

## BILL TEXT:

## STATE OF NEW YORK

8652--A

2005-2006 Regular Sessions

## IN ASSEMBLY

June 1, 2005

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein, John, Benjamin, Bradley, A. Cohen, Cook, Cymbrowitz, Lafayette, Lavelle, McEneny, O'Donnell) -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the civil practice law and rules, in relation to service of process, communications between courts and taking of testimony in proceedings under the uniform child custody jurisdiction and enforcement act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1 and 2 of section 75-g of the domestic  
2 relations law, as added by chapter 386 of the laws of 2001, are amended  
3 to read as follows:

4 1. Notice required for the exercise of jurisdiction when a person is  
5 outside this state [~~may~~] shall be given in a manner prescribed by the  
6 law of this state for service of process, as provided in paragraph (a),  
7 (b) or (c) of this subdivision, or by the law of the state in which the  
8 service is made, as provided in paragraph (d) of this subdivision.  
9 Notice must be given in a manner reasonably calculated to give actual  
10 notice [~~but may be by publication if other means are not effective~~]. If  
11 a person cannot be served with notice within the state, the court shall  
12 require that such person be served in a manner reasonably calculated to  
13 give actual notice, as follows:

14 (a) by personal delivery outside the state in the manner prescribed by  
15 section three hundred thirteen of the civil practice law and rules; or  
16 (b) by any form of mail requesting a receipt; or  
17 (c) in such manner as the court, upon motion, directs, including  
18 publication, if service is impracticable under paragraph (a) or (b) of  
19 this subdivision; or  
20 (d) in such manner as prescribed by the law of the state in which  
21 service is made.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 2. Proof of service [~~may be~~] outside the state shall be by affidavit  
2 of the individual who made the service, or in the manner prescribed by  
3 the order pursuant to which service is made. If service is made by mail,  
4 proof may be by a receipt signed by the addressee or other evidence of  
5 delivery to the addressee. Proof of service may also be in the manner  
6 prescribed by the law of [~~this~~] the state [~~or by the law of the state~~]  
7 in which the service is made.

8 § 2. Subdivision 1 of section 75-i of the domestic relations law, as  
9 added by chapter 386 of the laws of 2001, is amended to read as follows:

10 1. A court of this state may communicate and, pursuant to subdivision  
11 four of section seventy-six-c, subdivision two of section seventy-six-e  
12 and section seventy-seven-f of this article, must communicate, with a  
13 court in another state concerning a proceeding arising under this arti-  
14 cle.

15 § 3. Subdivision 2 of section 75-j of the domestic relations law, as  
16 added by chapter 386 of the laws of 2001, is amended to read as follows:

17 2. A court of this state may permit an individual residing in another  
18 state to be deposed or to testify by telephone, audiovisual means, or  
19 other electronic means before a designated court or at another location  
20 in that state. A court of this state shall cooperate with courts of  
21 other states in designating an appropriate location for the deposition  
22 or testimony and the procedures to be followed by the persons taking  
23 such deposition or testimony. Any such testimony or deposition shall be  
24 recorded and preserved for transcription.

25 § 4. Section 77-h of the domestic relations law, as added by chapter  
26 386 of the laws of 2001, is amended to read as follows:

27 § 77-h. Service of petition and order. Except as otherwise provided in  
28 section seventy-seven-j of this title, the petition and order must be  
29 served, by any method authorized by the law of this state, upon respond-  
30 ent and any person who has physical custody of the child. Service may  
31 be made outside the state in the manner prescribed by section seventy-  
32 five-g of this article.

33 § 5. Subdivision (b) of section 302 of the civil practice law and  
34 rules, as amended by chapter 441 of the laws of 1995, is amended to read  
35 as follows:

36 (b) Personal jurisdiction over non-resident defendant in matrimonial  
37 actions or family court proceedings. A court in any matrimonial action  
38 or family court proceeding involving a demand for support, alimony,  
39 maintenance, distributive awards or special relief in matrimonial  
40 actions may exercise personal jurisdiction over the respondent or  
41 defendant notwithstanding the fact that he or she no longer is a resi-  
42 dent or domiciliary of this state, or over his or her executor or admin-  
43 istrator, if the party seeking support is a resident of or domiciled in  
44 this state at the time such demand is made, provided that this state was  
45 the matrimonial domicile of the parties before their separation, or the  
46 defendant abandoned the plaintiff in this state, or the claim for  
47 support, alimony, maintenance, distributive awards or special relief in  
48 matrimonial actions accrued under the laws of this state or under an  
49 agreement executed in this state. The family court may exercise personal  
50 jurisdiction over a non-resident respondent to the extent provided in  
51 sections one hundred fifty-four and one thousand thirty-six and article  
52 five-B of the family court act and article five-A of the domestic  
53 relations law.

