CHAPTER 15

Child Custody and Visitation

CROSS REFERENCES

Compliance with federal law, disability affecting parent’s right to fulfill responsibilities, probable cause order, see Section 63‑21‑20.

ARTICLE 1

General Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑15‑10 | 20‑7‑1525 |
| 63‑15‑20 | 20‑7‑1520 |
| 63‑15‑30 | 20‑7‑1515 |
| 63‑15‑40 | 20‑7‑1530 |
| 63‑15‑50 | 20‑7‑1535 |
| 63‑15‑60 | 20‑7‑1540 |

**SECTION 63‑15‑10.** “Tender Years Doctrine” abolished.

 The “Tender Years Doctrine” in which there is a preference for awarding a mother custody of a child of tender years is abolished.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 26.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1002.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Parent and Child Section 6 , Introductory Comments.

Notes of Decisions

In general 1

1. In general

A mother and father stand in parity with one another as the custody analysis begins and in light of the abolition of the tender years’ doctrine. Purser v. Owens (S.C.App. 2011) 396 S.C. 531, 722 S.E.2d 225, rehearing denied, certiorari denied. Child Custody 24; Child Custody 26

**SECTION 63‑15‑20.** Religious faith.

 In placing the child in the custody of an individual or a private agency or institution, the court shall, whenever practicable, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of such child, or, in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 222.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 140, Religion.

**SECTION 63‑15‑30.** Child’s preference.

 In determining the best interests of the child, the court must consider the child’s reasonable preference for custody. The court shall place weight upon the preference based upon the child’s age, experience, maturity, judgment, and ability to express a preference.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 78.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1001.

C.J.S. Parent and Child Sections 70 to 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 58, Paramount Consideration.

NOTES OF DECISIONS

In general 1

Abuse of discretion 3

Testimony regarding preference 2

1. In general

Family court is required to consider a child’s reasonable preference for custody; however, the weight given to the child’s preference depends upon the child’s age, experience, maturity, judgment, and ability to express a preference, and a determination of the best interests of the child is paramount to the child’s preference. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 78

The significance to be attached to the wishes of children in a custody dispute depends upon the age of the children and the attendant circumstances; the child’s preference will be given little weight where the wishes of the child are influenced by the permissive attitude of the preferred parent. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 78

Minor children’s expressed preference to live with their mother was insufficient to warrant custody award to mother; children were ages six and 10, guardian ad litem recommended custody be awarded to father and stated that children were not mature enough to tell him why they wanted to live with mother, preference of children was only one factor in custody analysis and was not determinative, and family court considered children’s wishes. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 78; Child Custody 421

Trial court did not abuse its discretion, in custody proceedings incident to divorce, in awarding custody of parties’ two younger children to wife, where older of the two expressed preference for living with wife, witnesses testified that children were happy when they visited wife and that older child had friends in wife’s home town, and both parties agreed that children should not be separated. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 78; Child Custody 82; Child Custody 83

2. Testimony regarding preference

Failure to give child’s preference regarding custody controlling weight was not error; while not expressing outright preference, child stated that “he wanted things to stay the way they were,” and family court acknowledged child’s preference in final order, but clearly took other factors, such as mother’s emotional condition and its impact upon child, into consideration in its decision to modify custody arrangement. Payne v. Payne (S.C.App. 2009) 382 S.C. 62, 674 S.E.2d 515, rehearing denied. Child Custody 566

The trial judge is not required to take testimony from the children regarding preference for custody where counsel fails to request that the judge take the testimony and the children’s guardian ad litem testifies as to the children’s preferences. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 500

3. Abuse of discretion

In child custody proceeding, family court did not abuse its discretion in failing to appoint a guardian ad litem or consider child’s preference as to custody; both physician and another witness who interviewed the parties and their children expressed concern that the relationship between mother and 13‑year‑old child was becoming enmeshed, physician specifically recommended that the family court assign child’s custody preference no weight, and no basis existed for appointing a guardian ad litem. Sheila R. v. David R. (S.C.App. 2011) 396 S.C. 41, 719 S.E.2d 682. Child Custody 78; Infants 1238(9)

**SECTION 63‑15‑40.** Consideration of domestic violence.

 (A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence as defined in Section 16‑25‑20 or Section 16‑25‑65 including, but not limited to:

 (1) physical or sexual abuse; and

 (2) if appropriate, evidence of which party was the primary aggressor, as defined in Section 16‑25‑70.

 (B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 48, 61, 260.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1004 to 1005.

C.J.S. Parent and Child Sections 79, 83.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 135.5, Domestic Violence.

S.C. Jur. Divorce Section 28.5, Domestic Violence.

NOTES OF DECISIONS

In general 1

1. In general

Family Court properly considered the totality of the circumstances in determining that daughter’s best interest would be served by awarding sole legal and physical custody to father; court considered the parties’ history of domestic violence, the fitness of each party to handle daughter’s physical and emotional needs, the willingness of each party to facilitate the relationship between daughter and the other parent, the financial and physical resources of the parties, the stability of each party’s home, the amount of time each party has to spend with daughter, each party’s family network of support, child care availability, the loving relationship between daughter and each party, religious training, primary caretaker status, immoral conduct of each party, the guardian ad litem’s opinion, and each party’s respect for court orders. Divine v. Robbins (S.C.App. 2009) 385 S.C. 23, 683 S.E.2d 286, rehearing denied, certiorari denied. Child Custody 511

**SECTION 63‑15‑50.** Domestic violence and visitation; payment for treatment.

 (A) A court may award visitation to a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, as defined in Section 16‑25‑20 or Section 16‑25‑65, or in cases in which complaints were made against both parties, to the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor under Section 16‑25‑70, only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.

 (B) In a visitation order, a court may:

 (1) order an exchange of a child to occur in a protected setting;

 (2) order visitation supervised by another person or agency;

 (3) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to attend and complete, to the satisfaction of the court, a program of intervention for offenders or other designated counseling as a condition of the visitation;

 (4) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty‑four hours preceding the visitation;

 (5) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay a fee to defray the costs of supervised visitation;

 (6) prohibit overnight visitation;

 (7) require a bond from a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, from the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, for the return and safety of the child if that person has made a threat to retain the child unlawfully;

 (8) impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, and any other household member.

 (C) If a court allows a household member to supervise visitation, the court must establish conditions to be followed during the visitation.

 (D) A judge may, upon his own motion or upon the motion of any party, prohibit or limit the visitation when necessary to ensure the safety of the child or the parent who is a victim of domestic violence.

 (E) If visitation is not allowed or is allowed in a restricted manner to provide for the safety of a child or parent who is a victim of domestic violence, the court may order the address of the child and the victim to be kept confidential.

 (F) The court must order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay the actual cost of any medical or psychological treatment for a child who is physically or psychologically injured as a result of one or more acts of domestic violence.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 188, 200, 215.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1014, 1016 to 1018.

**SECTION 63‑15‑60.** De facto custodian.

 (A) For purposes of this section, “de facto custodian” means, unless the context requires otherwise, a person who has been shown by clear and convincing evidence to have been the primary caregiver for and financial supporter of a child who:

 (1) has resided with the person for a period of six months or more if the child is under three years of age; or

 (2) has resided with the person for a period of one year or more if the child is three years of age or older.

 Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child must not be included in determining whether the child has resided with the person for the required minimum period.

 (B) A person is not a de facto custodian of a child until the court determines by clear and convincing evidence that the person meets the definition of de facto custodian with respect to that child. If the court determines a person is a de facto custodian of a child, that person has standing to seek visitation or custody of that child.

 (C) The family court may grant visitation or custody of a child to the de facto custodian if it finds by clear and convincing evidence that the child’s natural parents are unfit or that other compelling circumstances exist.

 (D) No proceeding to establish whether a person is a de facto custodian may be brought concerning a child in the custody of the Department of Social Services.

 (E) If the court has determined by clear and convincing evidence that a person is a de facto custodian, the court must join that person in the action as a party needed for just adjudication under the South Carolina Rules of Civil Procedure.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 274.

Westlaw Topic No. 76D.

RESEARCH REFERENCES

Encyclopedias

143 Am. Jur. Trials 441, Litigation for De Facto Parent to Seek Child Custody or Visitation.

S.C. Jur. Children and Families Section 153, Jurisdiction.

ARTICLE 2

Court‑Ordered Child Custody

Editor’s Note

2012 Act No. 259, Section 2, provides as follows:

“(A) The South Carolina Family Court Study Committee is created to study the feasibility of tracking the outcome of contested temporary and final custody proceedings in the family court.

“(B) The study committee shall be composed of the following members:

“(1) one member of the judiciary appointed by the Chief Justice of the South Carolina Supreme Court;

“(2) the Director of Court Administration, or his designee;

“(3) the Speaker of the House of Representatives, or his designee;

“(4) the President Pro Tempore of the Senate, or his designee;

“(5) the Chairman of the House Judiciary Committee, or his designee;

“(6) the Chairman of the Senate Judiciary Committee, or his designee; and

“(7) the South Carolina Crime Victim Ombudsman, or his designee.

