

D R A F T
FOR DISCUSSION ONLY

IMPLEMENTATION OF HAGUE CONVENTION ON PROTECTION OF CHILDREN

**(Revisions to Uniform Child Custody Jurisdiction and
Enforcement Act)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

May 10 – 11, 2013 Drafting Committee Meeting

With Prefatory Notes and Comments

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April 29, 2013

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IMPLEMENTATION OF HAGUE CONVENTION ON PROTECTION OF CHILDREN

PREFATORY NOTE

DRAFTING NOTE

This redrafting of the Uniform Child Custody Jurisdiction and Enforcement Act was undertaken as part of the effort to implement the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The drafting committee was instructed to make no substantive changes in the UCCJEA, other than those changes necessary to incorporate the Convention into UCCJEA. However, the Committee on Style has undertaken to restyle the entire Act. None of the changes wrought by the Committee on Style are intended to have any substantive effect. Therefore all the changes to Article 1 and 2, except for the additions to the definitions and Section 211, are for style purposes only and do not change the substance of the Act. Substantive changes otherwise begin with broadening of the enforcement procedure in Section 305. Article 4 is the primary vehicle for incorporating the Convention into domestic law.

I. FROM THE UCCJA TO THE UCCJEA

In 1997 the Uniform Law Commission revisited the problem of the interstate child when it promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as a replacement for the Uniform Child Custody Jurisdiction Act (UCCJA). 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) to address the interstate custody jurisdiction and enforcement 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 were similar to those in the UCCJA. There were, however, some significant differences.

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 UCCJEA revisions of the jurisdictional provisions of the UCCJA eliminated the inconsistent state interpretations and can be summarized as follows:

1. Home state priority. Rather than four concurrent bases of jurisdiction, the UCCJEA prioritized home state jurisdiction over all other bases thereby conforming the UCCJEA to the PKPA.
2. Clarification of emergency jurisdiction. This jurisdictional basis was clarified to make it clear that it provided jurisdiction only on a temporary basis and was specifically made applicable to state domestic violence protective order cases.
3. Exclusive continuing jurisdiction for the state that entered the decree. The UCCJEA made it explicit that the state that made the original custody determination retained exclusive continuing jurisdiction over the custody determination so long as that state remained the residence of a parent, the child, or a person acting as a parent.
4. Specification of what custody proceedings are covered. These provisions extended the coverage of the UCCJEA to all cases, except adoptions, where a child custody determination was made. This eliminated the substantial ambiguity of the UCCJA concerning which proceeding were covered.
5. Role of “Best Interests.” The UCCJEA eliminated the term “best interests” in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody of and visitation with children.

The UCCJEA also enacted specific provisions on the enforcement of custody determinations for interstate cases. First, there is a simple procedure for registering a custody determination in another state. This allows 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 to another state.

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.

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.

II. THE 1996 HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

At the same time that the Uniform Law Commission was revising the UCCJA, the Hague Conference on Private International law was revising the 1961 Convention on the Protection of Minors. That Convention was adopted by a number of European States and was utilized to recognize custody determinations. However, no common law country ratified the convention. The Hague Conference decided that a revised convention on jurisdiction and judgments with regard to minors might attract more countries as signatories. This resulted in the 1996 Convention which established international standards for jurisdiction, choice of law, and enforcement of judgments in cases regarding measures taken for the protection of minors.

There are significant differences between the UCCJEA and the 1996 Convention. However, the purposes of the two are very similar. They are both designed to allocate judicial competence to decide cases involving child custody and visitation. Both documents provide for enforcement of custody and visitation determinations of other states or countries. The differences are in the details of how this is to be accomplished.

There is a large part of the 1996 Convention that is devoted to country to country cooperation. There is a small role for a national central authority in carrying out the cooperation provisions of the Convention. Most of the cooperation provisions are ultimately directed to the "competent authority" which would be the appropriate entity under local law for carrying out the particular function referred to in the 1996 Convention. This means that the central authority in the United States will delegate these functions to the local authority. These cooperation problems will be addressed in the federal implementing legislation. Therefore it is not necessary to address the particular cooperation aspects contained in Chapter V of the 1996 Convention in this revision to the UCCJEA.

III. THE INTERNATIONAL CUSTODY CASE

The international child custody case, like the international child support case, has always been the marginal case in the multi-state system. However, with increasing globalization, the international case has been assuming more importance. The international case was dealt with in both the UCCJA and the UCCJEA.

A. THE UCCJA

Section 23 of the UCCJA provided that the general policies of that Act applied to foreign country custody determinations. Foreign custody determinations were to be recognized and enforced if they were made consistently with the UCCJA and there was reasonable notice and

opportunity to be heard. There were two types of issues that arose under this section. The first was whether a United States court would defer to a foreign tribunal when that tribunal would have jurisdiction under the UCCJA and the case was filed first in that tribunal. The second issue was whether a state of the United States would recognize, under this section, a custody determination made by a foreign tribunal.

On the first issue, the UCCJA was ambiguous and only required application of the “general policies” of the Act. Frequently courts in the United States would apply the same jurisdictional principles to international cases that they would apply in interstate cases. For example, in *Superior Court v. Plas*, 202 Cal.Rptr. 490 (Cal. Ct. App. 1984), the mother filed for custody when she had only been in California with her child for four months. The child was born in France and was raised and lived there with his family until shortly before the California hearing. The court determined that California lacked jurisdiction to hear the case and, even if it had jurisdiction, it should have deferred to France as the most convenient forum. However, not all states followed the same practice. For example, the Oregon Court of Appeals in *Horiba v. Horiba*, 950 P.2d 340 (Or. Ct. App. 1997), refused to defer to a pending Japanese proceeding since Japan was not a “state” under the definition of “state” in the UCCJA.

With respect to the second issue, most American states enforced foreign custody orders if made consistently with the jurisdictional standards of the UCCJA and reasonable notice and opportunity to be heard were afforded all participants. However, Missouri, New Mexico and Ohio refused to enact §23 of the UCCJA. Indiana formerly had a provision which seemed to affirmatively require the state to not recognize and enforce a foreign custody order. These provisions undermined the UCCJA principles of recognition and enforcement of custody determinations by countries with appropriate jurisdiction under the UCCJA and created obstacles to the return of children that were illegally abducted.

B. THE UCCJEA

Section 105(a) of the UCCJEA provides that a foreign country will be treated as if it is a state of the United States for the purposes of applying Articles I and II of the UCCJEA. This means that the scope and cooperation principles of Article I as well as the jurisdiction provisions of Article II apply to foreign countries in the same way that they apply to states of United States. Thus communication between a tribunal of the United States and a tribunal in a foreign country is mandatory in cases concerning emergency jurisdiction under Section 204 and simultaneous proceedings under Section 206. Otherwise tribunals in the United States may communicate with tribunals in foreign countries whenever it would be appropriate to communicate with tribunals in the United States under Section 110.

Section 105(b) requires tribunals in the United States to recognize foreign custody determinations if the facts and circumstances of the case indicate that the foreign custody determination was made in substantial conformity with the jurisdictional provisions of the UCCJEA. However, as indicated in Section 105(c) a United States court is given the discretion not to apply the UCCJEA if the child custody law of a foreign country violates fundamental principles of human rights. The language of the section was taken from the Hague Convention on the Civil Aspects of International Child Abduction. The drafting committee of the UCCJEA

did not attempt to define what aspects of a foreign custody law would violate fundamental principles of human rights. The committee considered a hypothetical case where the foreign custody law awarded custody of children automatically to the father. When asked to decide whether such a provision violated fundamental principles of human rights, the committee, along with the advisors and observers, could not agree. Therefore the application of that provision was left to the courts to determine on a case by case basis.

Application of Section 105 does not seem to have presented much of a problem for courts since the enactment of the UCCJEA. In particular it does not appear that enforcement has been denied on the basis of a violation of fundamental principles of human rights. The effect of Section 105 is to ensure that all foreign custody determinations that are made in conformity with UCCJEA jurisdictional standards are enforced in the United States. Ratification of 1996 Convention is not necessary for enforcement of foreign custody decrees; ratification it is necessary in order for United States custody determinations to be enforced in other countries.

IV. THIS REVISION

The purpose of this revision to the UCCJEA is to amend the act to incorporate the 1996 Hague Convention on the Protection of Minors. The United States has signed the Convention and the revision of this Act will constitute part of the implementing legislation. The rest of the Convention will be implemented at the federal level.

This version makes minimal changes to Articles 1 and 2, thereby basically keeping those articles as originally written. Every section which could possibly apply to proceedings under the Convention is placed in Article 4 and rewritten with appropriate terminology, except for the recognition and enforcement provisions of Article 3. While it is possible to set out in Article 4 the Article 3 registration and enforcement sections, they would have to be extensively rewritten. Rather than attempt that task Article 3 remains pretty much as originally written with a reference in Article 4 to recognize and enforce a measure of protection as a child custody determination.

1 **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

2 **[ARTICLE] 1.**

3 **GENERAL PROVISIONS**

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

6 **SECTION 102. DEFINITIONS.** In this ~~Act~~ act:

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

9 (2) “Authority” means an entity authorized by a convention country to establish or
10 modify a measure of protection.

11 ~~(2)~~ (3) “Child” means an individual who has not attained 18 years of age.

12 ~~(3)~~ (4) “Child-custody determination” means a judgment, decree, or other order of a
13 court providing for the legal custody, physical custody, or visitation with respect to a child. The
14 term includes a permanent, temporary, or initial; order and a modification ~~order~~. The term does
15 not include an order relating to child support or other monetary obligation of an individual.

16 ~~(4)~~ (5) “Child-custody proceeding” means a proceeding in which legal custody, physical
17 custody, or visitation with respect to a child is an issue. The term includes a proceeding for
18 divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental
19 rights, and protection from domestic violence, in which the issue may appear. The term does not
20 include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement
21 under [Article] 3.

22 ~~(5)~~ (6) “Commencement” means the filing of the first pleading in a proceeding.

23 (7) “Convention” means the Convention on Jurisdiction, Applicable Law, Recognition,

Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the
Protection of Children, concluded at The Hague on 19 October, 1996.

(8) “Convention country” means a foreign country in which the Convention is in force
with respect to the United States.

~~(6)~~ (9) “Court” means an entity authorized by under the law of a State a state or
nonconvention country to establish, enforce, or modify a child-custody determination.

(10) “Foreign country” means a country, including a political subdivision thereof, other
than the United States.

~~(7)~~ (11) “Home State state” means the State 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 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 mentioned is part of
the period.

