

D R A F T  
FOR APPROVAL

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-SIXTH YEAR  
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# **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

*WITH PREFATORY NOTE AND COMMENTS*

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

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

3                                   **PREFATORY NOTE**

4                   This Act, the Uniform Child Custody Jurisdiction and Enforcement Act,  
5 revisits the problem of the interstate child almost thirty years after the Conference  
6 promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). It seeks to  
7 accomplish two major purposes.

8                   First, it revises the law on child custody jurisdiction in light of federal  
9 enactments and thirty years of contradictory case law. Article 2 of the Act provides  
10 for a clearer determination of which State can exercise original jurisdiction over a  
11 child-custody determination. It also, for the first time, enunciates a standard of  
12 continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the  
13 article harmonize the law on simultaneous proceedings, clean hands and forum non  
14 conveniens. Several sections of the original UCCJA that were obsolete were  
15 omitted from this revision.

16                  Second, this Act provides in Article 3 for an expedited process to enforce  
17 interstate child custody and visitation determinations. In doing so, it brings  
18 uniformity to the law of interstate enforcement that is currently producing  
19 inconsistent results. In many respects this Act accomplishes for custody and  
20 visitation determinations the same certainty that has occurred in interstate child  
21 support law with the promulgation of the Uniform Interstate Family Support Act.

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

23                  In 1994 the Conference's Study Committee on Family Law recommended to  
24 the Scope and Program Committee that the Uniform Child Custody Jurisdiction Act  
25 be amended to conform it to federal enactments, particularly the Parental  
26 Kidnapping Prevention Act, (PKPA), 28 U.S.C. § 1738A (Full Faith and Credit to  
27 Child Custody Determinations). In the same year the American Bar Association's  
28 Family Law Section's Council unanimously passed the following resolution at its  
29 spring 1994 meeting in Charleston:

30                                   **RESOLUTION**

31                  WHEREAS the Uniform Child Custody Jurisdiction Act (UCCJA) is in  
32 effect in all 50 of the United States, and the Federal Parental Kidnapping  
33 Prevention Act (PKPA), 28 U.S.C.A. § 1738A, governs the full faith and credit  
34 due a child custody determination by a court of a U.S. State or territory, and

35                  WHEREAS numerous scholars have noted that certain provisions of the  
36 PKPA and the UCCJA are inconsistent with each other,

37                  THEREFORE BE IT RESOLVED the Council of the Family Law Section  
38 of the American Bar Association urges the National Conference of  
39 Commissioners on Uniform State Laws (NCCUSL) to study whether revisions

1 to the UCCJA should be drafted and promulgated in a revised version of the  
2 uniform act.

3 The UCCJA was successfully adopted as law in all 50 States, the District of  
4 Columbia and the Virgin Islands. A number of adoptions, however, have  
5 significantly departed from the original text. In addition, almost thirty years of  
6 litigation since the promulgation of the UCCJA has produced substantial  
7 inconsistency in interpretation by state courts. These non-uniform interpretations  
8 have created many situations where the goals of the UCCJA were rendered  
9 unobtainable.

10 In 1980 the federal government enacted the Parental Kidnapping Prevention  
11 Act (PKPA), 28 U.S.C. § 1738A, to address interstate custody problems that  
12 continued to exist after the adoption of the UCCJA. The PKPA mandates that state  
13 authorities give full faith and credit to other States' custody determinations, so long  
14 as those determinations were made in conformity with the provisions of the PKPA.  
15 The PKPA provisions regarding bases for jurisdiction, restrictions on  
16 modifications, preclusion of simultaneous proceedings, and notice requirements are  
17 similar to those in the UCCJA. There are, however, some significant differences.  
18 For example, under the UCCJA there are four interchangeable bases of initial  
19 jurisdiction. The PKPA, however, prioritizes the "home state" jurisdiction by  
20 requiring that full faith and credit cannot be given to a State that exercises initial  
21 jurisdiction as a "significant connection State" when there is a "home State. In  
22 addition the PKPA authorizes continuing exclusive jurisdiction in the decree State  
23 so long as one parent or the child remains in that jurisdiction. The UCCJA did not  
24 directly address the issue. To further complicate the process, the PKPA partially  
25 incorporates state UCCJA law in its language.

26 The existing Drafting Committee on the Uniform Child Visitation Act was  
27 then requested by the Scope and Program Committee to revise the Uniform Child  
28 Custody Jurisdiction Act. The purposes of the revisions are to bring the UCCJA  
29 into compliance with the Parental Kidnapping Prevention Act and other federal  
30 statutes such as the Violence Against Women Act, 18 U.S.C. § 2265 (Full Faith and  
31 Credit for Protective Orders), as well as to make those changes to the UCCJA  
32 which are necessary after almost 30 years of inconsistent court interpretations.

33 The Drafting Committee on the Uniform Interstate Child Visitation Act  
34 combined these revisions, along with the enforcement provision it was drafting,  
35 into a proposed Uniform Child Custody Jurisdiction and Enforcement Act. This  
36 draft contains the following suggested amendments to the UCCJA:

37 **1. Providing for home state priority:** The PKPA provides for full faith  
38 and credit only when the custody determination is made by the home State. Other  
39 state custody determinations are not entitled to PKPA enforcement unless there is  
40 no home State. The UCCJA, however, specifically authorizes four independent  
41 bases of jurisdiction without prioritization. Under the UCCJA a significant-  
42 connection custody determination may have to be enforced even if it would be  
43 denied enforcement under the PKPA. This draft prioritizes home state jurisdiction  
44 in Section 201.

45 **2. A clarification of emergency jurisdiction:** There are several problems  
46 with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First,

1 the language of the UCCJA does not specify that emergency jurisdiction may only  
2 be exercised to protect the child on a temporary basis until the court with  
3 jurisdiction issues a permanent order. Some courts have interpreted the UCCJA  
4 language to so provide. Other courts, however, have held that there is no time limit  
5 on the emergency jurisdiction. Simultaneous proceedings and conflicting custody  
6 orders have resulted from these different interpretations.

7 Second, the emergency jurisdiction provisions predated the widespread  
8 enactment of state domestic violence statutes. Those statutes are often invoked to  
9 keep one parent away from the other parent and the children when there is a threat  
10 of violence. Whether these situations are sufficient to invoke the emergency  
11 jurisdiction provision of the UCCJA has been the subject of some confusion since  
12 the emergency jurisdiction provision does not specifically refer to violence directed  
13 against the parent of the child or against a sibling of the child.

14 Finally, the UCCJA provides no exception to the notice requirement, or to  
15 the ban on simultaneous proceedings, in emergency cases. Therefore, custody  
16 orders issued on a temporary emergency basis (e.g., child abuse orders or domestic  
17 violence orders of protection), prior to notice being given to all contestants or  
18 during the pendency of another custody proceeding in another State, would not  
19 currently be enforceable in any other State pursuant to the UCCJA, although they  
20 may have to be enforced under the Violence Against Women Act, 18 U.S.C. § 2265  
21 (Full Faith and Credit to Protection from Domestic Violence Orders) .

22 This draft contains a separate section on emergency jurisdiction at Section  
23 204 which addresses these issues.

24 **3. Providing for exclusive continuing jurisdiction for the decree**  
25 **granting State:** The failure of the current UCCJA to clearly state that the decree  
26 granting State retains exclusive jurisdiction to modify that decree has resulted in  
27 two major problems. First, different interpretations of the UCCJA on continuing  
28 jurisdiction have resulted in conflicting custody decrees. States have different  
29 interpretations as to how long continuing jurisdiction lasts. Some courts have held  
30 that modification jurisdiction continues until the last contestant leaves the State,  
31 regardless of how many years the child has lived outside the State or how tenuous  
32 the child's connections to the State have become. Other courts have held that  
33 continuing modification jurisdiction ends as soon as the child has established a new  
34 home State, regardless of how significant the child's connections to the decree State  
35 remain. Still other States distinguish between custody orders and visitation orders.  
36 This divergence of views leads to simultaneous proceedings and conflicting custody  
37 orders.

38 The second problem arises when it is necessary to determine whether the  
39 State with continuing jurisdiction has relinquished it. There should be a clear basis  
40 to determine when that court has relinquished jurisdiction. Currently, the UCCJA  
41 provides no guidance on this issue. The resulting ambiguity concerning whether a  
42 court has declined jurisdiction can result in one court improperly exercising  
43 jurisdiction because it erroneously believes that the other court has declined  
44 jurisdiction. This can cause simultaneous proceedings and conflicting custody  
45 orders. In addition some courts have declined jurisdiction after only informal  
46 contact between courts, with no notice to contestants and no opportunity for the



1 parties to be heard. This raises serious due process questions. This draft addresses  
2 these issues in Sections 110, 202, and 206.

3 **4. What custody proceedings are covered:** The definition of custody  
4 proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions  
5 regarding certain types of proceedings. There is no general agreement whether the  
6 UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination  
7 of parental rights, adoption and protection from domestic violence proceedings.  
8 This draft includes a sweeping definition that includes virtually all cases involving  
9 custody of or visitation with a child as a “custody determination.

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

19 This draft eliminates the term “best interests” in order to establish clarity  
20 between the jurisdictional standards and the substantive standards relating to  
21 custody and visitation of children.

22 **6. Applicability to Native Americans:** It is currently unclear whether  
23 Native American tribes are intended to be included under the definition of “State.”  
24 This ambiguity creates uncertainty as to whether child custody determinations made  
25 by Native American tribal courts are ever entitled to enforcement under the UCCJA  
26 and whether Native American tribal authorities are obliged to enforce state court  
27 determinations. Currently some States have enacted statutes exempting from  
28 UCCJA coverage all proceedings that would fall under the Indian Child Welfare  
29 Act. Others disagree. This draft includes Section 104 which gives States the  
30 option of whether to apply the Act to tribal custody proceedings and  
31 determinations.

32 **7. Other Changes:** This draft also makes a number of additional  
33 amendments to the UCCJA as pointed out in the Comments to those sections.  
34 These changes are not necessary to conform the Act to federal statutes. However,  
35 the Drafting Committee determined that these changes will result in an improved  
36 Act that is easier to apply.

## 37 **Enforcement Provisions**

38 The Drafting Committee for a proposed Uniform Interstate Child Visitation  
39 Act was originally charged with the task of developing remedies for interstate  
40 visitation and custody cases. As with child support, state borders have become the  
41 biggest obstacle to enforcement of custody and visitation orders. If either parent  
42 leaves the State where the custody determination was made, the other parent faces  
43 considerable difficulty in enforcing the visitation and custody provisions of the



1 decree. Locating the child, making service of process and preventing adverse  
2 modification in a new forum all present problems.

