

65216-8

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**NO. 65216-8-I**

**IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION I**

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**ORION INSKIP,**

Appellant,

v.

**MARY ROSS.**

Respondent

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**BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

I. **INTRODUCTION** ..... 1

II. **ASSIGNMENTS OF ERROR** ..... 2

III. **STATEMENT OF THE CASE**..... 3

    A. Separation and Dissolution ..... 3

    B. Divorce Decree and Parenting Plan entered in 2007 ..... 4

    C. Relocation of Ross in 2008 ..... 6

    D. Inskip’s Return to Washington State and Attempt to Resume Existing Parenting Plan..... 7

    E. Inskip Makes Repeated Attempts to Mediate in Accordance with Utah Decree ..... 7

    F. Ross files Petition to Modify Decree of Divorce in Utah and Motion For Temporary Order ..... 8

    G. Inskip Files Request For Child Custody Determination Registration Under UCCJEA and Petition For Enforcement ..... 8

    H. Trial Court Grants Ross’ Request for a Continuance of the December 17, 2009 Hearing ..... 12

    I. Trial Court Issues January Interim Order ..... 13

    J. Trial Court Dismisses Inskip’s Petition For Enforcement and Denies Reconsideration ..... 14

IV. **LEGAL AUTHORITY AND ARGUMENT** ..... 14

    A. The UCCJEA and SCRA/WSCRA..... 15

        1. UCCJEA ..... 15

        2. SCRA/WSCRA..... 18

B.	Trial Court Abused Its Discretion in Granting a Continuance of the December 17, 2009 Hearing, Failing to Enforce the Utah Decree, Failing to Strike Inadmissible Hearsay and Settlement Discussions, and Failing to Award Inskip Attorney Fees and Costs. ....	22
1.	Trial court was required to enforce the Utah Decree.....	23
2.	The trial court erred in Issuing its January Interim Order .....	28
C.	Trial Court Erred in Dismissing Inskip’s Motion to Enforce Utah Decree and Denying Inskip’s Motion for Reconsideration .....	30
1.	Utah lost its jurisdiction when all parties permanently moved to Washington State. ....	31
2.	Washington has maintained its home state despite the child’s absence from the state because its status was tolled by operation of law during the time that Inskip was deployed and Ross and the child resided in Utah.....	34
a)	Tolling of the home state calculation applies where the child’s absence is the result of misconduct.....	35
b)	Where a child is absent from the state due to a parent’s military service, the absence is temporary .....	36
3.	Trial court had the obligation to determine whether Utah had jurisdiction “in substantial conformity” with the UCCJEA and make findings concluding that Utah had .....	39
4.	Washington court should have asserted exclusive jurisdiction to enforce the Utah Decree because Utah could not have jurisdiction in “substantial conformity” with the UCCJEA....	43
5.	Trial court erred in denying Inskip’s Motion For Reconsideration.....	48
D.	Appellant Is Entitled to Reasonable Attorneys Fees and Costs at Trial and on Appeal .....	49
V.	<b>CONCLUSION</b> .....	49

## TABLE OF AUTHORITIES

### Cases

<u>Boone v. Lightner,</u> 319 U.S. 561, 63 S.Ct. 1223, 87 L.Ed. 1587 (1943).....	19, 38
<u>Convoy v. Aniskoff,</u> 507 U.S. 511, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993).....	20
<u>Curtis v. Curtis,</u> 574 So.2d 24 (Miss. 1990) .....	35, 36
<u>In Re Custody of Nelsen,</u> 37 Wn.App. 640, 681 P.2d 1302 (1984).....	45
<u>In Re Lewin,</u> 149 S.W.3d 727 (Tex App. 2004).....	36, 37
<u>In Re Marriage of Greenlaw,</u> 123 Wn.2d 592, 869 P.2d 1024 (1994).....	16
<u>In Re Marriage of Hamilton,</u> 120 Wn. App. 147, 84 P.3d 259 (2004).....	17
<u>In re Marriage of Payne,</u> 79 Wn. App. 43, 899 P.2d 1318 (1995).....	33
<u>In Re Marriage of Taddeo-Smith and Smith,</u> 127 Wn. App. 400, 110 P.3d 1192 (2007).....	37
<u>In Re Marriage of Verbin,</u> 92 Wn.2d 171, 595 P.2d 905 (1979).....	46
<u>In Re the Marriage of Ieronimakis,</u> 66 Wn. App. 83, 831 P.2d 172 (1992).....	46
<u>Jones v. Garrett,</u> 386 P.2d 194 (Kan. 1963).....	21
<u>Magnusson v. Johannesson,</u> 108 Wn. App. 109, 29 P.3d 1256 (2001).....	37

