
HOUSE BILL 3025

State of Washington

55th Legislature

1998 Regular Session

By Representatives McDonald and Costa; by request of Washington Uniform
Legislation Commission

Read first time 01/27/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to the uniform child custody jurisdiction and
2 enforcement act; adding new sections to chapter 26.27 RCW; and
3 repealing RCW 26.27.010, 26.27.020, 26.27.030, 26.27.040, 26.27.050,
4 26.27.060, 26.27.070, 26.27.080, 26.27.090, 26.27.100, 26.27.110,
5 26.27.120, 26.27.130, 26.27.140, 26.27.150, 26.27.160, 26.27.170,
6 26.27.180, 26.27.190, 26.27.200, 26.27.210, 26.27.220, 26.27.230,
7 26.27.900, 26.27.910, 26.27.920, and 26.27.930.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 ARTICLE 1

10 GENERAL PROVISIONS

11 NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter may be cited as
12 the uniform child custody jurisdiction and enforcement act.

13 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
14 section apply throughout this chapter, unless the context clearly
15 requires otherwise.

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

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

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

9 (4) "Child custody proceeding" means a proceeding in which legal
10 custody, physical custody, or visitation with respect to a child is an
11 issue. The term includes a proceeding for dissolution, divorce,
12 separation, neglect, abuse, dependency, guardianship, paternity,
13 termination of parental rights, and protection from domestic violence,
14 in which the issue may appear. The term does not include a proceeding
15 involving juvenile delinquency, contractual emancipation, or
16 enforcement under Article 3.

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

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

21 (7) "Home state" means the state in which a child lived with a
22 parent or a person acting as a parent for at least six consecutive
23 months immediately before the commencement of a child custody
24 proceeding. In the case of a child less than six months of age, the
25 term means the state in which the child lived from birth with a parent
26 or person acting as a parent. A period of temporary absence of a
27 parent or person acting as a parent is part of the period.

28 (8) "Initial determination" means the first child custody
29 determination concerning a particular child.

30 (9) "Issuing court" means the court that makes a child custody
31 determination for which enforcement is sought under this chapter.

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

34 (11) "Modification" means a child custody determination that
35 changes, replaces, supersedes, or is otherwise made after a previous
36 determination concerning the same child, whether or not it is made by
37 the court that made the previous determination.

38 (12) "Person" means an individual, corporation, business trust,
39 estate, trust, partnership, limited liability company, association,

1 joint venture, government, governmental subdivision, agency, or
2 instrumentality, public corporation, or any other legal or commercial
3 entity.

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

6 (a) Has physical custody of the child or has had physical custody
7 for a period of six consecutive months, including any temporary
8 absence, within one year immediately before the commencement of a child
9 custody proceeding; and

10 (b) Has been awarded legal custody by a court or claims a right to
11 legal custody under the law of this state.

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

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

18 (16) "Tribe" means an Indian tribe or band, or Alaskan Native
19 village, that is recognized by federal law or formally acknowledged by
20 a state.

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

23 NEW SECTION. **Sec. 103.** PROCEEDINGS GOVERNED BY OTHER LAW. This
24 chapter does not govern an adoption proceeding or a proceeding
25 pertaining to the authorization of emergency medical care for a child.

26 NEW SECTION. **Sec. 104.** APPLICATION TO INDIAN TRIBES. (1) A child
27 custody proceeding that pertains to an Indian child as defined in the
28 federal Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., is not
29 subject to this chapter to the extent that it is governed by the
30 federal Indian child welfare act.

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

33 (3) A child custody determination made by a tribe under factual
34 circumstances in substantial conformity with the jurisdictional
35 standards of this chapter must be recognized and enforced under Article
36 3.

1 NEW SECTION. **Sec. 105.** INTERNATIONAL APPLICATION OF CHAPTER. (1)
2 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
4 2.

5 (2) Except as otherwise provided in subsection (3) of this section,
6 a child custody determination made in a foreign country under factual
7 circumstances in substantial conformity with the jurisdictional
8 standards of this chapter must be recognized and enforced under Article
9 3.

10 (3) A court of this state need not apply this chapter if the child
11 custody law of a foreign country violates fundamental principles of
12 human rights.

