

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

538L0283

## HOUSE BILL NO. 1193

Introduced by: Representative O'Brien and Senators Knudson and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Child-Custody Jurisdiction and  
2 Enforcement Act and to repeal the Uniform Child Custody Jurisdiction Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Section 101. This Act may be cited as the Uniform Child-Custody Jurisdiction  
5 and Enforcement Act.

6 Section 2. Section 102. In this Act:

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

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

10 (3) "Child-custody determination" means a judgment, decree, or other order of a court  
11 providing for the legal custody, physical custody, or visitation with respect to a child.

12 The term includes a permanent, temporary, initial, and modification order. The term  
13 does not include an order relating to child support or other monetary obligation of an  
14 individual.

15 (4) "Child-custody proceeding" means a proceeding in which legal custody, physical  
16 custody, or visitation with respect to a child is an issue. The term includes a



1 proceeding for divorce, separation, neglect, abuse, dependency, guardianship,  
2 paternity, termination of parental rights, and protection from domestic violence, in  
3 which the issue may appear. The term does not include a proceeding involving  
4 juvenile delinquency, contractual emancipation, or enforcement under Article 3.

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

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

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

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

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

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

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

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

1 commercial entity.

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

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

6 (B) Has been awarded legal custody by a court or claims a right to legal custody  
7 under the law of this state.

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

9 (15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
10 United States Virgin Islands, or any territory or insular possession subject to the  
11 jurisdiction of the United States.

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

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

16 Section 3. Section 103. This Act does not govern an adoption proceeding or a proceeding  
17 pertaining to the authorization of emergency medical care for a child.

18 Section 4. Section 104. (a) A child-custody proceeding that pertains to an Indian child as  
19 defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Act to  
20 the extent that it is governed by the Indian Child Welfare Act.

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

23 (c) A child-custody determination made by a tribe under factual circumstances in substantial  
24 conformity with the jurisdictional standards of this Act must be recognized and enforced under

1 Article 3.

2 Section 5. Section 105. (a) A court of this state shall treat a foreign country as if it were a  
3 state of the United States for the purpose of applying Articles 1 and 2.

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

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

9 Section 6. Section 106. A child-custody determination made by a court of this state that had  
10 jurisdiction under this Act binds all persons who have been served in accordance with the laws  
11 of this state or notified in accordance with section 108 of this Act or who have submitted to the  
12 jurisdiction of the court, and who have been given an opportunity to be heard. As to those  
13 persons, the determination is conclusive as to all decided issues of law and fact except to the  
14 extent the determination is modified.

15 Section 7. Section 107. If a question of existence or exercise of jurisdiction under this Act  
16 is raised in a child-custody proceeding, the question, upon request of a party, must be given  
17 priority on the calendar and handled expeditiously.

18 Section 8. Section 108. (a) Notice required for the exercise of jurisdiction when a person is  
19 outside this state may be given in a manner prescribed by the law of this state for service of  
20 process or by the law of the state in which the service is made. Notice must be given in a manner  
21 reasonably calculated to give actual notice but may be by publication if other means are not  
22 effective.

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

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

3 Section 9. Section 109. (a) A party to a child-custody proceeding, including a modification  
4 proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody  
5 determination, is not subject to personal jurisdiction in this state for another proceeding or  
6 purpose solely by reason of having participated, or of having been physically present for the  
7 purpose of participating, in the proceeding.

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

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

15 Section 10. Section 110. (a) A court of this state may communicate with a court in another  
16 state concerning a proceeding arising under this Act.

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

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

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

1 communication and granted access to the record.

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

5 Section 11. Section 111. (a) In addition to other procedures available to a party, a party to  
6 a child-custody proceeding may offer testimony of witnesses who are located in another state,  
7 including testimony of the parties and the child, by deposition or other means allowable in this  
8 state for testimony taken in another state. The court on its own motion may order that the  
9 testimony of a person be taken in another state and may prescribe the manner in which and the  
10 terms upon which the testimony is taken.

