

West Virginia Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination – Jurisdiction

§ 48-20-201 Initial child custody jurisdiction (a) Except as otherwise provided in section 20-204 [§ 48-20-204], 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 subdivision (1) of this subsection, 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 20-207 or 20-208 [§ 48-20-207 or § 48-20-208], 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 subdivision (1) or (2) of this subsection 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 20-207 or 20-208 [§ 48-20-207 or § 48-20-208]; or (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2) or (3) of this subsection. (b) Subsection (a) of this section 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.

Custody Determination – Service/Notification Requirements

§ 48-20-205 Notice; opportunity to be heard; joinder (a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 20-108 [§ 48-20-108], 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 chapter 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 chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Paternity and Child Support Proceeding – Jurisdiction

A "Child custody proceeding" includes proceedings for paternity, abuse, neglect, dependency, guardianship, termination of parental rights or protection from domestic abuse. We note that the provisions in the West Virginia UCCJEA does not address jurisdiction or service/notification requirements for "Child custody proceedings" (rather, it only addresses "Child custody determinations",

so there are no special requirements for these proceedings. The payment of child support is explicitly carved out from the definition of "child custody determination" in the West Virginia UCCJEA, so there are no special jurisdictional or service/notification requirements.

Paternity and Child Support Proceeding – Service/Notification Requirements

See Paternity and Child Support Proceeding - Jurisdiction Section.

Child Abuse/Neglect Proceeding – Jurisdiction

See Paternity and Child Support Proceeding - Jurisdiction Section.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

See Paternity and Child Support Proceeding - Jurisdiction Section.

Divorce and Legal Separation – Jurisdiction

See Paternity and Child Support Proceeding - Jurisdiction Section.

Divorce and Legal Separation – Service/Notification Requirements

See Paternity and Child Support Proceeding - Jurisdiction Section.

Adoption Proceeding – Jurisdiction

The West Virginia UCCJEA does not cover adoption proceedings. § 20-5-203 Proceedings governed by other law This act shall not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Adoption Proceeding – Service/Notification Requirements

The West Virginia UCCJEA does not cover adoption proceedings. § 20-5-203 Proceedings governed by other law This act shall not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Domestic Violence – Jurisdiction

No independent statute identified.

Domestic Violence– Service/Notification Requirements

No independent statute identified.

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