

CHILD CUSTODY AND VISITATION DETERMINATIONS

MAY 21, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 1690]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1690) to amend title 28 of the United States Code regarding enforcement of child custody orders, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. CHILD CUSTODY AND VISITATION DETERMINATIONS.

Section 1738A of title 28, United States Code is amended as follows:

(1) Subsection (a) is amended by striking “subsection (f) of this section, any child custody determination” and inserting “subsections (f) and (g) of this section, any custody determination or visitation determination”.

(2) Subsection (b)(2) is amended by striking “a parent” and inserting “, but not limited to, a parent or grandparent or, in cases involving a contested adoption, a person acting as a parent”.

(3) Subsection (b)(3) is amended—

(A) by striking “or visitation”;

(B) by striking “and” before “initial orders”; and

(C) by inserting before the semicolon at the end the following: “, and includes decrees, judgments, orders of adoption, and orders dismissing or denying petitions for adoption”.

(4) Subsection (b)(4) is amended to read as follows:

“(4)(A) except as provided in subparagraph (B), ‘home State’ means—

“(i) the State in which, immediately preceding the time involved, the child lived with his or her parents, a parent, or a person acting as a parent, with whom the child has been living for at least six consecutive months, a prospective adoptive parent, or an agency with legal custody during a proceeding for adoption, and

“(ii) in the case of a child less than six months old, the State in which the child lived from birth, or from soon after birth, and periods of temporary absence of any such persons are counted as part of such 6-month or other period; and

“(B) in cases involving a proceeding for adoption, ‘home State’ means the State in which—

“(i) immediately preceding commencement of the proceeding, not including periods of temporary absence, the child is in the custody of the prospective adoptive parent or parents;

“(ii) the child and the prospective adoptive parent or parents are physically present and the prospective adoptive parent or parents have lived for at least six months; and

“(iii) there is substantial evidence available concerning the child’s present or future care;”.

(5) Subsection (b)(5) is amended by inserting “or visitation determination” after “custody determination” each place it appears.

(6) Subsection (b) is amended by striking “and” at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting “; and”, and by adding after paragraph (8) the following:

“(9) ‘visitation determination’ means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.”

(7) Subsection (c) is amended by striking “child custody determination” in the matter preceding paragraph (1) and inserting “custody determination or visitation determination”.

(8) Subsection (c)(2)(D) is amended by adding “or visitation” after “determine the custody”.

(9) Subsection (d) is amended by striking “child custody determination” and inserting “custody determination or visitation determination”.

(10) Subsection (e) is amended—

(A) by striking “child custody determination” and inserting “custody determination or visitation determination”; and

(B) by striking “a child” and inserting “the child concerned”.

(11) Subsection (f) is amended—

(A) by striking “determination of the custody of the same child” and inserting “custody determination”;

(B) in paragraph (1) by striking “child” and by striking “and” after the semicolon;

(C) in paragraph (2) by striking the period and inserting “; and”; and

(D) by adding at the end the following:

“(3) in cases of contested adoption in which the child has resided with the prospective adoptive parent or parents for at least six consecutive months, the court finds by clear and convincing evidence that the court of the other State failed to consider—

“(A) the extent of the detriment to the child in being moved from the child’s custodial environment;

“(B) the nature of the relationship between the biological parent or parents and the child;

“(C) the nature of the relationship between the prospective adoptive parent or parents and the child; and

“(D) the recommendation of the child’s legal representative or guardian ad litem.

This subsection shall apply only if the party seeking a new hearing has acted in good faith and has not abused or attempted to abuse the legal process.”.

(12) Subsection (g) is amended by inserting “or visitation determination” after “custody determination” each place it appears.

(13) Section 1738A is amended by adding at the end the following:

“(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State has declined to exercise jurisdiction to modify such determination.

“(i) In cases of conflicts between 2 or more States, the district courts shall have jurisdiction to determine which of conflicting custody determinations or visitation determinations is consistent with the provisions of this section or which State court is exercising jurisdiction consistently with the provisions of this section for purposes of subsection (g).”.

(14) Section 1738A(c)(2) is amended—

(A) by inserting “or her” after “his” each place it appears; and

(B) in subsection by inserting “or she” after “he”.