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

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

18 Section 12. Section 112. (a) A court of this state may request the appropriate court of  
19 another state to:

- 20 (1) Hold an evidentiary hearing;
- 21 (2) Order a person to produce or give evidence pursuant to procedures of that state;
- 22 (3) Order that an evaluation be made with respect to the custody of a child involved in  
23 a pending proceeding;
- 24 (4) Forward to the court of this state a certified copy of the transcript of the record of the

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

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

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

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

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

13 Section 13. Section 201. (a) Except as otherwise provided in section 204 of this Act, a court  
14 of this state has jurisdiction to make an initial child-custody determination only if:

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

19 (2) A court of another state does not have jurisdiction under paragraph (1), or a court of  
20 the home state of the child has declined to exercise jurisdiction on the ground that  
21 this state is the more appropriate forum under section 207 or 208 of this Act, and:

22 (A) The child and the child's parents, or the child and at least one parent or a  
23 person acting as a parent, have a significant connection with this state other  
24 than mere physical presence; and

1 (B) Substantial evidence is available in this state concerning the child's care,  
2 protection, training, and personal relationships;

3 (3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise  
4 jurisdiction on the ground that a court of this state is the more appropriate forum to  
5 determine the custody of the child under section 207 or 208 of this Act; or

6 (4) No court of any other state would have jurisdiction under the criteria specified in  
7 paragraph (1), (2), or (3).

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

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

12 Section 14. Section 202. (a) Except as otherwise provided in section 204 of this Act, a court  
13 of this state which has made a child-custody determination consistent with section 201 or 203  
14 of this Act has exclusive, continuing jurisdiction over the determination until:

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

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

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

24 Section 15. Section 203. Except as otherwise provided in section 204 of this Act, a court of

1 this state may not modify a child-custody determination made by a court of another state unless  
2 a court of this state has jurisdiction to make an initial determination under section 201(a)(1) or  
3 (2) of this Act and:

4 (1) The court of the other state determines it no longer has exclusive, continuing  
5 jurisdiction under section 202 of this Act or that a court of this state would be a more  
6 convenient forum under section 207 of this Act; or

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

9 Section 16. Section 204. (a) A court of this state has temporary emergency jurisdiction if the  
10 child is present in this state and the child has been abandoned or it is necessary in an emergency  
11 to protect the child because the child, or a sibling or parent of the child, is subjected to or  
12 threatened with mistreatment or abuse.

13 (b) If there is no previous child-custody determination that is entitled to be enforced under  
14 this Act and a child-custody proceeding has not been commenced in a court of a state having  
15 jurisdiction under sections 201 to 203, inclusive, of this Act, a child-custody determination  
16 made under this section remains in effect until an order is obtained from a court of a state having  
17 jurisdiction under sections 201 to 203, inclusive, of this Act. If a child-custody proceeding has  
18 not been or is not commenced in a court of a state having jurisdiction under sections 201 to 203,  
19 inclusive, of this Act, a child-custody determination made under this section becomes a final  
20 determination, if it so provides and this state becomes the home state of the child.

21 (c) If there is a previous child-custody determination that is entitled to be enforced under this  
22 Act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction  
23 under sections 201 to 203, inclusive, of this Act, any order issued by a court of this state under  
24 this section must specify in the order a period that the court considers adequate to allow the

1 person seeking an order to obtain an order from the state having jurisdiction under sections 201  
2 to 203, inclusive, of this Act. The order issued in this state remains in effect until an order is  
3 obtained from the other state within the period specified or the period expires.

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

14 Section 17. Section 205. (a) Before a child-custody determination is made under this Act,  
15 notice and an opportunity to be heard in accordance with the standards of section 108 of this Act  
16 must be given to all persons entitled to notice under the law of this state as in child-custody  
17 proceedings between residents of this state, any parent whose parental rights have not been  
18 previously terminated, and any person having physical custody of the child.

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

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

24 Section 18. Section 206. (a) Except as otherwise provided in section 204 of this Act, a court

1 of this state may not exercise its jurisdiction under this article if, at the time of the  
2 commencement of the proceeding, a proceeding concerning the custody of the child has been  
3 commenced in a court of another state having jurisdiction substantially in conformity with this  
4 Act, unless the proceeding has been terminated or is stayed by the court of the other state  
5 because a court of this state is a more convenient forum under section 207 of this Act.

6 (b) Except as otherwise provided in section 204 of this Act, a court of this state, before  
7 hearing a child-custody proceeding, shall examine the court documents and other information  
8 supplied by the parties pursuant to section 209 of this Act. If the court determines that a child-  
9 custody proceeding has been commenced in a court in another state having jurisdiction  
10 substantially in accordance with this Act, the court of this state shall stay its proceeding and  
11 communicate with the court of the other state. If the court of the state having jurisdiction  
12 substantially in accordance with this Act does not determine that the court of this state is a more  
13 appropriate forum, the court of this state shall dismiss the proceeding.

