4-98-11(36)

National Conference of Commissioners on Uniform State Laws
1155 East 60th St., Chicago, Illinois 60637 — (312) 493-0533

(This is the first in a three-part series explaining major provisions of the Uniform Marriage and Divorce Act which is scheduled for consideration in many state legislatures in 1971.)

CHICAGO — The proposed Uniform Marriage and Divorce Act is designed "to strengthen and preserve the integrity of marriage and to safeguard meaningful family relationships."

The act which was drafted by the National Conference of Commissioners on Uniform State Laws deals with solemnization and registration of marriage; marriage dissolution through separation and divorce; and child custody.

The 250 members of the NCCUSL are leading judges, law professors and practicing lawyers selected by the governors of the 50 states. They approved the code during the annual meeting in St. Louis last summer and will press for enactment when their state legislatures convene in 1971.

Approval of the Marriage and Divorce Act completed one of the specific assignments given to the conference when it was formed by the American Bar Association in 1892. After nearly 70 years, commissioners finally were able to agree on uniform legislation dealing with the controversial problems involved.

The code places few restrictions on those seeking to marry after their 18th birthday anniversary. Marriage is prohibited only: when a prospective spouse already is married; between an ancestor and descendant, or brother and sister either by blood or adoption, or between uncle and niece or aunt and nephew, "except as to marriages permitted by the established customs of aboriginal cultures." But the act stipulates that even children born of prohibited marriages are legitimate.

- more -

The code also allows 16- and 17-year-olds to marry with consent from parents or guardians, or with judicial approval. Those under 16 could marry under the act with the consent of parents, guardians and courts.

Judges are permitted to allow such under-age marriages only if ''the underaged party is capable of assuming the responsibilities of marriage and the marriage would serve his best interests. Pregnancy alone does not establish that the best interests of the party would be served.''

Commissioners drafted an act which also allows for flexibility in solemnization of a marriage. Those entitled to perform this rite include: a judge; a public official; or any other person or mode ''recognized by any religious denomination, Indian Nation or Tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the (marriage license) clerk.''

- 0 -

(Tomorrow, this series will continue with an article on separation and divorce provisions of the act.)

(This is the second article in a three-part series on the Uniform Marriage and Divorce Act scheduled for consideration by many state legislatures in 1971.)

CHICAGO — Divorce ''contests'' would be eliminated by the proposed Uniform Marriage and Divorce Act.

The legislation drafted by the National Conference of Commissioners on Uniform State Laws is meant ''to mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.'' Portions of the act dealing with divorce and separation were drafted to deal ''with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.''

The act would abolish the concept of ''fault'' in divorce proceedings. Drafters hope eliminating all need for stating and proving ''disreputable'' acts would reduce the rancor which often accompanies divorce litigation.

Under the act, divorce or separation proceedings may be initiated by either husband or wife. This petition would allege that the marriage is ''irretrievably broken.'' Any ''defense'' against this allegation must show that the relationship can be repaired. Defenses now used such as ''condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.''

If both husband and wife agreed their marriage is irretrievably broken, or neither has denied it, the court could decide ''after hearing'' and considering evidence if the divorce petition should be granted. If a spouse denied the allegation, the judge would consider ''all relevant factors, including circumstances that gave rise to the filing of the petition and the prospect for reconciliation'' and decide if the marriage is ''irretrievably broken.''

The judge may continue the matter to allow for counseling and other procedures designed to aid reconciliation. This furthers the act's purpose of

UMDA 03384

''promoting the amicable settlement of disputes'' which arise within marriage.

The effort to ''mitigate the potential harm'' of a marriage breakup is reflected in sections governing disposition of property and child custody and support. The act provides that the parties may enter into a written separation agreement.

Terms dealing with money and possessions are binding unless a judge determines that the separation agreement is ''unconscionable,'' or unreasonable. In that instance a judge could ask for a revised agreement.

Decisions on division of marital property and maintenance payments — alimony is abolished along with ''fault'' — are to be made without regard to marital misconduct. Factors to be considered in disposition of property and maintenance payments include: contributions of each spouse including that as a homemaker; economic circumstances of each spouse; ability of a spouse to support himself; the standard of living established during marriage; age; physical and emotional conditions.

Separation agreements also may include provisions dealing with child custody, support and visitation privileges. But a judge is not bound to accept agreement in this area.

– 0 –

(Tomorrow, this series will conclude with an article on child custody provisions of the act.)

(This is the third and final article of a series on the Uniform Marriage and Divorce Act scheduled for consideration by many state legislatures in 1971.)

CHICAGO — ''The best interests of the child'' are the only consideration in determining custody of the children of broken homes, under the Uniform Marriage and Divorce Act.

The proposed act drafted by the National Conference of Commissioners on Uniform State Laws says factors relevant to custody decisions include: wishes of the parents and child; parental and sibling relations; problems of adjustment to home, school and community; and the mental and physical health of everyone involved.

However, the act says ''conduct of a proposed custodian that does not affect his relationship to the child'' should not be considered.

The act affords judges the opportunity to interview a child in chambers to learn his wishes. Counsel may be permitted at such an interview which also would be recorded. Judges also may seek written advice of professionals whether or not they are regularly employed by the court. Such professionals would be available for cross-examination.

If an investigation is ordered, ''any person who may have information about the child and his potential custodial arrangements'' may be consulted. This includes — in addition to relatives and friends — physicians, psychiatrists, and other professionals ''who have served the child in the past without...obtaining the consent of the parent or the child's custodian, but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent.''

The act empowers a judge to exclude the public from custody hearings if he believes it is in the child's best interest. But judges also may admit any

UMDA 03386

person to a hearing ''who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.''

A parent not granted custody of a child is entitled to ''reasonable visitation rights'' if these do not ''endanger the child's physical health or significantly impair his emotional development.''

By giving judges the responsibility to insure protection of children, drafters of the act emphasized they were seeking a humane approach to marriage difficulties. The punitive methods now incorporated in the laws dealing with divorce and separation in many states would be abolished by the proposed legislation.

- 0 -