<b><u>Meyer v. Meyer,</u></b> 196 P.3d 604 (Utah 2008).....	39, 40, 42, 43
<b><u>Parenting of A.R.K.,</u></b> 142 Wn. App. 297, 174 P.3d 160 (2007).....	33
<b><u>State v Roper,</u></b> 168 S.W.3d 577 (Mo. 2005).....	20
<b><u>State v. Downing,</u></b> 151 Wn.2d 265, 87 P.3d 116 (2004).....	22
<b><u>Tostado v. Tostado,</u></b> 137 Wn. App. 136, 151 P.3d 1060 (2007).....	30
<b><u>Trummel v. Mitchell,</u></b> 156 Wn.2d 653, 131 P.3d 305 (2006).....	22
 <b>Statutes</b>	
28 U.S.C.A. §1738A.....	16
50 U.S.C.A. § 526.....	19
RCW 26.09.480 (1).....	44
RCW 26.09.260.....	11
RCW 26.09.260 (11).....	37, 38, 45
RCW 26.09.260 (12).....	37
RCW 26.09.405.....	44
RCW 26.09.440.....	45
RCW 26.09.440(1).....	44
RCW 26.09.440(1)(2).....	44

<b>RCW 26.09.470(1)</b> .....	<b>44</b>
<b>RCW 26.09.470(2)(3)</b> .....	<b>45</b>
<b>RCW 26.09.470(2)(d)</b> .....	<b>45</b>
<b>RCW 26.09.480(2)</b> .....	<b>44</b>
<b>RCW 26.27.021(7)</b> .....	<b>34</b>
<b>RCW 26.27.071</b> .....	<b>27</b>
<b>RCW 26.27.081</b> .....	<b>24</b>
<b>RCW 26.27.081(1)(a) and (b)</b> .....	<b>25</b>
<b>RCW 26.27.201</b> .....	<b>16, 32, 35</b>
<b>RCW 26.27.201(1)(b)</b> .....	<b>17</b>
<b>RCW 26.27.201(a)</b> .....	<b>34</b>
<b>RCW 26.27.201(b)</b> .....	<b>17</b>
<b>RCW 26.27.211</b> .....	<b>31, 32</b>
<b>RCW 26.27.211(1)(a)(b)</b> .....	<b>32</b>
<b>RCW 26.27.211(1)(b)</b> .....	<b>33</b>
<b>RCW 26.27.221</b> .....	<b>23, 30</b>
<b>RCW 26.27.231</b> .....	<b>29</b>
<b>RCW 26.27.251</b> .....	<b>17</b>
<b>RCW 26.27.271</b> .....	<b>46, 47</b>
<b>RCW 26.27.271(1)(a),(b), and (c)</b> .....	<b>44</b>
<b>RCW 26.27.431</b> .....	<b>30</b>

<b>RCW 26.27.441(4)</b> .....	<b>25</b>
<b>RCW 26.27.441(5)</b> .....	<b>25</b>
<b>RCW 26.27.451(1)</b> .....	<b>27</b>
<b>RCW 26.27.461</b> .....	<b>41, 43</b>
<b>RCW 26.27.471(3)</b> .....	<b>23, 25, 26</b>
<b>RCW 26.27.491</b> .....	<b>24</b>
<b>RCW 26.27.511</b> .....	<b>49</b>
<b>RCW 26.27.511(1)</b> .....	<b>49</b>
<b>RCW 38.42.020(3)</b> .....	<b>22</b>
<b>RCW 38.42.050(6)</b> .....	<b>39</b>
<b>RCW 38.42.050(9)</b> .....	<b>39</b>
<b>RCW 38.42.060</b> .....	<b>39</b>
<b>RCW 38.42.090</b> .....	<b>20, 34, 38</b>
<b>RCW 73.16.070</b> .....	<b>19</b>

## I. INTRODUCTION

This case involves a custody dispute between a servicemember and his ex-spouse in a factual and legal scenario unaddressed by Washington courts. Here, there are competing jurisdictional claims between two states that must be resolved in light of federal and state statutes designed to protect the legal rights of this country's servicemembers while in active duty and in light of state laws prescribing the rights and obligations of parents who seek to move the residence of their minor children.