~~(8)~~ (12) “Initial determination” means the first child-custody determination concerning a
particular child.

~~(9)~~ (13) “Issuing court” means the court that makes a child-custody determination for
which enforcement is sought under this [Act] [act].

~~(10)~~ (14) “Issuing State state” means the State state in which a child-custody
determination is made.

(15) “Measure of protection” means a decision on a matter covered by [Article] 4 made
by an authority or a court with regard to a child.

~~(11)~~ (16) “Modification” means a child-custody determination or measure of protection

1 that changes, replaces, supersedes, or is otherwise made after a previous determination or
2 measure concerning the same child, whether or not it is made by the court or authority that made
3 the previous determination or measure.

4 (17) “Nonconvention country” means a foreign country in which the Convention is not in
5 force with respect to the United States.

6 (18) “Parental responsibility” means the rights, powers, and obligations of a parent,
7 guardian, or other person with similar responsibility in relation to a child.

8 ~~(12)~~ (19) “Person” means an individual, ~~corporation, business trust, estate, trust,~~
9 ~~partnership, limited liability company, association, joint venture,~~ business or nonprofit entity,
10 public corporation, government or governmental subdivision, agency, or instrumentality, ~~public~~
11 ~~corporation;~~ or any other legal ~~or commercial~~ entity.

12 ~~(13)~~ (20) “Person acting as a parent” means a person, other than a parent, who:

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

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

18 ~~(14)~~ (21) “Physical custody” means the physical care and supervision of a child.

19 (22) “Record” means information that is inscribed on a tangible medium or that is stored
20 in an electronic or other medium and is retrievable in perceivable form.

21 ~~(15)~~ (23) “State” means a ~~State~~ state of the United States, the District of Columbia,
22 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States.

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

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

Comment

Note to Style: In (9) you dropped the word “enforce.” We were wondering why?

Note: Word changes in Articles 1 through 3 are generally the product of the Committee on Style and are not intended to have any substantive effect.

Related to the convention: Art. 1(2).

The term “authority” is used in connection with cases arising under the convention. Just as it is a “court” that makes a child custody determination under Articles 1-3, so it is an “authority” that orders a “measure” under the convention. The term is broader than “court” in that it includes administrative authorities that, under foreign law, may take a measure of protection with regard to a child.

Subsection (15) defines the term “measure of protection,” or “measure.” The term is used most often in Article 4, but does arise in the other articles. The term “custody determination” which is used with regard to United States orders in the first three articles is inappropriate in relationship to a discussion of the 1996 Convention because the convention covers much more than custody determinations. The convention does not itself provide a definition of the term. The term “measure of protection” is defined functionally as a decision regarding a matter covered by Article 4. That means that it is within the ambit of Section 402(a).

The term “parental responsibility” is taken fairly directly from Article 1(2) of the convention. The term is purposely broad in the convention and therefore questions regarding whether a particular issue is to be interpreted as coming within the concept of parental responsibility ought to be resolved in favor of inclusion. See the Explanatory Report at ¶18.

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This ~~[Act]~~ [act] does not govern an adoption proceeding or, except as otherwise provided in Section 416, a proceeding pertaining to the authorization of emergency medical care for a child.

Comment

Proceedings pertaining to emergency medical care are not governed by Articles 1-3, but a proceeding pertaining to emergency medical care for a child is a measure within the scope of

Article 4.

SECTION 104. APPLICATION TO INDIAN ~~TRIBES~~. TRIBE.

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

[(b) A court of this ~~State~~ state shall treat a tribe as if it were a ~~State~~ 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]~~ [act] must be recognized and enforced under [Article] 3.]

SECTION 105. INTERNATIONAL APPLICATION OF [ACT].

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

(b) ~~Except as otherwise provided in subsection (c), a~~ A child-custody determination made in a ~~foreign~~ nonconvention country under factual circumstances in substantial conformity with the jurisdictional standards of this ~~[Act]~~ [Article] 2 ~~must be recognized and enforced under~~ is governed by the provisions of [Article] 3.

(c) A court of this state shall apply [Article] 4 in a proceeding involving the convention.

~~(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

In this version of the act, Section 105 remains. It now distinguishes between convention countries which are covered in Article 4 and nonconvention countries, that are covered under Articles 2 and 3.

1 The original comments to this section noted that the term “child custody determination”
2 should be interpreted to cover custody as well analogous decisions made under the 1996
3 Convention.
4

5 Subparagraph (c) then directs an attorney to apply article 4 to cases involving convention
6 countries. This seems an appropriate place to put a directional text since attorneys will probably
7 look at this section whenever they have a case with international connections.
8

9 The former subsection (c) which authorized states to decline to recognize a child custody
10 determination of a foreign country if the child-custody laws violated fundamental principles of
11 human rights has been moved to the recognition article in Section 303 where it more
12 appropriately belongs.
13

14 **SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.**

15 (a) A child-custody determination made by a court of this ~~State~~ state ~~that~~ which had
16 jurisdiction under this ~~[Act]~~ [act] binds ~~all persons who have~~ a person that:

17 (1) has:

18 (A) been served in accordance with the ~~laws~~ law of this ~~State~~ state; ~~or~~

19 (B) ~~has~~ been notified in accordance with Section 108; ~~or~~

20 (C) ~~who have~~ submitted to the jurisdiction of the court; and

21 (2) ~~who have~~ has been given an opportunity to be heard. ~~As to those persons, the~~

22 (b) ~~The~~ A determination under subsection (a) is conclusive as to all decided issues of law
23 and fact except to the extent the determination is modified.

24 **Comment**

25 In this section, as well as some of the later sections of Article 2 and 3, word changes are
26 the product of the Style Committee and are not intended to have any substantive effect.
27

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

SECTION 108. NOTICE TO PERSON OUTSIDE STATE.

(a) Notice required for the exercise of jurisdiction ~~when a person is outside of this state~~
by a court of this state when a person is outside this state may be given in a manner for service of
process prescribed by the law of this ~~State~~ state or by the law of the ~~State~~ 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~~ state or by the law of the ~~State~~ state in which the service is made.

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

Additional Comment

When the original UCCJEA was drafted there was no requirement that international service of process comply, when required, with the Hague Convention on Service of Process Abroad or other treaties concerning the service of process, although most courts have added that requirement. Rather the section merely indicated that service was valid if accomplished according to the law of this state or the law of the state where service took place. In those cases where the Service Convention is applicable it is the law of both this state and the foreign country and therefore must be complied with.

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~~ 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~~ party ~~who~~ that is subject to personal jurisdiction in this ~~State~~ state on a basis other than physical presence is not immune under subsection (a) from service of process in this

1 ~~State~~ state. A party present in this ~~State~~ state ~~who~~ that is subject to the jurisdiction of another
2 ~~State~~ state is not immune under subsection (a) from service of process allowable under the laws
3 of that ~~State~~ state.

4 (c) The immunity ~~granted by~~ under subsection (a) does not extend to civil litigation
5 based on acts an act ~~unrelated to the participation in a proceeding under this [Act]~~ committed by
6 ~~an~~ a individual party while present in this ~~State~~ state which is unrelated to the party's
7 participation in a proceeding under this [act].

8 **SECTION 110. COMMUNICATION BETWEEN COURTS.**

9 (a) ~~A~~ In a proceeding under this [act], the court of this ~~State~~ state may communicate with
10 a court in another ~~State~~ state concerning a proceeding arising under this ~~[Act]~~ [act].

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

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

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

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

1 **Comment**

2 Note to Style: Although Section 413(b)(1) uses the term “immediately” it does so in the
3 context of an international child abduction. That term must remain as is because it is a term in
4 the 1980 Abduction Convention that is used in the 1996 Convention. That does not make the
5 term “promptly” used in Section 110 inconsistent. The contexts are very different.
6

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

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

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

19 (c) ~~Documentary~~ In a proceeding under this [act], documentary evidence transmitted
20 from another ~~State~~ state to a court of this ~~State~~ state by technological means that do not produce
21 an original writing may not be excluded from evidence on an objection based on the means of
22 transmission.

23 **SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF**
24 **RECORDS.**

25 (a) In a proceeding under this [act], the ~~A~~ court of this ~~State~~ state may request the
26 appropriate court of another ~~State~~ state to:

- 1 (1) hold an evidentiary hearing;
- 2 (2) order a person to produce or give evidence pursuant to procedures of that ~~State~~
3 state;
- 4 (3) order that an evaluation be made with respect to the custody of a child
5 involved in a pending proceeding;
- 6 (4) forward to the court ~~of this State~~ a certified copy of the transcript of the record
7 of the hearing, the evidence ~~otherwise~~ presented, and any evaluation prepared in compliance with
8 the request; and
- 9 (5) order a party to a child-custody proceeding or any person having physical
10 custody of the child to appear in the proceeding with or without the child.
- 11 (b) ~~Upon~~ In a proceeding under this [act] on request of a court of another ~~State~~ state, a
12 court of this ~~State~~ state may hold a hearing or ~~enter~~ render an order described in subsection (a).
- 13 (c) Travel and other necessary and reasonable expenses incurred under subsections (a)
14 and (b) may be assessed against ~~the parties~~ a party according to the law of this ~~State~~ state ~~other~~
15 than this [act].
- 16 (d) In a proceeding under this [act], A court of this ~~State~~ state shall preserve the
17 pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with
18 respect to a child-custody proceeding until the child attains 18 years of age. ~~Upon~~ On
19 appropriate request by a court or law enforcement official of another ~~State~~ state, the court shall
20 forward a certified copy of those records.

21 **Comment**

22 Note to Style: The drafting committee has considered your suggestions that it flesh out
23 what appropriate means in subsection (d) and your suggestion that this section needs a provision
24 on who pays costs of the court to prepare and send the records. It has declined to make these
25 additions. Its rationale is that this section has existed as part of the UCCJA and UCCJEA for

1 almost fifty years and has not created any problems.