13 NEW SECTION. **Sec. 106.** EFFECT OF CHILD CUSTODY DETERMINATION. A
14 child custody determination made by a court of this state that had
15 jurisdiction under this chapter binds all persons who have been served
16 in accordance with the laws of this state or notified in accordance
17 with section 108 of this act or who have submitted to the jurisdiction
18 of the court, and who have been given an opportunity to be heard. As
19 to those persons, the determination is conclusive as to all decided
20 issues of law and fact except to the extent the determination is
21 modified.

22 NEW SECTION. **Sec. 107.** PRIORITY. If a question of existence or
23 exercise of jurisdiction under this chapter is raised in a child
24 custody proceeding, the question, upon request of a party, must be
25 given priority on the calendar and handled expeditiously.

26 NEW SECTION. **Sec. 108.** NOTICE TO PERSONS OUTSIDE STATE. (1)
27 Notice required for the exercise of jurisdiction when a person is
28 outside this state may be given in a manner prescribed by the law of
29 this state for service of process or by the law of the state in which
30 the service is made. Notice must be given in a manner reasonably
31 calculated to give actual notice but may be by publication if other
32 means are not effective.

33 (2) Proof of service may be made in the manner prescribed by the
34 law of this state or by the law of the state in which the service is
35 made.

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

3 NEW SECTION. **Sec. 109.** APPEARANCE AND LIMITED IMMUNITY. (1) A
4 party to a child custody proceeding, including a modification
5 proceeding, or a petitioner or respondent in a proceeding to enforce or
6 register a child custody determination, is not subject to personal
7 jurisdiction in this state for another proceeding or purpose solely by
8 reason of having participated, or of having been physically present for
9 the purpose of participating, in the proceeding.

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

15 (3) The immunity granted by subsection (1) of this section does not
16 extend to civil litigation based on acts unrelated to the participation
17 in a proceeding under this chapter committed by an individual while
18 present in this state.

19 NEW SECTION. **Sec. 110.** COMMUNICATION BETWEEN COURTS. (1) A court
20 of this state may communicate with a court in another state concerning
21 a proceeding arising under this chapter.

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

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

29 (4) Except as otherwise provided in subsection (3) of this section,
30 a record must be made of a communication under this section. The
31 parties must be informed promptly of the communication and granted
32 access to the record.

33 (5) For the purposes of this section, "record" means information
34 that is inscribed on a tangible medium or that is stored in an
35 electronic or other medium and is retrievable in perceivable form.

1 NEW SECTION. **Sec. 111.** TAKING TESTIMONY IN ANOTHER STATE. (1) In
2 addition to other procedures available to a party, a party to a child
3 custody proceeding may offer testimony of witnesses who are located in
4 another state, including testimony of the parties and the child, by
5 deposition or other means allowable in this state for testimony taken
6 in another state. The court on its own motion may order that the
7 testimony of a person be taken in another state and may prescribe the
8 manner in which and the terms upon which the testimony is taken.

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

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

19 NEW SECTION. **Sec. 112.** COOPERATION BETWEEN COURTS--PRESERVATION
20 OF RECORDS. (1) A court of this state may request the appropriate
21 court of another state to:

22 (a) Hold an evidentiary hearing;

23 (b) Order a person to produce or give evidence pursuant to
24 procedures of that state;

25 (c) Order that an evaluation be made with respect to the custody of
26 a child involved in a pending proceeding;

27 (d) Forward to the court of this state a certified copy of the
28 transcript of the record of the hearing, the evidence otherwise
29 presented, and any evaluation prepared in compliance with the request;
30 and

31 (e) Order a party to a child custody proceeding or any person
32 having physical custody of the child to appear in the proceeding with
33 or without the child.

34 (2) Upon request of a court of another state, a court of this state
35 may hold a hearing or enter an order described in subsection (1) of
36 this section.

1 (3) Travel and other necessary and reasonable expenses incurred
2 under subsections (1) and (2) of this section may be assessed against
3 the parties according to the law of this state.

