





# INTRODUCTION

Interstate custody cases involving domestic violence arrive at the courthouse in a variety of ways:

- A victim of domestic violence who has fled for safety from another state seeks an emergency custody order from your court.
- A left-behind parent files for custody in your court, seeking the return of the children from another state.
- A victim with a custody order from another state seeks enforcement of the order in your state because the other parent has refused to return the children.
- A victim with a custody order from another state seeks a modification from your court because the other parent has been abusive during visitation with the children.
- A victim from another state seeks a protection order with a custody provision.
- A protection order from one state and a custody order from another contain conflicting provisions regarding the children.

This guide, developed by the Legal Resource Center on Violence Against Women, the National Center on State Courts, and the National Council of Juvenile and Family Court Judges, is intended to help you to determine whether your court has jurisdiction to enter or modify a child custody order in these and other interstate cases, as well as to understand your responsibilities to enforce orders from other jurisdictions. The guide includes four components: (1) an overview of the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA), a uniform state law that governs decision-making about jurisdiction in interstate custody cases; (2) a practice guide for judicial officers that includes strategies for effective implementation of the UCCJEA in your court; (3) a similar practice guide for non-judicial court personnel; and (4) a copy of the UCCJEA and a chart with citations to state versions of the UCCJEA.

If you have any questions about the information presented in these materials, or about interstate custody cases involving domestic violence, please do not hesitate to call the Legal Resource Center at 301-270-1550.

# OVERVIEW OF THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The UCCJEA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission) and enacted by all states (with the exception of Massachusetts), the District of Columbia, Guam, and the Virgin Islands.

The UCCJEA addresses a court's subject matter jurisdiction in child custody cases, specifically answering the question of whether a court has the power to decide a custody case in which more than one state, tribe, or territory is involved. The law specifies which court has the power to decide a custody case, not how the court should decide the case, which is governed by the jurisdiction's general child custody laws.

The following flowchart provides a step-by-step approach to determining whether a court has jurisdiction over a custody case under the UCCJEA:

1. Is there an emergency? (temporary emergency jurisdiction)



2. Is there an existing custody order and/or custody proceeding in another state? If so, do I have jurisdiction to modify any orders or to issue a new order?



3. If there is no emergency or existing order/proceeding, do I have initial child custody jurisdiction?



4. If I have jurisdiction to enter an initial custody order or to modify an existing order, should I decline to do so?



5. Are there any additional considerations?



---

# STEP 1:

## Is there an emergency?

---

- Temporary Emergency Jurisdiction
- Judicial Communication

### **Temporary Emergency Jurisdiction**

Under the UCCJEA, a court may exercise temporary emergency jurisdiction when “the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.” UCCJEA, §204. A court may do so even if another court has preferred jurisdiction for the long-term custody case.

The provision clarifies that a court may exercise temporary emergency jurisdiction when a parent (or sibling) of a child has been abused or threatened with abuse, even if the child herself or himself has not been abused. Consequently, a court can exercise this form of jurisdiction when there is evidence that the parent has been abused by the other parent without requiring a finding that there is any child mistreatment or abuse. To exercise emergency jurisdiction, however, a court must find that the child is present in the state. A court may exercise temporary emergency jurisdiction by entering a domestic violence protection order that includes a custody provision (or through another procedural vehicle).

The UCCJEA specifies that emergency jurisdiction is temporary; it is available to protect the parties until a court in the state with preferred jurisdiction is aware of the emergency and in a position to issue an order or to decline jurisdiction in favor of another state. In limited circumstances, however, it can become permanent if the order so states, provided a child custody proceeding has not been commenced in another state with jurisdiction and the state becomes the child’s home state.

### **Judicial Communication**

An exercise of emergency jurisdiction triggers mandatory judicial communication between the issuing court and any court in another jurisdiction that is hearing an existing custody case or has issued a custody order involving the same parties. The purpose of the communication is to resolve the emergency, protect the parties and child, and determine the duration of the emergency order. Ultimately, the court with preferred jurisdiction has the authority to issue or modify a long-term custody order, though it may decline to do so on inconvenient forum grounds (see Step 4).



---

## STEP 2:

Is there an existing custody order and/or custody proceeding in another state?  
If so, do I have jurisdiction to modify any orders or to issue a new order?

---

### **Modifying an Order**

The court that originally issued a custody order retains continuing exclusive jurisdiction over any modifications of that order. UCCJEA, §202. A court in a different state may modify the order (provided it has jurisdiction) under four circumstances:

1. Upon a finding by the issuing court or the new court that all of the parties have left the issuing state; or
2. Upon a finding by the issuing court that the parties no longer have a significant connection with the state and that substantial evidence is no longer available there; or
3. Upon a decision by the issuing court to decline to exercise jurisdiction in favor of another state (see Step 4); or
4. Upon a finding by the new court that it has grounds to exercise temporary emergency jurisdiction.



