

D R A F T
FOR DISCUSSION ONLY

IMPLEMENTATION OF HAGUE CONVENTION ON PROTECTION OF CHILDREN

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For November 2- 4, 2012 Drafting Committee Meeting

All in 4 version

With Prefatory Note and Comments

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ON UNIFORM STATE LAWS

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October 2, 2012

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TABLE OF CONTENTS

Prefatory Note.	1
----------------------	---

[ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE.....	6
SECTION 102. DEFINITIONS.....	6
SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.	9
SECTION 104. APPLICATION TO INDIAN TRIBES..	10
SECTION 105. INTERNATIONAL APPLICATION OF [ACT].....	10
SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION..	11
SECTION 107. PRIORITY.	11
SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.....	12
SECTION 109. APPEARANCE AND LIMITED IMMUNITY.....	12
SECTION 110. COMMUNICATION BETWEEN COURTS..	13
SECTION 111. TAKING TESTIMONY IN ANOTHER STATE..	14
SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS..	14

[ARTICLE] 2 JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION..	15
SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.....	16
SECTION 203. JURISDICTION TO MODIFY DETERMINATION.	17
SECTION 204. TEMPORARY EMERGENCY JURISDICTION.....	17
SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.....	19
SECTION 206. SIMULTANEOUS PROCEEDINGS..	19
SECTION 207. INCONVENIENT FORUM.	20
SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT..	22
SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.....	23
SECTION 210. APPEARANCE OF PARTIES AND CHILD.....	24
SECTION 211. FINDINGS AND CONCLUSIONS.....	25

[ARTICLE] 3 ENFORCEMENT

SECTION 301. DEFINITIONS.	26
SECTION 302. ENFORCEMENT UNDER HAGUE <u>ABDUCTION</u> CONVENTION.	26
SECTION 303. DUTY TO ENFORCE.....	27
SECTION 304. TEMPORARY VISITATION..	27
SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION AND MEASURE OF PROTECTION.....	28

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION AND MEASURE.....	29
SECTION 307. SIMULTANEOUS PROCEEDINGS.....	30
SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.....	30
SECTION 309. SERVICE OF PETITION AND ORDER..	32
SECTION 310. HEARING AND ORDER.....	32
SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD..	33
SECTION 312. COSTS, FEES, AND EXPENSES..	34
SECTION 313. RECOGNITION AND ENFORCEMENT.....	35
SECTION 314. APPEALS..	35
SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].....	35
SECTION 316. ROLE OF [LAW ENFORCEMENT]..	36
SECTION 317. COSTS AND EXPENSES.....	36

[ARTICLE] 4 PROCEEDINGS UNDER CONVENTION

PART 1: GENERAL PRINCIPLES

SECTION 401. SCOPE..	36
SECTION 402. EFFECT OF MEASURE OF PROTECTION..	39
SECTION 403. PRIORITY.....	39
SECTION 404. NOTICE TO PERSONS OUTSIDE STATE.....	39
SECTION 405. APPEARANCE AND LIMITED IMMUNITY.....	40
SECTION 406. COMMUNICATION BETWEEN COURTS AND AUTHORITIES.....	40
SECTION 407. TAKING TESTIMONY IN A CONVENTION COUNTRY..	41
SECTION 408. COOPERATION BETWEEN COURTS AND AUTHORITIES; PRESERVATION OF RECORDS.....	42

PART 2: JURISDICTION

SECTION 409. HABITUAL RESIDENCE.....	43
SECTION 410. MEASURE OF PROTECTION: JURISDICTION.....	44
SECTION 411. SIMULTANEOUS PROCEEDINGS.....	44
SECTION 412. JURISDICTION IN CASE OF WRONGFUL REMOVAL OR RETENTION OF CHILD..	45
SECTION 413. TRANSFER OF JURISDICTION.....	47
SECTION 414. MEASURE OF PROTECTION: TEMPORARY JURISDICTION.....	50
SECTION 415. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.....	51
SECTION 416. INFORMATION TO BE SUBMITTED TO COURT.....	51
SECTION 417. APPEARANCE OF PARTIES AND CHILD.....	53
SECTION 418. DURATION OF MEASURE..	53

PART 3: CONFLICT OF LAWS

SECTION 419. CONFLICT OF LAWS.....	54
------------------------------------	----

SECTION 420. CONFLICT OF LAWS RULES REGARDING PARENTAL RESPONSIBILITY.....	56
--	----

PART 4: RECOGNITION AND ENFORCEMENT

SECTION 421. DUTY TO RECOGNIZE MEASURE OF PROTECTION ORDERED IN A CONVENTION COUNTRY..	58
SECTION 422. REGISTRATION AND ENFORCEMENT OF CONVENTION MEASURE.....	60

PART 5: JUDICIAL COOPERATION

SECTION 423. COOPERATION WITH CONVENTION COUNTRY.....	60
SECTION 424. SUITABILITY TO EXERCISE VISITATION.....	61

[ARTICLE] 45 MISCELLANEOUS PROVISIONS

SECTION 401 <u>501</u> . UNIFORMITY OF APPLICATION AND CONSTRUCTION..	61
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	61
SECTION 405 <u>503</u> . TRANSITIONAL PROVISION.....	61
[SECTION 402 <u>504</u> . SEVERABILITY..	62

IMPLEMENTATION OF HAGUE CONVENTION ON PROTECTION OF CHILDREN

Prefatory Note

I. FROM THE UCCJA TO THE UCCJEA

In 1997 the Uniform Law Commission revisited the problem of the interstate child when it promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as a replacement for the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJA was adopted as law in all 50 states, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA) to address the interstate custody jurisdiction and enforcement problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements were similar to those in the UCCJA. There were, however, some significant differences.

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

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

1. Home state priority. Rather than four concurrent bases of jurisdiction, the UCCJEA prioritized home state jurisdiction over all other bases thereby conforming the UCCJEA to the PKPA.
2. Clarification of emergency jurisdiction. This jurisdictional basis was clarified to make it clear that it provided jurisdiction only on a temporary basis and was specifically made applicable to state domestic violence protective order cases.
3. Exclusive continuing jurisdiction for the state that entered the decree. The UCCJEA made it explicit that the state that made the original custody determination retained exclusive continuing jurisdiction over the custody determination so long as that state remained the residence of a parent, the child, or a person acting as a parent.
4. Specification of what custody proceedings are covered. These provisions extended

the coverage of the UCCJEA to all cases, except adoptions, where a child custody determination was made. This eliminated the substantial ambiguity of the UCCJA concerning which proceeding were covered.

