

CERTIFICATION OF ENROLLMENT

SENATE BILL 5348

57th Legislature
2001 Regular Session

Passed by the Senate March 12, 2001
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 5, 2001
YEAS 94 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5348** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5348

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

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

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

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

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

9 **ARTICLE 1**

10 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (a) Hold an evidentiary hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3
ENFORCEMENT

1
2
3 NEW SECTION. **Sec. 301.** DEFINITIONS. The definitions in this
4 section apply throughout this article, unless the context clearly
5 requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **ARTICLE 4**
9 **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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