“(C) The members of the study committee shall serve without compensation and may not receive mileage or per diem.

“(D) Staff of the House of Representatives and the Senate shall serve as staff to the study committee, as needed.

“(E) The study committee shall issue its findings concerning the feasibility of tracking the outcome of temporary and final contested custody proceedings in the family court by January 31, 2013.”

**SECTION 63‑15‑210.** Definitions.

 As used in this article:

 (1) “Joint custody” means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions.

 (2) “Sole custody” means a person, including, but not limited to, a parent who has temporary or permanent custody of a child and, unless otherwise provided for by court order, the rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 142, Joint Custody.

S.C. Jur. Children and Families Section 142.50, Sole Custody.

**SECTION 63‑15‑220.** Parenting plans.

 (A) At all temporary hearings where custody is contested, each parent must prepare, file, and submit to the court a parenting plan, which reflects parental preferences, the allocation of parenting time to be spent with each parent, and major decisions, including, but not limited to, the child’s education, medical and dental care, extracurricular activities and religious training. However, the parties may elect to prepare, file, and submit a joint parenting plan. The court shall issue temporary and final custody orders only after considering these parenting plans; however, the failure by a party to submit a parenting plan to the court does not preclude the court from issuing a temporary or final custody order.

 (B) At the final hearing, either party may file and submit an updated parenting plan for the court’s consideration.

 (C) The South Carolina Supreme Court shall develop rules and forms for the implementation of the parenting plan.

HISTORY: 2012 Act No. 259, Section 1, eff August 17, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 130.50, Parenting Plan.

**SECTION 63‑15‑230.** Final custody determination; considerations.

 (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

 (B) The court may award joint custody to both parents or sole custody to either parent.

 (C) If custody is contested or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody, and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.

 (D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 131, The Custody Trial and the Best Interests of the Child.

S.C. Jur. Children and Families Section 142, Joint Custody.

Notes of Decisions

In general 1

Guardian ad litem 2

Review 3

1. In general

In child custody case, rather than merely adopting the recommendation of the guardian ad litem, the court, by its own review of all the evidence, should consider the character, fitness, attitude, and inclinations on the part of each parent as they impact the child as well as all psychological, physical, environmental, spiritual, educational, medical, family, emotional and recreational aspects of the child’s life. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 33

2. Guardian ad litem

Family court properly considered all the relevant factors and circumstances when it awarded custody of child to husband; wife never objected to the sufficiency of guardian ad litem’s (GAL) investigation, she never attempted to request a continuance or sought to remove the GAL, despite knowing the GAL had not contacted her until the eve of the final hearing, wife’s failure to cooperate with the GAL by not returning phone calls and failing to communicate with the GAL contributed to the tardiness of GAL’s interview as well as his observations of wife and child, and family court’s order neither referenced the GAL’s findings nor stated the family court placed any reliance on the GAL’s report or investigation, and doctor, who interviewed both parties and child, gave husband high marks. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

In child custody case, guardian ad litem (GAL) properly expressed his concerns to the family court based on his observations; GAL couched his concern over how child was disciplined as it related to both parents’ discipline styles, and one of GAL’s main concerns when parents divorced was that rules the child was required to follow be the same in both homes and the only way that happened was that both parents had to agree to communicate with each other and set those boundaries. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

In child custody case, it was incumbent upon the guardian ad litem (GAL) to bring wife’s prior mental “episode” to the family court’s attention as any relapse could affect child’s wellbeing; GAL stated his only concern was, if another episode happened, it could possibly put child in danger. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

3. Review

Wife’s claim that her due process rights were violated because the guardian ad litem’s (GAL) report did not comply with statutory notice requirements was not preserved for appellate review, where wife did not object in child custody case when the GAL submitted his report and testified before the family court. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 904

**SECTION 63‑15‑240.** Contents of order for custody affecting rights and responsibilities of parents; best interests of the child.

 (A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

 (1) the approval of a parenting plan;

 (2) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent;

 (3) the award of joint custody, in which case the order must include:

 (a) residential arrangements with each parent in accordance with the needs of each child; and

 (b) how consultations and communications between the parents will take place, generally and specifically, with regard to major decisions concerning the child’s health, medical and dental care, education, extracurricular activities, and religious training;

 (4) other custody arrangements as the court may determine to be in the best interest of the child.

 (B) In issuing or modifying a custody order, the court must consider the best interest of the child, which may include, but is not limited to:

 (1) the temperament and developmental needs of the child;

 (2) the capacity and the disposition of the parents to understand and meet the needs of the child;

 (3) the preferences of each child;

 (4) the wishes of the parents as to custody;

 (5) the past and current interaction and relationship of the child with each parent, the child’s siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child;

 (6) the actions of each parent to encourage the continuing parent‑child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

 (7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute;

 (8) any effort by one parent to disparage the other parent in front of the child;

 (9) the ability of each parent to be actively involved in the life of the child;

 (10) the child’s adjustment to his or her home, school, and community environments;

 (11) the stability of the child’s existing and proposed residences;

 (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

 (13) the child’s cultural and spiritual background;

 (14) whether the child or a sibling of the child has been abused or neglected;

 (15) whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

 (16) whether one parent has relocated more than one hundred miles from the child’s primary residence in the past year, unless the parent relocated for safety reasons; and

 (17) other factors as the court considers necessary.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 131, The Custody Trial and the Best Interests of the Child.

**SECTION 63‑15‑250.** Telephonic and electronic communication between minor child and parents.

 In addition to all rights and duties given to parents pursuant to Section 63‑5‑30:

 (A) when a court orders sole custody to one parent, the custodial parent, except in cases of abuse, neglect, or abandonment, should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child; and

 (B) when a court orders joint custody to both parents, each parent should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the other parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 131, The Custody Trial and the Best Interests of the Child.

S.C. Jur. Children and Families Section 142, Joint Custody.

**SECTION 63‑15‑260.** Equal access to educational and medical records of child by parents.

 Notwithstanding the custody arrangement and in addition to all rights and duties given to parents pursuant to Section 63‑5‑30, each parent has equal access and the same right to obtain all educational records and medical records of his or her minor children and the right to participate in the children’s school activities and extracurricular activities that are held in public locations unless prohibited by an order of the court or State law.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 124, Equal Rights as to Custody.

ARTICLE 3

Uniform Child Custody Jurisdiction and Enforcement Act

Subarticle 1

General Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑15‑300 | 20‑7‑6000 |
| 63‑15‑302 | 20‑7‑6002 |
| 63‑15‑304 | 20‑7‑6004 |
| 63‑15‑306 | 20‑7‑6006 |
| 63‑15‑308 | 20‑7‑6008 |
| 63‑15‑310 | 20‑7‑6010 |
| 63‑15‑312 | 20‑7‑6012 |
| 63‑15‑314 | 20‑7‑6014 |
| 63‑15‑316 | 20‑7‑6016 |
| 63‑15‑318 | 20‑7‑6018 |
| 63‑15‑320 | 20‑7‑6020 |
| 63‑15‑322 | 20‑7‑6022 |

**SECTION 63‑15‑300.** Citation.

 This article may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act”.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 702.

Westlaw Topic No. 76D.

RESEARCH REFERENCES

ALR Library

52 ALR 6th 433 , Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Significant Connection Jurisdiction Provision.

Encyclopedias

143 Am. Jur. Trials 441, Litigation for De Facto Parent to Seek Child Custody or Visitation.

LAW REVIEW AND JOURNAL COMMENTARIES

A small amount of change for the good of the children: Replacing the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act in South Carolina. 58 S.C. L. Rev. 1049 (Summer 2007).

Notes of Decisions

Construction and application 2

Purpose 1

1. Purpose

The primary purpose of the Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) is to provide uniformity of the law with respect to child custody decrees between courts in different states. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 703

2. Construction and application

The Parental Kidnapping Prevention Act (PKPA) and Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) apply to termination of parental rights (TPR) actions. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 730; Infants 2066

**SECTION 63‑15‑302.** Definitions.

 As used in this article:

 (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

 (2) “Child” means an individual who has not attained eighteen years of age.

 (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

 (4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subarticle 3.

 (5) “Commencement” means the filing of the first pleading in a proceeding.

 (6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

 (7) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

 (8) “Initial determination” means the first child custody determination concerning a particular child.

 (9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this article.

 (10) “Issuing state” means the state in which a child custody determination is made.

 (11) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

 (12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.

 (13) “Person acting as a parent” means a person, other than a parent, who:

 (a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

 (b) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

 (14) “Physical custody” means the physical care and supervision of a child.

 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

 (16) “Tribe” means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

 (17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 702.

Westlaw Topic No. 76D.

RESEARCH REFERENCES

ALR Library

53 ALR 6th 419 , Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Temporary Emergency Jurisdiction Provision.

70 ALR 526 , Power of Court to Modify the Provisions of Its Decree Respecting Custody of Child as Affected by Absence of Parent or Child from Its Territorial Jurisdiction.