3 There is currently no uniform method of enforcing custody and visitation  
4 orders validly entered in another State. As documented in an extensive study by the  
5 American Bar Association's Center on Children and the Law, *Obstacles to the*  
6 *Recovery and Return of Parentally Abducted Children (Obstacles Study)*, despite  
7 the fact that both the UCCJA and the PKPA direct the enforcement of visitation and  
8 custody orders entered in accordance with mandated jurisdictional prerequisites and  
9 due process, neither deals with the mechanisms for enforcement.

10 As the *Obstacles Study* pointed out, the lack of specificity in enforcement  
11 procedures has resulted in the law of enforcement evolving differently in different  
12 jurisdictions. In one State it might be common practice to file a Motion to Enforce  
13 or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In  
14 another a Writ of Habeas Corpus or a Citation for Contempt might be commonly  
15 used. In some States, mandamus and prohibition also may be utilized. All of these  
16 enforcement procedures differ from jurisdiction to jurisdiction. While many States  
17 tend to limit considerations in enforcement proceedings to whether the court which  
18 issued the decree had jurisdiction to make the custody determination, others  
19 broaden the considerations to scrutiny of whether enforcement would be in the best  
20 interests of the child.

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

29 The provisions of Article 3 reflect the decisions taken by the Drafting  
30 Committee. The Act provides an extremely swift remedy along the lines of habeas  
31 corpus. Time is extremely important in visitation and custody cases. If visitation  
32 rights cannot be enforced quickly, they often cannot be enforced at all. This is  
33 particularly true if there is a limited time within which visitation can be exercised  
34 such as may be the case when one parent has been granted visitation during the  
35 winter or spring holiday period. Without speedy consideration and resolution of the  
36 enforcement of such visitation rights, the ability to visit may be lost entirely.  
37 Similarly, a custodial parent must be able to obtain prompt enforcement when the  
38 noncustodial parent refuses to return a child at the end of authorized visitation,  
39 particularly when a summer visitation extension will infringe on the school year. A  
40 swift enforcement mechanism is desirable for violations of both custody and  
41 visitation provisions.

42 The draft also provides that the enforcing court will be able to utilize an  
43 extraordinary remedy. If the enforcing court is concerned that the parent, who has  
44 physical custody of the child, will flee or harm the child, a warrant to take physical  
45 possession of the child is available.

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

5           The Drafting Committee decided there should be a role for public  
6 authorities in the enforcement process. One of the basic policies behind the  
7 recommendation of the *Obstacles Study* is that the involvement of public  
8 authorities will encourage the parties to abide by the terms of the custody  
9 determination. If the parties know that prosecutors and law enforcement officers are  
10 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           The model proposed by the *Obstacles Study* could also prove more effective  
13 in remedying violations of the custody determination. Most parties do not have the  
14 resources to enforce a custody determination in another jurisdiction. The  
15 availability of the prosecutor as an enforcement agency will help ensure that this  
16 remedy can be made available regardless of income level. In addition the  
17 prosecutor may have resources to draw on that are unavailable to the average  
18 litigant.

19           This draft provides a permissive role for the prosecutor and law  
20 enforcement in enforcing a custody determination. It does not authorize the  
21 prosecutor to be involved in the action leading up to the making of the custody  
22 determination except when requested by the court when there is a violation of the  
23 Hague Convention on the Civil Aspects of Child Abduction or when the person  
24 holding the child has violated a criminal statute. The Act does not mandate that the  
25 prosecutor be involved in all cases referred to it. Not all States, or local  
26 prosecutors, may have access to the funds necessary for an effective custodial  
27 enforcement program.

28           At the request of the Drafting Committee, the Scope and Program  
29 Committee determined that the revisions of the UCCJA and the enforcement  
30 remedy provided by a Uniform Interstate Child Visitation Act be combined into one  
31 new act to be entitled the Uniform Child-Custody Jurisdiction and Enforcement  
32 Act.

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

3                                   **[ARTICLE] 1**  
4                                   **GENERAL PROVISIONS**

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

7                                   Comment

8                   Section 1 of the UCCJA was a statement of the purposes of the Act.  
9 Although extensively cited by courts, it was eliminated by the Committee on Style.  
10 Uniform Acts no longer contain such a section.

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

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

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

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

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

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

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

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

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

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

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

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

19          (12) “Person includes government, governmental subdivision, agency, or  
20          instrumentality, or any other legal or commercial entity.

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

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

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

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

2 (15) “State means a State of the United States, the District of Columbia,  
3 Puerto Rico, the United States Virgin Islands, or any territory or insular possession  
4 subject to the jurisdiction of the United States.

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

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

9 Comment

10 The UCCJA did not contain a definition of “child. The definition here is  
11 taken from the PKPA and is part of the process of conforming this Act to the  
12 PKPA. The Drafting Committee abandoned an attempt to define a child  
13 functionally as one who was the subject of a custody proceeding. Such a definition  
14 resulted in potentially including adult guardianships in the Act which the Drafting  
15 Committee did not consider desirable since the law of guardianships and a  
16 determination of whether or not an adult is competent are beyond the scope of this  
17 Act.

18 The Committee on Style has changed the term “custody determination and  
19 “custody proceedings as found in the original UCCJA to “child-custody  
20 determination and “child-custody proceeding. No substantive change is intended  
21 by the change in terminology. The definition of “child-custody determination now  
22 closely tracks the PKPA definition.

23 The definition of “child-custody proceeding has been rewritten several  
24 times. The Drafting Committee decided to retain the phrase “is one of several  
25 issues, as it appeared in the UCCJA. The Committee on Style has substituted “is  
26 an issue. The list of custody proceedings is expanded from the comparable  
27 definition in the UCCJA. The listed proceedings have generally been determined to  
28 be the type of proceeding to which the UCCJA and PKPA are applicable. There are  
29 however some contrary holdings. See, e.g., *L.G. v. People*, 890 P.2d 647 (Colo.  
30 1995) (juvenile neglect proceedings are not “custody proceedings under the  
31 PKPA). The list of examples removed any controversy about the types of  
32 proceedings where a custody determination can occur. Proceedings that affect  
33 access to the child are subject to this Act. The inclusion of protection from  
34 domestic violence proceedings is necessary because some state domestic violence  
35 proceedings may affect custody of and visitation with a child. The passage of the  
36 Violence Against Women Act, 18 U.S.C. § 2265 (Full Faith and Credit for  
37 Protective Orders) provides an additional method by which some custody  
38 determinations contained in protective orders may be enforced. Juvenile  
39 delinquency or proceedings to confer contractual rights are not “custody  
40 proceedings because they do not relate to civil aspects of access to a child. While  
41 a determination of paternity is covered under the Uniform Interstate Family Support

1 Act, the custody and visitation aspects of paternity cases are custody proceedings.  
2 Cases involving the Hague Convention on the Civil Aspects of Child Abduction  
3 have not been included at this point because custody of the child is not determined  
4 in a proceeding under the International Child Abductions Remedies Act. Those  
5 proceedings are specially included in Article 3.

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

9 The definition of “home State” has been slightly rewritten by the Committee  
10 on Style. No substantive change is intended from the UCCJA.

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

15 The term “person” has been defined as required by the Drafting Rules for  
16 Uniform or Model Act, Rule 12(g). The required definition includes entities which  
17 are unlikely to be involved in a custody determination such as a business or a joint  
18 venture. However, its inclusion does make it clear that the provisions of this Act  
19 apply when the State is the moving party in a custody proceeding or has legal  
20 custody of a child.

21 The term “person acting as parent” has been redefined in accordance with  
22 the decision of the Drafting Committee. The term has been broadened from the  
23 original definition to include a person who has acted as a parent for a significant  
24 period of time prior to the filing of the custody proceeding as well as a person who  
25 currently has physical custody of the child. In addition a person acting as a parent  
26 must either have legal custody or claim a right to legal custody under the law of a  
27 State.

28 The definition of “tribe” is the one provided by the Committee on Style and  
29 is close to the definition adopted by the Conference in the Uniform Certification of  
30 Questions of Law Act. Should a State choose to apply this Act to tribal  
31 adjudications, it should enact this definition as well as Section 104.

32 The term “contestant” has been omitted from this revision. The reason for  
33 its inclusion in the original UCCJA was never clearly enunciated. It seems to have  
34 served little purpose over the years and whatever function it once had has been  
35 subsumed by state laws on who has standing to seek custody of or visitation with a  
36 child. In addition subsection (5) of the original UCCJA defining “decree” and  
37 “custody decree” has been eliminated as duplicative of the definition of “custody  
38 determination.





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

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

4 [(b) A court of this State shall treat a tribe as a State of the United States for  
5 purposes of [Articles] 1 and 2.]

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

9 **Comment**

10 This section gives States the discretion to extend the terms of this Act to  
11 Indian tribes by removing the brackets. The definition of tribe is found at Section  
12 102(17). Of course, this Act does not purport to legislate custody jurisdiction for  
13 tribal courts. However, a Tribe could adopt this Act as enabling legislation by  
14 simply replacing references to “this State” with “this Tribe.”

15 Subsection (a) is not bracketed. A case that falls under the Indian Child  
16 Welfare Act is governed by that Act and not by this Act.

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

18 (a) A court of this State shall treat a foreign country as a State of the United  
19 States for purposes of applying [Articles] 1 and 2.

20 (b) A child-custody determination made in a foreign country under factual  
21 circumstances in substantial conformity with the jurisdictional standards of this  
22 [Act] must be recognized and enforced under [Article] 3 of this [Act].

23 (c) The court need not apply the provisions of this [Act] when the child  
24 custody law of the other country violates fundamental principles of human rights

25 **Comment**

26 In accordance with the decision of the Drafting Committee, all the  
27 provisions of this Act will have international application to child-custody  
28 proceedings and determinations of other countries. Another country will be treated  
29 as if it was another State for purposes of applying Articles 1 and 2 of this Act.  
30 Custody determinations of other countries will be enforced if the facts of the case  
31 indicate that jurisdiction was in substantial compliance with the requirements of  
32 this Act.

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

6 A court of this State may refuse to apply this Act when the child custody  
7 law of the other country ignores basic principles relating to the protection of human  
8 rights and fundamental freedoms. The same concept is found in Section 20 of the  
9 Hague Convention on the Civil Aspects of Child Abduction (return of the child  
10 may be refused if this would not be permitted by the fundamental principles of the  
11 requested State relating to the protection of human rights and fundamental  
12 freedoms). This draft adopts a suggestion from the floor during the first reading to  
13 the effect that the court’s scrutiny should be on the child-custody law of the foreign  
14 country and not on other aspects of the other legal system. This Act takes no  
15 position on what laws relating to child custody would violate fundamental  
16 freedoms. That determination is left to a case-by-case development.