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

- 18 (1) Stay the proceeding for modification pending the entry of an order of a court of the  
19 other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
- 20 (2) Enjoin the parties from continuing with the proceeding for enforcement; or
- 21 (3) Proceed with the modification under conditions it considers appropriate.

22 Section 19. Section 207. (a) A court of this state which has jurisdiction under this Act to  
23 make a child-custody determination may decline to exercise its jurisdiction at any time if it  
24 determines that it is an inconvenient forum under the circumstances and that a court of another

1 state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion  
2 of a party, the court's own motion, or request of another court.

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

- 7 (1) Whether domestic violence has occurred and is likely to continue in the future and  
8 which state could best protect the parties and the child;
- 9 (2) The length of time the child has resided outside this state;
- 10 (3) The distance between the court in this state and the court in the state that would  
11 assume jurisdiction;
- 12 (4) The relative financial circumstances of the parties;
- 13 (5) Any agreement of the parties as to which state should assume jurisdiction;
- 14 (6) The nature and location of the evidence required to resolve the pending litigation,  
15 including testimony of the child;
- 16 (7) The ability of the court of each state to decide the issue expeditiously and the  
17 procedures necessary to present the evidence; and
- 18 (8) The familiarity of the court of each state with the facts and issues in the pending  
19 litigation.

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

24 (d) A court of this state may decline to exercise its jurisdiction under this Act if a child-

1 custody determination is incidental to an action for divorce or another proceeding while still  
2 retaining jurisdiction over the divorce or other proceeding.

3 Section 20. Section 208. (a) Except as otherwise provided in section 204 of this Act, if a  
4 court of this state has jurisdiction under this Act because a person seeking to invoke its  
5 jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its  
6 jurisdiction unless:

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

9 (2) A court of the state otherwise having jurisdiction under sections 201 to 203,  
10 inclusive, of this Act determines that this state is a more appropriate forum under  
11 section 207 of this Act; or

12 (3) No court of any other state would have jurisdiction under the criteria specified in  
13 sections 201 to 203, inclusive, of this Act.

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

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

1 Section 21. Section 209. (a) In a child-custody proceeding, each party, in its first pleading  
2 or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to  
3 the child's present address or whereabouts, the places where the child has lived during the last  
4 five years, and the names and present addresses of the persons with whom the child has lived  
5 during that period. The pleading or affidavit must state whether the party:

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

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

13 (3) Knows the names and addresses of any person not a party to the proceeding who has  
14 physical custody of the child or claims rights of legal custody or physical custody of,  
15 or visitation with, the child and, if so, the names and addresses of those persons.

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

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

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

24 (e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty

1 of a party or child would be jeopardized by disclosure of identifying information, the  
2 information must be sealed and may not be disclosed to the other party or the public unless the  
3 court orders the disclosure to be made after a hearing in which the court takes into consideration  
4 the health, safety, or liberty of the party or child and determines that the disclosure is in the  
5 interest of justice.

6 Section 22. Section 210. (a) In a child-custody proceeding in this state, the court may order  
7 a party to the proceeding who is in this state to appear before the court in person with or without  
8 the child. The court may order any person who is in this state and who has physical custody or  
9 control of the child to appear in person with the child.

10 (b) If a party to a child-custody proceeding whose presence is desired by the court is outside  
11 this state, the court may order that a notice given pursuant to section 108 of this Act include a  
12 statement directing the party to appear in person with or without the child and informing the  
13 party that failure to appear may result in a decision adverse to the party.

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

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

20 Section 23. Section 301. In this article:

21 (1) "Petitioner" means a person who seeks enforcement of an order for return of a child  
22 under the Hague Convention on the Civil Aspects of International Child Abduction  
23 or enforcement of a child-custody determination.

24 (2) "Respondent" means a person against whom a proceeding has been commenced for

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

4 Section 24. Section 302. Under this article a court of this state may enforce an order for the  
5 return of the child made under the Hague Convention on the Civil Aspects of International Child  
6 Abduction as if it were a child-custody determination.

7 Section 25. Section 303. (a) A court of this state shall recognize and enforce a child-custody  
8 determination of a court of another state if the latter court exercised jurisdiction in substantial  
9 conformity with this Act or the determination was made under factual circumstances meeting  
10 the jurisdictional standards of this Act and the determination has not been modified in  
11 accordance with this Act.

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

16 Section 26. Section 304. (a) A court of this state which does not have jurisdiction to modify  
17 a child-custody determination, may issue a temporary order enforcing:

- 18 (1) A visitation schedule made by a court of another state; or  
19 (2) The visitation provisions of a child-custody determination of another state that does  
20 not provide for a specific visitation schedule.