---

## STEP 3:

# If there is no emergency or existing order/proceeding, do I have initial child custody jurisdiction?

---

- Initial Child Custody Jurisdiction
- Home State Jurisdiction
- Significant Connection Jurisdiction
- More Appropriate Forum
- No Other State or Vacuum Jurisdiction

### Initial Child Custody Jurisdiction

The UCCJEA sets forth four jurisdictional bases to help a court determine whether it has “initial child-custody jurisdiction” over a custody matter (in addition to temporary emergency jurisdiction, described above in Step 1). UCCJEA, §201. These four bases for initial child custody jurisdiction are:

1. Home state;
2. Significant connection;
3. More appropriate forum; and
4. No other state or vacuum.

The UCCJEA establishes a hierarchy among the four jurisdictional bases, prioritizing home state jurisdiction.

### Home State Jurisdiction

The UCCJEA defines the home state as “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.” UCCJEA, §102(7). Home state jurisdiction also exists in a state that was the child’s home state within six months before the filing of the custody case, provided a parent continues to live in that previous home state. Often called the “extended home state rule,” it applies in domestic violence cases when a victim flees with the children to a new state, giving a court in the previous state jurisdiction to hear a custody case filed within six months of the child’s move.

In the case of a child who is less than six months of age at the time of filing, the statute defines the home state as “the state in which the child lived from birth.” *Id.*

If the family has left and then returned to a state, the judge in this state may need to determine whether the time away was a “temporary absence” under the UCCJEA. If the time period is deemed to be a temporary absence, it is included in the calculation of the requisite six-month period for home state jurisdiction.

### **Significant Connection Jurisdiction**

A court may exercise significant connection jurisdiction only if there is no home state and two conditions are met: (1) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, must have “a significant connection with the state other than mere physical presence”; and (2) substantial evidence must be available in the state concerning the child’s “care, protection, training, and personal relationships.” UCCJEA, §201(a)(2). Courts may consider such factors as the length of time that the child has lived in the state and the nature and location of the relevant evidence, including whether the state is home to such potential sources of evidence as school teachers and counselors, therapists, health care providers, and relatives. If one court already is exercising significant connection jurisdiction, a court in a different state with a significant connection may not proceed.

### **More Appropriate Forum**

A court with home state or significant connection jurisdiction may decline to exercise jurisdiction because the court has found that there is a more appropriate forum (see Step 4).

### **No Other State or Vacuum Jurisdiction**

Last resort or vacuum jurisdiction is available when no state satisfies any of the three jurisdictional bases described above. When a family has traveled from state to state with only brief stays in any one place, it may be necessary for a court to exercise this form of jurisdiction.





---

## STEP 4:

# If I have jurisdiction to enter an initial custody order or to modify an existing order, should I decline to do so?

---

- Inconvenient Forum
- By Reason of Conduct (“Unclean Hands”)

### **Inconvenient Forum**

A court having jurisdiction under one of the four jurisdictional bases described above may decline to exercise jurisdiction if the court finds that it is an inconvenient forum and a court in another state is a more appropriate forum. UCCJEA, §207. Courts must consider the following factors:

1. Whether domestic violence has occurred and is likely to continue and which state could best protect the parties and the child;
2. The length of time the child resided outside the state;
3. The distance between the state declining jurisdiction and the state that would assume jurisdiction;
4. The financial circumstances of the parties;
5. Any agreement of the parties as to which state should assume jurisdiction;
6. The nature and location of the evidence, including the testimony of the child;
7. The ability of the court in each state to decide the issue quickly and the procedures necessary to present the evidence; and
8. The familiarity of the court of each state with the facts and issues in the pending litigation.

Some courts have found that the first factor, related to domestic violence, requires that courts prioritize the safety of domestic violence victims when they make jurisdictional decisions under this provision.

### **By Reason of Conduct (“Unclean Hands”)**

A court must decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct that resulted in the court’s jurisdiction over the case. UCCJEA, §208.

This provision authorizes courts to decline to exercise jurisdiction when domestic violence perpetrators have abducted the children, creating custody jurisdiction in a

new state. UCCJEA commentary specifies, however, that “domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal.” UCCJEA Commentary, §208.



---

## STEP 5:

# Are there any additional considerations?

---

- Judicial Communication
- Interstate Cooperation
- Protection Orders
- Information to Submit to the Court
- Enforcement
- International Orders
- Tribal Court Orders

### **Judicial Communication**

The UCCJEA requires courts in different jurisdictions to communicate when one court exercises emergency jurisdiction if there is a pending custody proceeding in a court in another state, or if a court in another state has issued a custody order involving the same parties. In addition, courts in different states must communicate when they become aware that simultaneous proceedings are pending in different jurisdictions. The statute sets forth requirements for judicial communication including:

- The parties must be given an opportunity to present evidence and make arguments prior to a jurisdictional decision by the court;
- A record of the communication must be made; and
- The parties must be given access to the record. UCCJEA, §110.