17 This section is derived from Section 23 of the original UCCJA.

#### 18 **SECTION 106. BINDING FORCE OF CHILD-CUSTODY**

19 **DETERMINATION.** A child-custody determination made by a court of this State  
20 that had jurisdiction under this [Act] binds all persons who have been served in  
21 accordance with the laws of this State or notified in accordance with Section 108 or  
22 who have submitted to the jurisdiction of the court, and who have been given an  
23 opportunity to be heard. The determination is conclusive as to them as to all  
24 decided issues of law and fact except to the extent the determination is modified.

#### 25 **Comment**

26 No substantive changes have been made to this section. Some organization  
27 changes and language changes were made by the Committee on Style. This was  
28 Section 12 of the UCCJA.

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

#### 33 **Comment**

1 No substantive change was made to this section which was Section 24 of the  
2 original Act. Language changes were required by the Committee on Style. The  
3 Drafting Committee determined that it should be placed toward the beginning of  
4 Article 1 to emphasize its importance.

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

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

9 (a) Notice required for the exercise of jurisdiction while a person is outside  
10 this State may be given in a manner prescribed by the law of this State for the  
11 service of process or by the law of the State in which the service is made.

12 However, the notice must be given in a manner calculated to give actual notice.

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

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

#### 17 **Comment**

18 This section authorizes notice, and proof of service, to be made by any  
19 method allowed by either the State which issues the notice or the State where the  
20 notice is received. This eliminates the need to specify the type of notice in the Act.  
21 Thus service by publication is permissible upon compliance with local rules  
22 governing its use. Service by fax would also be permissible if allowed by local rule  
23 in either State. In addition where special service or notice rules are available for  
24 some procedures, in either jurisdiction, they could be utilized under this Act. For  
25 example, if there are problems of domestic violence and the statute of either State  
26 would authorize notice to be served by a peace officer such service could be used  
27 under this Act.

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

33 Subsection (b) of Section 5 of the UCCJA which mandated that service take  
34 place either 10 or 20 days prior to any hearing under the Act has been eliminated.  
35 Local law should determine how long prior to the hearing notice must occur. This  
36 corresponds with the use of local law to determine as many issues as possible under

1 this Act. Otherwise no major substantive changes were made to this section. Other  
2 language changes were required by the Committee on Style.

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

4 (a) A party to a child-custody proceeding who is not subject to personal  
5 jurisdiction in this State and is a responding party under [Article] 2, a petitioner in a  
6 proceeding to modify a child-custody determination under [Article] 2, or a  
7 petitioner in a proceeding to enforce or register a child-custody determination under  
8 [Article] 3 may appear and participate in the proceeding without submitting to  
9 personal jurisdiction over the party for another proceeding or purpose.

10 (b) A party is not subject to personal jurisdiction in this State solely by  
11 being physically present for the purpose of participating in a proceeding under this  
12 [Act]. If a party is subject to personal jurisdiction in this State on a basis other than  
13 physical presence, the party may be served with process in this State. If a party  
14 present in this State is subject to the jurisdiction of another State, service of process  
15 allowable under the laws of that State may be accomplished in this State.

16 **Comment**

17 In accordance with the decision of the Drafting Committee, the provisions  
18 of the section on limited immunity were moved from the enforcement article and  
19 made applicable to the entire Act. This creates the general principle that  
20 participation in a custody proceeding does not, by itself, give the court jurisdiction  
21 over any issue for which personal jurisdiction over the individual is required. The  
22 term participate should be read broadly. If jurisdiction is proper under Article 2, a  
23 respondent, or a petitioner for a modification, should be able to request custody  
24 without this constituting the seeking of affirmative relief that would waive personal  
25 jurisdictional objections. This would eliminate the difficulties that have occurred  
26 with cases such as *Custody of Rose*, 666 N.E.2d 1228 (Ill. App. Ct. 1996). Once  
27 jurisdiction is proper under Article 2, a party should not be placed in the dilemma  
28 of choosing between seeking custody or protecting their right not to be subject to a  
29 monetary judgment by a court with no other relationship to the party.

30 This remainder of this section is derived from UIFSA § 314. A person who  
31 is required to appear in a custody proceeding as a respondent or who files an  
32 enforcement action under this article is not subjected to the general jurisdiction of  
33 the State by virtue of the filing. However, if the petitioner would otherwise be  
34 subject to the jurisdiction of the State, appearing in a custody proceeding or filing  
35 an enforcement proceeding will not provide immunity. Thus if the non-custodial

parent moves from the State that decides the custody determination, that parent is still subject to the State's jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If that parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, assume that both parties move from F1 after the determination. The custodial parent and the child establish a new home State in F2 and the non-custodial parent moves to F3. The non-custodial parent is not at this point subject to the jurisdiction of F2 for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into F2 to enforce the visitation aspects of the determination, he is not subject to the jurisdiction of F2 for the enforcement of the back-due child support by virtue of his filing the enforcement action. Cf. UIFSA § 611 (personal service over the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support).

A party also is immune from service of process during the time in the State for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus when the non-custodial parent comes into F2 to enforce the visitation aspects of the decree, F2 cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. However, a party that is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

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

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

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

(b) Communications between courts that affect the substantive rights of a party must be made in a manner that allows the parties to participate, or allows the parties to present jurisdictional facts and legal arguments to the courts, before a final determination is made as to which forum is appropriate. A record must be made of those communications between courts. The record may consist of notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum of other electronic

1 communications between the courts, or a memorandum made by one or more courts  
2 after the communication.

3 (c) Communications between courts on schedules, calendars, court records,  
4 and other matters that do not affect the substantive rights of the parties may occur  
5 without informing the parties. A record need not be made of those  
6 communications.

#### 7 Comment

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

15 Language has been added to emphasize the role of the parties in the  
16 communication process. If the communication between the courts involves  
17 relatively inconsequential concerns such as scheduling, calendars or consultation on  
18 other minor matters, the communication can occur without the parties being  
19 informed or participating. Included within this type of communication would be  
20 matters of cooperation between courts under Section 112.

21 However, on all matters which could affect the parties' substantive rights, a  
22 court must communicate with another court in a manner which allows the parties to  
23 participate or to present jurisdictional facts and arguments. In particular this  
24 includes communications that are required under Section 204 (Emergency  
25 Jurisdiction), Section 206 (Simultaneous Proceedings), Section 207 (Forum Non  
26 Conveniens), and Section 305 (Simultaneous Proceedings). In any event, a record  
27 of the communication must be made. No particular form of communication is  
28 required to inform the parties that a communication between courts is scheduled.  
29 An informal communication is sufficient.

30 The purpose of this section is to regularize the communication process  
31 between courts. It preserves the flexibility necessary to accommodate busy judicial  
32 schedules while including protection for the parties against unauthorized ex parte  
33 communications. A full discussion of the problem can be found in *State ex rel.*  
34 *Grape v. Zach*, 524 N.W.2d 788 (Neb. 1994).

### 35 SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

36 (a) In addition to other procedures available to a party, a party to a child-  
37 custody proceeding may offer testimony of witnesses that are located in another



1 State, including testimony of the parties and the child, by deposition or other means  
2 allowable in this State for testimony taken in another State. The court on its own  
3 motion may order that the testimony of a person be taken in another State and may  
4 prescribe the manner in which and the terms upon which the testimony is taken.

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

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

13 **Comment**

14 No substantive changes have been made to subsection (a) which was  
15 Section 18 of the original Act.

16 Subsections (b) and (c) merely provide that modern modes of  
17 communication are permissible in the taking of testimony and the transmittal of  
18 documents. See UIFSA § 316. Any language changes were for clarity or required  
19 by the Committee on Style.

20 **SECTION 112. COOPERATION BETWEEN COURTS;**  
21 **PRESERVATION OF RECORDS.**

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

24 (1) hold an evidentiary hearing;

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

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

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

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

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

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

11 (d) A court of this State shall preserve the pleadings, orders, decrees,  
12 records of hearings, evaluations, and other pertinent documents with respect to a  
13 child-custody proceeding until the child attains 18 years of age. Upon appropriate  
14 request by a court or law enforcement official of another State, the court shall  
15 forward a certified copy of those documents.

#### 16 Comment

17 This section combines Sections 19-22 of the UCCJA. Courts may request  
18 assistance from courts of other States and may assist courts of other States. The  
19 section on the assessment of costs for travel under this section has been changed.  
20 The UCCJA provided that the costs may be assessed against the parties or the State  
21 or county. A number of commentators urged that assessment against a government  
22 entity in a case where the government is not involved is inappropriate and therefore  
23 that provision has been removed. In addition, if the State is involved as a party,  
24 assessment of costs and expenses against the State must be authorized by other law.  
25 It should be noted that the term “expenses” includes out-of-pocket costs. Overhead  
26 costs should not be assessed as expenses.

27 No other substantive changes have been made. The term “social study” as  
28 used in the UCCJA was replaced with the modern term: “custody evaluation.” The  
29 Act does not take a position on the admissibility of a custody evaluation that was  
30 done in another State. It merely authorizes a court to seek assistance of, or render  
31 assistance to, a court of another State.

32 Subsection (d) was Section 21 of the original Act. No substantive changes  
33 were made. Other language changes between this draft and the original UCCJA  
34 sections were required by the Committee on Style.



1 [ARTICLE] 2  
2 JURISDICTION

3 SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

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

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

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

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

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

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

23 (4) no State would have jurisdiction under paragraph (1), (2), or (3).

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

1 (c) Physical presence of, or personal jurisdiction over, a party or a child is  
2 neither necessary nor sufficient to make a child-custody determination.

### 3 Comment

4 The basic UCCJA jurisdiction section has been modified in several ways.  
5 The extended home state provision has been modified, in accordance with the  
6 decision of the Drafting Committee, to apply whenever the child has left the State  
7 and a parent or person acting as a parent remains. It is no longer necessary to  
8 determine why the child has been removed. The only inquiry relates to the status of  
9 the person left behind. This change provides a slightly more refined home state  
10 standard than the PKPA. The PKPA requires a determination that the child has  
11 been removed by a contestant or for other reasons. The scope of the PKPA  
12 provision is theoretically narrower than this version of the UCCJA. However, the  
13 phrase “or for other reasons” seems to cover most fact situations where the child is  
14 not in the home State and therefore the differences are more apparent than real. In  
15 another sense, this version is narrower than the PKPA. The PKPA’s definition of  
16 extended home State is more expansive than this section because it applies  
17 whenever a “contestant” remains in the home State. That class of individuals has  
18 been eliminated in this Act. In accordance with the decision of the Drafting  
19 Committee, this Act retains the original UCCJA classification of “parent or person  
20 acting as parent” to define who must remain for a State to exercise the extended  
21 home state jurisdiction.

22 The Drafting Committee received a suggestion from a number of groups  
23 that home state jurisdiction should attach immediately when a victim of domestic  
24 violence flees to a new State with a child for safety reasons. The difficulty with this  
25 suggestion is that it contravenes the PKPA. If the left behind parent commences a  
26 custody proceeding within the six months extended home state jurisdiction  
27 accorded by the PKPA, all other States would have to give full faith and credit to  
28 that state’s child-custody determination including the State where the victim of  
29 domestic violence fled.