5. Role of “Best Interests.” The UCCJEA eliminated the term “best interests” in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody of and visitation with children.

The UCCJEA also enacted specific provisions on the enforcement of custody determinations for interstate cases. First, there is a simple procedure for registering a custody determination in another state. This allows a party to know in advance whether that state will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation to another state.

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

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

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

II.

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

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

Convention which established international standards for jurisdiction, choice of law, and enforcement of judgments in cases regarding measures taken for the protection of minors.

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

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

III. THE INTERNATIONAL CUSTODY CASE

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

A. THE UCCJA

Section 23 of the UCCJA provided that the general policies of that Act applied to foreign country custody determinations. Foreign custody determinations were to be recognized and enforced if they were made consistently with the UCCJA and there was reasonable notice and opportunity to be heard. There were two types of issues that arose under this section. The first was whether a United States court would defer to a foreign tribunal when that tribunal would have jurisdiction under the UCCJA and the case was filed first in that tribunal. The second issue was whether a state of the United States would recognize, under this section, a custody determination made by a foreign tribunal.

On the first issue, the UCCJA was ambiguous and only required application of the "general policies" of the Act. Frequently courts in the United States would apply the same jurisdictional principles to international cases that they would apply in interstate cases. For example, in *Superior Court v. Plas*, 202 Cal.Rptr. 490 (Cal. Ct. App. 1984), the mother filed for custody when she had only been in California with her child for four months. The child was born in France and was raised and lived there with his family until shortly before the California hearing. The court determined that California lacked jurisdiction to hear the case and, even if it had jurisdiction, it should have deferred to France as the most convenient forum. However, not

all states followed the same practice. For example, the Oregon Court of Appeals in *Horiba v. Horiba*, 950 P.2d 340 (Or. Ct. App. 1997), refused to defer to a pending Japanese proceeding since Japan was not a “state” under the definition of “state” in the UCCJA.

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

B. THE UCCJEA

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

Section 105(b) requires tribunals in the United States to recognize foreign custody determinations if the facts and circumstances of the case indicate that the foreign custody determination was made in substantial conformity with the jurisdictional provisions of the UCCJEA. However, as indicated in Section 105(c) a United States court is given the discretion not to apply the UCCJEA if the child custody law of a foreign country violates fundamental principles of human rights. The language of the section was taken from the Hague Convention on the Civil Aspects of International Child Abduction. The drafting committee of the UCCJEA did not attempt to define what aspects of a foreign custody law would violate fundamental principles of human rights. The committee considered a hypothetical case where the foreign custody law awarded custody of children automatically to the father. When asked to decide whether such a provision violated fundamental principles of human rights, the committee, along with the advisors and observers, could not agree. Therefore the application of that provision was left to the courts to determine on a case by case basis.

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

IV. THIS REVISION

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

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

1 [ARTICLE] 1

2 GENERAL PROVISIONS

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

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

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

8 (2) “Authority” means the judicial or administrative entity authorized by a foreign
9 country to order a measure of protection with regard to a child.

10 ~~(2)~~(3) “Child” means an individual who has not attained 18 years of age.

11 ~~(3)~~(4) “Child-custody determination” means a judgment, decree, or other order of a court
12 providing for the legal custody, physical custody, or visitation with respect to a child. The term
13 includes a permanent, temporary, or initial; order and a modification order. The term does not
14 include an order relating to property of the child, child support or other monetary obligation of an
15 individual.

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

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

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

Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the
Protection of Children, concluded at The Hague on 19 October, 1996. (8) “Convention
country” means a country, including a political subdivision thereof, other than the United States,
in which the convention is in force with respect to the United States.

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

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

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

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

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

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

(15) “Measure of protection” means a decision on a matter covered by [Article] 4 made
by an authority in a foreign country or a court in this state with regard to a child. The term
includes a permanent, temporary, or initial measure and a modification. [The term does not
include an order relating to property of the child, child support, or other monetary obligation of

1 an individual.]

2 ~~(11)~~(16) “Modification” means a child-custody determination or measure of protection
3 that changes, replaces, supersedes, or is otherwise made after a previous determination or
4 measure concerning the same child, whether or not it is made by the court or authority that made
5 the previous determination or measure.

6 (17) “Nonconvention country” means a country, including a political subdivision thereof,
7 other than the United States, in which the convention is not in force with respect to the United
8 States.

9 (18) “Parental responsibility” means the rights, powers and obligations of a parent,
10 guardian, or other legal representative in relation to the person of the child.

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

15 ~~(13)~~(20) “Person acting as a parent” means a person, other than a parent, who:

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

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

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

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

jurisdiction of the United States.

~~[(16)(23)]~~ “Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a ~~State~~ state.]

~~(17)(24)~~ “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Comment

Question: A number of the definitions such “measure of protection,” “authority” etc do not appear in the text until Article 4. Should those definitions be moved to a separate definition sections in Article 4?

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

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

Subsection (15) defines the term “measure of protection,” or “measure.” The term is used most often in Article 4, but does arise in the other articles. The term “custody determination” which is used with regard to United States orders in the first three articles is inappropriate in relationship to a discussion of the 1996 Convention because the convention covers much more than custody determinations. The convention does not itself provide a definition of the term. The term “measure of protection” is defined functionally as a decision regarding a matter covered by Article 4. That means that it is within the scope of Article 4 in Section 401. The second and third sentences of the definition may be redundant given the scope section and therefore could perhaps be eliminated, although many members of the drafting committee wished to include the second sentence of the definition in the text of the definition section.

