

CHAPTER 139  
CHILD CUSTODY JURISDICTION—UNIFORM ACT

S. F. 274

AN ACT relating to uniform child-custody jurisdiction.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. LEGISLATIVE INTENT. The general purposes of this Act are to:

1. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody, which have in the past resulted in the shifting of children from state to state with harmful effects on their wellbeing.
2. Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.
3. Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.
4. Discourage continuing controversies over child custody, in the interest of greater stability of home environment and of secure family relationships for the child.
5. Deter abductions and other unilateral removals of children undertaken to obtain custody awards.
6. Avoid relitigation of custody decisions of other states in this state insofar as feasible.
7. Facilitate the enforcement of custody decrees of other states.
8. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

9. Make uniform the law of those states which enact it.

This Act shall be construed to promote the general purposes stated in this section.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

2. "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

3. "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

4. "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

5. "Home state" means the state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

6. "Initial decree" means the first custody decree concerning a particular child.

7. "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

8. "Physical custody" means actual possession and control of a child.

9. "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

10. "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Sec. 3. NEW SECTION. JURISDICTION.

1. A court of this state which is competent to decide child custody matters has jurisdiction to make a child-custody determination by initial or modification decree if:

a. This state is the home state of the child at the time of commencement of the proceeding, or had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

b. It is in the best interest of the child that a court of this state assume jurisdiction because the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

c. The child is physically present in this state, and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

d. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs a, b, or c, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

2. Except under paragraphs c and d of subsection one (1) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child-custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

Sec. 4. NEW SECTION. NOTICE--TO WHOM. Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If

any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section five (5) of this Act.

Sec. 5. NEW SECTION. NOTICE--METHODS. Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

1. By personal delivery outside this state in the manner prescribed for service of process within this state;
2. In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
3. By publication and mailing in accordance with Iowa rules of civil procedure, rules sixty (60) through sixty-three (63); or
4. As directed by the court.

Notice under this section shall be served, mailed, delivered, or last published at least twenty days before any hearing in this state.

Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made.

Notice is not required if a person submits to the jurisdiction of the court.

Sec. 6. NEW SECTION. JURISDICTION WITHHELD. A court of this state shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under section nine (9) of this Act and shall consult the child-custody registry established under section sixteen (16) of this Act concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court

administrator or other appropriate official of the other state.

If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending, to the end that the issue may be litigated in the more appropriate forum and that information may be exchanged in accordance with sections nineteen (19) through twenty-two (22) of this Act. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court, to the end that the issues may be litigated in the more appropriate forum.

Sec. 7. NEW SECTION. INCONVENIENT FORUM.

1. A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case, and that a court of another state is a more appropriate forum.

2. A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

3. In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

a. Whether another state is or recently was the child's home state.

b. Whether another state has a closer connection with the child and the child's family or with the child and one or more of the contestants.

c. Whether substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state.

d. Whether the parties have agreed on another forum which is no less appropriate.

e. Whether the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section one (1) of this Act.

4. Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court, with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

5. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state, or upon any other conditions which may be just and proper, including the condition that a moving party give consent and submit to the jurisdiction of the other forum.

6. The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding, while retaining jurisdiction over the divorce or other proceeding.

7. If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

8. Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

9. Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Sec. 8. NEW SECTION. JURISDICTION DECLINED BY REASON OF CONDUCT.

1. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

2. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

3. In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

Sec. 9. NEW SECTION. INFORMATION SUBMITTED TO COURT.

1. Every party in a custody proceeding, in that party's first pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether he or she:

a. Has participated as a party, witness or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state.

b. Has information of any custody proceeding concerning the child pending in a court of this or any other state.

c. Knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

2. If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

3. Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state, of which that party obtained information during this proceeding.

Sec. 10. NEW SECTION. ADDITIONAL PARTIES. If the court learns from information furnished by the parties pursuant to section nine (9) of this Act, or from other sources, that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of that person's joinder as a party. If the person joined as a party is outside this state, he or she shall be served with process or otherwise notified in accordance with section five (5) of this Act.

Sec. 11. NEW SECTION. APPEARANCE.