Judicial communication can be critical to victim safety in domestic violence cases because it ensures that a court is not receiving information only from the perpetrator.

## **Interstate Cooperation**

The UCCJEA provides for interstate cooperation when a party does not reside in the forum state. Statutory provisions can help victims who have fled for their safety to remain in the refuge state while participating in the litigation. UCCJEA, §§111-112.

For instance, judges may request that a court in another state hold a hearing, order a party to produce evidence or appear at a hearing, conduct social studies regarding custody, or forward hearing transcripts. A party may offer testimony of witnesses located in another state, or a court may order testimony to be taken elsewhere. The statute authorizes courts to take advantage of technologies such as telephones, audiovisual equipment, or other electronic means to facilitate the taking of depositions or testimony by people who live outside of the forum state. In a case in which a victim lives in a refuge state, the use of such technologies can enable the court to obtain evidence, including the victim's testimony, without endangering the victim.

## **Protection Orders**

The UCCJEA explicitly includes civil protection order cases in its definition of "child custody proceedings" that are subject to the Act's provisions. UCCJEA, §102(4).

## **Information to Submit to the Court**

The UCCJEA requires parties to include the following information in pleadings:

- the child's current address;
- the places the child has lived during the past five years;
- the names and addresses of the persons with whom the child has lived;
- information about other pending or completed custody cases involving the child; and
- information about other persons with custody or visitation claims. UCCJEA, §209.

In domestic violence cases, disclosing information about the location of the victim or child could be dangerous. The UCCJEA recognizes this danger and recommends that courts keep identifying information about survivors and children confidential and sealed.

## **Enforcement**

The UCCJEA establishes enforcement provisions for child custody orders across state and international lines to help ensure the safety of the parties and child. Specifically, Article 3 of the UCCJEA establishes a duty to enforce out-of-state orders in substantial conformity with the statute, sets forth an optional process for registration of out-of-state orders to facilitate enforcement, provides for expedited enforcement of orders in emergencies, authorizes courts to enter warrants for law enforcement to take physical custody of children, and includes additional enforcement provisions.

### **International Orders**

Courts are required to treat foreign countries as if they were states and apply the UCCJEA unless the child custody law of the country “violates fundamental principles of human rights.” UCCJEA, §105.

### **Tribal Court Orders**

If a state has enacted the optional UCCJEA provision regarding tribes (as most have), states must treat tribal court orders as if they were entered by another state. UCCJEA, §104. Because tribes are sovereign nations, however, each tribe has its own child custody jurisdiction law.



# Judicial Officer

PRACTICE GUIDE



---

# JUDICIAL OFFICER PRACTICE GUIDE

---

- Jurisdictional Considerations
- Training Court Staff
- Forms
- Judicial Communication
- Interstate Cooperation
- Victim Safety

## Jurisdictional Considerations

- ✓ Recognize the court’s authority to exercise temporary emergency jurisdiction even when the court is not the home state (or the state with preferred jurisdiction).
  - Determine whether a filing for a custody order presents emergency circumstances.
  - Recognize that exercising temporary emergency jurisdiction does not take jurisdiction away from a court with preferred jurisdiction but does require judicial communication and a time limit if another court has long-term jurisdiction over the case.
  - Understand that when there is an emergency, a court may enter an order that temporarily trumps a custody order from the home state.
- ✓ Facilitate victims’ ability to seek temporary emergency relief.
  - Train court personnel on the availability of temporary emergency relief and ensure that they do not turn away individuals because they have not yet lived in the jurisdiction for six months.
  - Understand that even after a domestic violence survivor leaves the home, due to separation violence, an emergency may exist.<sup>1</sup>
  - Consider working with the responsible agency (e.g., administrative office of the courts) to modify existing forms to facilitate requests for temporary emergency jurisdiction.

---

<sup>1</sup> Domestic violence survivors may be at increased risk for physical violence when they take steps to leave an abusive partner. Callie Marie Rennison & Sarah Welchans, Bureau of Justice Statistics, Intimate Partner Violence 1, 5 (May 2000)(finding that “divorced or separated persons were subjected to the highest rates of intimate partner victimization”). See also Mindy Abel, Denver Metro Domestic Violence Fatality Review 5 (2002) (finding that in 67% of the homicides, the victim had expressed a desire to leave or end the relationship). The risk of lethal and nonlethal assaults peaks in the first two months following separation and when survivors attempt permanent separation through legal or other means. Walter Dekeseredy, Molly Dragiewicz, and Martin Schwartz, Abusive Endings: Separation and Divorce Violence Against Women 7 (2017).

