

2A:34-53

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 147

NJSA: 2A:34-53 ("Uniform Child Custody Jurisdiction and Enforcement Act")

BILL NO: S150 (Substituted for A2970)

SPONSOR(S): Bryant and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:**
SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2004

SENATE: June 17, 2004

DATE OF APPROVAL: September 14, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Senate Committee Substitute enacted

S150

[SPONSOR'S STATEMENT:](#) (Begins on page19 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

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REPORTS:

974.901 New Jersey Law Revision Commission
L446 Annual report....1999. , February 1, 2000. Trenton
2000 (See pp.8-9 and Appendix C)

Yes

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No

NEWSPAPER ARTICLES:

No

Title 2A.
Chapter 34.
Part II. Uniform
Child Custody and
Enforcement.
§§1-43 -
C.2A:34-53
to 2A:34-95
§44 - Repealer

P.L. 2004, CHAPTER 147, *approved September 14, 2004*
Senate Committee Substitute for
Senate, No. 150

1 **AN ACT** creating the "Uniform Child Custody Jurisdiction and
2 Enforcement Act" and revising various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7

ARTICLE 1

8

GENERAL PROVISIONS

9

10 1. Short Title.

11 This act shall be known and may be cited as the "Uniform Child
12 Custody Jurisdiction and Enforcement Act."

13

14 2. Definitions.

15 As used in this act:

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

18 "Child" means an individual who has not attained 18 years of age.

19 "Child custody determination" means a judgment, decree, or other
20 order of a court providing for the legal custody, physical custody or
21 visitation with respect to a child. The term includes a permanent,
22 temporary, initial and modification order. The term does not include
23 a provision relating to child support or other monetary obligation of
24 an individual.

25 "Child custody proceeding" means a proceeding in which legal
26 custody, physical custody or visitation with respect to a child is an
27 issue. The term includes a proceeding for divorce, separation, neglect,
28 abuse, dependency, guardianship, paternity, termination of parental
29 rights, and protection from domestic violence, in which the issue may
30 appear. The term does not include a proceeding involving juvenile
31 delinquency, contractual emancipation or enforcement under article 3
32 of this act.

33 "Commencement" means the filing of the first pleading in a
34 proceeding.

35 "Court" means an entity authorized under the law of a state to
36 establish, enforce or modify a child custody determination.

37 "Home state" means the state in which a child lived with a parent

1 or a person acting as a parent for at least six consecutive months
2 immediately before the commencement of a child custody proceeding.
3 In the case of a child less than six months of age, the term means the
4 state in which the child lived from birth with any of the persons
5 mentioned. A period of temporary absence of any of the mentioned
6 persons is part of the period.

7 "Initial determination" means the first child custody determination
8 concerning a particular child.

9 "Issuing court" means the court that makes a child custody
10 determination for which enforcement is sought under this act.

11 "Issuing state" means the state in which a child custody
12 determination is made.

13 "Modification" means a child custody determination that changes,
14 replaces, supersedes, or is otherwise made after a previous
15 determination concerning the same child, whether or not it is made by
16 the court that made the previous determination.

17 "Person" means an individual, corporation, business trust, estate,
18 trust, partnership, limited liability company, association, joint venture,
19 government, governmental subdivision, agency, or instrumentality,
20 public corporation or any other legal or commercial entity.

21 "Person acting as a parent" means a person, other than a parent,
22 who:

23 a. has physical custody of the child or has had physical custody for
24 a period of six consecutive months, including any temporary absence,
25 within one year immediately before the commencement of a child
26 custody proceeding; and

27 b. has been awarded legal custody by a court or claims a right to
28 legal custody under the laws of this State.

29 "Physical custody" means the physical care and supervision of a
30 child.

31 "State" means a state of the United States, the District of
32 Columbia, Puerto Rico, the United States Virgin Islands, or any
33 territory or insular possession subject to the jurisdiction of the United
34 States.

35 "Tribe" means an Indian tribe or band, or Alaskan Native village,
36 which is recognized by federal law or formally acknowledged by a
37 state.

38 "Warrant" means an order issued by a court authorizing law
39 enforcement officers to take physical custody of a child.

40

41 3. Proceedings Governed by Other Law.

42 This act does not govern an adoption proceeding or a proceeding
43 pertaining to the authorization of emergency medical care for a child.

44

45 4. Application to Indian Tribes.

46 a. A child custody proceeding that pertains to an Indian child as

1 defined in the Indian Child Welfare Act, 25 U.S.C.1901 et seq., is not
2 subject to this act to the extent that it is governed by the Indian Child
3 Welfare Act.

4 b. A court of this State shall treat a tribe as if it were a state of the
5 United States for purposes of articles 1 and 2 of this act.

6 c. A child custody determination made by a tribe under factual
7 circumstances in substantial conformity with the jurisdictional
8 standards of this act shall be recognized and enforced under the
9 provisions of article 3 of this act.

10

11 5. International Application of Act.

12 a. A court of this State shall treat a foreign country as if it were
13 a state of the United States for the purpose of applying articles 1 and
14 2 of this act if the foreign court gives notice and an opportunity to be
15 heard to all parties before making child custody determinations.

16 b. A child custody determination made in a foreign country under
17 factual circumstances in substantial conformity with the jurisdictional
18 standards of this act shall be recognized and enforced under article 3
19 of this act.

20 c. A court of this State need not apply this act if the child custody
21 law of a foreign country violates fundamental principles of human
22 rights or does not base custody decisions on evaluation of the best
23 interests of the child.

24

25 6. Effect of Custody Determination.

26 A child custody determination made by a court of this State that
27 had jurisdiction under this act binds all persons who have been served
28 in accordance with the laws of this State or notified in accordance with
29 section 8 of this act or who have submitted to the jurisdiction of the
30 court, and who have been given an opportunity to be heard. As to
31 those persons, the determination is conclusive as to all decided issues
32 of law and fact except to the extent the determination is modified.

33

34 7. Priority.

35 If a question of existence or exercise of jurisdiction under this act
36 is raised in a child custody proceeding, the question, upon request of
37 a party, shall be given priority on the calendar and handled
38 expeditiously.

39

40 8. Notice of Persons Outside State.

41 a. Notice required for the exercise of jurisdiction when a person
42 is outside this State may be given in a manner prescribed by the law of
43 this State for the service of process or by the law of the state in which
44 the service is made. Notice shall be given in a manner reasonably
45 calculated to give actual notice, but may be by publication if other
46 means are not effective.

1 b. Proof of service may be made in the manner prescribed by the
2 law of this State or by the law of the state in which the service is
3 made.

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

6
7 9. Appearance and Limited Immunity.

8 a. A party to a child custody proceeding, including a modification
9 proceeding, or a petitioner or a respondent in a proceeding to enforce
10 or register a child custody determination, is not subject to personal
11 jurisdiction in this State for another proceeding or purpose solely by
12 reason of having participated, or of having been physically present for
13 the purpose of participating in the proceeding.

14 b. A party who is subject to personal jurisdiction in this State on
15 a basis other than physical presence is not immune from service of
16 process in this State. A party present in this State who is subject to
17 the jurisdiction of another state is not immune from service of process
18 allowable under the laws of that state.

19 c. The immunity granted by subsection a. of this section does not
20 extend to civil litigation based on acts unrelated to the participation in
21 a proceeding under this act committed by an individual while present
22 in this State.

23
24 10. Communication Between Courts.

25 a. A court of this State may communicate with a court in another
26 state concerning a proceeding arising under this act.

27 b. The court may allow the parties to participate in the
28 communication. If the parties are not able to participate in the
29 communication, the parties shall be given the opportunity to present
30 facts and legal arguments before a decision on jurisdiction is made.

31 c. Communication between courts on schedules, calendars, court
32 records and similar matters may occur without informing the parties.
33 A record need not be made of that communication.

34 d. Except as provided in subsection c. of this section, a record
35 shall be made of a communication under this section. The parties shall
36 be informed promptly of the communication and granted access to the
37 record.

38 e. For the purposes of this section, "record" means information
39 that is inscribed on a tangible medium or that which is stored in an
40 electronic or other medium and is retrievable in perceivable form.

41
42 11. Taking Testimony in Another State.

43 a. In addition to other procedures available to a party, a party to
44 a child custody proceeding may offer testimony of witnesses who are
45 located in another state, including testimony of the parties and the
46 child, by deposition or other means allowable in this State for

1 testimony taken in another state. The court on its own motion may
2 order that the testimony of a person be taken in another state and may
3 prescribe the manner in which and the terms upon which the testimony
4 is taken.

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

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

15

16 12. Cooperation Between Courts; Preservation of Records.

17 a. A court of this State may request the appropriate court of
18 another state to:

19 (1) hold an evidentiary hearing;

20 (2) order a person to produce or give evidence under procedures
21 of that state;

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

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

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

31 b. Upon request of a court of another state, a court of this State
32 may hold a hearing or enter an order described in subsection a. of this
33 section.

34 c. Travel and other necessary and reasonable expenses incurred
35 under subsections a. and b. of this section may be assessed against the
36 parties according to the laws of this State.

37 d. A court of this State shall preserve the pleadings, orders,
38 decrees, records of hearings, evaluations and other pertinent records
39 with respect to a child custody proceeding until the child attains 18
40 years of age. Upon appropriate request by a court or law enforcement
41 official of another state, the court shall forward a certified copy of
42 these records.

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ARTICLE 2
JURISDICTION

13. Initial Child Custody Jurisdiction.

a. Except as otherwise provided in section 16 of this act, a court of this State has jurisdiction to make an initial child custody determination only if:

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

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

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

(b) substantial evidence is available in this State concerning the child’s care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 19 or 20 of this act; or

(4) no state would have jurisdiction under paragraph (1), (2) or (3) of this subsection.

b. Subsection a. of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

c. Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

d. A court of this State may assume temporary emergency jurisdiction in accordance with section 16 of this act.

14. Exclusive, Continuing Jurisdiction.

a. Except as otherwise provided in section 16 of this act, a court of this State that has made a child custody determination consistent with section 13 or 15 of this act has exclusive, continuing jurisdiction over the determination until:

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

(2) a court of this State or a court of another state determines that

1 neither the child, nor a parent, nor any person acting as a parent
2 presently resides in this State.

3 b. A court of this State which has made a child custody
4 determination and does not have exclusive, continuing jurisdiction
5 under this section may modify that determination only if it has
6 jurisdiction to make an initial determination under section 13 of this
7 act.

8

9 15. Jurisdiction to Modify Determination.

10 Except as otherwise provided in section 16 of this act, a court of
11 this State may not modify a child custody determination made by a
12 court of another state unless a court of this State has jurisdiction to
13 make an initial determination under paragraph (1) or (2) of subsection
14 a. of section 13 of this act and:

15 a. the court of the other state determines it no longer has
16 exclusive, continuing jurisdiction under section 14 of this act or that
17 a court of this State would be a more convenient forum under section
18 19 of this act; or

19 b. a court of this State or a court of the other state determines that
20 the child, the child's parents, and any person acting as a parent do not
21 presently reside in the other state.

22

23 16. Temporary Emergency Jurisdiction.

24 a. A court of this State has temporary emergency jurisdiction if the
25 child is present in this State and the child has been abandoned or it is
26 necessary in an emergency to protect the child because the child, or a
27 sibling or parent of the child, is subjected to or threatened with
28 mistreatment or abuse.

29 b. If there is no previous child custody determination that is
30 entitled to be enforced under this act, and if no child custody
31 proceeding has been commenced in a court of a state having
32 jurisdiction under sections 13 through 15 of this act, a child custody
33 determination made under this section remains in effect until an order
34 is obtained from a court of a state having jurisdiction under sections
35 13 through 15 of this act. If a child custody proceeding has not been
36 or is not commenced in a court of a state having jurisdiction under
37 sections 13 through 15 of this act, a child custody determination made
38 under this section becomes a final determination if:

39 (1) it so provides; and

40 (2) this State becomes the home state of the child.

41 c. If there is a previous child custody determination that is entitled
42 to be enforced under this act, or a child custody proceeding has been
43 commenced in a court of a state having jurisdiction under sections 13
44 through 15 of this act, any order issued by a court of this State under
45 this section must specify in the order a period of time which the court
46 considers adequate to allow the person seeking an order to obtain an

1 order from the state having jurisdiction under sections 13 through 15
2 of this act. The order issued in this State remains in effect until an
3 order is obtained from the other state within the period specified or the
4 period expires.

5 d. A court of this State which has been asked to make a child
6 custody determination under this section, upon being informed that a
7 child custody proceeding has been commenced in, or a child custody
8 determination has been made, by a court of a state having jurisdiction
9 under sections 13 through 15 of this act, shall immediately
10 communicate with the other court. A court of this State which is
11 exercising jurisdiction pursuant to sections 13 through 15 of this act,
12 upon being informed that a child custody proceeding has been
13 commenced in, or a child custody determination has been made by, a
14 court of another state under a statute similar to this section shall
15 immediately communicate with the court of that state to resolve the
16 emergency, protect the safety of the parties and the child, and
17 determine a period for the duration of the temporary order.

18

19 17. Notice; Opportunity to be Heard; Joinder.

20 a. Before a child custody determination is made under this act,
21 notice and an opportunity to be heard in accordance with the standards
22 of section 8 of this act shall be given to all persons entitled to notice
23 under the law of this State as in child custody proceedings between
24 residents of this State, any parent whose parental rights have not been
25 previously terminated, and any person having physical custody of the
26 child.

27 b. This act does not govern the enforceability of a child custody
28 determination made without notice and an opportunity to be heard.

29 c. The obligation to join a party and the right to intervene as a
30 party in a child custody proceeding under this act are governed by the
31 law of this State as in child custody proceedings between residents of
32 this State.

33

34 18. Simultaneous Proceedings.

35 a. Except as otherwise provided in section 16 of this act, a court
36 of this State may not exercise its jurisdiction under this article if at the
37 time of the commencement of the proceeding a proceeding concerning
38 the custody of the child had been commenced in a court of another
39 state having jurisdiction substantially in conformity with this act,
40 unless the proceeding has been terminated or is stayed by the court of
41 the other state because a court of this State is a more convenient
42 forum under section 19 of this act.