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

1 Section 27. Section 305. (a) A child-custody determination issued by a court of another state  
2 may be registered in this state, with or without a simultaneous request for enforcement, by  
3 sending to the appropriate court in this state:

- 4 (1) A letter or other document requesting registration;
- 5 (2) Two copies, including one certified copy, of the determination sought to be  
6 registered, and a statement under penalty of perjury that to the best of the knowledge  
7 and belief of the person seeking registration the order has not been modified; and
- 8 (3) Except as otherwise provided in section 209 of this Act, the name and address of the  
9 person seeking registration and any parent or person acting as a parent who has been  
10 awarded custody or visitation in the child-custody determination sought to be  
11 registered.

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

- 13 (1) Cause the determination to be filed as a foreign judgment, together with one copy of  
14 any accompanying documents and information, regardless of their form; and
- 15 (2) Serve notice upon the persons named pursuant to subsection (a)(3) and provide them  
16 with an opportunity to contest the registration in accordance with this section.

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

- 18 (1) A registered determination is enforceable as of the date of the registration in the same  
19 manner as a determination issued by a court of this state;
- 20 (2) A hearing to contest the validity of the registered determination must be requested  
21 within twenty days after service of notice; and
- 22 (3) Failure to contest the registration will result in confirmation of the child-custody  
23 determination and preclude further contest of that determination with respect to any  
24 matter that could have been asserted.

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

- 4 (1) The issuing court did not have jurisdiction under Article 2;
- 5 (2) The child-custody determination sought to be registered has been vacated, stayed, or  
6 modified by a court having jurisdiction to do so under Article 2; or
- 7 (3) The person contesting registration was entitled to notice, but notice was not given in  
8 accordance with the standards of section 108 of this Act, in the proceedings before  
9 the court that issued the order for which registration is sought.

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

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

16 Section 28. Section 306. (a) A court of this state may grant any relief normally available  
17 under the law of this state to enforce a registered child-custody determination made by a court  
18 of another state.

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

21 Section 29. Section 307. If a proceeding for enforcement under this article is commenced  
22 in a court of this state and the court determines that a proceeding to modify the determination  
23 is pending in a court of another state having jurisdiction to modify the determination under  
24 Article 2, the enforcing court shall immediately communicate with the modifying court. The

1 proceeding for enforcement continues unless the enforcing court, after consultation with the  
2 modifying court, stays or dismisses the proceeding.

3 Section 30. Section 308. (a) A petition under this article must be verified. Certified copies  
4 of all orders sought to be enforced and of any order confirming registration must be attached to  
5 the petition. A copy of a certified copy of an order may be attached instead of the original.

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

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

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

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

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

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

20 (6) If the child-custody determination has been registered and confirmed under section  
21 305 of this Act, the date and place of registration.

22 (c) Upon the filing of a petition, the court shall issue an order directing the respondent to  
23 appear in person with or without the child at a hearing and may enter any order necessary to  
24 ensure the safety of the parties and the child. The hearing must be held on the next judicial day

1 after service of the order unless that date is impossible. In that event, the court shall hold the  
2 hearing on the first judicial day possible. The court may extend the date of hearing at the request  
3 of the petitioner.

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

9 (1) The child-custody determination has not been registered and confirmed under section  
10 305 of this Act and that:

11 (A) The issuing court did not have jurisdiction under Article 2;

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

15 (C) The respondent was entitled to notice, but notice was not given in accordance  
16 with the standards of section 108 of this Act, in the proceedings before the  
17 court that issued the order for which enforcement is sought; or

18 (2) The child-custody determination for which enforcement is sought was registered and  
19 confirmed under section 304 of this Act, but has been vacated, stayed, or modified  
20 by a court of a state having jurisdiction to do so under Article 2.

21 Section 31. Section 309. Except as otherwise provided in section 311 of this Act, the petition  
22 and order must be served, by any method authorized by the state statute, upon respondent and  
23 any person who has physical custody of the child.