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

10 **ARTICLE 2**
11 **JURISDICTION**

12 NEW SECTION. **Sec. 201.** INITIAL CHILD CUSTODY JURISDICTION. (1)
13 Except as otherwise provided in section 204 of this act, a court of
14 this state has jurisdiction to make an initial child custody
15 determination only if:

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

21 (b) A court of another state does not have jurisdiction under (a)
22 of this subsection, or a court of the home state of the child has
23 declined to exercise jurisdiction on the ground that this state is the
24 more appropriate forum under section 207 or 208 of this act, and:

25 (i) The child and the child's parents, or the child and at least
26 one parent or a person acting as a parent, have a significant
27 connection with this state other than mere physical presence; and

28 (ii) Substantial evidence is available in this state concerning the
29 child's care, protection, training, and personal relationships;

30 (c) All courts having jurisdiction under (a) or (b) of this
31 subsection have declined to exercise jurisdiction on the ground that a
32 court of this state is the more appropriate forum to determine the
33 custody of the child under section 207 or 208 of this act; or

34 (d) No court of any other state would have jurisdiction under the
35 criteria specified in (a), (b), or (c) of this subsection.

1 (2) Subsection (1) of this section is the exclusive jurisdictional
2 basis for making a child custody determination by a court of this
3 state.

4 (3) Physical presence of, or personal jurisdiction over, a party or
5 a child is not necessary or sufficient to make a child custody
6 determination.

7 NEW SECTION. **Sec. 202.** EXCLUSIVE, CONTINUING JURISDICTION. (1)
8 Except as otherwise provided in section 204 of this act, a court of
9 this state that has made a child custody determination consistent with
10 section 201 or 203 of this act has exclusive, continuing jurisdiction
11 over the determination until:

12 (a) A court of this state determines that neither the child, the
13 child's parents, and any person acting as a parent do not have a
14 significant connection with this state and that substantial evidence is
15 no longer available in this state concerning the child's care,
16 protection, training, and personal relationships; or

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

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

25 NEW SECTION. **Sec. 203.** JURISDICTION TO MODIFY DETERMINATION.
26 Except as otherwise provided in section 204 of this act, a court of
27 this state may not modify a child custody determination made by a court
28 of another state unless a court of this state has jurisdiction to make
29 an initial determination under section 201(1) (a) or (b) of this act
30 and:

31 (1) The court of the other state determines it no longer has
32 exclusive, continuing jurisdiction under section 202 of this act or
33 that a court of this state would be a more convenient forum under
34 section 207 of this act; or

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

1 NEW SECTION. **Sec. 204.** TEMPORARY EMERGENCY JURISDICTION. (1) A

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

7 (2) If there is no previous child custody determination that is
8 entitled to be enforced under this chapter and a child custody
9 proceeding has not been commenced in a court of a state having
10 jurisdiction under sections 201 through 203 of this act, a child
11 custody determination made under this section remains in effect until
12 an order is obtained from a court of a state having jurisdiction under
13 sections 201 through 203 of this act. If a child custody proceeding
14 has not been or is not commenced in a court of a state having
15 jurisdiction under sections 201 through 203 of this act, a child
16 custody determination made under this section becomes a final
17 determination, if it so provides and this state becomes the home state
18 of the child.

19 (3) If there is a previous child custody determination that is
20 entitled to be enforced under this chapter, or a child custody
21 proceeding has been commenced in a court of a state having jurisdiction
22 under sections 201 through 203 of this act, any order issued by a court
23 of this state under this section must specify in the order a period
24 that the court considers adequate to allow the person seeking an order
25 to obtain an order from the state having jurisdiction under sections
26 201 through 203 of this act. The order issued in this state remains in
27 effect until an order is obtained from the other state within the
28 period specified or the period expires.

29 (4) A court of this state that has been asked to make a child
30 custody determination under this section, upon being informed that a
31 child custody proceeding has been commenced in, or a child custody
32 determination has been made by, a court of a state having jurisdiction
33 under sections 201 through 203 of this act, shall immediately
34 communicate with the other court. A court of this state that is
35 exercising jurisdiction pursuant to sections 201 through 203 of this
36 act, upon being informed that a child custody proceeding has been
37 commenced in, or a child custody determination has been made by, a
38 court of another state under a statute similar to this section shall
39 immediately communicate with the court of that state to resolve the

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

3 NEW SECTION. **Sec. 205.** NOTICE--OPPORTUNITY TO BE HEARD--JOINDER.

4 (1) Before a child custody determination is made under this chapter,
5 notice and an opportunity to be heard in accordance with the standards
6 of section 108 of this act must be given to all persons entitled to
7 notice under the law of this state as in child custody proceedings
8 between residents of this state, any parent whose parental rights have
9 not been previously terminated, and any person having physical custody
10 of the child.