43 b. Except as otherwise provided in section 16 of this act, a court
44 of this State, before hearing a child custody proceeding, shall examine
45 the court documents and other information supplied by the parties
46 pursuant to section 21 of this act. If the court determines that a child

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

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

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

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

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

20
21 19. a. Inconvenient Forum.

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

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

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

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

37 (3) the distance between the court in this State and the court in
38 the state that would assume jurisdiction;

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

40 (5) any agreement of the parties as to which state should assume
41 jurisdiction;

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

44 (7) the ability of the court of each state to decide the issue
45 expeditiously and the procedures necessary to present the evidence;
46 and

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

3 c. 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,
5 it shall stay the proceedings upon condition that a child custody
6 proceeding be promptly commenced in another designated state and
7 may impose any other condition the court considers just and proper.

8 d. A court of this State may decline to exercise its jurisdiction
9 under this act if a child custody determination is incidental to an action
10 for divorce or another proceeding while still retaining jurisdiction over
11 the divorce or other proceeding.

12
13 20. Jurisdiction Declined by Reason of Conduct.

14 a. Except as otherwise provided in section 16 of this act or by
15 other law of this State, if a court of this State has jurisdiction under
16 this act because a person invoking the jurisdiction has engaged in
17 unjustifiable conduct, the court shall decline to exercise its jurisdiction
18 unless:

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

21 (2) a court of the state otherwise having jurisdiction under
22 sections 13 through 15 of this act determines that this State is a more
23 appropriate forum under section 19 of this act; or

24 (3) no other State would have jurisdiction under sections 13
25 through 15 of this act.

26 b. If a court of this State declines to exercise its jurisdiction
27 pursuant to subsection a. of this section, it may fashion an appropriate
28 remedy to ensure the safety of the child and prevent a repetition of the
29 wrongful conduct, including staying the proceeding until a child
30 custody proceeding is commenced in a court having jurisdiction under
31 sections 13 through 15 of this act.

32 c. If a court dismisses a petition or stays a proceeding because it
33 declines to exercise its jurisdiction pursuant to subsection a. of this
34 section, it shall charge the party invoking the jurisdiction of the court
35 with necessary and reasonable expenses including costs,
36 communication expenses, attorney's fees, investigative fees, expenses
37 for witnesses, travel expenses, and child care during the course of the
38 proceedings, unless the party from whom fees are sought establishes
39 that the award would be inappropriate. The court may not assess fees,
40 costs, or expenses against this State except as otherwise provided by
41 law other than this act. No fees, costs or expenses shall be assessed
42 against a party who is fleeing an incident or pattern of domestic
43 violence or mistreatment or abuse of a child or sibling, unless the court
44 is convinced by a preponderance of evidence that such assessment
45 would be clearly appropriate.

46 d. In making a determination under this section, a court shall not

1 consider as a factor weighing against the petitioner any taking of the
2 child or retention of the child from the person who has rights of legal
3 custody, physical custody or visitation, if there is evidence that the
4 taking or retention of the child was to protect the petitioner from
5 domestic violence or to protect the child or sibling from mistreatment
6 or abuse.

7
8 21. Information to be Submitted to Court.

9 a. Unless a party seeks an exception to disclosure of information
10 as provided by subsection e. of this section, each party, in its first
11 pleading or in an attached affidavit, shall give information, if
12 reasonably ascertainable, under oath as to the child's present address,
13 the places where the child has lived during the last five years, and the
14 names and present addresses of the persons with whom the child has
15 lived during that period. The pleading or affidavit shall state whether
16 the party:

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

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

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

30 b. If the information required by subsection a. of this section is not
31 furnished, the court, upon its own motion or that of a party, may stay
32 the proceeding until the information is furnished.

33 c. If the declaration as to any of the items described in subsection
34 a. of this section is in the affirmative, the declarant shall give
35 additional information under oath as required by the court. The court
36 may examine the parties under oath as to details of the information
37 furnished and other matters pertinent to the court's jurisdiction and the
38 disposition of the case.

39 d. Each party has a continuing duty to inform the court of any
40 proceeding in this or any other state that could affect the current
41 proceeding.

42 e. If a party alleges in an affidavit or a pleading under oath that the
43 health, safety, or liberty of a party or child would be put at risk by the
44 disclosure of identifying information, that information shall be sealed
45 and not disclosed to the other party or the public unless the court
46 orders the disclosure to be made after a hearing in which the court

1 takes into consideration the health, safety, or liberty of the party or
2 child and determines that the disclosure is in the interest of justice.

3
4 22. Appearance of Parties and Child.

5 a. In a child custody proceeding in this State, the court may order
6 a party to a child custody proceeding who is in this State to appear
7 before the court in person with or without the child. The court may
8 order any person who is in this State and who has physical custody or
9 control of the child to appear physically with the child.

10 b. If a party to a child custody proceeding whose presence is
11 desired by the court is outside this state, the court may order that a
12 notice given pursuant to section 8 of this act include a statement
13 directing the party to appear personally with or without the child and
14 declaring that failure to appear may result in a decision adverse to the
15 party.

16 c. The court may enter any orders necessary to ensure the safety
17 of the child and of any person ordered to appear under this section.

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

23
24 ARTICLE 3
25 ENFORCEMENT

26
27 23. Definitions.

28 As used in this article:

29 "Petitioner" means a person who seeks enforcement of a child
30 custody determination or enforcement of an order for the return of the
31 child under the Hague Convention on the Civil Aspects of
32 International Child Abduction.

33 "Respondent" means a person against whom a proceeding has been
34 commenced for enforcement of a child custody determination or
35 enforcement of an order for return of a child under the Hague
36 Convention on the Civil Aspects of International Child Abduction.

37
38 24. Enforcement Under Hague Convention.

39 Under this article, a court of this State may enforce an order for
40 the return of a child made under the Hague Convention on the Civil
41 Aspects of International Child Abduction as if it were a child custody
42 determination.

43
44 25. Duty to Enforce.

45 a. A court of this State shall recognize and enforce a child custody
46 determination of a court of another state if the latter court exercised

1 jurisdiction in substantial conformity with this act or the determination
2 was made under factual circumstances meeting the jurisdictional
3 standards of this act and the determination has not been modified in
4 accordance with this act.

5 b. A court of this State may utilize any remedy available under
6 other law of this State to enforce a child custody determination made
7 by a court of another state. The remedies provided in this article are
8 cumulative and do not affect the availability of other remedies to
9 enforce a child custody determination.

10

11 26. Temporary Visitation.

12 a. A court of this State which does not have jurisdiction to modify
13 a child custody determination may issue a temporary order enforcing:

14 (1) a visitation schedule made by a court of another state; or

15 (2) the visitation provisions of a child custody determination of
16 another state that does not provide for a specific visitation schedule.

17 b. If a court of this State makes an order under paragraph (2) of
18 subsection a. of this section, it shall specify in the order a period that
19 it considers adequate to allow the petitioner to obtain an order from
20 a court having jurisdiction under the criteria specified in article 2 of
21 this act. The order remains in effect until an order is obtained from the
22 other court or the period expires.

23

24 27. Registration of Child Custody Determination.

25 a. A child custody determination issued by a court of another state
26 may be registered in this State, with or without a simultaneous request
27 for enforcement, by sending to the Superior Court in this State:

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

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

33 (3) except as otherwise provided in section 21 of this act, the
34 name and address of the person seeking registration and any parent or
35 person acting as a parent who has been awarded custody or visitation
36 in the child custody determination sought to be registered.

37 b. On receipt of the documents required by subsection a. of this
38 section, the registering court shall:

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

42 (2) serve notice upon the persons named pursuant to paragraph
43 (3) of subsection a. of this section and provide them with an
44 opportunity to contest the registration in accordance with this section.

45 c. The notice required by paragraph (2) of subsection b. of this
46 section shall state that:

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

4 (2) a hearing to contest the validity of the registered determination
5 shall be requested within 20 days after service of notice; and

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

10 d. A person seeking to contest the validity of a registered order
11 shall request a hearing within 20 days after service of the notice. At
12 that hearing, the court shall confirm the registered order unless the
13 person contesting registration establishes that:

14 (1) the issuing court did not have jurisdiction under article 2 of
15 this act;

16 (2) the child custody determination sought to be registered has
17 been vacated, stayed, or modified by a court of a state having
18 jurisdiction to do so under article 2 of this act; or

19 (3) the person contesting registration was entitled to notice, but
20 notice was not given in accordance with the standards of section 8 of
21 this act in the proceedings before the court that issued the order for
22 which registration is sought.

23 e. If a timely request for a hearing to contest the validity of the
24 registration is not made, the registration is confirmed as a matter of
25 law and the person requesting registration and all persons served must
26 be notified of the confirmation.

27 f. Confirmation of a registered order, whether by operation of law
28 or after notice and hearing, precludes further contest of the order with
29 respect to any matter which could have been asserted at the time of
30 registration.

31
32 28. Enforcement of Registered Determination.

33 a. A court of this State may grant any relief normally available
34 under the law of this State to enforce a registered child custody
35 determination made by a court of another state.

36 b. A court of this State shall recognize and enforce, but may not
37 modify, except in accordance with article 2 of this act, a registered
38 child custody determination of another state.

39
40 29. Simultaneous Proceedings.

41 If a proceeding for enforcement under this article has been or is
42 commenced in a court of this State and the court determines that a
43 proceeding to modify the determination is pending in a court of
44 another state having jurisdiction to modify the determination under
45 article 2 of this act, the enforcing court shall immediately communicate
46 with the modifying court. The proceeding for enforcement continues

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

3

4 30. Expedited Enforcement of Child Custody Determination.

5 a. A petition under this article shall be verified. Certified copies
6 of all orders sought to be enforced and of the order confirming
7 registration, if any, shall be attached to the petition. A copy of a
8 certified copy of an order may be attached instead of the original.

9 b. A petition for enforcement of a child custody determination
10 shall state:

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

14 (2) whether the determination for which enforcement is sought has
15 been vacated, stayed, or modified by a court whose decision must be
16 enforced under this act and, if so, identify the court, the case number,
17 and the nature of the proceeding;

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

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

25 (5) whether relief in addition to the immediate physical custody of
26 the child and attorney's fees is sought, including a request for
27 assistance from law enforcement officials and, if so, the relief sought:
28 and

29 (6) if the child custody determination has been registered and
30 confirmed under section 27 of this act, the date and place of
31 registration.

32 c. Upon the filing of a petition, the court shall issue an order
33 directing the respondent to appear in person with or without the child
34 at a hearing and may enter any orders necessary to ensure the safety
35 of the parties and the child. The hearing shall be held on the next
36 judicial day following service of process unless that date is impossible.
37 In that event, the court shall hold the hearing on the first day possible.
38 The court may extend the date of hearing at the request of the
39 petitioner.

40 d. An order issued under subsection c. of this section shall state
41 the time and place of the hearing and advise the respondent that at the
42 hearing the court will order that the petitioner may take immediate
43 physical custody of the child and the payment of fees, costs, and
44 expenses under section 34 of this act, and may schedule a hearing to
45 determine whether further relief is appropriate, unless the respondent
46 appears and establishes that:

1 (1) the child custody determination has not been registered and
2 confirmed under section 27 of this act, and that

3 (a) the issuing court did not have jurisdiction under article 2 of
4 this act;

5 (b) the child custody determination for which enforcement is
6 sought has been vacated, stayed, or modified by a court of a state
7 having jurisdiction to do so under article 2 of this act; or

8 (c) the respondent was entitled to notice, but notice was not given
9 in accordance with the standards of section 8 in the proceedings before
10 the court that issued the order for which enforcement is sought; or

11 (2) the child custody determination for which enforcement is
12 sought was registered and confirmed under section 27 of this act, but
13 has been vacated, stayed or modified by a court of a state having
14 jurisdiction to do so under article 2 of this act or federal law.

15

16 31. Service of Petition and Order.

17 Except as otherwise provided in section 33 of this act, the petition
18 and order shall be served, by any method authorized by the law of this
19 State, upon respondent and any person who has physical custody of
20 the child.

21

22 32. Hearing and Order.

23 a. Unless the court enters a temporary emergency order pursuant
24 to section 16 of this act, upon a finding that a petitioner is entitled to
25 the physical custody of the child immediately, the court shall order the
26 child delivered to the petitioner unless the respondent establishes that:

27 (1) the child custody determination has not been registered and
28 confirmed under section 27 of this act, and that

29 (a) the issuing court did not have jurisdiction under article 2 of
30 this act;

31 (b) the child custody determination for which enforcement is
32 sought has been vacated, stayed or modified by a court of a state
33 having jurisdiction to do so under article 2 of this act or federal law;
34 or

35 (c) the respondent was entitled to notice, but notice was not given
36 in accordance with the standards of section 8 of this act in the
37 proceedings before the court that issued the order for which
38 enforcement is sought; or

39 (2) the child custody determination for which enforcement is
40 sought was registered and confirmed under section 27 of this act, but
41 has been vacated, stayed or modified by a court of a state having
42 jurisdiction to do so under article 2 of this act or federal law.

43 b. The court shall award the fees, costs, and expenses authorized
44 under section 34 of this act and may grant additional relief, including
45 a request for the assistance of law enforcement officials, and set a
46 further hearing to determine whether additional relief is appropriate.

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

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

8
9 33. Warrant to Take Physical Custody of Child.

10 a. Upon the filing of a petition seeking enforcement of a child
11 custody determination, the petitioner may file a verified application for
12 the issuance of a warrant to take physical custody of the child if the
13 child is likely to suffer serious imminent physical harm or removal
14 from this State.

15 b. If the court, upon the testimony of the petitioner or other
16 witness, finds that the child is likely to suffer serious imminent physical
17 harm or be imminently removed from this State, it may issue a warrant
18 to take physical custody of the child. The petition shall be heard on
19 the next judicial day after the warrant is executed. The warrant shall
20 include the statements required by subsection b. of section 30 of this
21 act.

22 c. A warrant to take physical custody of a child shall:

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

25 (2) direct law enforcement officers to take physical custody of the
26 child immediately;

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

28 d. The respondent shall be served with the petition, warrant and
29 order immediately after the child is taken into physical custody.