30 There are other possible ways of resolving the problem. First, the victim of  
31 domestic violence can obtain a protective order prior to leaving. If the protective  
32 order included a custody determination, that determination would have to be given  
33 full faith and credit in all other states pursuant to both the PKPA and the Violence  
34 Against Women Act. Second, the state where the victim is present could, if  
35 appropriate, issue a protective order under the temporary emergency jurisdiction  
36 provisions of Section 204. If no custody proceeding is commenced in the home  
37 State within the time required under Section 201, the custody determination  
38 contained in the emergency determination could become final. Third, if a custody  
39 proceeding is commenced in the home State, that State could be persuaded that the  
40 State where the victim has fled is a more appropriate forum to make the custody  
41 determination. In any event, the home State has an opportunity to protect the  
42 victim through the procedures of Sections 110 through 112.

43 Significant connection jurisdiction is amended in three ways. First, the  
44 “best interest” language of the UCCJA has been eliminated. This phrase tended to  
45 create confusion between the jurisdictional issue and the substantive custody  
46 determination. Since the language was not necessary for the jurisdictional

determination, it has been removed. The section also prioritizes home state jurisdiction in the same manner as the PKPA. This prioritization is necessary to conform the UCCJA to the PKPA.

Second, a significant connection State may assume jurisdiction when the home State decides that the significant connection State would be the most appropriate forum under Section 207. Third, the determination of significant connections has been changed to eliminate the language of “present or future care. The jurisdictional determination should be made by determining whether there is sufficient evidence in the State for the court to make an informed custody determination. That evidence might relate to the past as well as to the “present or future.

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Paragraph (a)(3) provides for jurisdiction when all States with jurisdiction under paragraphs (a)(1) and (2) determine that this State is a more appropriate forum. The determination would have to be made by all States with jurisdiction under (a)(1) and (2). Jurisdiction would not exist in this State simply because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under (a)(2).

Paragraph (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA.

Subsections (b) and (c) clearly state the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State do not confer jurisdiction to make a custody determination. Subject to Section 204, satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section plus the notice provisions of the Act are all that is necessary to satisfy procedural due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter’s concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no “workable interstate custody law could be built around [Justice] Burton’s plurality opinion . . . . Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand.L.Rev. 1207,1233 (1969). It should also be noted that since jurisdiction to make a child-custody determination is subject-matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is void.

Other language changes between the UCCJA and this draft are required by the Committee on Style.

**SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.**

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

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

(2) a court of this State or a court of another State determines that this State is no longer the residence of the child, a parent, or any person acting as a parent.

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

### Comment

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed under the original UCCJA . Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to its continuing jurisdiction so long as that State had jurisdiction under its own law and remained the residence of the child or any contestant.

This section addresses continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law to make the continuing jurisdiction of the original decree State exclusive so long as the child, a parent, or person acting as a parent remains in the State and there is substantial evidence concerning the child's care, protection, training and personal relations. In other words, even if the child has acquired a new home State, the original decree State retains exclusive continuing jurisdiction, so long as the general requisites of the "substantial connection jurisdiction provisions of Section 201 are met. If, after the child acquires a new home State, the relationship between the child and the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find a significant connection or substantial evidence, jurisdiction would no longer exist.



1 The use of the phrase “a court of this State” under (a)(1) makes it clear that  
2 the original decree State is the sole determinant of whether jurisdiction continues.  
3 A party seeking to modify a custody determination must obtain an order from the  
4 original decree State stating that it no longer has jurisdiction. The only exception is  
5 under (a)(2) when the child, parents and persons acting as parents have all left the  
6 State which made the custody determination prior to the commencement of the  
7 modification proceeding. Continuing jurisdiction of a State is not affected by all  
8 parties leaving the State after the commencement of the modification proceeding.

9 The exact language of subsection (a)(2) was the subject of considerable  
10 debate. Ultimately the Drafting Committee and the Style Committee settled on the  
11 phrase “is no longer the residence” to determine when exclusive, continuing  
12 jurisdiction ended. The phrase is meant to be identical in meaning to the language  
13 of the PKPA which provides that full faith and credit is to be given to custody  
14 determinations made by a State in the exercise of its continuing jurisdiction when  
15 that “State remains the residence of the child or any contestant. The phrase is also  
16 the equivalent of the language “continues to reside” which occurs in UIFSA  
17 § 205(a)(1) to determine the exclusive, continuing jurisdiction of the State that  
18 made a support order. The phrase “remains the residence of” in the PKPA has been  
19 the subject of conflicting case law. It is the intention of the Drafting Committee  
20 that the phrase “is no longer the residence of” means no longer continues to actually  
21 live within the State. The phrase is not used in the sense of a technical residence or  
22 domicile. Thus when the child, the parents, and all persons acting as parents  
23 physically leave the State to live elsewhere, the exclusive, continuing jurisdiction  
24 ceases. The fact that the original decree State still considers one parent a domicil or  
25 a “resident” does not confer exclusive, continuing jurisdiction.

26 Exclusive, continuing jurisdiction does not reassert itself if, after the child,  
27 the parents, and all persons acting as parents leave the State, the non-custodial  
28 parent returns. As subsection (b) provides, once a State has lost exclusive,  
29 continuing jurisdiction, it can modify its own determination only if it has  
30 jurisdiction under the standards of Section 201. If another State acquires exclusive  
31 continuing jurisdiction under this section, then its orders cannot be modified even if  
32 this State has once again become the home State of the child.

33 The issue of whether a State “no longer remains the residence of the child, a  
34 parent, or a person acting as a parent” can occasionally be a matter of extensive  
35 litigation. However, the only issue is whether the child, the parents, and all persons  
36 acting as parents have moved out of the decree State after the original custody  
37 determination. Therefore considerations of waste of resources suggest authorizing  
38 either a court of the original determination State or the court of a State that would  
39 otherwise have jurisdiction under Section 203 to decide that all parties have left the  
40 State which made the custody determination.

41 In accordance with the majority of UCCJA case law, the State with  
42 exclusive, continuing jurisdiction may relinquish jurisdiction when it determines  
43 that another State would be a more convenient forum under the principles of  
44 Section 207.

45 The continuing jurisdiction provisions of this section are narrower than the  
46 comparable provisions of the PKPA. That statute authorizes continuing jurisdiction  
47 so long as any “contestant” remains in the original decree State and that State

continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The remaining person must be the child, a parent, or a person acting as a parent. This is a narrower group of individuals than “contestants. This does not present a conflict with the PKPA. The PKPA’s reference in § 1738(c)(1) authorizes States to narrow the class of cases that would be subject to exclusive, continuing jurisdiction.

### **SECTION 203. JURISDICTION TO MODIFY DETERMINATION.**

Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

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

(2) a court of this State or a court of the other State determines that the other State is no longer the residence of the child, a parent, or any person acting as a parent.

#### **Comment**

In accordance with the decision of the Drafting Committee, this section has been moved to follow the section on continuing jurisdiction. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless the court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this State would be a more convenient forum under Section 207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the original State no longer remains the residence of the child, the parents, or any person acting as a parent. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201.

A question was raised during the first reading concerning the effect in a modification jurisdiction of a provision in the custody law of the original State that a modification proceeding could not be brought for two years. That question is one of choice of law. It raises the issue of whether the modification forum should apply its own custody law or the custody law of the original determination State. That issue was not addressed in the original UCCJA and is beyond the scope of this Act.

1                   **SECTION 204. TEMPORARY EMERGENCY JURISDICTION.**

2                   (a) A court of this State has temporary emergency jurisdiction if the child is  
3 present in this State and the child has been abandoned or it is necessary in an  
4 emergency to protect the child because the child, or a sibling or parent of the child,  
5 is subjected to or threatened with mistreatment or abuse.

6                   (b) If there is no previous child-custody determination that is entitled to be  
7 enforced under this [Act], and if no child-custody proceeding has been commenced  
8 in a court of a State having jurisdiction under Sections 201 through 203, a child-  
9 custody determination made under this section remains in effect until an order is  
10 obtained from a court of a State having jurisdiction under Sections 201 through  
11 203. If a child-custody proceeding has not been or is not commenced in a court of a  
12 State having jurisdiction under Sections 201 through 203, a child-custody  
13 determination made under this section becomes a final determination, if:

14                         (1) it so provides; and

15                         (2) this State becomes the home State of the child.

16                   (c) If there is a previous child-custody determination that is entitled to be  
17 enforced under this [Act], or a child-custody proceeding has been commenced in a  
18 court of a State having jurisdiction under Sections 201 through 203, any orders  
19 issued by a court of this State under this section must specify in the order a period,  
20 not exceeding 90 days, which the court considers adequate to allow the person  
21 seeking an order to obtain an order from the State having jurisdiction under  
22 Sections 201 through 203. The order issued in this State remains in effect until an  
23 order is obtained from the other State within the period specified or the period  
24 expires.

25                   (d) A court of this State that has been asked to make a child-custody  
26 determination under this section, upon being informed that a child-custody

1 proceeding has been commenced, or a child-custody determination has been made,  
2 by a court of a State having jurisdiction under Sections 201 through 203, shall  
3 immediately communicate with the other court. A court of this State that is  
4 exercising jurisdiction pursuant to Sections 201 through 203, upon being informed  
5 that a child-custody proceeding has been commenced, or a child-custody  
6 determination has been made by a court of another State under a statute similar to  
7 this section shall immediately communicate with the court of that State. The  
8 purpose of the communication is to resolve the emergency and protect the safety of  
9 the parties and the child.

#### 10 Comment

11 The problem of emergency jurisdiction permeates all questions involved in  
12 revising the UCCJA to conform it to federal enactments. The Drafting Committee  
13 decided to deal with the problems of emergency jurisdiction in a separate section  
14 and then refer to it when the issue arose in connection with other forms of  
15 jurisdiction. The provisions of this section are an elaboration of what was formerly  
16 Section 3(a)(3) of the original UCCJA. The scope of this jurisdiction has been  
17 taken, in part, from the PKPA and the Violence Against Women Act (VAWA).  
18 Unlike the UCCJA, the PKPA's definition of emergency jurisdiction does not use  
19 the term "neglect. It defines an emergency as "mistreatment or abuse. Neglect is  
20 so elastic a concept that it could justify taking emergency jurisdiction in a wide  
21 variety of cases. Under the PKPA, if a State exercised emergency temporary  
22 jurisdiction based on a finding that the child was neglected without a finding of  
23 mistreatment or abuse, the order would not be entitled to federal enforcement in  
24 other States. Therefore this section eliminates the term neglect as a basis for the  
25 assumption of temporary emergency jurisdiction.