11 (2) This chapter does not govern the enforceability of a child
12 custody determination made without notice or an opportunity to be
13 heard.

14 (3) The obligation to join a party and the right to intervene as a
15 party in a child custody proceeding under this chapter are governed by
16 the law of this state as in child custody proceedings between residents
17 of this state.

18 NEW SECTION. **Sec. 206.** SIMULTANEOUS PROCEEDINGS. (1) Except as
19 otherwise provided in section 204 of this act, a court of this state
20 may not exercise its jurisdiction under this article if, at the time of
21 the commencement of the proceeding, a proceeding concerning the custody
22 of the child has been commenced in a court of another state having
23 jurisdiction substantially in conformity with this chapter, unless the
24 proceeding has been terminated or is stayed by the court of the other
25 state because a court of this state is a more convenient forum under
26 section 207 of this act.

27 (2) Except as otherwise provided in section 204 of this act, a
28 court of this state, before hearing a child custody proceeding, shall
29 examine the court documents and other information supplied by the
30 parties pursuant to section 209 of this act. If the court determines
31 that a child custody proceeding has been commenced in a court in
32 another state having jurisdiction substantially in accordance with this
33 chapter, the court of this state shall stay its proceeding and
34 communicate with the court of the other state. If the court of the
35 state having jurisdiction substantially in accordance with this chapter
36 does not determine that the court of this state is a more appropriate
37 forum, the court of this state shall dismiss the proceeding.

1 (3) In a proceeding to modify a child custody determination, a
2 court of this state shall determine whether a proceeding to enforce the
3 determination has been commenced in another state. If a proceeding to
4 enforce a child custody determination has been commenced in another
5 state, the court may:

6 (a) Stay the proceeding for modification pending the entry of an
7 order of a court of the other state enforcing, staying, denying, or
8 dismissing the proceeding for enforcement;

9 (b) Enjoin the parties from continuing with the proceeding for
10 enforcement; or

11 (c) Proceed with the modification under conditions it considers
12 appropriate.

13 NEW SECTION. **Sec. 207.** INCONVENIENT FORUM. (1) A court of this
14 state which has jurisdiction under this chapter to make a child custody
15 determination may decline to exercise its jurisdiction at any time if
16 it determines that it is an inconvenient forum under the circumstances
17 and that a court of another state is a more appropriate forum. The
18 issue of inconvenient forum may be raised upon motion of a party, the
19 court's own motion, or request of another court.

20 (2) Before determining whether it is an inconvenient forum, a court
21 of this state shall consider whether it is appropriate for a court of
22 another state to exercise jurisdiction. For this purpose, the court
23 shall allow the parties to submit information and shall consider all
24 relevant factors, including:

25 (a) Whether domestic violence has occurred and is likely to
26 continue in the future and which state could best protect the parties
27 and the child;

28 (b) The length of time the child has resided outside this state;

29 (c) The distance between the court in this state and the court in
30 the state that would assume jurisdiction;

31 (d) The relative financial circumstances of the parties;

32 (e) Any agreement of the parties as to which state should assume
33 jurisdiction;

34 (f) The nature and location of the evidence required to resolve the
35 pending litigation, including testimony of the child;

36 (g) The ability of the court of each state to decide the issue
37 expeditiously and the procedures necessary to present the evidence; and

1 (h) The familiarity of the court of each state with the facts and
2 issues in the pending litigation.

3 (3) If a court of this state determines that it is an inconvenient
4 forum and that a court of another state is a more appropriate forum, it
5 shall stay the proceedings upon condition that a child custody
6 proceeding be promptly commenced in another designated state and may
7 impose any other condition the court considers just and proper.

8 (4) A court of this state may decline to exercise its jurisdiction
9 under this chapter if a child custody determination is incidental to an
10 action for dissolution or another proceeding while still retaining
11 jurisdiction over the dissolution or other proceeding.

