

D R A F T  
FOR DISCUSSION ONLY

# UNIFORM CHILD CUSTODY JURISDICTION ACT (199\_)

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**November 17, 1995, Draft**

UNIFORM CHILD CUSTODY JURISDICTION ACT (199\_)

With Prefatory Note and Comments

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1 UNIFORM CHILD CUSTODY JURISDICTION ACT (199\_)

2  
3 November 17, 1995, Draft

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5 **INTRODUCTORY NOTE: JURISDICTION REVISION**

6  
7 The Drafting Committee on the Uniform Child Visitation Act was requested by the Scope  
8 and Program Committee to revise the Uniform Child Custody Jurisdiction Act. The purpose of the  
9 revisions are to bring the UCCJA into compliance with the Parental Kidnapping Prevention Act and  
10 other federal statutes such as the Violence Against Women's Act. This draft contains these revisions  
11 in Article I of a proposed Uniform Child Custody Jurisdiction Act (199\_). This draft contains the  
12 following suggested amendments to the UCCJA:  
13

14 **1. Providing for home state priority:** The PKPA provides for full faith and credit only when the  
15 custody determination is made by the home state. Other state custody determinations are not entitled  
16 to PKPA enforcement unless there is no home state. The UCCJA, however, specifically authorizes  
17 four independent bases of jurisdiction without prioritization. Under the UCCJA a significant-  
18 connection custody determination may have to be enforced even if it would be denied enforcement  
19 under the PKPA. This draft prioritizes home state jurisdiction in Section 104.  
20

21 **2. A clarification of emergency jurisdiction:** There are several problems with the current  
22 emergency jurisdiction provision of the UCCJA §3(a)(3).. First, the language of the UCCJA does not  
23 specify that emergency jurisdiction may only be exercised to protect the child on a temporary basis  
24 until the court with jurisdiction issues a permanent order. Some courts have interpreted the UCCJA  
25 language to so provide. Other courts, however, have held that there is no time limit on the  
26 emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted  
27 from these different interpretations.  
28

29 Second, the emergency jurisdiction provisions do not explicitly protect children harmed by  
30 violence perpetrated by one parent against another parent or against the child's sibling.  
31

32 Finally, the UCCJA provides no exception to the notice requirement, or the ban on  
33 simultaneous proceeding, in emergency cases. Therefore, custody orders issued on a temporary  
34 emergency basis (e.g., child abuse orders or domestic violence orders of protection), prior to notice  
35 being given to all contestants or during the pendency of another custody proceeding in another state,  
36 would not currently be enforceable in any other state pursuant to the UCCJA.

1 This draft contains a separate section on emergency jurisdiction at Section 106 which  
2 addresses these issues.  
3

4 **3. Providing for exclusive continuing jurisdiction for the decree granting state:** The failure of  
5 the current UCCJA to clearly state that the decree granting state retains exclusive jurisdiction to  
6 modify that decree have resulted in two major problem areas. First, different interpretations of the  
7 UCCJA on continuing jurisdiction have resulted in conflicting custody decrees. States have different  
8 interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification  
9 jurisdiction continues until the last contestant leaves the state, regardless of how many years the child  
10 has lived outside the state or how tenuous the child's connections to the state have become. Other  
11 courts have held that continuing modification jurisdiction ends as soon as the child's new home state  
12 is established elsewhere, regardless of how significant the child's connections to the decree state  
13 remain. This divergence of views leads to simultaneous proceedings and conflicting custody orders.  
14

15 The second problem arises when it is necessary to determine whether the state with  
16 continuing jurisdiction has relinquished it. There should be a clear basis to determine when that  
17 court has relinquished jurisdiction. Currently the UCCJA provides no guidance on this issue. The  
18 resulting ambiguity concerning whether a court has declined jurisdiction can result in one court  
19 improperly exercising jurisdiction because it erroneously believes that the other court has declined  
20 jurisdiction. This can cause simultaneous proceedings and conflicting custody orders. In addition  
21 some courts have declined jurisdiction after only informal contact between courts, with no notice to  
22 contestants and no opportunity for the parties to be heard. This raises serious due process questions.  
23

24 This draft addresses these issues in Section 105.  
25

26 **4. What custody proceedings are covered:** The definition of custody proceeding in the UCCJA is  
27 ambiguous. Although the intent was undoubtedly to cover all proceedings regarding access to a  
28 child, states have rendered conflicting decisions regarding certain types of proceedings. There is no  
29 general agreement whether the UCCJA applies to neglect, abuse, dependency, wardship,  
30 guardianship, termination of parental rights, adoption and protection from domestic violence  
31 proceedings.  
32

33 The definition of custody proceeding has been modified to specify what proceeding are  
34 covered under the Act and which are excluded. This amendment while desirable is not necessary to  
35 conform the UCCJA to federal enactments.  
36

37 **5. Applicability to Native Americans:** It is currently unclear whether Native American tribes are  
38 intended to be included under the definition of "state." This ambiguity creates uncertainty whether  
39 child custody determinations made by Native American tribal courts are ever entitled to enforcement  
40 under the UCCJA and whether Native American tribal authorities are obliged to enforce state court  
41 determinations. Currently some states have enacted statutes exempting from UCCJA coverage all  
42 proceedings that would fall under the Indian Child Welfare Act. Others disagree.  
43

44 The current draft makes it clear that Native American judicial systems are included in the  
45 Act. This clarification, while desirable, is not necessary to confirm the UCCJA to federal  
46 enactments.  
47

48 **6. Role of "Best Interests:"** The jurisdiction scheme of the UCCJA was designed to promote the  
49 best interests of the children whose custody was in question by discouraging parental abduction and  
50 providing that, in general, the state with the closest connections to and the most evidence regarding a  
51 child should decide that child's custody. The "best interest" language in the jurisdictional sections of

1 the Act was not intended to be an invitation to include discussion of the merits of the custody dispute  
2 in the jurisdictional determination or to otherwise provide that "best interests" considerations should  
3 override jurisdictional determinations or to provide an additional jurisdictional basis.  
4

5 This draft eliminates the term "best interests" in order to establish clarity between the  
6 jurisdictional standards and the substantive standards relating to custody and visitation of children.  
7 This change, while desirable, is not necessary to conform the UCCJA to federal enactments.  
8

9 **7. Other Changes:** This draft also makes a number of additional amendments to the UCCJA as  
10 pointed out in the comments to those sections. These changes are not necessary to conform the Act  
11 to federal statutes. The Drafting Committee will need to decide whether such changes are or are not  
12 authorized by the Scope and Program Committee.  
13

## 14 15 **INTRODUCTORY NOTE: ENFORCEMENT PROVISIONS** 16

17 Article II of the present draft contains the custody enforcement remedy as originally set out in  
18 the provisions of earlier drafts of a proposed Uniform Interstate Child Visitation Act. The current  
19 provisions reflect the comments and changes of the Drafting Committee at its meetings during this  
20 last year.  
21

22 As with financial support, state borders have become the biggest obstacle to enforcement of  
23 state policies designed to ensure that children have access to both parents. If the either parent leaves  
24 the state where the custody determination was made, the other parent faces considerable difficulty in  
25 enforcing the visitation and custody provisions of the decree. Locating the child, making service of  
26 process, obtaining jurisdiction and preventing adverse modification all present problems.  
27

28 There is currently no uniform method of enforcing custody and visitation orders validly  
29 entered in another state. As documented by the ABA Center on Children and the Law's Report,  
30 Obstacles to the Recovery and Return of Parentally Abducted Children (Obstacles Study), despite  
31 the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders  
32 entered in accordance with mandated jurisdictional prerequisites and due process, neither deals with  
33 the mechanisms for enforcement.  
34

35 As the Obstacles Study pointed out, the lack of specificity in enforcement procedures has  
36 resulted in the law of enforcement evolving differently in different jurisdictions. In one state it might  
37 be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate  
38 an enforcement proceeding. In another a writ of habeas corpus or a citation for contempt might be  
39 commonly used. In some states, mandamus and prohibition also may be utilized. All of these  
40 enforcement procedures differ in local details. While many states tend to limit considerations in  
41 enforcement proceedings to whether the court which issued the decree had jurisdiction to make the  
42 custody determination, others broaden the considerations to a scrutiny of whether enforcement would  
43 be in the best interests of the child.  
44

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

1 All of the difficulties inherent in the lack of uniformity for visitation orders also apply to the  
2 custody part of the same order. The original Uniform Child Custody Jurisdiction Act defined  
3 visitation as an aspect of custody. The American Bar Association's Family Law Section adopted a  
4 resolution requesting the drafting committee to include provisions addressed to both custody and  
5 visitation. The drafting committee, at its initial meeting, decided that this article should cover  
6 enforcement of all aspects of the custody determination. The title of the Act is not changed.  
7 However, the term "custody determination" is used to describe what is being enforced.  
8

9 The provisions of Article II reflect the decisions taken by the drafting committee. The Act  
10 severely restricts the time for filing responsive pleadings, holding a hearing and rendering a decision.  
11 This is because enforcement procedures have occasionally been as lengthy as the original custody  
12 proceeding. Children should not be subject to long litigation. Therefore the enforcement procedure  
13 has been drafted to be as summary a process as possible.  
14

15 Time is extremely important when visitation rights are at issue. If visitation rights cannot be  
16 enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited  
17 time within which visitation can be exercised such as may be the case when one parent has been  
18 granted visitation during the winter or spring holiday period. Without speedy consideration and  
19 resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely.  
20

21 The draft also provides that the enforcing tribunal will be able to exercise extraordinary  
22 remedies. If the enforcing tribunal is concerned that the parent, who has physical custody of the  
23 child, will flee or harm the child, injunctive relief is made available  
24

25 The scope of the enforcing court's inquiry is limited to the issue of whether the decreeing  
26 court had subject matter jurisdiction and complied with due process in rendering the original custody  
27 decree. No further inquiry is necessary because Article II does not authorize the modification of a  
28 custody determination.  
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(a) The general purposes of this Act are to:

(b) This [Act] shall be construed to promote the general purposes stated in this section.