26 This section also authorizes a court to assume temporary emergency  
27 jurisdiction when there has been a threat of harm or abuse to a sibling of the child  
28 or to the child's parent. This comports with modern day statutes governing  
29 domestic violence proceedings. The provisions of the VAWA require full faith and  
30 credit to be given to these protective orders providing the State had subject matter  
31 and personal jurisdiction. To the extent that domestic violence protective orders  
32 affect custody of or visitation with a child, the subject matter jurisdiction required  
33 to issue the order is governed by this Act.

34 The VAWA also plays an important role in determining whether an  
35 emergency exists. That Act requires a court to give full faith and credit to a  
36 protective order issued in another State if the order is made in accordance with the  
37 VAWA. This would include those findings of fact contained in the order. When a  
38 court is deciding whether an emergency exists under this section, it may not  
39 relitigate the existence of those factual findings.

1           There may be circumstances where a court issues an ex parte emergency  
2 custody determination without notice and hearing. This Act does not address the  
3 questions of when those circumstances occur and what the provisions should be for  
4 notice. Those matters are determined by individual state law. However, an order  
5 issued after the assumption of temporary emergency jurisdiction is entitled to be  
6 enforced under this Act and the PKPA only if there has been notice and a  
7 reasonable opportunity to be heard. There is an exception for the custody portion of  
8 a protection from domestic violence order. The VAWA requires full faith and  
9 credit to ex parte domestic violence orders if notice will be given and there will be a  
10 reasonable opportunity to be heard. However, the full faith and credit provisions of  
11 the VAWA require that the court have jurisdiction over the parties and the subject  
12 matter. When a victim of domestic violence flees F1 and, upon arriving in F2,  
13 seeks a protection from domestic violence order, unless minimum contacts exist,  
14 the court in F2 does not have jurisdiction over the respondent. Therefore the full  
15 faith and credit provisions of the VAWA are not applicable and the only order  
16 possibly available to the victim is an order under this section. That order cannot be  
17 enforced elsewhere absent notice and a reasonable opportunity to be heard.

18           This section also codifies several aspects of what has become common  
19 practice under the UCCJA and PKPA. First, a court may take jurisdiction to protect  
20 the child even though it can claim neither home State nor significant connection  
21 jurisdiction. Second, the duties of States to recognize, enforce and not modify a  
22 custody determination of another State do not take precedence over the need to  
23 enter an emergency order to protect the child.

24           Third, custody determinations made under the emergency jurisdiction  
25 provisions are temporary orders. The purpose of the order is to protect the child  
26 until the State that has jurisdiction is able to enter the appropriate order. Subsection  
27 (b) provides for an exception if there is no existing custody determination, and no  
28 custody proceeding is filed in a State with jurisdiction under Sections 201-203.  
29 When that occurs the custody determination made under this section becomes a  
30 final order, if it so provides, when the State that issues the order becomes the home  
31 State of the child.

32           Subsection (c) is concerned with the temporary nature of an order when  
33 there exists a prior custody order that is entitled to be enforced under this Act or  
34 when a subsequent custody proceeding is filed in a State with jurisdiction under  
35 Sections 201-203. It allows the temporary order to stay in effect only so long as is  
36 necessary for the person who obtained the determination under this section to  
37 present their case and obtain an order from the State with jurisdiction under  
38 Sections 201-203. If there is an existing order by a State with jurisdiction under  
39 Sections 201-203, that order need not be reconfirmed. The temporary emergency  
40 determination would lapse by its own terms at the end of 90 days or whenever an  
41 order was obtained from the State with appropriate jurisdiction within the 90 day  
42 period. Whether the determination made by the emergency court is continued in  
43 effect is solely within the discretion of the court with appropriate jurisdiction. The  
44 court with appropriate jurisdiction may also decide, under the provisions of Section  
45 207, that the court that entered the emergency order is in a better position to address  
46 the safety of the person who obtained the emergency order, or the child, and  
47 transfer the case.

1 Any hearing in the State with jurisdiction under Sections 201-203 on the  
2 temporary emergency determination, is subject to the provisions of Sections 111  
3 and 112. These sections facilitate the presentation of testimony and evidence taken  
4 out of State. If there is any concern that the person obtaining the temporary  
5 emergency determination under this section would be in danger upon returning to  
6 the State with jurisdiction under Sections 201-203, these provisions should be used.

7 Subsection (d) requires communication between the court of the State that is  
8 exercising jurisdiction under this section and the court of another State that is  
9 exercising jurisdiction under Sections 201-203. The pleading rules of Section 209  
10 apply fully to determinations involving this section. Therefore a person seeking a  
11 temporary emergency custody determination is required to inform the court  
12 pursuant to Section 209(d) of any proceeding concerning the child that is  
13 commenced elsewhere. The person commencing the custody determination under  
14 Sections 201-203 is required under Section 209(a) to inform the court about the  
15 temporary emergency proceeding. The notice requirements are essential to ensure  
16 that all parties are able to inform the courts of the proceedings.

17 The communication between courts is to be accomplished in accordance  
18 with Section 110. The communication under this section affects the substantive  
19 rights of the parties and therefore the provisions of that section on participation of  
20 parties and making of the record are applicable.

## 21 **SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.**

22 (a) Before a child-custody determination is made under this [Act],  
23 reasonable notice and an opportunity to be heard must be given to all persons  
24 entitled to notice under the law of this State as in child-custody proceedings  
25 between residents of this State, any parent whose parental rights have not been  
26 previously terminated, and any person having physical custody of the child.

27 (b) This [Act] does not govern the enforceability of a child-custody  
28 determination made without notice and an opportunity to be heard.

29 (c) The obligation to join a party and the right to intervene as a party in a  
30 child-custody proceeding under this [Act] are governed by the law of this State as in  
31 child-custody proceedings between residents of this State.

### 32 **Comment**

33 This section generally continues the notice provisions of the original Act.  
34 However, it does not attempt to dictate who is entitled to notice. Local rules vary  
35 with regard to persons entitled to seek custody of a child. Therefore this section  
36 simply indicates that those persons should receive notice but leaves the rest of the



1 determination to local law. Parents whose parental rights have not been previously  
2 terminated and persons having physical custody of the child are specifically  
3 mentioned as persons who must receive notice. The PKPA, § 1738A(e), requires  
4 that they receive notice.

5 State laws also vary with regard to whether a court has the power to issue an  
6 enforceable temporary custody order without notice and hearing. Whether such  
7 orders are enforceable is outside the scope of this Act. An order is enforceable  
8 under this Act only if there has been notice and an opportunity to be heard. The  
9 PKPA, § 1738A(e), requires that custody determination is entitled to full faith and  
10 credit only if there has been notice and an opportunity to be heard. However, a  
11 temporary order may be enforceable, against due process objections, for a short  
12 period of time if issued as a temporary restraining order to protect a child from  
13 harm. Similarly, the Violence Against Women Act, 18 U.S.C. § 2265, requires that  
14 full faith and credit be given to ex parte protective orders so long as notice is given  
15 within a reasonable time after the order is issued sufficient to protect the  
16 respondent's due process rights. The validity of such orders and the enforceability  
17 of such orders is governed by the law which authorizes them and not by this Act.

18 Rules requiring joinder of people with an interest in the custody of and  
19 visitation with a child also vary widely throughout the country. The UCCJA had a  
20 separate section on joinder of parties. The Drafting Committee decided that the  
21 issue of who is entitled to intervene and who must be joined in a custody  
22 proceeding be determined by local state law.

23 A sentence of the original UCCJA § 4 which indicated that persons outside  
24 the State were to be given notice and an opportunity to be heard in accordance with  
25 Article 1 was eliminated by the Committee on Style as redundant.

## 26 **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

27 (a) Except as otherwise provided in Section 204, a court of this State may  
28 not exercise its jurisdiction under this [article] if at the time of the commencement  
29 of the proceeding a proceeding concerning the custody of the child had been  
30 previously commenced in a court of another State having jurisdiction substantially  
31 in conformity with this [Act], unless the proceeding is stayed by the court of the  
32 other State because a court of this State is a more convenient forum under Section  
33 207.

34 (b) Except as otherwise provided in Section 204, a court of this State,  
35 before hearing a child-custody proceeding, shall examine the court documents and  
36 other information supplied by the parties pursuant to Section 209. If the court



1 determines that a child-custody proceeding was previously commenced in a court in  
2 another State having jurisdiction substantially in accordance with this [Act], the  
3 court of this State shall stay its proceeding and communicate with the court of the  
4 other State. If the court of the State having jurisdiction substantially in accordance  
5 with this [Act] does not determine that the court of this State is a more appropriate  
6 forum, the court of this State shall dismiss the proceeding.

7 (c) In a proceeding to modify a child-custody determination, a court of this  
8 State shall determine whether a proceeding to enforce the determination has been  
9 commenced in another State. If a proceeding to enforce a custody determination  
10 has been commenced in another State, the court may:

11 (1) stay the proceeding for modification pending the entry of an order of  
12 a court of the other State enforcing, staying, denying, or dismissing the proceeding  
13 for enforcement;

14 (2) enjoin the parties from continuing with the proceeding for  
15 enforcement;

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

#### 18 Comment

19 This section represents the remnants of the simultaneous proceedings  
20 provision of the original UCCJA. The problem of simultaneous proceedings is no  
21 longer a significant issue. Most of the problems have been resolved by the  
22 prioritization of home state jurisdiction under Section 201, the exclusive,  
23 continuing jurisdiction provisions of Section 202, and the prohibitions on  
24 modification of Section 203. If there is a home State, there can be no exercise of  
25 significant connection jurisdiction and therefore no simultaneous proceedings. If  
26 there is a State of exclusive, continuing jurisdiction, there cannot be another State  
27 with concurrent jurisdiction and therefore no simultaneous proceedings. Of course,  
28 the home State, as well as the State with exclusive, continuing jurisdiction, could  
29 defer to another State under Section 207. However, that decision is left entirely to  
30 the home State or the exclusive, continuing jurisdiction State.

31 Under this Act, the simultaneous proceedings problem will arise only when  
32 there is no home State and more than one significant connection State. For those  
33 cases this section retains the “first in time” rule of the UCCJA. Subsection (b)

1 retains the UCCJA's policy favoring judicial communication. Communication  
2 between courts is required when it is determined that a proceeding has been  
3 commenced in another State. The communication is governed by Section 110. It is  
4 a communication that affects the substantive rights of the parties.

