

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

Act 668 of 1999
SENATE BILL 207

5 By: Senator Harriman
6 By: Representative Lynn
7

For An Act To Be Entitled

8 "THE UNIFORM CHILD CUSTODY JURISDICTION AND
9 ENFORCEMENT ACT (1997)."
10

Subtitle

11 "THE UNIFORM CHILD CUSTODY JURISDICTION
12 AND ENFORCEMENT ACT (1997)."
13

14
15
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

ARTICLE 1

GENERAL PROVISIONS

18
19
20 SECTION 101. SHORT TITLE. This Act may be cited as the Uni form Child-
21 Custody Jurisdiction and Enforcement Act.
22

23 SECTION 102. DEFINITIONS. In this Act:

24 (1) "Abandoned" means left without provision for reasonable and
25 necessary care or supervision.

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

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

32 (4) "Child-custody proceeding" means a proceeding in which legal
33 custody, physical custody, or visitation with respect to a child is an issue.
34 The term includes a proceeding for divorce, separation, neglect, abuse,
35 dependency, guardianship, paternity, termination of parental rights, and
36 protection from domestic violence, in which the issue may appear. The term

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1 does not include a proceeding involving juvenile delinquency, contractual
2 emancipation, or enforcement under Article 3.

3 (5) "Commencement" means the filing of the first pleading in a
4 proceeding.

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

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

13 (8) "Initial determination" means the first child-custody determination
14 concerning a particular child.

15 (9) "Issuing court" means the court that makes a child-custody
16 determination for which enforcement is sought under this Act.

17 (10) "Issuing State" means the State in which a child-custody
18 determination is made.

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

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

27 (13) "Person acting as a parent" means a person, other than a parent,
28 who:

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

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

35 (14) "Physical custody" means the physical care and supervision of a
36 child.

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

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

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

8
 9 SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This Act does not
 10 govern an adoption proceeding or a proceeding pertaining to the authorization
 11 of emergency medical care for a child.

12
 13 SECTION 104. APPLICATION TO INDIAN TRIBES.

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

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

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

23
 24 SECTION 105. INTERNATIONAL APPLICATION OF ACT.

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

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

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

33
 34 SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION. A child-custody
 35 determination made by a court of this State that had jurisdiction under this
 36 Act binds all persons who have been served in accordance with the laws of this

1 State or notified in accordance with Section 108 or who have submitted to the
 2 jurisdiction of the court, and who have been given an opportunity to be heard.
 3 As to those persons, the determination is conclusive as to all decided issues
 4 of law and fact except to the extent the determination is modified.

5
 6 SECTION 107. PRIORITY. If a question of existence or exercise of
 7 jurisdiction under this Act is raised in a child-custody proceeding, the
 8 question, upon request of a party, must be given priority on the calendar and
 9 handled expeditiously.

10
 11 SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

21
 22 SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

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

29 (b) A person who is subject to personal jurisdiction in this State on a
 30 basis other than physical presence is not immune from service of process in
 31 this State. A party present in this State who is subject to the jurisdiction
 32 of another State is not immune from service of process allowable under the
 33 laws of that State.

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

1
2 SECTION 110. COMMUNICATION BETWEEN COURTS.

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

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

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

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

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

18
19 SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

36

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

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

(1) hold an evidentiary hearing;

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

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

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

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

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

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

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another 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 has jurisdiction to make an initial child-custody determination only if:

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

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to

1 exercise jurisdiction on the ground that this State is the more appropriate
 2 forum under Section 207 or 208, and:

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

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

8 (3) all courts having jurisdiction under paragraph (1) or (2) have
 9 declined to exercise jurisdiction on the ground that a court of this State is
 10 the more appropriate forum to determine the custody of the child under Section
 11 207 or 208; or

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

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

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

18
 19 SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

20 (a) Except as otherwise provided in Section 204, a court of this State
 21 which has made a child-custody determination consistent with Section 201 or
 22 203 has exclusive, continuing jurisdiction over the determination until:

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

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

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

35
 36 SECTION 203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise

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

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

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

11
12 SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

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

18 (b) If there is no previous child-custody determination that is
19 entitled to be enforced under this Act and a child-custody proceeding has not
20 been commenced in a court of a State having jurisdiction under Sections 201
21 through 203, a child-custody determination made under this section remains in
22 effect until an order is obtained from a court of a State having jurisdiction
23 under Sections 201 through 203. If a child-custody proceeding has not been or
24 is not commenced in a court of a State having jurisdiction under Sections 201
25 through 203, a child-custody determination made under this section becomes a
26 final determination, if it so provides and this State becomes the home State
27 of the child.