2
3 **[ARTICLE] 2.**

4 **JURISDICTION**

5 **SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.**

6 (a) Except as otherwise provided in Section 204, a court of this ~~State~~ state has
7 jurisdiction to make an initial child-custody determination only if:

8 (1) this ~~State~~ state is the home ~~State~~ state of the child on the date of the
9 commencement of the proceeding, or was the home ~~State~~ state of the child within six months
10 before the commencement of the proceeding and the child is absent from this ~~State~~ state but a
11 parent or person acting as a parent continues to live in this ~~State~~ state;

12 (2) a court of another ~~State~~ state does not have jurisdiction under paragraph (1), or
13 a court of the home ~~State~~ state of the child has declined to exercise jurisdiction on the ground that
14 this ~~State~~ state is the more appropriate forum under Section 207 or 208, and:

15 (A) the child and the child's parents, or the child and at least one parent or
16 a person acting as a parent, have a significant connection with this ~~State~~ state other than mere
17 physical presence; and

18 (B) substantial evidence is available in this ~~State~~ state concerning the
19 child's care, protection, training, and personal relationships;

20 (3) all courts having jurisdiction under paragraph (1) or (2) have declined to
21 exercise jurisdiction on the ground that a court of this ~~State~~ state is the more appropriate forum to
22 determine the custody of the child under Section 207 or 208; or

23 (4) no court of any other ~~State~~ state would have jurisdiction under the criteria
24 specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this ~~State~~ state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

(a) Except as otherwise provided in Section 204, a court of this ~~State~~ state ~~which~~ that has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this ~~State~~ state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this ~~State~~ state and that substantial evidence is no longer available in this ~~State~~ state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this ~~State~~ state or a court of another ~~State~~ state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this ~~State~~ state.

(b) A court of this ~~State~~ state ~~which~~ that has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.

Comment

Cases involving convention countries are covered in Article 4. It should be noted that there is no continuing jurisdiction in cases that are covered by the convention.

SECTION 203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise provided in Section 204, a court of this ~~State~~ state may not modify a child-custody

determination made by a court of another ~~State~~ state unless a court of this ~~State~~ state has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

(1) the court of the other ~~State~~ state determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this ~~State~~ state would be a more convenient forum under Section 207; or

(2) a court of this ~~State~~ state or a court of the other ~~State~~ state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other ~~State~~ state.

SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

(a) A court of this ~~State~~ state has temporary emergency jurisdiction if the child is present in this ~~State~~ state and 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.

(b) If there is no previous child-custody determination that is entitled to be enforced under this ~~[Act]~~ [act] and a child-custody proceeding has not been commenced in a court of a ~~State~~ state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a ~~State~~ state having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a ~~State~~ state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this ~~State~~ state becomes the home ~~State~~ state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this ~~[Act]~~ [act], or a child-custody proceeding has been commenced in a court of a ~~State~~ state

1 having jurisdiction under Sections 201 through 203, any order issued by a court of this ~~State~~ state
2 under this section must specify in the order a period that the court considers adequate to allow the
3 person seeking an order to obtain an order from the ~~State~~ state having jurisdiction under Sections
4 201 through 203. The order issued in this ~~State~~ state remains in effect until an order is obtained
5 from the other ~~State~~ state within the period specified or the period expires.

6 (d) A court of this ~~State~~ state ~~which that~~ has been asked to make a child-custody
7 determination under this section, ~~upon on~~ being informed that a child-custody proceeding has
8 been commenced in, or a child-custody determination has been made by, a court of a ~~State~~ state
9 having jurisdiction under Sections 201 through 203, shall ~~immediately~~ communicate immediately
10 with the other court. A court of this ~~State~~ state ~~which that~~ is exercising jurisdiction pursuant to
11 Sections 201 through 203, ~~upon on~~ being informed that a child-custody proceeding has been
12 commenced in, or a child-custody determination has been made by, a court of another ~~State~~ state
13 under a statute similar to this section shall ~~immediately~~ communicate immediately with the court
14 of that ~~State~~ state to resolve the emergency, protect the safety of the parties and the child, and
15 determine a period for the duration of the temporary order.

16 **SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.**

17 (a) Before a child-custody determination is made under this ~~[Act]~~ [act], notice and an
18 opportunity to be heard in accordance with the standards of Section 108 must be given to: ~~all~~
19 ~~persons~~

20 (1) each person entitled to notice under the law of this ~~State~~ state ~~as in a child-~~
21 ~~custody proceedings~~ proceeding between residents of this ~~State~~ state;

22 (2) any a parent whose parental rights have not been ~~previously~~ terminated
23 previously; and

1 (3) ~~any~~ a person having physical custody of the child.

2 (b) This ~~[Act]~~ [act] does not govern the enforceability of a child-custody determination
3 made without notice or an opportunity to be heard.

4 (c) The obligation to join a party and the right to intervene as a party in a child-custody
5 proceeding under this ~~[Act]~~ [act] are governed by the law of this ~~State~~ state as in a child-custody
6 ~~proceedings~~ proceeding between residents of this ~~State~~ state.

7 **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

8 (a) Except as otherwise provided in Section 204, a court of this ~~State~~ state may not
9 exercise its jurisdiction under this [article] if, at the time of the commencement of the
10 proceeding, a proceeding concerning the custody of the child has been commenced in a court of
11 another ~~State~~ state having jurisdiction substantially in conformity with this ~~[Act]~~ [article], unless
12 the proceeding has been terminated or is stayed by the court of the other ~~State~~ state because a
13 court of this ~~State~~ state is a more convenient forum under Section 207.

14 (b) Except as otherwise provided in Section 204, a court of this ~~State~~ state, before
15 hearing a child-custody proceeding, shall examine the court documents and other information
16 supplied by the parties pursuant to Section 209. If the court determines that a child-custody
17 proceeding has been commenced in a court in another ~~State~~ state having jurisdiction substantially
18 in accordance with this ~~[Act]~~ [article], the court of this ~~State~~ state shall stay its proceeding and
19 communicate with the court of the other ~~State~~ state. If the court of the ~~State~~ state having
20 jurisdiction substantially in accordance with this ~~[Act]~~ [article] does not determine that the court
21 of this ~~State~~ state is a more appropriate forum, the court of this ~~State~~ state shall dismiss the
22 proceeding.

23 (c) In a proceeding to modify a child-custody determination, a court of this ~~State~~ state

1 shall determine whether a proceeding to enforce the determination has been commenced in
2 another ~~State~~ state. If a proceeding to enforce a child-custody determination has been
3 commenced in another ~~State~~ state, the court may:

4 (1) stay the proceeding for modification pending the entry of an order of a court of
5 the other ~~State~~ state enforcing, staying, denying, or dismissing the proceeding for enforcement;

6 (2) enjoin the parties from continuing with the proceeding for enforcement; or

7 (3) proceed with the modification under conditions it considers appropriate.

8 **SECTION 207. INCONVENIENT FORUM.**

9 (a) A court of this ~~State~~ state ~~which that~~ has jurisdiction under this ~~[Act]~~ [article] to
10 make a child-custody determination may decline to exercise its jurisdiction at any time if it
11 determines that it is an inconvenient forum under the circumstances and that a court of another
12 ~~State~~ state is a more appropriate forum. The issue of inconvenient forum may be raised ~~upon~~ on
13 motion of a party, the court's own motion, or request of another court.

14 (b) Before determining whether it is an inconvenient forum, a court of this ~~State~~ state
15 shall consider whether it is appropriate for a court of another ~~State~~ state to exercise jurisdiction.
16 For this purpose, the court shall allow the parties to submit information and shall consider all
17 relevant factors, including:

18 (1) whether domestic violence has occurred and is likely to continue in the future
19 and which ~~State~~ state could best protect the parties and the child;

20 (2) the length of time the child has resided outside this ~~State~~ state;

21 (3) the distance between the court in this ~~State~~ state and the court in the ~~State~~ state
22 that would assume jurisdiction;

23 (4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which ~~State~~ state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each ~~State~~ state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each ~~State~~ state with the facts and issues in the pending litigation.

(c) If a court of this ~~State~~ state determines that it is an inconvenient forum and that a court of another ~~State~~ state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be ~~promptly~~ commenced promptly in another designated ~~State~~ state and may impose any other condition the court considers just and proper.

(d) A court of this ~~State~~ state may decline to exercise its jurisdiction under this ~~[Act]~~ [article] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding

Comment

Other than the limited circumstances of Section 412, there is no forum non conveniens between countries parties to the 1996 Convention. There is only the transfer of jurisdiction proceeding of Section 414.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) Except as otherwise provided in Section 204 [or by other law of this ~~State~~ state], if a court of this ~~State~~ state has jurisdiction under this ~~[Act]~~ [article] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of

jurisdiction;

(2) a court of the ~~State~~ state otherwise having jurisdiction under Sections 201 through 203 determines that this ~~State~~ state is a more appropriate forum under Section 207; or

(3) no court of any other ~~State~~ state would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this ~~State~~ state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses 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~~ which fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this ~~State~~ state unless authorized by law other than this ~~[Act]~~ [act].

SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the ~~names and present addresses of the persons~~ name and address of each person ~~having physical custody with whom~~ which the child has lived during that period. The pleading

or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court or authority, the case number, and the nature of the proceeding; and

(3) knows the ~~names and addresses of any~~ name and address of each person not a party to the proceeding ~~who has~~ having physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, ~~the names and addresses of those persons:~~ name and address of the person.

(b) If the information required by subsection (a) is not furnished, the court, ~~upon~~ on motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection ~~(a)(1) through (3)~~ (a) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding ~~in this or any other State~~ that could affect the current proceeding.

[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the

1 court orders the disclosure to be made after a hearing in which the court takes into consideration
2 the health, safety, or liberty of the party or child and determines that the disclosure is in the
3 interest of justice.]

4 **Comment**

5 Note to Style: Subsection (b) has been retained since it has been part of the UCCJEA and
6 the UCCJA. There is a risk that if eliminated it might be thought to restrict the power of the
7 court.
8

9 Pursuant to the last decision of the drafting committee the identification of the habitual
10 residence of the child has been omitted.
11

12 **SECTION 210. APPEARANCE OF PARTIES AND CHILD.**

13 (a) In a child-custody proceeding in this ~~State~~ state, the court may order a party to the
14 proceeding ~~who~~ which is in this ~~State~~ state to appear before the court in person with or without
15 the child. The court may order any person ~~who~~ that is in this ~~State~~ state and who has physical
16 custody or control of the child to appear in person with the child.

17 (b) If a party to a child-custody proceeding whose presence is desired by the court is
18 outside this ~~State~~ state, the court may order that a notice given pursuant to Section 108 include a
19 statement directing the party to appear in person with or without the child and informing the
20 party that failure to appear may result in a decision adverse to the party.

21 (c) The court may enter any orders necessary to ensure the safety of the child and of any
22 person ordered to appear under this section.

23 (d) If a party to a child-custody proceeding who is outside this ~~State~~ state is directed to
24 appear under subsection (b) or desires to appear personally before the court with or without the
25 child, the court may require another party to pay reasonable and necessary travel and other
26 expenses of the party so appearing and of the child.