The history and policy considerations behind the enactment and evolution of the four statutes are involved in this dispute: the Servicemembers Civil Relief Act (SCRA), the Washington State Servicemembers Civil Relief Act (WSCRA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Washington Parenting Act which contains the Relocation of Child Act (RCA). Thus the court's rulings on these laws are of paramount public importance.

This appeal arose from the dismissal of an action to enforce a Utah custody decree. After entry of the Utah Decree, all parties moved to Washington. The parties shared parenting time on an alternating weekly basis for approximately 14 months at which time the father, a servicemember in the Washington National Guard, was deployed to Iraq. After his departure, without prior notice to the father, the mother returned

to Utah with the minor child. Upon his release from active duty and return to Washington 13 months later, the mother remained in Utah. She withheld access to the child, and filed a modification action in the Utah court to secure sole custody. The father responded by filing an enforcement action in Washington. The action was ultimately dismissed when the court deferred to Utah's assertion of jurisdiction.

The father, Appellant Orion Inskip ("Appellant" or "Inskip") appeals to this Court for relief.

## **II. ASSIGNMENTS OF ERROR**

Assignments of Error: The trial court erred in (1) issuing the December 17, 2009, Order granting Respondent's Motion to Continue Show Cause Hearing, and failing to award Appellant legal fees; (2) issuing the January 13, 2010, Interim Enforcement Order of the Utah Decree; (3) issuing the February 23, 2010, Order on Petitioner Inskip's Petition for Enforcement of Utah Decree and Child Custody Determination Under UCCJEA; and (4) in issuing the March 23, 2010, Order Denying Petitioner Inskip's Motion for Reconsideration and Additional Findings.

Issues Pertaining to Assignments of Error:

No. 1: Whether the trial court erred in granting a continuance of the Show Cause hearing on December 17, 2009 and failing to award Inskip legal fees, when the trial court had no discretion to delay the hearing date under the UCCJEA, Ross was given proper notice of the hearing and Inskip was

unfairly prejudiced by the trial court's extension of his hearing date to almost one month.

- No. 2: Whether the trial court erred in issuing the January 13, 2010 Interim Order for Enforcement when the Utah court relinquished jurisdiction to Washington to enforce the unmodified and registered Utah Decree, which mandated shared custody, and when the trial court had an independent obligation to determine which court had proper jurisdiction.
- No. 3: Whether the trial court erred in dismissing Inskip's Petition for Enforcement of the Utah Decree and failing to grant Inskip his legal fees when the trial court had jurisdiction under the UCCJEA and because of the tolling provision in the WSCRA, when Ross failed to comply with both the WPA and RCA, when Utah could not assert jurisdiction "in substantial compliance" with the UCCJEA, and when the trial court made no findings that the Utah court had in dismissing the action.
- No. 4: Whether the trial court erred in denying the Inskip's Motion for Reconsideration when Inskip had not been notice of the Utah order that was the basis of the Washington court's dismissal, there was pending hearing in Utah that would resolve Utah's position on jurisdiction, when Utah had lost exclusive jurisdiction, when Ross had been adequately served prior to the first hearing, and when Inskip was prejudiced by the trial court's refusal to assert jurisdiction.

### **III. STATEMENT OF THE CASE**

#### **A. Separation and Dissolution**

The parties were married in Utah in 1996, and had one daughter, "M." in 2000. CP 22. In the Spring of 2003, Appellant Inskip and Respondent Mary Ross ("Respondent" or "Ross") agreed on a trial separation. CP 23. Also in the spring of 2005, Inskip, a 10-year veteran of the Utah National Guard, accepted a three month assignment in

Washington State. CP 23; CP 25. Before its conclusion, Ross advised of her intent to divorce and commenced cohabitation with a man raised in the Seattle area and with strong ongoing family ties to the Seattle area. CP 23.