28 (c) If there is a previous child-custody determination that is entitled
29 to be enforced under this Act, or a child-custody proceeding has been
30 commenced in a court of a State having jurisdiction under Sections 201 through
31 203, any order issued by a court of this State under this section must specify
32 in the order a period that the court considers adequate to allow the person
33 seeking an order to obtain an order from the State having jurisdiction under
34 Sections 201 through 203. The order issued in this State remains in effect
35 until an order is obtained from the other State within the period specified or
36 the period expires.

1 (d) A court of this State which has been asked to make a child-custody
2 determination under this section, upon being informed that a child-custody
3 proceeding has been commenced in, or a child-custody determination has been
4 made by, a court of a State having jurisdiction under Sections 201 through
5 203, shall immediately communicate with the other court. A court of this
6 State which is exercising jurisdiction pursuant to Sections 201 through 203,
7 upon being informed that a child-custody proceeding has been commenced in, or
8 a child-custody determination has been made by, a court of another State under
9 a statute similar to this section shall immediately communicate with the court
10 of that State to resolve the emergency, protect the safety of the parties and
11 the child, and determine a period for the duration of the temporary order.

12
13 SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

14 (a) Before a child-custody determination is made under this Act, notice
15 and an opportunity to be heard in accordance with the standards of Section 108
16 must be given to all persons entitled to notice under the law of this State as
17 in child-custody proceedings between residents of this State, any parent whose
18 parental rights have not been previously terminated, and any person having
19 physical custody of the child.

20 (b) This Act does not govern the enforceability of a child-custody
21 determination made without notice or an opportunity to be heard.

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

25
26 SECTION 206. SIMULTANEOUS PROCEEDINGS.

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

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

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

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

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

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

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

19
 20 SECTION 207. INCONVENIENT FORUM.

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

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

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

35 (2) the length of time the child has resided outside this State;

36 (3) the distance between the court in this State and the court in

1 the State that would assume jurisdiction;

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

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

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

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

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

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

16 (d) A court of this State may decline to exercise its jurisdiction
17 under this Act if a child-custody determination is incidental to an action for
18 divorce or another proceeding while still retaining jurisdiction over the
19 divorce or other proceeding.

20
21 SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

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

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

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

33 (b) If a court of this State declines to exercise its jurisdiction
34 pursuant to subsection (a), it may fashion an appropriate remedy to ensure the
35 safety of the child and prevent a repetition of the unjustifiable conduct,
36 including staying the proceeding until a child-custody proceeding is commenced

1 in a court having jurisdiction under Sections 201 through 203.

2 (c) If a court dismisses a petition or stays a proceeding because it
3 declines to exercise its jurisdiction pursuant to subsection (a), it shall
4 assess against the party seeking to invoke its jurisdiction necessary and
5 reasonable expenses including costs, communication expenses, attorney's fees,
6 investigative fees, expenses for witnesses, travel expenses, and child care
7 during the course of the proceedings, unless the party from whom fees are
8 sought establishes that the assessment would be clearly inappropriate. The
9 court may not assess fees, costs, or expenses against this State unless
10 authorized by law other than this Act.

11
12 SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

13 (a) In a child-custody proceeding, each party, in its first pleading or
14 in an attached affidavit, shall give information, if reasonably ascertainable,
15 under oath as to the child's present address or whereabouts, the places where
16 the child has lived during the last five years, and the names and present
17 addresses of the persons with whom the child has lived during that period.
18 The pleading or affidavit must state whether the party:

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

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

28 (3) knows the names and addresses of any person not a party to the
29 proceeding who has physical custody of the child or claims rights of legal
30 custody or physical custody of, or visitation with, the child and, if so, the
31 names and addresses of those persons.

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

35 (c) If the declaration as to any of the items described in subsection
36 (a)(1) through (3) is in the affirmative, the declarant shall give additional

1 information under oath as required by the court. The court may examine the
 2 parties under oath as to details of the information furnished and other
 3 matters pertinent to the court's jurisdiction and the disposition of the case.

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

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

14
 15 SECTION 210. APPEARANCE OF PARTIES AND CHILD.

