



**LEGAL BULLETIN #2002-01
OFFICE OF LEGAL AFFAIRS**

**RECOGNITION OF FOREIGN
CHILD CUSTODY ORDERS**



Legal Flag: Child custody orders issued by courts of foreign states shall be enforceable within Illinois, but only after such orders have been registered by an Illinois court.

This LEGAL BULLETIN discusses the procedures Department members must follow when presented with a child custody order issued by a court of a state other than Illinois.

OVERVIEW

A court outside Illinois may issue an order determining the parental visitation rights and/or custody of a child present within Illinois. Federal law requires that these orders be recognized and enforced throughout the United States. However, prior to enforcement, Illinois law requires that such orders be filed and registered in an Illinois court. Once properly registered, the order is enforceable and refusal to abide by the order may result in a charge of contempt. Department members should be familiar with this process in the event they are called to the scene of a disturbance involving child custody or visitation.

Pursuant to both federal and state statutes, foreign court orders addressing child custody shall be recognized and enforced by the courts of Illinois.

The federal *Parental Kidnaping Prevention Act* (PKPA), 28 U.S.C. 1738A, imposes a duty upon a state to enforce a child custody order entered by a court of another state if the order is consistent with the provisions of the PKPA.

The PKPA provides that this duty shall apply to an initial custody judgment concerning a child; any subsequent modification of the initial judgment; and orders granting parental visitation rights.

In compliance with the PKPA, Illinois mandates that out-of-state child custody judgments shall be recognized and enforced if certain jurisdictional standards have been met by the court issuing the order. *See 750 ILCS 35/14, Uniform Child Custody Jurisdiction Act* (the "Illinois Act"), *Recognition of Out-of-State Custody Judgments*.

Foreign custody orders include orders issued outside the United States.

Illinois' recognition and enforcement of foreign custody orders extends, in certain instances, to those issued by courts outside the United States. Section 24 of the Illinois Act, *International Application* (750 ILCS 35/24), provides that orders of other nations, with legal principles similar in nature as to those required within the Illinois Act, are entitled to recognition and enforcement within this State. As with out-of-state orders, the validity of a court order issued within a foreign country will be determined upon review by an Illinois court.

Foreign court child custody orders are not immediately enforceable.

While federal and state law require each state to recognize and enforce the custody orders of other states, the order of an outside state shall not be immediately enforced within Illinois. Pursuant to Illinois law, a party seeking to enforce a foreign child custody order must first file and register the order with an Illinois circuit court, as set forth in section 16 of the Act. 750 ILCS 35/16. Once an Illinois court has reviewed and approved the foreign order, the court will either attach its seal to a certified copy of the foreign order, or reissue the order on an Illinois form. At this point, the order is enforceable within Illinois.

Department members may provide necessary assistance in enforcing the court order, but absent certain conditions, should refrain from physically removing a child from a parent or guardian who resists relinquishing custody of the child.

Department members may be called upon to assist in the enforcement of a properly registered order. When presented with a court order which addresses the custody of a child, Department members should attempt to verify the authenticity of the order prior to enforcement. Authentication may be made by contacting the Cook County State's Attorney's Office, Domestic Relations Division, at 312-603-6300, between the hours of 0830 and 1630, Monday through Friday.

If the parent or guardian being ordered to relinquish control of the child agrees to voluntarily comply with the order, Department members should provide such assistance as is necessary to ensure a safe and orderly transfer. However, if the parent/guardian indicates any resistance to compliance with the order, Department members should refrain from removing the child from that parent's custody, absent an indication that the

child's health or safety is endangered, or that a crime such as child abduction, neglect, etc., has been committed. The party seeking to enforce the order should be directed to notify the Illinois court within which the foreign order had been registered, of such noncompliance. The court may then direct one of several remedies to ensure compliance with its order. In urgent situations, such as the possibility of relocation of the child to prevent enforcement of the order, officers may direct the party to seek an emergency court order by appearing in room 802 of the Daley Center, Monday through Friday, 0830-1630 hours.

If indications of endangerment are observed, Department members should proceed in accordance with current directives applicable to incidents of child endangerment, which include, but are not limited to, seeking medical treatment for the child and/or arrest of the offending parent/guardian.

SUMMARY

A court order issued by a foreign state or country may be enforced within Illinois only after it has been properly registered and reviewed by an Illinois court. Department members may be called upon to assist in the enforcement of such an order. If the custodial parent voluntarily relinquishes control of the child, any assistance necessary to ensure a safe and orderly transfer should be provided. If the custodial parent does not comply with the order, in limited circumstances, Department members should refrain from physically effecting a transfer of the child, instead directing the enforcing party to notify the appropriate Illinois court of the noncompliance. If however, responding Department members observe indications of an endangerment to the child's health or safety, or evidence of a crime, the incident should be processed accordingly, which may necessitate removal of the child, regardless of whether the custodial parent acquiesces.

This Bulletin was prepared by Legal Officer Gary Feffer, an attorney with the Office of Legal Affairs.

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