Comment

While there are many issues that need to be addressed in revising the UCCJA, the authority of the Drafting Committee is, as I understand it, to make some very specific changes to conform the Act to federal statutes. Most uniform acts do not include a statement of purpose. However, the purposes of the Act are generally laudatory and there is no major reason for deleting them.

Subsection (3) has, however, been deleted. The thrust of this revision is to further restrict child custody jurisdiction. Under this Act it will normally be clear where child custody jurisdiction is located. Subsection (3) was designed as an interpretive canon to help courts decide between two states with concurrent jurisdiction. It should not be necessary in this revision. In enacting the PKPA Congress approved of the purposes of the UCCJA, except for Subsection (3). In amending the UCCJA to conform to the PKPA the subsection should be eliminated.

Subsection (4) has been modified in accordance with the Committee decision. One of the purposes of the UCCJA should be to discourage the abduction of children regardless of the reason. Note: This change is not necessary to conform the UCCJA to the PKPA or other federal statutes.

Subsection (5) has been modified by striking the final clause. Avoiding relitigation should always be a major goal. Note: This change is not necessary to conform the UCCJA to any federal enactment.

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

(1) "Child" means a person under the age of eighteen;

~~1.~~ (2) "Contestant" means a person, including a parent, who claims a right to custody of or visitation rights with respect to a child under State law;

~~2. (3) "Custody determination" means a court decision and court orders and instructions judgment, decree, or other order of a tribunal providing for the custody of a child, including visitation rights. It includes permanent, temporary, initial and modification orders. The term does not include a decision relating to parentage, child support or any other monetary obligation of any individual.~~

~~3. (4) "Custody proceeding" includes means a proceeding in which a custody determination is one of an several issue s, and includes such as an action for a proceeding involving [adoption], divorce, or separation, and includes child neglect, abuse, or dependency, wardship, guardianship, termination of parental rights, or protection from domestic abuse. Actions regarding status offenses, juvenile delinquency and emancipation are not custody proceedings.~~



1 ~~4. (5) "Decree" or "custody decree" means a custody determination contained in a~~  
2 ~~judicial decree or in a custody proceeding, and includes an initial decree or modification~~  
3 ~~decree;~~

4 5. (5). "Home state" means the State in which the child immediately preceding the  
5 time involved lived with parents, a parent, or a person acting as parent, for at least six (6)  
6 consecutive months, and in the case of a child less than six (6) months old, the State in  
7 which the child lived from birth with any of the persons mentioned. Periods of temporary  
8 absence of any of the named persons are counted as part of the six-month or other  
9 period;

10 6. (6). "Initial" decree means the first custody decree or determination concerning  
11 a particular child;

12 (7) "Issuing state" or "issuing tribunal" means the State or the tribunal which  
13 decided a custody determination for which enforcement is sought under this [Act]

14 . 7. (8) "Modification" ~~decree~~ means a custody determination which ~~modified~~  
15 ~~changes, or replaces, supersedes or is otherwise made after a prior previous decree,~~  
16 determination concerning the same child, whether or not made by the court tribunal  
17 ~~which rendered the prior decree or by another court; made the previous custody~~  
18 ~~determination~~

19 8 (9) "Physical custody" means actual possession and control of ~~a~~ the child;

20 9. (10) "Person acting as parent" means a person, other than a parent and  
21 including state agencies, who has physical custody of a the child or has had physical  
22 custody for a period of three months within two years of the filing of the custody  
23 proceeding and who has either been awarded custody by a court or claims a right to  
24 custody;

25 10. (11) "State" means ~~any a~~ a State, ~~territory or possession~~ of the United States,

1 the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular  
2 possession subject to the jurisdiction of the United States. ~~the District of Columbia.~~ The  
3 term includes a foreign jurisdiction and any Indian tribe as defined in the Indian Child  
4 Welfare Act, 25 U.S.C. §1901 et.seq.

5 (12) "Tribunal" means a court, agency, or other entity authorized to establish,  
6 enforce, or modify a custody determination.

7 (13) "Tribunal of this State" means the [court, administrative agency, quasi-judicial  
8 entity, or combination].

9 (14) "Warrant" means an order issued by a tribunal authorizing law enforcement  
10 officers to detain a child.

#### 11 Comment

12  
13 The UCCJA did not contain a definition of "child." The definition here is taken  
14 from the PKPA and is part of the process of conforming the UCCJA to the PKPA. The  
15 drafting committee determined to abandon an attempt to define a child functionally as  
16 one who was subject of a custody proceeding. Such a definition resulted in including  
17 adult guardianships in the Act which is not desirable.

18  
19 The drafting committee determined to use the word "person" instead of  
20 "individual" in the definition of contestant. This was to facilitate UCCJA coverage of  
21 cases where the legal custody of a child is given to a state agency in, for example, a  
22 child neglect proceeding. The use of the term "Individual" might raise doubts about the  
23 applicability of the Act in juvenile cases. Note: The PKPA's definition of the term  
24 "contestant" utilizes the term "person." The phrase "under State law" has been added to  
25 emphasize that this Act does not confer any substantive custody rights. Only those  
26 persons authorized to seek custody or visitation under State law may be considered a  
27 contestant. Note: The term "contestant" as defined in the PKPA does not include this  
28 phrase. It's inclusion in the Act does not create a conflict with the PKPA. The federal  
29 statute cannot give any state law substantive rights. However, this clause is not required  
30 by any federal enactment.

31  
32 The definition of "custody determination" is expanded from the prior version. It  
33 closely tracks the PKPA definition. The second sentence clearly indicates what  
34 determinations are not subject to this Act. Paternity determinations and support orders  
35 are clearly governed by UIFSA and thus are specifically excluded from coverage by this  
36 Act. Note: This definition is not required by any federal enactment. The PKPA uses  
37 only the words custody and visitation. It does not attempt to indicate what is not a  
38 custody and visitation determination.

39  
40 The definition of "custody proceeding" has been slightly expanded from the

1 comparable definition in the UCCJA. These proceedings have generally be adjudicated  
2 to be the type of proceeding to which the UCCJA and PKPA are applicable. There are  
3 however some contrary holdings. See e.g., *Interest of L.G.*, 890 P.2d 647 (Colo. 1995)  
4 (juvenile neglect proceedings are not "custody proceedings" under the PKPA). The list of  
5 examples removes any controversy about the types of proceedings where a custody  
6 determination can occur. Decrees of any of these proceedings that affect access to the  
7 child are subject to this Act. The inclusion of protection for domestic violence  
8 proceedings is necessary after the passage of the Violence Against Womens Act, 18  
9 U.S.C. §2265 (Full Faith and Credit for Protective Orders). Adoption proceedings have  
10 been bracketed. If a state adopts the jurisdictional provisions of the Uniform Adoption  
11 Act, that Act would govern adoption proceedings. Juvenile delinquency, status offender  
12 or emancipation proceedings are not "custody proceedings" because they do not relate  
13 to civil aspects of access to a child. Hague Convention proceedings have not been  
14 included at this point because custody of the child is not determined in a proceeding  
15 under International Child Abductions Remedies Act. It will have to be included at a later  
16 point so that Hague proceedings are subject to the enforcement sections.

17  
18 Subsection (5) of the original UCCJA defining "decree" and "custody decree" has  
19 been eliminated as duplicative of the definition of "custody determination." Note this  
20 change is not required to conform the UCCJA to federal enactments.

21  
22 The term "issuing state" is borrowed from UIFSA. There it refers to the tribunal  
23 that issued the support or parentage order. Here, it refers to the state, or the tribunal,  
24 which decided the custody determination that is sought to be enforced. It is used  
25 primarily in Article II. It's inclusion is not necessary to conform the UCCJA to federal  
26 enactments.

27  
28 The term "person acting as parent" has been redefined in accordance with the  
29 decision at the last meeting of the drafting committee. The term has been broadened to  
30 include a person who has acted as a parent for a significant period of time prior to the  
31 filing of the custody proceeding as well as a person who currently has physical custody of  
32 the child. Note: This change takes the definition out of conformity with 18 U.S.C. §2265  
33 (Full Faith and Credit for Protective Orders). Indian tribe is defined in accordance with  
34 the Indian Child Welfare Act.