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

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. Except as
provided in [Article] 4, This this [Act] [act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

1 **Comment**

2 The drafting committee has not discussed this issue. Proceedings pertaining to medical
3 care are not governed by Articles 1-3, but a proceeding pertaining to emergency medical care for
4 a child is a measure within the scope of Article 4.
5

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

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

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

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

15 **SECTION 105. INTERNATIONAL APPLICATION OF [ACT].** Except as
16 otherwise provided in Section 413 and 414 the following rules apply:

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

19 (2)(b) Except as otherwise provided in ~~subsection (c)~~ paragraph (4), a child-custody
20 determination made in a ~~foreign nonconvention~~ country under factual circumstances in
21 substantial conformity with the jurisdictional standards of ~~this [Act]~~ [Article] 2 must be
22 recognized and enforced under [Article] 3.

23 (3) A court of this state shall apply [Article] 4 in proceedings concerning convention
24 countries.

25 (4)(c) A court of this ~~State~~ state need not apply this ~~[Act]~~ [act] if the child custody law of

1 a foreign country violates fundamental principles of human rights.

2 **Comment**

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

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

9 Subparagraph (3) then directs an attorney to apply article 4 to cases involving convention
10 countries. This seems an appropriate place to put a directional text since attorneys will probably
11 look at this section whenever they have a case with international connections.

12 Subsection (4) restates the provision currently in the UCCJEA. It applies to “foreign
13 countries” which includes both convention and nonconvention countries. It is functional
14 equivalent of Article 23 (2)(d) which allows a state to refuse to recognize and enforce a measure
15 under the convention if the measure is manifestly contrary to public policy taking into account
16 the best interests of the child. If the child custody law violates fundamental principles of human
17 rights, it is undoubtedly not in the child’s best interests. Therefore, it does not appear necessary
18 to have a separate public policy defense in the enforcement proceedings sections. However, this
19 principle could also be set out in full in both the Article 3 and Article 4 enforcement sections.

20 **SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.** A child-
21 custody determination made by a court of this ~~State~~ state that had jurisdiction under this ~~[Act]~~
22 ~~[act]~~ binds ~~all persons who have~~ a person that has been served in accordance with the ~~laws~~ law of
23 this ~~State~~ state, ~~or has been~~ notified in accordance with Section 108 or ~~who have~~ has submitted to
24 the jurisdiction of the court; and ~~who have~~ has been given an opportunity to be heard. ~~As to~~
25 ~~those persons, the~~ The determination is conclusive as to all decided issues of law and fact except
26 to the extent the determination is modified.

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

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

Comment

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

SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

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

1 in this ~~State~~ state who is subject to the jurisdiction of another ~~State~~ state is not immune from
2 service of process allowable under the laws of that ~~State~~ state.

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

6 **SECTION 110. COMMUNICATION BETWEEN COURTS.**

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

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

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

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

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

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

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

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

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

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

16 **SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF**
17 **RECORDS.**

18 (a) A court of this ~~State~~ state may request the appropriate court of another ~~State~~ state to:
19 (1) hold an evidentiary hearing;
20 (2) order a person to produce or give evidence pursuant to procedures of that ~~State~~
21 state;
22 (3) order that an evaluation be made with respect to the custody of a child
23 involved in a pending proceeding;

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

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

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

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

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

[ARTICLE] 2

JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

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

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

(2) a court of another ~~State~~ state does not have jurisdiction under paragraph (1), or

1 a court of the home ~~State~~ state of the child has declined to exercise jurisdiction on the ground that
2 this ~~State~~ state is the more appropriate forum under Section 207 or 208, and:

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

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

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

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

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

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

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

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

21 (1) a court of this ~~State~~ state determines that neither the child, nor the child and
22 one parent, nor the child and a person acting as a parent have a significant connection with this
23 ~~State~~ state and that substantial evidence is no longer available in this ~~State~~ state concerning the

child's care, protection, training, and personal relationships; or

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

(b) A court of this ~~State~~ state which 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.

SECTION 203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise provided in Section 204, a court of this ~~State~~ state may not modify a child-custody determination made by a court of another ~~State~~ state unless a court of this ~~State~~ state has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

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

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

SECTION 204. TEMPORARY EMERGENCY JURISDICTION. Except as otherwise provided in Section 414(c), the following rules apply:

~~(a)~~(1) A court of this ~~State~~ state has temporary emergency jurisdiction if the child is present in this ~~State~~ state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

1 ~~(b)~~(2) If there is no previous child-custody determination that is entitled to be enforced
2 under this ~~[Act]~~ [act] and a child-custody proceeding has not been commenced in a court of a
3 ~~State~~ state having jurisdiction under Sections 201 through 203, a child-custody determination
4 made under this section remains in effect until an order is obtained from a court of a ~~State~~ state
5 having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been
6 or is not commenced in a court of a ~~State~~ state having jurisdiction under Sections 201 through
7 203, a child-custody determination made under this section becomes a final determination, if it so
8 provides and this ~~State~~ state becomes the home ~~State~~ state of the child.

9 ~~(c)~~(3) If there is a previous child-custody determination that is entitled to be enforced
10 under this ~~[Act]~~ [act], or a child-custody proceeding has been commenced in a court of a ~~State~~
11 state having jurisdiction under Sections 201 through 203, any order issued by a court of this ~~State~~
12 state under this section must specify in the order a period that the court considers adequate to
13 allow the person seeking an order to obtain an order from the ~~State~~ state having jurisdiction
14 under Sections 201 through 203. The order issued in this ~~State~~ state remains in effect until an
15 order is obtained from the other ~~State~~ state within the period specified or the period expires.

16 ~~(d)~~(4) A court of this ~~State~~ state which has been asked to make a child-custody
17 determination under this section, ~~upon~~ on being informed that a child-custody proceeding has
18 been commenced in, or a child-custody determination has been made by, a court of a ~~State~~ state
19 having jurisdiction under Sections 201 through 203, shall immediately communicate with the
20 other court. A court of this ~~State~~ state which is exercising jurisdiction pursuant to Sections 201
21 through 203, ~~upon~~ on being informed that a child-custody proceeding has been commenced in, or
22 a child-custody determination has been made by, a court of another ~~State~~ state under a statute
23 similar to this section shall immediately communicate with the court of that ~~State~~ state to resolve

1 the emergency, protect the safety of the parties and the child, and determine a period for the
2 duration of the temporary order.

3 **Additional Comment**

4 The convention provides a special rule for when an emergency order of the forum is
5 replaced by a decision from the nonconvention country of the habitual residence of the child.
6 The introductory clause contains the reference to that Section.