30 e. A warrant to take physical custody of a child is enforceable
31 throughout this State. If the court finds on the basis of the testimony
32 of the petitioner or other witness that a less intrusive remedy is not
33 effective, it may authorize law enforcement officers to enter private
34 property to take physical custody of the child. If required by the
35 exigency of the case, the court may authorize law enforcement officers
36 to make a forcible entry at any hour.

37 f. The court may impose conditions upon placement of a child to
38 ensure the appearance of the child and the child's custodian. After the
39 issuance of any temporary or permanent order determining custody or
40 visitation of a minor child, a law enforcement officer having reasonable
41 cause to believe that a person is likely to flee the State with the child
42 or otherwise by flight or concealment evade the jurisdiction of the
43 courts of this State may take a child into protective custody and return
44 the child to the parent having lawful custody, or to a court in which a
45 custody hearing concerning the child is pending.

46 g. After the issuance of any temporary or permanent order

1 determining custody or visitation of a minor child, a law enforcement
2 officer having reasonable cause to believe that a person is likely to flee
3 the State with the child or otherwise by flight or concealment evade
4 the jurisdiction of the courts of this State may take a child into
5 protective custody and deliver the child to a court in which a custody
6 hearing concerning the child is pending.

7
8 34. Costs, Fees and Expenses.

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

16 b. The court may not assess fees, costs, or expenses against a state
17 except as otherwise provided by law other than this act.

18
19 35. Recognition and Enforcement.

20 A court of this State shall accord full faith and credit to an order
21 made consistently with this act which enforces a child custody
22 determination by a court of another state unless the order has been
23 vacated, stayed, or modified by a court authorized to do so under
24 article 2 of this act.

25
26 36. Appeals.

27 An appeal may be taken from a final order in a proceeding under
28 this article in accordance with expedited appellate procedures in other
29 civil cases. Unless the court enters a temporary emergency order
30 under section 16 of this act, the enforcing court may not stay an order
31 enforcing a child custody determination pending appeal.

32
33 37. Role of Prosecutor or Other Appropriate Public Official.

34 a. In a case arising under this act or involving the Hague
35 Convention on the Civil Aspects of International Child Abduction, the
36 prosecutor or other appropriate public official may take any lawful
37 action, including resort to a proceeding under this article or any other
38 available civil proceeding to locate a child, obtain the return of a child,
39 or enforce a child custody determination if there is:

40 (1) an existing child custody determination;

41 (2) a request from a court in a pending child custody case;

42 (3) a reasonable belief that a criminal statute has been violated; or

43 (4) a reasonable belief that the child has been wrongfully removed
44 or retained in violation of the Hague Convention on the Civil Aspects
45 of International Child Abduction.

46 b. A prosecutor or other appropriate public official acts on behalf

1 of the court and may not represent any party to a child custody
2 determination.

3

4 38. Role of Law Enforcement.

5 At the request of a prosecutor or other appropriate public official
6 acting under section 37 of this act, a law enforcement officer may take
7 any lawful action reasonably necessary to locate a child or a party and
8 assist a prosecutor or other appropriate public official with
9 responsibilities under section 37 of this act.

10

11 39. Costs and Expenses.

12 If the respondent is not the prevailing party, the court may assess
13 against the respondent all direct expenses and costs incurred by the
14 prosecutor or other appropriate public official and law enforcement
15 officers under section 37 or 38 of this act.

16

17 ARTICLE 4

18 MISCELLANEOUS PROVISIONS

19

20 40. Application and Construction.

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

24

25 41. Severability.

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

31

32 42. Transitional Provision.

33 A motion or other request for relief made in a child custody or
34 enforcement proceeding which was commenced before the effective
35 date of this act is governed by the law in effect at the time the motion
36 or other request was made.

37

38 43. Notice of Penalties for Order Violation.

39 Every order of a court involving custody or visitation shall include
40 a written notice, in both English and Spanish, advising the persons
41 affected as to the penalties provided in N.J.S.2C:13-4 for violating
42 that order.

43

44 44. Repealer.

45 The following are repealed:

46 The "Uniform Child Custody Jurisdiction Act," P.L.1979, c.124

1 (C.2A:34-28 et seq.); and sections 2 and 3 of P.L.1990, c.104
2 (C.2A:34-31.1 and 2A:34-31.2.)

3

4 45. Effective Date.

5 This act shall take effect on the 90th day after enactment.

6

7

8

9

10 Creates the "Uniform Child Custody Jurisdiction and Enforcement
11 Act."

SENATE, No. 150

STATE OF NEW JERSEY
211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Creates the "Uniform Child Custody Jurisdiction and Enforcement Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT creating the "Uniform Child Custody Jurisdiction and
2 Enforcement Act" and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7

ARTICLE 1

8

GENERAL PROVISIONS

9

10 1. This act shall be known and may be cited as the "Uniform Child
11 Custody Jurisdiction and Enforcement Act."

12

13 2. As used in this act:

14 "Abandoned" means left without provision for reasonable and
15 necessary care or supervision.

16 "Child" means an individual who has not attained 18 years of age.

17 "Child custody determination" means a judgment, decree, or other
18 order of a court providing for the legal custody, physical custody or
19 visitation with respect to a child. The term includes a permanent,
20 temporary, initial and modification order. The term does not include
21 an order relating to child support or other monetary obligation of an
22 individual.

23 "Child custody proceeding" means a proceeding in which legal
24 custody, physical custody or visitation with respect to a child is an
25 issue. The term includes a proceeding for divorce, separation, neglect,
26 abuse, dependency, guardianship, paternity, termination of parental
27 rights, and protection from domestic violence, in which the issue may
28 appear. The term does not include a proceeding involving juvenile
29 delinquency, contractual emancipation or enforcement under article 3
30 of this act.

31 "Commencement" means the filing of the first pleading in a
32 proceeding.

33 "Court" means an entity authorized under the law of a state to
34 establish, enforce or modify a child custody determination.

35 "Home state" means the state in which a child lived with a parent
36 or a person acting as a parent for at least six consecutive months
37 immediately before the commencement of a child custody proceeding.
38 In the case of a child less than six months of age, the term means the
39 state in which the child lived from birth with any of the persons
40 mentioned. A period of temporary absence of any of the mentioned
41 persons is part of the period.

42 "Initial determination" means the first child custody determination
43 concerning a particular child.

44 "Issuing court" means the court that makes a child custody
45 determination for which enforcement is sought under this act.

46 "Issuing state" means the state in which a child custody

1 determination is made.

2 "Modification" means a child custody determination that changes,
3 replaces, supersedes, or is otherwise made after a previous
4 determination concerning the same child, whether or not it is made by
5 the court that made the previous determination.

6 "Person" means an individual, corporation, business trust, estate,
7 trust, partnership, limited liability company, association, joint venture,
8 government, governmental subdivision, agency, or instrumentality,
9 public corporation or any other legal or commercial entity.

10 "Person acting as a parent" means a person, other than a parent,
11 who:

12 a. has physical custody of the child or has had physical custody for
13 a period of six consecutive months, including any temporary absence,
14 within one year immediately before the commencement of a child
15 custody proceeding; and

16 b. has been awarded legal custody by a court or claims a right to
17 legal custody under the laws of this State.

18 "Physical custody" means the physical care and supervision of a
19 child.

20 "State" means a state of the United States, the District of Columbia,
21 Puerto Rico, the United States Virgin Islands, or any territory or
22 insular possession subject to the jurisdiction of the United States.

23 "Tribe" means an Indian tribe or band, or Alaskan Native village,
24 which is recognized by federal law or formally acknowledged by a
25 state.

26 "Warrant" means an order issued by a court authorizing law
27 enforcement officers to take physical custody of a child.

28

29 3. This act does not govern an adoption proceeding or a
30 proceeding pertaining to the authorization of emergency medical care
31 for a child.

32

33 4. a. A child custody proceeding that pertains to an Indian child
34 as defined in the Indian Child Welfare Act, 25 U.S.C.1901 et seq., is
35 not subject to this act to the extent that it is governed by the Indian
36 Child Welfare Act.

37 b. A court of this State shall treat a tribe as if it were a state of the
38 United States for purposes of articles 1 and 2 of this act.

39 c. A child custody determination made by a tribe under factual
40 circumstances in substantial conformity with the jurisdictional
41 standards of this act shall be recognized and enforced under the
42 provisions of article 3 of this act.

43

44 5. a. A court of this State shall treat a foreign country as if it were
45 a state of the United States for the purpose of applying articles 1 and
46 2 of this act if the foreign court gives notice and an opportunity to be

1 heard to all parties before making child custody determinations.

2 b. A child custody determination made in a foreign country under
3 factual circumstances in substantial conformity with the jurisdictional
4 standards of this act shall be recognized and enforced under article 3
5 of this act.

6 c. A court of this State need not apply this act if the child custody
7 law of a foreign country violates fundamental principles of human
8 rights or does not base custody decisions on evaluation of the best
9 interests of the child.

10

11 6. A child custody determination made by a court of this State that
12 had jurisdiction under this act binds all persons who have been served
13 in accordance with the laws of this State or notified in accordance with
14 section 8 of this act or who have submitted to the jurisdiction of the
15 court, and who have been given an opportunity to be heard. As to
16 those persons, the determination is conclusive as to all decided issues
17 of law and fact except to the extent the determination is modified.

18

19 7. If a question of existence or exercise of jurisdiction under this
20 act is raised in a child custody proceeding, the question, upon request
21 of a party, shall be given priority on the calendar and handled
22 expeditiously.

23

24 8. a. Notice required for the exercise of jurisdiction when a person
25 is outside this State may be given in a manner prescribed by the law of
26 this State for the service of process or by the law of the state in which
27 the service is made. Notice shall be given in a manner reasonably
28 calculated to give actual notice, but may be by publication if other
29 means are not effective.

30 b. Proof of service may be made in the manner prescribed by the
31 law of this State or by the law of the state in which the service is
32 made.

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

35

36 9. a. A party to a child custody proceeding, including a
37 modification proceeding, or a petitioner or a respondent in a
38 proceeding to enforce or register a child custody determination, is not
39 subject to personal jurisdiction in this State for another proceeding or
40 purpose solely by reason of having participated, or of having been
41 physically present for the purpose of participating in the proceeding.

42 b. A party who is subject to personal jurisdiction in this State on
43 a basis other than physical presence is not immune from service of
44 process in this State. A party present in this State who is subject to
45 the jurisdiction of another state is not immune from service of process
46 allowable under the laws of that state.

1 c. The immunity granted by subsection a. of this section does not
2 extend to civil litigation based on acts unrelated to the participation in
3 a proceeding under this act committed by an individual while present
4 in this State.

5
6 10. a. A court of this State may communicate with a court in
7 another state concerning a proceeding arising under this act.

8 b. The court may allow the parties to participate in the
9 communication. If the parties are not able to participate in the
10 communication, the parties shall be given the opportunity to present
11 facts and legal arguments before a decision on jurisdiction is made.

12 c. Communication between courts on schedules, calendars, court
13 records and similar matters may occur without informing the parties.
14 A record need not be made of that communication.

15 d. Except as provided in subsection c. of this section, a record shall
16 be made of a communication under this section. The parties shall be
17 informed promptly of the communication and granted access to the
18 record.

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

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

31 b. A court of this State may permit an individual residing in another
32 state to be deposed or to testify by telephone, audiovisual means or
33 other electronic means before a designated court or at another location
34 in that state. A court of this State shall cooperate with courts of other
35 states in designating an appropriate location for the deposition or
36 testimony.

37 c. Documentary evidence transmitted from another state to a court
38 of this State by technological means that do not produce an original
39 writing may not be excluded from evidence on an objection based on
40 the means of transmission.

41
42 12. a. A court of this State may request the appropriate court of
43 another state to:

44 (1) hold an evidentiary hearing;

45 (2) order a person to produce or give evidence under procedures of
46 that state;

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

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

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

10 b. Upon request of a court of another state, a court of this State
11 may hold a hearing or enter an order described in subsection a. of this
12 section.

13 c. Travel and other necessary and reasonable expenses incurred
14 under subsections a. and b. of this section may be assessed against the
15 parties according to the laws of this State.

16 d. A court of this State shall preserve the pleadings, orders,
17 decrees, records of hearings, evaluations and other pertinent records
18 with respect to a child custody proceeding until the child attains 18
19 years of age. Upon appropriate request by a court or law enforcement
20 official of another state, the court shall forward a certified copy of
21 these records.

22
23 ARTICLE 2
24 JURISDICTION
25

26 13. a. Except as otherwise provided in section 16 of this act, a
27 court of this State has jurisdiction to make an initial child custody
28 determination only if:

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

34 (2) a court of another state does not have jurisdiction under
35 paragraph (1) of this subsection, or a court of the home state of the
36 child has declined to exercise jurisdiction on the ground that this State
37 is the more appropriate forum under section 19 or 20 of this act and:

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

41 (b) substantial evidence is available in this State concerning the
42 child's care, protection, training and personal relationships;

43 (3) all courts having jurisdiction under paragraph (1) or (2) of this
44 subsection have declined to exercise jurisdiction on the ground that a
45 court of this State is the more appropriate forum to determine the
46 custody of the child under section 19 or 20 of this act; or

1 (4) no state would have jurisdiction under paragraph (1), (2) or (3)
2 of this subsection.

3 b. Subsection a. of this section is the exclusive jurisdictional basis
4 for making a child custody determination by a court of this State.

5 c. Physical presence of, or personal jurisdiction over, a party or a
6 child is neither necessary nor sufficient to make a child custody
7 determination.

8

9 14. a. Except as otherwise provided in section 16 of this act, a
10 court of this State that has made a child custody determination
11 consistent with section 13 or 15 of this act has exclusive, continuing
12 jurisdiction over the determination until:

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

18 (2) a court of this State or a court of another state determines that
19 neither the child, nor a parent, nor any person acting as a parent
20 presently resides in this State.

21 b. A court of this State which has made a child custody
22 determination and does not have exclusive, continuing jurisdiction
23 under this section may modify that determination only if it has
24 jurisdiction to make an initial determination under section 13 of this
25 act.

