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**SENATE BILL 5348**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Costa, Long, Patterson, Kastama, Hargrove, Sheahan, McCaslin, Prentice, Kohl-Welles, Haugen, Kline, Johnson, Zarelli and Oke

Read first time 01/19/2001. Referred to Committee on Judiciary.

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,  
4 parenting plan, or other order of a court providing for the legal  
5 custody, physical custody, or visitation with respect to a child. The  
6 term includes a permanent, temporary, initial, and modification order.  
7 The term does not include an order relating to child support or other  
8 monetary obligation of an individual.

9 (4) "Child custody proceeding" means a proceeding in which legal  
10 custody, physical custody, a parenting plan, or visitation with respect  
11 to a child is an issue. The term includes a proceeding for  
12 dissolution, divorce, separation, neglect, abuse, dependency,  
13 guardianship, paternity, termination of parental rights, and protection  
14 from domestic violence, in which the issue may appear. The term does  
15 not include a proceeding involving juvenile delinquency, emancipation  
16 proceedings under chapter 13.64 RCW, proceedings under chapter 13.32A  
17 RCW, or enforcement under Article 3.

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

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

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

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

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

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

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

1 (12) "Person" means an individual, corporation, business trust,  
2 estate, trust, partnership, limited liability company, association,  
3 joint venture, government, governmental subdivision, agency, or  
4 instrumentality, public corporation, or any other legal or commercial  
5 entity.

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

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

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

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

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

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

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

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

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

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

35 (3) A child custody determination made by a tribe under factual  
36 circumstances in substantial conformity with the jurisdictional

1 standards of this chapter must be recognized and enforced under Article  
2 3.

3 NEW SECTION. **Sec. 105.** INTERNATIONAL APPLICATION OF CHAPTER. (1)  
4 A court of this state shall treat a foreign country as if it were a  
5 state of the United States for the purpose of applying Articles 1 and  
6 2.

7 (2) Except as otherwise provided in subsection (3) of this section,  
8 a child custody determination made in a foreign country under factual  
9 circumstances in substantial conformity with the jurisdictional  
10 standards of this chapter must be recognized and enforced under Article  
11 3.

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

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

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

28 NEW SECTION. **Sec. 108.** NOTICE TO PERSONS OUTSIDE STATE. (1)  
29 Notice required for the exercise of jurisdiction when a person is  
30 outside this state may be given in a manner prescribed for service of  
31 process by the law of the state in which the service is made or given  
32 in a manner reasonably calculated to give actual notice, and may be  
33 made in any of the following ways:

34 (a) Personal delivery outside this state in the manner prescribed  
35 for service of process within this state;

1 (b) By any form of mail addressed to the person to be served and  
2 requesting a receipt; or

3 (c) As directed by the court, including publication if other means  
4 of notification are ineffective.

5 (2) Proof of service outside this state may be made:

6 (a) By affidavit of the individual who made the service;

7 (b) In the manner prescribed by the law of this state or the law of  
8 the state in which the service is made; or

9 (c) As directed by the order under which the service is made.

10 If service is made by mail, proof may be a receipt signed by the  
11 addressee or other evidence of delivery to the addressee.

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

14 NEW SECTION. Sec. 109. APPEARANCE AND LIMITED IMMUNITY. (1)  
15 Except as provided in subsection (2) of this section, a party to a  
16 child custody proceeding, including a modification proceeding, or a  
17 petitioner or respondent in a proceeding to enforce or register a child  
18 custody determination, is not subject to personal jurisdiction in this  
19 state for another proceeding or purpose solely by reason of having  
20 participated, or of having been physically present for the purpose of  
21 participating, in the proceeding.

22 (2) A person who is subject to personal jurisdiction in this state  
23 on a basis other than physical presence is not immune from service of  
24 process in this state. A party present in this state who is subject to  
25 the jurisdiction of another state is not immune from service of process  
26 allowable under the laws of that state.

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

31 NEW SECTION. Sec. 110. COMMUNICATION BETWEEN COURTS. (1) A court  
32 of this state may communicate with a court in another state concerning  
33 a proceeding arising under this chapter.

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

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

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

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

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

19 (2) A court of this state may permit an individual residing in  
20 another state to be deposed or to testify by telephone, audiovisual  
21 means, or other electronic means before a designated court or at  
22 another location in that state. A court of this state shall cooperate  
23 with courts of other states in designating an appropriate location for  
24 the deposition or testimony.

