RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Nonparent Custody and Visitation Act promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.
Uniform Nonparent Custody and Visitation Act

Summary


In *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court recognized a right of a fit parent to make decisions regarding the rearing of his or her child. With that in mind, the UNCVA seeks to balance, within constitutional restraints, the interests of children, parents, and certain nonparents. Notably, the UNCVA:

Recognizes a right to seek custody or visitation for two categories of nonparents: (a) nonparents who have acted as consistent caretakers of a child without expectation of compensation, and (b) nonparents who have a substantial relationship (formed without expectation of compensation) with a child and who demonstrate that denial of custody or visitation cause harm to the child with clear-and-convincing evidence.

Requires that a nonparent’s petition be verified and include specific facts on which the request for custody or visitation is based. This will aid courts in filtering out cases in which the petitioner does not have a meritorious claim and will facilitate more efficient and clear procedures for evaluating custody and visitation petitions.

Provides a presumption that the parent’s decision about custody or visitation is in the best interest of the child. A nonparent would have the burden of rebutting that presumption with clear-and-convincing evidence.

Requires that when custody or visitation rights are sought, notice must be provided to: (a) any parent of the child; (b) any person having custody of the child; (c) any individual having court-ordered visitation with the child; and (d) any attorney, guardian, or similar representative for the child.

Provides a list of factors to guide the court’s decision regarding the child’s best interest. These factors include the child’s relationships with parents and nonparents, the opinion of the child, the age and maturity of the child, past behavior by parents or nonparents, and the impact of the requested rights on the child.

Provides protections for victims of domestic abuse. The court shall presume that custody or visitation rights are not in the best interests of the child if the court finds abuse, neglect, violence, sexual assault, or stalking was committed by the nonparent or member of the nonparent’s household.
Provides that a nonparent granted visitation may be ordered to pay the cost of facilitating visitation, including the cost of transportation.

Does not apply to a proceeding between two or more nonparents unless a parent is party, nor does the act apply to children who are the subject of proceedings for abuse, neglect, or dependency. In addition, under an optional provision, a nonparent may not maintain a proceeding under this act solely on the basis of having served as a foster parent.

The Uniform Nonparent Custody and Visitation Act and the work of the drafting committee is available at www.uniformlaws.org, the website of the Conference.

Respectfully submitted,

Anita Ramasastry, President
National Conference of Commissioners on Uniform State Laws
January 2019
1. **Summary of Resolution(s).**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) requests approval of the Uniform Nonparent Custody and Visitation Act (2018) by the American Bar Association (ABA) House of Delegates.

2. **Approval by Submitting Entity.**

The National Conference of Commissioners on Uniform State Laws granted final approval to the Act at its July 2018 Annual Meeting.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

In 1989, the ABA approved 89M106, encouraging further development of state law on grandparent visitation in accordance with certain guidelines. The UNCVA is not inconsistent with the guidelines in 89M106.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

Not applicable.

6. **Status of Legislation. (If applicable)**

The Uniform Nonparent Custody and Visitation Act has not yet been enacted in any jurisdiction.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

NCCUSL will present the Act to state legislatures for consideration and enactment.

8. **Cost to the Association. (Both direct and indirect costs)**
None.

9. Disclosure of Interest. (If applicable)

None.

10. Referrals.

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts. The drafting committee's work can be found at uniformlaws.org.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Nonparent Custody and Visitation Act (2018), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. **Summary of the Issue that the Resolution Addresses**

The Uniform Nonparent Custody and Visitation Act (2018) provides states with a uniform framework for establishing child custody and visitation rights of nonparents.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

Approval of the Uniform Nonparent Custody and Visitation Act (2018) by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified:**

None known.