- ✓ Before ordering a party to return with the children to the home state, consider the context of an individual’s move across state or tribal lines with children and whether the move was motivated by flight from domestic violence or child abuse.
- ✓ Recognize the reasons for declining to exercise jurisdiction on inconvenient forum grounds, including:
  - If the parties are in different states because of the violence, it could be unsafe for the victim to return to the home state to litigate a custody case. A victim may not have the financial means to return to the home state due to the perpetrator's financial abuse.<sup>2</sup>
  - A victim may have fled to a safe haven where family members can offer secure shelter, childcare, or employment opportunities.<sup>3</sup>
  - Due to separation violence, a victim may be at increased risk for physical violence or homicide when she leaves; forcing a return to a state where the abuser resides could be deadly.<sup>4</sup>
  - A perpetrator may litigate a jurisdictional or custody issue as a means to punish a victim for leaving.<sup>5</sup>
  - Denying a victim’s relocation or inconvenient forum request permits a batterer to continue to control a victim’s life.
- ✓ Recognize that courts should not decline to exercise jurisdiction under the UCCJEA’s “unjustifiable conduct” provision when the parent seeking jurisdiction fled across jurisdictional lines to escape abuse.
- ✓ Recognize that international cases may involve the Hague Convention on the Civil Aspects of International Child Abduction as well as the UCCJEA.

### **Training Court Staff**

- ✓ Provide staff with training on the UCCJEA.
- ✓ Ensure that court personnel assist litigants with interstate custody cases, including:
  - Helping litigants to identify the correct forms to complete, including the required UCCJEA certification/affidavit;
  - Assisting litigants to understand what documentation they must provide regarding cases and orders from other jurisdictions;
  - Referring victims who have legal questions about interstate custody cases to qualified attorneys, including legal services.

2 Financial abuse often includes behavior such as preventing a victim from getting or keeping a job, making her ask for money, giving her an allowance, taking her money, and not letting her know about or have access to the family’s income. See Power and Control Wheel, Domestic Abuse Intervention Project, Duluth (1984).

3 Deborah Goelman and Darren Mitchell, Interstate Custody Cases, in *The Impact of Domestic Violence on Your Legal Practice* (eds. Drew, Jordan, Mathews, and Runge, 2004) at 257.

4 See, e.g., Walter S. DeKeserdy et al., Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge 2 (2002) (finding that separation entails a six-fold increase in homicide risk for women).

5 See Peter G. Jaffe, Nancy K.D. Lemon, and Samantha Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability* 20 (2003).





## Interstate Cooperation

- ✓ Develop a protocol (using telephonic, video, or other forms of communication) to enable out-of-state litigants to participate in court hearings without returning to dangerous jurisdictions.
- ✓ Utilize the UCCJEA's tools for interstate litigation and respond to requests from courts in other jurisdictions.
  - Establish a protocol for requesting assistance from courts in other jurisdictions, including conducting hearings, ordering a party to produce evidence or appear at a hearing, conducting social studies regarding custody, or forwarding hearing transcripts.
  - Establish a protocol for responding to such requests from other courts.
  - Assign dedicated court personnel to tasks related to interstate litigation under the UCCJEA.



## Victim Safety

- ✓ Use the UCCJEA's provisions and other means to improve the safety of victims of domestic violence in your court.
  - If disclosure of identifying information would jeopardize the safety of a party or child, seal the information. UCCJEA, §209(e).
  - Enter any orders necessary to ensure the safety of the child and any person ordered to appear. UCCJEA, §210(c).
  - Consider ordering the other parent to pay the victim's "reasonable and necessary travel and other expenses." UCCJEA, §210(d).
  - Allow the victim extra time to leave the courthouse before dismissing the perpetrator.
  - Before including contact information for a victim of domestic violence on court orders, consider whether the party is enrolled in a state address confidentiality program (in which a legal substitute address is available to victims).
  - Become familiar with local legal services and victim advocacy programs and provide referrals as needed.







## **Interstate Cooperation**

- ✓ Facilitate interstate litigation.
  - Work with judges to establish a protocol for requesting assistance from courts in other jurisdictions with interstate litigation, including conducting hearings, ordering a party to produce evidence or appear at a hearing, conducting social studies regarding custody, or forwarding hearing transcripts.
  - Work with judges to establish a protocol for responding to such requests from other courts.

## **Victim Safety**

- ✓ Work with court security to ensure the safety of victims and children in interstate custody cases.
  - Respond to the safety needs of victims who may have traveled back to the community where the abuse took place.
  - Inform victims of security measures (e.g., separate waiting rooms, notification of a bailiff, or requesting permission to leave the courtroom before the perpetrator is dismissed).
  - Be aware that abusers who reside out of state may return unexpectedly for court hearings.
  - Refer victims to local victim advocacy programs for assistance with safety planning and other support.
  - Keep information about victims confidential where this has been requested or ordered.