Amend the title so as to read:

A bill to amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

PURPOSE AND SUMMARY

H.R. 1690 amends the Parental Kidnaping Prevention Act of 1980, 28 U.S.C. § 1738A, to clarify that the Act was intended to include grandparents as persons who may claim rights to custody or visitation of a child and that orders granting such rights should be enforced in any subsequent state where the children may be moved. It restores to federal courts subject matter jurisdiction to determine which of two conflicting state court custody determinations or visitation determinations is valid based on which state is exercising proper jurisdiction in the case. It also provides that in cases of contested adoptions, a state need not uphold the earlier decision of another state’s court if that state court failed to consider the child’s best interest.

BACKGROUND AND NEED FOR LEGISLATION

Representative Andrews introduced H.R. 1690 on May 21, 1997.

Grandparents with visitation rights are often left helpless when the parent(s) of their grandchildren move and refuse to let them visit the kids. One or both of the parents may move the children to another state and then challenge the visitation order, forcing grandparents to relitigate the issue because the court of the new state does not recognize the existing order from the previous state. Many times, the grandparents do not have the physical or financial ability to fight for visitation or enforce visitation rights already granted. H.R. 1690 would alleviate those obstacles by clarifying that state courts confronting a challenge to a visitation order granted to a grandparent or any other eligible person in another state must, under the Parental Kidnaping Prevention Act, enforce that order.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on H.R. 1690 on April 23, 1998. Testimony was received from three witnesses; Representative Robert Andrews, Anne Haralambie on behalf of the American Bar Association, and Josephine D'Antonio on behalf of Grandparents Count.

COMMITTEE CONSIDERATION

On April 30, 1998, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 1690, as amended, by voice vote, a quorum being present. On May 6, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 1690, without amendment, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1690, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1690, a bill to amend Title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

cc: Hon. John Conyers, Jr.,
Ranking Minority Member.

H.R. 1690—A bill to amend Title 28, United States Code, with respect to the enforcement of child custody and visitation orders

CBO estimates that enacting this legislation would have no significant impact on the federal budget. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

H.R. 1690 would make several changes and clarifications to the current laws relating to child custody and visitation cases. It attempts to enhance the rights of grandparents in these disputes. The bill also would permit the transfer of jurisdiction from state courts to the federal courts in certain cases, which could result in additional costs to federal courts. Because we do not expect many such actions, we estimate that implementing H.R. 1690 would have no significant effect on the caseload of the federal court system.

H.R. 1690 would require state courts to enforce visitation rulings made in the courts of other states. This requirement would be an intergovernmental mandate as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) in those cases where a state does not currently recognize visitation orders issued by a court in another state. However, the mandate would have a minimal impact on the budgets of state, local, and tribal governments because the number of cases involving disputes about the proper application of state visitation orders is small. This bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 18, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Child Custody and Visitation Determinations

Paragraph (1)

This section makes a technical amendment, clarifying that in subsection (a) of the Act, the authorities of every State shall not

modify any child custody determinations or visitation determinations made by the court of another state except as provided in both subsections (f) and (g).

Paragraph (2)

This section clarifies that in subsection (b)(2) of the Act, grandparents are to be included in the definition of a contestant. It also clarifies that including “grandparent” in the definition is not intended to exclude other persons or family members. In contested adoption cases, a contestant may also be a person acting as a parent.

Paragraph (3)

This section amends subsection (b)(3) to include decrees, judgments, orders of adoption, and orders dismissing or denying petitions for adoption in the definition of a “custody determination.” The provisions of the Act would apply to these court orders as well. It also strikes the words, “or visitation” due to a new definition being inserted by Subsection (6) of the bill.

Paragraph (4)

This section divides subsection (b)(4) into (b)(4)(A) and (b)(4)(B). Subsection (b)(4)(A) contains an amended definition of “home State.” The definition of “home State” may also be the state in which the child lived with his or her prospective adoptive parent or an agency with legal custody during a proceeding for adoption. To give this effect in interstate adoptions, the home state of a child less than six months old is amended to be where the child has lived from birth or from soon after birth.