24 Section 32. Section 310. (a) Unless the court issues a temporary emergency order pursuant

1 to section 204 of this Act, upon a finding that a petitioner is entitled to immediate physical  
2 custody of the child, the court shall order that the petitioner may take immediate physical  
3 custody of the child unless the respondent establishes that:

4 (1) The child-custody determination has not been registered and confirmed under section  
5 305 of this Act and that:

6 (A) The issuing court did not have jurisdiction under Article 2;

7 (B) The child-custody determination for which enforcement is sought has been  
8 vacated, stayed, or modified by a court of a state having jurisdiction to do so  
9 under Article 2; or

10 (C) The respondent was entitled to notice, but notice was not given in accordance  
11 with the standards of section 108 of this Act, in the proceedings before the  
12 court that issued the order for which enforcement is sought; or

13 (2) The child-custody determination for which enforcement is sought was registered and  
14 confirmed under section 305 of this Act but has been vacated, stayed, or modified by  
15 a court of a state having jurisdiction to do so under Article 2.

16 (b) The court shall award the fees, costs, and expenses authorized under section 312 of this  
17 Act and may grant additional relief, including a request for the assistance of law enforcement  
18 officers, and set a further hearing to determine whether additional relief is appropriate.

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

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

24 Section 33. Section 311. (a) Upon the filing of a petition seeking enforcement of a child-

1 custody determination, the petitioner may file a verified application for the issuance of a warrant  
2 to take physical custody of the child if the child is immediately likely to suffer serious physical  
3 harm or be removed from this state.

4 (b) If the court, upon the testimony of the petitioner or other witness, finds that the child is  
5 imminently likely to suffer serious physical harm or be removed from this state, it may issue  
6 a warrant to take physical custody of the child. The petition must be heard on the next judicial  
7 day after the warrant is executed unless that date is impossible. In that event, the court shall hold  
8 the hearing on the first judicial day possible. The application for the warrant must include the  
9 statements required by section 308(b) of this Act.

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

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

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

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

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

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

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

1 Section 34. Section 312. (a) The court shall award the prevailing party, including a state,  
2 necessary and reasonable expenses incurred by or on behalf of the party, including costs,  
3 communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel  
4 expenses, and child care during the course of the proceedings, unless the party from whom fees  
5 or expenses are sought establishes that the award would be clearly inappropriate.

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

8 Section 35. Section 313. A court of this state shall accord full faith and credit to an order  
9 issued by another state and consistent with this Act which enforces a child-custody  
10 determination by a court of another state unless the order has been vacated, stayed, or modified  
11 by a court having jurisdiction to do so under Article 2.

12 Section 36. Section 314. An appeal may be taken from a final order in a proceeding under  
13 this article in accordance with expedited appellate procedures in other civil cases. Unless the  
14 court enters a temporary emergency order under section 204 of this Act, the enforcing court may  
15 not stay an order enforcing a child-custody determination pending appeal.

16 Section 37. Section 315. (a) In a case arising under this Act or involving the Hague  
17 Convention on the Civil Aspects of International Child Abduction, the prosecutor or other  
18 appropriate public official may take any lawful action, including resort to a proceeding under  
19 this article or any other available civil proceeding to locate a child, obtain the return of a child,  
20 or enforce a child-custody determination if there is:

- 21 (1) An existing child-custody determination;
- 22 (2) A request to do so from a court in a pending child-custody proceeding;
- 23 (3) A reasonable belief that a criminal statute has been violated; or
- 24 (4) A reasonable belief that the child has been wrongfully removed or retained in

1 violation of the Hague Convention on the Civil Aspects of International Child  
2 Abduction.

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

5 Section 38. Section 316. At the request of a prosecutor or other appropriate public official  
6 acting under section 315 of this Act, a law enforcement officer may take any lawful action  
7 reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public  
8 official with responsibilities under section 315 of this Act.

9 Section 39. Section 317. If the respondent is not the prevailing party, the court may assess  
10 against the respondent all direct expenses and costs incurred by the prosecutor or other  
11 appropriate public official and law enforcement officers under section 315 or 316 of this Act.

12 Section 40. Section 401. In applying and construing this Uniform Act, consideration must  
13 be given to the need to promote uniformity of the law with respect to its subject matter among  
14 states that enact it.

15 Section 41. Section 402. If any provision of this Act or its application to any person or  
16 circumstance is held invalid, the invalidity does not affect other provisions or applications of  
17 this Act which can be given effect without the invalid provision or application, and to this end  
18 the provisions of this Act are severable.

19 Section 42. Section 403. This Act takes effect on July 1, 2005.

20 Section 43. Section 404. That §§ 26-5A-1 to 26-5A-26, inclusive, be repealed.

21 Section 44. Section 405. A motion or other request for relief made in a child-custody  
22 proceeding or to enforce a child-custody determination which was commenced before the  
23 effective date of this Act is governed by the law in effect at the time the motion or other request  
24 was made.