1 **SECTION 211. FINDINGS AND CONCLUSIONS.**

2 (a) If requested by a party, a court of this state that makes or modifies a child-custody
3 determination or orders or modifies a measure of protection under this [act] shall include in the
4 determination or measure the court's findings and conclusions on the following:

5 (1) the basis for the exercise of jurisdiction by the court;

6 (2) the manner in which notice and opportunity to be heard were given to each
7 person entitled to notice of the proceeding;

8 (3) the opportunity for the child to be heard or the reasons why the child was not
9 heard; and

10 (4) the country of the habitual residence of the child.

11 (b) A child-custody determination or measure of protection made under this [act] may be
12 supplemented at any time to include the findings and conclusions described in subsection (a)
13 without the supplement being construed as a modification.

14 **Comment**

15
16 Related to Convention: Article 25: This section was proposed by the drafting committee.
17 It is meant to help those parents who contemplate foreign enforcement of a United States custody
18 determination or measure of protection. It is important that a court not only make the
19 conclusions set out in this section, but also the findings of fact underlying those conclusions.
20 This is because Article 25 of the convention requires that the requested state is bound by the
21 findings of fact upon which another convention states based its jurisdiction. These findings and
22 conclusions will be extremely helpful to an American parent seeking to enforce abroad a measure
23 taken by a United States court.

24
25 Subsection (b) makes it clear that a child custody determination or a measure of
26 protection can be amended or supplemented to include the findings and conclusions without the
27 risk of the amendments being called a modification.

1 [ARTICLE] 3.

2 ENFORCEMENT

3 Drafting Note

4 For this draft Article 3 remains as it was in the original UCCJEA with one minor change.
5 In some sections the jurisdictional reference to Article 2 is changed to this Act. This is required
6 because of the addition of Article 4 which contains the rules with regard to cases under the
7 convention and, because Article 3 is used to enforce both custody-determination ordered under
8 Article 2 and measures of protection ordered under Article 4.
9

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

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

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

17 SECTION 302. ENFORCEMENT UNDER HAGUE ABDUCTION

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

21 SECTION 303. DUTY TO ENFORCE.

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

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

5 (c) A court of this state need not apply this [section] if the child custody law of a
6 nonconvention country violates fundamental principles of human rights.

7 **Comment**

8 The drafting committee determined that the standard for nonrecognition of nonconvention
9 country child-custody determinations should continue as before the revision of the UCCJEA. It
10 has been moved to this section from section 105 to clarify the differences between convention
11 and nonconvention countries.

12 **SECTION 304. TEMPORARY VISITATION.**

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

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

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

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

22 **Comment**

23 Note to Style: the comma that appears in line 13 appears to be an old comma. Do you
24 wish it deleted?

1 **SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.**

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

5 (1) a letter or other document requesting registration;

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

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

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

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

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

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

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

20 (2) a hearing to contest the validity of the registered determination must be
21 requested ~~within~~ not later than 20 days after service of notice; and

22 (3) failure to contest the registration will result in confirmation of the child-
23 custody determination and preclude further contest of that determination with respect to any

1 matter that could have been asserted.

2 (d) A person seeking to contest the validity of a registered order must request a hearing
3 ~~within~~ not later than 20 days after service of the notice. At that hearing, the court shall confirm
4 the registered order unless the person contesting registration establishes that:

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

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

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

11 (4) the child has been placed in a foster home or institution in this state and the
12 authority that ordered the placement did so without consultation, without transmitting a report
13 giving the reasons for the placement and this state has not consented to the placement.

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

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

20 **Comment**

21 Note to Style: We are not sure to the delta noted on page 29 line 15 refers. The is a
22 “dd”note in the margin. We originally replaced the “(a)(1) to (3)” “(a)” at your request. Please
23 clarify. Also on page 30, line 2, we need to know whether you prefer “must” or “shall” or some
24 other word.

25 This section generally is the same as the existing Section 305. It is referred to in Article 4

as the method by which a “measure of protection” from a convention country is to be registered, recognized and enforced. That means for Article 4 purposes, the terms in this and other sections need to be thought of in Article 4 terminology. Thus child-custody determination is the equivalent for this section of measure of protection, court is the equivalent of authority, etc.

The drafting committee also determined that the defense to registration noted in (d)(4) which is found in the convention ought to be applicable to non convention countries as well.

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.

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

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

(c) A court of this state may only modify a registered child-custody determination of a state in accordance with this [act].

Comment

The addition of subsection (c) was requested by the style committee.

Note to Style: Is subsection (c) more appropriate than the original text? The comma after modify in line 16 appears to be an old comma. It is now deleted with the addition of the new (c).

SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [article] is commenced in a court of this ~~State~~ state and the court determines that a proceeding to modify the determination is pending in a court of another ~~State~~ state, having jurisdiction to modify the determination under ~~[Article] 2 this [act],~~ the enforcing court shall ~~immediately~~ communicate immediately with the modifying court, The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

1 **SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY**
2 **DETERMINATION.**

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

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

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

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

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

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

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

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

22 (c) ~~Upon~~ On the filing of a petition; under this section, the court shall issue an order
23 directing the respondent to appear in person with or without the child at a hearing and may enter

1 any order necessary to ensure the safety of the parties and the child. The hearing must be held on
2 the next judicial day after service of the order unless that date is impossible. In that event, the
3 court shall hold the hearing on the first judicial day possible. The court may extend the date of
4 hearing at the request of the petitioner.

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

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

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

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

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

19 (D) the child has been placed in a foster home or institution in this state and
20 the authority that ordered the placement did so without consultation, without transmitting a report
21 giving the reasons for the placement and this state has not consented to the placement; or

22 (2) the child-custody determination for which enforcement is sought was
23 registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court

1 of a ~~State~~ state having jurisdiction to do so under ~~[Article] 2~~ this [act].

2 **Comment**

3 Note to Style: Page 32, line 12. “Authority” is not inserted here. The drafting committee
4 made the decision to refer to Article 3 in Article 4 that the process used to register, recognize and
5 enforce a custody determination is to be used for a measure of protection. Thus it decided that it
6 was not necessary to go back and insert “authority” every time court is used and “convention
7 country” every time the word “state” is used.

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

12 **SECTION 310. HEARING AND ORDER.**

13 (a) Unless the court issues a temporary ~~emergency~~ order pursuant to Section 204 or 416,
14 ~~upon~~ on a finding that a petitioner is entitled to immediate physical custody of the child, the court
15 shall order that the petitioner may take immediate physical custody of the child unless the
16 respondent establishes that:

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

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

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

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

(D)the child has been placed in a foster home or institution in this state
and the authority that ordered the placement did so without consultation, without transmitting a
report giving the reasons for the placement and this state has not consented to the placement;

(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~~ state having jurisdiction to do so under ~~[Article] 2~~ this [act].

(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~~ act.

Comment

As in Section 305, the defense of placement in this state without consultation has been added to the list of defenses applicable to all cases.

SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

(a) ~~Upon~~ On 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 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 state, it may

1 issue a warrant to take physical custody of the child. The petition must be heard on the next
2 judicial day after the warrant is executed unless that date is impossible. In that event, the court
3 shall hold the hearing on the first judicial day possible. The application for the warrant must
4 include the statements required by Section 308(b).

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

6 (1) recite the facts ~~upon~~ on which a conclusion of imminent serious physical harm
7 or removal from the jurisdiction is based;

8 (2) direct law enforcement officers to take physical custody of the child
9 immediately; and

10 (3) provide for the placement of the child pending final relief.

11 (d) The respondent must be served with the petition, warrant, and order immediately
12 after the child is taken into physical custody.

13 (e) A warrant to take physical custody of a child is enforceable throughout this ~~State~~
14 state. If the court finds on the basis of the testimony of the petitioner or other witness that a less
15 intrusive remedy is not effective, it may authorize law enforcement officers to enter private
16 property to take physical custody of the child. If required by exigent circumstances of the case,
17 the court may authorize law enforcement officers to make a forcible entry at any hour.

18 (f) The court may impose conditions upon placement of a child to ensure the appearance
19 of the child and the child's custodian.

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

21 (a) The court shall award the prevailing party, including a ~~State~~ state, necessary and
22 reasonable expenses incurred by or on behalf of the party, including costs, communication
23 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~~ which 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~~ state unless authorized by law other than this ~~[Act]~~ [act].

Comment

Note to Style: The comma appearing on page 36, line 23 appears to be an old comma.
Delete or retain?

SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this ~~State~~ state shall accord full faith and credit to an order issued by another ~~State~~ state ~~and~~ which is consistent with this ~~[Act]~~ [act] ~~which and~~ enforces a child-custody determination by a court of another ~~State~~ state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under ~~[Article] 2~~ 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~~ renders a temporary emergency order under Section 204 or 416, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Comment

Note to Style: In Section 310 you removed the word “emergency” in the phrase as it exists in line 17 of this section. You did not do so in this section. Do you wish the two to be consistent and if so, which is preferred?

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

(a) In a case arising under this ~~[Act]~~ [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-

1 custody determination if there is:

2 (1) an existing child-custody determination;

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

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

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

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

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

13 **SECTION 317. COSTS AND EXPENSES.** If the respondent is not the prevailing
14 party, the court may assess against the respondent all direct expenses and costs incurred by the
15 [prosecutor or other appropriate public official] and [law enforcement officers] under Section
16 315 or 316.

17 **[ARTICLE] 4.**

18 **PROCEEDINGS UNDER CONVENTION**

19 **Introductory Comment**

20 This Article applies exclusively to cases that fall under the 1996 Hague Convention on
21 Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of
22 Parental Responsibility and Measures for the Protection of Children. It applies to cases between
23 states of the United States and foreign countries in which the Convention is in force. It also
24 applies to cases between states of the United States and foreign countries in which the
25 convention is not in force to the extent that the convention requires special treatment for such
26 countries. The Article has no application to cases between states of the United States.

1 **SECTION 401. SCOPE.**

2 (a) Except as provided in Sections 416, 421, and 422 this [article] applies exclusively to a
3 proceeding in a court of this state that involves:

4 (1) recognition and enforcement of a measure of protection ordered by an
5 authority in a convention country.

6 (2) a matter described in Section 402(a) if:

7 (A) a party to the proceeding has a significant connection to a convention
8 country other than the United States; or

9 (B) a child who is the subject of the proceedings has a significant
10 connection to a convention country other than the United States.

11 (b) If a provision of this [article] is inconsistent with [articles] 1 through 3, this [article]
12 controls.

13 **Comment**

14 The term “proceeding in a court of this state” means that this article will apply to courts
15 and not to measures that are governed by the convention that will be determined by
16 administrative agencies and other governmental personnel. The federal implementing legislation
17 will address those applications.