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

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

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

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

33 ARTICLE 3

34 ENFORCEMENT

35 SECTION 301. DEFINITIONS. In this article:

36 (1) "Petitioner" means a person who seeks enforcement of an order for

1 return of a child under the Hague Convention on the Civil Aspects of
2 International Child Abduction or enforcement of a child-custody determination.

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

7
8 SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION. Under this article a
9 court of this State may enforce an order for the return of the child made
10 under the Hague Convention on the Civil Aspects of International Child
11 Abduction as if it were a child-custody determination.

12
13 SECTION 303. DUTY TO ENFORCE.

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

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

24
25 SECTION 304. TEMPORARY VISITATION.

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

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

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

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

36

1 SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15
 16 SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.

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

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

23
 24 SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement
 25 under this article is commenced in a court of this State and the court
 26 determines that a proceeding to modify the determination is pending in a court
 27 of another State having jurisdiction to modify the determination under Article
 28 2, the enforcing court shall immediately communicate with the modifying court.
 29 The proceeding for enforcement continues unless the enforcing court, after
 30 consultation with the modifying court, stays or dismisses the proceeding.

31
 32 SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

36 (A) the issuing court did not have jurisdiction under

1 Article 2;

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

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

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

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

17
 18 SECTION 310. HEARING AND ORDER.

19 (a) Unless the court issues a temporary emergency order pursuant to
 20 Section 204, upon a finding that a petitioner is entitled to immediate
 21 physical custody of the child, the court shall order that the petitioner may
 22 take immediate physical custody of the child unless the respondent establishes
 23 that:

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

26 (A) the issuing court did not have jurisdiction under
 27 Article 2;

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

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

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

1 Article 2.

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

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

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

12
 13 SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

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

19 (b) If the court, upon the testimony of the petitioner or other
 20 witness, finds that the child is imminently likely to suffer serious physical
 21 harm or be removed from this State, it may issue a warrant to take physical
 22 custody of the child. The petition must be heard on the next judicial day
 23 after the warrant is executed unless that date is impossible. In that event,
 24 the court shall hold the hearing on the first judicial day possible. The
 25 application for the warrant must include the statements required by Section
 26 308(b).

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

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

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

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

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

35 (e) A warrant to take physical custody of a child is enforceable
 36 throughout this State. If the court finds on the basis of the testimony of

1 the petitioner or other witness that a less intrusive remedy is not effective,
2 it may authorize law enforcement officers to enter private property to take
3 physical custody of the child. If required by exigent circumstances of the
4 case, the court may authorize law enforcement officers to make a forcible
5 entry at any hour.

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

8
9 SECTION 312. COSTS, FEES, AND EXPENSES.

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

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

18
19 SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this State shall
20 accord full faith and credit to an order issued by another State and
21 consistent with this Act which enforces a child-custody determination by a
22 court of another State unless the order has been vacated, stayed, or modified
23 by a court having jurisdiction to do so under Article 2.

24
25 SECTION 314. APPEALS. An appeal may be taken from a final order in a
26 proceeding under this article in accordance with Supreme Court Rules of
27 Appellate Procedure. Unless the court enters a temporary emergency order
28 under Section 204, the enforcing court may not stay an order enforcing a
29 child-custody determination pending appeal.

30
31 SECTION 315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.

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

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

9 (b) A prosecutor acting under this section acts on behalf of the court
 10 and may not represent any party.

11

12 SECTION 316. ROLE OF LAW ENFORCEMENT. At the request of a prosecutor
 13 acting under Section 315, a law enforcement officer may take any lawful action
 14 reasonably necessary to locate a child or a party and assist a prosecutor with
 15 responsibilities under Section 315.

16

17 SECTION 317. COSTS AND EXPENSES. If the respondent is not the
 18 prevailing party, the court may assess against the respondent all direct
 19 expenses and costs incurred by the prosecutor and law enforcement officers
 20 under Section 315 or 316.

21 ARTICLE 4

22 MISCELLANEOUS PROVISIONS

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

27

28 SECTION 402. CODE. All provisions of this act of a general and
 29 permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the
 30 Arkansas Code Revision Commission shall incorporate the same in the Code.

31

32 SECTION 403. SEVERABILITY CLAUSE. If any provision of this Act or its
 33 application to any person or circumstance is held invalid, the invalidity does
 34 not affect other provisions or applications of this Act which can be given
 35 effect without the invalid provision or application, and to this end the
 36 provisions of this Act are severable.