26

27 15. Except as otherwise provided in section 16 of this act, a court
28 of this State may not modify a child custody determination made by a
29 court of another state unless a court of this State has jurisdiction to
30 make an initial determination under paragraph (1) or (2) of subsection
31 a. of section 13 of this act and:

32 a. the court of the other state determines it no longer has exclusive,
33 continuing jurisdiction under section 14 of this act or that a court of
34 this State would be a more convenient forum under section 19 of this
35 act; or

36 b. a court of this State or a court of the other state determines that
37 the child, the child's parents, and any person acting as a parent do not
38 presently reside in the other state.

39

40 16. a. A court of this State has temporary emergency jurisdiction
41 if the child is present in this State and the child has been abandoned or
42 it is necessary in an emergency to protect the child because the child,
43 or a sibling or parent of the child, is subjected to or threatened with
44 mistreatment or abuse.

45 b. If there is no previous child custody determination that is
46 entitled to be enforced under this act, and if no child custody

1 proceeding has been commenced in a court of a state having
2 jurisdiction under sections 13 through 15 of this act, a child custody
3 determination made under this section remains in effect until an order
4 is obtained from a court of a state having jurisdiction under sections
5 13 through 15 of this act. If a child custody proceeding has not been
6 or is not commenced in a court of a state having jurisdiction under
7 sections 13 through 15 of this act, a child custody determination made
8 under this section becomes a final determination if:

9 (1) it so provides; and

10 (2) this State becomes the home state of the child.

11 c. If there is a previous child custody determination that is entitled
12 to be enforced under this act, or a child custody proceeding has been
13 commenced in a court of a state having jurisdiction under sections 13
14 through 15 of this act, any order issued by a court of this State under
15 this section must specify in the order a period of time which the court
16 considers adequate to allow the person seeking an order to obtain an
17 order from the state having jurisdiction under sections 13 through 15
18 of this act. The order issued in this State remains in effect until an
19 order is obtained from the other state within the period specified or the
20 period expires.

21 d. A court of this State which has been asked to make a child
22 custody determination under this section, upon being informed that a
23 child custody proceeding has been commenced in, or a child custody
24 determination has been made, by a court of a state having jurisdiction
25 under sections 13 through 15 of this act, shall immediately
26 communicate with the other court. A court of this State which is
27 exercising jurisdiction pursuant to sections 13 through 15 of this act,
28 upon being informed that a child custody proceeding has been
29 commenced in, or a child custody determination has been made by, a
30 court of another state under a statute similar to this section shall
31 immediately communicate with the court of that state to resolve the
32 emergency, protect the safety of the parties and the child, and
33 determine a period for the duration of the temporary order.

34
35 17. a. Before a child custody determination is made under this act,
36 notice and an opportunity to be heard in accordance with the standards
37 of section 8 of this act shall be given to all persons entitled to notice
38 under the law of this State as in child custody proceedings between
39 residents of this State, any parent whose parental rights have not been
40 previously terminated, and any person having physical custody of the
41 child.

42 b. This act does not govern the enforceability of a child custody
43 determination made without notice and an opportunity to be heard.

44 c. The obligation to join a party and the right to intervene as a
45 party in a child custody proceeding under this act are governed by the

1 law of this State as in child custody proceedings between residents of
2 this State.

3
4 18. a. Except as otherwise provided in section 16 of this act, a
5 court of this State may not exercise its jurisdiction under this article
6 if at the time of the commencement of the proceeding a proceeding
7 concerning the custody of the child had been commenced in a court of
8 another state having jurisdiction substantially in conformity with this
9 act, unless the proceeding has been terminated or is stayed by the
10 court of the other state because a court of this State is a more
11 convenient forum under section 19 of this act.

12 b. Except as otherwise provided in section 16 of this act, a court
13 of this State, before hearing a child custody proceeding, shall examine
14 the court documents and other information supplied by the parties
15 pursuant to section 21 of this act. If the court determines that a child
16 custody proceeding was previously commenced in a court in another
17 state having jurisdiction substantially in accordance with this act, the
18 court of this State shall stay its proceeding and communicate with the
19 court of the other state. If the court of the state having jurisdiction
20 substantially in accordance with this act does not determine that the
21 court of this State is a more appropriate forum, the court of this State
22 shall dismiss the proceeding.

23 c. In a proceeding to modify a child custody determination, a court
24 of this State shall determine whether a proceeding to enforce the
25 determination has been commenced in another state. If a proceeding
26 to enforce a child custody determination has been commenced in
27 another state, the court may:

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

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

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

35
36 19. a. A court of this State that has jurisdiction under this act to
37 make a child custody determination may decline to exercise its
38 jurisdiction at any time if it determines that it is an inconvenient forum
39 under the circumstances and that a court of another state is a more
40 appropriate forum. The issue of inconvenient forum may be raised
41 upon the court's own motion, request of another court or motion of
42 a party.

43 b. Before determining whether it is an inconvenient forum, a court
44 of this State shall consider whether it is appropriate for a court of
45 another state to exercise jurisdiction. For this purpose, the court shall

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

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

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

7 (3) the distance between the court in this State and the court in the
8 state that would assume jurisdiction;

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

10 (5) any agreement of the parties as to which state should assume
11 jurisdiction;

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

14 (7) the ability of the court of each state to decide the issue
15 expeditiously and the procedures necessary to present the evidence;
16 and

17 (8) the familiarity of the court of each state with the facts and issues
18 of the pending litigation.

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

24 d. A court of this State may decline to exercise its jurisdiction
25 under this act if a child custody determination is incidental to an action
26 for divorce or another proceeding while still retaining jurisdiction over
27 the divorce or other proceeding.

28

29 20. a. Except as otherwise provided in section 16 of this act or by
30 other law of this State, if a court of this State has jurisdiction under
31 this act because a person invoking the jurisdiction has engaged in
32 unjustifiable conduct, the court shall decline to exercise its jurisdiction
33 unless:

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

36 (2) a court of the state otherwise having jurisdiction under sections
37 13 through 15 of this act determines that this State is a more
38 appropriate forum under section 19 of this act; or

39 (3) no other State would have jurisdiction under sections 13
40 through 15 of this act.

41 b. If a court of this State declines to exercise its jurisdiction
42 pursuant to subsection a. of this section, it may fashion an appropriate
43 remedy to ensure the safety of the child and prevent a repetition of the
44 wrongful conduct, including staying the proceeding until a child
45 custody proceeding is commenced in a court having jurisdiction under
46 sections 13 through 15 of this act.

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

11

12 21. a. Unless a party seeks an exception to disclosure of
13 information as provided by subsection e. of this section, each party,
14 in its first pleading or in an attached affidavit, shall give information,
15 if reasonably ascertainable, under oath as to the child's present
16 address, the places where the child has lived during the last five years,
17 and the names and present addresses of the persons with whom the
18 child has lived during that period. The pleading or affidavit shall state
19 whether the party:

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

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

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

33 b. If the information required by subsection a. of this section is not
34 furnished, the court, upon its own motion or that of a party, may stay
35 the proceeding until the information is furnished.

36 c. If the declaration as to any of the items described in subsection
37 a. of this section is in the affirmative, the declarant shall give
38 additional information under oath as required by the court. The court
39 may examine the parties under oath as to details of the information
40 furnished and other matters pertinent to the court's jurisdiction and the
41 disposition of the case.

42 d. Each party has a continuing duty to inform the court of any
43 proceeding in this or any other state that could affect the current
44 proceeding.

45 e. If a party alleges in an affidavit or a pleading under oath that the
46 health, safety, or liberty of a party or child would be put at risk by the

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

6
7 22. a. In a child custody proceeding in this State, the court may
8 order a party to a child custody proceeding who is in this State to
9 appear before the court in person with or without the child. The court
10 may order any person who is in this State and who has physical
11 custody or control of the child to appear physically with the child.

12 b. If a party to a child custody proceeding whose presence is
13 desired by the court is outside this state, the court may order that a
14 notice given pursuant to section 8 of this act include a statement
15 directing the party to appear personally with or without the child and
16 declaring that failure to appear may result in a decision adverse to the
17 party.

18 c. The court may enter any orders necessary to ensure the safety
19 of the child and of any person ordered to appear under this section.

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

25
26 ARTICLE 3
27 ENFORCEMENT
28

29 23. As used in this article:

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

34 "Respondent" means a person against whom a proceeding has been
35 commenced for enforcement of an order for return of a child under the
36 Hague Convention on the Civil Aspects of International Child
37 Abduction or enforcement of a child custody determination.

38
39 24. Under this article, a court of this State may enforce an order
40 for the return of a child made under the Hague Convention on the Civil
41 Aspects of International Child Abduction as if it were a child custody
42 determination.

43
44 25. a. A court of this State shall recognize and enforce a child
45 custody determination of a court of another state if the latter court
46 exercised jurisdiction in substantial conformity with this act or the

1 determination was made under factual circumstances meeting the
2 jurisdictional standards of this act and the determination has not been
3 modified in accordance with this act.

4 b. A court of this State may utilize any remedy available under
5 other law of this State to enforce a child custody determination made
6 by a court of another state. The remedies provided in this article are
7 cumulative and do not affect the availability of other remedies to
8 enforce a child custody determination.

9

10 26. a. A court of this State which does not have jurisdiction to
11 modify a child custody determination, may issue a temporary order
12 enforcing:

13 (1) a visitation schedule made by a court of another state; or

14 (2) the visitation provisions of a child custody determination of
15 another state that does not provide for a specific visitation schedule.

16 b. If a court of this State makes an order under paragraph (2) of
17 subsection a. of this section, it shall specify in the order a period that
18 it considers adequate to allow the petitioner to obtain an order from
19 court having jurisdiction under the criteria specified in article 2 of this
20 act. The order remains in effect until an order is obtained from the
21 other court or the period expires.

22

23 27. a. A child custody determination issued by a court of another
24 state may be registered in this State, with or without a simultaneous
25 request for enforcement, by sending to the Superior Court in this
26 State:

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

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

32 (3) except as otherwise provided in section 21 of this act, the name
33 and address of the person seeking registration and any parent or
34 person acting as a parent who has been awarded custody or visitation
35 in the child custody determination sought to be registered.

36 b. On receipt of the documents required by subsection a. of this
37 section, the registering court shall:

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

41 (2) serve notice upon the persons named pursuant to paragraph (3)
42 of subsection a. of this section and provide them with an opportunity
43 to contest the registration in accordance with this section.

44 c. The notice required by paragraph (2) of subsection b. of this
45 section shall state that:

46 (1) a registered determination is enforceable as of the date of the

1 registration in the same manner as a determination issued by a court
2 of this State;

3 (2) a hearing to contest the validity of the registered determination
4 shall be requested within 20 days after service of notice; and

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

9 d. A person seeking to contest the validity of a registered order
10 shall request a hearing within 20 days after service of the notice. At
11 that hearing, the court shall confirm the registered order unless the
12 person contesting registration establishes that:

13 (1) the issuing court did not have jurisdiction under article 2 of this
14 act;

15 (2) the child custody determination sought to be registered has been
16 vacated, stayed, or modified by a court of a state having jurisdiction
17 to do so under article 2 of this act; or

18 (3) the person contesting registration was entitled to notice, but
19 notice was not given in accordance with the standards of section 8 of
20 this act in the proceedings before the court that issued the order for
21 which registration is sought.

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

26 f. Confirmation of a registered order, whether by operation of law
27 or after notice and hearing, precludes further contest of the order with
28 respect to any matter which could have been asserted at the time of
29 registration.

30

31 28. a. A court of this State may grant any relief normally available
32 under the law of this State to enforce a registered child custody
33 determination made by a court of another state.

34 b. A court of this State shall recognize and enforce, but may not
35 modify, except in accordance with article 2 of this act, a registered
36 child custody determination of another state.

37

38 29. If a proceeding for enforcement under this article has been or
39 is commenced in a court of this State and the court determines that a
40 proceeding to modify the determination is pending in a court of
41 another state having jurisdiction to modify the determination under
42 article 2 of this act, the enforcing court shall immediately communicate
43 with the modifying court. The proceeding for enforcement continues
44 unless the enforcing court, after consultation with the modifying court,
45 stays or dismisses the proceeding.

1 30. a. A petition under this article shall be verified. Certified
2 copies of all orders sought to be enforced and of the order confirming
3 registration, if any, shall be attached to the petition. A copy of a
4 certified copy of an order may be attached instead of the original.

5 b. A petition for enforcement of a child custody determination shall
6 state:

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

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

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

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

21 (5) whether relief in addition to the immediate physical custody of
22 the child and attorney's fees is sought, including a request for
23 assistance from law enforcement officials and, if so, the relief sought:
24 and

25 (6) if the child custody determination has been registered and
26 confirmed under section 27 of this act, the date and place of
27 registration.

28 c. Upon the filing of a petition, the court shall issue an order
29 directing the respondent to appear in person with or without the child
30 at a hearing and may enter any orders necessary to ensure the safety
31 of the parties and the child. The hearing shall be held on the next
32 judicial day following service of process unless that date is impossible.
33 In that event, the court shall hold the hearing on the first day possible.
34 The court may extend the date of hearing at the request of the
35 petitioner.

36 d. An order issued under subsection c. of this section shall state the
37 time and place of the hearing and advise the respondent that at the
38 hearing the court will order that the petitioner may take immediate
39 physical custody of the child and the payment of fees, costs, and
40 expenses under section 34 of this act, and may schedule a hearing to
41 determine whether further relief is appropriate, unless the respondent
42 appears and establishes that:

43 (1) the child custody determination has not been registered and
44 confirmed under section 27 of this act, and that

45 (a) the issuing court did not have jurisdiction under article 2 of this
46 act;

1 (b) the child custody determination for which enforcement is sought
2 has been vacated, stayed, or modified by a court of a state having
3 jurisdiction to do so under article 2 of this act; or

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

7 (2) the child custody determination for which enforcement is sought
8 was registered and confirmed under section 27 of this act, but has been
9 vacated, stayed or modified by a court of a state having jurisdiction to
10 do so under article 2 of this act or federal law.

11
12 31. Except as otherwise provided in section 33 of this act, the
13 petition and order shall be served, by any method authorized by the
14 law of this State, upon respondent and any person who has physical
15 custody of the child.