18 **SECTION 402. MEASURE OF PROTECTION.**

19 (a) A measure of protection includes:

20 (1) the attribution, exercise, termination, delegation, or restriction of parental
21 responsibility;

22 (2) rights of custody, including:

23 (A) rights relating to the care of the person of a child; and

24 (B) determining the place of residence of a child;

25 (3) rights of access or visitation, including the right to take a child for a limited

1 period to a place other than the habitual residence of a child;

2 (4) guardianship of a child and any similar relationship;

3 (5) the designation and function of a person that has charge of a child, or that
4 represents or assists a child;

5 (6) governmental supervision of a person that has charge of a child; and

6 (7) placement of a child in foster care, institutional care, or a similar relationship.

7 (b) A measure of protection does not include:

8 (1) establishment or contest of a parent-child relationship;

9 (2) adoption, including preparatory measures, or annulment or revocation of an
10 adoption;

11 (3) the name of a child;

12 (4) emancipation of a child;

13 (5) a support or maintenance obligation with regard to a child;

14 (6) a trust or succession;

15 (7) a public benefit, including social security;

16 (8) a general governmental decision with regard to education or health;

17 (9) a measure resulting from an offense committed by a child; [or]

18 (10) a right of asylum and immigration[; or

19 (11) property of a child].

20 **Comment**

21 Note to Style: as asked in the last draft, termination of parental rights is a measure within
22 the scope of this act and therefore is inappropriate to include in subsection (b)(1).
23

24 Related to the Convention: Arts. 3,4.

25 This article involves measures of protection taken in relation to one of the subject

1 matters covered in Article 3 of the Convention. As noted in the Explanatory Report, the list in
2 article 3, and therefore in subsection (a) of this section, is opened-ended which is indicated by
3 using the term “may include.” Unlike subsection (a), subsection (b) concerning exclusions is a
4 closed list. The subjects in subsection (b) are covered by law other than this act.

5 The terms “rights of custody” and “rights of access” are taken from the 1980 Hague
6 Convention on the Civil Aspects of International Child Abduction with slight word changes
7 mandated by the Style Committee. They should be given the same definition in applying this
8 convention as they are given in applying the 1980 convention. Thus, for example, a ne exeat
9 right would be treated as a right of custody under this convention just as it would under the 1980
10 convention. See *Abbott v. Abbott*, 130 S.Ct. 1983 (2010). The terms are particularly important
11 in the application of section 413 and are broad enough to include most of the contemporary
12 variations on word choice for custody. Thus “parenting time”, “joint custody”, and “managing
13 conservator” are all terms used in various states to indicate who is entitled to make decisions
14 concerning the child. If those decisions include rights relating to the care of the child, and, in
15 particular, the right to choose the child’s residence, it becomes a right of custody under this
16 convention and the Abduction Convention.

17 Nothing in this section is meant to broaden or restrict the right of a court to appoint an
18 advocate, lawyer, or other representative for the child.

19 **SECTION 403. EFFECT OF MEASURE OF PROTECTION.**

20 (a) A measure of protection ordered by a court of this state which had jurisdiction under
21 this article binds a person that:

22 (1) has:

23 (A) been served in accordance with the law of this state;

24 (B) been notified in accordance with Section 404; or

25 (C) submitted to the jurisdiction of the court; and

26 (2) has been given an opportunity to be heard.

27 (b) The measure under subsection (a) is conclusive as to all decided issues of law and
28 fact except to the extent the measure is modified.

29 **Comment**

30 In this version of the act all the sections from article 1-2 that are applicable to an article 4
31 proceeding are set out in full in article 4. I have made appropriate language changes, i.e.,
32 changing “child custody determination” to “measure of protection” and “court” to “authority

where required.” This section is comparable to Section 106.

SECTION 404. PRIORITY. If a question of the existence or exercise of jurisdiction under this [article] is raised in a proceeding, on request of a party the question must be given priority on the calendar and handled expeditiously.

Comment

Comparable to Section 107.

SECTION 405. NOTICE TO PERSON OUTSIDE STATE.

(a) Notice required for the exercise of jurisdiction by a court of this state when a person is outside this state may be given in a manner for service of process prescribed by the law of this state or of the convention country 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 this state or of the law of the convention country in which service is made.

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

Comment

Comparable to Section 108.

SECTION 406. APPEARANCE AND LIMITED IMMUNITY.

(a) A party to a proceedings under this [article], including a modification proceeding, or a petitioner or respondent to a proceeding to enforce or register a measure of protection, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating in the

1 proceeding.

2 (b) A party that is subject to personal jurisdiction in this state on a basis other than
3 physical presence is not immune under subsection (a) from service of process in this state. A
4 party present in this state that is subject to the jurisdiction of another state or convention country
5 is not immune under subsection (a) from service of process allowable under the laws of that state
6 or convention country.

7 (c) The immunity under subsection (a) does not extend to civil litigation based on an act
8 committed by a party while present in this state which is unrelated to the party's participation in a
9 proceeding under this [article].

10 **Comment**

11 Comparable to Section 109.

12 **SECTION 407. COMMUNICATION BETWEEN COURT AND AUTHORITIES.**

13 (a) In a proceeding under this [article], the court may communicate with an authority in a
14 convention country concerning a proceeding arising under this [article].

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

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

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

1 **Comment**

2 Comparable to Section 110.

3 **SECTION 408. TAKING TESTIMONY IN A CONVENTION COUNTRY.**

4 (a) In addition to other procedures available to a party, a party to a proceeding in a court
5 of this state under this [article] may offer testimony of witnesses who are located in a convention
6 country, including testimony of the parties and the child, by deposition or other means allowable
7 in this state for testimony taken in another state or foreign country. The court on its own motion
8 may order that the testimony of a person be taken in a convention country and may prescribe the
9 manner in which and the terms upon which the testimony is taken.

10 (b) A court of this state may permit an individual residing in another convention country
11 to be deposed or to testify by telephone, audiovisual means, or other electronic means before a
12 designated authority or at another location in that country. A court of this state shall cooperate
13 with authorities of other convention countries in designating an appropriate location for the
14 deposition or testimony.

15 (c) In a proceeding under this [article], documentary evidence from a convention country
16 to the court by technological means that do not produce an original writing may not be excluded
17 from evidence on an objection based on the means of transmission.

18 **Comment**

19 Comparable to Section 111.

20 **SECTION 409. COOPERATION BETWEEN COURT AND AUTHORITY;**
21 **PRESERVATION OF RECORDS.**

22 (a) In a proceeding under this [article], the court may request the appropriate authority of
23 another convention country to:

(1) hold an evidentiary hearing;

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

country;

(3) order that an evaluation be made with respect to the child involved in a

pending proceeding;

(4) forward to the court a certified copy of the transcript of the record of the

hearing, the evidence presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a measure of protection proceeding or any person having

physical custody of the child to appear in the proceeding with or without the child.

(b) In a proceeding under this [article], on request of an authority of another convention

country a court may hold a hearing or render an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and

(b) may be assessed against a party according to the law of this state other than this [act].

(d) In a proceeding under this [article], the court shall preserve the pleadings, orders,

decree, records of hearings, evaluations, and other pertinent records with respect to a measure of

protection until the child attains 18 years of age. On request by an authority or law enforcement

official of another convention country, the court shall forward a certified copy of those records.

Comment

Note to Style: The drafting committee determined that it would decline the invitation to flesh out the term “appropriate” in subsection (d). It also determined that a provision on who pay costs of the court to prepare and send the records was not needed. The rationale for the decision of the drafting committee is that these provision were part of the original UCCJA and have been in existence for almost 50 years without causing any difficulty.

Comparable to Section 112.

SECTION 410. HABITUAL RESIDENCE. In a proceeding under this [article], the

1 court shall consider all relevant factors in determining the habitual residence of a child, including

2 (1) whether the child has a home state in the United States;

3 (2) the extent of the child's ties to a particular country, including the child's social
4 interactions, education, family relationships, peer relationships, and language;

5 (3) the age and maturity of the child;

6 (4) whether the presence of the child in the country is time limited or open ended; and

7 (5) the circumstances under which the child is in the country;

8 (6) the intent of each person with parental responsibility for the child in determining the
9 habitual residence of the child.

10 **Comment**

11 In accordance with the decision of the drafting committee, this is not a definition but
12 rather a provision designed to give guidance to a court in making the determination of the
13 habitual residence of the child. As determined by the Drafting Committee, the provision is also
14 child centered, in that it focuses on the child and not on the child's parents. The intention of the
15 child's parents is listed as the last of the factors to be considered. No determination is made as to
16 when it would be appropriate to consider the parents' intent, however, it will obviously be more
17 important with extremely young children.

18 It should be noted that the 1996 Convention uses the term "habitual residence" in a
19 different context than the 1980 Abduction Convention. In the 1980 Convention the
20 determination that a child is habitually resident in the requesting country is necessary in order for
21 the remedy of that Convention to be applicable and is part of the larger inquiry as to whether
22 there has been a wrongful removal or retention of a child. The role of habitual residence in the
23 1996 Convention is to assess which country's authorities have jurisdiction to take measures of
24 protection and whether their decisions should be recognized by other contracting countries.
25 Therefore the precedent that has developed under the 1980 Convention is not necessarily
26 applicable to the determination of habitual residence under this article.

27 **SECTION 411. MEASURE OF PROTECTION; JURISDICTION.**

28 (a) Except as otherwise provided in Section 416, a court of this state has jurisdiction to
29 order or modify a measure of protection only if:

30 (1) the court has jurisdiction under Section 201 and the United States is the

1 habitual residence of a child;

2 (2) the child is present in this state; and

3 (A) the habitual residence of the child cannot be determined;

4 (B) the child is a refugee; or

5 (C) the child is internationally displaced due to disturbances in the country
6 of the habitual residence of the child; or

7 (3) an authority with jurisdiction substantially in accord with paragraph (1) or (2)
8 requests the court to assume jurisdiction and the court agrees.

9 (b) If requested by a party, the court shall make findings and conclusions of the
10 jurisdictional facts.

11 **Comment**

12 Related to Convention: Arts. 5,6,8, and 9. This section relates primarily to articles 5 and
13 6 of the Convention. A state can also have jurisdiction, apart from habitual residence, if the child
14 is present in this state and has no habitual residence. However, the Practical Handbook indicates
15 that this determination should be avoided if at all possible. Jurisdiction is also proper if the child
16 is present in the state and is a refugee or is internationally displaced. Finally, this state has
17 jurisdiction if the convention country that would otherwise have jurisdiction has decided to ask a
18 court of this state to assume jurisdiction and the court has agreed.