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1                   **SECTION 3 104. INITIAL JURISDICTION.**

2                   (a) Subject to Section 106, a court tribunal of this State which is competent to  
3 decide child custody matters has jurisdiction to make an initial child custody  
4 determination ~~by initial or modification decree~~ only if:

5                   (1) this State:

6                               (i) is the home State of the child ~~at the time~~ on the date of the  
7 commencement filing of the proceeding,

8                               (ii) had been the child's home State within six (6) months before the  
9 date of the filing commencement of the proceeding and the child is absent from this  
10 State ~~because of his removal or retention by a person claiming his custody or for other~~  
11 ~~reasons~~, and a parent or person acting as parent continues to live in this state; or

12                   (2) ~~It is in the best interest of the child that a court of this state assume~~  
13 ~~jurisdiction because~~ No State has jurisdiction under paragraph (1) or the child's home  
14 State has declined to exercise jurisdiction on the ground that this State is the more  
15 appropriate forum under Section 110 and (i) the child and ~~his~~ the child's parents, or the  
16 child and at least one contestant, have a significant connection with this State, other than  
17 mere physical presence, and (ii) there is available in this State substantial evidence  
18 concerning the child's ~~present or future~~ care, protection, training, and personal  
19 relationships; or

20                   (3). ~~The child is physically present in this State and:~~

21                               (ii) ~~the child has been abandoned, or~~

22                               (ii) ~~it is necessary in an emergency to protect the child because he~~  
23 ~~has been subjected to or threatened with mistreatment or abuse or is otherwise~~  
24 ~~neglected or dependent; or~~

25                   (4) (3) ~~It appears that~~ No other State would have jurisdiction under

prerequisites substantially in accordance with paragraphs (1) or(2), ~~or~~ 3 of this subsection, or another State has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child under Section 110. ~~and~~

~~b. it is in the best interest of the child that this court assume jurisdiction.~~

B. ~~(b)~~ Except under paragraphs 3 and 4 of subsection ~~(a)~~ Physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court tribunal of this State to make a child custody determination.

~~C. (c)~~ Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to make a custody determination. ~~determine his custody.~~

#### Comment

The basic UCCJA jurisdiction section has been modified in several ways. It now applies only to the initial custody determination. Modifications are governed by the sections on continuing jurisdiction and modification jurisdiction.

The extended home state provision has been modified, in accordance with the decision of the drafting committee, to apply whenever the child has left the state and a parent or person acting as a parent remains. It is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. Note: This change provides a different home state standard than the PKPA. The PKPA requires a determination that the child has been removed by a contestant or for other reasons. The scope of the PKPA provision is theoretically narrower than this version of the UCCJA. However, the phrase "or for other reasons" seems to cover most fact situations where the child is not in the home state. Note: The PKPA's definition of extended home state is more expansive than the UCCJA because it applies when a "contestant" remains in the home state. In accordance with the decision of the drafting committee, this version of the UCCJA retains the narrower classification of "parent or person acting as parent."

Significant connection jurisdiction is amended in three ways. First, it eliminates the "best interest" language. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional determination, it has been removed. The removal of the language is not necessary to conform the UCCJA to any federal enactment. The section also prioritizes home state jurisdiction in the same manner as the PKPA. Note: This prioritization is necessary to conform the UCCJA to the PKPA.

A significant connection state may assume jurisdiction when the home state decides that significant connection state would be the most appropriate forum under the

1 section on forum non conveniens. In addition, the determination of significant  
2 connections has been changed to eliminate the language of "present or future care."  
3 The jurisdictional determination should be made by determining whether there is  
4 sufficient evidence in the state for the court to make an informed custody determination.  
5 That evidence might relate to the recent past as well as "present or future." In  
6 accordance with the decision of the drafting committee "contact" clause and the  
7 "evidence" clause of the original draft have been merged into one sentence. The  
8 elimination of the "present or future care" language is not required by any federal  
9 enactment.

10  
11 Emergency jurisdiction has been moved to a separate section. This is to make it  
12 clear that the power to protect a child in crisis does not give the power to enter a  
13 permanent order for that child.  
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(a) as long as this State remains the residence of the child, or any party and

(1) a tribunal of this State determines that this State continues to be the  
home state of the child, or

(2) a tribunal of this State determines the child and one party has a  
significant connection with this State and there is present in this State substantial  
evidence concerning the child's care, protection, training and personal relationships. or

(b) until each party has filed written consent with the tribunal for a tribunal of  
another State with subject matter jurisdiction under Section 104(1) or (2) to assume  
jurisdiction over the custody proceeding; or

(c) until a tribunal of this State determines that another state would be a more  
convenient forum under the principles of Section 110.

(d) When a motion to modify a custody determination is filed pursuant to this  
section, the tribunal shall inquire of the parties whether a proceeding to enforce the  
determination has been filed in any other State. If a proceeding to enforce the  
determination has been filed in another State, the tribunal may either

(1) stay the modification proceeding pending the entry of an order in the  
other state enforcing, denying or dismissing the enforcement proceeding, or

(2) enjoin the parties from continuing with the enforcement proceeding.

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed under the original UCCJA . Its absence caused

1 considerable confusion. This section borrows from UIFSA as well as recent UCCJA case  
2 law and makes the continuing jurisdiction of the original decree state exclusive so long  
3 one party remains in the state and that state determines that it has either home state  
4 jurisdiction or significant connection jurisdiction. The term "party" is used instead of  
5 "contestant" or "person acting as a parent" since all persons with an interest in the  
6 original custody determination will have been joined under the provisions of Section 113.  
7

8 The use of the phrase "a tribunal of this State determines" has been included to  
9 make it clear that the original decree state is the sole determinant of whether jurisdiction  
10 continues. A party seeking to modify a custody determination must obtain an order from  
11 the original decree state unless all parties and the child have left that state or the parties  
12 agree on another state to exercise jurisdiction over the custody determination.  
13

14 In accordance with the majority of UCCJA case law, the state with continuing  
15 exclusive jurisdiction may relinquish it in two situations. The first is when the parties  
16 agree that another state should assume jurisdiction over the custody proceedings. That  
17 state must be one with subject matter jurisdiction under Section 104(1) or (2). Cf UIFSA  
18 §205 Secondly, jurisdiction may be relinquished to a state which has a closer  
19 relationship to the parties and the child under the principles of Section 110.  
20

21 Note: The continuing jurisdiction provisions of this section are narrower than the  
22 comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so  
23 long as any "contestant" remains in the original decree state and that state continues to  
24 have jurisdiction under its own law.  
25

26 Subsection (d) concerns the problem of simultaneous proceedings in the state  
27 with exclusive continuing jurisdiction and enforcement proceedings under Article II. This  
28 section authorizes the court with exclusive continuing jurisdiction to either stay the  
29 modification proceeding pending the outcome of the enforcement proceeding or to enjoin  
30 the parties from continuing with the enforcement proceeding. Since it is the court with  
31 exclusive continuing jurisdiction, its decision should be determinative. Note: This section  
32 is not needed to conform the UCCJA to federal enactments. If Article II is to stand on its  
33 own as UICVA then this section may need to be eliminated.

## SECTION 106. TEMPORARY EMERGENCY JURISDICTION.

(a) Notwithstanding any other provision of this Act, a tribunal that is competent to make a child custody determination may make a temporary child custody order if the child is present in the State, and

(1) the child has been abandoned, or

\_\_\_\_\_ (2) it is necessary to protect the child because the child, the child's sibling  
or the child's parent is subject to imminent mistreatment or abuse.

(b) A tribunal proceeding under this section may waive the notice requirements of this [Act] and issue a temporary emergency custody order. After issuing the order the tribunal shall require the defendant be notified and shall hold a hearing within five days to determine whether to continue the temporary emergency custody order.

(c) No tribunal shall issue a final custody order under this section. The tribunal shall require the person seeking the order to file in the state with jurisdiction under Section 104 or 105.

(d) Tribunals of this State shall enforce a temporary custody order issued by  
another State under statutory provisions substantially in accordance with this Act.

(1) until it is superseded by an order from a tribunal with jurisdiction under  
Section 104 or 105; or

(2) for [number] days if no custody proceeding has been commenced in a  
state with jurisdiction under Section 104 or 105, whichever is shorter.