1
2 SECTION 404. GENERAL REPEALER. All laws and parts of laws in conflict
3 with this Act are hereby repealed.

4
5 SECTION 405. REPEALS. The Uni form Child Custody Jurisdiction Act, Ark.
6 Code Ann. §§ 9-13-201 through 9-13-227, is hereby repealed.

7 ~~§ 9-13-201. Purposes of subchapter - Construction of provisions.~~

8 ~~(a) The general purposes of this subchapter are to:~~

9 ~~— (1) Avoid jurisdictional competition and conflict with courts of other~~
10 ~~states in matters of child custody which have in the past resulted in the~~
11 ~~shifting of children from state to state with harmful effects on their well-~~
12 ~~being;~~

13 ~~— (2) Promote cooperation with the courts of other states to the end that a~~
14 ~~custody decree is rendered in that state which can best decide the case in the~~
15 ~~interest of the child;~~

16 ~~— (3) Assure that litigation concerning the custody of a child take place~~
17 ~~ordinarily in the state with which the child and his family have the closest~~
18 ~~connection and where significant evidence concerning his care, protection,~~
19 ~~training, and personal relationships are most readily available, and that~~
20 ~~courts of this state decline the exercise of jurisdiction when the child and~~
21 ~~his family have a closer connection with another state;~~

22 ~~— (4) Discourage continuing controversies over child custody in the~~
23 ~~interest of greater stability of home environment and of secure family~~
24 ~~relationships for the child;~~

25 ~~— (5) Deter abductions and other unilateral removals of children undertaken~~
26 ~~to obtain custody awards;~~

27 ~~— (6) Avoid relitigation of custody decisions of other states in this state~~
28 ~~insofar as feasible;~~

29 ~~— (7) Facilitate the enforcement of custody decrees of other states;~~

30 ~~— (8) Promote and expand the exchange of information and other forms of~~
31 ~~mutual assistance between the courts of this state and those of other states~~
32 ~~concerned with the same child; and~~

33 ~~— (9) Make uniform the law of those states which enact it.~~

34 ~~(b) This subchapter shall be construed to promote the general purposes~~
35 ~~stated in this section.~~

36

~~§ 9-13-202. Definitions.~~

~~As used in this subchapter:~~

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

~~(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person;~~

~~(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;~~

~~(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;~~

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

~~(6) "Initial decree" means the first custody decree concerning a particular child;~~

~~(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;~~

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

~~(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and~~

~~(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.~~

~~§ 9-13-203. Jurisdiction.~~

~~(a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:~~

~~1 — (1) This state (i) is the home state of the child at the time of
2 commencement of the proceeding, or (ii) had been the child's home state within
3 six (6) months before commencement of the proceeding and the child is absent
4 from this state because of his removal or retention by a person claiming his
5 custody or for other reasons, and a parent or person acting as parent
6 continues to live in this state; or~~

~~7 — (2) It is in the best interest of the child that a court of this state
8 assume jurisdiction because (i) the child and his parents, or the child and at
9 least one (1) contestant, have a significant connection with this state and
10 (ii) there is available in this state substantial evidence concerning the
11 child's present or future care, protection, training, and personal
12 relationships; or~~

~~13 — (3) The child is physically present in this state and (i) the child has
14 been abandoned or (ii) it is necessary in an emergency to protect the child
15 because he has been subjected to or threatened with mistreatment or abuse or
16 is otherwise neglected or dependent; or~~

~~17 — (4)(i) —~~

~~18 — It appears that no other state would have jurisdiction under
19 prerequisites substantially in accordance with subdivisions (a)(1), (2), or
20 (3), or another state has declined to exercise jurisdiction on the ground that
21 this state is the more appropriate forum to determine the custody of the
22 child, and (ii) it is in the best interest of the child that this court assume
23 jurisdiction.~~

~~24 — (b) Except under subdivisions (a)(3) and (4), physical presence in this
25 state of the child, or of the child and one (1) of the contestants, is not
26 alone sufficient to confer jurisdiction on a court of this state to make a
27 child custody determination.~~

~~28 — (c) Physical presence of the child, while desirable, is not a
29 prerequisite for jurisdiction to determine his custody.~~

~~30
31 — § 9-13-204. Notice and opportunity to be heard - Inquiry about missing
32 children.~~