Encyclopedias

22 Am. Jur. Trials 347, Child Custody Litigation.

Notes of Decisions

Temporary jurisdiction 1

1. Temporary jurisdiction

Family Court lacked subject‑matter jurisdiction under Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) to issue final orders removing child from mother’s custody and terminating mother’s parental rights, though Family Court had valid basis to exercise temporary emergency jurisdiction under UCCJEA; mother and child were traveling through South Carolina at time of removal, mother was Georgia resident, child was born in Pennsylvania, child’s home state was Georgia, and there was evidence that courts in Pennsylvania and Georgia may have made prior custody determinations regarding child. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 730; Infants 2066

**SECTION 63‑15‑304.** Exemption proceedings.

 This article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Adoption 3.

Child Custody 702.

Health 911.

Westlaw Topic Nos. 17, 76D, 198H.

C.J.S. Adoption of Persons Sections 4 to 5, 7 to 9, 48.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

**SECTION 63‑15‑306.** Indian children proceedings exempt.

 (A) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this article to the extent that it is governed by the Indian Child Welfare Act.

 (B) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Subarticles 1 and 2.

 (C) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under Subarticle 3.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Indians 136.

Westlaw Topic No. 209.

**SECTION 63‑15‑308.** Recognition of foreign country custody.

 (A) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Subarticles 1 and 2.

 (B) Except as otherwise provided in subsection (C), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under Subarticle 3.

 (C) A court of this State need not apply this article if the child custody law of a foreign country violates fundamental principles of human rights.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 723, 800.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1277.

United States Supreme Court Annotations

Right of custody, removal of child to foreign country, see Abbott v. Abbott, 2010, 130 S.Ct. 1983, 560 U.S. 1, 176 L.Ed.2d 789, on remand 393 Fed.Appx. 148, 2010 WL 3377233.

**SECTION 63‑15‑310.** Determinations binding.

 A child custody determination made by a court of this State that had jurisdiction under this article binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 63‑15‑314 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 531(1) to 533, 730 to 753.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1035 to 1041, 1052, 1278, 1280.

C.J.S. Parent and Child Sections 139 to 140.

**SECTION 63‑15‑312.** Jurisdiction issues take priority.

 If a question of existence or exercise of jurisdiction under this article is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 746, 764.

Westlaw Topic No. 76D.

**SECTION 63‑15‑314.** Notice; proof of service; submission to jurisdiction.

 (A) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

 (B) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

 (C) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 766.

Westlaw Topic No. 76D.

**SECTION 63‑15‑316.** Immunity.

 (A) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

 (B) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

 (C) The immunity granted by subsection (A) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this State.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 767.

Courts 25.

Process 119.

Westlaw Topic Nos. 76D, 106, 313.

C.J.S. Courts Section 87.

C.J.S. Process Sections 34, 36 to 37.

**SECTION 63‑15‑318.** Communication with out‑of‑state courts.

 (A) A court of this State may communicate with a court in another state concerning a proceeding arising under this article.

 (B) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

 (C) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

 (D) Except as otherwise provided in subsection (C), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

 (E) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 752.

Westlaw Topic No. 76D.

**SECTION 63‑15‑320.** Testimony of out‑of‑state witnesses.

 (A) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order 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 is taken.

 (B) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

 (C) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 762, 779.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1305 to 1306, 1327, 1330 to 1331.

**SECTION 63‑15‑322.** Request for hearing in another state; preservation of records.

 (A) A court of this State may request the appropriate court of another state to:

 (1) hold an evidentiary hearing;

 (2) order a person to produce or give evidence pursuant to procedures of that state;

 (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

 (4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

 (5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

 (B) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (A).

 (C) Travel and other necessary and reasonable expenses incurred under subsections (A) and (B) may be assessed against the parties according to the law of this State.

 (D) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 752, 762, 942.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1191, 1193, 1305 to 1306, 1331.

Subarticle 2

Jurisdiction

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑15‑330 | 20‑7‑6030 |
| 63‑15‑332 | 20‑7‑6032 |
| 63‑15‑334 | 20‑7‑6034 |
| 63‑15‑336 | 20‑7‑6036 |
| 63‑15‑338 | 20‑7‑6038 |
| 63‑15‑340 | 20‑7‑6040 |
| 63‑15‑342 | 20‑7‑6042 |
| 63‑15‑344 | 20‑7‑6044 |
| 63‑15‑346 | 20‑7‑6046 |
| 63‑15‑348 | 20‑7‑6048 |

**SECTION 63‑15‑330.** Basis for jurisdiction.

 (A) Except as otherwise provided in Section 63‑15‑336, a court of this State has jurisdiction to make an initial child custody determination only if:

 (1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State, but a parent or person acting as a parent continues to live in this State;

 (2) a court of another state does not have jurisdiction under item (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 63‑15‑342 or 63‑15‑344, and:

 (a) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

 (b) substantial evidence is available in this State concerning the child’s care, protection, training, and personal relationships;

 (3) all courts, having jurisdiction under item (1) or (2), have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 63‑15‑342 or 63‑15‑344; or

 (4) no court of any other state would have jurisdiction under the criteria specified in item (1), (2), or (3).

 (B) Subsection (A) is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

 (C) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 730 to 752.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1052, 1278, 1280.

United States Supreme Court Annotations

Child custody, return of child to foreign country pursuant to Hague Convention return order did not render appeal of order moot, see Chafin v. Chafin, 2013, 133 S.Ct. 1017, 568 U.S. 165, 185 L.Ed.2d 1, on remand 2013 WL 4018591, on remand 742 F.3d 934. Child Custody 911; Treaties 8

NOTES OF DECISIONS

In general 1

Contacts with State 3

Interstate custody disputes 2

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1. In general

Under Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA), courts defer to the jurisdiction of the state that initially rules on a child custody matter. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 730

Neither Uniform Child Custody Jurisdiction Act nor Parental Kidnapping Act applied to determination whether trial court had subject matter jurisdiction to enter post‑decree orders related to child support and payment of medical expenses. Arnal v. Fraser (S.C. 2007) 371 S.C. 512, 641 S.E.2d 419, rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29. Child Support 507

Once custody decree has been entered, jurisdiction of decree state continues under Uniform Child Custody Jurisdiction Act (UCCJA) if one parent continues to reside in decree state and substantial evidence remains there, even though another state has become child’s home state. Charest v. Charest (S.C.App. 1997) 329 S.C. 511, 495 S.E.2d 784. Child Custody 745

Under Uniform Child Custody Jurisdiction Act (UCCJA), if connection with state who entered child custody decree state ends because all parties involved have moved away or contact with decree state has become slight, another state may assume jurisdiction to modify custody decree. Charest v. Charest (S.C.App. 1997) 329 S.C. 511, 495 S.E.2d 784. Child Custody 745

2. Interstate custody disputes

The Parental Kidnapping Prevention Act (PKPA) and the Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) govern subject matter jurisdiction in interstate child custody disputes. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 730

The Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA) govern the subject matter jurisdiction of state courts to rule in interstate custody disputes; because the PKPA is federal legislation, its provisions will govern any conflict between it and the UCCJA. Clay v. Burckle (S.C.App. 2006) 369 S.C. 651, 633 S.E.2d 173. Child Custody 707; Child Custody 730

A court may exercise continuing jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA) when there are sufficient contacts with the child and his parent(s) to justify legitimate state interest in the outcome of the dispute, and if sufficient evidence is available to enable the court to make a fair determination of custody based upon the best interest of the child. Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Child Custody 734; Child Custody 745

Once a child custody decree has been entered, the decree state has exclusive continuing jurisdiction, which is not necessarily affected by a child’s residence in another state, pursuant to Uniform Child Custody Jurisdiction Act (UCCJA). Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Child Custody 733; Child Custody 745

South Carolina had jurisdiction to order emergency change in custody of child from ex‑wife to ex‑husband, under Parental Kidnapping Prevention Act (PKPA) and Uniform Child Custody Jurisdiction Act (UCCJA); ex‑wife, ex‑husband, and child were South Carolina residents at time of initial custody decree, and, as such, jurisdictional requirements of PKPA and UCCJA were satisfied at that time, South Carolina had continuing jurisdiction over custody dispute under UCCJA, and residence of ex‑wife and child at time ex‑husband filed complaint seeking emergency custody of child was South Carolina. Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Child Custody 733; Child Custody 745

As state entering custody decree, South Carolina had continuing jurisdiction over former husband’s change of child custody action under Uniform Child Custody Jurisdiction Act (UCCJA), where former husband continued to reside in state and children visited him and remained in contact with him in state. Charest v. Charest (S.C.App. 1997) 329 S.C. 511, 495 S.E.2d 784. Child Custody 730

An Illinois family court improperly assumed jurisdiction of a father’s action for modification of a South Carolina custody and visitation decree where the parties had agreed to South Carolina’s exercise of jurisdiction on more than one occasion (once as recently as 3 months before commencement of the Illinois action), the mother still resided in South Carolina, the children still had a substantial connection to South Carolina, and South Carolina’s family court was familiar with the case. Knoth v. Knoth (S.C. 1989) 297 S.C. 460, 377 S.E.2d 340.