54 § 6. This act shall take effect immediately.

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A8652A

**SPONSOR:** Rules (Weinstein)

**TITLE OF BILL:** An act to amend the domestic relations law and the civil practice law and rules, in relation to service of process, communications between courts and taking of testimony in proceedings under the uniform child custody jurisdiction and enforcement act

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court Advisory and Rules Committee.

Enactment of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") in New York State

**L. 2001, c. 386** has been extremely helpful in facilitating uniformity, consistency with federal law and greater enforceability of custody orders across jurisdictions. Now law in 42 states, plus the District of Columbia and the United States Virgin Islands, {1} the UCCJEA has proven to be invaluable. It is evident, however, that some further fine-tuning of the statute is necessary. Accordingly, on the advice of our Advisory Committee, we propose this measure, which should strengthen three important provisions of the statute with no sacrifice of the uniformity that is essential for uniform acts.

First, this measure restores subdivisions one and three of section 75-f of the former Uniform Child Custody Jurisdiction Act ("UCCJA"), which were repealed when the UCCJA was replaced by the UCCJEA. These provisions permitted the Supreme or Family Court to direct service of an order to show cause or a petition involving an out-of-state party by personal service, by mail with proof by a return receipt or by other means directed by the Court. The UCCJEA now does not contain specific provisions governing service out-of-state and this has created a serious impediment for litigants - especially in Family Court where many are pro se and lack the resources and wherewithal to effectuate necessary service.

Restoration of the flexibility of the former UCCJA regarding service of process is essential to ensure fairness to all sides in interstate custody litigation and to facilitate prompt adjudication. Litigants lacking resources to retain out-of-state firms to serve pleadings may either let litigation languish for long periods or may improperly attempt personal service themselves. Victims of family violence, in particular, may require the option of service by mail or other means directed by the Court that are designed to provide actual notice. Ensuring that litigants have access to means of fast, fair, safe and effective service is central to the legislative purposes underlying the UCCJEA, that is, "to provide an effective mechanism to obtain and enforce orders of custody and visitation across state lines and to do so in a manner that ensures that the safety of the children is paramount and that victims of domestic violence and child abuse are protected."

**D.R.L. ¶ (2).**

Second, this measure supplies needed clarity regarding the circumstances under which communication between courts is discretionary and under which it is mandated. Section 75-i(1) of the Domestic Relations Law would be amended to cross-reference to sections 76-c(4), 76-e(2) and 77-f, thus identifying the three situations - temporary emergency jurisdiction, simultaneous child custody proceedings pending in two jurisdictions and simultaneous enforcement and modification proceedings in two jurisdictions - where inter-court communications are mandated. In all other situations, courts retain discretion as to communications with

courts in other jurisdictions.

Third, the measure clarifies that depositions or testimony taken by telephone, audiovisual or other electronic means must be recorded and preserved for transcription, an essential prerequisite for preserving a record for appeal. Courts would be further directed to cooperate in determining the procedures to be followed in taking testimony by these means, including, for example, the swearing - in of witnesses and the handling of objections in depositions.

Finally, the measure would make a technical amendment to section 302(b) of the Civil Practice Law and Rules, that is, to add cross- references to the Uniform Interstate Family Support Act

Article 5- B of the Family

Court Act and the Uniform Child Custody Jurisdiction and Enforcement Act

Article 5-A of the Domestic Relations Law to the provision regarding Family Court jurisdiction over non-resident respondents.

Especially in light of its rapid acceptance around the county, the UCCJEA has become an increasingly useful vehicle for the resolution of the frequent interjurisdictional issues that arise in custody cases. Enactment of this measure would significantly ease the burden on litigants in initiating and conducting proceedings under the UCCJEA and would make a needed correction to the personal jurisdiction provision of the CPLR.

This measure, which would take effect immediately, would have no meaningful fiscal impact on the public Treasury.

2003-04 LEGISLATIVE HISTORY:

Senate 5241 (Rath)

Children & Families

Assembly 7496 (Weinstein)

Passed

2005-06 LEGISLATIVE HISTORY:

Senate 5754-A (Meier)

Social Services, Children & Families

Assembly 8652 (Rules, at request of M. of A. Weinstein et al)

Judiciary

{1} Source: National Conference of Commissioners on Uniform State Laws, A Few Facts About the UCCJEA (Dec.2005) (www.nccusl.org)

{2} This proposal has been modified from its 2005 version to restore the language of former D.R.L. ¶ -f verbatim, thus requiring a return receipt when service is made by mail.