~~33 (a) Before making a decree under this subchapter, reasonable notice and
34 opportunity to be heard shall be given to the contestants, any parent whose
35 parental rights have not been previously terminated, and any person who has
36 physical custody of the child. If any of these persons is outside this state,~~

1 ~~notice and opportunity to be heard shall be given pursuant to § 9-13-205.~~

2 ~~— (b) In all proceedings for custody, when it appears from the pleadings or~~
3 ~~testimony that either parent resides at an unknown location, either parent is~~
4 ~~allegedly deceased, or personal service has not been perfected over either~~
5 ~~parent, the court shall, prior to the entry of a decree or modification~~
6 ~~concerning custody, inquire of the Missing Children Information Clearinghouse~~
7 ~~within the Arkansas Crime Information Center to determine if such child or~~
8 ~~children have been reported missing. The inquiry shall be directed to the~~
9 ~~center through a local law enforcement agency having on-line access to the~~
10 ~~Arkansas Crime Information Center.~~

11
12 ~~— § 9-13-205. Notice to persons outside this state.~~

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

16 ~~— (1) By personal delivery outside this state in the manner prescribed for~~
17 ~~service of process within this state;~~

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

21 ~~— (3) By any form of mail addressed to the person to be served and~~
22 ~~requesting a receipt; or~~

23 ~~— (4) As directed by the court, including publication, if other means of~~
24 ~~notification are ineffective.~~

25 ~~— (b) Notice under this section shall be served, or delivered, at least ten~~
26 ~~(10) days before any hearing in this state. Where notice is published,~~
27 ~~publication shall be thirty (30) days prior to the hearing.~~

28 ~~— (c) Proof of service outside this state may be made by affidavit of the~~
29 ~~individual who made the service, or in the manner prescribed by the law of~~
30 ~~this state, by the order pursuant to which the service is made, or by the law~~
31 ~~of the place in which the service is made. If service is made by mail, proof~~
32 ~~may be a receipt signed by the addressee or other evidence of delivery to the~~
33 ~~addressee.~~

34
35 ~~— § 9-13-206. Simultaneous proceedings in other states.~~

36 ~~(a) A court of this state shall not exercise its jurisdiction under this~~

1 ~~subchapter if at the time of filing the petition a proceeding concerning the~~
 2 ~~custody of the child was pending in a court of another state exercising~~
 3 ~~jurisdiction substantially in conformity with this subchapter, unless the~~
 4 ~~proceeding is stayed by the court of the other state because this state is a~~
 5 ~~more appropriate forum or for other reasons.~~

6 ~~— (b) Before hearing the petition in a custody proceeding the court shall~~
 7 ~~examine the pleadings and other information supplied by the parties under § 9-~~
 8 ~~13-209, and shall consult the child custody registry established under § 9-13-~~
 9 ~~216 concerning the pendency of proceedings with respect to the child in other~~
 10 ~~states. If the court has reason to believe that proceedings may be pending in~~
 11 ~~another state it shall direct an inquiry to the state court administrator or~~
 12 ~~other appropriate official of the other state.~~

13 ~~— (c) If the court is informed during the course of the proceeding that a~~
 14 ~~proceeding concerning the custody of the child is pending in another state~~
 15 ~~before the court assumed jurisdiction, it shall stay the proceeding and~~
 16 ~~communicate with the court in which the other proceeding is pending, to the~~
 17 ~~end that the issue may be litigated in the more appropriate forum and that~~
 18 ~~information be exchanged in accordance with §§ 9-13-219 - 9-13-222. If a court~~
 19 ~~of this state has made a custody decree before being informed of a pending~~
 20 ~~proceeding in a court of another state, it shall immediately inform that court~~
 21 ~~of the fact. If the court is informed that a proceeding was commenced in~~
 22 ~~another state after it assumed jurisdiction, it shall likewise inform the~~
 23 ~~other court to the end that the issues may be litigated in the more~~
 24 ~~appropriate forum.~~

25
 26 ~~— § 9-13-207. Inconvenient forum.~~

27 ~~(a) A court which has jurisdiction under this subchapter to make an initial~~
 28 ~~or modification decree may decline to exercise its jurisdiction any time~~
 29 ~~before making a decree if it finds that it is an inconvenient forum to make a~~
 30 ~~custody determination under the circumstances of the case and that a court of~~
 31 ~~another state is a more appropriate forum.~~

32 ~~— (b) A finding of inconvenient forum may be made upon the court's own~~
 33 ~~motion or upon motion of a party or a guardian ad litem or other~~
 34 ~~representative of the child.~~