Where husband and wife obtained divorce in South Carolina, with custody of child granted to mother, and mother subsequently moved to Delaware and registered custody order in Delaware pursuant to terms of Uniform Child Custody Jurisdiction Act, Delaware had become child’s “home state” when mother petitioned Delaware Family Court to assume jurisdiction to modify father’s visitation schedule, such that South Carolina Family Court properly declined to exercise jurisdiction over mother with regard to child custody. Kirylik v. Kirylik (S.C. 1987) 292 S.C. 475, 357 S.E.2d 449.

3. Contacts with State

Ex‑husband opposing ex‑wife’s South Carolina child custody modification action “presently resided” in Georgia under section of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governing modification of a custody order issued by a court of another state, and therefore Georgia, as the state which issued divorce decree and custody order, retained jurisdiction over action, where ex‑husband owned real estate and was registered to vote in Georgia, ex‑husband had a Georgia driver’s license, and ex‑husband filed taxes in Georgia. Russell v. Cox (S.C.App. 2009) 383 S.C. 215, 678 S.E.2d 460. Child Custody 730

A child did not have a “significant connection” with the state for purposes of jurisdiction under the Uniform Child Custody Jurisdiction Act (Sections 20‑7‑782 et seq.), although the child was conceived in South Carolina, where the mother moved to Utah and married a Utah resident prior to the child’s birth, the child was born in Utah, the mother and child made only 3 short visits to South Carolina to visit the mother’s family, and the child had no contact with the father or paternal grandparents during these visits, or at any other time. Smoak v. Wright (S.C.App. 1994) 314 S.C. 325, 443 S.E.2d 920.

A mother was not prevented from prosecuting her suit for primary custody of her child in South Carolina merely because the child’s father was a resident of North Carolina. The family court met the UCCJA prerequisites to the exercise of jurisdiction where the mother was a resident of South Carolina and had joint custody of the child, the South Carolina Department of Social Services had investigated the case and the professionals who had seen the child were in South Carolina, and no other state had sought to exercise jurisdiction. Cullen v. Prescott (S.C.App. 1990) 302 S.C. 201, 394 S.E.2d 722.

South Carolina was not an inconvenient forum for child custody issues where South Carolina was the children’s “home state” under the Uniform Child Custody Jurisdiction Act, the children had lived with their father and had attended school in South Carolina for a full school year, and their most current school and medical records were in South Carolina. Mansour v. Mansour (S.C. 1988) 296 S.C. 215, 371 S.E.2d 537.

More than one state may meet the jurisdictional requirements of Section 20‑7‑788, but once a custody decree has been entered, the continuing jurisdiction of the decree state is exclusive. If the decree state’s jurisdiction continues, a person seeking to modify the decree must petition the decree state for modification. Continuing jurisdiction is not affected merely by the fact that another state has become the child’s “home state.” If one parent continues to reside in the decree state, and substantial evidence remains there, its jurisdiction may continue. If connection with the decree state ends, however, another state may assume jurisdiction to modify the decree. Connection with the decree state ends if all the parties involved have moved away or contact with the decree state has otherwise become slight. In such a case, even if a state has continuing jurisdiction under local law, it has lost interstate jurisdiction. Sinclair v. Albrecht (S.C.App. 1985) 287 S.C. 20, 336 S.E.2d 485.

Where a child and his mother, who had custody of him under the terms of a North Carolina decree of divorce had been permanent residents of South Carolina for seven years prior to the commencement of the father’s petition to a South Carolina family court for a change of custody, South Carolina was the home state and the more convenient forum, and the South Carolina court had jurisdiction to hear the case under the Uniform Child Custody Jurisdiction Act, Sections 20‑7‑782, et seq. Williams v. Williams (S.C. 1985) 285 S.C. 270, 329 S.E.2d 751.

4. Out‑of‑state orders

A family court, except as provided by provision of Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) governing temporary emergency jurisdiction, may not modify a custody order issued by a court of another state unless a court of the state where child is located currently has jurisdiction to make an initial custody determination under the UCCJEA and (1) the court of the issuing state determines either that it no longer has continuing jurisdiction or that a court of the state where child is located currently would be a more convenient forum or (2) either a court of the state where the child is located currently or a court of the issuing state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the issuing state. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 725

Florida had continuing exclusive jurisdiction under Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA), and thus South Carolina lacked authority to modify Florida court’s order relating to child’s custody; at time of original custody decree, mother, father, and child were all residents of Florida, where original decree was issued, mother continued to reside in Florida, and, even though child and father had moved out of state, mother remained resident of Florida throughout proceedings. Clay v. Burckle (S.C.App. 2006) 369 S.C. 651, 633 S.E.2d 173. Child Custody 745

**SECTION 63‑15‑332.** Exclusive, continuing jurisdiction.

 (A) Except as otherwise provided in Section 63‑15‑336, a court of this State which has made a child custody determination consistent with Section 63‑15‑330 or 63‑15‑334 has exclusive, continuing jurisdiction over the determination until:

 (1) a court of this State determines that neither the child, the child’s parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child’s care, protection, training, and personal relationships; or

 (2) a court of this State or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this State.

 (B) A court of this State which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 63‑15‑330.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 744 to 745.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1052.

**SECTION 63‑15‑334.** Custody modification by another state.

 Except as otherwise provided in Section 63‑15‑336, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under Section 63‑15‑330(A)(1) or (2) and:

 (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 63‑15‑332 or that a court of this State would be a more convenient forum under Section 63‑15‑342; or

 (2) a court of this State or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 725 to 726.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1052, 1281.

RESEARCH REFERENCES

ALR Library

60 ALR 6th 193 , Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Exclusive, Continuing Jurisdiction Provision‑Other Than No Significant Connection/Substantial Evidence.

NOTES OF DECISIONS

In general 1

1. In general

A family court, except as provided by provision of Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) governing temporary emergency jurisdiction, may not modify a custody order issued by a court of another state unless a court of the state where child is located currently has jurisdiction to make an initial custody determination under the UCCJEA and (1) the court of the issuing state determines either that it no longer has continuing jurisdiction or that a court of the state where child is located currently would be a more convenient forum or (2) either a court of the state where the child is located currently or a court of the issuing state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the issuing state. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 725

Ex‑husband opposing ex‑wife’s South Carolina child custody modification action “presently resided” in Georgia under section of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governing modification of a custody order issued by a court of another state, and therefore Georgia, as the state which issued divorce decree and custody order, retained jurisdiction over action, where ex‑husband owned real estate and was registered to vote in Georgia, ex‑husband had a Georgia driver’s license, and ex‑husband filed taxes in Georgia. Russell v. Cox (S.C.App. 2009) 383 S.C. 215, 678 S.E.2d 460. Child Custody 730

**SECTION 63‑15‑336.** Temporary jurisdiction.

 (A) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

 (B) If there is no previous child custody determination that is entitled to be enforced under this article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, a child custody determination made under this section becomes a final determination, if it so provides and this State becomes the home state of the child.

 (C) If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

 (D) A court of this State which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, shall immediately communicate with the other court. A court of this State, which is exercising jurisdiction pursuant to Sections 63‑15‑330 through 63‑15‑334, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 753.

Westlaw Topic No. 76D.

RESEARCH REFERENCES

ALR Library

53 ALR 6th 419 , Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Temporary Emergency Jurisdiction Provision.

70 ALR 526 , Power of Court to Modify the Provisions of Its Decree Respecting Custody of Child as Affected by Absence of Parent or Child from Its Territorial Jurisdiction.

Encyclopedias

22 Am. Jur. Trials 347, Child Custody Litigation.

Notes of Decisions

Construction and application 1

1. Construction and application

Family Court lacked subject‑matter jurisdiction under Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) to issue final orders removing child from mother’s custody and terminating mother’s parental rights, though Family Court had valid basis to exercise temporary emergency jurisdiction under UCCJEA; mother and child were traveling through South Carolina at time of removal, mother was Georgia resident, child was born in Pennsylvania, child’s home state was Georgia, and there was evidence that courts in Pennsylvania and Georgia may have made prior custody determinations regarding child. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 730; Infants 2066

A family court, except as provided by provision of Uniform Child‑Custody Jurisdiction and Enforcement Act (UCCJEA) governing temporary emergency jurisdiction, may not modify a custody order issued by a court of another state unless a court of the state where child is located currently has jurisdiction to make an initial custody determination under the UCCJEA and (1) the court of the issuing state determines either that it no longer has continuing jurisdiction or that a court of the state where child is located currently would be a more convenient forum or (2) either a court of the state where the child is located currently or a court of the issuing state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the issuing state. South Carolina Department of Social Services v. Tran (S.C.App. 2016) 418 S.C. 308, 792 S.E.2d 254. Child Custody 725

**SECTION 63‑15‑338.** Notice; obligation to join party and right to intervene.

 (A) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of Section 63‑15‑314 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

 (B) This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

 (C) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by the law of this State as in child custody proceedings between residents of this State.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 765, 766.

Westlaw Topic No. 76D.

