible. The court could extend the date of the hearing at the request of a petitioner.

Unless the court issued a temporary emergency order as provided under the bill, upon a finding that a petitioner was immediately entitled to the physical custody of the child, the court would have to order the child delivered to the petitioner unless the respondent established either of the following:

- The child-custody determination had not been registered and confirmed and 1) the issuing court did not have jurisdiction under Article 2; 2) the determination had been vacated, stayed, or modified by a court having jurisdiction under Article 2 or Federal law; or 3) the respondent was entitled to notice, but notice was not given in accordance with the bill in the proceedings before the issuing court.
- The child-custody determination for which enforcement was sought was registered and confirmed under Article 3, but had been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 or Federal law.

Upon filing a motion seeking enforcement of a child-custody determination, the petitioner could file a verified application for the issuance of a warrant to take physical custody of the child, if the child were likely to suffer serious imminent physical harm or be removed, it from Michigan. If the court found that the child was likely to suffer such harm or be removed, it could issue a warrant to take physical custody of the child. The warrant would be enforceable throughout the State. If the court found on the basis of testimony that a less intrusive remedy was not effective, the court could authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court could authorize law enforcement officers to make a forcible entry at any hour.

A court would have to award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of a party, including costs, communication expenses, attorney fees, investigative fees, witness expenses, travel expenses, and child care expenses during the course of the proceedings, unless the party from whom the fees or expenses were sought established that the award would be clearly inappropriate. The court could not assess fees, costs, or expenses against a state except as otherwise provided by law other than the proposed Act.

A Michigan court would have to accord full faith and credit to an order issued by another state consistent with the bill, that enforced a child-custody determination by a court of another state unless the order had been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2.

An appeal could be taken from a final order in a proceeding under Article 3 in accordance with expedited appellate procedures in other civil cases. Unless the court entered a temporary emergency order, the enforcing court could not stay an order enforcing a child-custody determination pending appeal.

In a case arising under the bill or involving the Hague Convention on the Civil Aspects of International Child Abduction, a prosecutor or the Attorney General could take any lawful action, including a proceeding under Article 3 or another available civil proceeding, to locate a child, obtain the return of a child, or enforce a child-custody determination if there were one or more of the following:

- An existing child-custody determination.
- A request from a court in a pending child-custody proceeding.
- A reasonable belief that a criminal statute had been violated.
- A reasonable belief that the child had been wrongfully removed or retained in violation of the Hague Convention.

The bill states that the prosecutor or the Attorney General would be acting on behalf of the court and could not represent a party to a child-custody determination. At the request of the prosecutor or the Attorney General, a law enforcement officer could take any lawful action reasonably necessary to locate a child or a party and to assist the prosecutor or Attorney General.

Article 4--Miscellaneous

In applying and construing the proposed Act, the court would have to give consideration to the need to promote uniformity of the law with respect to its subject matter among the states enacting the Act.

A motion or other request for relief made in a child-custody or enforcement proceeding that was commenced before the bill's effective date would be governed by the law in effect at the time the motion or other request was made.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

State and Federal uniform laws are necessary because of the mobility of the American public, which can seriously affect child custody disputes. When each parent lives in a different state, more than one state might have the power to adjudicate a dispute between them, which can lead to competing decisions. The situation is further complicated because child custody orders can be modified until the children reach the age of majority. When the parties' circumstances change after a custodial parent has moved to another state, there may be a question as to which state's courts may modify the order. To address these situations, the original uniform law established bases for states to take, retain, and decline jurisdiction, and to recognize orders issued by other states. In addition to updating and streamlining these jurisdictional provisions, the new UCCJEA brings them into conformity with the Federal law and contains effective enforcement remedies.

As promulgated by the Uniform Law Commissioners, the UCCJEA addresses some issues that the Uniform Child Custody Jurisdiction Act does not cover, and resolves differences between that law and the Parental Kidnapping Prevention Act enacted by Congress. Unlike the original uniform Act, the Federal law gives first priority to the home state of the child in determining which state may exercise jurisdiction, and provides that once a state has exercised jurisdiction, it remains the continuing, exclusive jurisdiction until every party to the dispute has left that state. The UCCJEA contains the same

provisions. It also extends temporary, emergency jurisdiction to situations involving threats to a sibling or parent. Temporary jurisdiction can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, the other state declines to take jurisdiction.

Further, the UCCJEA requires a state to enforce a custody or parenting time order from another state that conforms substantially with the Act. The basic procedure for enforcement is registration of the out-of-state order, but an expedited remedy also is available if a court receives a verified petition. In addition, if a child is in danger or is likely to be removed from the enforcing jurisdiction, a petition may be filed for a warrant for law enforcement officers to take physical custody of the child. Another enforcement device gives prosecutors the power to enforce custody or parenting time orders and authorizes law enforcement officers to locate a child or a party upon a prosecutor's request.

By enacting this bill, Michigan would join the other states that have adopted the new uniform law, in order to improve the adjudication of interstate child-custody proceedings, including parenting time disputes, and provide for the enforcement of this and other states' orders.

Supporting Argument

Enactment of the bill would help victims of domestic abuse. Under the bill, the term "child-custody proceeding" would include a proceeding involving protection from domestic violence, in which a custodial or parenting time issue could appear. Also, specific provisions would address situations involving actual or threatened domestic violence. In particular, a court would have temporary, emergency jurisdiction if a child, or a sibling or parent of the child, were subjected to or threatened with mistreatment or abuse. In an expedited proceeding, a court could issue a warrant directing law enforcement officers to take physical custody of a child who was in danger of serious imminent injury. Also, when a court that had jurisdiction determined whether it was appropriate for another state's court to exercise jurisdiction, domestic violence is one of the factors that would have to be considered.

In October 2000, the Michigan Domestic Violence Homicide Prevention Task Force,

chaired by Lt. Governor Dick Posthumous, was created. The task force recently issued a report containing a number of recommendations. Among the items recommended for further review is the replacement of the Uniform Child Custody Jurisdiction Act with the UCCJEA. According to the task force report, "The UCCJEA affords better protection to domestic violence victims and their children and better protection of the due process rights of all parties."

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would update the Uniform Child Custody Jurisdiction Act. There would be no substantial changes to existing law and the bill would not result in new costs to the State or local units of government.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.