19 **SECTION 412. SIMULTANEOUS PROCEEDINGS.**

20 (a) Except as otherwise provided in Section 416, a court of this state may not exercise its
21 jurisdiction under [Sections 411, 413 or 414] [this article] if the court determines that at the time
22 the proceeding commenced, a request for a similar measure of protection was made before an
23 authority having jurisdiction and that request is still under consideration, unless the authority
24 declines to exercise its jurisdiction in favor of the court.

25 (b) If a court of this state which has jurisdiction under [Sections 411, 413, or 414] [this
26 article] determines that a proceeding has been commenced later in a convention country having

jurisdiction concerning a similar measure of protection, the court may decline jurisdiction.

Comment

Related to the Convention, Art 13. Article 13 provides a lis pendens for situations where there is potentially conflicting jurisdiction. Its use was primarily thought to apply between the country of the child's habitual residence and the country where a divorce between the child's parents is pending. However, it has application to all potential jurisdictional conflicts that might arise under Articles 5-10 of the Convention. Therefore, it would apply in those rare situations when the child's habitual residence changes during the middle of a case.

Note that under subsection (a) there is a provision for a court of this state to continue the case if the court that first had jurisdiction declines in favor of this state. This declination of jurisdiction is on the basis of forum non conveniens and does not involve the transfer jurisdiction of Article 8-9 of the Convention. There is a subsection (b) that authorizes a court of this state to decline jurisdiction in favor of the second to file country, if that would be appropriate under the circumstances.

SECTION 413. WRONGFUL REMOVAL OR RETENTION OF CHILD; JURISDICTION.

(a) This section applies to a right of custody that arises by operation of law or from a judicial or administrative decision or an agreement having legal effect under the law of the country of a child's habitual residence immediately before removal or retention of a child.

(b) Removal or retention of a child is wrongful if:

(1) it is in breach of a right of custody of a person, either jointly or solely, under the law of the country of the child's habitual residence immediately before the removal or retention; and

(2) at the time of removal or retention, the right of custody was exercised, either jointly or solely, or would have been exercised but for the removal or retention.

(c) A court that has jurisdiction under Section 411(a)(1) continues to have jurisdiction after a wrongful removal or retention of the child until the child acquires a new habitual residence, and:

1 (1) each person with a right of custody has acquiesced in the removal or retention;
2 or

3 (2) the child resides in the country of the new habitual residence for at least one
4 year after the time that every person with a right of custody knew or should have known of the
5 whereabouts of the child, no request for the return of the child is pending before an authority of
6 the country of the new habitual residence or in a court of this state, and the child is settled in the
7 new environment.

8 (d) Except as otherwise provided in Section 416, a court of this state does not have
9 jurisdiction over a child whose habitual residence in this state is the result of a wrongful removal
10 or retention unless:

11 (1) each person with a right of custody has acquiesced in the removal or retention;
12 (2) the child resides in this state for at least one year after the time that every
13 person with a right of custody knew or should have known of the whereabouts of a child, no
14 request for the return of the child is pending in a court of this state or before an authority of the
15 country of the former habitual residence of the child, and the child is settled in the new
16 environment; or

17 (3) a court agrees to assume jurisdiction under Section 415.

18 **Comment**

19 Note to Style: The terms “habitual residence” and “environment” as used in this section
20 are terms that the 1996 Protection Convention borrowed from the 1980 Abduction Convention
21 and are meant to have the same meaning. Both terms have acquired considerable judicial gloss
22 over the last 30 years. While not exact, “environment” has a connection with a space such as a
23 local city or village or farm. “Habitual residence” refers to a connection with a political unit like
24 a country or state. A change in either terminology will be thought of by practitioners to have
25 substantive effects given the long history of interpretation of the terms. Therefore the terms
26 should be left as written.

27 Relation to Convention, Art 7. The definition of wrongful removal or retention in this

1 section does not specifically set out “institution or other body” as the term is used in the
2 Convention, That is because the definition of the term “person” in section 102 includes
3 “institution or other body” and therefore the terms would be redundant in this section.

4 The term “rights of custody” is also not defined in this section since it takes the definition
5 that is set out in section 402. The term “rights of custody” does not include access or visitation
6 or access rights as defined in the same section. This section is designed to prevent jurisdiction
7 from transferring following a wrongful removal or retention as set out in the 1980 convention.
8 Therefore, the terms of “rights of custody,” exercise of custody,” acclimatized,” and
9 “environment” etc will take on the same meaning here that they have in the cases interpreting the
10 1980 convention. Since there is a considerable judicial gloss on those terms, the drafting
11 committee determined that none of the language should be modernized.

12 This section presents both sides of Article 7. It confirms that a court of this state does not
13 lose its jurisdiction after a wrongful abduction unless the requirements of Article 7 are met. It
14 also provides that a court of this state does not obtain jurisdiction if the child’s habitual residence
15 in this state is the result of a wrongful abduction unless the requirements of the article are met.

16 The reference to a petition for the return of the child pending in the court of this state or
17 the new habitual residence is in line with the interpretation of the section set out in the Practical
18 Handbook. See Preliminary Document No. 4, Practical Handbook on the Operation of the 1996
19 Convention, available at <http://www.hcch.net/upload/wop/abduct2011pd04e.pdf>. It should be
20 noted that a custody determination made by the court of the state from which the child has been
21 wrongfully removed or retained while that state still has jurisdiction under this section must be
22 recognized and enforced under the section on recognition and enforcement.

23 **SECTION 414. DECLINING JURISDICTION.**

24 (a) If a court of this state that has jurisdiction under Section 411(a)(1) or (2) determines
25 that an authority in another convention country is in a better position to assess the best interest of
26 a child, the court may:

27 (1) request that the authority assume jurisdiction over all or part of the case; or

28 (2) stay the proceeding to allow a party to request that the authority assume
29 jurisdiction.

30 If the authority of the other convention country agrees to assume jurisdiction, the court may
31 decline jurisdiction.

32 (b) A court of this state may communicate under Section 407 with the authority in a

1 convention country concerning a request that it assume jurisdiction under subsection (a).

2 (c) Before determining whether an authority in another convention country is in a better
3 position to determine the best interest of a child, a court shall allow each party to submit
4 information and shall consider all relevant factors, including:

5 (1) whether domestic violence has occurred and is likely to continue and which
6 convention country can best protect the parties and the child;

7 (2) the length of time the child has resided outside the United States;

8 (3) the distance between the court and the authority in the convention country
9 which would assume jurisdiction;

10 (4) the financial circumstances of the parties;

11 (5) any agreement of the parties concerning which convention country should
12 assume jurisdiction;

13 (6) the nature and location of evidence required to resolve any issue in the case,
14 including testimony of the child;

15 (7) the ability of the court and the authority of the other convention country to
16 present evidence and decide the case expeditiously;

17 (8) the procedures available in this state and the other convention country
18 necessary to present evidence;

19 (9) the familiarity of the court and the authority of the other convention country
20 with the facts and issues in the proceeding; and

21 (10) whether a defense to the return of the child was sustained under the 1980
22 Hague Convention on the Civil Aspects of International Child Abduction.

23 (d) A request under subsection (a) may be made only to an authority:

1 (1) in a convention country of which the child is a national;

2 (2) that has jurisdiction over the [divorce] or annulment of marriage of the parents

3 of the child; or

4 (3) in a convention country that has a substantial connection to the child.

5 (e) A declination of jurisdiction under this section is not permanent.

6 **Comment**

7 Note to Style: The drafting committee agrees with your comment. The section no longer
8 refers to transferring jurisdiction. Rather the draft refers to assuming jurisdiction and declining
9 jurisdiction.

10 Relation to Convention, Arts 8,9.

11 As discussed by the drafting committee at its February, 2012 meeting, Article 8 and 9 of
12 the convention are now set out in two separate article. This article refers to declining jurisdiction
13 and the next article refers to assuming jurisdiction. The term “transferring jurisdiction” was not
14 used since it does not fit comfortably into a common law tradition, even though the convention
15 terminology is “transferring jurisdiction.”

16 Subsection (c) is material that is contained in Article 207. This section should provide
17 guidance to a court in determining whether it is appropriate to transfer jurisdiction in the same
18 way that 207 provides guidance in terms of whether a court should find that it is an inconvenient
19 forum. The factors of this section can also be used to determine whether another convention
20 country has a significant connection to the child. The convention does not provide a procedure
21 for determining when a court decides that another state should transfer or receive jurisdiction.
22 Therefore it would not be inconsistent with the Convention to add such a provision.

23 That part of article 8 of the Convention that requires a court to determine whether it is in
24 the best interests of the child for it to receive jurisdiction is covered in Section 411(3).

25 Subsection (e) provides that the transfer of the case under this Section does not effect a
26 permanent transfer of jurisdiction. If the country of the habitual residence of the child transfers
27 the case to another country, modification procedures would take place in the country of the
28 child’s habitual residence since there is no continuing jurisdiction under the convention.

29 **SECTION 415. REQUESTING JURISDICTION.**

30 (a) A court of this state may request or invite the parties to request the appropriate
31 authority of the convention country of the habitual residence of a child to decline jurisdiction

1 over a measure of protection in favor of the court if:

2 (1) the child is a national of the United States;

3 (2) a [divorce] or annulment proceeding concerning the parents of the child is
4 pending in this state; or

5 (3) this state has a substantial connection to the child.

6 (b) The court may communicate under Section 407 with the authority of the convention
7 country of the habitual residence of the child concerning a request under subsection (a).

8 (c) A court of this state may not assume jurisdiction following a request under subsection
9 (a) until the authority of the convention country of the habitual residence of the child decides to
10 decline jurisdiction in favor of the court.

11 (d) An assumption of jurisdiction under this section is not permanent.

12 **Comment**

13 It is not necessary to delineate the court's jurisdiction under subsection (a). So long as it
14 would have subject matter jurisdiction to entertain a petition it can decide whether to request a
15 transfer of jurisdiction from the convention country of the child's habitual residence.

16 As in the case of the previous section an assumption of jurisdiction in this state following
17 a declination by the state of the habitual residence is not permanent. Future actions would have
18 to be filed in the convention country of the child's habitual residence.

19 **SECTION 416. TEMPORARY URGENT JURISDICTION; MEASURE OF** 20 **PROTECTION.**

21 (a) A court of this state has jurisdiction to order a temporary measure of protection for a
22 child present in this state in an urgent situation, including when the child has been abandoned or
23 it is necessary to protect the child because the child or a sibling or a parent of the child is
24 subjected to or threatened with mistreatment or abuse.