### Comment

The problem of emergency jurisdiction permeates all questions involved in revising the UCCJA to conform it to federal enactments. It seemed appropriate to deal with the issue in a separate section and then refer to it when the issues arise in connection with other forms of jurisdiction. The provisions of this section are an

1 elaboration of what was formerly Section 3(a)(3), emergency jurisdiction, of the original  
2 UCCJA. The definition of emergency has been restricted. It has been limited to those  
3 situations where harm to the child, the child's parent, or the child's sibling is imminent.  
4 The term "neglect" has been removed. It's definition is so elastic that it could justify  
5 taking emergency jurisdiction in wide variety of cases. Note: this definition is narrower  
6 than the PKPA definition of emergency. That act provides full faith and credit for a larger  
7 group of emergency orders.  
8

9 This section recognizes several aspects of what has become common practice  
10 under the UCCJA. First, a court may take jurisdiction to protect the child even though it  
11 could claim neither home state nor significant connection jurisdiction. Second, the duties  
12 of states to recognize, enforce and not modify a custody determination of another state  
13 do not take precedence over the need to enter an emergency order to protect the child.  
14 Third, custody determinations made under the emergency jurisdiction provisions must be  
15 temporary. Therefore this section provides that orders issued under this section must  
16 include a direction to the parties to file a petition in the state with jurisdiction under  
17 section 104 or 105 and that the order expire on its own after a period of time.  
18

19 This section also provides for the issuance of ex parte emergency custody  
20 decrees. There is no provision for the issuance and recognition of an ex parte decree  
21 under the UCCJA. However, emergency protective orders, both ex parte and bilateral,  
22 are required to be given full faith and credit when made consistently with 18 U.S.C.  
23 §2265 (Violence Against Women Act). Since those protective orders often include  
24 provisions on custody and visitation, it is necessary to address this issue in a revised  
25 UCCJA.

**SECTION 107. NOTICE AND OPPORTUNITY TO BE HEARD.** Subject to  
Section 106, before making a custody determination ~~decree~~ under this [Act], reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to Section 108 of this [Act].

Comment

This section is subject to the section on Temporary Emergency Jurisdiction. It provides an exception to the notice and opportunity requirement for ex parte emergency orders. Without such a provision, an ex parte order would not be entitled to enforcement pursuant to this act. Federal law now requires that victim protection orders be granted full faith and credit. 18 U.S.C.A. §2265. Since a victim protection order can be a custody determination and can be granted without notice and hearing in an emergency, there must be provision in a revised child custody jurisdiction act for a narrow exception to the notice requirement.

## SECTION 108. NOTICE TO PERSONS OUTSIDE THE STATE.

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the ~~court~~, tribunal including publication, if other means of notification are ineffective.

(b) Notice under this section shall be served, mailed, delivered or last published at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court tribunal.

### Comment

No substantive changes were made to this section.

1                   **SECTION 109. SIMULTANEOUS PROCEEDINGS.**

2                   (a) Subject to Section 106, a court tribunal of this State shall not exercise its  
3 jurisdiction under this [Act] if at the time of filing the petition a proceeding concerning the  
4 custody of the child was pending filed in a court tribunal of another State exercising with  
5 jurisdiction substantially in conformity with this [Act], unless the proceeding is stayed by  
6 the court tribunal of the other State because this State is a more appropriate forum or for  
7 other reasons.

8                   (b) Before hearing the petition in a custody proceeding the court tribunal shall  
9 examine the pleadings and other information supplied by the parties under Section 112  
10 of this [Act] and shall consult the child custody registry established under Section 117 of  
11 this [Act] concerning the pendency filing of proceedings with respect to the child in other  
12 States. ~~If the court tribunal has reason to believe that proceedings may be pending in~~  
13 ~~another State it shall direct an inquiry to the State court administrator or other~~  
14 ~~appropriate official of the other State.~~

15                   (c) If the court tribunal is informed during the course of the proceeding that a  
16 proceeding concerning the custody of the child was pending filed in another State before  
17 the court tribunal assumed jurisdiction, it shall stay the proceeding and communicate with  
18 the court tribunal in which the other proceeding is pending has been filed to the end that  
19 the issue may be litigated in the more appropriate forum and that information be  
20 exchanged in accordance with Sections 119 through 121 of this [Act]. If a court tribunal  
21 of this State has made a custody decree before being informed of a pending the filing of  
22 a proceeding in a court tribunal of another State, it shall immediately inform that court  
23 tribunal of the fact. ~~If the court is informed that a proceeding was commenced in another~~  
24 ~~State after it assumed jurisdiction it shall likewise inform the other court to the end that~~  
25 ~~the issues may be litigated in the more appropriate forum.~~



(d) Communication with other tribunals should be made in a manner which allows the parties to participate. Methods of participation may include: having the parties or their attorneys on the telephone during a conference call between the tribunals, having the parties or their attorneys join in on-line or other electronic communication between tribunals, or by allowing the parties or their attorneys to present facts and legal arguments to the tribunals before a final determination of the appropriate forum is made.

(e) A record shall be made of the communication. The record may include: the notes or transcripts of a court reporter who listened to the conference call between the tribunals, an electronic recording of the telephone call, a recording of other electronic communications between the parties, or findings of fact and findings of law made by one or more tribunals after the communication.

### Comment

This section is subject to the section on Temporary Emergency Jurisdiction. A court can always take jurisdiction to protect a child even if a custody proceeding is pending in another State that is exercising jurisdiction under this Act.

This section clarifies the role of the tribunals when there is simultaneous proceedings. Rather than the first-to-file rule of the UCCJA, this section, in combination with section 104, requires a "significant connection" State to defer to the state with home state jurisdiction. Note: This change is required to conform the statute to the PKPA. The first to file rule is utilized only to decide between two States with "significant" connection jurisdiction.

The second change eliminates the term "pending". It has caused considerable confusion in the case law. It has been replaced with the term "filing" as more accurately reflecting the policy behind this section. Note: This change is not required to conform the UCCJA to federal statutes.

The remaining subsections continue to stress the role of judicial communications under the Act. One new subsection has been added to increase the role of the parties in the communication process. A tribunal should communicate with another tribunal in a manner which allows the parties to participate. In any event a record of the communication must be made. Communications between judges that affect the substantive rights without participation by the parties, raises due process and ethical concerns. See the discussion in *Nebraska ex rel Grape v. Zach*, 21 Fam.L.Rep. 1101 (Neb.Sup.Ct. 1994). There has been some concern that the methods of communication

1 and making a record are not specifically set out in the text. The final subsections will,  
2 hopefully, meet those concerns. Note: These additional sections are not necessary to  
3 conform the act to federal statutes.

1                   **SECTION 110. INCONVENIENT FORUM.**

2                   (a) A ~~court~~ tribunal which has jurisdiction under this [Act] to make an initial or  
3 modification decree may decline to exercise its jurisdiction any time before making a  
4 decree if it finds that it is an inconvenient forum to make a custody determination under  
5 the circumstances of the case and that a ~~court~~ tribunal of another State is a more  
6 appropriate forum.

7                   (b) A finding of inconvenient forum may be made upon the ~~court's~~ tribunal's own  
8 motion or upon motion of a party or a guardian ad litem or other representative of the  
9 child.

10                  (c) In determining if it is an inconvenient forum, the ~~court~~ tribunal shall consider if it  
11 is in the interest of the child that another State assume jurisdiction. For this purpose, it  
12 may take into account the following factors, among others:

13                         (1) If another State ~~is or~~ recently was the child's home State;

14                         (2) If another State has a closer connection with the child and ~~his~~ the child's  
15 family or with the child and one or more of the contestants;

16                         (3) If substantial evidence concerning the child's ~~present or future~~ care,  
17 protection, training and personal relationships is more readily available in another State;

18                         (4) If the parties have agreed on another forum which is no less  
19 appropriate; and

20                         (5) If the exercise of jurisdiction by a ~~court~~ tribunal of this State would  
21 contravene any of the purposes stated in Section 1 of this [Act].

22                   (d) Before determining whether to decline or retain jurisdiction the ~~court~~ tribunal  
23 may communicate with a ~~court~~ tribunal of another State and exchange information  
24 pertinent to the assumption of jurisdiction by either ~~court~~ tribunal with a view to assuring  
25 that jurisdiction will be exercised by the more appropriate ~~court~~ tribunal and that a forum

1 will be available to the parties.

2 (e) If the ~~court~~ tribunal finds that it is an inconvenient forum and that a ~~court~~  
3 tribunal of another State is a more appropriate forum, it ~~may dismiss the proceedings, or~~  
4 ~~it may~~ shall stay the proceedings upon condition that a custody proceeding be promptly  
5 commenced in another named State or upon any other conditions which may be just and  
6 proper, including the condition that a moving party stipulate his consent and submission  
7 to the jurisdiction of the other forum.

8 (f) The ~~court~~ tribunal may decline to exercise its jurisdiction under this act if a  
9 custody determination is incidental to an action for divorce or another proceeding while  
10 retaining jurisdiction over the divorce or other proceeding.

11 (g) If it appears to the ~~court~~ tribunal that it is clearly an inappropriate forum it ~~may~~  
12 shall require the party who commenced the proceedings to pay in addition to the costs of  
13 the proceedings in this State, necessary travel and other expenses, including attorneys'  
14 fees, incurred by other parties or their witnesses, unless the party who commenced the  
15 proceeding establishes that such order would be clearly inappropriate. Payment is to be  
16 made to the clerk of the court for remittance to the proper party.

17 (h) Upon dismissal or stay of proceedings under this section the ~~court~~ tribunal  
18 shall inform the ~~court~~ tribunal found to be the more appropriate forum of this fact or, if the  
19 ~~court~~ tribunal which would have jurisdiction in the other State is not certainly known, shall  
20 transmit the information to the court administrator or other appropriate official for  
21 forwarding to the appropriate ~~court~~ tribunal.