NOTES OF DECISIONS

In general 1

1. In general

The trial court had the authority to review the decision of a Missouri court’s child custody decision to determine whether the Missouri order was entered in accordance with the notice requirements of Section 20‑7‑790 and 20‑7‑792; consequently, the trial court erred when it dismissed the appellants’ action for lack of jurisdiction without addressing the issue of proper notice. Clark v. Gordon (S.C.App. 1993) 313 S.C. 240, 437 S.E.2d 144.

SC Code Ann Sections 20‑7‑790, 20‑7‑808 unmistakably declare that state family courts need afford full faith and credit to custody orders of other states only if those orders are competently entered in accordance with standards set forth in Subarticle 2 of Chapter 7 of Children’s code (Sections 20‑7‑782 et seq.); New York temporary custody order was not entitled to full faith and credit where New York Family Court did not give mother notice and opportunity to be heard on father’s custody claim, where there was no evidence in record that mother was served with father’s custody pleadings or had any notice of them, and further, where there is no indication in Order to Show Cause or in father’s affidavit attached thereto that father sought custody of minor child. Purdie v. Smalls (S.C.App. 1987) 293 S.C. 216, 359 S.E.2d 306. Judgment 818(2)

**SECTION 63‑15‑340.** Stays of other proceedings.

 (A) Except as otherwise provided in Section 63‑15‑336, a court of this State may not exercise its jurisdiction under this subarticle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under Section 63‑15‑342.

 (B) Except as otherwise provided in Section 63‑15‑336, a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 63‑15‑346. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

 (C) In a proceeding to modify a child custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

 (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

 (2) enjoin the parties from continuing with the proceeding for enforcement; or

 (3) proceed with the modification under conditions it considers appropriate.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 786 to 787.

Westlaw Topic No. 76D.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143, Uniform Child Custody Jurisdiction Act.

Notes of Decisions

In general 1

1. In general

South Carolina trial court lacked jurisdiction to terminate father’s parental rights and grant stepfather’s petition to adopt child; Georgia courts entered an initial order regarding child custody, Georgia courts had exclusive, continuing jurisdiction, and there was no evidence that Georgia court declined to exercise jurisdiction or determined that South Carolina was a more convenient forum. Anthony H. v. Matthew G. (S.C.App. 2012) 397 S.C. 447, 725 S.E.2d 132, rehearing denied. Adoption 10; Child Custody 749

**SECTION 63‑15‑342.** Inconvenient forum.

 (A) A court of this State, which has jurisdiction under this article to make a child custody determination, may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.

 (B) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

 (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

 (2) the length of time the child has resided outside this State;

 (3) the distance between the court in this State and the court in the state that would assume jurisdiction;

 (4) the relative financial circumstances of the parties;

 (5) any agreement of the parties as to which state should assume jurisdiction;

 (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

 (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

 (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

 (C) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

 (D) A court of this State may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 751.

Westlaw Topic No. 76D.

NOTES OF DECISIONS

In general 1

Travel costs 2

1. In general

Trial court acted within its discretion in determining that Georgia was a more convenient forum for ex‑wife’s child custody modification action, where all previous litigation took place in Georgia, the Georgia court still monitored ex‑wife’s child support, and most of ex‑wife’s visits took place in Georgia. Russell v. Cox (S.C.App. 2009) 383 S.C. 215, 678 S.E.2d 460. Child Custody 751

New York, rather than South Carolina, was more convenient and appropriate forum for former husband’s action to change custody of minor children under Uniform Child Custody Jurisdiction Act (UCCJA), despite fact that former husband continued to reside in South Carolina which had entered original custody decree, where New York had been children’s home state for over five years, New York had most significant connection to children and was location of witnesses who could testify to their daily activities, and children were enrolled in school in New York and spent most of their time there. Charest v. Charest (S.C.App. 1997) 329 S.C. 511, 495 S.E.2d 784. Child Custody 751

South Carolina was not an inconvenient forum for child custody issues where South Carolina was the children’s “home state” under the Uniform Child Custody Jurisdiction Act, the children had lived with their father and had attended school in South Carolina for a full school year, and their most current school and medical records were in South Carolina. Mansour v. Mansour (S.C. 1988) 296 S.C. 215, 371 S.E.2d 537.

Assuming that family court has jurisdiction over custody issue, court acts within discretion in declining jurisdiction under Section 20‑7‑796 where parties were divorced in South Carolina, husband and older son reside in South Carolina, but wife and younger son, who is subject of custody issue, have lived in Georgia for 5 years and people most familiar with child’s present condition are in Georgia. McGee v. McGee (S.C.App. 1986) 287 S.C. 644, 340 S.E.2d 571. Child Custody 733

Where a child and his mother, who had custody of him under the terms of a North Carolina decree of divorce, had been permanent residents of South Carolina for seven years prior to the commencement of the father’s petition to a South Carolina family court for a change of custody, South Carolina was the home state and the more convenient forum, and the South Carolina court had jurisdiction to hear the case under the Uniform Child Custody Jurisdiction Act, Sections 20‑7‑782, et seq. Williams v. Williams (S.C. 1985) 285 S.C. 270, 329 S.E.2d 751.

Trial court’s decision to decline jurisdiction was not abuse of discretion granted to it under Section 20‑7‑796(a), where trial judge specifically determined South Carolina to be inconvenient forum, finding that (1) North Carolina has closer connection with child, respondents, and appellant, (2) substantial evidence concerning child’s present or future care, protection, training, and personal relationships was more readily available in North Carolina, and (3) exercise of jurisdiction would foster jurisdictional competition with North Carolina District Court and encourage continuing controversy over, and possible relitigation of, child support issue, to detriment of child. Oehler v. Clinton (S.C. 1984) 282 S.C. 25, 317 S.E.2d 445. Child Custody 751

2. Travel costs

New York, rather than South Carolina which had entered original custody decree, was clearly more appropriate forum for former husband’s action to change custody of minor children who had been residing in New York for over five years, and, thus, former husband was required to pay children’s travel expenses for their immediate return to New York under statutory requirements for imposing such costs, where all evidence pertaining to allegations that change of custody was warranted would necessarily come from New York. Charest v. Charest (S.C.App. 1997) 329 S.C. 511, 495 S.E.2d 784. Child Custody 751

**SECTION 63‑15‑344.** Unjustifiable jurisdiction.

 (A) Except as otherwise provided in Section 63‑15‑336 or by other law of this State, if a court of this State has jurisdiction under this article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

 (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

 (2) a court of the state otherwise having jurisdiction under Sections 63‑15‑330 through 63‑15‑334 determines that this State is a more appropriate forum under Section 63‑15‑342; or

 (3) no court of any other state would have jurisdiction under the criteria specified in Sections 63‑15‑330 through 63‑15‑334.

 (B) If a court of this State declines to exercise its jurisdiction pursuant to subsection (A), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 63‑15‑330 through 63‑15‑334.

 (C) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (A), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and childcare during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 737 to 738, 746.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1052.

**SECTION 63‑15‑346.** Information regarding other proceedings.

 (A) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

 (1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

 (2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

 (3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

 (B) If the information required by subsection (A) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

 (C) If the declaration as to any of the items described in subsection (A)(1) through (3) 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 other matters pertinent to the court’s jurisdiction and the disposition of the case.

 (D) Each party has a continuing duty to inform the court of any proceeding in this State or any other state that could affect the current proceeding.

 (E) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 769.

Westlaw Topic No. 76D.

C.J.S. Divorce Section 1317.

**SECTION 63‑15‑348.** Persons requested to appear.

 (A) In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

 (B) If a party to a child custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 63‑15‑314 includes a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

 (C) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

 (D) If a party to a child custody proceeding who is outside of this State is directed to appear under subsection (B) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 766, 767.

Westlaw Topic No. 76D.

Subarticle 3

Enforcement

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑15‑350 | 20‑7‑6050 |
| 63‑15‑352 | 20‑7‑6052 |
| 63‑15‑354 | 20‑7‑6054 |
| 63‑15‑356 | 20‑7‑6056 |
| 63‑15‑358 | 20‑7‑6058 |
| 63‑15‑360 | 20‑7‑6060 |
| 63‑15‑362 | 20‑7‑6062 |
| 63‑15‑364 | 20‑7‑6064 |
| 63‑15‑366 | 20‑7‑6066 |
| 63‑15‑368 | 20‑7‑6068 |
| 63‑15‑370 | 20‑7‑6070 |
| 63‑15‑372 | 20‑7‑6072 |
| 63‑15‑374 | 20‑7‑6074 |
| 63‑15‑376 | 20‑7‑6076 |
| 63‑15‑378 | 20‑7‑6078 |
| 63‑15‑380 | 20‑7‑6080 |
| 63‑15‑382 | 20‑7‑6082 |

**SECTION 63‑15‑350.** Definitions.

 As used in this subarticle:

 (1) “Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

 (2) “Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 814.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1305 to 1306, 1331.

**SECTION 63‑15‑352.** Enforcement under Hague Convention.

 Under this subarticle a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 816.