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

29 NEW SECTION. Sec. 112. COOPERATION BETWEEN COURTS--PRESERVATION  
30 OF RECORDS. (1) A court of this state may request the appropriate  
31 court of another state to:

32 (a) Hold an evidentiary hearing;

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

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

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

5 (e) Order a party to a child custody proceeding or any person  
6 having physical custody of the child to appear in the proceeding with  
7 or without the child.

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

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

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

20 **ARTICLE 2**  
21 **JURISDICTION**

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

26 (a) This state is the home state of the child on the date of the  
27 commencement of the proceeding, or was the home state of the child  
28 within six months before the commencement of the proceeding and the  
29 child is absent from this state but a parent or person acting as a  
30 parent continues to live in this state;

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

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

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

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

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

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

12 (3) Physical presence of, or personal jurisdiction over, a party or  
13 a child is not necessary or sufficient to make a child custody  
14 determination.

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

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

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

28 (2) A court of this state that has made a child custody  
29 determination and does not have exclusive, continuing jurisdiction  
30 under this section may modify that determination only if it has  
31 jurisdiction to make an initial determination under section 201 of this  
32 act.

33 NEW SECTION. **Sec. 203.** JURISDICTION TO MODIFY DETERMINATION.  
34 Except as otherwise provided in section 204 of this act, a court of  
35 this state may not modify a child custody determination made by a court  
36 of another state unless a court of this state has jurisdiction to make



1 an initial determination under section 201(1) (a) or (b) of this act  
2 and:

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

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

10 NEW SECTION. **Sec. 204.** TEMPORARY EMERGENCY JURISDICTION. (1) A  
11 court of this state has temporary emergency jurisdiction if the child  
12 is present in this state and the child has been abandoned or it is  
13 necessary in an emergency to protect the child because the child, or a  
14 sibling or parent of the child, is subjected to or threatened with  
15 abuse.

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

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

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

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

15 (1) Before a child custody determination is made under this chapter,  
16 notice and an opportunity to be heard in accordance with the standards  
17 of section 108 of this act must be given to: (a) All persons entitled  
18 to notice under the law of this state as in child custody proceedings  
19 between residents of this state; (b) any parent whose parental rights  
20 have not been previously terminated; and (c) any person having physical  
21 custody of the child.

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

25 (3) The obligation to join a party and the right to intervene as a  
26 party in a child custody proceeding under this chapter are governed by  
27 the law of this state as in child custody proceedings between residents  
28 of this state.

29 NEW SECTION. **Sec. 206.** SIMULTANEOUS PROCEEDINGS. (1) Except as  
30 otherwise provided in section 204 of this act, a court of this state  
31 may not exercise its jurisdiction under this article if, at the time of  
32 the commencement of the proceeding, a proceeding concerning the custody  
33 of the child has been commenced in a court of another state having  
34 jurisdiction substantially in conformity with this chapter, unless the  
35 proceeding has been terminated or is stayed by the court of the other  
36 state because a court of this state is a more convenient forum under  
37 section 207 of this act.

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

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

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

20 (b) Enjoin the parties from continuing with the proceeding for  
21 enforcement; or

22 (c) Proceed with the modification under conditions it considers  
23 appropriate.

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

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

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

- 1 (b) The length of time the child has resided outside this state;  
2 (c) The distance between the court in this state and the court in  
3 the state that would assume jurisdiction;  
4 (d) The relative financial circumstances of the parties;  
5 (e) Any agreement of the parties as to which state should assume  
6 jurisdiction;  
7 (f) The nature and location of the evidence required to resolve the  
8 pending litigation, including testimony of the child;  
9 (g) The ability of the court of each state to decide the issue  
10 expeditiously and the procedures necessary to present the evidence; and  
11 (h) The familiarity of the court of each state with the facts and  
12 issues in the pending litigation.

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

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

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

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

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

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

35 (2) If a court of this state declines to exercise its jurisdiction  
36 pursuant to subsection (1) of this section, it may fashion an  
37 appropriate remedy to ensure the safety of the child and prevent a  
38 repetition of the unjustifiable conduct, including staying the

1 proceeding until a child custody proceeding is commenced in a court  
2 having jurisdiction under sections 201 through 203 of this act.