5 Subsection (c) concerns the problem of simultaneous proceedings in the  
6 State with modification jurisdiction and enforcement proceedings under Article 3.  
7 This section authorizes the court with exclusive, continuing jurisdiction to stay the  
8 modification proceeding pending the outcome of the enforcement proceeding, to  
9 enjoin the parties from continuing with the enforcement proceeding, or to continue  
10 the modification proceeding under such conditions as it determines are appropriate.  
11 The court may wish to communicate with the enforcement court. However,  
12 communication is not mandatory. Although the enforcement State is required by  
13 the PKPA to enforce according to its terms a custody determination made  
14 consistently with it, that duty is subject to the decree being modified by a State with  
15 the power to do so under the PKPA. An order to enjoin the parties from enforcing  
16 the decree is the equivalent of a temporary modification by a State with the  
17 authority to do so. The concomitant provision addressed to the enforcement court  
18 is Section 305. That section requires the enforcement court to communicate with  
19 the modification court in order to determine what action the modification court  
20 wishes the enforcement court to take.

21 The term "pending" has been replaced. It has caused considerable  
22 confusion in the case law. It has been replaced with the term "commencement of  
23 the proceeding" as more accurately reflecting the policy behind this section.

## 24 **SECTION 207. INCONVENIENT FORUM.**

25 (a) A court of this State that has jurisdiction under this [Act] to make a  
26 child-custody determination may decline to exercise its jurisdiction at any time if it  
27 determines that it is an inconvenient forum under the circumstances and that a court  
28 of another State is a more appropriate forum. The issue of inconvenient forum may  
29 be raised upon the court's own motion, request of another court, or motion of a  
30 party.

31 (b) Before determining whether it is an inconvenient forum, a court of this  
32 State shall consider whether it is appropriate that a court of another State exercise  
33 jurisdiction. For this purpose, the court shall allow the parties to submit  
34 information and shall consider all relevant factors, including:

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

- 1 (2) the length of time the child has resided outside this State;  
2 (3) the distance between this State and the State whose court would  
3 assume jurisdiction;  
4 (4) the relative financial circumstances of the parties;  
5 (5) any agreement of the parties as to which State should assume  
6 jurisdiction;  
7 (6) the nature and location of the evidence required to resolve the  
8 pending litigation, including the testimony of the child;  
9 (7) the ability of the court of each State to decide the issue expeditiously  
10 and the procedures necessary to present the evidence; and  
11 (8) the familiarity of the court of each State with the facts and issues of  
12 the pending litigation.
- 13 (c) If a court of this State determines that it is an inconvenient forum and  
14 that a court of another State is a more appropriate forum, it shall stay the  
15 proceedings upon condition that a child-custody proceeding be promptly  
16 commenced in another designated State and may impose any other condition the  
17 court considers just and proper.
- 18 (d) A court of this State may decline to exercise its jurisdiction under this  
19 [Act] if a child-custody determination is incidental to an action for divorce or  
20 another proceeding while still retaining jurisdiction over the divorce or other  
21 proceeding.

22 **Comment**

23 This section generally retains the focus of the original section. It authorizes  
24 courts to decide that another State is in a better position to make the custody  
25 determination taking into consideration the relative circumstances of the parties. If  
26 so, the court may defer to the other State.

27 The list of factors that the court may consider has been updated from the  
28 original UCCJA. The list is not meant to be exclusive. For example, although it is  
29 not specifically listed, the fact that the person remaining in the State which made

1 the original custody determination has moved to another part of the State would be  
2 relevant in the context of the distance between the parties and the familiarity of the  
3 court with the facts and issues of the case.

4 Several provisions, however, require particular comment. Subparagraph (1)  
5 is concerned specifically with domestic violence and other matters affecting the  
6 health and safety of the parties. For this purpose the court should determine  
7 whether the parties are located in different States because one party is a victim of  
8 domestic violence. If domestic violence or child abuse has occurred, this factor  
9 authorizes the court to consider which State can best protect the victim from further  
10 violence or abuse. It is often very dangerous to require a victim of domestic  
11 violence to return to the abuser's State to litigate custody and visitation.

12 In applying subparagraph (3) courts should realize that distance concerns  
13 can be alleviated by applying the communication and cooperation provisions of  
14 Sections 111 and 112.

15 In applying subsection (7) on expeditious resolution of the controversy, the  
16 court could consider the different procedural and evidentiary laws of the two States,  
17 as well as the flexibility of the court dockets. It also should consider the ability of a  
18 court to arrive at a solution to all the legal issues surrounding the family. If one  
19 State has jurisdiction to decide both the custody and support issues, it would be  
20 desirable to determine that State to be the most convenient forum. The same is true  
21 when children of the same family live in different States. It would be inappropriate  
22 to require parents to have custody proceedings in several States when one State  
23 could resolve the custody of all the children.

24 Before determining whether to decline or retain jurisdiction, the court of this  
25 State may communicate, in accordance with Section 110, with a court of another  
26 State and exchange information pertinent to the assumption of jurisdiction by either  
27 court. Unless the communication involves a discussion of routine matters, such as  
28 scheduling, the communication would be one that would affect the substantive  
29 rights of the parties.

30 There are two departures from Section 7 of the UCCJA. First, the court  
31 may not simply dismiss the action. To do so would leave the case in limbo. Rather  
32 the court shall stay the case and direct the parties to file in the State that has been  
33 found to be the more convenient forum. The court is also authorized to impose any  
34 other conditions it considers appropriate. This might include the issuance of  
35 temporary custody orders during the time necessary to commence a proceeding in  
36 the designated State; dismissing the case if the custody proceeding is not  
37 commenced in the other State; resuming jurisdiction if a court of the other State  
38 refuses to take the case.

39 Second, subsection (g) of the UCCJA which allowed the court to assess fees  
40 and costs if it was a clearly inappropriate court, has been eliminated. The Drafting  
41 Committee determined that if a court has jurisdiction under this Act it could not be  
42 a clearly inappropriate court.



1           The “Clean Hands” section of the original UCCJA has been truncated in  
2 this revision. Since there is no longer a multiplicity of jurisdictions which could  
3 take cognizance of a child-custody proceeding, there is less of a concern that one  
4 parent will take the child to another jurisdiction in an attempt to find a more  
5 favorable forum. The prioritization of home State in Section 201 and the exclusive,  
6 continuing jurisdiction provisions of Section 202 should solve most of the  
7 jurisdiction problems generated by abducting parents. For example, if a parent  
8 takes the child from the home State and seeks an original custody determination  
9 elsewhere, the stay-at-home parent has six months to file a custody petition under  
10 the extended home state jurisdictional provision of Section 201 which will ensure  
11 that the case is retained in the home State. If a petitioner for a modification  
12 determination takes the child from the State that issued the original custody  
13 determination, another State cannot assume jurisdiction as long as the first State  
14 exercises continuing exclusive jurisdiction.

15           Nonetheless there are still a number of cases where parents or their  
16 surrogates act in a reprehensible manner, such as removing, secreting, retaining, or  
17 restraining the child. This section ensures that abducting parents will not receive an  
18 advantage for their unjustifiable conduct. If the conduct is unjustified, courts must  
19 decline to exercise jurisdiction that is inappropriately invoked by one of the parties.  
20 For example, if one parent abducts the child pre-decree and establishes a new home  
21 State, that jurisdiction will decline to hear the case. Similarly if one parent has  
22 either restrained the child from visiting with the other parent, or has retained the  
23 child after visitation, and seeks to modify the decree, the court should refuse to  
24 entertain the motion. However, if the other party has acquiesced in the court’s  
25 jurisdiction, the court may hear the case. Such acquiescence may occur by filing a  
26 pleading submitting to the jurisdiction or by not filing in the court that would  
27 otherwise have jurisdiction under this Act. Similarly if the court that would have  
28 jurisdiction finds that the court of this State is a more appropriate forum, the court  
29 may hear the case.

30           The focus in this section is on the “unjustified” conduct of the person who  
31 invokes the jurisdiction of the court. A technical illegality or wrong is insufficient  
32 to trigger the applicability of this section. This is particularly important in cases  
33 involving domestic violence and child abuse. Domestic violence victims should  
34 not be charged with unjustifiable conduct for conduct that occurred in the process  
35 of fleeing domestic violence even if their conduct is technically illegal. Thus, if a  
36 parent flees with a child to escape domestic violence and in the process violates a  
37 joint custody decree, the case should not be automatically dismissed under this  
38 section. An inquiry must be made into whether the flight was justified under the  
39 circumstances of the case. However, an abusive parent who seizes the child and  
40 flees to another State to establish jurisdiction has committed unjustifiable conduct  
41 and the new State must decline to exercise jurisdiction under this section.

42           Subsection (b) authorizes the court to fashion an appropriate remedy for the  
43 safety of the child and to prevent a repetition of the unjustified conduct. Thus it  
44 would be appropriate for the court to notify the other parent and to provide for  
45 foster care for the child until the child is returned to the other parent. The court  
46 could also stay the proceeding and require that a custody proceeding be instituted in  
47 another State that would have jurisdiction under this Act. It should be noted that  
48 the court is not making a forum non conveniens analysis in this section. If the  
49 conduct is unjustifiable it must decline jurisdiction. It may, however, retain

1 jurisdiction until a custody proceeding is commenced in the appropriate tribunal if  
2 such retention is necessary to prevent a repetition of the wrongful conduct or to  
3 ensure the safety of the child.

4 The attorney's fee standard for this section is patterned after the  
5 International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). While not  
6 required by federal statute, it does make the attorney's fee standards uniform  
7 between state and federal statutes.

## 8 **SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.**

9 (a) [Subject to local law providing for the confidentiality of procedures,  
10 addresses, and other identifying information, in] [In] a child-custody proceeding,  
11 each party, in its first pleading or in an attached affidavit, shall give information, if  
12 reasonably ascertainable, under oath as to the child's present address, the places  
13 where the child has lived during the last five years, and the names and present  
14 addresses of the persons with whom the child has lived during that period. The  
15 pleading or affidavit must state whether the party:

16 (1) has participated, as a party or witness or in any other capacity, in any  
17 other proceeding concerning the custody of or visitation with the child and, if so,  
18 the date and place of the proceeding;

19 (2) knows of any proceeding that could affect the current proceeding,  
20 including proceedings for enforcement and proceedings relating to domestic  
21 violence, protective orders, termination of parental rights, and adoptions; and

22 (3) knows the names and addresses of any person not a party to the  
23 proceeding who has physical custody of the child or claims rights of legal custody  
24 or physical custody of, or visitation with, the child.

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



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

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

8 [(e) Upon a finding, which may be made ex parte, that the health, safety, or  
9 liberty of a party or a child would be unreasonably put at risk by the disclosure of  
10 identifying information, or if an existing order so provides, a court of this State  
11 shall order that the address of the child or party or other identifying information not  
12 be disclosed in a pleading or other document filed in a proceeding under this [Act]].