Subsection (b)(4)(B) is a new paragraph that defines “home state” in a case involving an adoption proceeding. In these cases, the “home state” means the state where immediately preceding the adoption proceeding, the child is in the custody of the prospective adoptive parent or parents, both the child and prospective adoptive parent or parents are physically present and the prospective parent or parents have lived in that state for at least six months and there is substantial evidence available concerning the child’s present or future care. The last criteria in the definition is intended to ensure that in the event an adoption is contested in another state, the “home state” must have looked into the quality of the care to be provided by the adoptive parent or parents in order for the Act to apply.

Paragraph (5)

This section clarifies the prohibitions against modifying another state’s custody determinations also applies to visitation determinations.

Paragraph (6)

This section adds a new paragraph (b)(9) which defines a ‘visitation determination.’

Paragraph (7)

This section clarifies in subsection (c)(1) that a custody determination and a visitation determination are two different orders to which the Act applies.

Paragraph (8)

This section clarifies in subsection (c)(2)(D) that the determination of visitation of a child and the determination of custody are two different procedures to which the Act applies.

Paragraph (9)

This section clarifies in subsection (d) that a custody determination and a visitation determination are two different orders to which the Act applies.

Paragraph (10)

This section clarifies in subsection (e) that a custody determination and a visitation determination are two different procedures to which the Act applies. It also amends the last phrase by striking the words “a child” and inserting “the child concerned.”

Paragraph (11)

This section clarifies the language in subsection (f) by stating that a court of another State may modify a custody determination in limited situations.

This section also adds a new situation in which a court may choose not to apply the Act in Subsection (f)(3). A state court would have the option, in an interstate contested adoption case that has already been ruled on in another State, to exercise jurisdiction and modify the decision if the other State had failed to conduct a “best interest of the child analysis.”

This section also states that litigants who have not acted in good faith or have abused or attempted to abuse the system would not be eligible to utilize this provision. This is to prevent biological parents, adoptive parents, attorneys, guardians or other parties from attempting to use this provision to unlawfully gain custody of a child.

Paragraph (12)

This section clarifies in subsection (g) that a custody determination and a visitation determination are two different procedures to which the Act applies.

Paragraph (13)

This section adds new subsections (h), (i), and (j) to the Act. Subsection (h) further clarifies that a State may not modify a visitation determination made by a court of another State unless the court of the other State has declined to exercise jurisdiction to modify that visitation determination.

Subsection (i) states that in all contested proceedings based on the Act, all proceedings and appeals should be expedited.

Subsection (j) restores to federal courts subject matter jurisdiction to determine which state has jurisdiction over custody or visitation cases where two states have entered conflicting orders. This

would overturn the decision in *Thompson v. Thompson*, 184 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988), which held that the Parental Kidnaping Prevention Act did not give the federal courts jurisdiction to determine which of two conflicting decrees is valid although prior to 1988 federal courts did hear these cases. The decision has had the effect of producing conflicting state decisions with no mechanism to determine which is valid. This amendment clarifies Congress' intent that under the PKPA, only one state should have jurisdiction over child custody and visitation cases at a time and will reduce duplicative state court proceedings. In determining which State order is valid, the federal court should look at the facts relating to jurisdiction and not the substantive issues of how or why a custody determination or visitation determination was made.

Paragraph (14)

This section corrects references to 'his' and 'he' to include 'her' and 'she' in Subsection (c)(2).

This section also amends the title of the bill.

AGENCY VIEWS

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, DC, May 5, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We have learned that H.R. 1690 was amended in subcommittee to allow for federal jurisdiction to resolve conflicting child custody orders between two or more states. *The Judicial Conference of the United States opposes the creation of federal jurisdiction to resolve conflicts between states on the issue of child custody disputes arising under the Parental Kidnapping Prevention Act (28 U.S.C. § 17381).*

When this position was adopted in March 1996, the Conference expressed confidence in the ability of state courts to resolve such disputes and support for the efforts of the Conference of Chief Justices to address successfully any existing problems with conflicting state child custody orders. The Conference of Chief Justice also adopted a Resolution in March 1996 opposing the creation of federal jurisdiction in this area.