After Inskip's return to Salt Lake City upon conclusion of his three-month assignment and until the spring of 2005, the parties shared the physical custody of M. almost equally. CP 23. In the Spring of 2005, Inskip transferred to the Washington Army National Guard and relocated to Steilacoom, Washington. M. resided with Inskip in Steilacoom for the summer of 2005. CP 23; CP 25; CP 173.

**B. Divorce Decree and Parenting Plan entered in 2007**

A Decree of Divorce ("Utah Decree") was entered on May 4, 2007. CP 3-11. Previously in 2005, both Inskip and Ross had been accepted to post-graduate programs in Washington state. CP 23-24. Ross's significant other had business opportunities in Seattle. CP 24.

On June 25, 2007, Ross, who had received a job offer in the Seattle area, relocated with her significant other from Salt Lake City to Seattle. CP 24. M was enrolled at a public school in Seattle and Inskip moved into an apartment located across the street from M's school. CP 24. Per the Decree, the parties shared the physical custody of M. on an alternating weekly basis. CP 26.

In May of 2008, Inskip completed law school at Seattle University, and sat for the Washington State Bar Exam in July 2008; Ross completed her Master's Degree at the University of Washington in August. CP 25.

The Decree of Divorce and Judgment (CP 3-12) states:

At the conclusion of the current academic year in May 2007, [Inskip] will spend approximately one month abroad and will return to Seattle around June 19, 2007. [Ross] and [M.] will move from Salt Lake City to the Seattle area on approximately June 15, 2007. Orion begins a full-time job for the Army National Guard, in which he has served for 17 years, at Fort Lewis in Washington on June 25, 2007. [Ross] anticipates beginning a new job in the Seattle area around that same time.

CP 4-5. The Decree included a parenting plan for M. (in relevant part):

[Inskip and Ross] agree that it is best for their daughter [M.], to spend as close to an equal amount of time as possible with each parent. With that tenet as their guide, they have agreed to the following parent time plan.

[Ross and Inskip] agree that they will routinely cooperate in making arrangements for [M.] to spend time with each parent. It is their intention that [M.] will live with each of her parents for enough time for her to have the whole parent-child experience with one *sic* [both] parents and [not] the vacation-fun-parent experience with the other [either] parent. Should [Inskip and Ross] not agree any time concerning parent time, they will adhere to the following provisions for parent time:

1) Beginning Sunday June 24, 2007, [M.] will live with each of her parents during alternating weeks.

...

3) Each parent intends to live within a reasonably close vicinity of the other and, if possible [M.]'s school, to make [M.]'s transition from one home to another as easy as possible.

...

7) [Ross and Inskip] agree that, at the end of the 2007-2008 academic year when each of them will complete their current education programs, they will re-evaluate their parenting plan and make changes, if any, that they believe are in [M.]’s best interest. If they are unable to resolve differences they may have concerning their parenting plan, they agree to return to mediation with a qualified mediator to work out those differences. Only if they cannot resolve their issues in mediation will they consider a court action.

CP 5-7. At no point was the custody arrangement in the Utah Decree modified until the immediate proceedings. CP 14; CP 20, ¶1.3.

**C. Relocation of Ross in 2008**

In July of 2008, Inskip received notification that he would be deployed to Iraq with the Washington National Guard; he provided notice to Ross immediately after receiving the notification. CP 26.

Inskip and Ross informally agreed that Ross would provide the primary care of M during Inskip’s absence. CP 26. He was clear with Ross regarding both his intent to return to Washington after completion of his tour; and his expectation to resume the alternating weekly parenting schedule set out in the Utah Decree. CP 26.

Inskip left Washington on August 18, 2008 to begin his active duty service with the National Guard. CP 26; CP 30, CP 177, ¶6. Shortly after Inskip left Washington, Ross advised Inskip that she and her significant other were giving up their apartment in Seattle and relocating to Utah with M. CP 26. Despite Inskip’s protestations to Ross’ unexpected plans, Ross

left Washington with M. on approximately August 22, 2008 and relocated to Utah. CP 22; CP 178, ¶7.