16
17 32. a. Unless the court enters a temporary emergency order
18 pursuant to section 16 of this act, upon a finding that a petitioner is
19 entitled to the physical custody of the child immediately, the court
20 shall order the child delivered to the petitioner unless the respondent
21 establishes that:

22 (1) the child custody determination has not been registered and
23 confirmed under section 27 of this act, and that

24 (a) the issuing court did not have jurisdiction under article 2 of this
25 act;

26 (b) the child custody determination for which enforcement is sought
27 has been vacated, stayed or modified by a court of a state having
28 jurisdiction to do so under article 2 of this act or federal law; or

29 (c) the respondent was entitled to notice, but notice was not given
30 in accordance with the standards of section 8 of this act in the
31 proceedings before the court that issued the order for which
32 enforcement is sought; or

33 (2) the child custody determination for which enforcement is sought
34 was registered and confirmed under section 27 of this act, but has been
35 vacated, stayed or modified by a court of a state having jurisdiction to
36 do so under article 2 of this act or federal law.

37 b. The court shall award the fees, costs, and expenses authorized
38 under section 34 of this act and may grant additional relief, including
39 a request for the assistance of law enforcement officials, and set a
40 further hearing to determine whether additional relief is appropriate.

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

44 d. A privilege against disclosure of communications between
45 spouses and a defense of immunity based on the relationship of

1 husband and wife or parent and child may not be invoked in a
2 proceeding under this article.

3

4 33. a. Upon the filing of a petition seeking enforcement of a child
5 custody determination, the petitioner may file a verified application for
6 the issuance of a warrant to take physical custody of the child if the
7 child is likely to suffer serious imminent physical harm or removal
8 from this State.

9 b. If the court, upon the testimony of the petitioner or other
10 witness, finds that the child is likely to suffer serious imminent physical
11 harm or be imminently removed from this State, it may issue a warrant
12 to take physical custody of the child. The petition shall be heard on
13 the next judicial day after the warrant is executed. The warrant shall
14 include the statements required by subsection b. of section 30 of this
15 act.

16 c. A warrant to take physical custody of a child shall:

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

19 (2) direct law enforcement officers to take physical custody of the
20 child immediately;

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

22 d. The respondent shall be served with the petition, warrant and
23 order immediately after the child is taken into physical custody.

24 e. A warrant to take physical custody of a child is enforceable
25 throughout this State. If the court finds on the basis of the testimony
26 of the petitioner or other witness that a less intrusive remedy is not
27 effective, it may authorize law enforcement officers to enter private
28 property to take physical custody of the child. If required by the
29 exigency of the case, the court may authorize law enforcement officers
30 to make a forcible entry at any hour.

31 f. The court may impose conditions upon placement of a child to
32 ensure the appearance of the child and the child's custodian. After the
33 issuance of any temporary or permanent order determining custody or
34 visitation of a minor child, a law enforcement officer having reasonable
35 cause to believe that a person is likely to flee the State with the child
36 or otherwise by flight or concealment evade the jurisdiction of the
37 courts of this State may take a child into protective custody and return
38 the child to the parent having lawful custody, or to a court in which a
39 custody hearing concerning the child is pending.

40 g. After the issuance of any temporary or permanent order
41 determining custody or visitation of a minor child, a law enforcement
42 officer having reasonable cause to believe that a person is likely to flee
43 the State with the child or otherwise by flight or concealment evade
44 the jurisdiction of the courts of this State may take a child into
45 protective custody and deliver the child to a court in which a custody
46 hearing concerning the child is pending.

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

8 b. The court may not assess fees, costs, or expenses against a state
9 except as otherwise provided by law other than this act.

10

11 35. A court of this State shall accord full faith and credit to an
12 order made consistently with this act which enforces a child custody
13 determination by a court of another state unless the order has been
14 vacated, stayed, or modified by a court authorized to do so under
15 article 2 of this act.

16

17 36. An appeal may be taken from a final order in a proceeding
18 under this article in accordance with expedited appellate procedures
19 in other civil cases. Unless the court enters a temporary emergency
20 order under section 16 of this act, the enforcing court may not stay an
21 order enforcing a child custody determination pending appeal.

22

23 37. a. In a case arising under this act or involving the Hague
24 Convention on the Civil Aspects of International Child Abduction, the
25 prosecutor or other appropriate public official may take any lawful
26 action, including resort to a proceeding under this article or any other
27 available civil proceeding to locate a child, obtain the return of a child,
28 or enforce a child custody determination if there is:

29 (1) an existing child custody determination;

30 (2) a request from a court in a pending child custody case;

31 (3) a reasonable belief that a criminal statute has been violated; or

32 (4) a reasonable belief that the child has been wrongfully removed
33 or retained in violation of the Hague Convention on the Civil Aspects
34 of International Child Abduction.

35 b. A prosecutor or other appropriate public official acts on behalf
36 of the court and may not represent any party to a child custody
37 determination.

38

39 38. At the request of a prosecutor or other appropriate public
40 official acting under section 37 of this act, a law enforcement officer
41 may take any lawful action reasonably necessary to locate a child or a
42 party and assist a prosecutor or other appropriate public official with
43 responsibilities under section 37 of this act.

44

45 39. If the respondent is not the prevailing party, the court may
46 assess against the respondent all direct expenses and costs incurred by

1 the prosecutor or other appropriate public official and law
2 enforcement officers under section 37 or 38 of this act.

3
4 ARTICLE 4
5 MISCELLANEOUS PROVISIONS
6

7 40. In applying and construing this uniform act, consideration shall
8 be given to the need to promote uniformity of the law with respect to
9 its subject matter among states that enact it.

10
11 41. If any provision of this act or its application to any person or
12 circumstance is held invalid, the invalidity does not affect other
13 provisions or applications of this act which can be given effect without
14 the invalid provision or application, and to this end the provisions of
15 this act are severable.

16
17 42. A motion or other request for relief made in a child custody or
18 enforcement proceeding which was commenced before the effective
19 date of this act is governed by the law in effect at the time the motion
20 or other request was made.

21
22 43. Every order of a court involving custody or visitation shall
23 include a written notice, in both English and Spanish, advising the
24 persons affected as to the penalties provided in N.J.S.2C:13-4 for
25 violating that order.

26
27 44. The following are repealed:
28 The "Uniform Child Custody Jurisdiction Act," P.L.1979, c.124
29 (C.2A:34-28 et seq.); and sections 2 and 3 of P.L.1990,
30 c.104(C.2A:34-31.1 and 2A:34-31.2.)

31
32 45. This act shall take effect on the 90th day after enactment.

33
34
35 STATEMENT
36

37 This bill is based on the May, 1999 Final Report of the New Jersey
38 Law Revision Commission pertaining to the "Uniform Child Custody
39 Jurisdiction and Enforcement Act" (UCCJEA). This bill revises the
40 provisions of the Uniform Child Custody Jurisdiction Act (UCCJA),
41 which was adopted in every state, and brings it into compliance with
42 the federal Parental Kidnaping Prevention Act. This bill limits child
43 custody jurisdiction to one state, and provides enforcement provisions
44 for child custody orders. It is based on a draft promulgated by the
45 National Conference of Commissions of Uniform State Laws with
46 certain modifications suggested by the New Jersey Law Revision

1 Commission.

2 This bill provides certain rules for custody determinations as
3 follows:

4 Updated Home State Provisions: The bill gives priority to the
5 home state as a ground for taking jurisdiction.

6 Continuing Exclusive Jurisdiction: This bill provides that a state
7 which makes the initial custody determination has continuing exclusive
8 jurisdiction if a party to the original custody determination remains in
9 that state. A state with continuing exclusive jurisdiction is the only
10 state which can modify a custody order. If it determines that another
11 state has a more significant connection to the child, it may relinquish
12 its authority.

13 Emergency Jurisdiction: This bill clarifies the provisions regarding
14 emergency jurisdiction, allowing a court to take jurisdiction even
15 though it is not the home state, if the child is present in the state and
16 has been abandoned, or is subjected to or threatened with mistreatment
17 or abuse. An order issued by a court with emergency jurisdiction is
18 temporary.

19 The bill also provides the following enforcement provisions. The
20 original UCCJA did not address the enforcement issue.

21 Expedited Enforcement Hearings: At an enforcement hearing, a
22 petitioner only needs to show a certified copy of the custody
23 determination to be enforced, evidence of a violation by the
24 respondent, and the remedy sought. The court will then decide
25 whether the remedy sought should be granted.

26 Enhanced Court Remedies: If the enforcing court is concerned that
27 the parent, who has physical custody of the child, will flee or harm the
28 child, a warrant to take physical possession of the child is available.

29 Duty to Enforce: The bill provides that a court has the duty to
30 enforce a custody determination of another state; however, a child
31 custody order of another state is not subject to modification.

32 Civil Enforcement of Custody Orders: A prosecutor is authorized
33 to locate a child and enforce the custody determination. The
34 prosecutor is authorized to utilize any civil proceeding to secure the
35 enforcement of the custody determination. Law enforcement officials
36 may assist in locating a child and enforcing a custody determination.

37 This bill will provide uniformity of law in a time when the mobility
38 of the American public makes it important to have laws regarding child
39 custody determinations uniform from state to state. Lack of
40 uniformity increases the costs of the enforcement action, decreases the
41 lack of certainty of outcome, and may turn enforcement of a child
42 custody or visitation order into a long and drawn out process.

43 The New Jersey Law Revision Commission decided to supplement
44 the 1997 uniform law with two sections that were added to the
45 UCCJA by the Legislature after its enactment in 1979. The language
46 of N.J.S.A.2A:34-31.1 is retained as subsection g. of section 33, and

1 N.J.S.A.2A:34-31.2 is retained as section 43. The bill repeals the
2 1979 "Uniform Child Custody Jurisdiction Act," N.J.S.A.2A:34-28 et
3 seq., since the provisions of this bill replace those of the 1999 law.
4 The bill also repeals N.J.S.A.2A:34-31.1 and 2A:34-31.2 since their
5 provisions are incorporated in sections 33 and 43, respectively, of this
6 bill.

7 The Commission also approved two differences from the uniform
8 text of UCCJEA. Section 5, (International application of act), is
9 reworded in subsections a. and c., to give New Jersey courts greater
10 authority to exercise discretion regarding custody judgments made in
11 foreign countries. The wording of subsection a. of section 21 is also
12 changed to clarify that certain residence data need not be disclosed if
13 the court finds that the data must be protected in the interest of
14 personal safety.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 150**

STATE OF NEW JERSEY

DATED: MAY 13, 2004

The Senate Judiciary Committee reports favorably a substitute for Senate Bill No. 150.

This substitute enacts the "Uniform Child Custody Jurisdiction and Enforcement Act" (UCCJEA), which was promulgated in 1997 by the National Conference of Commissioners on Uniform State Laws. The substitute also contains certain modifications suggested by the New Jersey Law Revision Commission in 1999.

The UCCJEA would replace the Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted in New Jersey in 1979 and adopted in every state. As of this date, 36 states have replaced the UCCJA with the new UCCJEA. The UCCJEA limits child custody jurisdiction to one state, provides limits on modification jurisdiction, and provides enforcement provisions for child custody orders. The UCCJEA also brings New Jersey law into compliance with the federal Parental Kidnaping Prevention Act.

The substitute provides certain rules for custody determinations as follows:

Updated Home State Provisions: The substitute gives priority to the home state as a ground for taking jurisdiction.

Continuing Exclusive Jurisdiction: This substitute provides that a state which makes the initial custody determination has continuing exclusive jurisdiction if a party to the original custody determination remains in that state. A state with continuing exclusive jurisdiction is the only state which can modify a custody order. If it determines that another state has a more significant connection to the child, it may relinquish its authority.

Emergency Jurisdiction: This substitute clarifies the provisions regarding emergency jurisdiction, allowing a court to take jurisdiction even though it is not the home state, if the child is present in the state and has been abandoned, or is subjected to or threatened with mistreatment or abuse. An order issued by a court with emergency jurisdiction is temporary.

The substitute also provides the following enforcement provisions, which were not addressed in the original UCCJA:

Expedited Enforcement Hearings: At an enforcement hearing, a

petitioner only needs to show a certified copy of the custody determination to be enforced, evidence of a violation by the respondent, and the remedy sought. The court will then decide whether the remedy sought should be granted.

Enhanced Court Remedies: If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Duty to Enforce: The substitute provides that a court has the duty to enforce a custody determination of another state; however, a child custody order of another state is not subject to modification.

Civil Enforcement of Custody Orders: A prosecutor is authorized to locate a child and enforce the custody determination. The prosecutor is authorized to utilize any civil proceeding to secure the enforcement of the custody determination. Law enforcement officials may assist in locating a child and enforcing a custody determination.

This substitute is intended to provide uniformity of law in a time when the mobility of the American public makes it important to have laws regarding child custody determinations uniform from state to state. Lack of uniformity increases the costs of the enforcement action, decreases the lack of certainty of outcome, and may turn enforcement of a child custody or visitation order into a long and drawn out process.

As recommended by the New Jersey Law Revision Commission, the substitute contains two additional sections that were added to the UCCJA after its 1979 enactment in New Jersey. The language of N.J.S.A.2A:34-31.1 is retained as subsection g. of section 33, and N.J.S.A.2A:34-31.2 is retained as section 43. The substitute repeals the 1979 "Uniform Child Custody Jurisdiction Act," N.J.S.A.2A:34-28 et seq.. The substitute also repeals N.J.S.A.2A:34-31.1 and 2A:34-31.2 since their provisions are incorporated in sections 33 and 43, respectively, of this substitute.

The substitute also contains two differences from the uniform text of UCCJEA that were recommended by the New Jersey Law Revision Commission. Section 5 (International Application of Act) is reworded in subsections a. and c., to give New Jersey courts greater authority to exercise discretion regarding custody judgments made in foreign countries. The wording of subsection a. of section 21 (Information to be Submitted to Court) is also changed to clarify that certain residence data need not be disclosed if the court finds that the data must be protected in the interest of personal safety.

In addition, the substitute contains additional provisions concerning the protection of domestic violence victims. Section 20 (Jurisdiction Declined by Reason of Conduct) sets out new language providing that no fees, costs or expenses shall be assessed against a party who is fleeing domestic violence or mistreatment or abuse of a child or sibling, unless the court is convinced by a preponderance of the evidence that such assessment would be clearly appropriate. (See

subsection c. of section 20.) The added language also provides that in making a determination, the court shall not consider as a factor weighing against the petitioner any taking of the child or retention of the child from the person who has rights of legal custody, physical custody or visitation, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or to protect the child or sibling from mistreatment or abuse. (See subsection d. of section 20.)