# Appendix

<b>State/Territory</b>	<b>UCCJEA Cite</b>
<b>Alabama</b>	<i>Code of Ala. § 30-3B-101 et seq.</i>
<b>Alaska</b>	<i>Alaska Stat. § 25.30.300 et seq.</i>
<b>Arizona</b>	<i>Ariz. Rev. Stat. § 25-1001 et seq.</i>
<b>Arkansas</b>	<i>Ark. Code. Ann. § 9-19-101 et seq.</i>
<b>California</b>	<i>Cal. Fam. Code § 3400 et seq.</i>
<b>Colorado</b>	<i>Colo. Rev. Stat. § 14-13-101 et seq.</i>
<b>Connecticut</b>	<i>Conn. Gen. Stat. § 46b-115 et seq.</i>
<b>Delaware</b>	<i>13 Del. Code § 1901 et seq.</i>
<b>District of Columbia</b>	<i>D.C. Code § 16-4601.01 et seq.</i>
<b>Florida</b>	<i>Fla. Stat. § 61.501 et seq.</i>
<b>Georgia</b>	<i>Ga. Code Ann. § 19-9-40 et seq.</i>
<b>Guam</b>	<i>7 Guam Code Ann. § 39101 et seq.</i>
<b>Hawaii</b>	<i>Haw. Rev. Stat. § 583A-101 et seq.</i>
<b>Idaho</b>	<i>Idaho Code § 32-11-101 et seq.</i>
<b>Illinois</b>	<i>750 Ill. Comp. Stat. § 36/101 et seq.</i>
<b>Indiana</b>	<i>Ind. Code Ann. § 31-21 et seq.</i>
<b>Iowa</b>	<i>Iowa Code § 598B.101 et seq.</i>
<b>Kansas</b>	<i>Kan. Stat. Ann. § 23-37,101 et seq.</i>
<b>Kentucky</b>	<i>Ky. Rev. Stat. § 403.800 et seq.</i>
<b>Louisiana</b>	<i>La. Rev. Stat. § 13:1801 et seq.</i>
<b>Maine</b>	<i>Me. Rev. Stat. Ann. tit. 19-A § 1731 et seq.</i>
<b>Maryland</b>	<i>Md. Fam. Law Code Ann. § 9.5-101 et seq.</i>
<b>Massachusetts (UCCJA)</b>	<i>Mass. Gen. Laws ch. 209B</i>
<b>Michigan</b>	<i>Mich. Comp. Laws § 722.1101 et seq.</i>
<b>Minnesota</b>	<i>Minn. Stat. § 518D.101 et seq.</i>
<b>Mississippi</b>	<i>Miss. Code Ann. § 93-27-101 et seq.</i>
<b>Missouri</b>	<i>Mo. Rev. Stat. § 452.700 et seq.</i>
<b>Montana</b>	<i>Mont. Code Ann. § 40-7-101 et seq.</i>
<b>Nebraska</b>	<i>Neb. Rev. Stat. § 43-1226 et seq.</i>
<b>Nevada</b>	<i>Nev. Rev. Stat. § 125A.005 et seq.</i>
<b>New Hampshire</b>	<i>N.H. Rev. Stat. Ann. § 458-A:1 et seq.</i>
<b>New Jersey</b>	<i>N.J. Stat. Ann. § 2A:34-53 et seq.</i>
<b>New Mexico</b>	<i>N.M. Stat. Ann. § 40-10A-101 et seq.</i>
<b>New York</b>	<i>N.Y. Dom. Rel. Law § 75 et seq.</i>
<b>North Carolina</b>	<i>N.C. Gen. Stat. § 50A-101 et seq.</i>
<b>North Dakota</b>	<i>N.D. Cent. Code § 14-14.1-01 et seq.</i>
<b>Ohio</b>	<i>Ohio Rev. Code Ann. § 3127.01 et seq.</i>
<b>Oklahoma</b>	<i>Okla. Stat. tit. 43, § 551-101 et seq.</i>