35 ~~— (c) In determining if it is an inconvenient forum, the court shall~~
 36 ~~consider if it is in the interest of the child that another state assume~~

1 ~~jurisdiction. For this purpose, it may take into account the following~~
2 ~~factors, among others:~~

3 ~~— (1) If another state is or recently was the child's home state;~~

4 ~~— (2) If another state has a closer connection with the child and his~~
5 ~~family or with the child and one (1) or more of the contestants;~~

6 ~~— (3) If substantial evidence concerning the child's present or future~~
7 ~~care, protection, training, and personal relationships is more readily~~
8 ~~available in another state;~~

9 ~~— (4) If the parties have agreed on another forum which is no less~~
10 ~~appropriate; and~~

11 ~~— (5) If the exercise of jurisdiction by a court of this state would~~
12 ~~contravene any of the purposes stated in § 9-13-201.~~

13 ~~— (d) Before determining whether to decline or retain jurisdiction, the~~
14 ~~court may communicate with a court of another state and exchange information~~
15 ~~pertinent to the assumption of jurisdiction by either court, with a view to~~
16 ~~assuring that jurisdiction will be exercised by the more appropriate court and~~
17 ~~that a forum will be available to the parties.~~

18 ~~— (e) If the court finds that it is an inconvenient forum and that a court~~
19 ~~of another state is a more appropriate forum, it may dismiss the proceedings,~~
20 ~~or it may stay the proceedings upon condition that a custody proceeding be~~
21 ~~promptly commenced in another named state, or upon any other conditions which~~
22 ~~may be just and proper, including the condition that a moving party stipulate~~
23 ~~his consent and submission to the jurisdiction of the other forum.~~

24 ~~— (f) The court may decline to exercise its jurisdiction under this~~
25 ~~subchapter if a custody determination is incidental to an action for divorce~~
26 ~~or another proceeding while retaining jurisdiction over the divorce or other~~
27 ~~proceeding.~~

28 ~~— (g) If it appears to the court that it is clearly an inappropriate forum,~~
29 ~~it may require the party who commenced the proceedings to pay, in addition to~~
30 ~~the costs of the proceedings in this state, necessary travel and other~~
31 ~~expenses, including attorneys' fees, incurred by other parties or their~~
32 ~~witnesses. Payment is to be made to the clerk of the court for remittance to~~
33 ~~the proper party.~~

34 ~~— (h) Upon dismissal or stay of proceedings under this section, the court~~
35 ~~shall inform the court found to be the more appropriate forum of this fact or,~~
36 ~~if the court which would have jurisdiction in the other state is not certainly~~

1 known, shall transmit the information to the court administrator or other
2 appropriate official for forwarding to the appropriate court.

3 ~~— (i) Any communication received from another state informing this state of
4 a finding of inconvenient forum because a court of this state is the more
5 appropriate forum shall be filed in the custody registry of the appropriate
6 court. Upon assuming jurisdiction, the court of this state shall inform the
7 original court of this fact.~~

8
9 ~~— § 9-13-208. Jurisdiction declined by reason of conduct.~~

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

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

22 ~~— (c) In appropriate cases, a court dismissing a petition under this
23 section may charge the petitioner with necessary travel and other expenses,
24 including attorneys' fees, incurred by other parties or their witnesses.~~

25
26 ~~— § 9-13-209. Information under oath to be submitted to the court.~~

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

33 ~~— (1) He has participated as a party, witness, or in any other capacity, in
34 any other litigation concerning the custody of the same child in this or any
35 other state;~~

36 ~~— (2) He has information of any custody proceeding concerning the child~~

1 ~~pending in a court of this or any other state; and~~

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

5 ~~— (b) If the declaration as to any of the above items is in the~~
6 ~~affirmative, the declarant shall give additional information under oath as~~
7 ~~required by the court. The court may examine the parties under oath as to~~
8 ~~details of the information furnished and as to other matters pertinent to the~~
9 ~~court's jurisdiction and the disposition of the case.~~

10 ~~— (c) Each party has a continuing duty to inform the court of any custody~~
11 ~~proceeding concerning the child in this or any other state of which he~~
12 ~~obtained information during this proceeding.~~