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

8 (a) Before a child-custody determination is made under this ~~[Act]~~ [act], notice and an
9 opportunity to be heard in accordance with the standards of Section 108 must be given to all
10 persons entitled to notice under the law of this ~~State~~ state as in child-custody proceedings
11 between residents of this ~~State~~ state, any parent whose parental rights have not been previously
12 terminated, and any person having physical custody of the child.

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

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

18 **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

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

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

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

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

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

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

SECTION 207. INCONVENIENT FORUM. Except as otherwise provided in Section 413, the following rules apply:

~~(a)~~(1) A court of this ~~State~~ state which has jurisdiction under this ~~[Act]~~ [act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another ~~State~~ state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a

1 party, the court's own motion, or request of another court.

2 ~~(b)~~(2) Before determining whether it is an inconvenient forum, a court of this ~~State~~ state
3 shall consider whether it is appropriate for a court of another ~~State~~ state to exercise jurisdiction.
4 For this purpose, the court shall allow the parties to submit information and shall consider all
5 relevant factors, including:

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

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

9 ~~(3)~~(C) the distance between the court in this ~~State~~ state and the court in the ~~State~~
10 state that would assume jurisdiction;

11 ~~(4)~~(D) the relative financial circumstances of the parties;

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

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

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

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

20 ~~(c)~~(3) If a court of this ~~State~~ state determines that it is an inconvenient forum and that a
21 court of another ~~State~~ state is a more appropriate forum, it shall stay the proceedings upon
22 condition that a child-custody proceeding be promptly commenced in another designated ~~State~~
23 state and may impose any other condition the court considers just and proper.

(d)(4) A court of this State state may decline to exercise its jurisdiction under this ~~[Act]~~ [act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Comment

There is a question regarding whether the introductory clause is necessary. There is no forum non conveniens between countries parties to the 1996 Convention. There is only the transfer of jurisdiction proceeding of Section 413. Given that Article 2 only refers to states and, through Section 105, nonconvention countries, perhaps the introductory phrase could be eliminated. However, its presence may alert practitioners who may try to argue the applicability of Section 207 to Convention cases. The issue is one the drafting committee should decide.

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

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

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

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

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

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its

1 jurisdiction necessary and reasonable expenses including costs, communication expenses,
2 attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during
3 the course of the proceedings, unless the party from ~~whom~~ which fees are sought establishes that
4 the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses
5 against this ~~State~~ state unless authorized by law other than this ~~[Act]~~ [act].

6 **SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SECTION 211. FINDINGS AND CONCLUSIONS.**

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

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

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

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

16 (4) the habitual residence of the child.

17 (b) A child-custody determination or measure of protection made under this [act] may be
18 amended to include the findings and conclusions described in subsection (a).

19 **Comment**

20 Question: Where should this Section be placed? The drafting committee originally
21 determined that it should be placed at the end of article 2. It could easily be placed in Article 1 or
22 4.

23 Related to Convention: Article 24: This section was proposed by the drafting committee.
24 It is meant to help those parents who contemplate foreign enforcement of a United States custody
25 determination or measure of protection. It is important that a court not only make the
26 conclusions set out in this section, but also the findings of fact underlying those conclusions.

1 This is because Article 24 of the convention requires that the requested state is bound by the
2 findings of fact upon which another convention states based its jurisdiction. These findings and
3 conclusions will be extremely helpful to an American parent seeking to enforce abroad a measure
4 taken by a United States court.

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

8 [ARTICLE] 3

9 ENFORCEMENT

10 Drafting Note

11 For this draft Article 3 remains as it was in the original UCCJEA with one minor change.
12 In some sections the jurisdictional reference to Article 2 is changed to this Act. This is possible
13 because Article 4 requires that a measure of protection be enforced as a child-custody
14 determination under this article.

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

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

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

22 SECTION 302. ENFORCEMENT UNDER HAGUE ABDUCTION

23 **CONVENTION.** Under this [article], a court of this ~~State~~ state may enforce an order for the
24 return of ~~the~~ a child made under the Hague Convention on the Civil Aspects of International
25 Child Abduction or a measure of protection issued by a convention country as if it were a child-
26 custody determination.

1 **Comment**

2 I left the addition in this Section since it backs up the reference from Article 4

3 **SECTION 303. DUTY TO ENFORCE.**

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

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

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

15 **Additional Comment**

16 Subsection (c) is bracketed. Given section 105, it is probably not necessary here.

17 **SECTION 304. TEMPORARY VISITATION.**

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

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

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

23 (b) If a court of this ~~State~~ state makes an order under subsection (a)(2), it shall specify in

1 the order a period that it considers adequate to allow the petitioner to obtain an order from a court
2 having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an
3 order is obtained from the other court or the period expires.

4 **SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION**
5 **AND MEASURE OF PROTECTION.**

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

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

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

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

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

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

19 (2) serve notice upon the persons named pursuant to subsection ~~(a)(1)-(3)~~ (a) and
20 provide them with an opportunity to contest the registration in accordance with this section.

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

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

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

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

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

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

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

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

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

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

21 **SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION AND**
22 **MEASURE.**

23 (a) A court of this ~~State~~ state may grant any relief normally available under the law of

1 this ~~State~~ state to enforce a registered child-custody determination made by a court of another
2 ~~State~~ state.

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

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

13 **SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY**
14 **DETERMINATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **SECTION 310. HEARING AND ORDER.**

15 (a) Unless the court issues a temporary ~~emergency~~ order pursuant to Section 204 or 414,
16 ~~upon on~~ a finding that a petitioner is entitled to immediate physical custody of the child, the court
17 shall order that the petitioner may take immediate physical custody of the child unless the
18 respondent establishes that:

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

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

22 (B) the child-custody determination for which enforcement is sought has
23 been vacated, stayed, or modified by a court of a ~~State~~ state having jurisdiction to do so under

1 ~~[Article]~~ 2 this [act]; or

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

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

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

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

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

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

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

21 (b) If the court, upon the testimony of the petitioner or other witness, finds that the child
22 is imminently likely to suffer serious physical harm or be removed from this ~~State~~ state, it may
23 issue a warrant to take physical custody of the child. The petition must be heard on the next

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

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

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

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

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

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

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

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

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

20 (a) The court shall award the prevailing party, including a ~~State~~ state necessary and
21 reasonable expenses incurred by or on behalf of the party, including costs, communication
22 expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child
23 care during the course of the proceedings, unless the party from ~~whom~~ which fees or expenses

are sought establishes that the award would be clearly inappropriate.

