

14-13-102. Definitions.

As used in this article, unless the context otherwise requires:

(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 or physical custody of a child or allocating parental responsibilities with respect to a child or providing for visitation, parenting time, or grandparent 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 or physical custody with respect to a child or the allocation of parental responsibilities with respect to a child or visitation, parenting time, or grandparent visitation with respect to a child is an issue. The term includes a proceeding for divorce, dissolution of marriage, legal separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence and domestic abuse, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under part 3 of this article.

(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) (a) "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.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), "home state" does not mean a state in which a child lived with a parent or a person acting as a parent on a temporary basis as the result of an interim order entered pursuant to section [14-10-131.3](#).

(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, 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 or allocated parental responsibilities with respect to a child by a court or claims a right to legal custody or parental responsibilities 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) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Source: L. 2000: Entire article R&RE, p. 1519, § 1, effective July 1. L. 2008: (7) amended, p. 333, § 2, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 2000. Provisions of this section, as it existed in 2000, are similar to those contained in 14-13-103 as said section existed in 1999, the year prior to the repeal and reenactment of this article.

OFFICIAL COMMENT

The UCCJA did not contain a definition of "child." The definition here is taken from the PKPA.

The definition of "child-custody determination" now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as "managing conservatorship" or "parenting plan."

The definition of "child-custody proceeding" has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not "custody proceedings" because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the part 3 enforcement process.

"Commencement" has been included in the definitions as a replacement for the term "pending" found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of "home State" has been reworded slightly. No substantive change is intended from the UCCJA.

The term "issuing State" is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in part 3.

The term "person" has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of "person" is the one that is mandated for all Uniform Acts.

The term "person acting as a parent" has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a "person acting as a parent" under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of "tribe" is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104. (Note: Section 104 of the Act deals with the application to Indian tribes. Colorado did not adopt this section of the Act.)

The term "contestant" as has been omitted from this revision. It was defined in the UCCJA § 2(1) as "a person, including a parent, who claims a right to custody or visitation rights with respect to a child." It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined "decree" and "custody decree" has been eliminated as duplicative of the definition of "custody determination."

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75).

Annotator's note. Since § [14-13-102](#) is similar to § [14-13-103](#) as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

"Custody determination" does not include decision relating to child support. County of Clearwater v. Petrash, 41 Colo. App. 143, 589 P.2d 1370 (1978), aff'd in part and rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979).

Modification of visitation rights is a "custody determination" under subsection (2), and so, pursuant to § [14-13-104](#)(1)(b), where a child and his parents have been living in this state for over a year, a trial court of this state has the jurisdiction to modify a foreign child visitation order. In re Bechard, 40 Colo. App. 516, 577 P.2d 778 (1978).

A temporary restraining order constitutes a "child-custody determination" within the meaning of the UCCJEA. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

"Custody proceeding" interpreted. In re Barden, 678 P.2d 1031 (Colo. App. 1983); Barden v. Blau, 712, P.2d 481 (Colo. 1986).

The definition of "home state" refers to the child's physical residence, not his legal residence or domicile. McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983).

Trial court properly held that Colorado is child's home state since she maintained significant connections here. She has lived with her mother and attended school in Colorado for years, and both her guardian ad litem and therapist are here. In re Dickson, 983 P.2d 44 (Colo. App. 1998) (decided prior to 2000 repeal and reenactment).

Even though a petition is brought by the state and is not a private action brought by a parent or other party seeking custody, the act governs a custody determination made during a child neglect and dependency proceeding. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

The provisions of the UCCJA are implicated whenever the court makes a custody determination, which under this section means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. In re Custody of K.R., 897 P.2d 896 (Colo. App. 1995).

Applied in Zumbrun v. Zumbrun, 42 Colo. App. 37, 592 P.2d 16 (1978); Roberts v. District Court, 198 Colo. 231, 596 P.2d 65 (1979); In re Tricamo, 42 Colo. App. 493, 599 P.2d 273 (1979); Lopez v. District Court, 199 Colo. 207, 606 P.2d 853 (1980); In re Nicholson, 648 P.2d 681 (Colo. App. 1982); In re Tatum, 653 P.2d 74 (Colo. App. 1982); In re Tonnessen, 937 P.2d 863 (Colo. App. 1996).