ASSEMBLY, No. 2970

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 27, 2004

Sponsored by:

Assemblyman BRIAN P. STACK

District 33 (Hudson)

Assemblyman LOUIS MANZO

District 31 (Hudson)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Creates the "Uniform Child Custody Jurisdiction and Enforcement Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/18/2004)

1 AN ACT creating the "Uniform Child Custody Jurisdiction and
2 Enforcement Act" and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7

ARTICLE 1

8

GENERAL PROVISIONS

9

10 1. Short Title.

11 This act shall be known and may be cited as the "Uniform Child
12 Custody Jurisdiction and Enforcement Act."

13

14 2. Definitions.

15 As used in this act:

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

18 "Child" means an individual who has not attained 18 years of age.

19 "Child custody determination" means a judgment, decree, or other
20 order of a court providing for the legal custody, physical custody or
21 visitation with respect to a child. The term includes a permanent,
22 temporary, initial and modification order. The term does not include
23 a provision relating to child support or other monetary obligation of
24 an individual.

25 "Child custody proceeding" means a proceeding in which legal
26 custody, physical custody or visitation with respect to a child is an
27 issue. The term includes a proceeding for divorce, separation, neglect,
28 abuse, dependency, guardianship, paternity, termination of parental
29 rights, and protection from domestic violence, in which the issue may
30 appear. The term does not include a proceeding involving juvenile
31 delinquency, contractual emancipation or enforcement under article 3
32 of this act.

33 "Commencement" means the filing of the first pleading in a
34 proceeding.

35 "Court" means an entity authorized under the law of a state to
36 establish, enforce or modify a child custody determination.

37 "Home state" means the state in which a child lived with a parent
38 or a person acting as a parent for at least six consecutive months
39 immediately before the commencement of a child custody proceeding.
40 In the case of a child less than six months of age, the term means the
41 state in which the child lived from birth with any of the persons
42 mentioned. A period of temporary absence of any of the mentioned
43 persons is part of the period.

44 "Initial determination" means the first child custody determination
45 concerning a particular child.

46 "Issuing court" means the court that makes a child custody

1 determination for which enforcement is sought under this act.

2 "Issuing state" means the state in which a child custody
3 determination is made.

4 "Modification" means a child custody determination that changes,
5 replaces, supersedes, or is otherwise made after a previous
6 determination concerning the same child, whether or not it is made by
7 the court that made the previous determination.

8 "Person" means an individual, corporation, business trust, estate,
9 trust, partnership, limited liability company, association, joint venture,
10 government, governmental subdivision, agency, or instrumentality,
11 public corporation or any other legal or commercial entity.

12 "Person acting as a parent" means a person, other than a parent,
13 who:

14 a. has physical custody of the child or has had physical custody for
15 a period of six consecutive months, including any temporary absence,
16 within one year immediately before the commencement of a child
17 custody proceeding; and

18 b. has been awarded legal custody by a court or claims a right to
19 legal custody under the laws of this State.

20 "Physical custody" means the physical care and supervision of a
21 child.

22 "State" means a state of the United States, the District of Columbia,
23 Puerto Rico, the United States Virgin Islands, or any territory or
24 insular possession subject to the jurisdiction of the United States.

25 "Tribe" means an Indian tribe or band, or Alaskan Native village,
26 which is recognized by federal law or formally acknowledged by a
27 state.

28 "Warrant" means an order issued by a court authorizing law
29 enforcement officers to take physical custody of a child.

30

31 3. Proceedings Governed by Other Law.

32 This act does not govern an adoption proceeding or a proceeding
33 pertaining to the authorization of emergency medical care for a child.

34

35 4. Application to Indian Tribes.

36 a. A child custody proceeding that pertains to an Indian child as
37 defined in the Indian Child Welfare Act, 25 U.S.C.1901 et seq., is not
38 subject to this act to the extent that it is governed by the Indian Child
39 Welfare Act.

40 b. A court of this State shall treat a tribe as if it were a state of the
41 United States for purposes of articles 1 and 2 of this act.

42 c. A child custody determination made by a tribe under factual
43 circumstances in substantial conformity with the jurisdictional
44 standards of this act shall be recognized and enforced under the
45 provisions of article 3 of this act.

46

1 5. International Application of Act.

2 a. A court of this State shall treat a foreign country as if it were a
3 state of the United States for the purpose of applying articles 1 and 2
4 of this act if the foreign court gives notice and an opportunity to be
5 heard to all parties before making child custody determinations.

6 b. A child custody determination made in a foreign country under
7 factual circumstances in substantial conformity with the jurisdictional
8 standards of this act shall be recognized and enforced under article 3
9 of this act.

10 c. A court of this State need not apply this act if the child custody
11 law of a foreign country violates fundamental principles of human
12 rights or does not base custody decisions on evaluation of the best
13 interests of the child.

14

15 6. Effect of Custody Determination.

16 A child custody determination made by a court of this State that
17 had jurisdiction under this act binds all persons who have been served
18 in accordance with the laws of this State or notified in accordance with
19 section 8 of this act or who have submitted to the jurisdiction of the
20 court, and who have been given an opportunity to be heard. As to
21 those persons, the determination is conclusive as to all decided issues
22 of law and fact except to the extent the determination is modified.

23

24 7. Priority.

25 If a question of existence or exercise of jurisdiction under this act
26 is raised in a child custody proceeding, the question, upon request of
27 a party, shall be given priority on the calendar and handled
28 expeditiously.

29

30 8. Notice of Persons Outside State.

31 a. Notice required for the exercise of jurisdiction when a person is
32 outside this State may be given in a manner prescribed by the law of
33 this State for the service of process or by the law of the state in which
34 the service is made. Notice shall be given in a manner reasonably
35 calculated to give actual notice, but may be by publication if other
36 means are not effective.

37 b. Proof of service may be made in the manner prescribed by the
38 law of this State or by the law of the state in which the service is
39 made.

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

42

43 9. Appearance and Limited Immunity.

44 a. A party to a child custody proceeding, including a modification
45 proceeding, or a petitioner or a respondent in a proceeding to enforce
46 or register a child custody determination, is not subject to personal

1 jurisdiction in this State for another proceeding or purpose solely by
2 reason of having participated, or of having been physically present for
3 the purpose of participating in the proceeding.

4 b. A party who is subject to personal jurisdiction in this State on
5 a basis other than physical presence is not immune from service of
6 process in this State. A party present in this State who is subject to
7 the jurisdiction of another state is not immune from service of process
8 allowable under the laws of that state.

9 c. The immunity granted by subsection a. of this section does not
10 extend to civil litigation based on acts unrelated to the participation in
11 a proceeding under this act committed by an individual while present
12 in this State.

13
14 10. Communication Between Courts.

15 a. A court of this State may communicate with a court in another
16 state concerning a proceeding arising under this act.

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

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

24 d. Except as provided in subsection c. of this section, a record shall
25 be made of a communication under this section. The parties shall be
26 informed promptly of the communication and granted access to the
27 record.

28 e. For the purposes of this section, "record" means information
29 that is inscribed on a tangible medium or that which is stored in an
30 electronic or other medium and is retrievable in perceivable form.

31
32 11. Taking Testimony in Another State.

33 a. In addition to other procedures available to a party, a party to
34 a child custody proceeding may offer testimony of witnesses who are
35 located in another state, including testimony of the parties and the
36 child, by deposition or other means allowable in this State for
37 testimony taken in another state. The court on its own motion may
38 order that the testimony of a person be taken in another state and may
39 prescribe the manner in which and the terms upon which the testimony
40 is taken.

41 b. A court of this State may permit an individual residing in another
42 state to be deposed or to testify by telephone, audiovisual means or
43 other electronic means before a designated court or at another location
44 in that state. A court of this State shall cooperate with courts of other
45 states in designating an appropriate location for the deposition or
46 testimony.

1 c. Documentary evidence transmitted from another state to a court
2 of this State by technological means that do not produce an original
3 writing may not be excluded from evidence on an objection based on
4 the means of transmission.

5
6 12. Cooperation Between Courts; Preservation of Records.

7 a. A court of this State may request the appropriate court of
8 another state to:

9 (1) hold an evidentiary hearing;

10 (2) order a person to produce or give evidence under procedures of
11 that state;

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

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

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

21 b. Upon request of a court of another state, a court of this State
22 may hold a hearing or enter an order described in subsection a. of this
23 section.

24 c. Travel and other necessary and reasonable expenses incurred
25 under subsections a. and b. of this section may be assessed against the
26 parties according to the laws of this State.

27 d. A court of this State shall preserve the pleadings, orders,
28 decrees, records of hearings, evaluations and other pertinent records
29 with respect to a child custody proceeding until the child attains 18
30 years of age. Upon appropriate request by a court or law enforcement
31 official of another state, the court shall forward a certified copy of
32 these records.

33
34 ARTICLE 2
35 JURISDICTION
36

37 13. Initial Child Custody Jurisdiction.

38 a. Except as otherwise provided in section 16 of this act, a court
39 of this State has jurisdiction to make an initial child custody
40 determination only if:

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

46 (2) a court of another state does not have jurisdiction under

1 paragraph (1) of this subsection, or a court of the home state of the
2 child has declined to exercise jurisdiction on the ground that this State
3 is the more appropriate forum under section 19 or 20 of this act and:

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

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

9 (3) all courts having jurisdiction under paragraph (1) or (2) of this
10 subsection have declined to exercise jurisdiction on the ground that a
11 court of this State is the more appropriate forum to determine the
12 custody of the child under section 19 or 20 of this act; or

13 (4) no state would have jurisdiction under paragraph (1), (2) or (3)
14 of this subsection.

15 b. Subsection a. of this section is the exclusive jurisdictional basis
16 for making a child custody determination by a court of this State.

17 c. Physical presence of, or personal jurisdiction over, a party or a
18 child is neither necessary nor sufficient to make a child custody
19 determination.

20 d. A court of this State may assume temporary emergency
21 jurisdiction in accordance with section 16 of this act.

22

23 14. Exclusive, Continuing Jurisdiction.

24 a. Except as otherwise provided in section 16 of this act, a court
25 of this State that has made a child custody determination consistent
26 with section 13 or 15 of this act has exclusive, continuing jurisdiction
27 over the determination until:

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

33 (2) a court of this State or a court of another state determines that
34 neither the child, nor a parent, nor any person acting as a parent
35 presently resides in this State.

36 b. A court of this State which has made a child custody
37 determination and does not have exclusive, continuing jurisdiction
38 under this section may modify that determination only if it has
39 jurisdiction to make an initial determination under section 13 of this
40 act.

41

42 15. Jurisdiction to Modify Determination.

43 Except as otherwise provided in section 16 of this act, a court of
44 this State may not modify a child custody determination made by a
45 court of another state unless a court of this State has jurisdiction to
46 make an initial determination under paragraph (1) or (2) of subsection

1 a. of section 13 of this act and:

2 a. the court of the other state determines it no longer has exclusive,
3 continuing jurisdiction under section 14 of this act or that a court of
4 this State would be a more convenient forum under section 19 of this
5 act; or

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

9

10 16. Temporary Emergency Jurisdiction.

11 a. A court of this State has temporary emergency jurisdiction if the
12 child 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 mistreatment or abuse.

16 b. If there is no previous child custody determination that is
17 entitled to be enforced under this act, and if no child custody
18 proceeding has been commenced in a court of a state having
19 jurisdiction under sections 13 through 15 of this act, a child custody
20 determination made under this section remains in effect until an order
21 is obtained from a court of a state having jurisdiction under sections
22 13 through 15 of this act. If a child custody proceeding has not been
23 or is not commenced in a court of a state having jurisdiction under
24 sections 13 through 15 of this act, a child custody determination made
25 under this section becomes a final determination if:

26 (1) it so provides; and

27 (2) this State becomes the home state of the child.

28 c. If there is a previous child custody determination that is entitled
29 to be enforced under this act, or a child custody proceeding has been
30 commenced in a court of a state having jurisdiction under sections 13
31 through 15 of this act, any order issued by a court of this State under
32 this section must specify in the order a period of time which the court
33 considers adequate to allow the person seeking an order to obtain an
34 order from the state having jurisdiction under sections 13 through 15
35 of this act. The order issued in this State remains in effect until an
36 order is obtained from the other state within the period specified or the
37 period expires.

38 d. A court of this State which has been asked to make a child
39 custody determination under this section, upon being informed that a
40 child custody proceeding has been commenced in, or a child custody
41 determination has been made, by a court of a state having jurisdiction
42 under sections 13 through 15 of this act, shall immediately
43 communicate with the other court. A court of this State which is
44 exercising jurisdiction pursuant to sections 13 through 15 of this act,
45 upon being informed that a child custody proceeding has been
46 commenced in, or a child custody determination has been made by, a

1 court of another state under a statute similar to this section shall
2 immediately communicate with the court of that state to resolve the
3 emergency, protect the safety of the parties and the child, and
4 determine a period for the duration of the temporary order.

5
6 17. Notice; Opportunity to be Heard; Joinder.

7 a. Before a child custody determination is made under this act,
8 notice and an opportunity to be heard in accordance with the standards
9 of section 8 of this act shall be given to all persons entitled to notice
10 under the law of this State as in child custody proceedings between
11 residents of this State, any parent whose parental rights have not been
12 previously terminated, and any person having physical custody of the
13 child.

14 b. This act does not govern the enforceability of a child custody
15 determination made without notice and an opportunity to be heard.

16 c. The obligation to join a party and the right to intervene as a
17 party in a child custody proceeding under this act are governed by the
18 law of this State as in child custody proceedings between residents of
19 this State.

20
21 18. Simultaneous Proceedings.

22 a. Except as otherwise provided in section 16 of this act, a court
23 of this State may not exercise its jurisdiction under this article if at the
24 time of the commencement of the proceeding a proceeding concerning
25 the custody of the child had been commenced in a court of another
26 state having jurisdiction substantially in conformity with this act,
27 unless the proceeding has been terminated or is stayed by the court of
28 the other state because a court of this State is a more convenient
29 forum under section 19 of this act.