12 NEW SECTION. **Sec. 208.** JURISDICTION DECLINED BY REASON OF
13 CONDUCT. (1) Except as otherwise provided in section 204 of this act
14 or by other law of this state, if a court of this state has
15 jurisdiction under this chapter because a person seeking to invoke its
16 jurisdiction has engaged in unjustifiable conduct, the court shall
17 decline to exercise its jurisdiction unless:

18 (a) The parents and all persons acting as parents have acquiesced
19 in the exercise of jurisdiction;

20 (b) A court of the state otherwise having jurisdiction under
21 sections 201 through 203 of this act determines that this state is a
22 more appropriate forum under section 207 of this act; or

23 (c) No court of any other state would have jurisdiction under the
24 criteria specified in sections 201 through 203 of this act.

25 (2) If a court of this state declines to exercise its jurisdiction
26 pursuant to subsection (1) of this section, it may fashion an
27 appropriate remedy to ensure the safety of the child and prevent a
28 repetition of the unjustifiable conduct, including staying the
29 proceeding until a child custody proceeding is commenced in a court
30 having jurisdiction under sections 201 through 203 of this act.

31 (3) If a court dismisses a petition or stays a proceeding because
32 it declines to exercise its jurisdiction pursuant to subsection (1) of
33 this section, it shall assess against the party seeking to invoke its
34 jurisdiction necessary and reasonable expenses including costs,
35 communication expenses, attorneys' fees, investigative fees, expenses
36 for witnesses, travel expenses, and child care during the course of the
37 proceedings, unless the party from whom fees are sought establishes
38 that the assessment would be clearly inappropriate. The court may not

1 assess fees, costs, or expenses against this state unless authorized by
2 law other than this chapter.

3 NEW SECTION. **Sec. 209.** INFORMATION TO BE SUBMITTED TO COURT. (1)
4 Subject to laws providing for the confidentiality of procedures,
5 addresses, and other identifying information, in a child custody
6 proceeding, each party, in its first pleading or in an attached
7 affidavit, shall give information, if reasonably ascertainable, under
8 oath as to the child's present address or whereabouts, the places where
9 the child has lived during the last five years, and the names and
10 present addresses of the persons with whom the child has lived during
11 that period. The pleading or affidavit must state whether the party:

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

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

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

25 (2) If the information required by subsection (1) of this section
26 is not furnished, the court, upon motion of a party or its own motion,
27 may stay the proceeding until the information is furnished.

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

34 (4) Each party has a continuing duty to inform the court of any
35 proceeding in this or any other state that could affect the current
36 proceeding.

37 (5) If a party alleges in an affidavit or a pleading under oath
38 that the health, safety, or liberty of a party or child would be

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

7 NEW SECTION. **Sec. 210.** APPEARANCE OF PARTIES AND CHILD. (1) In
8 a child custody proceeding in this state, the court may order a party
9 to the proceeding who is in this state to appear before the court in
10 person with or without the child. The court may order any person who
11 is in this state and who has physical custody or control of the child
12 to appear in person with the child.

13 (2) If a party to a child custody proceeding whose presence is
14 desired by the court is outside this state, the court may order that a
15 notice given pursuant to section 108 of this act include a statement
16 directing the party to appear in person with or without the child and
17 informing the party that failure to appear may result in a decision
18 adverse to the party.

19 (3) The court may enter any orders necessary to ensure the safety
20 of the child and of any person ordered to appear under this section.

21 (4) If a party to a child custody proceeding who is outside this
22 state is directed to appear under subsection (2) of this section or
23 desires to appear personally before the court with or without the
24 child, the court may require another party to pay reasonable and
25 necessary travel and other expenses of the party so appearing and of
26 the child.

27 **ARTICLE 3**
28 **ENFORCEMENT**

29 NEW SECTION. **Sec. 301.** DEFINITIONS. The definitions in this
30 section apply throughout this article, unless the context clearly
31 requires otherwise.

32 (1) "Petitioner" means a person who seeks enforcement of an order
33 for return of a child under the Hague Convention on the Civil Aspects
34 of International Child Abduction or enforcement of a child custody
35 determination.