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

SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this ~~State~~ state shall accord full faith and credit to an order issued by another ~~State~~ state and consistent with this ~~[Act]~~ [act] which enforces a child-custody determination by a court of another ~~State~~ state or unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under ~~[Article] 2~~ this [act].

SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204 or 414, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

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

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

- (1) an existing child-custody determination;
- (2) a request to do so from a court in a pending child-custody or proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

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

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

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

[ARTICLE] 4

PROCEEDINGS UNDER CONVENTION

Introductory Comment

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

Under this version of the act, everything that is necessary to decide an article 4 case is in article 4. The only reference back is in the provisions on recognition and enforcement where there is a blanket reference to article 3.

PART 1: GENERAL PRINCIPLES

SECTION 401. SCOPE.

(a) This [article] applies only to a proceeding in a court of this state involving a measure of protection under this [article]. A measure of protection may involve:

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

3 (2) rights of custody, including:

4 (A) rights relating to the care of the person of the child and,

5 (B) determining the place of residence of the child;

6 (3) rights of access or visitation, including the right to take the child for a limited
7 period to a place other than the habitual residence of the child;

8 (4) guardianship of the person of the child and any similar relationship;

9 (5) the designation and function of a person having charge of the person of the
10 child, or representing or assisting the child;

11 (6) governmental supervision of an individual having charge of the person of the
12 child; and

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

15 (b) This [article] does not apply to:

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

17 (2) adoption, including preparatory measures, and the annulment or revocation of
18 an adoption;

19 (3) the name of a child;

20 (4) emancipation of a child;

21 (5) support or maintenance obligations with regard to a child;

22 (6) trusts or succession;

23 (7) public benefits, including social security;

1 (8) general governmental decisions regarding education or health;

2 (9) measures resulting from an offense committed by a child; [or]

3 (10) decisions on rights of asylum and immigration]; or

4 (11) property of a child].

5 (c) If a provision of this [article] is inconsistent with [Articles] 1 through 3, this [article]
6 controls.

7 **Comment**

8 Related to the Convention: Arts. 3,4. This section on the scope of this article was
9 requested by the Drafting Committee and follows the terms of the Convention. The term
10 “proceeding in a court of this state” means that this article will apply to courts and not to
11 measures that are governed by the convention that will have to be determined by administrative
12 agencies and other governmental personnel. The federal implementing legislation will have to
13 address those applications. This section also makes it clear that it applies only to proceedings
14 that are governed by the Convention. The language follows the comparable section in UIFSA
15 (2008)

16 The scope of this article is a measure that is taken in relation to one of the subject matters
17 covered in Article 3 of the Convention. As noted in the Explanatory Report, the list in article 3,
18 and therefore in subsection (a) of this section, is opened-ended which is indicated by using the
19 term “may include.” Unlike subsection (a), subsection (b) concerning exclusions is a closed list.
20 The subjects in subsection (b) are covered by law other than this act.

21 The terms “rights of custody” and “rights of access are taken from the 1980 Hague
22 Convention on the Civil Aspects of International Child Abduction. They should be given the
23 same definition in applying this convention as they are given in applying the 1980 convention.
24 Thus, for example, a ne exeat right would be treated as a right of custody under this convention
25 just as it would under the 1980 convention. See Abbott v. Abbott, 130 S.Ct. 1983 (2010). The
26 terms are particularly important in the application of section 412 and are broad enough to include
27 most of the contemporary variation on word choice for custody. Thus parenting time, joint
28 custody, and managing conservator are all terms used in various states to indicate who is entitled
29 to make decisions concerning the child. If those decisions include rights relating to the care of
30 the child, and, in particular, the right to choose the child’s residence it becomes a right of custody
31 under this convention.

32 Subsection (c) is taken from UIFSA 2008, Section 702 and resolves any possibility of a
33 conflict between earlier section of this Act and this article.

SECTION 402. EFFECT OF MEASURE OF PROTECTION. A measure of protection ordered by a court of this state that had jurisdiction under this article binds a person that has been served in accordance with the law of this state, has been notified in accordance with Section 404 or has submitted to the jurisdiction of the court; and has been given an opportunity to be heard. The measure is conclusive as to all decided issues of law and fact except to the extent the measure is modified.

Comment

In this version of the act all the sections from articles 1-2 that are applicable to an article 4 proceeding are set out in full in article 4. I have made appropriate language changes, i.e. changing “child-custody determination” to “measure of protection” and “court” to “authority” where required. This section is comparable to Section 106.

SECTION 403. PRIORITY. If a question of existence or exercise of jurisdiction under this article is raised in a proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Comment

Comparable to Section 107.

SECTION 404. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

1 **Comment**

2 Comparable to Section 108.

3 **SECTION 405. APPEARANCE AND LIMITED IMMUNITY.**

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

9 (b) A person who is subject to personal jurisdiction in this state on a basis other than
10 physical presence is not immune from service of process in this state. A party present in this
11 state who is subject to the jurisdiction of another state or convention country is not immune from
12 service of process allowable under the laws of that state or convention country.

13 (c) The immunity granted by subsection (a) does not extend to civil litigation based on
14 acts unrelated to the participation in a proceeding under this article committed by an individual
15 while present in this state.

16 **Comment**

17 Comparable to Section 109.

18 **SECTION 406. COMMUNICATION BETWEEN COURTS AND AUTHORITIES.**

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

22 (b) A court of this state may communicate with an authority in another convention
23 country concerning a proceeding arising under this article.

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

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

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

Comment

Comparable to Section 110.

SECTION 407. TAKING TESTIMONY IN A CONVENTION COUNTRY.

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

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

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

Comment

Comparable to Section 111.

SECTION 408. COOPERATION BETWEEN COURTS AND AUTHORITIES;
PRESERVATION OF RECORDS.