30 b. Except as otherwise provided in section 16 of this act, a court
31 of this State, before hearing a child custody proceeding, shall examine
32 the court documents and other information supplied by the parties
33 pursuant to section 21 of this act. If the court determines that a child
34 custody proceeding was previously commenced in a court in another
35 state having jurisdiction substantially in accordance with this act, the
36 court of this State shall stay its proceeding and communicate with the
37 court of the other state. If the court of the state having jurisdiction
38 substantially in accordance with this act does not determine that the
39 court of this State is a more appropriate forum, the court of this State
40 shall dismiss the proceeding.

41 c. In a proceeding to modify a child custody determination, a court
42 of this State shall determine whether a proceeding to enforce the
43 determination has been commenced in another state. If a proceeding
44 to enforce a child custody determination has been commenced in
45 another state, the court may:

46 (1) stay the proceeding for modification pending the entry of an

1 order of a court of the other state enforcing, staying, denying or
2 dismissing the proceeding for enforcement;

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

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

7

8 19. a. Inconvenient Forum.

9 A court of this State that has jurisdiction under this act to make a
10 child custody determination may decline to exercise its jurisdiction at
11 any time if it determines that it is an inconvenient forum under the
12 circumstances and that a court of another state is a more appropriate
13 forum. The issue of inconvenient forum may be raised upon the
14 court's own motion, request of another court or motion of a party.

15 b. Before determining whether it is an inconvenient forum, a court
16 of this State shall consider whether it is appropriate for a court of
17 another state to exercise jurisdiction. For this purpose, the court shall
18 allow the parties to submit information and shall consider all relevant
19 factors, including:

20 (1) whether domestic violence has occurred and is likely to continue
21 in the future and which state could best protect the parties and the
22 child;

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

24 (3) the distance between the court in this State and the court in the
25 state that would assume jurisdiction;

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

27 (5) any agreement of the parties as to which state should assume
28 jurisdiction;

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

31 (7) the ability of the court of each state to decide the issue
32 expeditiously and the procedures necessary to present the evidence;
33 and

34 (8) the familiarity of the court of each state with the facts and issues
35 of the pending litigation.

36 c. If a court of this State determines that it is an inconvenient
37 forum and that a court of another state is a more appropriate forum,
38 it shall stay the proceedings upon condition that a child custody
39 proceeding be promptly commenced in another designated state and
40 may impose any other condition the court considers just and proper.

41 d. A court of this State may decline to exercise its jurisdiction
42 under this act if a child custody determination is incidental to an action
43 for divorce or another proceeding while still retaining jurisdiction over
44 the divorce or other proceeding.

45

46 20. Jurisdiction Declined by Reason of Conduct.

1 a. Except as otherwise provided in section 16 of this act or by
2 other law of this State, if a court of this State has jurisdiction under
3 this act because a person invoking the jurisdiction has engaged in
4 unjustifiable conduct, the court shall decline to exercise its jurisdiction
5 unless:

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

8 (2) a court of the state otherwise having jurisdiction under sections
9 13 through 15 of this act determines that this State is a more
10 appropriate forum under section 19 of this act; or

11 (3) no other State would have jurisdiction under sections 13
12 through 15 of this act.

13 b. If a court of this State declines to exercise its jurisdiction
14 pursuant to subsection a. of this section, it may fashion an appropriate
15 remedy to ensure the safety of the child and prevent a repetition of the
16 wrongful conduct, including staying the proceeding until a child
17 custody proceeding is commenced in a court having jurisdiction under
18 sections 13 through 15 of this act.

19 c. If a court dismisses a petition or stays a proceeding because it
20 declines to exercise its jurisdiction pursuant to subsection a. of this
21 section, it shall charge the party invoking the jurisdiction of the court
22 with necessary and reasonable expenses including costs,
23 communication expenses, attorney's fees, investigative fees, expenses
24 for witnesses, travel expenses, and child care during the course of the
25 proceedings, unless the party from whom fees are sought establishes
26 that the award would be inappropriate. The court may not assess fees,
27 costs, or expenses against this State except as otherwise provided by
28 law other than this act. No fees, costs or expenses shall be assessed
29 against a party who is fleeing an incident or pattern of domestic
30 violence or mistreatment or abuse of a child or sibling, unless the court
31 is convinced by a preponderance of evidence that such assessment
32 would be clearly appropriate.

33 d. In making a determination under this section, a court shall not
34 consider as a factor weighing against the petitioner any taking of the
35 child or retention of the child from the person who has rights of legal
36 custody, physical custody or visitation, if there is evidence that the
37 taking or retention of the child was to protect the petitioner from
38 domestic violence or to protect the child or sibling from mistreatment
39 or abuse.

40

41 21. Information to be Submitted to Court.

42 a. Unless a party seeks an exception to disclosure of information
43 as provided by subsection e. of this section, each party, in its first
44 pleading or in an attached affidavit, shall give information, if
45 reasonably ascertainable, under oath as to the child's present address,
46 the places where the child has lived during the last five years, and the

1 names and present addresses of the persons with whom the child has
2 lived during that period. The pleading or affidavit shall state whether
3 the party:

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

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

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

17 b. If the information required by subsection a. of this section is not
18 furnished, the court, upon its own motion or that of a party, may stay
19 the proceeding until the information is furnished.

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

26 d. Each party has a continuing duty to inform the court of any
27 proceeding in this or any other state that could affect the current
28 proceeding.

29 e. If a party alleges in an affidavit or a pleading under oath that the
30 health, safety, or liberty of a party or child would be put at risk by the
31 disclosure of identifying information, that information shall be sealed
32 and not disclosed to the other party or the public unless the court
33 orders the disclosure to be made after a hearing in which the court
34 takes into consideration the health, safety, or liberty of the party or
35 child and determines that the disclosure is in the interest of justice.

36

37 22. Appearance of Parties and Child.

38 a. In a child custody proceeding in this State, the court may order
39 a party to a child custody proceeding who is in this State to appear
40 before the court in person with or without the child. The court may
41 order any person who is in this State and who has physical custody or
42 control of the child to appear physically with the child.

43 b. If a party to a child custody proceeding whose presence is
44 desired by the court is outside this state, the court may order that a
45 notice given pursuant to section 8 of this act include a statement
46 directing the party to appear personally with or without the child and

1 declaring that failure to appear may result in a decision adverse to the
2 party.

3 c. The court may enter any orders necessary to ensure the safety
4 of the child and of any person ordered to appear under this section.

5 d. If a party to a child custody proceeding who is outside this state
6 is directed to appear under subsection b. of section or desires to
7 appear personally before the court with or without the child, the court
8 may require another party to pay reasonable and necessary travel and
9 other expenses of the party so appearing and of the child.

10

11

ARTICLE 3
ENFORCEMENT

12

13

14 23. Definitions.

15 As used in this article:

16 "Petitioner" means a person who seeks enforcement of a child
17 custody determination or enforcement of an order for the return of the
18 child under the Hague Convention on the Civil Aspects of
19 International Child Abduction.

20 "Respondent" means a person against whom a proceeding has been
21 commenced for enforcement of a child custody determination or
22 enforcement of an order for return of a child under the Hague
23 Convention on the Civil Aspects of International Child Abduction.

24

25 24. Enforcement Under Hague Convention.

26 Under this article, a court of this State may enforce an order for the
27 return of a child made under the Hague Convention on the Civil
28 Aspects of International Child Abduction as if it were a child custody
29 determination.

30

31 25. Duty to Enforce.

32 a. A court of this State shall recognize and enforce a child custody
33 determination of a court of another state if the latter court exercised
34 jurisdiction in substantial conformity with this act or the determination
35 was made under factual circumstances meeting the jurisdictional
36 standards of this act and the determination has not been modified in
37 accordance with this act.

38 b. A court of this State may utilize any remedy available under
39 other law of this State to enforce a child custody determination made
40 by a court of another state. The remedies provided in this article are
41 cumulative and do not affect the availability of other remedies to
42 enforce a child custody determination.

1 26. Temporary Visitation.

2 a. A court of this State which does not have jurisdiction to modify
3 a child custody determination may issue a temporary order enforcing:

4 (1) a visitation schedule made by a court of another state; or

5 (2) the visitation provisions of a child custody determination of
6 another state that does not provide for a specific visitation schedule.

7 b. If a court of this State makes an order under paragraph (2) of
8 subsection a. of this section, it shall specify in the order a period that
9 it considers adequate to allow the petitioner to obtain an order from
10 a court having jurisdiction under the criteria specified in article 2 of
11 this act. The order remains in effect until an order is obtained from the
12 other court or the period expires.

13

14 27. Registration of Child Custody Determination.

15 a. A child custody determination issued by a court of another state
16 may be registered in this State, with or without a simultaneous request
17 for enforcement, by sending to the Superior Court in this State:

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

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

23 (3) except as otherwise provided in section 21 of this act, the name
24 and address of the person seeking registration and any parent or
25 person acting as a parent who has been awarded custody or visitation
26 in the child custody determination sought to be registered.

27 b. On receipt of the documents required by subsection a. of this
28 section, the registering court shall:

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

32 (2) serve notice upon the persons named pursuant to paragraph (3)
33 of subsection a. of this section and provide them with an opportunity
34 to contest the registration in accordance with this section.

35 c. The notice required by paragraph (2) of subsection b. of this
36 section shall state that:

37 (1) a registered determination is enforceable as of the date of the
38 registration in the same manner as a determination issued by a court
39 of this State;

40 (2) a hearing to contest the validity of the registered determination
41 shall be requested within 20 days after service of notice; and

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

46 d. A person seeking to contest the validity of a registered order

1 shall request a hearing within 20 days after service of the notice. At
2 that hearing, the court shall confirm the registered order unless the
3 person contesting registration establishes that:

4 (1) the issuing court did not have jurisdiction under article 2 of this
5 act;

6 (2) the child custody determination sought to be registered has been
7 vacated, stayed, or modified by a court of a state having jurisdiction
8 to do so under article 2 of this act; or

9 (3) the person contesting registration was entitled to notice, but
10 notice was not given in accordance with the standards of section 8 of
11 this act in the proceedings before the court that issued the order for
12 which registration is sought.

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

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

21
22 28. Enforcement of Registered Determination.

23 a. A court of this State may grant any relief normally available
24 under the law of this State to enforce a registered child custody
25 determination made by a court of another state.

26 b. A court of this State shall recognize and enforce, but may not
27 modify, except in accordance with article 2 of this act, a registered
28 child custody determination of another state.

29
30 29. Simultaneous Proceedings.

31 If a proceeding for enforcement under this article has been or is
32 commenced in a court of this State and the court determines that a
33 proceeding to modify the determination is pending in a court of
34 another state having jurisdiction to modify the determination under
35 article 2 of this act, the enforcing court shall immediately communicate
36 with the modifying court. The proceeding for enforcement continues
37 unless the enforcing court, after consultation with the modifying court,
38 stays or dismisses the proceeding.

39
40 30. Expedited Enforcement of Child Custody Determination.

41 a. A petition under this article shall be verified. Certified copies of
42 all orders sought to be enforced and of the order confirming
43 registration, if any, shall be attached to the petition. A copy of a
44 certified copy of an order may be attached instead of the original.

45 b. A petition for enforcement of a child custody determination shall
46 state:

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

4 (2) 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 act and, if so, identify the court, the case number,
7 and the nature of the proceeding;

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

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

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

19 (6) if the child custody determination has been registered and
20 confirmed under section 27 of this act, the date and place of
21 registration.

22 c. 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 orders necessary to ensure the safety
25 of the parties and the child. The hearing shall be held on the next
26 judicial day following service of process unless that date is impossible.
27 In that event, the court shall hold the hearing on the first day possible.
28 The court may extend the date of hearing at the request of the
29 petitioner.

30 d. An order issued under subsection c. of this section shall state the
31 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 34 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 (1) the child custody determination has not been registered and
38 confirmed under section 27 of this act, and that

39 (a) the issuing court did not have jurisdiction under article 2 of this
40 act;

41 (b) the child custody determination for which enforcement is sought
42 has been vacated, stayed, or modified by a court of a state having
43 jurisdiction to do so under article 2 of this act; or

44 (c) the respondent was entitled to notice, but notice was not given
45 in accordance with the standards of section 8 in the proceedings before
46 the court that issued the order for which enforcement is sought; or

1 (2) the child custody determination for which enforcement is sought
2 was registered and confirmed under section 27 of this act, but has been
3 vacated, stayed or modified by a court of a state having jurisdiction to
4 do so under article 2 of this act or federal law.

5
6 31. Service of Petition and Order.

7 Except as otherwise provided in section 33 of this act, the petition
8 and order shall be served, by any method authorized by the law of this
9 State, upon respondent and any person who has physical custody of
10 the child.

11
12 32. Hearing and Order.

13 a. Unless the court enters a temporary emergency order pursuant
14 to section 16 of this act, upon a finding that a petitioner is entitled to
15 the physical custody of the child immediately, the court shall order the
16 child delivered to the petitioner unless the respondent establishes that:

17 (1) the child custody determination has not been registered and
18 confirmed under section 27 of this act, and that

19 (a) the issuing court did not have jurisdiction under article 2 of this
20 act;

21 (b) the child custody determination for which enforcement is sought
22 has been vacated, stayed or modified by a court of a state having
23 jurisdiction to do so under article 2 of this act or federal law; or

24 (c) the respondent was entitled to notice, but notice was not given
25 in accordance with the standards of section 8 of this act in the
26 proceedings before the court that issued the order for which
27 enforcement is sought; or

28 (2) the child custody determination for which enforcement is sought
29 was registered and confirmed under section 27 of this act, but has been
30 vacated, stayed or modified by a court of a state having jurisdiction to
31 do so under article 2 of this act or federal law.

32 b. The court shall award the fees, costs, and expenses authorized
33 under section 34 of this act and may grant additional relief, including
34 a request for the assistance of law enforcement officials, and set a
35 further hearing to determine whether additional relief is appropriate.

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

39 d. A privilege against disclosure of communications between
40 spouses and a defense of immunity based on the relationship of
41 husband and wife or parent and child may not be invoked in a
42 proceeding under this article.

