

Ordering Law Enforcement Officers to Enforce a Child Custody Order

It is not uncommon to see custody orders – both orders entered by North Carolina courts and orders from other states – containing language such as “Law enforcement officers shall assist in the enforcement of this custody order,” or “Law enforcement shall pick up the minor child and deliver the child to the custodial parent.” While most judges intentionally enter such orders only when there is reason to be concerned for the safety of the children, these provisions often are included as standard provisions in custody order templates throughout North Carolina and are extremely common in form orders used in other states.

Must a law enforcement officer comply with such a provision in an order from another state? Does a North Carolina judge have the authority to order law enforcement involvement? Case law and statutes indicate that authority for law enforcement involvement is limited.

Enforcement of Custody Orders

Custody orders are civil orders enforceable by contempt. [GS 50-13.3\(a\)](#). [GS Chapter 5A](#) sets out the remedies authorized when a court holds a person in civil or criminal contempt. While law enforcement officers can be ordered to take a person into custody pursuant to an order that the person be imprisoned, the contempt statutes do not include the authority to order law enforcement to assist in effectuating the terms of the underlying civil order.

No one would assume law enforcement could be ordered to enforce any other type of civil order, such as a child support order, a property division order, or a small claims judgment. Is there something different about a child custody order?

Appellate Opinions

There are only two court opinions in North Carolina addressing this issue and both indicate that the court of appeals does not believe there is any sort of general authority for these orders in custody cases. *In re Bhatti*, 98 N.C. App. 493 (1990), held that the trial court erred in ordering law enforcement to pick up children to enforce a custody order entered in the state of Georgia. After pointing out that the Uniform Child Custody Jurisdiction Act (UCCJA) in effect at the time specifically provided that orders from other states be enforced by ordering a party to produce the child at the enforcement hearing, the court stated that there is no statutory authority in North Carolina for a court to order law enforcement involvement in a custody case. Instead, according to the court in *Bhatti*, the trial court is limited to the remedy of contempt.

The court made the same statement again in *Chick v. Chick*, 164 N.C. App. 444 (2004). In that case, the court held that the trial court erred by ordering law enforcement to pick up children to enforce an order entered in Vermont. By the time *Chick* was decided, North Carolina had adopted the new [Uniform Child Custody Jurisdiction and Enforcement Act \(UCCJEA\)](#) containing the enforcement provisions discussed below. After concluding that the trial court did not comply with the provisions of that act that would have allowed the court to issue a pick-up warrant, the *Chick* court cited *Bhatti* and stated that because there is no general statutory authority authorizing the use of law enforcement in a custody case, the trial court was limited to the remedies authorized in the contempt statutes.

The UCCJEA Enforcement Provisions: Not Just for Out-of-State Orders??

One of the significant differences between the UCCJA and the UCCJEA that replaced it in 1999 is that the UCCJEA contains enforcement provisions that were not included in the first act. [Part 3 of the UCCJEA](#) contains provisions regarding enforcement of a “custody determination” and those provisions include [GS 50A-311](#) which authorizes a court to issue a pick-up warrant in specific circumstances. While the provisions in Part 3 relating to registration of custody determinations specify that they apply only to orders entered in other states, the provisions authorizing a process for expedited enforcement and the issuance of a pick-up warrant specify that they apply to any “custody determination.” [GS 50A-102\(3\)](#) defines “custody determination” to include any judgment or order addressing the custody of a child. Apparently therefore these provisions apply to both orders from other states and orders entered by North Carolina judges.

The Enforcement Process

[GS 50A-308](#) authorizes a procedure for expedited enforcement of an order. The AOC has adopted forms for use in this process. [AOC-CV-665, et seq.](#) However, the AOC forms indicate that the process is to be used for the enforcement of “foreign” custody orders.

Because law enforcement authority in the civil custody area is so unclear, when a North Carolina law enforcement officer is presented with a custody order from another state, it is best for the officer to direct the person seeking enforcement of the order to the clerk of court to initiate the enforcement process through the use of these AOC forms.

Like the UCCJA, the UCCJEA provides that the normal course for enforcement of a custody order should be for the court to order the party to produce the child at the enforcement hearing. However, [GS 50A-311](#) authorizes the court to order law enforcement involvement in limited circumstances. That statute provides that if a petitioner files a verified request for a pick-up warrant and:

[i]f the court, *upon the testimony of the petitioner or other witness*, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. (emphasis added).

In addition to requiring actual testimony rather than allowing the court to rely on a verified motion, the statute requires that the warrant actually “recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.”

Any warrant issued also must “provide for the placement of the child pending final relief” and the court is required to schedule a hearing for the day following service of the warrant, unless that date is impossible. If not the next judicial day, the hearing must be held on “the first judicial day possible.”

To be Avoided if Possible

The UCCJEA clearly intends that law enforcement officers should be involved in custody cases only under the most extreme circumstances. This statute, along with the appellate court reluctance to recognize general authority on the part of the trial court, indicates that orders for law enforcement involvement in civil custody cases should be avoided except when necessary to protect a child.