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

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

10 NEW SECTION. **Sec. 303.** DUTY TO ENFORCE. (1) A court of this
11 state shall recognize and enforce a child custody determination of a
12 court of another state if the latter court exercised jurisdiction in
13 substantial conformity with this chapter or the determination was made
14 under factual circumstances meeting the jurisdictional standards of
15 this chapter and the determination has not been modified in accordance
16 with this chapter.

17 (2) A court of this state may use any remedy available under other
18 law of this state to enforce a child custody determination made by a
19 court of another state. The remedies provided in this article are
20 cumulative and do not affect the availability of other remedies to
21 enforce a child custody determination.

22 NEW SECTION. **Sec. 304.** TEMPORARY VISITATION. (1) A court of this
23 state that does not have jurisdiction to modify a child custody
24 determination may issue a temporary order enforcing:

- 25 (a) A visitation schedule made by a court of another state; or
26 (b) The visitation provisions of a child custody determination of
27 another state that does not provide for a specific visitation schedule.

28 (2) If a court of this state makes an order under subsection (1)(b)
29 of this section, it shall specify in the order a period that it
30 considers adequate to allow the petitioner to obtain an order from a
31 court having jurisdiction under the criteria specified in Article 2.
32 The order remains in effect until an order is obtained from the other
33 court or the period expires.

34 NEW SECTION. **Sec. 305.** REGISTRATION OF CHILD CUSTODY
35 DETERMINATION. (1) A child custody determination issued by a court of

1 another state may be registered in this state, with or without a
2 simultaneous request for enforcement, by sending to the appropriate
3 court in this state:

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

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

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

13 (2) On receipt of the documents required by subsection (1) of this
14 section, the registering court shall:

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

18 (b) Serve notice upon the persons named pursuant to subsection
19 (1)(c) of this section and provide them with an opportunity to contest
20 the registration in accordance with this section.

21 (3) The notice required by subsection (2)(b) of this section must
22 state that:

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

26 (b) A hearing to contest the validity of the registered
27 determination must be requested within twenty days after service of
28 notice; and

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

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

36 (a) The issuing court did not have jurisdiction under Article 2;

37 (b) The child custody determination sought to be registered has
38 been vacated, stayed, or modified by a court having jurisdiction to do
39 so under Article 2; or

1 (c) The person contesting registration was entitled to notice, but
2 notice was not given in accordance with the standards of section 108 of
3 this act, in the proceedings before the court that issued the order for
4 which registration is sought.

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

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

13 NEW SECTION. **Sec. 306.** ENFORCEMENT OF REGISTERED DETERMINATION.

14 (1) A court of this state may grant any relief normally available under
15 the law of this state to enforce a registered child custody
16 determination made by a court of another state.

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

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

29 NEW SECTION. **Sec. 308.** EXPEDITED ENFORCEMENT OF CHILD CUSTODY
30 DETERMINATION. (1) A petition under this article must be verified.
31 Certified copies of all orders sought to be enforced and of any order
32 confirming registration must be attached to the petition. A copy of a
33 certified copy of an order may be attached instead of the original.

34 (2) A petition for enforcement of a child custody determination
35 must state:

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

4 (b) Whether the determination for which enforcement is sought has
5 been vacated, stayed, or modified by a court whose decision must be
6 enforced under this chapter and, if so, identify the court, the case
7 number, and the nature of the proceeding;

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

13 (d) The present physical address of the child and the respondent,
14 if known;

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

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

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

30 (4) An order issued under subsection (3) of this section must state
31 the time and place of the hearing and advise the respondent that at the
32 hearing the court will order that the petitioner may take immediate
33 physical custody of the child and the payment of fees, costs, and
34 expenses under section 312 of this act, and may schedule a hearing to
35 determine whether further relief is appropriate, unless the respondent
36 appears and establishes that:

37 (a) The child custody determination has not been registered and
38 confirmed under section 305 of this act and that:

39 (i) The issuing court did not have jurisdiction under Article 2;