43
44 33. Warrant to Take Physical Custody of Child.

45 a. Upon the filing of a petition seeking enforcement of a child
46 custody determination, the petitioner may file a verified application for

1 the issuance of a warrant to take physical custody of the child if the
2 child is likely to suffer serious imminent physical harm or removal
3 from this State.

4 b. If the court, upon the testimony of the petitioner or other
5 witness, finds that the child is likely to suffer serious imminent physical
6 harm or be imminently removed from this State, it may issue a warrant
7 to take physical custody of the child. The petition shall be heard on
8 the next judicial day after the warrant is executed. The warrant shall
9 include the statements required by subsection b. of section 30 of this
10 act.

11 c. A warrant to take physical custody of a child shall:

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

14 (2) direct law enforcement officers to take physical custody of the
15 child immediately;

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

17 d. The respondent shall be served with the petition, warrant and
18 order immediately after the child is taken into physical custody.

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

26 f. The court may impose conditions upon placement of a child to
27 ensure the appearance of the child and the child's custodian. After the
28 issuance of any temporary or permanent order determining custody or
29 visitation of a minor child, a law enforcement officer having reasonable
30 cause to believe that a person is likely to flee the State with the child
31 or otherwise by flight or concealment evade the jurisdiction of the
32 courts of this State may take a child into protective custody and return
33 the child to the parent having lawful custody, or to a court in which a
34 custody hearing concerning the child is pending.

35 g. After the issuance of any temporary or permanent order
36 determining custody or visitation of a minor child, a law enforcement
37 officer having reasonable cause to believe that a person is likely to flee
38 the State with the child or otherwise by flight or concealment evade
39 the jurisdiction of the courts of this State may take a child into
40 protective custody and deliver the child to a court in which a custody
41 hearing concerning the child is pending.

42

43 34. Costs, Fees and Expenses.

44 a. The court shall award the prevailing party, including a state,
45 necessary and reasonable expenses incurred by or on behalf of the
46 party, including costs, communication expenses, attorney's fees,

1 investigative fees, expenses for witnesses, travel expenses, and child
2 care during the course of the proceedings, unless the party from whom
3 fees or expenses are sought establishes that the award would be clearly
4 inappropriate.

5 b. The court may not assess fees, costs, or expenses against a state
6 except as otherwise provided by law other than this act.

7
8 35. Recognition and Enforcement.

9 A court of this State shall accord full faith and credit to an order
10 made consistently with this act which enforces a child custody
11 determination by a court of another state unless the order has been
12 vacated, stayed, or modified by a court authorized to do so under
13 article 2 of this act.

14
15 36. Appeals.

16 An appeal may be taken from a final order in a proceeding under
17 this article in accordance with expedited appellate procedures in other
18 civil cases. Unless the court enters a temporary emergency order
19 under section 16 of this act, the enforcing court may not stay an order
20 enforcing a child custody determination pending appeal.

21
22 37. Role of Prosecutor or Other Appropriate Public Official.

23 a. In a case arising under this act or involving the Hague
24 Convention on the Civil Aspects of International Child Abduction, the
25 prosecutor or other appropriate public official may take any lawful
26 action, including resort to a proceeding under this article or any other
27 available civil proceeding to locate a child, obtain the return of a child,
28 or enforce a child custody determination if there is:

29 (1) an existing child custody determination;

30 (2) a request from a court in a pending child custody case;

31 (3) a reasonable belief that a criminal statute has been violated; or

32 (4) a reasonable belief that the child has been wrongfully removed
33 or retained in violation of the Hague Convention on the Civil Aspects
34 of International Child Abduction.

35 b. A prosecutor or other appropriate public official acts on behalf
36 of the court and may not represent any party to a child custody
37 determination.

38
39 38. Role of Law Enforcement.

40 At the request of a prosecutor or other appropriate public official
41 acting under section 37 of this act, a law enforcement officer may take
42 any lawful action reasonably necessary to locate a child or a party and
43 assist a prosecutor or other appropriate public official with
44 responsibilities under section 37 of this act.

45
46 39. Costs and Expenses.

1 If the respondent is not the prevailing party, the court may assess
2 against the respondent all direct expenses and costs incurred by the
3 prosecutor or other appropriate public official and law enforcement
4 officers under section 37 or 38 of this act.

5
6 ARTICLE 4
7 MISCELLANEOUS PROVISIONS
8

9 40. Application and Construction.

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

13
14 41. Severability.

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

20
21 42. Transitional Provision.

22 A motion or other request for relief made in a child custody or
23 enforcement proceeding which was commenced before the effective
24 date of this act is governed by the law in effect at the time the motion
25 or other request was made.

26
27 43. Notice of Penalties for Order Violation.

28 Every order of a court involving custody or visitation shall include
29 a written notice, in both English and Spanish, advising the persons
30 affected as to the penalties provided in N.J.S.2C:13-4 for violating
31 that order.

32
33 44. Repealer.

34 The following are repealed:

35 The "Uniform Child Custody Jurisdiction Act," P.L.1979, c.124
36 (C.2A:34-28 et seq.); and sections 2 and 3 of P.L.1990, c.104
37 (C.2A:34-31.1 and 2A:34-31.2.)

38
39 45. Effective Date.

40 This act shall take effect on the 90th day after enactment.

41
42
43 STATEMENT
44

45 This bill enacts the "Uniform Child Custody Jurisdiction and
46 Enforcement Act" (UCCJEA), which was promulgated in 1997 by the

1 National Conference of Commissioners on Uniform State Laws. The
2 bill also contains certain modifications suggested by the New Jersey
3 Law Revision Commission in 1999.

4 The UCCJEA would replace the Uniform Child Custody
5 Jurisdiction Act (UCCJA), which was enacted in New Jersey in 1979
6 and adopted in every state. As of this date, 36 states have replaced the
7 UCCJA with the new UCCJEA. The UCCJEA limits child custody
8 jurisdiction to one state, provides limits on modification jurisdiction,
9 and provides enforcement provisions for child custody orders. The
10 UCCJEA also brings New Jersey law into compliance with the federal
11 Parental Kidnaping Prevention Act.

12 The bill provides certain rules for custody determinations as
13 follows:

14 Updated Home State Provisions: The bill gives priority to the
15 home state as a ground for taking jurisdiction.

16 Continuing Exclusive Jurisdiction: This bill provides that a state
17 which makes the initial custody determination has continuing exclusive
18 jurisdiction if a party to the original custody determination remains in
19 that state. A state with continuing exclusive jurisdiction is the only
20 state which can modify a custody order. If it determines that another
21 state has a more significant connection to the child, it may relinquish
22 its authority.

23 Emergency Jurisdiction: This bill clarifies the provisions regarding
24 emergency jurisdiction, allowing a court to take jurisdiction even
25 though it is not the home state, if the child is present in the state and
26 has been abandoned, or is subjected to or threatened with mistreatment
27 or abuse. An order issued by a court with emergency jurisdiction is
28 temporary.

29 The bill also provides the following enforcement provisions, which
30 were not addressed in the original UCCJA:

31 Expedited Enforcement Hearings: At an enforcement hearing, a
32 petitioner only needs to show a certified copy of the custody
33 determination to be enforced, evidence of a violation by the
34 respondent, and the remedy sought. The court will then decide
35 whether the remedy sought should be granted.

36 Enhanced Court Remedies: If the enforcing court is concerned that
37 the parent, who has physical custody of the child, will flee or harm the
38 child, a warrant to take physical possession of the child is available.

39 Duty to Enforce: The bill provides that a court has the duty to
40 enforce a custody determination of another state; however, a child
41 custody order of another state is not subject to modification.

42 Civil Enforcement of Custody Orders: A prosecutor is authorized
43 to locate a child and enforce the custody determination. The
44 prosecutor is authorized to utilize any civil proceeding to secure the
45 enforcement of the custody determination. Law enforcement officials
46 may assist in locating a child and enforcing a custody determination.

1 This bill is intended to provide uniformity of law in a time when the
2 mobility of the American public makes it important to have laws
3 regarding child custody determinations uniform from state to state.
4 Lack of uniformity increases the costs of the enforcement action,
5 decreases the lack of certainty of outcome, and may turn enforcement
6 of a child custody or visitation order into a long and drawn out
7 process.

8 As recommended by the New Jersey Law Revision Commission, the
9 bill contains two additional sections that were added to the UCCJA
10 after its 1979 enactment in New Jersey. The language of
11 N.J.S.A.2A:34-31.1 is retained as subsection g. of section 33, and
12 N.J.S.A.2A:34-31.2 is retained as section 43. The bill repeals the
13 1979 "Uniform Child Custody Jurisdiction Act," N.J.S.A.2A:34-28 et
14 seq. The bill also repeals N.J.S.A.2A:34-31.1 and 2A:34-31.2 since
15 their provisions are incorporated in sections 33 and 43, respectively,
16 of this bill.

17 The bill also contains two differences from the uniform text of
18 UCCJEA that were recommended by the New Jersey Law Revision
19 Commission. Section 5 (International Application of Act) is reworded
20 in subsections a. and c., to give New Jersey courts greater authority
21 to exercise discretion regarding custody judgments made in foreign
22 countries. The wording of subsection a. of section 21 (Information to
23 be Submitted to Court) is also changed to clarify that certain residence
24 data need not be disclosed if the court finds that the data must be
25 protected in the interest of personal safety.

26 In addition, the bill contains additional provisions concerning the
27 protection of domestic violence victims. Section 20 (Jurisdiction
28 Declined by Reason of Conduct) sets out new language providing that
29 no fees, costs or expenses shall be assessed against a party who is
30 fleeing domestic violence or mistreatment or abuse of a child or
31 sibling, unless the court is convinced by a preponderance of the
32 evidence that such assessment would be clearly appropriate. (See
33 subsection c. of section 20.) The added language also provides that
34 in making a determination, the court shall not consider as a factor
35 weighing against the petitioner any taking of the child or retention of
36 the child from the person who has rights of legal custody, physical
37 custody or visitation, if there is evidence that the taking or retention
38 of the child was to protect the petitioner from domestic violence or to
39 protect the child or sibling from mistreatment or abuse. (See
40 subsection d. of section 20.)

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2970

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2970.

This bill enacts the "Uniform Child Custody Jurisdiction and Enforcement Act" (UCCJEA), which was promulgated in 1997 by the National Conference of Commissioners on Uniform State Laws. The bill also contains certain modifications suggested by the New Jersey Law Revision Commission in 1999.

The UCCJEA would replace the Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted in New Jersey in 1979 and adopted in every state. As of this date, 36 states have replaced the UCCJA with the new UCCJEA. The UCCJEA limits child custody jurisdiction to one state, provides limits on modification jurisdiction, and provides enforcement provisions for child custody orders. The UCCJEA also brings New Jersey law into compliance with the federal Parental Kidnaping Prevention Act.

The bill provides certain rules for custody determinations as follows:

Updated Home State Provisions: The bill gives priority to the home state as a ground for taking jurisdiction.

Continuing Exclusive Jurisdiction: This bill provides that a state which makes the initial custody determination has continuing exclusive jurisdiction if a party to the original custody determination remains in that state. A state with continuing exclusive jurisdiction is the only state which can modify a custody order. If it determines that another state has a more significant connection to the child, it may relinquish its authority.

Emergency Jurisdiction: This bill clarifies the provisions regarding emergency jurisdiction, allowing a court to take jurisdiction even though it is not the home state, if the child is present in the state and has been abandoned, or is subjected to or threatened with mistreatment or abuse. An order issued by a court with emergency jurisdiction is temporary.

The bill also provides the following enforcement provisions, which were not addressed in the original UCCJA:

Expedited Enforcement Hearings: At an enforcement hearing, a petitioner only needs to show a certified copy of the custody determination to be enforced, evidence of a violation by the

respondent, and the remedy sought. The court will then decide whether the remedy sought should be granted.

Enhanced Court Remedies: If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Duty to Enforce: The bill provides that a court has the duty to enforce a custody determination of another state; however, a child custody order of another state is not subject to modification.

Civil Enforcement of Custody Orders: A prosecutor is authorized to locate a child and enforce the custody determination. The prosecutor is authorized to utilize any civil proceeding to secure the enforcement of the custody determination. Law enforcement officials may assist in locating a child and enforcing a custody determination.

This bill is intended to provide uniformity of law in a time when the mobility of the American public makes it important to have laws regarding child custody determinations uniform from state to state. Lack of uniformity increases the costs of the enforcement action, decreases the lack of certainty of outcome, and may turn enforcement of a child custody or visitation order into a long and drawn out process.

As recommended by the New Jersey Law Revision Commission, the bill contains two additional sections that were added to the UCCJA after its 1979 enactment in New Jersey. The language of N.J.S.A.2A:34-31.1 is retained as subsection g. of section 33, and N.J.S.A.2A:34-31.2 is retained as section 43. The bill repeals the 1979 "Uniform Child Custody Jurisdiction Act," N.J.S.A.2A:34-28 et seq.. The bill also repeals N.J.S.A.2A:34-31.1 and 2A:34-31.2 since their provisions are incorporated in sections 33 and 43, respectively.

The bill also contains two differences from the uniform text of UCCJEA that were recommended by the New Jersey Law Revision Commission. Section 5 (International Application of Act) is reworded in subsections a. and c., to give New Jersey courts greater authority to exercise discretion regarding custody judgments made in foreign countries. The wording of subsection a. of section 21 (Information to be Submitted to Court) is also changed to clarify that certain residence data need not be disclosed if the court finds that the data must be protected in the interest of personal safety.

In addition, the bill contains provisions concerning the protection of domestic violence victims. Section 20 (Jurisdiction Declined by Reason of Conduct) sets out new language providing that no fees, costs or expenses shall be assessed against a party who is fleeing domestic violence or mistreatment or abuse of a child or sibling, unless the court is convinced by a preponderance of the evidence that such assessment would be clearly appropriate. (See subsection c. of section 20.) The added language also provides that in making a determination, the court shall not consider as a factor weighing against the petitioner any taking of the child or retention of the child from the person who

has rights of legal custody, physical custody or visitation, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or to protect the child or sibling from mistreatment or abuse. (See subsection d. of section 20.)