Westlaw Topic No. 76D.

United States Supreme Court Annotations

Right of custody, removal of child to foreign country, see Abbott v. Abbott, 2010, 130 S.Ct. 1983, 560 U.S. 1, 176 L.Ed.2d 789, on remand 393 Fed.Appx. 148, 2010 WL 3377233.

Notes of Decisions

In general 1

1. In general

District court’s inquiry in child abduction case under Hague Convention on the Civil Aspects of International Child Abduction, as implemented by International Child Abduction Remedies Act (ICARA), is not what is in best interests of child as is typically case in child custody matter. Hirst v. Tiberghien, 2013, 947 F.Supp.2d 578. Child Custody 803; Treaties 8

**SECTION 63‑15‑354.** Enforcing other states’ orders.

 (A) A court of this State shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this article or the determination was made under factual circumstances meeting the jurisdictional standards of this article and the determination has not been modified in accordance with this article.

 (B) A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another state. The remedies provided in this subarticle are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 723, 782 to 785.

Westlaw Topic No. 76D.

**SECTION 63‑15‑356.** Visitation.

 (A) A court of this State which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:

 (1) a visitation schedule made by a court of another state; or

 (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

 (B) If a court of this State makes an order under subsection (A)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Subarticle 2. The order remains in effect until an order is obtained from the other court or the period expires.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 762.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1305 to 1306, 1331.

**SECTION 63‑15‑358.** Registration of out‑of‑state custody order.

 (A) A child custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

 (1) a letter or other document requesting registration;

 (2) two copies, including one certified copy, of the 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 order has not been modified; and

 (3) except as otherwise provided in Section 63‑15‑346, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

 (B) On receipt of the documents required by subsection (A), the registering court shall:

 (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

 (2) serve notice upon the persons named pursuant to subsection (A)(3) and provide them with an opportunity to contest the registration in accordance with this section.

 (C) The notice required by subsection (B)(2) must state that:

 (1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

 (2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

 (3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

 (D) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

 (1) the issuing court did not have jurisdiction under Subarticle 2;

 (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Subarticle 2; or

 (3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which registration is sought.

 (E) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

 (F) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 715.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1278, 1280.

**SECTION 63‑15‑360.** Enforcement of registered order.

 (A) A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another state.

 (B) A court of this State shall recognize and enforce, but may not modify, except in accordance with Subarticle 2, a registered child custody determination of a court of another state.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 723, 782 to 785.

Westlaw Topic No. 76D.

NOTES OF DECISIONS

In general 1

Validity of judgment 2

1. In general

Sections 20‑7‑790 and 20‑7‑808 declare that South Carolina must afford full faith and credit to custody orders of other states only if those orders are competently entered in accordance with standards set forth in Subarticle 2 of Chapter 7 of the Children’s Code. Clark v. Gordon (S.C.App. 1993) 313 S.C. 240, 437 S.E.2d 144. Child Custody 719

2. Validity of judgment

An award of attorney fees and guardian ad litem fees, which was based on the mother’s unjustified refusal to comply with a California modified custody decree, would be reversed where it was found that California did not have jurisdiction to issue the decree. Schwartz v. Schwartz (S.C.App. 1993) 311 S.C. 303, 428 S.E.2d 748, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 314 S.C. 335, 444 S.E.2d 498.

Sections 20‑7‑790, 20‑7‑808 unmistakably declare that state family courts need afford full faith and credit to custody orders of other states only if those orders are competently entered in accordance with standards set forth in Subarticle 2 of Chapter 7 of Children’s code (Sections 20‑7‑782 et seq.); New York temporary custody order was not entitled to full faith and credit where New York Family Court did not give mother notice and opportunity to be heard on father’s custody claim, where there was no evidence in record that mother was served with father’s custody pleadings or had any notice of them, and further, where there is no indication in Order to Show Cause or in father’s affidavit attached thereto that father sought custody of minor child. Purdie v. Smalls (S.C.App. 1987) 293 S.C. 216, 359 S.E.2d 306. Judgment 818(2)

**SECTION 63‑15‑362.** Modification pending out‑of‑state.

 If a proceeding for enforcement under this subarticle is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Subarticle 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 748, 752, 786.

Westlaw Topic No. 76D.

**SECTION 63‑15‑364.** Enforcement petition.

 (A) A petition under this subarticle must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

 (B) A petition for enforcement of a child custody determination must state:

 (1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

 (2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this article and, if so, identify the court, the case number, and the nature of the proceeding;

 (3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

 (4) the present physical address of the child and the respondent, if known;

 (5) whether relief in addition to the immediate physical custody of the child and attorney’s fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

 (6) if the child custody determination has been registered and confirmed under Section 63‑15‑358, the date and place of registration.

 (C) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

 (D) An order issued under subsection (C) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 63‑15‑372, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

 (1) the child custody determination has not been registered and confirmed under Section 63‑15‑358 and that:

 (a) the issuing court did not have jurisdiction under Subarticle 2;

 (b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Subarticle 2;

 (c) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which enforcement is sought; or

 (2) the child custody determination for which enforcement is sought was registered and confirmed under Section 63‑15‑356, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subarticle 2.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 715, 769.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1278, 1280, 1317.

**SECTION 63‑15‑366.** Service of petition and order.

 Except as otherwise provided in Section 63‑15‑370, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 766.

Westlaw Topic No. 76D.

**SECTION 63‑15‑368.** Physical custody of child.

 (A) Unless the court issues a temporary emergency order pursuant to Section 63‑15‑336, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

 (1) the child custody determination has not been registered and confirmed under Section 63‑15‑358 and that:

 (a) the issuing court did not have jurisdiction under Subarticle 2;

 (b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subarticle 2; or

 (c) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which enforcement is sought; or

 (2) the child custody determination for which enforcement is sought was registered and confirmed under Section 63‑15‑358 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subarticle 2.

 (B) The court shall award the fees, costs, and expenses authorized under Section 63‑15‑372 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

 (C) If a party called to testify refuses to answer on the ground that the testimony may be self‑incriminating, the court may draw an adverse inference from the refusal.

 (D) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 783.

Westlaw Topic No. 76D.

**SECTION 63‑15‑370.** Warrant to take physical custody.

 (A) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

 (B) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 63‑15‑364(B).

 (C) A warrant to take physical custody of a child must:

 (1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

 (2) direct law enforcement officers to take physical custody of the child immediately; and

 (3) provide for the placement of the child pending final relief.

 (D) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

 (E) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

 (F) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child’s custodian.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 762.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1305 to 1306, 1331.

**SECTION 63‑15‑372.** Costs.

 (A) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and childcare during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

 (B) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 940 to 959.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1190 to 1199.

**SECTION 63‑15‑374.** Full faith and credit.

 A court of this State shall accord full faith and credit to an order issued by another state and consistent with this article which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Subarticle 2.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 719.

Westlaw Topic No. 76D.

**SECTION 63‑15‑376.** Appeals.

 An appeal may be taken from a final order in a proceeding under this subarticle in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 63‑15‑336, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 903, 905, 906.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1164, 1166 to 1169.

C.J.S. Parent and Child Sections 147 to 148.

**SECTION 63‑15‑378.** Remedies.

 (A) In a case arising under this article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under this subarticle or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

 (1) an existing child custody determination;

 (2) a request to do so from a court in a pending child custody proceeding;

 (3) a reasonable belief that a criminal statute has been violated; or

 (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

 (B) A prosecutor acting under this section acts on behalf of the court and may not represent any party.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 814.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1305 to 1306, 1331.

**SECTION 63‑15‑380.** Assistance of law enforcement.

 At the request of a prosecutor acting under Section 63‑15‑378, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under Section 63‑15‑378.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Sheriffs and Constables 86, 93.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 66 to 79, 86.

**SECTION 63‑15‑382.** Assessment of assistance costs.

 If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under Section 63‑15‑378 or 63‑15‑380.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 942.

Westlaw Topic No. 76D.

C.J.S. Divorce Sections 1191, 1193.

Subarticle 4

Miscellaneous Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑15‑390 | 20‑7‑6090 |
| 63‑15‑392 | 20‑7‑6092 |
| 63‑15‑394 | 20‑7‑6094 |

**SECTION 63‑15‑390.** Uniformity of application.

 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 702.

Statutes 226.

Westlaw Topic Nos. 76D, 361.

C.J.S. Statutes Sections 306, 358 to 361.

**SECTION 63‑15‑392.** Severability.

 If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 702.

Statutes 64(7).

Westlaw Topic Nos. 76D, 361.

C.J.S. Statutes Sections 83, 88.

**SECTION 63‑15‑394.** Applicability to prior proceedings.

 A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 705.

Westlaw Topic No. 76D.

ARTICLE 4

South Carolina Blind Person’s Right to Parent Act

**SECTION 63‑15‑400.** Decisions on guardianship, custody, or visitation not to be based solely on person’s blindness.

 In making decisions on guardianship, custody, or visitation where a party to the action is blind, the court may not deny the party guardianship, custody, or visitation of a child solely because the party is blind. The blindness of a party only must be used to determine whether or not granting guardianship, custody, or visitation to the party would be in the best interest of the child.