<b>State/Territory</b>	<b>UCCJEA Cite</b>
<b>Oregon</b>	<i>Or. Rev. Stat. Ann. § 109.701 et seq.</i>
<b>Pennsylvania</b>	<i>23 Pa. Cons. Stat. Ann. § 5401 et seq.</i>
<b>Rhode Island</b>	<i>R.I. Gen. Laws § 15-14.1-1 et seq.</i>
<b>South Carolina</b>	<i>S.C. Code Ann. § 63-15-300 et seq.</i>
<b>South Dakota</b>	<i>S.D. Codified Laws § 26-5B-101 et seq.</i>
<b>Tennessee</b>	<i>Tenn. Code Ann. § 36-6-201 et seq.</i>
<b>Texas</b>	<i>Tex. Fam. Code § 152.001 et seq.</i>
<b>Utah</b>	<i>Utah Code Ann. § 78B-13-101 et seq.</i>
<b>Vermont</b>	<i>Vt. Stat. Ann. tit. 15, § 1061 et seq.</i>
<b>Virginia</b>	<i>Va. Code Ann. § 20-146.1 et seq.</i>
<b>Virgin Islands</b>	<i>V.I. Code Ann. Tit. 16 § 115 et seq.</i>
<b>Washington</b>	<i>Wash. Rev. Code. § 26.27.011 et seq.</i>
<b>West Virginia</b>	<i>W. Va. Code § 48-20-101 et seq.</i>
<b>Wisconsin</b>	<i>Wis. Stat. § 822.01 et seq.</i>
<b>Wyoming</b>	<i>Wyo. Stat. Ann. § 20-5-201 et seq.</i>



**UNIFORM CHILD CUSTODY JURISDICTION  
AND ENFORCEMENT ACT (1997)**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR  
ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-SIXTH YEAR  
IN SACRAMENTO, CALIFORNIA  
JULY 25 - AUGUST 1, 1997

*WITH PREFATORY NOTE AND COMMENTS*

COPYRIGHT© 1997

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*Approved by the American Bar Association  
Nashville, Tennessee, February 4, 1998*

November 20, 1998

## **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)**

**The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction and Enforcement Act (1997) was as follows:**

MARIAN P. OPALA, Supreme Court, Room 238, State Capitol, Oklahoma City,  
OK, 73105, *Chair*

DEBORAH E. BEHR, Office of Attorney General, Department of Law,  
P.O. Box 110300, Juneau, AK 99811

ROBERT N. DAVIS, University of Mississippi, School of Law, University, MS 38677

ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa,  
AL 35486

DOROTHY J. POUNDERS, 47 N. Third Street, Memphis, TN 38103

BATTLE R. ROBINSON, Family Court Building, 22 The Circle, Georgetown, DE 19947

HARRY L. TINDALL, 2800 Texas Commerce Tower, 600 Travis Street, Houston,  
TX 77002

LEWIS V. VAFIADES, P.O. Box 919, 23 Water Street, Bangor, ME 04402

MARTHA LEE WALTERS, Suite 220, 975 Oak Street, Eugene, OR 97401

ROBERT G. SPECTOR, University of Oklahoma College of Law, 300 Timberdell Road,  
Norman, OK 73019, *Reporter*

### **EX OFFICIO**

BION M. GREGORY, Office of Legislative Counsel, State Capitol, Suite 3021,  
Sacramento, CA 95814-4996, *President*

DAVID PEEPLES, 224th District Court, Bexar County Courthouse, 100 Dolorosa,  
San Antonio, TX 78205, *Chair, Division F*

### **EXECUTIVE DIRECTOR**

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road,  
Norman, OK 73019, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104,  
*Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
676 North St. Clair Street, Suite 1700  
Chicago, Illinois 60611  
312/915-0195

# **UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)**

## **PREFATORY NOTE**

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Article 2 of this Act provides clearer standards for which States can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the article harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Article 3 for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

### **Revision of Uniform Child Custody Jurisdiction Act**

The UCCJA was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice

requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became “technical enough to delight a medieval property lawyer.” Homer H. Clark, *Domestic Relations* § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association’s Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) (*Obstacles Study*), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the States. The *Obstacles Study* suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

**1. Home state priority.** The PKPA prioritizes “home state” jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a “significant connection state” when there is a “home State.” Initial custody determinations based on “significant connections” are not entitled to PKPA enforcement unless there is no home State. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in Section 201.

**2. Clarification of emergency jurisdiction.** There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat

of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 204 which addresses these issues.

**3. Exclusive continuing jurisdiction for the State that entered the decree.** The failure of the UCCJA to clearly enunciate that the decree-granting State retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. Still other States distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 110, 202, and 206.

**4. Specification of what custody proceedings are covered.** The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

**5. Role of “Best Interests.”** The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, the State with the closest connections to, and the most evidence regarding, a child should decide that child’s custody. The “best interest” language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that “best interests” considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term “best interests” in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

**6. Other Changes.** This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

### **Enforcement Provisions**

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the State where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another State. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one State, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In

another State, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some States, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many States tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required – one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Article 3 provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another State. This will allow a party to know in advance whether that State will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Article 2 nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all States, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.