#### 13 Comment

14 The pleading requirements from Section 9 of the UCCJA are generally  
15 carried over into this revision. However, the information is made subject to local  
16 law on the protection of names and other identifying information in certain cases.  
17 A number of States have enacted laws relating to the protection of victims in  
18 domestic violence and child abuse cases which provide for the confidentiality of  
19 victims' names, addresses, and other information. These procedures must be  
20 followed if the child-custody proceeding of the State requires their applicability.  
21 See, e.g., California Family Law Code § 3409(a). If a State does not have local law  
22 that provides for protecting names and addresses then subsection (e) or a similar  
23 provision should be adopted. Subsection (e) is the address impoundment provision  
24 that exists in UIFSA at § 312. There are other models to choose from, in particular  
25 the Model Code on Domestic and Family Violence § 304(c).

26 Subsection (a)(2) has been rephrased to include specific mention of  
27 proceedings to enforce the custody determination as well as proceedings dealing  
28 with domestic violence, child abuse and termination of parental rights. The term  
29 "proceedings" as used in this section should be read broadly to include more than  
30 custody proceedings. Thus if one parent was being criminally prosecuted for child  
31 abuse, that proceeding should be disclosed. If the child is subject to the Interstate  
32 Compact on the Placement of Children, facts relating to compliance with the  
33 Compact should be disclosed in the pleading or affidavit.

34 Subsection (b) has been added. It authorizes the court to stay the  
35 proceeding until the information required in subsection (a) has been disclosed,  
36 although failure to provide the information does not deprive the court of  
37 jurisdiction to hear the case. This follows the majority of jurisdictions which held

1 that failure to comply with the pleading requirements of the UCCJA did not deprive  
2 the court of jurisdiction to make a custody determination.

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

4 (a) A court of this State may order a party to a child-custody proceeding  
5 who is in this State to appear before the court personally with or without the child.  
6 The court may order any person who is in this State and has the child to appear  
7 physically with the child.

8 (b) If a party to a child-custody proceeding whose presence is desired by the  
9 court is outside this State, the court may order that a notice given pursuant to  
10 Section 108 include a statement directing the party to appear personally with or  
11 without the child and declaring that failure to appear may result in a decision  
12 adverse to the party.

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

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

20 **Comment**

21 No major changes have been made to this section which was Section 11 of  
22 the UCCJA. Language was added to subsection (a) to authorize the court to require  
23 a non-party who had physical custody of the child to produce the child. Other  
24 language changes were mandated by the Committee on Style.

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

1           Several sections from the original UCCJA have been eliminated in this  
2 revision. The sections on the establishment of a custody registry and the filing of  
3 custody determinations in the registry were not included. Many courts never  
4 established registries and those that did utilized them infrequently. The Drafting  
5 Committee decided not to include them.

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

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

(1) “Petitioner” means a person who seeks enforcement of a child-custody determination.

(2) “Respondent” means a person against whom a proceeding for enforcement of a child-custody determination has been commenced.

### Comment

For purposes of this article, petitioner and respondent are defined respectively as the person who is seeking enforcement of a custody determination and the person against whom a custody proceeding is filed. The definitions have been added here to clarify certain aspects of the notice and hearing sections.

## SECTION 302. SCOPE; TEMPORARY VISITATION.

(a) This [article] may be invoked to enforce:

(1) a child-custody determination; and

(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

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

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

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

(c) If a court of this State makes an order under subparagraph (b)(2), it shall specify in the order a period, not exceeding 90 days, which it considers adequate to allow the person seeking the order to obtain an order from the State having jurisdiction under [Article] 2. The order remains in effect until an order is obtained from the other State or the period expires.

Comment

Subsection (a) applies the enforcement remedy provided by this article to child-custody determinations of other States as well as orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq. implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention was thought necessary because even though an ICARA proceeding often occurs prior to any formal custody determination, the need for a speedy enforcement remedy is just as necessary.

This article can also be used to enforce custody determinations which are the result of arbitration or other alternative dispute mechanisms that have been judicially confirmed. More and more custody disputes are decided by means other than litigation, a trend which the Drafting Committee encourages. This article will facilitate the enforcement of such resolutions and thereby encourage their utilization.

This article does not confer jurisdiction upon a court of this State to modify a child-custody determination issued by a court of another State. The procedure for enforcement of a custody determination does not authorize a modification of that custody determination. However, a court is authorized to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on non-modification. Therefore if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

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

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

**SECTION 303. DUTY TO ENFORCE.**

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction that was in substantial conformity with this [Act] or the determination was made

1 under factual circumstances meeting the jurisdictional standards of this [Act] and  
2 the determination has not been modified in accordance with this [Act].

3 (b) A court may utilize any remedy available under other law of this State  
4 to enforce a child-custody determination made by a court of another State. The  
5 procedure provided by this [article] does not affect the availability of other  
6 remedies to enforce a child-custody determination.

#### 7 Comment

8 This article supplies the enforcement mechanism for interstate child custody  
9 cases. It embodies decisions of the Drafting Committee to shorten the time periods  
10 and to provide a summary remedial process modeled after habeas corpus. This  
11 section is based on Section 13 of the original UCCJA which contained the basic  
12 duty to enforce. The language of the original section was retained to ensure that the  
13 duty to enforce has not been lessened in this Act. Enforcement of custody  
14 determinations of issuing States is also required by federal law in the PKPA, 28  
15 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make the  
16 enforcement section of this Act consistent with the enforcement provisions of the  
17 PKPA. The duty to enforce orders for the return of the child is required under the  
18 International Child Abductions Remedies Act, 42 U.S.C. § 11601.

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

27 The remedy provided by this article for the enforcement of a custody  
28 determination will be the procedure that will normally be utilized. This article does  
29 not detract from the number of remedies available under other local law. There is  
30 often a need for a number of remedies to ensure that a child-custody determination  
31 is obeyed. If other remedies would easily facilitate enforcement, they are still  
32 available. The petitioner, for example, can still cite the respondent for contempt of  
33 court or file a tort claim for intentional interference with custodial relations. The  
34 additional remedy provided by this article does not authorize the court to take  
35 actions that are not authorized by this article or by other local law. Thus a court  
36 could not require a respondent to pay a punitive damage award to the petitioner,  
37 even if petitioner asked for that remedy, unless such an award were otherwise  
38 available.

### 39 SECTION 304. REGISTRATION OF CHILD-CUSTODY 40 DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

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

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

(3) the person contesting registration was entitled to, but did not receive, notice and opportunity to be heard in the proceedings before the court that issued the order for which registration is sought.

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

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

Comment

This section provides the registration procedure that was approved by the Drafting Committee. The purpose is to provide a simplified registration procedure for child-custody determinations paralleling the process found in UIFSA. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA. The procedure of this section generally duplicates the provisions of UIFSA without utilizing a separate article. Unlike UIFSA, however, a custody determination can be registered without any accompanying request for enforcement.





1 jurisdiction to modify under Section 203. Therefore if that court determines that  
2 the enforcement proceeding should be stayed or dismissed, the enforcement court  
3 should stay or dismiss the proceeding. If the enforcement court does not do so, the  
4 court with exclusive, continuing jurisdiction under Section 202, or with  
5 modification jurisdiction under Section 203, could enjoin the parties from  
6 continuing with the enforcement proceeding.

7 The communication between the courts is governed by Section 110 and is  
8 one that affects the substantive rights of the parties.

9 **SECTION 307. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY**  
10 **DETERMINATION.**

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

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

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

18 (2) whether the determination for which enforcement is sought has been  
19 vacated, stayed, or modified by a court whose decision must be enforced under this  
20 [Act] or federal law;

21 (3) whether any proceeding has been commenced that could affect the  
22 current proceeding, including proceedings relating to domestic violence, protective  
23 orders, termination of parental rights, and adoptions;

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

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

1 (c) If the child-custody determination has been registered and confirmed  
2 under Section 304, the petition must also state the date and place of registration.

3 (d) The court shall issue an order directing the respondent to appear with or  
4 without the child at a hearing and may enter any orders necessary to ensure the  
5 safety of the parties and the child.

6 (e) The hearing must be held on the next judicial day following service of  
7 process unless a later date is requested by the petitioner.

8 (f) The order must state the time and place of the hearing and must advise  
9 the respondent that at the hearing the court will order the delivery of the child and  
10 the payment of fees, costs, and expenses under Section 311, and may set an  
11 additional hearing to determine whether further relief is appropriate, unless the  
12 respondent appears and establishes that:

13 (1) the child-custody determination has not been registered and  
14 confirmed under Section 304, and that

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

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

19 (C) the respondent was entitled to, but did not receive, notice and  
20 opportunity to be heard in the proceedings before the court that issued the order for  
21 which enforcement is sought; or

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

26 Comment

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the court to have the necessary information. The Drafting Committee eliminated the registry on the ground that most States had not implemented it. Therefore the only method by which the court will have the orders is to require the parties to produce them.

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

The order requires the respondent to appear at a hearing on the next court day. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that the respondent did not receive notice, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so. The court is also to order the fees and expenses set out in Section 311. The court may set another hearing to determine whether additional relief available under this State's law should be granted.

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

**SECTION 308. SERVICE OF PETITION AND ORDER.** Except as otherwise provided in Section 310, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

### Comment

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

### SECTION 309. HEARING AND ORDER.

(a) Unless the court enters a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

1 (1) the child-custody determination has not been registered and  
2 confirmed under Section 304, and that

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

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

7 (C) the respondent was entitled to, but did not receive, notice and  
8 opportunity to be heard in the proceedings before the court that issued the order for  
9 which enforcement is sought;

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

14 (b) The court shall award the fees, costs, and expenses authorized under  
15 Section 311 and may grant additional relief, including a request for the assistance of  
16 [law enforcement officials], and set a further hearing to determine whether  
17 additional relief is appropriate.

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

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

#### 24 Comment

25 This section provides the specific remedy of this Act: the immediate  
26 delivery of the child. The scope of inquiry for the enforcing court is quite limited.  
27 Federal law requires the court to enforce the custody determination if the issuing  
28 State's decree was rendered in compliance with the PKPA. This Act requires

1 enforcement of custody determinations that are made in conformity with Article 2  
2 on jurisdiction.

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

8 It is a defense to enforcement that another jurisdiction has issued a custody  
9 determination that is required to be enforced under Article 2 or the PKPA. An  
10 example of when this could occur is when one court has based its original custody  
11 determination on the current UCCJA § 3(a)(2) (significant connections) and another  
12 jurisdiction has rendered an original custody determination based on the current  
13 UCCJA § 3(a)(1) (home State). When this occurs, the PKPA as well as Article 2  
14 and Section 302 of this Act mandate that the home state determination be given full  
15 faith and credit in all other States, including the State that rendered the significant  
16 connections determination.

17 Lack of opportunity to be heard by a person entitled to notice and hearing at  
18 the original custody determination is a defense to enforcement of the custody  
19 determination. The defense of lack of notice should not be available if the  
20 respondent purposely hid from the petitioner, took deliberate steps to avoid service  
21 of process or elected not to participate in the initial proceedings.

