CHAPTER 14-09.4
UNIFORM NONPARENT CUSTODY AND VISITATION ACT

14-09.4-01. Definitions.

As used in this chapter:

1. "Child" means an unemancipated individual who is under eighteen years of age.
2. "Compensation" means wages or other remuneration paid in exchange for care of a child. The term does not include reimbursement of expenses for care of the child, including payment for food, clothing, and medical expenses.
3. "Consistent caretaker" means a nonparent who meets the requirements of subsection 2 of section 14-09.4-03.
4. "Custody" means physical custody, legal custody, or both. The term includes joint custody or shared custody.
5. "Harm to a child" means significant adverse effect on a child's physical, emotional, or psychological well-being.
6. "Legal custody" means the right to make significant decisions regarding a child, including decisions regarding a child's education, health care, and scheduled activity.
7. "Nonparent" means an individual other than a parent of the child, including a grandparent, sibling, or stepparent of the child.
8. "Parent" means an individual recognized as a parent under law of this state other than this chapter.
9. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
10. "Physical custody" means living with a child and exercising day-to-day care of the child.
11. "Record" means information inscribed on a tangible medium, or stored in an electronic or other medium, and is retrievable in perceivable form.
12. "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. The term includes a federally recognized Indian tribe.
13. "Substantial relationship with the child" means a relationship between a nonparent and child which meets the requirements of subsection 3 of section 14-09.4-03.
14. "Visitation" means the right to spend time, which may include an overnight stay, with a child who is living with another person.

14-09.4-02. Scope.

1. Except as otherwise provided in subsection 2, this chapter applies to a proceeding in which a nonparent seeks custody or visitation.
2. This chapter does not apply to a proceeding:
   a. Between nonparents, unless a parent is a party to the proceeding;
   b. Pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978 [25 U.S.C. 1903(4)], to the extent the proceeding is governed by the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 196]; and
   c. Pertaining to a child who is the subject of an ongoing proceeding in any state regarding:
      (1) Guardianship of the person; or
      (2) An allegation by a government entity that the child is abused, neglected, dependent, or otherwise in need of care.
3. A nonparent may not maintain a proceeding under this chapter for custody of or visitation with a child solely because the nonparent served as a foster parent of the child.
4. An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this chapter concerning the child.

5. Relief under this chapter is not available during the period of a custody or visitation order entered under chapter 14-09.3 or other order dealing with custody of or visitation with a child of a deployed parent. A custody or visitation order entered before a parent was deployed remains in effect unless modified by the court.

14-09.4-03. Requirements for order of custody or visitation.

1. A court may order custody or visitation to a nonparent if the nonparent proves:
   a. The nonparent:
      (1) Is a consistent caretaker; or
      (2) Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child; and
   b. An order of custody or visitation to the nonparent is in the best interest of the child.
2. A nonparent is a consistent caretaker if the nonparent without expectation of compensation:
   a. Lived with the child for not less than twelve months, unless the court finds good cause to accept a shorter period;
   b. Regularly exercised care of the child;
   c. Made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and
   d. Established a bonded and dependent relationship with the child with the express or implied consent of a parent of the child, or without the consent of a parent if no parent has been able or willing to perform parenting functions.
3. A nonparent has a substantial relationship with the child if:
   a. The nonparent:
      (1) Is an individual with a familial relationship with the child by blood or law; or
      (2) Formed a relationship with the child without expectation of compensation; and
   b. A significant emotional bond exists between the nonparent and the child.

14-09.4-04. Presumption for parental decision.

1. In an initial proceeding under this chapter, a decision by a parent regarding a request for custody or visitation by a nonparent is presumed to be in the best interest of the child.
2. Subject to section 14-09.4-14, a nonparent has the burden to rebut the presumption under subsection 1 by clear and convincing evidence of the facts required by subsection 1 of section 14-09.4-03. Proof of unfitness of a parent is not required to rebut the presumption under subsection 1.

14-09.4-05. Commencement of proceeding - Jurisdiction.

A nonparent may commence a proceeding by filing a petition under section 14-09.4-06 in the court having jurisdiction to determine custody or visitation under chapter 14-14.1.

14-09.4-06. Verified petition.

1. A nonparent shall verify a petition for custody or visitation under penalty of perjury and allege facts showing the nonparent:
   a. Meets the requirements of a consistent caretaker of the child; or
   b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. A petition under subsection 1 must state the relief sought and allege specific facts showing:
   a. The duration and nature of the relationship between the nonparent and the child, including the period the nonparent lived with the child and the care provided, if any;

b. The content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child;
c. A description of any previous attempt by the nonparent to obtain custody of or visitation or other contact with the child;
d. The extent to which the parent is willing to permit the nonparent to have custody of or visitation or other contact with the child;
e. Information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;
f. Information required to establish the jurisdiction of the court under chapter 14-14.1;
g. The reason the requested custody or visitation is in the best interest of the child, applying the factors in section 14-09.4-11; and
h. If the nonparent alleges a substantial relationship with the child, the reason denial of custody or visitation to the nonparent would result in harm to the child.