22 (i) Any communication received from another State informing this State of a  
23 finding of inconvenient forum because a ~~court~~ tribunal of this State is the more  
24 appropriate forum shall be filed in the custody registry of the appropriate ~~court~~ tribunal.  
25 Upon assuming jurisdiction, the ~~court~~ tribunal of this State shall inform the original ~~court~~

tribunal of this fact.

### Comment

This section generally retains the focus of the original section. It authorizes tribunals to decide that another State could do a better job of making the custody determination. If so the tribunal may defer to the other State. However, under this section the tribunal may not simply dismiss the action. To do so would leave the case in limbo. Rather the tribunal shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. Note: This change is not necessary to conform the UCCJA to federal statutes.

The second amendment occurs in subsection (g). The attorney fee standards are now patterned after the International Child Abduction Remedies Act, 42 U.S.C. §11607(b)(3). Note: This change is not required by federal statutes. It does however make the attorney fees standards uniform between state and federal statutes.

1           **SECTION 111. JURISDICTION DECLINED BY REASON OF CONDUCT.**

2           (a) Subject to Section 106, a tribunal shall decline to exercise the jurisdiction  
3 provided in Section 104 and 105 if the petitioner has wrongfully removed or retained the  
4 child.

5           (b) For purposes of this Section, the removal or retention of a child is to be  
6 considered wrongful where it is in breach of rights of custody of another person. The  
7 rights of custody mentioned in this subsection may arise by operation of law or by reason  
8 of a custody determination issued by a tribunal with jurisdiction under Sections 104-106  
9 of this [Act].

10       ~~—— (a) If the petitioner for an initial decree has wrongfully taken the child from~~  
11 ~~another State or has engaged in similar reprehensible conduct the court may decline to~~  
12 ~~exercise jurisdiction if this is just and proper under the circumstances.~~

13       ~~—— (b) Unless required in the interest of the child, the court shall not exercise its~~  
14 ~~jurisdiction to modify a custody decree of another State if the petitioner, without consent~~  
15 ~~of the person entitled to custody, has improperly removed the child from the physical~~  
16 ~~custody of the person entitled to custody or has improperly retained the child after a visit~~  
17 ~~or other temporary relinquishment of physical custody. If the petitioner has violated any~~  
18 ~~other provision of a custody decree of another State the court may decline to exercise its~~  
19 ~~jurisdiction if this is just and proper under the circumstances.~~

20           (c) A tribunal is not required to decline to exercise its jurisdiction under this  
21 Section if more than one year has elapsed between the wrongful removal or retention  
22 and the filing of the petition.

23           ~~(d) In appropriate cases, A court dismissing a petition under this section may~~ shall  
24 charge the petitioner with necessary travel and other expenses, including attorneys' fees,  
25 incurred by other parties or their witnesses, unless the party who commenced the

1 proceeding establishes that such order would be clearly inappropriate.

2  
3 Comment

4  
5 This section has been substantially rewritten. The original UCCJA section  
6 authorized so much judicial discretion that its terms became generally meaningless. The  
7 drafting committee decided in July to adopt a version of this section which would require  
8 the tribunal to decline jurisdiction if the petitioner engaged in certain wrongful conduct.  
9 This version is patterned after the Hague Convention on International Child Abductions.  
10 It requires a tribunal to refuse to exercise its discretion when the child has been  
11 wrongfully removed or retained in breach of the rights of custody of another person. The  
12 term rights of custody has been defined in accordance with the Convention. This  
13 provides some definition for the term "wrongful" which was generally left undefined under  
14 the prior Act. While amendments to this section are not required to conform to federal  
15 law, it does bring about a uniformity between international abduction law and interstate  
16 custody jurisdiction.

17  
18 This section is subject to the section on temporary emergency orders. If  
19 the child is in need of protection, the petitioner's conduct is no longer egregious.

20  
21 Subsection (c) was suggested at the July drafting committee meeting. It would  
22 limit the requirement that the court decline to exercise jurisdiction if over one year has  
23 elapsed since the wrongful removal or retention. The tribunal could, as a matter of  
24 discretion, decline to hear the case, but it would not be required to do so.

25  
26 The final subsection has been amended to conform the attorney fees and costs  
27 section to the International Child Abductions Remedies Act.  
28  
29



1                   **SECTION 112. INFORMATION TO BE SUBMITTED TO THE COURT**

2                   (a) In a custody proceeding, every party's first pleading, ~~Every party in a custody~~  
3 ~~proceeding in his first pleading or in an affidavit attached to that pleading shall give~~  
4 information under oath as to the child's present address, the places where the child has  
5 lived within the last five (5) years, and the names and present addresses of the persons  
6 with whom the child has lived during that period. This pleading or affidavit shall state  
7 whether the party: ~~In this pleading or affidavit every party shall further declare under oath~~  
8 ~~whether:~~

9                   (1) ~~He~~ has participated, as a party, witness, or in any other capacity, in any  
10 other litigation concerning the custody of the same child in this or any other State;

11                   (2) ~~He~~ has information of any custody proceeding concerning the child  
12 ~~pending in a court~~ tribunal of this or any other State; and

13                   (3) ~~He~~ knows of any person not a party to the proceedings who has  
14 physical custody of the child or claims to have custody or visitation rights with respect to  
15 the child.

16                   (b) If the declaration as to any of the above items is in the affirmative the declarant  
17 shall give additional information under oath as required by the ~~court~~ tribunal. The ~~court~~  
18 tribunal may examine the parties under oath as to details of the information furnished  
19 and as to other matters pertinent to the ~~court's~~ tribunal's jurisdiction and the disposition of  
20 the case.

21                   (c) Each party has a continuing duty to inform the ~~court~~ tribunal of any custody  
22 proceeding concerning the child in this or any other State of which ~~he~~ the party obtained  
23 information during this proceeding.

24                   (d) Upon a finding, which may be made ex parte, that the health, safety or liberty  
25 of a party or a child would be unreasonably put at risk by the disclosure of identifying

1 information, or if an existing order so provides, a tribunal shall order that the address of  
2 the child or party or other identifying information not be disclosed in a pleading or other  
3 document filed in a proceeding under this [Act]. The information shall be provided to the  
4 tribunal.

5 Comment  
6

7 The pleading requirements from the UCCJA are carried over into this revision. A  
8 separate section has been added to protect the address of victims of domestic violence  
9 or child abuse. The source for the section is UIFSA §312. Note: This addition is not  
10 required to conform the UCCJA to federal statutes.

**SECTION 113. ADDITIONAL PARTIES.** If the court ~~tribunal~~ learns from information furnished by the parties pursuant to Section 44 112 of this [Act] or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the joinder and pendency of the proceeding, ~~and of his joinder as a party.~~ A joined party located outside this State shall ~~If the person joined as a party is outside this State he shall~~ be served with process or otherwise notified in accordance with Section 5 108 of this [Act].

### Comment

No major changes have been made to this section.

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(a) The court tribunal may order any party to the proceeding who is in this State to appear personally before the court tribunal. The tribunal may order that any party who has physical custody of the child appear personally with the child. ~~If that party has physical custody of the child the court tribunal may order that he appear personally with the child.~~

(b) If a party to the proceeding whose presence is desired by the ~~court~~ tribunal is outside this State with or without the child, the ~~court~~ tribunal may order that the notice given under Section 108 of this [Act] include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court tribunal with or without the child, the court tribunal may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

Comment

No major changes have been made to this section.

**SECTION 115. BINDING FORCE OF CUSTODY DECREE.** A custody decree rendered by a ~~court~~ tribunal of this State which had jurisdiction under Section 3 of this [Act] binds all parties who have been served in this State or notified in accordance with Section 108 of this act or who have submitted to the jurisdiction of the ~~court~~ tribunal, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made, unless and until that determination is modified pursuant to law, including the provisions of this [Act].

### Comment

No major changes have been made to this section.

~~SECTION 13. ENFORCEMENT AND NON-MODIFICATION OF DECREE OF ANOTHER STATE. The court of this State shall recognize and enforce an initial or modification decree of a court of another State which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of in accordance with this act.~~

Comment

This section has been eliminated. It is duplicated by the first section of the enforcement provisions. However, if it is decided that the enforcement provisions are to be a stand-alone act, then this section will be added back.

**SECTION 14 116. MODIFICATION OF DECREE OF ANOTHER STATE.**

~~A. If A court tribunal of another State has made a custody decree, a court tribunal of this State shall not modify that decree unless:~~

~~1. It appears to the court tribunal of this State that the court tribunal which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree; and/-~~

~~2. The court tribunal of this State has jurisdiction.~~

(a) Subject to the provisions of Section 106, a tribunal of this State shall not modify a custody determination of the same child made by a tribunal of another State,  
unless

(1) that State no longer has jurisdiction under Section 105, and

(2) this State has jurisdiction under Section 104.

(b) A tribunal of this State may issue a temporary order enforcing a visitation schedule that deviates from the terms of the original schedule. The order shall be effective for no more than [30] of days. If necessary, the tribunal shall require the petitioner to file for a permanent modification in the State with continuing exclusive jurisdiction under Section 105.

(b) (c) If a court tribunal of this State is authorized under subsection (a) to modify a custody decree of another State it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with Section 124.