13
14 ~~§ 9-13-210. Additional parties.~~

15 ~~If the court learns from information furnished by the parties pursuant to § 9-~~
16 ~~13-209 or from other sources that a person not a party to the custody~~
17 ~~proceeding has physical custody of the child or claims to have custody or~~
18 ~~visitation rights with respect to the child, it shall order that person to be~~
19 ~~joined as a party and to be duly notified of the pendency of the proceeding~~
20 ~~and of his joinder as a party. If the person joined as a party is outside this~~
21 ~~state, he shall be served with process or otherwise notified in accordance~~
22 ~~with § 9-13-205.~~

23
24 ~~§ 9-13-211. Appearance of parties and child.~~

25 ~~— (a) The court may order any party to the proceeding who is in this state to~~
26 ~~appear personally before the court. If that party has physical custody of the~~
27 ~~child, the court may order that he appear personally with the child.~~

28 ~~— (b) If a party to the proceeding whose presence is desired by the court~~
29 ~~is outside this state with or without the child, the court may order that the~~
30 ~~notice given under § 9-13-205 include a statement directing that party to~~
31 ~~appear personally with or without the child and declaring that failure to~~
32 ~~appear may result in a decision adverse to that party.~~

33 ~~— (c) If a party to the proceeding who is outside this state is directed to~~
34 ~~appear under subsection (b) or desires to appear personally before the court~~
35 ~~with or without the child, the court may require another party to pay to the~~
36 ~~clerk of the court travel and other necessary expenses of the party so~~

1 appearing and of the child, if this is just and proper under the
2 circumstances.

3
4 ~~§ 9-13-212. Binding force and res judicata effect of custody decree.~~

5 A custody decree rendered by a court of this state which had jurisdiction
6 under § 9-13-203 binds all parties who have been served in this state or
7 notified in accordance with § 9-13-205, or who have submitted to the
8 jurisdiction of the court, and who have been given an opportunity to be heard.
9 As to these parties, the custody decree is conclusive as to all issues of law
10 and fact decided and as to the custody determination made, unless and until
11 that determination is modified pursuant to law, including the provisions of
12 this subchapter.

13
14 ~~§ 9-13-213. Recognition of out-of-state custody decrees.~~

15 The courts of this state shall recognize and enforce an initial or
16 modification decree of a court of another state which had assumed jurisdiction
17 under statutory provisions substantially in accordance with this subchapter,
18 or which was made under factual circumstances meeting the jurisdictional
19 standards of this subchapter, so long as this decree has not been modified in
20 accordance with jurisdictional standards substantially similar to those of
21 this subchapter.

22
23 ~~§ 9-13-214. Modification of custody decree of another state.~~

24 (a) If a court of another state has made a custody decree, a court of this
25 state shall not modify that decree unless (1) it appears to the court of this
26 state that the court which rendered the decree does not now have jurisdiction
27 under jurisdictional prerequisites substantially in accordance with this
28 subchapter or has declined to assume jurisdiction to modify the decree and (2)
29 the court of this state has jurisdiction.

30 (b) If a court of this state is authorized under subsection (a) and § 9-
31 13-208 to modify a custody decree of another state, it shall give due
32 consideration to the transcript of the record and other documents of all
33 previous proceedings submitted to it in accordance with § 9-13-222.

34
35 ~~§ 9-13-215. Filing and enforcement of custody decree of another state.~~

36 (a) A certified copy of a custody decree of another state may be filed in the

1 ~~office of the clerk of any chancery court of this state. The clerk shall treat~~
2 ~~the decree in the same manner as a custody decree of the chancery court of~~
3 ~~this state. A custody decree so filed has the same effect and shall be~~
4 ~~enforced in like manner as a custody decree rendered by a court of this state.~~

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

9
10 ~~§ 9-13-216. Registry of out-of-state custody decrees and proceedings.~~

11 ~~The clerk of each chancery court shall maintain a registry in which he shall~~
12 ~~enter the following:~~

13 ~~— (1) Certified copies of custody decrees of other states received for~~
14 ~~filing;~~

15 ~~— (2) Communications as to the pendency of custody proceedings in other~~
16 ~~states;~~

17 ~~— (3) Communications concerning a finding of inconvenient forum by a court~~
18 ~~of another state; and~~

19 ~~— (4) Other communications or documents concerning custody proceedings in~~
20 ~~another state which may affect the jurisdiction of a court of this state or~~
21 ~~the disposition to be made by it in a custody proceeding.~~