3. If an agreement described in subdivision b of subsection 2 is in a record, the nonparent shall attach a copy of the agreement to the petition.

14-09.4-07. Sufficiency of petition.

1. The court shall determine based on the petition under section 14-09.4-06 whether the nonparent has pleaded a prima facie case that the nonparent:
   a. Is a consistent caretaker; or
   b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. If the court determines under subsection 1 the nonparent has not pleaded a prima facie case, the court shall dismiss the petition.

14-09.4-08. Notice.

On commencement of a proceeding, the nonparent shall give notice to each:

1. Parent of the child who is the subject of the proceeding;
2. Person having custody of the child;
3. Individual having court-ordered visitation with the child; and
4. Attorney, guardian ad litem, or similar representative appointed for the child.

14-09.4-09. Appointment - Interview of child - Court services - Limitation.

In the manner and to the extent authorized by this title in a family law proceeding other than under this chapter, the court may:

1. Appoint an attorney, guardian ad litem, or similar representative for the child;
2. Interview the child;
3. Require the parties to participate in mediation or another form of alternative dispute resolution, but a party who has been the victim of domestic violence, sexual assault, stalking, or other crime against the individual by another party to the proceeding may not be required to participate.
4. Order an evaluation, investigation, or other assessment of the child's circumstances and the effect on the child of ordering or denying the requested custody or visitation or modifying a custody or visitation order; and
5. Allocate payment between the parties of a fee for a service ordered under this section. Public funds may not be used to provide services under this section.

14-09.4-10. Emergency order.

On finding that a party or a child who is the subject of a proceeding is in danger of imminent harm, the court may expedite the proceeding and issue an emergency order.

14-09.4-11. Best interest of child.

In determining whether an order of custody or visitation to a nonparent is in the best interest of a child, the court shall consider:

1. The nature and extent of the relationship between the child and the parent;
2. The nature and extent of the relationship between the child and the nonparent;
3. The views of the child, taking into account the age and maturity of the child;
4. Past or present conduct by a party, or individual living with a party, which poses a risk to the physical, emotional, or psychological well-being of the child;
5. The likely impact of the requested order on the relationship between the child and the parent;
6. The applicable factors in section 14-09-06.2; and
7. Any other factor affecting the best interest of the child.

14-09.4-12. Presumption arising from child abuse, child neglect, domestic violence, sexual assault, or stalking.

1. The court shall presume that ordering custody or visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent, or an individual living with the nonparent, has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct in violation of law of this state or another state.
2. A finding that the conduct specified in subsection 1 occurred must be based on:
   a. Evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or
   b. Proof by a preponderance of the evidence.
3. A nonparent may rebut the presumption under subsection 1 by proving by clear and convincing evidence that ordering custody or visitation to the nonparent will not endanger the health, safety, or welfare of the child.

14-09.4-13. Order of custody or visitation.

1. If a nonparent seeks custody, the court may order:
   a. Primary residential responsibility to the nonparent;
   b. Joint custody to the nonparent and a parent or other party; or
   c. Visitation to the nonparent.
2. If a nonparent seeks visitation only, the court may not order custody to the nonparent seeking visitation.

14-09.4-14. Modification of custody or visitation.

1. On motion, and subject to subsections 3 and 4, the court may modify a final custody or visitation order under section 14-09.4-13 on a showing by a preponderance of the evidence that:
   a. A substantial and continuing change in circumstance has occurred relevant to the custody of or visitation with the child; and
   b. Modification is in the best interest of the child.
2. Except as otherwise provided in subsections 3 and 4, if a nonparent has rebutted the presumption under section 14-09.4-04 in an initial proceeding, the presumption remains rebutted.
3. If a motion is filed to modify an order of visitation under this chapter to obtain an order of custody, the nonparent must rebut the presumption under section 14-09.4-04.
4. On agreement of the parties, the court may modify a custody or visitation order, unless the court finds the agreement is not in the best interest of the child.

14-09.4-15. Findings of fact and conclusions of law.

When issuing a final order of custody or visitation, the court shall make findings of fact and conclusions of law on the record in support of its decision or, if the petition is dismissed under section 14-09.4-07, state the reasons for the dismissal.

14-09.4-16. Effect of adoption of child by stepparent or other relative.

If a child is adopted by a stepparent or other relative of the child, an order of custody or visitation to a nonparent remains in effect and is not changed by the adoption unless modified, after notice to all parties to the custody or visitation proceeding, by the court that entered the order or the court that granted the adoption.

14-09.4-17. Expense of facilitating visitation.

The court may issue an order allocating responsibility between the parties for payment of the expense of facilitating visitation, including transportation expenses.

14-09.4-18. Law governing child support.

The authority of a court to award child support payable to or by a nonparent is governed by chapter 14-09.

14-09.4-19. Equitable right or remedy.

This chapter does not preclude the recognition of an equitable right or remedy for a psychological parent under law of this state other than this chapter.

14-09.4-20. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].