(a) A court of this state may request the appropriate authority of another convention
country to:

(1) hold an evidentiary hearing;

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

country;

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

pending proceeding;

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

of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with

the request; and

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

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

(b) On request of an authority of another convention country, a court of this state may
hold a hearing or enter an order described in subsection (a).

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

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a measure of protection until the child attains 18 years of age. On appropriate request by an authority or law enforcement official of another convention country, the court shall forward a certified copy of those records.

Comment

Comparable to Section 112.

PART 2: JURISDICTION

SECTION 409. HABITUAL RESIDENCE. A court of this state shall consider the following in determining the habitual residence of a child:

(1) the length of time the child has been in a country, including whether this state is the home state of the child;

(2) the social interactions of the child, including education, family relationships, peer relationships, and language;

(3) the age and maturity of the child;

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

(5) the intent of the parents of the child.

Comment

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

It should be noted that the 1996 Convention uses the term "habitual residence" in a different context than the 1980 Abduction Convention. In the 1980 Convention the determination that a child is habitually resident in the requesting country is necessary in order for the remedy of that Convention to be applicable and is part of the larger inquiry as to whether

1 there has been a wrongful removal or retention of a child. The role of habitual residence in the
2 1996 Convention is to assess which country's authorities have jurisdiction to take measures of
3 protection and whether their decisions should be recognized by other contracting countries.
4 Therefore the precedent that has developed under the 1980 Convention is not necessarily
5 applicable to the determination of habitual residence under this article.

6 **SECTION 410. MEASURE OF PROTECTION: JURISDICTION.** Except as
7 otherwise provided in Sections 414, a court of this state may order or modify a measure of
8 protection only if:

9 (1) the court has jurisdiction under Section 201 and the child is a habitual resident of the
10 United States at the commencement of the proceeding;

11 (2) the child is present in this state and:

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

13 (B) the child is a refugee; or

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

16 (3) an authority of a convention country with jurisdiction substantially in accord with
17 paragraph (1) or (2) has decided to transfer jurisdiction to the court and the court decides that it is
18 in the best interests of the child to assume jurisdiction.

19 **Comment**

20 Related to Convention: Arts. 5,6,8, and 9. This section relates primarily to articles 5 and
21 6 of the Convention. A state can also have jurisdiction, apart from habitual residence, if the child
22 is present in this state and has no habitual residence. However, the Practical Handbook indicates
23 that this determination should be avoided if at all possible. Jurisdiction is also proper if the child
24 is present in the state and is a refugee or is internationally displaced. Finally, this state has
25 jurisdiction if the convention country that would otherwise have jurisdiction has decided to
26 transfer jurisdiction to this state and this state has accepted the transfer.

27 **SECTION 411. SIMULTANEOUS PROCEEDINGS.**

28 (a) Except as otherwise provided in Section 414, a court of this state may not exercise its

1 jurisdiction under Section 410, 412 or 413 if the court determines that at the time the proceeding
2 commenced, a proceeding was pending before an authority of a convention country having
3 jurisdiction concerning a similar measure of protection and the measure is under consideration
4 unless the authority declines to exercise its jurisdiction in favor of the court.

5 (b) If a court of this state which has jurisdiction under Section 410, 412, or 413
6 determines that a proceeding has been commenced later in a convention country having
7 jurisdiction concerning a similar measure of protection, the court may decline jurisdiction.

8 **Comment**

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

15 Note that under subsection (a) there is a provision for a court of this state to continue the
16 case if the court that first had jurisdiction declines in favor of this state. This declination of
17 jurisdiction is on the basis of forum non conveniens and does not involve the transfer jurisdiction
18 of Article 8-9 of the Convention. I have added a subsection (b) that authorizes a court of this
19 state to decline jurisdiction in favor of the second to file country.

20 **SECTION 412. JURISDICTION IN CASE OF WRONGFUL REMOVAL OR** 21 **RETENTION OF CHILD.**

22 (a) A removal or retention of a child is wrongful if:

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

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

1 (b) In this section, a right of custody may arise by operation of law, a judicial or
2 administrative decision, or an agreement having legal effect under the law of the country of the
3 child's habitual residence immediately before a removal or retention.

4 (c) A court of this state which has jurisdiction under Section 410 continues to have
5 jurisdiction after a wrongful removal or retention of a child until the child acquires a new
6 habitual residence, and:

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

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

14 (d) Except as otherwise provided in Section 414, a court of this state does not have
15 jurisdiction over a child whose habitual residence in this state is the result of a wrongful removal
16 or retention unless:

17 (1) each person with rights of custody has acquiesced in the removal or retention;
18 or

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

Comment

Relation to Convention, Art 7. The definition of wrongful removal or retention in this section does not specifically set out “institution or other body” as the term is used in the Convention, That is because the definition of the term “person” in section 102 includes “institution or other body” and therefore the terms would be redundant in this section.

The term “rights of custody” is also not defined in this section since it takes the definition that is set out in section 401 on scope. The term “rights of custody” does not include access or visitation or access rights as defined in the same section. This section is designed to prevent jurisdiction from transferring following a wrongful removal or retention as set out in the 1980 convention. Therefore, the terms of “rights of custody,” exercise of custody,” acclimated’, etc will take on the same meaning here that they have in the 1980 convention.

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

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

SECTION 413. TRANSFER OF JURISDICTION.

(a) If a court of this state has jurisdiction under Section 410(1) or (2) and determines that an authority in another convention country is in a better position to assess the best interests of the child, the court may:

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

(2) stay the case to allow the parties to request that the authority exercise jurisdiction.

(b) A court of this state may communicate with the authority in the other convention country concerning a request to transfer jurisdiction under subsection (a).

(c) Before determining whether jurisdiction should be transferred under subsection (a), a

1 court of this state shall allow the parties to submit information and shall consider all relevant
2 factors, including:

3 (1) whether domestic violence has occurred and is likely to continue in the future
4 and which convention country could best protect the parties and the child;

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

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

8 (4) the financial circumstances of the parties;

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

11 (6) the nature and location of evidence required to resolve the issues in the case,
12 including testimony of the child;

13 (7) the ability of the authorities of each convention country to present evidence
14 and decide the case expeditiously;

15 (8) the procedures available in each convention country necessary to present
16 evidence; and

17 (9) the familiarity of the authorities of each convention country with the facts and
18 issues in the proceeding.