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

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

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

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

16 NEW SECTION. **Sec. 310.** HEARING AND ORDER. (1) Unless the court
17 issues a temporary emergency order pursuant to section 204 of this act,
18 upon a finding that a petitioner is entitled to immediate physical
19 custody of the child, the court shall order that the petitioner may
20 take immediate physical custody of the child unless the respondent
21 establishes that:

22 (a) The child custody determination has not been registered and
23 confirmed under section 305 of this act and that:

24 (i) The issuing court did not have jurisdiction under Article 2;

25 (ii) The child custody determination for which enforcement is
26 sought has been vacated, stayed, or modified by a court of a state
27 having jurisdiction to do so under Article 2; or

28 (iii) The respondent was entitled to notice, but notice was not
29 given in accordance with the standards of section 108 of this act, in
30 the proceedings before the court that issued the order for which
31 enforcement is sought; or

32 (b) The child custody determination for which enforcement is sought
33 was registered and confirmed under section 305 of this act but has been
34 vacated, stayed, or modified by a court of a state having jurisdiction
35 to do so under Article 2.

36 (2) The court shall award the fees, costs, and expenses authorized
37 under section 312 of this act and may grant additional relief,

1 including a request for the assistance of law enforcement officials,
2 and set a further hearing to determine whether additional relief is
3 appropriate.

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

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

11 NEW SECTION. **Sec. 311.** WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

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

17 (2) If the court, upon the testimony of the petitioner or other
18 witness, finds that the child is imminently likely to suffer serious
19 physical harm or be removed from this state, it may issue a warrant to
20 take physical custody of the child. The petition must be heard on the
21 next judicial day after the warrant is executed unless that date is
22 impossible. In that event, the court shall hold the hearing on the
23 first judicial day possible. The application for the warrant must
24 include the statements required by section 308(2) of this act.

25 (3) A warrant to take physical custody of a child must:

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

28 (b) Direct law enforcement officers to take physical custody of the
29 child immediately; and

30 (c) Provide for the placement of the child pending final relief.

31 (4) The respondent must be served with the petition, warrant, and
32 order immediately after the child is taken into physical custody.

33 (5) A warrant to take physical custody of a child is enforceable
34 throughout this state. If the court finds on the basis of the
35 testimony of the petitioner or other witness that a less intrusive
36 remedy is not effective, it may authorize law enforcement officers to
37 enter private property to take physical custody of the child. If

1 required by exigent circumstances of the case, the court may authorize
2 law enforcement officers to make a forcible entry at any hour.

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

5 NEW SECTION. **Sec. 312.** COSTS, FEES, AND EXPENSES. (1) The court
6 shall award the prevailing party, including a state, necessary and
7 reasonable expenses incurred by or on behalf of the party, including
8 costs, communication expenses, attorneys' fees, investigative fees,
9 expenses for witnesses, travel expenses, and child care during the
10 course of the proceedings, unless the party from whom fees or expenses
11 are sought establishes that the award would be clearly inappropriate.

12 (2) The court may not assess fees, costs, or expenses against a
13 state unless authorized by law other than this chapter.

14 NEW SECTION. **Sec. 313.** RECOGNITION AND ENFORCEMENT. A court of
15 this state shall accord full faith and credit to an order issued by
16 another state and consistent with this chapter that enforces a child
17 custody determination by a court of another state unless the order has
18 been vacated, stayed, or modified by a court having jurisdiction to do
19 so under Article 2.

20 NEW SECTION. **Sec. 314.** APPEALS. An appeal may be taken from a
21 final order in a proceeding under this article in accordance with
22 expedited appellate procedures in other civil cases. Unless the court
23 enters a temporary emergency order under section 204 of this act, the
24 enforcing court may not stay an order enforcing a child custody
25 determination pending appeal.

26 NEW SECTION. **Sec. 315.** ROLE OF PROSECUTOR. (1) In a case arising
27 under this chapter or involving the Hague Convention on the Civil
28 Aspects of International Child Abduction, the prosecutor may take any
29 lawful action, including resorting to a proceeding under this article
30 or any other available civil proceeding to locate a child, obtain the
31 return of a child, or enforce a child custody determination if there
32 is:

33 (a) An existing child custody determination;

34 (b) A request to do so from a court in a pending child custody
35 proceeding;

1 (c) A reasonable belief that a criminal statute has been violated;
2 or

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

6 (2) A prosecutor acting under this section acts on behalf of the
7 court and may not represent any party.