3 (3) If a court dismisses a petition or stays a proceeding because  
4 it declines to exercise its jurisdiction pursuant to subsection (1) of  
5 this section, it shall assess against the party seeking to invoke its  
6 jurisdiction necessary and reasonable expenses including costs,  
7 communication expenses, attorneys' fees, investigative fees, expenses  
8 for witnesses, travel expenses, and child care during the course of the  
9 proceedings, unless the party from whom fees are sought establishes  
10 that the assessment would be clearly inappropriate. The court may not  
11 assess fees, costs, or expenses against this state unless authorized by  
12 law other than this chapter.

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

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

26 (b) Knows of any proceeding that could affect the current  
27 proceeding, including proceedings for enforcement and proceedings  
28 relating to domestic violence, protective orders, termination of  
29 parental rights, and adoptions and, if so, identify the court, the case  
30 number, and the nature of the proceeding; and

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

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

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

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

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

18 NEW SECTION. **Sec. 210.** APPEARANCE OF PARTIES AND CHILD. (1) In  
19 a child custody proceeding in this state, the court may order a party  
20 to the proceeding who is in this state to appear before the court in  
21 person with or without the child. The court may order any person who  
22 is in this state and who has physical custody or control of the child  
23 to appear in person with the child.

24 (2) If a party to a child custody proceeding whose presence is  
25 desired by the court is outside this state, the court may order that a  
26 notice given pursuant to section 108 of this act include a statement  
27 directing the party to appear in person with or without the child and  
28 informing the party that failure to appear may result in a decision  
29 adverse to the party.

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

32 (4) If a party to a child custody proceeding who is outside this  
33 state is directed to appear under subsection (2) of this section or  
34 desires to appear personally before the court with or without the  
35 child, the court may require another party to pay reasonable and  
36 necessary travel and other expenses of the party so appearing and of  
37 the child.

**ARTICLE 3**  
**ENFORCEMENT**

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2  
3     NEW SECTION.   **Sec. 301.**   DEFINITIONS.   The definitions in this  
4 section apply throughout this article, unless the context clearly  
5 requires otherwise.

6         (1) "Petitioner" means a person who seeks enforcement of an order  
7 for return of a child under the Hague Convention on the Civil Aspects  
8 of International Child Abduction or enforcement of a child custody  
9 determination.

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

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

19     NEW SECTION.   **Sec. 303.**   DUTY TO ENFORCE.   (1) A court of this  
20 state shall recognize and enforce a child custody determination of a  
21 court of another state if the latter court exercised jurisdiction in  
22 substantial conformity with this chapter or the determination was made  
23 under factual circumstances meeting the jurisdictional standards of  
24 this chapter and the determination has not been modified in accordance  
25 with this chapter.

26        (2) A court of this state may use any remedy available under other  
27 law of this state including writs of habeas corpus under chapter 7.36  
28 RCW and enforcement proceedings under Title 26 RCW to enforce a child  
29 custody determination made by a court of another state.   The remedies  
30 provided in this article are cumulative and do not affect the  
31 availability of other remedies to enforce a child custody  
32 determination.

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

1 (a) A visitation schedule made by a court of another state; or  
2 (b) The visitation provisions of a child custody determination of  
3 another state that does not provide for a specific visitation schedule.  
4 (2) If a court of this state makes an order under subsection (1)(b)  
5 of this section, it shall specify in the order a period that it  
6 considers adequate to allow the petitioner to obtain an order from a  
7 court having jurisdiction under the criteria specified in Article 2.  
8 The order remains in effect until an order is obtained from the other  
9 court or the period expires.

10 NEW SECTION. **Sec. 305.** REGISTRATION OF CHILD CUSTODY  
11 DETERMINATION. (1) A child custody determination issued by a court of  
12 another state may be registered in this state, with or without a  
13 simultaneous request for enforcement, by sending to the appropriate  
14 court in this state:

15 (a) A letter or other document requesting registration;  
16 (b) Two copies, including one certified copy, of the determination  
17 sought to be registered, and a statement under penalty of perjury that  
18 to the best of the knowledge and belief of the person seeking  
19 registration, the determination has not been modified; and  
20 (c) Except as otherwise provided in section 209 of this act, the  
21 name and address of the person seeking registration and any parent or  
22 person acting as a parent who has been awarded custody or visitation in  
23 the child custody determination sought to be registered.

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

26 (a) Cause the determination to be filed as a foreign judgment,  
27 together with one copy of any accompanying documents and information,  
28 regardless of their form; and  
29 (b) Serve notice upon the persons named pursuant to subsection  
30 (1)(c) of this section and provide them with an opportunity to contest  
31 the registration in accordance with this section.