Comment

The section probably should be moved to follow the section on continuing jurisdiction. It correlates to Section 105. Rather than set out the converse of the



1 conditions in that section, it is simply incorporated by reference. If any of the conditions  
2 of that section apply, no other tribunal may modify the custody determination. However,  
3 if none of the conditions of that section are present, a second state may modify the  
4 determination if the second state has jurisdiction under the principles of Section 104.  
5

6 Prior to modification the original state will have to relinquish jurisdiction. Ordinarily  
7 that would occur when the original State determines that it no longer has jurisdiction  
8 under the Section 105 or that another State would be a more appropriate forum. The  
9 modification state is not authorized to determine that the decree State has lost its  
10 jurisdiction. The only circumstance where the modification State need not obtain a  
11 declaration from the decree state is when all parties, contestants and the child no longer  
12 reside in the decree state.  
13

14 Subsection (b) authorizes a court to issue a temporary order if it is necessary to  
15 enforce visitation rights without violating the rules on non-modification. Such an order  
16 could include make-up visitation or substitution a specific visitation schedule for  
17 "reasonable and seasonable." However requests for a permanent change in the  
18 visitation schedule must be addressed to the tribunal with exclusive continuing  
19 jurisdiction. In addition, the temporary order must have a clear termination date, not  
20 exceeding a fixed number of days.  
21

~~SECTION 15. FILING AND ENFORCEMENT OF CUSTODY DECREES OF  
OTHER STATES~~

~~(A). A certified copy of a custody decree of another State may be filed in the office  
of the clerk of any district court of this State. The clerk shall the decree in the same  
manner as a custody decree of the district court of this State. A custody decree so filed  
has the same effect and shall be enforced in like manner as a custody decree rendered  
by a court tribunal of this State.~~

~~(b) A person violating a custody decree of another State which makes it necessary  
to enforce the decree in this State may be required to pay necessary travel and other  
expenses, including attorneys' fees, incurred by the party entitled to the custody or his  
witnesses.~~

Comment

This section has been deleted. The enforcement provisions will be covered in  
Article II, which is the current draft of UICVA. In any event, the attorney fee issue will be  
covered in that section.

**SECTION 46 117. CHILD CUSTODY REGISTRY** The clerk of each district court ~~tribunal~~ shall maintain a registry in which he shall enter contain the following:

(a) certified copies of custody decrees of other States received for filing;

(b) communications as to the pendency of custody proceedings in other States;

(c) Communications concerning a finding of inconvenient forum by a ~~court~~ tribunal of another State; and

(d) other communications or documents concerning custody proceedings in another State which may affect the jurisdiction of a ~~court~~ tribunal of this State or the disposition to be made by it in a custody proceeding.

### Comment

We need to discuss whether to retain the provisions of the custody registry. In many counties the registry simply does not exist or is never consulted. If we desire to retain the registry we may wish to provide penalties for failure to file. If, however, there is a possibility of a national custody registry, then this section will be eliminated and several other sections should be modified. Note: It is not necessary to decide this issue in order to conform the UCCJA to federal statutory enactments.

**SECTION 17 118. CERTIFIED COPIES OF CUSTODY DECREE.** The clerk of the ~~district court~~ tribunal of this State, at the request of the ~~court~~ tribunal of another State or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that ~~court~~ tribunal or person.

### Comment

No major changes have been made to this section.

**SECTION 48. 119 TAKING TESTIMONY IN ANOTHER STATE.** In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another State. The court tribunal on its own motion may direct that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony shall be taken.

### Comment

No major changes have been made to this section.

## **SECTION 49 120. HEARINGS AND STUDIES IN ANOTHER STATE.**

(a) A ~~court~~ tribunal of this State may request the appropriate ~~court~~ tribunal of another State to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that State, or to have ~~social studies~~ a custody evaluation made with respect to the custody of a child involved in proceedings pending in the ~~court~~ tribunal of this State; and to forward to the ~~court~~ tribunal of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any ~~social studies~~ custody evaluation prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].

(b) A court tribunal of this State may request the appropriate court tribunal of another State to order a party to custody proceedings pending in the court tribunal of this State to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Comment

No major changes have been made to this section. The term "social study" is dated. It has been replaced with the modern term: "custody evaluation." The change in terminology is not required by any federal statute.

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(b) A person within this State may voluntarily give ~~his~~ testimony or a statement in this State for use in a custody proceeding outside this State.

Section	Comment
1.1	No major changes have been made to this section. The term "social studies has been replaced with "custody evaluation" as in previous section.

No major changes have been made to this section. The term "social studies has been replaced with "custody evaluation" as in previous section.

**SECTION 24 122. PRESERVATION OF DOCUMENTS.** In any custody proceeding in this State the ~~court~~ tribunal shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, ~~social studies~~ custody evaluations, and other pertinent documents until the child reaches eighteen (18) years of age. Upon appropriate request of the ~~court~~ tribunal of another State the ~~court~~ tribunal shall forward to the other ~~court~~ tribunal certified copies of any or all such documents.

Comment

No major changes have been made to this section.



## SECTION 22 123. REQUESTS FOR COURT RECORDS FROM ANOTHER

**STATE** If a custody ~~decree~~ determination has been rendered in another State concerning a child involved in a custody proceeding pending in a ~~court~~ tribunal of this State, the ~~court~~ tribunal of this State upon taking jurisdiction of the case shall request of the ~~court~~ tribunal of the other State a certified copy of the transcript of any court tribunal record and other documents mentioned in Section 21.

Comment

No major changes have been made to this section.

**SECTION 23 124. INTERNATIONAL APPLICATION OF ACT.** The general policies of this [Act] extend to the international area. The provisions of this [Act] relating to the recognition and enforcement of custody decrees of other States apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

Comment

No major changes have been made to this section. There has been a suggestion that the provisions of this section be changed to require that the foreign custody order be made under statutory requirements or factual circumstances similar to the jurisdictional provisions of this Act. However, the dissimilarities of legal institutions would render such a requirement very onerous. Ultimately this section may be superseded by the Hague Convention on the Protection of Minors.

**SECTION 24 125. PRIORITY** Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this [Act] the case shall be given calendar priority and handled expeditiously.

Comment

No major changes have been made to this section.

1 **ARTICLE 2. ENFORCEMENT**

2  
3 **SECTION 201. DUTY TO ENFORCE.**

4 (a) A tribunal of this State shall recognize and enforce a custody determination of  
5 another State which had assumed jurisdiction under statutory provisions substantially in  
6 accordance with this [Act] or which was made under factual circumstances meeting the  
7 jurisdictional standards of this [Act] so long as this determination has not been modified  
8 in accordance with this [Act].

9 (b) This Article applies to proceedings to enforce determinations made under the  
10 Hague Convention on the Civil Aspects of International Child Abduction and the  
11 International Child Abductions Remedies Act, 42 U.S.C. §§11601 et seq.

12 (c) This Article does not confer jurisdiction upon a tribunal of this State to modify  
13 a custody determination of the issuing state.

14 (d) The tribunal may extend the time for filing any pleading under this Article for  
15 good cause shown.

16  
17 **Comment**

18  
19 This article begins the incorporation of the material on the Interstate Child  
20 Visitation Enforcement Act. Subsection (a) is the transformation of Section 13 of the  
21 original UCCJA which contained the basic duty to enforce. Enforcement of custody  
22 determinations of issuing states is required by the PKPA, 28 U.S.C. §1738A(a). The  
23 changes made in Article I of this Act now make the enforcement section of this Act  
24 consistent with the enforcement provisions of the PKPA.

25  
26 Subsection (b) applies the enforcement remedy provided by this Act applicable to  
27 orders requiring the return of a child issued under the authority of the International Child  
28 Abduction Remedies Act, 42 U.S.C. §11601 et seq. implementing the Hague Convention  
29 on the Civil Aspects of International Child Abduction. A specific section was thought  
30 necessary because even though an ICARA proceedings often occurs prior to any formal  
31 custody determination, the need for a speedy enforcement remedy is just as necessary.

32  
33 Subsection (c) makes it clear that the procedure for enforcement of a custody  
34 determination does not authorize a modification of that custody determination. Whether  
35 such a provision is necessary in light of the provisions on continuing jurisdiction and  
36 modification jurisdiction is questionable. However, it has been included here to

1 emphasize that whether a tribunal may modify a custody determination is governed by  
2 those sections and the PKPA, 28 U.S.C. §1738A(f).  
3

4 Subsection (d) has been moved to this section pursuant to the Drafting  
5 Committee's determination to have this provision apply to the entire article.  
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(b) A person is not amenable to service of process solely by being physically present in this State for the purpose of participating in a proceeding under this [Act], but this subsection does not prohibit service of process on such an individual pursuant to jurisdiction over the individual on a ground other than physical presence in this State.

Comment

This section is derived from UIFSA §314. A person who files an enforcement action under this Act is not subjected to the general jurisdiction of the state by virtue of the filing. This is to ensure that there is no deterrent to filing such an action when the respondent has violated the provisions of the custody decree. A party also is immune from service of process during the time in the state for an enforcement action except for those claims for which jurisdiction could be based on other than mere physical presence.