It is unclear how often one state issues a child custody order that conflicts with a previous custody order in another state and how often states are unable to resolve the conflicts. We know, however, that state court judges often resolve these disputes in a cooperative and effective manner.

In addition, if federal jurisdiction over child custody orders were created, federal courts would be called on to decide substantive issues beyond a simple review of two state court orders (*e.g.*, determining the best interests of the child or whether the child was abandoned or abused). Forcing federal courts into local domestic court jurisdiction will inevitably lead to federal courts enjoining state court orders and proceedings. Furthermore, through the exercise of supplemental jurisdiction, claims transactionally related to

the federal court action could be raised, thereby potentially allowing other custody or family matter issues to be joined.

For these reasons, the Judicial Conferences opposes H.R. 1690 to the extent that the bill brings into federal courts matters which can and should be disposed of by state courts.

Sincerely,

MICHAEL W. BLOOMER,

Assistant Director, Officer of Legislative Affairs.

cc: Members of the Committee on the Judiciary.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1738A OF TITLE 28, UNITED STATES CODE

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in **[subsection (f) of this section, any child custody determination]** *subsections (f) and (g) of this section, any custody determination or visitation determination* made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) “child” means a person under the age of eighteen;

(2) “contestant” means a person, including **[a parent]**, *but not limited to, a parent or grandparent or, in cases involving a contested adoption, a person acting as a parent*, who claims a right to custody or visitation of a child;

(3) “custody determination” means a judgment, decree, or other order of a court providing for the custody **[or visitation]** of a child, and includes permanent and temporary orders, **[and]** initial orders and modifications, *and includes decrees, judgments, orders of adoption, and orders dismissing or denying petitions for adoption;*

[(4) “home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;]

(4)(A) except as provided in subparagraph (B), “home State” means—

(i) the State in which, immediately preceding the time involved, the child lived with his or her parents, a parent, or a person acting as a parent, with whom the child has

been living for at least six consecutive months, a prospective adoptive parent, or an agency with legal custody during a proceeding for adoption, and

(ii) in the case of a child less than six months old, the State in which the child lived from birth, or from soon after birth,

and periods of temporary absence of any such persons are counted as part of such 6-month or other period; and

(B) in cases involving a proceeding for adoption, “home State” means the State in which—

(i) immediately preceding commencement of the proceeding, not including periods of temporary absence, the child is in the custody of the prospective adoptive parent or parents;

(ii) the child and the prospective adoptive parent or parents are physically present and the prospective adoptive parent or parents have lived for at least six months; and

(iii) there is substantial evidence available concerning the child’s present or future care;

(5) “modification” and “modify” refer to a custody determination or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination or visitation determination concerning the same child, whether made by the same court or not;

(6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) “physical custody” means actual possession and control of a child; [and]

(8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States[.]; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A [child custody determination] custody determination or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State;

and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his or her removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and

(ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and

his or her parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and

(ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a **[child custody determination]** *custody determination or visitation determination* consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a **[child custody determination]** *custody determination or visitation determination* is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of **[a child]** *the child concerned*.

(f) A court of a State may modify a **[determination of the custody of the same child]** *custody determination* made by a court of another State, if—

(1) it has jurisdiction to make such a **[child]** custody determination; **[and]**

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination**[.]; and**

(3) *in cases of contested adoption in which the child has resided with the prospective adoptive parent or parents for at least six consecutive months, the court finds by clear and convincing evidence that the court of the other State failed to consider—*

(A) *the extent of the detriment to the child in being moved from the child's custodial environment;*

(B) *the nature of the relationship between the biological parent or parents and the child;*

(C) *the nature of the relationship between the prospective adoptive parent or parents and the child; and*

(D) *the recommendation of the child's legal representative or guardian ad litem.*

This subsection shall apply only if the party seeking a new hearing has acted in good faith and has not abused or attempted to abuse the legal process.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination *or visitation determination* commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination *or visitation determination*.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State has declined to exercise jurisdiction to modify such determination.

(i) In cases of conflicts between 2 or more States, the district courts shall have jurisdiction to determine which of conflicting custody determinations *or visitation determinations* is consistent with the provisions of this section or which State court is exercising jurisdiction consistently with the provisions of this section for purposes of subsection (g).