25 (b) A measure of protection ordered under subsection (a) regarding a child habitually

1 resident in a convention country expires when the court orders an end to the measure or an
2 authority with jurisdiction takes whatever action is required.

3 (c) An measure of protection ordered under subsection (a) regarding a child habitually
4 resident in a nonconvention country expires when the court orders an end to the measure or a
5 measure ordered by the nonconvention country is registered in this state under Section 305.

6 **Comment**

7 Related to Convention: Art. 11. This section tracks article 11 of the Convention. The
8 scope of this section is wider than the scope of section 204. The term “urgent” covers more
9 situations than the comparable term “emergency” as found in section 204. According to the
10 Practical Handbook this means that this section can be used to fill in the gaps of the 1980 Hague
11 Convention on the Civil Aspects of International Child Abduction. Thus if a court of a country
12 that is requested to return the child under the 1980 convention might decide to return the child
13 only if the child is protected from the left behind parent on return. Or, it might decide to return
14 the child only if the left behind parent provides certain undertaking with regard to financial
15 commitments to child and the other parent. These orders are described as “urgent” and since
16 they are properly taken under this section are entitled to enforcement in the country of the
17 habitual residence of the child until modified. See the Practical Handbook, ¶6.11. Although
18 United States courts have authority to issue provisional orders under the International Child
19 Abductions Remedies Act, 42 U.S.C. §11604, there is no basis for enforcement of these orders
20 abroad except by this convention.

21 The expiration of the emergency order is as set out in Article 11. If the child’s habitual
22 residence is in a convention country the order expires when the convention country takes
23 whatever measure is required by the situation. If the child’s habitual residence is in a
24 nonconvention country the emergency order expires when it is recognized by a court of this state.
25 I think we need not concern ourselves with the language of Article 10(C) of “each contracting
26 state” and “in the contracting state in question” since we are writing for this state and no other
27 state.

28 The implication of the language of the convention seems to require that the non-
29 contracting state actually take a measure of protection since there must be something to be
30 recognized in this state in order for the temporary order to come to an end. With regard to an
31 emergency order when the child is habitually residence in a convention country, the convention
32 provides that the emergency order ends when the habitual residence takes whatever measures are
33 required by the situation which may be none at all if the country of habitual residence determines
34 that there is no emergency.

35 **SECTION 417. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.**

36 (a) Before a measure of protection is ordered by a court of this state under this [article]

1 notice and an opportunity to be heard must be given to:

2 (1) each person entitled to notice under the law of this state in a child-custody
3 proceeding between residents of this state;

4 (2) a parent whose parental rights have not been terminated previously; and

5 (3) a person having physical custody of the child.

6 (b) The obligation to join a party and the right to intervene as a party in a proceeding
7 under this [article] are governed by the law of this state in a child-custody proceeding between
8 residents of this state.

9 **Comment**

10 Comparable to 205.

11 **SECTION 418. INFORMATION TO BE SUBMITTED TO COURT.**

12 (a) [Subject to [local law providing for the confidentiality of procedures, addresses, and
13 other identifying information], in] [In] a measure of protection proceeding, each party, in its first
14 pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under
15 oath, as to the child's present address or whereabouts, the places where the child has lived during
16 the last five years, and the name and present address of each person having physical custody with
17 which the child has lived during that period. The pleading or affidavit must state whether the
18 party:

19 (1) has participated, as a party or witness or in any other capacity, in any other
20 proceeding concerning a measure of protection for the child and, if so, identify the court or
21 authority, the case number, and the date of the proceeding;

22 (2) knows of any proceeding that could affect the current proceeding, including a
23 proceeding for enforcement of a measure, and a proceeding relating to domestic violence, a

protective order, a termination of parental rights, or an adoption and, if so, identify the court or authority, the case number, and the date of the proceeding; and

(3) knows the name and address of any person not a party to the proceeding having physical custody of the child or claiming a right of legal custody of physical custody of, or visitation with the child and, if so, provide the name and address of the person.

(b) If the information required by subsection (a) is not furnished, the court, on motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If a pleading or affidavit states any information under subsection (a) affirmatively, the declarant shall give additional information under oath as required by the court. The court may examine the party under oath as to details of the information furnished and any other matter pertinent to the court's jurisdiction and the disposition of the case.

(d) A party to a measure of protection proceeding has a continuing duty to inform the court of any proceeding in this or any other state or foreign country that could affect the current proceeding.

[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

Comment

Note to Style: Subsection (b) has been retained for the same reason it was retained in Section 209.

This section is based on Section 209.

1 **SECTION 419. APPEARANCE OF PARTIES AND CHILD.**

2 (a) In a measure of protection proceeding in this state, the court may order a party that is
3 in this state to appear before the court in person with or without the child. The court may order
4 any person that is in this state and has physical custody or control of the child to appear in person
5 with the child.

6 (b) If a party to a measure of protection proceeding whose presence is desired by the court
7 is outside this state, the court may order that a notice given pursuant to Section 405 include a
8 statement directing the party to appear in person with or without the child and informing the
9 party that failure to appear may result in a decision adverse to the party.

0 (c) The court may enter any orders necessary to ensure the safety of the child and a person
1 ordered to appear under this section.

2 (d) If a party to a measure of protection proceeding who is outside this state and is
3 directed to appear under subsection (b) or desires to appear personally before the court with or
4 without the child, the court may require another party to pay reasonable and necessary travel or
5 other expenses of the party so appearing and of the child.

6	Comment
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7 Similar to Section 210

8 **SECTION 420. DURATION OF MEASURE OF PROTECTION.** Except as
9 otherwise provided in Section 416(b) and (c), the following rules apply:

(1) A measure of protection ordered by a court of this state with jurisdiction under [Sections 411, 413, or 415] [this article] remains in force even if a change of circumstances has eliminated the jurisdictional basis of the measure, until terminated, modified, or replaced by a measure of a court of this state or an authority of a convention country with jurisdiction.

(2) A measure of protection ordered by an authority of a convention country with jurisdiction remains in force even if a change of circumstances has eliminated the jurisdictional basis of the measure, until terminated, modified, or replaced by a measure of a court of this state or an authority with jurisdiction.

Comment

Note to Style: It seemed easier to draft an except clause for the termination of urgent measures rather than to have discuss their expiration under this section. Otherwise it would be necessary in Section 416 to refer to this section.

Related to Convention, Art 14, 23(2)(e). This is a familiar principle and is found in both UIFSA and the UCCJEA. An order made with appropriate jurisdiction continues to be enforceable even after the jurisdictional basis of the order disappears. The order is enforceable until modified by a court with appropriate jurisdiction under this article, or until a situation arises whereby another order can be recognized under the recognition sections. This would occur when the original order is modified by either a court with jurisdiction under this article or by an authority of the nonconvention state of the child's habitual residence.

SECTION 421. CONFLICT OF LAWS.

(a) In this section, "law" means the law in a state or foreign country other than its conflict of laws rules.

(b) Except as otherwise provided in this section, a court of this state shall apply the law of this state in a proceeding under this [article].

(c) In an exceptional circumstance in order to protect a child, a court of this state may apply or take into consideration the law of another country that has a substantial connection to the child.

(d) If this state becomes the habitual residence of a child, the law of this state governs the application in this state of a measure of protection taken in the convention country of the former habitual residence of the child.

(e) The law of the habitual residence of a child governs the exercise of parental

responsibility. If the habitual residence of the child changes the law of the new habitual residence is applicable.

(f) A court of this state may decline to apply the law designated by this section only if the court finds, after taking into account the best interest of the child, the law is manifestly contrary to the public policy of this state.

Comment

Question for Style: The last edit of subsection (f) replaced the word “section” in line 16 with “subsection (e).” However, the convention requires the public policy defense be applicable to all the rules in this Section. Therefore should not the word remain as “section?”

Related to Convention, Arts 15, 17, 20, 21(1), 22. These articles introduce into United States cases arising under the convention a new element: the question of the applicable law. In the United States, as well as most other common law countries, allocation of competency between jurisdictions in child custody and visitation cases is handled by rules of jurisdiction and recognition of judgments. Choice of law is not used. A court that has jurisdiction over a custody determination applies its own substantive law of custody, visitation, dependency, neglect, etc.

The normal rule, contained in subparagraph (b), is that a court that has jurisdiction under the convention will apply its own law, which, given that the jurisdiction is very likely to be the place of the child’s habitual residence, will result in the application of the law of the child’s habitual residence.

However, the court in order to protect the child may, in exceptional cases, apply the law of another country which has a substantial connection to the fact pattern. This provision is likely to be little used in the United States. Since there will be no jurisdiction for the divorce court in the United States, the only concurrent jurisdiction will be urgency jurisdiction. It is extremely unlikely that a court asked to decide a case in an emergency will have time to consider the law of another jurisdiction. Thus, practically all cases will be heard by the court of the child’s habitual residence which will apply its own law. However, it is possible that there may be a case, albeit rare, where even though a court has jurisdiction as the place of the child’s new habitual residence, the child, over the course of time, has had more connection with another country and therefore, although unlikely, the court of the child’s new habitual residence may wish to apply the law of the child’s previous habitual residence.

Subsection (d) draws a distinction between the existence of the measures and the method of application of the measure in a particular country when the child’s habitual residence changes as required by Article 15(3). In other words, the distinction is the equivalent of the distinction between the law governing the validity of a contract and the performance of a contract. The substantive law governing, for example, visitation, is that of the forum. However, the conditions for carrying out the visitation arrangements are that of the child’s new habitual residence. This is

1 particularly apt, according to the explanatory report in those situations where the original
2 determination was made by the child's habitual residence and then child's habitual residence
3 changes. The explanatory report acknowledges that there is not a clear line between the
4 establishment of a measure and the means of carrying out the measure and suggests that the line
5 will have to be drawn on a case-by-case basis.

6 Subsection (e) distinguishes between the existence of parental responsibility and the
7 exercise of parental responsibility. The applicable law governing the exercise of parental
8 responsibility is that of the habitual residence of the child. If the habitual residence of the child
9 changes the law of the new habitual residence governs the exercise of parental responsibility.

10 **SECTION 422. CONFLICT OF LAWS RULES REGARDING PARENTAL**
11 **RESPONSIBILITY.**

12 (a) Except as otherwise provided in subsection (b), in this section, "law" means the law
13 in force in a state or foreign country other than its conflict of laws rules.