This section is derived from UIFSA §314. A person who files an enforcement action under this Act is not subjected to the general jurisdiction of the state by virtue of the filing. This is to ensure that there is no deterrent to filing such an action when the respondent has violated the provisions of the custody decree. A party also is immune from service of process during the time in the state for an enforcement action except for those claims for which jurisdiction could be based on other than mere physical presence.

However, as the comments to UIFSA note, the immunity provided is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service for an automobile accident occurring while in the state.

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(b) The communication shall be governed by Section 109 (d)(e) of this [Act].

The process of communication is set out in Section 109.

## SECTION 204. PLEADINGS.

(a) All pleadings under this [Act] shall be verified and shall attach certified copies of all orders sought to be enforced.

(b) The pleading seeking enforcement shall state:

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

(2) whether the custody determination for which enforcement is sought has been stayed, vacated, or modified by a tribunal having jurisdiction to do so under Section 105 and 116;

(3) whether the respondent was notified and given an opportunity to be heard in the proceeding that resulted in the custody determination sought to be enforced;

(4) whether any proceeding is pending which could affect the current enforcement proceeding, including proceedings relating to domestic violence and orders of protection;

(5) subject to the provisions of Section 112(d), the present address of the child and the respondent, if known; and

(6) the relief sought.

(c) The petitioner shall attach to the pleading a Show Cause Order. The Order shall inform the respondent that the requested relief will be granted unless the respondent files an answer with [5] calendar days. The Show Cause Order shall inform the respondent that a hearing will be held at a specific time no less than fourteen calendar days following service of notice and that costs and fees may be assessed.

### Comment



1       The pleading are intended to provide the tribunal with as much information as  
2 possible. Attaching certified copies of all orders sought to be enforced allows the  
3 tribunal to have the necessary information. While, in theory, the determination may be  
4 registered with the state UCCJA registry, many states have not implemented the registry.  
5 Therefore while registration of the decree could be considered as a condition precedent  
6 to enforcement, it is likely to prove unworkable in a number of states.  
7

8       The remainder of the information required relates to the permissible scope of the  
9 tribunal's inquiry. If properly presented the tribunal will be able to make a decision on the  
10 basis of the pleadings without the necessity for holding a hearing. The petitioner has the  
11 responsibility to inform the court of all proceedings that would affect the current  
12 enforcement action. Specific mention is made of domestic violence and orders of  
13 protection to ensure that they are disclosed. Perhaps forms can be developed for both  
14 the petition and answer that would be available from the court clerk. The forms could be  
15 constructed to provide sufficient information to allow the tribunal to make a decision  
16 solely on the pleadings.  
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18       The final section relates to the Order To Show cause and its contents as  
19 determined by the drafting committee. The petitioner is required to have the Order  
20 issued at the same time as the pleading.  
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(b) Notice required for this Article shall be accomplished as provided by Section 108.

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(b) The answer may request that the petition be dismissed because:

(1) the issuing tribunal did not have subject matter jurisdiction under

(2) the custody determination for which enforcement is sought has been

(3) the respondent lacked notice and opportunity to be heard in the

(c) A certified copy of any order staying, vacating or modifying the custody

(d) The respondent may file a pleading seeking an order enforcing the terms of

Comment

This section sets out what should be contained in the answer. The respondent is given a very short period of time from receipt of the notice in which to answer. This again is in keeping with the summary nature of the enforcement proceeding. The contents of the answer are designed to determine whether the jurisdictional and notice aspects of the petition are correct. In addition, if the respondent claims the custody determination has been stayed, superseded or modified, a certified copy of that order must be attached to the answer.

The only affirmative relief the respondent may request relates to enforcement of the custody determination. The respondent may not request a modification of the custody decree in the enforcement action. Therefore no information that would only be relevant to a modification action should be included in the answer, such as information

1 concerning the best interests of the child. If the respondent is concerned that the child  
2 would be harmed as a result of the enforcement action, the respondent should file a  
3 petition under Section 106 asking the tribunal to issue a temporary emergency order.  
4

5         There is an argument that the respondent may not request any affirmative relief.  
6 However, both parties to a custody determination may have enforcement problems.  
7 Perhaps the visiting parent is not returning the child at the appropriate time in addition to  
8 the custodial parent not allowing the child to be picked up on time. The tribunal should  
9 to be allowed to address both enforcement problems in the same proceeding.  
10

11         This section does not attempt to address the issue of whether the child should be  
12 separately represented in an enforcement proceeding. The child is not a named party.  
13 Whether counsel or a guardian *ad litem* should be appointed for the child is left to the law  
14 of each individual state.  
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(c) The tribunal may order any party to the proceedings who is present in this State to appear personally. The tribunal may order any person in this State having physical custody of the child to personally appear with the child.

Subsection (c) is derived from UCCJA §11, now §114. It authorizes the tribunal in an enforcement proceeding to require the personal appearance of the in-state party and, if necessary, the child. If the individual with physical custody of the child is located in another State the tribunal could utilize UCCJA §19(b), now §120(b), and request assistance from a court in that State.

## SECTION 208. HEARING PROCEDURE AND EVIDENCE.

(a) In a proceeding under this [Act], the tribunal may order that the hearing be held by conference call or other available technology and may permit a party or a witness residing in another State to testify by telephonic, or other appropriate means at a designated tribunal or other location in that State. The tribunal shall cooperate with tribunals of other States in designating an appropriate location for the testimony. The tribunal may assess the costs of telephone calls, audiovisual, or other electronic communications in accordance with [§213 of this Act].

(b) Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, facsimile or other device that does not provide an original writing may not be excluded from evidence solely because of the means of transmission.

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

(d) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [Act].

(e) In a proceeding under this [Act], the defense of immunity based on the relationship of husband and wife or parent and child does not apply.

Comment

In the normal case, the hearing will be in the respondent's jurisdiction. However, the procedure could be brought in the petitioner's state or where the child is residing. There is no overriding requirement that all parties attend the proceeding. The tribunal should have the power to hold a hearing by whatever technology can best accommodate all the parties. A record must, however, be made of the hearing.

Subsection (a) requires tribunals of this state to cooperate with tribunals in other states in allowing witnesses to testify from this state in another jurisdiction's proceeding.

The remainder of this section is derived from UIFSA §316 and the current UCCJA §§18,19 and 20, particularly with regard to documentary evidence, the privilege of self-incrimination, spousal privileges and immunities.

Nothing in this Act addresses the question of whether the tribunal should appoint

1 an attorney or guardian ad litem for the child in the enforcement proceeding. That issue  
2 is left to each individual state to determine.  
3

## SECTION 209. COMMUNICATION BETWEEN TRIBUNALS.

(a) A tribunal of this State may communicate with a tribunal of another State in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a custody determination of that tribunal, the status of a proceeding in the other State, or other related matters. A tribunal of this State shall furnish similar information by similar means to a tribunal of another State.

(b) Communication with other tribunals should be made in a manner which allows the parties to participate. Methods of participation may include: having the parties or their attorneys on the telephone during a conference call between the tribunals, having the parties or their attorneys join in on-line or other electronic communication between tribunals, or by allowing the parties or their attorneys to present facts and legal arguments to the tribunals before a final determination of the appropriate forum is made.

(c) A record shall be made of the communication. The record may include: the notes or transcripts of a court reporter who listened to the conference call between the tribunals, an electronic recording of the telephone call, a recording of other electronic communications between the parties, or findings of fact and findings of law made by one or more tribunals after the communication.

(d) The expenses of communicating with a tribunal of another State may be assessed as costs under [§213 of this Act].

Comment

This section is derived from UIFSA §317 and the current UCCJA §7(d). It encourages judicial communication. The communication should be done in a manner which allows the parties to participate. In any event, a record must be made of the conversation. There can be significant due process concerns when a decision is based on a communication between two tribunals outside of the presence of the parties and without a record of the communication. See *Yost v. Johnson*, 581 A.2d 178 (Del.Sup.Ct 1991)(trial court violated procedural due process when it contacted the Virginia court without notifying the parties, failed to permit the parties to participate in the telephone



1 conversation and failed to create or produce a written record of the call).

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3 This section could be combined with the communication material of Article I into a  
4 separate section so we would not have to repeat the same section in both Articles.  
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(1) a certified or exemplified copy of the custody determination to be enforced, and

(2) evidence of its violation, or evidence of the respondent's violation, and

(3) the remedy sought.

(b) The tribunal shall grant the relief sought unless the respondent shows by a preponderance of the evidence that

(1) the issuing tribunal's exercise of subject matter jurisdiction did not comply with [Section 104, 105 of this Act];

(2) a different tribunal has made a custody determination that is entitled to enforcement under the Parental Kidnapping Prevention Act , 28 U.S.C. Section 1738A;

(3) the respondent did not receive notice in accordance with [Sections 107,108 of this Act];

(4) the determination has been modified, stayed, or vacated by the issuing tribunal or by a tribunal whose decision must be enforced under the authority of the Parental Kidnaping Prevention Act, 28 U.S.C. Section 1738A.