**UNIFORM CHILD-CUSTODY JURISDICTION  
AND ENFORCEMENT ACT (1997)**

**[ARTICLE] 1**

**GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

Comment

Section 1 of the UCCJA was a statement of the purposes of the Act. Although extensively cited by courts, it was eliminated because Uniform Acts no longer contain such a section. Nonetheless, this Act should be interpreted according to its purposes which are to:

(1) Avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being;

(2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child;

(3) Discourage the use of the interstate system for continuing controversies over child custody;

(4) Deter abductions of children;

(5) Avoid relitigation of custody decisions of other States in this State;

(6) Facilitate the enforcement of custody decrees of other States;

**SECTION 102. DEFINITIONS.** In this [Act]:

(1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained 18 years of age.

(3) “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.

(5) “Commencement” means the filing of the first pleading in a proceeding.

(6) “Court” means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.

(7) “Home State” means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) “Initial determination” means the first child-custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child-custody determination for which enforcement is sought under this [Act].

(10) “Issuing State” means the State in which a child-custody determination is made.

(11) “Modification” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) “Person acting as a parent” means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

(14) “Physical custody” means the physical care and supervision of a child.

(15) “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.

[(16) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.]

(17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

#### Comment

The UCCJA did not contain a definition of “child.” The definition here is taken from the PKPA.

The definition of “child-custody determination” now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as “managing conservatorship” or “parenting plan.”

The definition of “child-custody proceeding” has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not “custody proceedings” because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Article 3 enforcement process.

“Commencement” has been included in the definitions as a replacement for the term “pending” found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of “home State” has been reworded slightly. No substantive change is intended from the UCCJA.

The term “issuing State” is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Article 3.

The term “person” has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of “person” is the one that is mandated for all Uniform Acts.

The term “person acting as a parent” has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a “person acting as a parent” under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of “tribe” is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104.

The term “contestant” as has been omitted from this revision. It was defined in the UCCJA § 2(1) as “a person, including a parent, who claims a right to custody or visitation rights with respect to a child.” It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined “decree” and “custody decree” has been eliminated as duplicative of the definition of “custody determination.”

**SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.** This

[Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Comment

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most States either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a State adopts the UAA then Section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child's custody. UAA § 3-704. Those custody proceedings would be subject to this Act. See Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations*, 30 *Fam.L.Q.* 345 (1996).

Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: "Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement." For a discussion of the relationship between the UCCJA and the ICPC see *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All States have procedures which allow the State to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

**SECTION 104. APPLICATION TO INDIAN TRIBES.**

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this [Act] to the extent that it is governed by the Indian Child Welfare Act.

[(b) A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.]

[(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]

Comment

This section allows States the discretion to extend the terms of this Act to Indian tribes by removing the brackets. The definition of “tribe” is found at Section 102(16). This Act does not purport to legislate custody jurisdiction for tribal courts. However, a Tribe could adopt this Act as enabling legislation by simply replacing references to “this State” with “this Tribe.”

Subsection (a) is not bracketed. If the Indian Child Welfare Act requires that a case be heard in tribal court, then its provisions determine jurisdiction.

**SECTION 105. INTERNATIONAL APPLICATION OF [ACT].**

(a) A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.

(c) A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.

Comment

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a State of the United States for purposes of applying Articles 1 and 2 of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term “child-custody determination” should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court’s scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from Section 23 of the UCCJA.

**SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.** A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard.



As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Comment

No substantive changes have been made to this section which was Section 12 of the UCCJA.

**SECTION 107. PRIORITY.** If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Comment

No substantive change was made to this section which was Section 24 of the UCCJA. The section is placed toward the beginning of Article 1 to emphasize its importance.

The language change from “case” to “question” is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

**SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.**

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

#### Comment

This section authorizes notice and proof of service to be made by any method allowed by either the State which issues the notice or the State where the notice is received. This eliminates the need to specify the type of notice in the Act and therefore the provisions of Section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either State. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either State would authorize notice to be served by a peace officer, such service could be used under this Act.

Although Section 105 requires foreign countries to be treated as States for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

#### **SECTION 109. APPEARANCE AND LIMITED IMMUNITY.**

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A

party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.

#### Comment

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term “participate” should be read broadly. For example, if jurisdiction is proper under Article 2, a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under Article 2, a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the non-custodial parent moves from the State that decided the custody determination, that parent is still subject to the state’s jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If the non-custodial parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from State A after the determination, with the custodial parent and the child establishing a new home State in State B, and the non-custodial parent moving to State C. The non-custodial parent is not, at this point, subject to the jurisdiction of State B for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into State B to enforce the visitation aspects of the determination, the non-custodial parent is not subject to the jurisdiction of State B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the State for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the non-custodial parent comes into State B to enforce the visitation aspects of the decree, State B cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. Cf. UIFSA § 611 (personally serving the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the State.

#### **SECTION 110. COMMUNICATION BETWEEN COURTS.**

(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

#### Comment

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under Sections 204, 206, and 306 and strongly suggested in applying Section 207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties’ participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be

done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

**SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.**

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

**Comment**

No substantive changes have been made to subsection (a) which was Section 18 of the UCCJA.

