

DRL ARTICLE 5A: UCCJEA.

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CUSTODY DETERMINATIONS: include initial, modifications, temporary and permanent orders, AND visitation!

CUSTODY PROCEEDINGS: include visitation, as well as neglect/abuse, TPR/commitments, and paternity; also Family Offense *if* custody is at issue.

UCCJEA proceedings commence with the filing of the first pleading.

HOME STATE: where child lived with parent or person acting as parent for minimum of six months (child younger than six months = from birth).

PERSON: includes trusts, corporation, partnerships, and governments.

PERSON ACTING AS PARENT: having the child for 6 months within 1 year before filing, AND actually awarded custody, or having legal claim to custody.

STATE: United State, District of Columbia, Puerto Rico, Virgin Islands, Native American Tribes; also foreign countries unless those procedures violate fundamental legal rights.

Jurisdictional questions by party or law guardian shall be given priority and decided expeditiously.

Out-State service can either be by NYS rules and personal, mailing with receipt, publication, or other as the Judge allows; OR by rules of the state where service will be made.

Proof of service is NOT needed if out-state party submits to NYS jurisdiction.

Parties in New York pursuant to UCCJEA matter are not automatically subject to personal jurisdiction here for other cases; but are neither immune from service if cause of action then arose here.

Courts communicating between each other shall notify parties and keep a record of correspondence; EXCEPT: as regards calendars and records.

Electronic testimony is allowed in UCCJEA proceedings, as well as electronically transmitted documentary evidence.

NYS court can request an out-state tribunal to conduct an evidentiary hearing, order a person to appear with or without child; evaluate custody; and provide certified transcript. NYC court shall also vice-versa comply with such requests from other

jurisdictions.

Courts MAY allow travel expenses against the other party.

All records shall be preserved at least until the child turns 18, and forwarded on request.

NYS court can make initial custody determination IF: NYS was home state within past 6 months; OR no other state has jurisdiction (or has but declined) AND child/parent have “significant” connection here. The physical presence of party/child is not necessary NOR sufficient.

Jurisdiction continues until no party resides here; nor has a connection and evidence here.

NYS shall NOT modify another jurisdiction’s order unless: NYS has jurisdiction now, AND no party or child resides in other state (or other state declines).

In order to protect a child, sibling, or parent, OR if child was abandoned: NYS can take emergency temporary jurisdiction. If there is no other enforceable order or pending case: NYS temporary custody order continues until other state makes determination; else finalizes when NYS becomes home state. If there is an enforceable order or pending case, NYS order shall set time limit for Petr to get order (mod) from other state.

UCCJEA proceedings must be noticed on both parents (except when rights have been terminated), as well as anyone with physical custody.

UCCJEA shall not be commenced here if a case is already pending in another state, unless stayed as inappropriate forum.

If a modification is filed in NYS while the original state still has a case pending: NYS may proceed, can stay, or enjoin parties from litigating the matter here.

Court can decline jurisdiction due to inconvenient forum, upon motion of: any court, party, child, or law guardian.

Considerations for forum question: domestic violence; length of residence; distance to other locale; finances of parties; agreements; evidence; and which court is more familiar with case, and./or can expedite matters.

Court can decline jurisdiction due to party’s bad conduct; unless the other party acquiesces, or there is no other convenient forum. If court so declines: SHALL award costs: travel, attorney, witness, child care... unless inappropriate; NOT if party is fleeing domestic violence/abuse, NOT in State save by other statute.

Either the first pleading or a separate affidavit shall - if reasonably ascertained - lay out under oath: child's current residence, and addresses for last 5 years; name & address of each person with whom child lived; whether Petr was party/witness to another such case (if so, include court, docket, date of order) or if any other case pending (court, docket, nature); also name & address of any non-party with custody claim.

Court can order **in-state party** to appear with or without child; can order appearance of *non-party* having physical custody, ONLY together with child!

Notice out-state party that failure to appear may result in an adverse decision, as well as imposition of costs.

Courts can enforce orders to return child under Hague Convention.

Courts lacking jurisdiction can nevertheless *temporarily* enforce visitation orders.

Party can register order by filing 2 copies, at least 1 certified, and noticing other party. Unless hearing is held at other parties request within 20 days to vacate registration (for lack of jurisdiction by issuing court, or no notice; or stay/modification of order) then registration is confirmed, and other party must again be noticed.

Registered order may only be enforced; NOT modified!

If a party seeks an enforcement of an order while the original court has a pending modification case: enforcement court may confer with original court, but matter can proceed unless enforcement court itself decides to stay.

Enforcement petitions shall be verified, include certified order (also confirmation if was registered); statements as to whether order was stayed, modified, or registered (date, place); and physical address of child & Resp.

Court SHALL order Resp to appear within 3 days of filing (with or without child); service must be at least 24 hours before.

Court shall give Petr immediate custody unless the order is invalid (same as for registration purposes); and shall also award costs.

Court may take adverse inference from Resp's failure to testify on 5th Amendment grounds.

If there's a warrant issued on verified application under enforcement filing showing imminent risk: hearing shall be next court day after execution, save if adjourned for more than 3 days for exceptional circumstances.

Warrant shall recite facts; order law enforcement to take child; and provide for placement of child pending final determination. Resp must be served with warrant

immediately after child is taken. Warrant is good anywhere in-state, and allows entry into private property; if exigent circumstances: forcible entry allowed at any hour.

Costs shall be awarded to prevailing party, including State; but not against State, or domestic violence victim.

Appeals of UCCJEA orders get preference, whether taken pursuant to FCA or CPLR.

Orders entered pursuant to enforcement proceedings are NOT stayed on appeal; except temporary visitation where court lacked jurisdiction.

Valid out-state orders are accorded full faith and credit.

Prosecutor may present case on behalf of State - NOT private party! - if: there is an existing order; a request by a court; a violation of criminal law or Hague Convention. Prosecutor can have law enforcement assist. Costs shall be assessed against Resp if not prevail.