This section has been rewritten in accordance with the decision of the Drafting Committee at its February meeting. The scope of inquiry for the enforcing tribunal is really quite limited. Federal law requires the tribunal to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. This [Act] requires enforcement of custody determinations that are made in conformity with Sections 104 and 105

It is a defense to enforcement that another jurisdiction has issued a custody

1 determination that is required to be enforced under the PKPA. This could occur when  
2 one tribunal has based its determination on the current UCCJA §3(a)(2)(significant  
3 connections) and another jurisdiction has rendered a determination based on the current  
4 UCCJA §3(a)(1)(home state). When this occurs, the PKPA mandates that the home  
5 state determination be given full faith and credit in all other states, including the state that  
6 rendered the significant connections determination.  
7

8 Lack of opportunity to be heard at the original custody determination is a defense  
9 to enforcement of the custody determination. The defense of lack of notice should not  
10 be available if the respondent purposely hid from the petitioner, took deliberate steps to  
11 avoid service of process or elected not to participate in the initial proceedings.  
12

13 There are no affirmative defenses to an enforcement action. The drafting  
14 committee discussed whether there should be a defense if the child would be  
15 endangered by the enforcement of a custody or visitation order. If the child would be  
16 endangered, there is a basis for the assumption of emergency jurisdiction under [Section  
17 106 of this Act]. Upon the finding of an emergency, the tribunal should issue a temporary  
18 order and direct the parties proceed in the tribunal that is exercising continuing  
19 jurisdiction over the custody proceeding [under Section 105 of this Act].  
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(c) The warrant must:

- (e) The tribunal may impose conditions upon placement of the child to ensure the appearance of the child and the child's custodian at the enforcement hearing.

This section concerns emergency provisions for a temporary waiver of notice in any case where there is a reason to believe that the child will suffer immediate harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the tribunal finds immediate harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. After the warrant is executed, the respondent receives notice of the proceedings.

1 Immediate harm cannot be totally defined and, like the issuance of temporary  
2 restraining orders, is left to the circumstances of the case. It includes cases where the  
3 respondent is the subject of a criminal proceeding. It also would include situations where  
4 the respondent is secreting the child in violation of a court order, abusing the child, a  
5 flight risk and other circumstances that the tribunal concludes makes the issuance of  
6 notice a danger to the child. The tribunal must state the reasons for the waiver of notice  
7 and issuance of the warrant. The warrant can be enforced by law enforcement officers  
8 throughout the jurisdiction. The warrant may authorize entry upon private property to  
9 pick up the child or, if necessary, a forcible entry at any hour.

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

20  
21 This section authorizes the tribunal to utilize whatever means are available in the  
22 tribunal's jurisdiction to ensure the appearance of the petitioner and child at the  
23 enforcement hearing. Such means might include cash bonds, a surrender of a passport  
24 or whatever the tribunal determines is necessary.  
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(b) Subject to the provisions of [Section 116 of this Act] the tribunal may utilize any remedy to enforce the custody determination, or its imminent violation, that is available under the law of the forum.

Comment

At the end of the hearing the court must either grant or dismiss the petition in whole or in part. The short period for taking a case under advisement is necessary if the enforcement procedure is to be effective. The assistance of law enforcement provisions in this article mirror those in previous section. However, since an emergency no longer exists only peaceable entrance onto private property is authorized by this section.

The difficulty with the enforcement/modification dichotomy involved in the earlier draft has been resolved. This section refers to Section 116 on modification. That section authorizes a tribunal to issue whatever orders are necessary to enforce a visitation denial.

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(b) The tribunal shall not assess fees, costs and expenses against the State except as provided by other law.

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**SECTION 214. RECOGNITION AND ENFORCEMENT.** A tribunals of this State shall accord full faith and credit to an order enforcing a custody determination made consistently with this [Act] by a tribunal of another State unless the [registry established under Section 117] indicates the order has been superseded, stayed, vacated or modified by a tribunal authorized to do so under [Sections 104,105,116 of this Act].

### Comment

The enforcement order to be effective must also be enforced by other states. This section requires tribunals of this state to give full faith and credit to enforcement orders issued by other states when made consistently with the provisions of this Act.



**SECTION 215. APPEALS.** A final order in a proceeding under this Article may be appealed in accordance with expedited appellate procedures in civil cases. Subject to the provisions of [Section 106 of this Act], an order enforcing a custody determination may not be stayed pending appeal.

Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment to the child a petition to assume emergency jurisdiction must be filed under Section 106. Absent such a filing there is no reason to stay the enforcement of the order pending appeal.

1 [ARTICLE 3: ASSISTANCE OF PUBLIC AUTHORITIES]

2  
3 Introduction to Article Three

4  
5 This article is modeled upon the *Obstacles Report*, which in turn is based on the  
6 California experience in authorizing a role for public authorities in custody and visitation  
7 enforcement. One of the basic policies behind the California approach is that the  
8 involvement of public authorities will encourage the parties to abide by the terms of the  
9 custody determination. If the parties know that prosecutors and law enforcement officers  
10 are available to help in securing compliance with custody determinations, they may be  
11 deterred from interfering with the exercise of rights established by court order.  
12

13 The California model could also prove more effective in remedying violations of  
14 the custody determination. Most parties do not have the resources to enforce a custody  
15 determination in another jurisdiction. The availability of the prosecutor as an  
16 enforcement agency will help ensure that this remedy can be made available regardless  
17 of income level. In addition the prosecutor has resources to draw on that are unavailable  
18 to the average litigant.  
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**SECTION 301. ROLE OF [PROSECUTOR].**

(a) The [prosecutor] at the request of

(1) a person whose custody rights have been violated,

(2) a person who claims a right to custody or visitation under a custody

determination,

(3) a [prosecutor] in another jurisdiction, or

(4) the United States Department of State in a proceeding arising under 42

U.S.C. §11601 (International Child Abduction Remedies Act)

may take any action necessary to obtain the return of the child or to enforce a custody

determination, including locating the child and requesting the enforcement of the

determination by a prosecutor in another jurisdiction.

(b) The [prosecutor] is authorized to utilize any available civil or criminal

proceeding including proceedings under this [Act].

(c) The [prosecutor] shall act on behalf of the court and does not represent any

party to the custody determination.

### Comment

This section departs somewhat from the California model which provides a role for public authorities, in some cases, prior to the rendering of the custody determination. However, since this Act is an enforcement statute, the role of the prosecutor does not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the prosecutor be involved in the action leading up to the making of the custody determination. Nor does the Act mandate that the prosecutor be involved in all cases referred to it. There is only so much time and money available for enforcement proceeding. Therefore the prosecutor eventually will have to develop guidelines to determine which cases will receive priority.

The prosecutor is authorized to locate the child and enforce the custody determination. This Act does not attempt to suggest how the prosecutor should exercise its duties under this Act. It is assumed in locating the child the prosecutor would proceed as in a state missing person case. The prosecutor is authorized to utilize any criminal or civil proceeding to secure the enforcement of the custody determination, including this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provision. For example, the prosecutor is required to abide by the pleading and notice requirements of §§301 and 302. If the prosecutor believes that the child is threatened by

1 imminent harm, it may request an emergency order under §401.  
2

3 The prosecutor does not represent any party to the custody determination. It acts  
4 as a "friend of the court." It's role is to ensure that the custody determination is enforced.  
5  
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**SECTION 302. ROLE OF LAW ENFORCEMENT** At the request of the [prosecutor] acting pursuant to [§301 of this Act], law enforcement officials shall be authorized to take all actions reasonably necessary to locate a child and secure compliance with a custody determination.

Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination. There are two policy choices to be made at this juncture. The first is to determine how the assistance of law enforcement is to be obtained. One method is to indicate that law enforcement officers shall be involved when so requested by the prosecutor pursuant to §301. This removes all doubt from law enforcement as to the propriety of the request.

Another approach would authorize law enforcement officers to act when requested by a private individual. However, there would appear to be a requirement that law enforcement is acting to enforce a custody determination that is properly enforceable. Thus there would probably need to be some requirement that law enforcement make a preliminary determination that the decree was issued by a court that had jurisdiction to do so, that the person against whom it is being enforced had reasonable notice and that the decree has not been modified, superseded or stayed. This seems like a determination that law enforcement officers are not really competent to make.

The second issue is whether all reasonable means should be defined. This section does not attempt to do so but rather leaves it to each individual jurisdiction to determine what is the appropriate role of law enforcement consistent with the purposes of this Act.

**SECTION 303. COSTS AND EXPENSES.** All expenses and costs incurred by the [prosecutor] and law enforcement officials for proceedings under this [Act] shall be assessed against the losing party, unless the losing party establishes that such an order would be clearly inappropriate. If costs are not assessed against the losing party, the tribunal may assess some or all of the costs and expenses against the prevailing party. A monetary award made pursuant to this section shall constitute a judgment and be enforceable as such.

Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs and fees against the losing party. It differs from §402 in two ways. First, if the losing party cannot afford all the costs they may also be assessed against the prevailing party. The theory here is that one who utilizes government services may expect to pay a user fee under certain circumstances. Second, the monetary award is made an automatic judgment and can be enforceable as such.