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

34 (a) A registered determination is enforceable as of the date of the  
35 registration in the same manner as a determination issued by a court of  
36 this state;



1 (b) A hearing to contest the validity of the registered  
2 determination must be requested within twenty days after service of  
3 notice; and

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

7 (4) A person seeking to contest the validity of a registered  
8 determination must request a hearing within twenty days after service  
9 of the notice. At that hearing, the court shall confirm the registered  
10 determination unless the person contesting registration establishes  
11 that:

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

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

16 (c) The person contesting registration was entitled to notice, but  
17 notice was not given in accordance with the standards of section 108 of  
18 this act, in the proceedings before the court that issued the  
19 determination for which registration is sought.

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

24 (6) Confirmation of a registered determination, whether by  
25 operation of law or after notice and hearing, precludes further contest  
26 of the determination with respect to any matter that could have been  
27 asserted at the time of registration.

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

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

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

35 NEW SECTION. **Sec. 307.** SIMULTANEOUS PROCEEDINGS. If a proceeding  
36 for enforcement under this article is commenced in a court of this  
37 state and the court determines that a proceeding to modify the

1 determination is pending in a court of another state having  
2 jurisdiction to modify the determination under Article 2, the enforcing  
3 court shall immediately communicate with the modifying court. The  
4 proceeding for enforcement continues unless the enforcing court, after  
5 consultation with the modifying court, stays or dismisses the  
6 proceeding.

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

12 (2) A petition for enforcement of a child custody determination  
13 must state:

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

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

21 (c) Whether any proceeding has been commenced that could affect the  
22 current proceeding, including proceedings relating to domestic  
23 violence, protective orders, termination of parental rights, and  
24 adoptions and, if so, identify the court, the case number, and the  
25 nature of the proceeding;

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

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

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

35 (3) Upon the filing of a petition, the court shall issue an order  
36 directing the respondent to appear in person with or without the child  
37 at a hearing and may enter any order necessary to ensure the safety of  
38 the parties and the child. The hearing must be held on the next

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

5 (4) An order issued under subsection (3) of this section must state  
6 the time and place of the hearing and advise the respondent that at the  
7 hearing the court will order that the petitioner may take immediate  
8 physical custody of the child and the payment of fees, costs, and  
9 expenses under section 312 of this act, and may schedule a hearing to  
10 determine whether further relief is appropriate, unless the respondent  
11 appears and establishes that:

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

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

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

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

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

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

30 NEW SECTION. **Sec. 310.** HEARING AND ORDER. (1) Unless the court  
31 issues a temporary emergency order pursuant to section 204 of this act,  
32 upon a finding that a petitioner is entitled to immediate physical  
33 custody of the child, the court shall order that the petitioner may  
34 take immediate physical custody of the child unless the respondent  
35 establishes that:

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 311.** AUTHORIZATION TO TAKE PHYSICAL CUSTODY OF  
26 CHILD. An order under this chapter directing law enforcement to obtain  
27 physical custody of the child from the other parent or a third party  
28 holding the child may only be sought pursuant to a writ of habeas  
29 corpus under chapter 7.36 RCW.

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

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

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

9 NEW SECTION. **Sec. 314.** APPEALS. An appeal may be taken from a  
10 final order in a proceeding under this article in accordance with  
11 expedited appellate procedures in other civil cases relating to minor  
12 children. Unless the court enters a temporary emergency order under  
13 section 204 of this act, the enforcing court may not stay an order  
14 enforcing a child custody determination pending appeal.

15 NEW SECTION. **Sec. 315.** ROLE OF PROSECUTOR OR ATTORNEY GENERAL.

16 (1) In a case arising under this chapter or involving the Hague  
17 Convention on the Civil Aspects of International Child Abduction, the  
18 prosecutor or attorney general may take any lawful action, including  
19 resorting to a proceeding under this article or any other available  
20 civil proceeding to locate a child, obtain the return of a child, or  
21 enforce a child custody determination if there is:

- 22 (a) An existing child custody determination;
- 23 (b) A request to do so from a court in a pending child custody  
24 proceeding;
- 25 (c) A reasonable belief that a criminal statute has been violated;  
26 or
- 27 (d) A reasonable belief that the child has been wrongfully removed  
28 or retained in violation of the Hague Convention on the Civil Aspects  
29 of International Child Abduction.

30 (2) A prosecutor or attorney general acting under this section acts  
31 on behalf of the court and may not represent any party.