19 (d) Jurisdiction may be transferred under this section only to an authority in a convention
20 country:

21 (1) of which the child is a national;

22 (2) that has jurisdiction over the divorce or annulment of the parents of the child;

23 or

1 (3) that has a substantial connection to the child.

2 (e) A court of this state may request or invite the parties to request the appropriate
3 authority of the convention country of the habitual residence of a child to transfer jurisdiction to
4 the court if the court believes it can better assess the best interests of the child if:

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

6 (2) a divorce or annulment proceeding concerning the parents of the child is
7 pending in this state; or

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

9 (f) A court of this state may communicate with the authority of the convention country of
10 the habitual residence of the child with regard to a request under subsection (e).

11 (g) A court of this state may not assume jurisdiction following a request under subsection
12 (e) until the authority of the convention country of the habitual residence of the child decides to
13 transfer jurisdiction to the court.

14 **Comment**

15 Relation to Convention, Arts 8,9.

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

23 That part of article 8 of the Convention that requires a court to determine whether it is in
24 the best interests of the child for it to receive jurisdiction is covered in section 410(3).

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

1 **SECTION 414. MEASURE OF PROTECTION: TEMPORARY JURISDICTION.**

2 (a) In an urgent situation a court of this state has temporary jurisdiction to order a
3 measure of protection if necessary to protect a child present in this state, including when the child
4 has been abandoned or if it is necessary to protect the child because the child, or a sibling or
5 parent of the child, is subjected to or threatened with mistreatment or abuse.

6 (b) A measure of protection ordered under subsection (a) regarding a child habitually
7 resident in a convention country expires when an authority of the country with jurisdiction over
8 the child orders a measure of protection with respect to the child.

9 (c) An measure of protection ordered under subsection (a) regarding a child habitually
10 resident in a nonconvention country expires when the court recognizes a measure ordered by the
11 authority of the nonconvention country.

12 **Comment**

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

27 The expiration of the emergency order is as set out in Article 11. If the child’s habitual
28 residence is in a Convention country the order expires when the Convention country takes
29 whatever measure is required by the situation. If the child’s habitual residence is in a
30 nonconvention country the emergency order expires when it is recognized by a court of this state.
31 I think we need not concern ourselves with the language of Article 10(C) of “each contracting
32 state” and “in the contracting state in question” since we are writing for this state and no other
33 state. The implication of the language of the Convention seems to require that the non-

contracting state actually take a measure of protection since there must be something to be recognized in this state in order for the temporary order to come to an end.

SECTION 415. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

(a) Before a measure of protection is ordered under this article, notice and an opportunity to be heard in accordance with the standards of Section 404 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This [act] does not govern the enforceability of a measure of protection made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a proceeding under this article are governed by the law of this state as in child-custody proceedings between residents of this state.

Comment

Comparable to 205

SECTION 416. INFORMATION TO BE SUBMITTED TO COURT.

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

(1) has participated, as a party or witness or in any other capacity, in any other

1 proceeding concerning ith the child that is within the scope of this article, and, if so, identify the
2 court, the case number, and the date of the proceeding, if any;

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

7 (3) knows the names and addresses of any person not a party to the proceeding
8 having physical custody of the child or claims rights of legal custody or physical custody of, or
9 visitation with, the child and, if so, the names and addresses of those persons.

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

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

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

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

1 **SECTION 417. APPEARANCE OF PARTIES AND CHILD.**

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

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

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

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

16 **SECTION 418. DURATION OF MEASURE.** Except as otherwise provided in Section
17 414 the following rules apply:

18 (1) A measure of protection ordered by a court of this state with jurisdiction under
19 Section 410, 412, or 413 remains in force even if a change of circumstances has eliminated the
20 jurisdictional basis of the measure, until terminated, modified, or replaced by a measure of an
21 authority of a convention country with jurisdiction or of the nonconvention country of the
22 habitual residence of the child.

23 (2) A measure of protection ordered by an authority of a convention country with

jurisdiction remains in force even if a change of circumstances has eliminated the jurisdictional basis of the measure, until terminated, modified, or replaced by a measure of a court of this state with jurisdiction under this [article], an authority of a convention country with jurisdiction, or the nonconvention country of the habitual residence of the child.

Comment

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

This section implements Article 23(2)(e) which specifically sets out a rule allowing for non-recognition of an order from a convention country if it is incompatible with a later order from the nonconvention country of the child's habitual residence.

PART 3: CONFLICT OF LAWS

SECTION 419. CONFLICT OF LAWS.

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

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

(c) To protect a child, a court of this state may apply or take into consideration the law of another country which has a substantial relationship to the case.

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

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

responsibility.

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

Comment

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

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

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

Subsection (d) draws a distinction between the existence of the measures and the method of application of the measure in a particular country when the child's habitual residence changes as required by Article 15(3). In other words, the distinction is the equivalent of the distinction between the law governing the validity of a contract and the performance of a contract. The substantive law governing, for example, visitation, is that of the forum. However, the conditions for carrying out the visitation arrangements are that of the child's new habitual residence. This is particularly apt, according to the explanatory report in those situations where the original determination was made by the child's habitual residence and then child's habitual residence changes. The explanatory report acknowledges that there is not a clear line between the establishment of a measure and the means of carrying out the measure and suggests that the line will have to be drawn on a case-by-case basis.

1 Subsection (e) distinguishes between the existence of parental responsibility and the
2 exercise of parental responsibility. The applicable law governing the exercise of parental
3 responsibility is that of the habitual residence of the child.
4

5 **SECTION 420. CONFLICT OF LAWS RULES REGARDING PARENTAL**
6 **RESPONSIBILITY.**

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

9 (b) If the law made applicable by this section is the law of a nonconvention country and if
10 the conflict of laws rules of the nonconvention country would apply the law of another
11 nonconvention country, the law of the other nonconvention country is applicable. If the other
12 nonconvention country would not apply its own law, the law applicable is as provided in
13 subsection (c).

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

15 (1) Attribution or extinction of parental responsibility of a child by operation of
16 law, without the intervention of an authority, is governed by the law of the country of the habitual
17 residence of the child.

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

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

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

1 parental responsibility.