8 NEW SECTION. **Sec. 316.** ROLE OF LAW ENFORCEMENT. At the request
9 of a prosecutor acting under section 315 of this act, a law enforcement
10 officer may take any lawful action reasonably necessary to locate a
11 child or a party and assist a prosecutor with responsibilities under
12 section 315 of this act.

13 NEW SECTION. **Sec. 317.** COSTS AND EXPENSES. If the respondent is
14 not the prevailing party, the court may assess against the respondent
15 all direct expenses and costs incurred by the prosecutor and law
16 enforcement officers under section 315 or 316 of this act.

17 **ARTICLE 4**
18 **MISCELLANEOUS PROVISIONS**

19 NEW SECTION. **Sec. 401.** APPLICATION AND CONSTRUCTION. In applying
20 and construing this chapter, consideration must be given to the need to
21 promote uniformity of the law with respect to its subject matter among
22 states that enact it.

23 NEW SECTION. **Sec. 402.** SEVERABILITY CLAUSE. If any provision of
24 this act or its application to any person or circumstance is held
25 invalid, the remainder of the act or the application of the provision
26 to other persons or circumstances is not affected.

27 NEW SECTION. **Sec. 403.** The following acts or parts of acts are
28 each repealed:

- 29 (1) RCW 26.27.010 and 1979 c 98 s 1;
30 (2) RCW 26.27.020 and 1979 c 98 s 2;
31 (3) RCW 26.27.030 and 1979 c 98 s 3;
32 (4) RCW 26.27.040 and 1979 c 98 s 4;
33 (5) RCW 26.27.050 and 1979 c 98 s 5;

- 1 (6) RCW 26.27.060 and 1979 c 98 s 6;
- 2 (7) RCW 26.27.070 and 1979 c 98 s 7;
- 3 (8) RCW 26.27.080 and 1979 c 98 s 8;
- 4 (9) RCW 26.27.090 and 1979 c 98 s 9;
- 5 (10) RCW 26.27.100 and 1979 c 98 s 10;
- 6 (11) RCW 26.27.110 and 1979 c 98 s 11;
- 7 (12) RCW 26.27.120 and 1979 c 98 s 12;
- 8 (13) RCW 26.27.130 and 1979 c 98 s 13;
- 9 (14) RCW 26.27.140 and 1979 c 98 s 14;
- 10 (15) RCW 26.27.150 and 1979 c 98 s 15;
- 11 (16) RCW 26.27.160 and 1984 c 128 s 7 & 1979 c 98 s 16;
- 12 (17) RCW 26.27.170 and 1979 c 98 s 17;
- 13 (18) RCW 26.27.180 and 1979 c 98 s 18;
- 14 (19) RCW 26.27.190 and 1979 c 98 s 19;
- 15 (20) RCW 26.27.200 and 1979 c 98 s 20;
- 16 (21) RCW 26.27.210 and 1979 c 98 s 21;
- 17 (22) RCW 26.27.220 and 1979 c 98 s 22;
- 18 (23) RCW 26.27.230 and 1979 c 98 s 23;
- 19 (24) RCW 26.27.900 and 1979 c 98 s 24;
- 20 (25) RCW 26.27.910 and 1979 c 98 s 25;
- 21 (26) RCW 26.27.920 and 1979 c 98 s 26; and
- 22 (27) RCW 26.27.930 and 1979 c 98 s 27.

23 NEW SECTION. **Sec. 404.** TRANSITIONAL PROVISION. A motion or other
24 request for relief made in a child custody proceeding or to enforce a
25 child custody determination that was commenced before the effective
26 date of this section is governed by the law in effect at the time the
27 motion or other request was made.

28 NEW SECTION. **Sec. 405.** CAPTIONS, ARTICLE DESIGNATIONS, AND
29 ARTICLE HEADINGS NOT LAW. Captions and article designations and
30 headings used in this chapter are not any part of the law.

31 NEW SECTION. **Sec. 406.** Sections 101 through 112, 201 through 210,
32 301 through 317, 401, 404, and 405 of this act are each added to
33 chapter 26.27 RCW.

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