14 (b) If the law made applicable by this section is the law of a nonconvention country and
15 the conflict of laws rules of the nonconvention country would apply the law of another
16 nonconvention country, the law of the other nonconvention country is applicable. If the other
17 nonconvention country would not apply its own law, the law applicable is provided in subsection
18 (c).

19 (c) In a proceeding under this [article], the following rules apply:

20 (1) Attribution or extinction of parental responsibility by operation of law,
21 without the intervention of an authority, is governed by the law of the country of the habitual
22 residence of the child.

23 (2) Attribution or extinction of parental responsibility by agreement or a unilateral
24 act, without the intervention of an authority, is governed by the law of the country of the habitual
25 residence of the child at the time the agreement or unilateral act takes effect.

26 (3) Attribution of parental responsibility under the law of the country of the
27 habitual residence of the child continues even if the child acquires a new habitual residence.

1 (4) If the child acquires a new habitual residence, the law of the new habitual
2 residence determines the attribution of parental responsibility by operation of law to an
3 individual who at the time of the acquisition of the new habitual residence did not have parental
4 responsibility.

5 (d) Parental responsibility established under subsection (c) may be terminated or
6 modified by a measure of protection ordered in accordance with this [article].

7 (e) A court of this state may refuse to apply the law designated by this section only if the
8 court finds, after taking into account the best interest of the child, the law is manifestly contrary
9 to the public policy of this state.

10 **Comment**

11 Related to convention, Arts 16, 18, 21(2), 22. The specific rules referred to in this section
12 are for situations where a country may have rules which provide for rights of custody, or parental
13 responsibility, by operation of law, unilateral act, or agreement. Unlike anything else in the
14 convention, the rules do not concern decisions, but rather relationships created by local rules of
15 law. The convention provides that these issues be determined by the law of the habitual
16 residence of the child.

17 Subsection (c)(3) provides that the parental responsibility that comes about by operation
18 of law, agreement or unilateral act continues even if the habitual residence of the child changes.

19
20 Subsection (c)(4) deals with the reverse situation. It provides that if parents who do not
21 have parental responsibility under the law of the child's original habitual residence move to a
22 state where parental responsibility by operation of law is applicable, the law of the new habitual
23 residence applies.

24 Subsection (d) restates Article 18 that the parental responsibility established by this
25 section may be modified by a measure under this article.

26 Subsection (b) deals with the renvoi problem, i.e. whether the reference to the law of a
27 particular State is to that State's local law or whether the reference includes the conflict of law
28 rules of the referred to State. Article 21 (2) contains a exception to the normal rule of referring
29 only to local law for fact patterns that fall under Article 16. If the application of that article
30 designates the law of a nonconvention country and if the choice-of-law rules of that state would
31 dictate applying the law of another nonconvention country then the law of the second
32 nonconvention country applies. If the second nonconvention country would not apply its own
33 law then the convention requires that the applicable law be that set forth in the section.

1 **SECTION 423. DUTY TO RECOGNIZE AND ENFORCE MEASURE OF**
2 **PROTECTION ORDERED IN CONVENTION COUNTRY.** Except as otherwise provided

3 in paragraph (3), the following rules apply:

4 (1) A court of this state shall recognize and enforce a measure of protection ordered by
5 an authority in a convention country if:

6 (A) the convention country exercised jurisdiction in substantial conformity with
7 this [article] or the measure of protection was ordered under factual circumstances meeting the
8 jurisdictional standards of this [article]; and

9 (B) the measure has not been modified in accordance with this [article].

10 (2) Even if a child is not habitually resident in the convention country, the recognition
11 required by paragraph (1) applies to a measure of protection ordered by an authority in a
12 convention country that had jurisdiction over the [divorce] or annulment of the marriage of the
13 parents of the child if:

14 (A) the law of the convention country so provides;

15 (B) one parent was habitually resident in the country;

16 (C) at least one parent had parental responsibility at the time the proceedings for
17 [divorce] or annulment was commenced; and

18 (D) the jurisdiction of the authority that decided the [divorce] or annulment was
19 agreed to by the parents or any other person with parental responsibility.

20 (3) A court of this state may decline to recognize a measure of protection ordered by an
21 authority of a convention country only if:

22 (A) the convention country was not the habitual residence of the child and did not
23 otherwise have jurisdiction under [Sections 411(2)(B) or (C), 413, or 415] [this article];

(B) except in an urgent situation, the issuing authority did not allow the
respondent an opportunity to be heard;

(C) the measure is incompatible with a later measure taken by a convention country with jurisdiction or a nonconvention country of the child’s habitual residence;

(D) the court finds, after taking into account the best interest of the child, the
measure is manifestly contrary to the public policy of this state.

(E) except in an urgent situation, the issuing authority did not provide the child an
opportunity to be heard contrary to established principles of this state; or

(F) the child has been placed in a foster home or institution in this state and the authority that ordered the placement did so without consultation, without transmitting a report giving the reasons for the placement, and this state has not consented to the placement.

Comment

Related to the Convention, Art. 10, 23(1). This section sets out in subsection (a) the basic rule of recognition. It requires recognition of child custody determinations made in another contracting country if the measure was decided in accordance with the jurisdictional provisions of this article. The operative language from Section 303 has been slightly rewritten but the duty to recognize is not lessened in this article.

Subsection (b) is a special case. The convention allows an authority having jurisdiction of the parent's divorce or annulment to also exercise jurisdiction over the child so long as one of the parents is habitually resident in the country, one parent has parental responsibility and the parties, as well as anyone else with parental responsibility, agree. This jurisdictional basis is not required under the convention and will not be a part of United States law. However, the convention does require recognition of custody determinations made in accordance with its jurisdictional standard. Therefore even though the United States does not have this jurisdictional basis to determine custody, the convention does require recognition of measures taken by the country that has jurisdiction over the divorce or annulment of the parents of the child.

The jurisdiction authorized under Article 10 for the authority having jurisdiction of the divorce or annulment ceases when the divorce or annulment proceedings end. There is no continuing jurisdiction under the convention. Therefore proceeding to modify the determination made by the divorce authority are governed by Section 411.

The convention requires recognition as a matter of law without the intervention of a court

1 or other tribunal. Recognition “by operation of law” means that it is not necessary to commence
2 proceedings for the measure to be recognized in the requested Convention state and for it to
3 produce its effects there. An example set out by the Permanent Bureau in the Practical
4 Handbook, and slightly modified, is as follows:

5 A family are habitually resident in Contracting State A. Following the breakdown
6 of the parents’ relationship, the court in Contracting State A, with the agreement
7 of the father, grants the mother sole custody of the child. A year later, the mother
8 lawfully moves with the child to Contracting State B. She wishes to enroll the
9 children in school. Her sole custody of the child which will allow enrollment in
10 school will be recognized by operation of law in Contracting State B without her
11 taking any further action. She will not have to apply to the judicial or
12 administrative authorities in Contracting State B for recognition of the custody
13 order.

14 I have eliminated the language “by operation of law.” The example raised above does not
15 fall within the ambit of court decisions. Since this Act is directed to courts, it seems to follow
16 that it will deal with cases where recognition may be contested. Therefore the operation of law
17 language would not apply and the registration procedure is as set out in Article 3.

18 The defenses to recognition are set out in this section as they are in article 23(2) of the
19 Convention. The public policy defense is worded differently here than article 3. Article 3
20 applies to nonconvention countries and the wording of this defense is the one mandated by the
21 convention.

22 **SECTION 424. REGISTRATION, RECOGNITION, AND ENFORCEMENT OF**
23 **MEASURE OF PROTECTION OF CONVENTION COUNTRY.**

24 (a) A measure of protection ordered by an authority of a convention country may be
25 registered in this state under the procedure of Section 305.

26 (b) A measure of protection ordered by an authority of a convention country may be
27 recognized and enforced under the procedure of Sections 308 through 312.

28 (c) Registration, recognition, and enforcement of a measure of protection ordered by a
29 an authority in convention country may be declined only under Section 423(3).

30 (d) A court of this state is bound by the findings of fact on which the authority of the
31 convention country based its jurisdiction.

32 (e) A court of this state may use any remedy available to the court to enforce a measure

1 of protection ordered by an authority of a convention country. The remedies in this [act] are
2 cumulative and do not affect the availability of other remedies to enforce a measure of protection.

3 **Comment**

4 Related to Convention: Arts. 23, 24, 25, 26, 28.

5 It is possible that the entire registration and enforcement process could be set out section
6 by section in this draft. That was done under one of the earlier drafts. However, this article has
7 already become somewhat over long. And it seems easier to just incorporate the remainder of
8 article 3 by reference as opposed to having to redraft them.

9 **SECTION 425. COOPERATION WITH OTHER CONVENTION COUNTRY.**

10 Before placing a child in foster care, institutional care, or a similar situation in a foreign country,
11 a court of this state shall:

12 (1) consult with the appropriate authority of the other country; and

13 (2) obtain consent to the placement by the authority.

14 **Comment**

15 Related to Convention: Art. 33

16 **SECTION 426. SUITABILITY TO EXERCISE VISITATION.** A parent may
17 request the court to stay a proceeding in which the parent is seeking to obtain or maintain
18 visitation if the parent has asked an authority of the convention country with which the parent has
19 a substantial connection to make a finding on the suitability of the parent to exercise visitation.
20 The court shall consider the information in making the decision on visitation.

21 **Comment**

22 Related to the Convention, Art 35.

1 [ARTICLE] ~~45~~.

2 MISCELLANEOUS PROVISIONS

3 SECTION ~~401~~ 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

4 In applying and construing this uniform act, consideration must be given to the need to
5 promote uniformity of the law with respect to its subject matter among states that enact it.

6 SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
7 AND NATIONAL COMMERCE ACT. This [act] modifies, limits,
8 or supersedes the Electronic Signatures in Global and National Commerce Act, 15
9 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section
10 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of
11 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
12 7003(b).

13 SECTION ~~405~~ 503. TRANSITIONAL PROVISION. A motion or other request for
14 relief made in a child-custody proceeding or to enforce a child-custody determination which was
15 commenced before the [effective date of this [act]] is governed by the law in effect at the time the
16 motion or other request was made.\

17 [SECTION ~~402~~ 504. SEVERABILITY. If any provision of this [act] or its
18 application to any person or circumstance is held invalid, the invalidity does not
19 affect other provisions or applications of this [act] which can be given effect without
20 the invalid provision or application, and to this end the provisions of this [act] are
21 severable.]

22 ***Legislative Note:*** Include this section only if this state lacks a general severability
23 statute or a decision by the highest court of this state stating a general rule of
24 severability.

1 **SECTION ~~403~~ 505. EFFECTIVE DATE.** This [act] takes effect