22 There are no other defenses to an enforcement action. The Drafting  
23 Committee discussed whether there should be a defense if the child would be  
24 endangered by the enforcement of a custody or visitation order. If the child would  
25 be endangered, there is a basis for the assumption of emergency jurisdiction under  
26 Section 204 of this Act. Upon the finding of an emergency, the court should issue a  
27 temporary order and direct the parties to proceed either in the court that is  
28 exercising continuing jurisdiction over the custody proceeding under Section 202,  
29 or the court that would have jurisdiction to modify the custody determination under  
30 Section 203.

31 The court shall determine at the hearing whether fees should be awarded  
32 under Section 311. If so, it should order them paid. The court may determine if  
33 additional relief is appropriate including requesting law enforcement officers to  
34 assist the petitioner in the enforcement of the order. The court may set a hearing to  
35 determine whether additional relief should be granted.

36 The remainder of this section is derived from UIFSA § 316 with regard to  
37 the privilege of self-incrimination, spousal privileges and immunities. Its inclusion  
38 here represents the Drafting Committee's determination to parallel the procedures  
39 for child support and custody proceedings as much as possible.

40 **SECTION 310. WARRANT TO TAKE PHYSICAL CUSTODY OF**  
41 **CHILD.**

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

5 (b) If the court, upon the testimony of the petitioner or other witness, finds  
6 that the child is likely to suffer serious imminent physical harm or be imminently  
7 removed from this State, it may issue a warrant to take physical custody of the  
8 child. The petition must be heard on the next judicial day after the warrant is  
9 executed. The warrant must include the statements required by Section 307(b).

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

11 (1) recite the facts upon which a conclusion of serious imminent  
12 physical harm or removal from the jurisdiction is based;

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

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

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

18 (e) A warrant to take physical custody of a child is enforceable throughout  
19 this State. If the court finds on the basis of the testimony of the petitioner or other  
20 witness that a less intrusive remedy is not effective, it may authorize law  
21 enforcement officers to enter private property to take physical custody of the child.  
22 If required by the exigency of the case, the court may authorize law enforcement  
23 officers to make a forcible entry at any hour.

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

26 Comment



1           This section concerns emergency provisions for a temporary waiver of  
2 notice where there is a reason to believe that the child will suffer serious immediate  
3 physical harm or be imminently removed from the jurisdiction once the respondent  
4 learns that the petitioner has filed an enforcement proceeding. If the court finds  
5 immediate harm exists, it should temporarily waive the notice requirements and  
6 issue a warrant to take physical custody of the child. Immediately after the warrant  
7 is executed, the respondent is to receive notice of the proceedings.

8           The term “harm” cannot be totally defined and, as in the issuance of  
9 temporary restraining orders, the appropriate issuance of a warrant is left to the  
10 circumstances of the case. Those circumstances include cases where the respondent  
11 is the subject of a criminal proceeding as well as situations where the respondent is  
12 secreting the child in violation of a court order, abusing the child, a flight risk and  
13 other circumstances that the court concludes make the issuance of notice a danger  
14 to the child. The court must hear the testimony of the petitioner or another witness  
15 prior to issuing the warrant. The testimony may be heard in person, via telephone  
16 or by any other means acceptable under local law. The court must state the reasons  
17 for the issuance of the warrant. The warrant can be enforced by law enforcement  
18 officers wherever the child is found in the State. The warrant may authorize entry  
19 upon private property to pick up the child if no less intrusive means are possible. In  
20 extraordinary cases, the warrant may authorize law enforcement to make a forcible  
21 entry at any hour.

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

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

## 36           **SECTION 311. COSTS, FEES, AND EXPENSES.**

37           (a) The court shall award the prevailing party, including a State, necessary  
38 and reasonable expenses incurred by or on behalf of the party, including costs,  
39 communication expenses, attorney’s fees, investigative fees, expenses for  
40 witnesses, travel expenses, and child care during the course of the proceedings,

1 unless the party from whom fees or expenses are sought establishes that the award  
2 would be clearly inappropriate.

3 (b) The court may not assess fees, costs, or expenses against a State except  
4 as otherwise provided by law other than this [Act].

5 **Comment**

6 In accordance with the decision of the Drafting Committee, this section is  
7 derived from the International Child Abduction Remedies Act, 42 U.S.C.  
8 § 11607(b)(3). It creates a presumption that a court will award fees and costs  
9 against the non-prevailing party. The word “reasonable” is used in describing the  
10 fee awards. Included as expenses are the amount of investigation fees incurred by  
11 private persons or by public officials as well as the cost of child placement during  
12 the proceedings.

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

16 This section is consistent with Section 8(c) of Pub.L. 96-611 (part of the  
17 PKPA) which provides that:

18 “In furtherance of the purposes of section 1738A of title 28, United States Code  
19 [this section], as added by subsection (a) of this section, State courts are  
20 encouraged to –  
21 “(2) award to the person entitled to custody or visitation pursuant to a custody  
22 determination which is consistent with the provisions of such section 1738A  
23 [this section], necessary travel expenses, attorneys’ fees, costs of private  
24 investigations, witness fees or expenses, and other expenses incurred in  
25 connection with such custody determination . . .

26 The term “prevailing party” is not given a special definition for this Act. It  
27 is assumed that each State will apply its own standard.

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

32 **SECTION 312. RECOGNITION AND ENFORCEMENT.** A court of this  
33 State shall accord full faith and credit to an order enforcing a child-custody  
34 determination made consistently with this [Act] by a court of another State unless  
35 the order has been vacated, stayed, or modified by a court authorized to do so under  
36 [Article] 2.

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Comment

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

**SECTION 313. APPEALS.** An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Comment

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

**SECTION 314. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].**

(a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) an existing child-custody determination;
- (2) a request from a court in a pending child-custody case;
- (3) a reasonable belief that a criminal statute has been violated; or

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

4 (b) A [prosecutor or appropriate public official] acts on behalf of the court  
5 and may not represent any party to a child-custody determination.

#### 6 Comment

7 Sections 314-316 were derived from the recommendations of the *Obstacles*  
8 *Report* in authorizing a role for public authorities in civil enforcement of custody  
9 and visitation determinations. One of the basic policies behind this approach is that  
10 as is the case with child support, the involvement of public authorities will  
11 encourage the parties to abide by the terms of the custody determination. The  
12 Drafting Committee determined that the prosecutor would be the most appropriate  
13 public official to exercise authority under this section. However, States may decide  
14 to locate the authority described in the section in the most appropriate public office  
15 for their governmental structure. The authority could be, for example, the Friend of  
16 the Court Office or the Attorney General. If the parties know that prosecutors and  
17 law enforcement officers are available to help in securing the return of a child, the  
18 parties may be deterred from interfering with the exercise of rights established by  
19 court order.

20 This model could also prove more effective in remedying violations of the  
21 custody determination. Most parties do not have the resources to enforce a custody  
22 determination in another jurisdiction. The availability of the prosecutor or other  
23 government official as an enforcement agency will help ensure that this remedy can  
24 be made available regardless of income level. In addition, the prosecutor may have  
25 resources to draw on that are unavailable to the average litigant.

26 The Drafting Committee decided that the role of the prosecutor, or other  
27 designated official, should generally not begin until there is a custody determination  
28 that is sought to be enforced. The Act does not authorize the prosecutor to be  
29 involved in the action leading up to the making of the custody determination except  
30 when requested by the court, when there is a violation the Hague Convention on the  
31 Civil Aspects of Child Abduction, or when the person holding the child has  
32 violated a criminal statute. The Act does not mandate that the prosecutor be  
33 involved in all cases referred to it. There is only so much time and money available  
34 for enforcement proceedings. Therefore the prosecutor eventually will have to  
35 develop guidelines to determine which cases will receive priority.

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

1 A concern was expressed about whether allowing the prosecutor to use civil  
2 means as a method of settling a child abduction violated either DR 7-105(A) of the  
3 Code of Professional Responsibility or Model Rule of Professional Responsibility  
4 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer  
5 threatening criminal action solely to gain an advantage in a civil case. However,  
6 the prohibition is only when the threats are **solely** to gain an advantage in a civil  
7 case. If the prosecution has a good faith reason for pursuing the criminal action  
8 there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E. 2d  
9 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's  
10 former employee unless employee made restitution).

11 It must be emphasized that the prosecutor does not become involved in the  
12 merits of the case. The prosecutor is authorized only to locate the child and enforce  
13 the custody determination. This Act does not attempt to suggest how the prosecutor  
14 should exercise its duties under this Act. The prosecutor is authorized by this  
15 section to utilize any civil proceeding to secure the enforcement of the custody  
16 determination, including proceedings under this Act. If the prosecutor proceeds  
17 pursuant to this Act, the prosecutor is subject to its provisions.

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

21 The prosecutor's role is limited to cases covered by this Act, i.e. interstate  
22 cases. Nothing in this Act authorizes the prosecutor to act in intrastate cases.  
23 However, States may, if they wish, extend this part of the Act to cases without an  
24 extra-state element.

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

29 **SECTION 315. ROLE OF [LAW ENFORCEMENT].** At the request of a  
30 [prosecutor or other appropriate public official] acting under Section 314, a [law  
31 enforcement officer] may take any lawful action reasonably necessary to locate a  
32 child or a party and assist [a prosecutor or appropriate public official] with  
33 responsibilities under Section 313.

#### 34 Comment

35 This section authorizes law enforcement officials to assist in locating a child  
36 and enforcing a custody determination. There are two policy choices to be made at  
37 this juncture. The first is to determine how the assistance of law enforcement is to  
38 be obtained. One method is to indicate that law enforcement officers shall be  
39 involved when so requested by the prosecutor pursuant to Section 314. This  
40 removes all doubt from law enforcement as to the propriety of the request.

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

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

14 **SECTION 316. COSTS AND EXPENSES.** If the respondent is not the  
15 prevailing party, the court shall assess against the respondent all direct expenses  
16 and costs, including compensation for attorney's time, incurred by the [prosecutor  
17 or other appropriate public official] and [law enforcement officers] under Section  
18 314 or 315 unless the respondent establishes that the assessment would be clearly  
19 inappropriate.

#### 20 Comment

21 One of the major problems of utilizing public officials to locate children and  
22 enforce custody and visitation determinations is cost. This section authorizes the  
23 prosecutor and law enforcement to recover costs and fees against the non-prevailing  
24 party. The use of the term "direct" indicates that "overhead" is not a recoverable  
25 cost; however, the value of time spent by the prosecutor's attorneys can be  
26 recovered.

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

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

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

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

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

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

**SECTION 405. TRANSITIONAL PROVISIONS.** A motion or other request in a child-custody proceeding that was commenced before the effective date of this [Act] is governed by the law in effect at the time the motion or other request is made.

Comment



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