Subsections (b) and (c) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. See UIFSA § 316.

**SECTION 112. COOPERATION BETWEEN COURTS;**

**PRESERVATION OF RECORDS.**

(a) A court of this State may request the appropriate court of another State to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that State;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request



























































reasonable and necessary travel and other expenses of the party so appearing and of the child.

#### Comment

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

**[ARTICLE] 3**  
**ENFORCEMENT**

**SECTION 301. DEFINITIONS.** In this [article]:

(1) “Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) “Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

Comment

For purposes of this article, “petitioner” and “respondent” are defined. The definitions clarify certain aspects of the notice and hearing sections.

**SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION.**

Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

### **SECTION 303. DUTY TO ENFORCE.**

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

#### **Comment**

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification unless the State would have jurisdiction to modify the determination under Article 2.

The remedies provided by this article for the enforcement of a custody determination will normally be used. This article does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

#### **SECTION 304. TEMPORARY VISITATION.**

(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another State; or

(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.

## Comment

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for “reasonable and seasonable.”

However, a court may not, under subsection (a)(2) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 202 or modification jurisdiction under Section 203. As under Section 204, subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Article 2.

### **SECTION 305. REGISTRATION OF CHILD-CUSTODY**

#### **DETERMINATION.**

(a) A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the

court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under [Article] 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

#### Comment

This remainder of this article provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced

before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

**SECTION 306. ENFORCEMENT OF REGISTERED  
DETERMINATION.**

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2, a registered child-custody determination of a court of another State.

Comment

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Article 2.

**SECTION 307. SIMULTANEOUS PROCEEDINGS.** If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The



proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

#### Comment

The pleading rules of Section 308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under Section 202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202, or with modification jurisdiction under Section 203, could enjoin the parties from continuing with the enforcement proceeding.

### **SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.**

(a) A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

#### Comment

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the

court to have the necessary information. Most of the information relates to the permissible scope of the court’s inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A “procedure relating to domestic violence” includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term “next judicial day” in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2. The court is also to order payment of the fees and expenses set out in Section 312. The court may set another hearing to determine whether additional relief available under this state’s law should be granted.

If the order has been registered and confirmed in accordance with Section 304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2.

**SECTION 309. SERVICE OF PETITION AND ORDER.** Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

Comment

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

**SECTION 310. HEARING AND ORDER.**

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical

custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article].

#### Comment

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Article 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over

the custody proceeding under Section 202, or the court that would have jurisdiction to modify the custody determination under Section 203.

The court shall determine at the hearing whether fees should be awarded under Section 312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

**SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If 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. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

- (1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
  - (2) direct law enforcement officers to take physical custody of the child immediately; and
  - (3) provide for the placement of the child pending final relief.
- (d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- (e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

#### Comment

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary restraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is



secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

#### **SECTION 312. COSTS, FEES, AND EXPENSES.**

(a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act].

#### Comment

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to –

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination ... .

The term “prevailing party” is not given a special definition for this Act. Each State will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

**SECTION 313. RECOGNITION AND ENFORCEMENT.** A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court

of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

Comment

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

**SECTION 314. APPEALS.** An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 204, there is no reason to stay the enforcement of the order pending appeal.

**SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].**

(a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a

proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.

#### Comment

Sections 315-317 are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, States may locate the authority described in the section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of

income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violated either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a State from authorizing the prosecutor or other public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a "friend of the court." Its role is to ensure that the custody determination is enforced.

Sections 315-317 are limited to cases covered by this Act, i.e. interstate cases. However, States may, if they wish, extend this part of the Act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

**SECTION 316. ROLE OF [LAW ENFORCEMENT].** At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

**SECTION 317. COSTS AND EXPENSES.** If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.

Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term “direct” indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities’ attorneys.

**[ARTICLE] 4**  
**MISCELLANEOUS PROVISIONS**

**SECTION 401. APPLICATION AND CONSTRUCTION.** In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**SECTION 402. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 403. EFFECTIVE DATE.** This [Act] takes effect .....

**SECTION 404. REPEALS.** The following acts and parts of acts are hereby repealed:

- (1) The Uniform Child Custody Jurisdiction Act;
- (2) .....
- (3) .....

**SECTION 405. TRANSITIONAL PROVISION.** A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody

determination which was commenced before the effective date of this [Act] is governed by the law in effect at the time the motion or other request was made.

#### Comment

A child custody proceeding will last throughout the minority of the child. The commencement of a child custody proceeding prior to this Act does not mean that jurisdiction will continued to be governed by prior law. The provisions of this act apply if a motion to modify an existing determination is filed after the enactment of this Act. A motion that is filed prior to enactment may be completed under the rules in effect at the time the motion is filed.