HISTORY: 2014 Act No. 193 (S.687), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 193, Section 1, provides as follows:

“SECTION 1. This act may be cited as the ‘South Carolina Blind Person’s Right to Parent Act’.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 120, Who May Serve as Guardian Ad Litem.

S.C. Jur. Children and Families Section 124, Equal Rights as to Custody.

**SECTION 63‑15‑410.** Adoption petitions not to be denied solely because of person’s blindness.

 (A) When the Department of Social Services, a guardian, or a child placement agency considers an adoption petition, the department, guardian, or child placement agency may not deny the petition solely because the petitioner is blind.

 (B) In making a determination of adoption where the petitioner is blind, the court may not deny the petition solely because the petitioner is blind. The blindness of the petitioner only must be used to determine whether or not granting the adoption would be in the best interest of the child.

HISTORY: 2014 Act No. 193 (S.687), Section 2, eff June 2, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 22, Factors to be Considered in Adoption Proceeding.

**SECTION 63‑15‑420.** Regulations.

 Within one year of the adoption of this act, the Department of Social Services shall promulgate regulations prohibiting a local department from removing a child from a home and placing the child in foster care solely because the child’s parent or guardian is blind.

HISTORY: 2014 Act No. 193 (S.687), Section 2, eff June 2, 2014.

**SECTION 63‑15‑430.** Definitions.

 For purposes of this act, the term “blind” or “blindness” means:

 (A) vision that is 20/200 or less in the best corrected eye; or

 (B) vision that subtends an angle of not greater than twenty degrees in the best corrected eye.

HISTORY: 2014 Act No. 193 (S.687), Section 2, eff June 2, 2014.

ARTICLE 5

Uniform Deployed Parents Custody and Visitation Act

Subarticle 1

General Provisions

**SECTION 63‑15‑500.** Short title.

 This chapter may be cited as the “Uniform Deployed Parents Custody and Visitation Act”.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑502.** Definitions.

 As used in this article:

 (1) “Adult” means an individual who is at least eighteen years of age or an emancipated minor.

 (2) “Caretaking authority” means the right to live with and care for a child on a day‑to‑day basis, including physical custody, parenting time, right to access, and visitation.

 (3) “Child” means:

 (a) an unemancipated individual who has not attained eighteen years of age; or

 (b) an adult son or daughter by birth or adoption or under the law of this State, other than this article, who is the subject of an existing court order concerning custodial responsibility.

 (4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

 (5) “Court” means an entity authorized under the law of this State, other than this article, to establish, enforce, or modify a decision regarding custodial responsibility.

 (6) “Custodial responsibility” is a comprehensive term that includes any and all powers and duties relating to caretaking authority and decision‑making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation, and the authority to designate limited contact with a child.

 (7) “Decision‑making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extra‑curricular activities, and travel. The term does not include day‑to‑day decisions that necessarily accompany a grant of caretaking authority.

 (8) “Deploying parent” means a service member, who is deployed or has been notified of impending deployment, and is:

 (a) a parent of a child under the law of this State other than this article; or

 (b) an individual other than a parent who has custodial responsibility of a child under the law of this State other than this article;

 (9) “Deployment” means the movement or mobilization of a service member to a location for more than ninety days but fewer than eighteen months pursuant to an official order that:

 (a) is designated as unaccompanied;

 (b) does not authorize dependent travel; or

 (c) otherwise does not permit the movement of family members to that location.

 (10) “Family member” includes a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child and an individual recognized to be in a familial relationship with a child under the law of this State other than this article.

 (11) “Limited contact” means the opportunity for a nonparent to visit with a child for a limited period of time. The term includes authority to take the child to a place other than the residence of the child.

 (12) “Nonparent” means an individual other than a deploying parent or other parent.

 (13) “Other parent” means an individual who, in common with a deploying parent, is:

 (a) the parent of a child under the law of this State other than this article; or

 (b) an individual other than a parent with custodial responsibility of a child under the law of this State other than this article.

 (14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

 (15) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

 (16) “Service member” means a member of a uniformed service.

 (17) “Sign” means, with present intent to authenticate or adopt a record to:

 (a) execute or adopt a tangible symbol; or

 (b) attach to or logically associate with the record an electronic symbol, sound, or process.

 (18) “State” means a state of the United States, the District of Columbia, Puerto Rico, and the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

 (19) “Uniformed service” means:

 (a) active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

 (b) the Merchant Marine, the commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

 (c) the National Guard.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑504.** Remedies for noncompliance.

 In addition to other relief provided by the law of this State, other than this article, if a court finds that a party to a proceeding under this article has acted in bad faith or intentionally failed to comply with this article or a court order issued pursuant to this article, the court may assess reasonable attorney’s fees and costs of the opposing party and order other appropriate relief.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑506.** Jurisdiction.

 (A) A court may issue an order regarding custodial responsibility pursuant to this article only if the court has jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act. If the court has issued a temporary order regarding custodial responsibility pursuant to Subarticle 3, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

 (B) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Subarticle 2, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

 (C) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

 (D) This section does not prohibit the exercise of temporary emergency jurisdiction by a court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

CROSS REFERENCES

Proceeding for temporary custody order, see Section 63‑15‑524.

Uniform Child Custody Jurisdiction and Enforcement Act, see Section 63‑7‑6000 et seq.

**SECTION 63‑15‑508.** Notice required of deploying parent.

 (A) Except as provided in subsection (D), and subject to subsection (C), a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent providing notification within seven days, such notification must be made as soon as reasonably possible thereafter.

 (B) Except as provided in subsection (D), and subject to subsection (C), each parent shall provide in a record the other parent with a plan for fulfilling that parent’s share of custodial responsibility during deployment as soon as reasonably possible after receiving notice of deployment.

 (C) If an existing court order prohibits disclosure of the address or contact information of the other parent, a notification of deployment pursuant to subsection (A) or notification of a plan for the custodial responsibility during deployment pursuant to subsection (B) may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

 (D) Notice in a record is not required if the parents are living in the same residence and there is actual notice of the deployment or plan.

 (E) In a proceeding regarding custodial responsibility between parents, a court may consider the reasonableness of a parent’s efforts to comply with this section.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑510.** Notification required for change of address.

 (A) Except as otherwise provided in subsection (B), an individual to whom custodial responsibility has been assigned or granted during deployment pursuant to Subarticle 2 or 3 shall notify the deploying parent and any other individual with custodial responsibility of any change of mailing address or residence until the assignment or grant is terminated. The individual shall provide the notice to any court that has issued an existing custody or child support order concerning the child.

 (B) If an existing court or order prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been assigned or granted, a notification of change of mailing address or residence pursuant to subsection (A) may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been assigned or granted.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑512.** General consideration in custody proceeding of parent’s military service.

 In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent’s past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent’s past or possible future deployment.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

Subarticle 2

Agreement Addressing Custodial Responsibility During Deployment

**SECTION 63‑15‑514.** Form of agreement.

 (A) The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment.

 (B) An agreement under subsection (A) must be:

 (1) in writing; and

 (2) signed by both parents and any nonparent to whom custodial responsibility is granted.

 (C) An agreement under subsection (A), if feasible, must:

 (1) identify to the extent feasible the destination, duration, and conditions of the deployment that is the basis for the agreement;

 (2) specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent, if applicable;

 (3) specify a decision‑making authority that accompanies a grant of caretaking authority;

 (4) specify any grant of limited contact to a nonparent;

 (5) if the agreement shares custodial responsibility between the other parent and a nonparent or between two nonparents, provide a process to resolve any dispute that may arise;

 (6) specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child; any role to be played by the other parent in facilitating the contact; and allocation of any costs of communications;

 (7) specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

 (8) acknowledge that any party’s existing child‑support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court;

 (9) provide that the agreement terminates following the deploying parent’s return from deployment according to the procedures in Subarticle 4; and

 (10) if the agreement must be filed pursuant to Section 63‑15‑522, specify which parent shall file the agreement.

 (D) The omission of an item in subsection (C) does not invalidate an agreement entered into pursuant to this section.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑516.** Nature of authority created by agreement.

 (A) An agreement under this subarticle is temporary and terminates pursuant to Subarticle 4 following the return from deployment of the deployed parent, unless the agreement has been terminated before that time by court order or modification of the agreement pursuant to Section 63‑15‑518. The agreement derives from the parent’s custodial responsibility and does not create an independent, continuing right to caretaking authority, decision‑making authority, or limited contact in an individual to whom custodial responsibility is given.

 (B) A nonparent given caretaking authority, decision‑making authority, or limited contact by an agreement under this subarticle has standing to enforce the agreement until it has been terminated pursuant to an agreement of the parents under Section 63‑15‑518, under Subarticle 4, or by court order.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑518.** Modification of agreement.

 (A) The parents may modify an agreement regarding custodial responsibility made pursuant to this article by mutual consent.