32 NEW SECTION. **Sec. 316.** ROLE OF LAW ENFORCEMENT. At the request  
33 of a prosecutor or attorney general acting under section 315 of this  
34 act, a law enforcement officer may take any lawful action reasonably

1 necessary to locate a child or a party and assist a prosecutor or  
2 attorney general with responsibilities under section 315 of this act.

3 NEW SECTION. **Sec. 317.** COSTS AND EXPENSES. If the respondent is  
4 not the prevailing party, the court may assess against the respondent  
5 all direct expenses and costs incurred by the prosecutor or attorney  
6 general and law enforcement officers under section 315 or 316 of this  
7 act.

#### 8 **ARTICLE 4**

#### 9 **MISCELLANEOUS PROVISIONS**

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

14 NEW SECTION. **Sec. 402.** SEVERABILITY CLAUSE. If any provision of  
15 this act or its application to any person or circumstance is held  
16 invalid, the remainder of the act or the application of the provision  
17 to other persons or circumstances is not affected.

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

20 (1) RCW 26.27.010 (Purposes of chapter--Construction of provisions)  
21 and 1979 c 98 s 1;

22 (2) RCW 26.27.020 (Definitions) and 1979 c 98 s 2;

23 (3) RCW 26.27.030 (Jurisdiction) and 1979 c 98 s 3;

24 (4) RCW 26.27.040 (Notice and opportunity to be heard) and 1979 c  
25 98 s 4;

26 (5) RCW 26.27.050 (Notice to persons outside this state--Submission  
27 to jurisdiction) and 1979 c 98 s 5;

28 (6) RCW 26.27.060 (Simultaneous proceedings in other states) and  
29 1979 c 98 s 6;

30 (7) RCW 26.27.070 (Inconvenient forum) and 1979 c 98 s 7;

31 (8) RCW 26.27.080 (Jurisdiction declined by reason of conduct) and  
32 1979 c 98 s 8;

33 (9) RCW 26.27.090 (Information under oath to be submitted to court)  
34 and 1979 c 98 s 9;

- 1 (10) RCW 26.27.100 (Additional parties) and 1979 c 98 s 10;
- 2 (11) RCW 26.27.110 (Appearance of parties and child) and 1979 c 98
- 3 s 11;
- 4 (12) RCW 26.27.120 (Binding force and res judicata effect of
- 5 custody decree) and 1979 c 98 s 12;
- 6 (13) RCW 26.27.130 (Recognition of out-of-state custody decrees)
- 7 and 1979 c 98 s 13;
- 8 (14) RCW 26.27.140 (Modification of custody decree of another
- 9 state) and 1979 c 98 s 14;
- 10 (15) RCW 26.27.150 (Filing and enforcement of custody decree of
- 11 another state) and 1979 c 98 s 15;
- 12 (16) RCW 26.27.160 (Registry of out-of-state custody decrees and
- 13 proceedings) and 1984 c 128 s 7 & 1979 c 98 s 16;
- 14 (17) RCW 26.27.170 (Certified copies of custody decree) and 1979 c
- 15 98 s 17;
- 16 (18) RCW 26.27.180 (Taking testimony in another state) and 1979 c
- 17 98 s 18;
- 18 (19) RCW 26.27.190 (Hearings and studies in another state--Orders
- 19 to appear) and 1979 c 98 s 19;
- 20 (20) RCW 26.27.200 (Assistance to courts of other states) and 1979
- 21 c 98 s 20;
- 22 (21) RCW 26.27.210 (Preservation of records of custody
- 23 proceedings--Forwarding to another state) and 1979 c 98 s 21;
- 24 (22) RCW 26.27.220 (Request for court records of another state) and
- 25 1979 c 98 s 22;
- 26 (23) RCW 26.27.230 (International application) and 1979 c 98 s 23;
- 27 (24) RCW 26.27.900 (Construction with chapter 26.09 RCW) and 1979
- 28 c 98 s 24;
- 29 (25) RCW 26.27.910 (Short title) and 1979 c 98 s 25;
- 30 (26) RCW 26.27.920 (Severability--1979 c 98) and 1979 c 98 s 26;
- 31 and
- 32 (27) RCW 26.27.930 (Section captions) and 1979 c 98 s 27.

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

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

4        NEW SECTION.    **Sec. 406.**    Sections 101 through 112, 201 through 210,  
5 301 through 317, 401, 404, and 405 of this act are each added to  
6 chapter 26.27 RCW.

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