22
23 ~~§ 9-13-217. Certified copies of custody decree.~~

24 ~~The clerks of the chancery courts of this state, at the request of the court~~
25 ~~of another state or at the request of any person who is affected by or has a~~
26 ~~legitimate interest in a custody decree, shall certify and forward a copy of~~
27 ~~the decree to that court or person.~~

28
29 ~~— § 9-13-218. Taking testimony in another state.~~

30 ~~In addition to other procedural devices available to a party, any party to the~~
31 ~~proceeding or a guardian ad litem or other representative of the child may~~
32 ~~adduce testimony of witnesses, including parties and the child, by deposition~~
33 ~~or otherwise, in another state. The court on its own motion may direct that~~
34 ~~the testimony of a person be taken in another state and may prescribe the~~
35 ~~manner in which and the terms upon which the testimony shall be taken.~~

36

1 ~~§ 9-13-219. Hearings and studies in another state - Orders to appear.~~

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

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

17
18 ~~§ 9-13-220. Assistance to courts of other states.~~

19 ~~(a) Upon request of the court of another state, the courts of this state~~
20 ~~which are competent to hear custody matters may order a person in this state~~
21 ~~to appear at a hearing to adduce evidence or to produce or give evidence under~~
22 ~~other procedures available in this state, or may order social studies to be~~
23 ~~made for use in a custody proceeding in another state. A certified copy of the~~
24 ~~transcript of the record of the hearing or the evidence otherwise adduced, and~~
25 ~~any social studies prepared, shall be forwarded by the clerk of the court to~~
26 ~~the requesting court.~~

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

29 ~~(c) Upon request of the court of another state, a competent court of this~~
30 ~~state may order a person in this state to appear alone or with the child in a~~
31 ~~custody proceeding in another state. The court may condition compliance with~~
32 ~~the request upon assurance by the other state that state travel and other~~
33 ~~necessary expenses will be advanced or reimbursed.~~

34
35 ~~§ 9-13-221. Preservation of documents for use in other states.~~

36 ~~In any custody proceeding in this state, the court shall preserve the~~

1 ~~pleadings, orders and decrees, any record that has been made of its hearings,~~
2 ~~social studies, and other pertinent documents until the child reaches eighteen~~
3 ~~(18) years of age. Upon appropriate request of the court of another state, the~~
4 ~~court shall forward to the other court certified copies of any or all of those~~
5 ~~documents.~~

6
7 ~~§ 9-13-222. Request for court records of another state.~~

8 ~~If a custody decree has been rendered in another state concerning a child~~
9 ~~involved in a custody proceeding pending in a court of this state, the court~~
10 ~~of this state, upon taking jurisdiction of the case, shall request of the~~
11 ~~court of the other state a certified copy of the transcript of any court~~
12 ~~record and other documents mentioned in § 9-13-221.~~

13
14 ~~—§ 9-13-223. International application.~~

15 ~~The general policies of this subchapter extend to the international area. The~~
16 ~~provisions of this subchapter relating to the recognition and enforcement of~~
17 ~~custody decrees of other states apply to custody decrees and decrees involving~~
18 ~~legal institutions similar in nature to custody institutions rendered by~~
19 ~~appropriate authorities of other nations if reasonable notice and opportunity~~
20 ~~to be heard were given to all affected persons.~~

21
22 ~~§ 9-13-224. Priority.~~

23 ~~Upon the request of a party to a custody proceeding which raises a question of~~
24 ~~existence or exercise of jurisdiction under this subchapter, the case shall be~~
25 ~~given calendar priority and handled expeditiously.~~

26
27 ~~—§ 9-13-225. Severability.~~

28 ~~If any provision of this subchapter or the application thereof to any person~~
29 ~~or circumstance is held invalid, its invalidity does not affect other~~
30 ~~provisions or applications of the subchapter which can be given effect without~~
31 ~~the invalid provision or application, and to this end the provisions of this~~
32 ~~subchapter are severable.~~

33
34 ~~—§ 9-13-226. Short title.~~

35 ~~This subchapter may be cited as the "Uniform Child Custody Jurisdiction Act".~~
36 ~~History. Acts 1979, No. 91, § 26; A.S.A. 1947, § 34-2725.~~

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~~§ 9-13-227. Repealer.~~

~~All laws and parts of laws in conflict with this subchapter are hereby repealed.~~

SECTION 406. TRANSITIONAL PROVISION. A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made.

APPROVED: 3/17/1999