 (B) If an agreement under subsection (A) is modified before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

 (C) If an agreement under subsection (A) is modified during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

CROSS REFERENCES

Nature of authority created by agreement, see Section 63‑15‑516.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑520.** Power of attorney.

 If no other parent possesses custodial responsibility under the law of this State, other than this article, or if an existing court order prohibits contact between the child and the other parent, a deploying parent, by power of attorney, may delegate all or part of his or her custodial responsibility to an adult nonparent for the period of deployment. The power of attorney is revocable by the deploying parent through a revocation of the power of attorney signed by the deploying parent.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑522.** Filing agreement or power of attorney with court.

 An agreement or power of attorney made under this subarticle must be filed within a reasonable period of time with any court that has entered an existing order on custodial responsibility or child support concerning the child. The case number and heading of the existing case concerning custodial responsibility or child support must be provided to the court with the agreement or power of attorney.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

CROSS REFERENCES

Form of agreement, see Section 63‑15‑514.

Procedure for terminating temporary grant of custodial responsibility established by agreement, see Section 63‑15‑544.

Subarticle 3

Judicial Procedure for Granting Custodial Responsibility During Deployment

**SECTION 63‑15‑524.** Proceeding for temporary custody order.

 (A) After a deploying parent receives notice of deployment and during the deployment, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521‑522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

 (B) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in an existing proceeding for custodial responsibility of the child with jurisdiction pursuant to Section 63‑15‑506 or, if there is no existing proceeding in a court with jurisdiction pursuant to Section 63‑15‑506, in a new action for granting custodial responsibility during deployment.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

Federal Aspects

Servicemembers Civil Relief Act (SCRA) (SSCRA) (Soldiers’ and Sailors’ Civil Relief Act of 1940); Oct. 17, 1940, ch. 888, as amended Dec. 19, 2003, Pub.L. 108‑189, Section 1, 117 Stat. 2835. Short title, see 50 App. U.S.C.A. Section 501.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑526.** Expedited hearing.

 If a motion to grant custodial responsibility is filed before a deploying parent deploys, the court shall conduct an expedited hearing.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑528.** Testimony by electronic means.

 In a proceeding brought pursuant to this subarticle, a party or witness who is not reasonably available to appear personally may appear and provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑530.** Effect of prior judicial order or agreement.

 In a proceeding for a grant of custodial responsibility pursuant to this subarticle, the following rules apply:

 (1) A prior judicial order designating custodial responsibility of a child in the event of deployment is binding on the court unless the circumstances meet the requirements of the law of this State, other than this article, for modifying a judicial order regarding custodial responsibility.

 (2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility of a child in the event of deployment, including a prior written agreement executed pursuant to Subarticle 2, unless the court finds the agreement contrary to the best interest of the child.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

CROSS REFERENCES

Modifying or terminating assignment or grant of custodial responsibility to nonparent, see Section 63‑15‑542.

**SECTION 63‑15‑532.** Grant of caretaking or decision‑making authority to nonparent.

 (A) On the motion of a deploying parent and in accordance with the law of this State other than this article, a court may grant caretaking authority of a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if it is in the best interest of the child.

 (B) Unless the grant of caretaking authority to a nonparent under subsection (A) is agreed to by the other parent, the grant is limited to an amount of time not greater than:

 (1) the time granted to the deploying parent in an existing permanent custody order, except that the court may add unusual travel time necessary to transport the child; or

 (2) in the absence of an existing permanent custody order, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, except that the court may add unusual travel time necessary to transport the child.

 (C) A court may grant part of the deploying parent’s decision‑making authority for a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the deploying parent is unable to exercise that authority. When a court grants the authority to a nonparent, the court shall specify the decision‑making power that will and will not be granted, including applicable health, educational, and religious decisions.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑534.** Grant of limited contact.

 On motion of a deploying parent and in accordance with the law of this State, other than this article, a court shall grant limited contact with a child to a nonparent who is either a family member of the child or an individual with whom the child has a close and substantial relationship, unless the court finds that the contact would be contrary to the best interest of the child.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑536.** Nature of authority created by order.

 (A) A grant made pursuant to this subarticle is temporary and terminates pursuant to Subarticle 4 following the return from deployment of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision‑making authority, or limited contact in an individual to whom it is granted.

 (B) A nonparent granted caretaking authority, decision‑making authority, or limited contact pursuant to this article has standing to enforce the grant until it is terminated pursuant to Subarticle 4 or by court order.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑538.** Content of temporary custody order.

 (A) An order granting custodial responsibility pursuant to this article must:

 (1) designate the order as temporary; and

 (2) identify to the extent feasible the destination, duration, and conditions of the deployment.

 (B) If applicable, a temporary order for custodial responsibility must:

 (1) specify the allocation of caretaking authority, decision‑making authority, or limited contact among the deploying parent, the other parent, and any nonparent;

 (2) if the order divides caretaking or decision‑making authority between individuals or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any significant dispute that may arise;

 (3) provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

 (4) provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available, unless contrary to the best interest of the child;

 (5) provide for reasonable contact between the deploying parent and the child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order; and

 (6) provide that the order will terminate following return from deployment according to the procedures pursuant to Subarticle 4.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑540.** Order for child support.

 If a court has issued an order providing for grant of caretaking authority pursuant to this subarticle or an agreement granting caretaking authority has been executed pursuant to Subarticle 2, the court may enter a temporary order for child support consistent with the law of this State, other than this article, if the court has jurisdiction under the Uniform Interstate Family Support Act.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

CROSS REFERENCES

Uniform Interstate Family Support Act, see Section 63‑17‑2900 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑542.** Modifying or terminating assignment or grant of custodial responsibility to nonparent.

 (A) Except for an order in accordance with Section 63‑15‑530, or as otherwise provided in subsection (B), and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appx. Sections 521‑522, on motion of a deploying parent or other parent or any nonparent to whom caretaking authority, decision‑making authority, or limited contact has been granted, the court may modify or terminate a grant of caretaking authority, decision‑making authority, or limited contact made pursuant to this article if the modification or termination is consistent with this article and the court finds it is in the best interest of the child. Any modification must be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures in Subarticle 4, unless the grant has been terminated before that time by court order.

 (B) On motion of a deploying parent, the court shall terminate a grant of limited contact.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

Federal Aspects

Servicemembers Civil Relief Act (SCRA) (SSCRA) (Soldiers’ and Sailors’ Civil Relief Act of 1940); Oct. 17, 1940, ch. 888, as amended Dec. 19, 2003, Pub.L. 108‑189, Section 1, 117 Stat. 2835. Short title, see 50 App. U.S.C.A. Section 501.

Subarticle 4

Return From Deployment

**SECTION 63‑15‑544.** Procedure for terminating temporary grant of custodial responsibility established by agreement.

 (A) At any time following return from deployment, a temporary agreement granting custodial responsibility pursuant to Subarticle 2 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

 (B) The temporary agreement granting custodial responsibility terminates:

 (1) if the agreement to terminate specifies a date for termination, on that date; or

 (2) if the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by both parents.

 (C) In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates sixty days from the date of the deploying parent’s giving notice to the other parent of having returned from deployment.

 (D) If the temporary agreement granting custodial responsibility was filed with a court pursuant to Section 63‑15‑522, an agreement to terminate the temporary agreement also must be filed with that court within a reasonable period of time after the signing of the agreement. The case number and heading of the existing custodial responsibility or child support case must be provided to the court with the agreement to terminate.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 143.50, Uniform Deployed Parents Custody and Visitation Act.

**SECTION 63‑15‑546.** Consent procedure for terminating temporary grant of custodial responsibility established by court order.

 At any time following return from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued pursuant to Subarticle 3. After an agreement has been filed, the court shall issue an order terminating the temporary order on the date specified in the agreement. If no date is specified, the court shall issue the order immediately.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑548.** Visitation before termination of temporary grant of custodial responsibility.

 Following return from deployment of a deploying parent until a temporary agreement or order for custodial responsibility established pursuant to Subarticle 2 or 3 is terminated, the court shall enter a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time exceeds the time the deploying parent spent with the child before deployment.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑550.** Termination by operation of law of temporary grant of custodial responsibility established by court order.

 (A) A temporary order for custodial responsibility issued pursuant to Subarticle 3 shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, sixty days from the date of the deploying parent’s giving notice of having returned from deployment to the other parent and any nonparent granted custodial responsibility.

 (B) Any proceedings seeking to prevent termination of a temporary order for custodial responsibility are governed by the law of this State other than this article.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑552.** Uniformity of application and construction.

 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

**SECTION 63‑15‑554.** Relation to Electronic Signatures in Global and National Commerce Act.

 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.

Federal Aspects

Electronic Signatures in Global and National Commerce Act; Pub.L. 106‑229, June 30, 2000, 114 Stat. 464; see 15 U.S.C.A. Section 7001 et seq.

**SECTION 63‑15‑556.** Savings clause.

 This article does not affect the validity of a temporary court order concerning custodial responsibility during deployment that was entered before the effective date of this article.

HISTORY: 2015 Act No. 61 (H.3156), Section 1, eff June 4, 2015.