1. The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that person to appear personally with the child.

2. If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under section five (5) of this Act include a statement directing that party to appear personally with or without the child, and declaring that failure to appear may result in a decision adverse to that party.

3. If a party to the proceeding who is outside this state is directed to appear or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

Sec. 12. NEW SECTION. EFFECT OF CUSTODY DECREE. A custody decree rendered by a court of this state which had jurisdiction under section three (3) of this Act binds all parties who have been served in this state or notified in accordance with section five (5) of this Act, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made, unless and until that determination is modified pursuant to law.



Sec. 13. NEW SECTION. OUT-OF-STATE CUSTODY DECREE. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act, or which was made under factual circumstances meeting the jurisdictional standards of this Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

Sec. 14. NEW SECTION. MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE. If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act, or has declined to assume jurisdiction to modify the decree, and the court of this state has jurisdiction.

If a court of this state is authorized under this section and section eight (8) of this Act to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section twenty-two (22) of this Act.

Sec. 15. NEW SECTION. FILING AND ENFORCEMENT OF OUT-OF-STATE DECREES. A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

A person violating a custody decree of another state, which makes it necessary to enforce the decree in this state, may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or by that party's witnesses.

Sec. 16. NEW SECTION. REGISTRY OF OUT-OF-STATE DECREES. The clerk of each district court shall maintain a registry in which shall be entered the following:

1. Certified copies of custody decrees of other states received for filing.

2. Communications as to the pendency of custody proceedings in other states.

3. Communications concerning a finding of inconvenient forum by a court of another state.

4. Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Sec. 17. NEW SECTION. CERTIFIED COPIES. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Sec. 18. NEW SECTION. TAKING TESTIMONY IN ANOTHER STATE. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Sec. 19. NEW SECTION. HEARINGS IN ANOTHER STATE. A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the county.

A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Sec. 20. NEW SECTION. ASSISTANCE TO COURTS OF OTHER STATES. Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state, or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced, and any social studies prepared, shall be forwarded by the clerk of the court to the requesting court.

A person within this state may voluntarily give testimony or a statement in this state for use in a custody proceeding outside this state.

Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

Sec. 21. NEW SECTION. PRESERVATION OF DOCUMENTS. In any custody proceeding in this state, the court shall preserve the pleadings, orders and decrees, and any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Sec. 22. NEW SECTION. REQUEST FOR RECORDS. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section twenty-one (21) of this Act.

Sec. 23. NEW SECTION. INTERNATIONAL APPLICATION. The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations, if reasonable notice and opportunity to be heard were given to all affected persons.

Sec. 24. NEW SECTION. JUDICIAL PRIORITY. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act, the case shall be given calendar priority and handled expeditiously.

Sec. 25. NEW SECTION. SHORT TITLE. This Act may be cited as the "Uniform Child Custody Jurisdiction Act".

Sec. 26. Section five hundred ninety-seven point fifteen (597.15), Code 1977, is amended to read as follows:

597.15 CUSTODY OF CHILDREN. If the husband abandons the wife she is entitled to the custody of the minor children, unless the district court, upon application for that purpose, shall otherwise direct, or unless a custody decree is entered in accordance with the provisions of this Act.

Sec. 27. Section five hundred ninety-eight point twenty-one (598.21), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

When a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified. Orders relating to custody of children shall be subject to the provisions of this Act.

Approved June 10, 1977

## CHAPTER 140

### ADOPTION AND PARENTAL RIGHTS

S. F. 363

AN ACT to make technical corrections and to clarify language in the adoption laws and the termination of parental rights laws, and to permit waiver of investigations in cases of adoptions by stepparents or relatives, to allow an investigator to make investigations for interstate or interagency placements, to change the time for giving notice of an adoption hearing from sixty days to twenty days before the hearing date, to eliminate the requirement for formal notice to the department and to the petitioner and the petitioner's spouse, to give the court discretion in the matter of opening records to an adult adopted person who has an adopted minor sibling, to codify provisions relating to access to adoption records which were passed by the 1976 session of the General Assembly, to provide that consents to adoption obtained prior to January 1, 1977 shall be unaffected by the termination requirements which become effective on that date, to eliminate the requirement of "disinterest" on the part of persons witnessing releases of custody, and to state two new grounds for termination of parental rights.