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

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

7 **Comment**

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

14 Subsection (c)(3) provides that the parental responsibility that comes about by operation
15 of law, agreement or unilateral act continues even if the habitual residence of the child changes.
16

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

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

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

1 **PART 4: RECOGNITION AND ENFORCEMENT**

2 **SECTION 421. DUTY TO RECOGNIZE MEASURE OF PROTECTION**

3 **ORDERED IN A CONVENTION COUNTRY.**

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

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

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

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

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

15 (2) one of the parents was habitually resident in the country;

16 (3) at least one of the parents had parental responsibility of the child at the time
17 the proceedings for divorce or annulment was commenced; and

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

20 [(c) A court of this state need not apply this section if the measure of protection law of a
21 convention country violates fundamental principles of human rights.]

22 **Comment**

23 Related to the Convention, Art. 10, 23(1). This section sets out in subsection (a) the basic
24 rule of recognition. It requires recognition of child custody determinations made in another

1 contracting country if the measure was decided in accordance with the jurisdictional provisions
2 of this article. The operative language from Section 303 has been slightly rewritten but the duty
3 to recognize is not lessened in this article.

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

13 The jurisdiction authorized under Article 10 for the authority having jurisdiction of the
14 divorce or annulment ceases when the divorce or annulment proceedings end. There is no
15 continuing jurisdiction under the convention. Therefore proceeding to modify the determination
16 made by the divorce authority are governed by Section 404.

17 The convention requires recognition as a matter of law without the intervention of a court
18 or other tribunal. Recognition "by operation of law" means that it is not necessary to commence
19 proceedings for the measure to be recognized in the requested Convention state and for it to
20 produce its effects there. An example set out by the Permanent Bureau in the Practical
21 Handbook, and slightly modified, is as follows:

22 A family are habitually resident in Contracting State A. Following the breakdown
23 of the parents' relationship, the court in Contracting State A, with the agreement
24 of the father, grants the mother sole custody of the child. A year later, the mother
25 lawfully moves with the child to Contracting State B. She wishes to enroll the
26 children in school. Her sole custody of the child which will allow enrollment in
27 school will be recognized by operation of law in Contracting State B without her
28 taking any further action. She will not have to apply to the judicial or
29 administrative authorities in Contracting State B for recognition of the custody
30 order.

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

35 Subsection (c) may not be needed given that this version retains Section 105 and this
36 principle is stated there as applicable to the entire act. On the other hand, it may be needed and
37 Section 105 may have to be revised. The convention provides for a public policy defense in
38 applying the choice of law rules and in the recognition of judgments. There is, however, no
39 public policy defense in the jurisdiction section. That means that a country which is not the
40 country of the child's habitual residence would have to defer to the convention country of the
41 child's habitual residence even if the forum determined that the measure of protection law of the

1 habitual residence violated fundamental principle of human rights.

2 **SECTION 422. REGISTRATION AND ENFORCEMENT OF CONVENTION**

3 **MEASURE.**

4 (a) A measure of protection is recognized and enforced as a custody-determination under
5 [Article] 3.

6 (b) A court of this state is bound by the findings of fact on which the authority of the
7 convention country based its jurisdiction.

8 (c) A court of this state may use any remedy available under law of this state other than
9 this act to enforce a measure of protection made by an authority of a convention country. The
10 remedies provided in this [act] are cumulative and do not affect the availability of other remedies
11 to enforce a measure.

12 **Comment**

13 Related to Convention: Arts. 23, 24, 25, 26, 28. This section requires that the standards
14 and procedure for recognition and enforcement of measures of protection from convention
15 countries will be subject to the requirements as recognition of child-custody determinations from
16 other states and nonconvention countries. Under the convention this is possible because the
17 defenses to recognition set out in Article 23(2) of the convention are permissive defenses and not
18 mandatory defenses. Three of the defenses are already recognized by Article 3. They are lack of
19 appropriate jurisdiction, failure to give notice, and incompatibility with a later measure that is
20 entitled to be recognized. A fourth defense is contained in Section 105(d) in that the measure
21 violates fundamental principles of human rights. The remaining two defenses are that the child
22 was not give an opportunity to be heard in violation of fundamental rules of procedure of the
23 forum and that this state was not consulted before a child is placed in this state for a foreign child
24 placing authority. These defenses are waived in this enactment.

25
26 It is possible that the entire registration and enforcement process could be set out section by
27 section in this draft. That was done under one of the earlier drafts. However, this article has
28 already become somewhat over long. And it seems easier to just incorporate the remainder of
29 article 3 by reference as opposed to having to redraft them.

30 **PART 5: JUDICIAL COOPERATION**

31 **SECTION 423. COOPERATION WITH CONVENTION COUNTRY.** Before
32

1 placing a child in foster care, institutional care, or a similar situation in a convention country, a
2 court of this state shall:

3 (1) consult with the appropriate authority in the country; and

4 (2) obtain consent to the placement by the appropriate authority in the country.

5 **SECTION 424. SUITABILITY TO EXERCISE VISITATION.** A parent who is a
6 party to a case in this state who is seeking to obtain or maintain visitation and has asked an
7 authority of the convention country that is the residence of the parent to make a finding on the
8 suitability of the parent to exercise visitation, may request a court to stay the case pending receipt
9 of information regarding suitability. The court shall consider the information in making a
10 decision on visitation.

11 **Comment**

12 Related to the Convention, Arts 33, 35.

13 **[ARTICLE] 45**

14 **MISCELLANEOUS PROVISIONS**

15 **SECTION 401501 . UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

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

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

24 **SECTION 405 503. TRANSITIONAL PROVISION.** A motion or other request for

1 relief made in a child-custody proceeding or to enforce a child-custody determination which was
2 commenced before the effective date of this [act] is governed by the law in effect at the time the
3 motion or other request was made.

4 **[SECTION ~~402~~ 504. SEVERABILITY.** If any provision of this [act] or its
5 application to any person or circumstance is held invalid, the invalidity does not
6 affect other provisions or applications of this [act] which can be given effect without
7 the invalid provision or application, and to this end the provisions of this [act] are
8 severable.]

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

12
13 **SECTION ~~403~~ 505. EFFECTIVE DATE.** This [Act] takes effect