**D. Inskip's Return to Washington State and Attempt to Resume Existing Parenting Plan**

On August 28, 2009, Inskip returned to Washington State and immediately attempted to resume the parenting plan set out in the Utah Decree. CP 28. Initially, Ross agreed to allow the minor child, M., to travel to Seattle for Labor Day weekend (September 4-8). CP 28. One day before the visit, on September 3, Ross sent an email reneging on her previous agreement. CP 28; CP 31 (email from Ross). Subsequently, Ross agreed to a September 11-13 visit to Seattle. CP 28.

On the eve of the September 11 visit, Ross canceled it. CP 28. Instead, she retained a lawyer in Salt Lake City and on September 16, and as a condition of securing access to M. from September 30 to October 4, 2009, Ross obligated Inskip to sign a Utah Stipulation and Order entitling her to secure a "pick-up order" and assistance from law enforcement to reclaim M. should Inskip fail to return her to Ross. CP 28.

**E. Inskip Makes Repeated Attempts to Mediate in Accordance with Utah Decree**

On September 13, 2009, after Inskip's formal release from active duty status, via email, he asked Ross to engage in mediation to resolve the apparent disagreement regarding the parenting plan for M. CP 29; CP 32-

33 (September 13, 2009 Letter). Inskip did not receive a response from Ross. CP 29. On October 23, 2009, Inskip sent a second written request to Ross for mediation of the parenting plan dispute; Inskip's letter included the name of an appropriate and available mediator. CP 29; CP 34 (October 22, 2009 Letter). Ross did not respond. CP 29.

**F. Ross files Petition to Modify Decree of Divorce in Utah and Motion For Temporary Order**

Ross filed a Petition to Modify Decree of Divorce ("Ross Petition") in Utah on September 21, 2009. CP 28; CP 64. In support of her Petition, Ross included a sworn statement alleging that Inskip "breached our parenting plan and made it impossible to continue sharing [M.], by leaving the state and country where we resided for a one year period." CP 28-29; CP 179, ¶9. On September 23, 2009, she filed a Motion for Temporary Orders in Utah, seeking sole physical custody of M. CP 182-83.<sup>1</sup>

**G. Inskip Files Request For Child Custody Determination Registration Under UCCJEA and Petition For Enforcement**

On November 16, 2008, Inskip filed a Request for Child Custody Determination Registration Under UCCJEA ("Request") in King County Superior Court, cause number 09-3-07624-7 SEA. CP 1. On November

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<sup>1</sup> On November 18, 2009, Inskip filed in Utah a Memorandum in Support of Motion to Dismiss [Ross' Motion to Modify] and In Opposition to Motion for Temporary Orders. CP 261-66.

19, a Notice of Child Custody Determination Registration Under UCCJEA (“Registration”) was issued. CP 17-18.

On November 19, 2009, Inskip also filed a Petition for Enforcement of Child Custody Determination and Issuance of Order to Show Cause Under UCCJEA (“Enforcement Petition”). CP 19-21. On that same date, an Order to Appear and Show Cause was issued with a hearing date of December 10, 2010. CP 15.

The November 19 Order to Show Cause advised Ross that the court would order Inskip to take physical custody of M, the payment of his fees, costs and expenses, and that it might schedule a hearing to determine whether further relief was appropriate unless she appeared and established that: a) the issuing court did not have jurisdiction, b) the child custody determination had been vacated, stayed, or modified by a court with proper jurisdiction, c) that Ross was not given proper notice of the Washington show cause hearing in accordance with 26.27.081. CP 15-16.

The November 19 Notice of Child Custody Determination Registration under UCCJEA notified Ross that she bore the burden of contesting or vacating the Registration. CP 18.<sup>2</sup>

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<sup>2</sup> Ross’ Motions were heard in Utah on November 25, 2009 in front of Comm. Michelle Bloomquist. CP 73. The hearing was continued until December 2, 2009, due to the parties’ failure to mediate their dispute as required by the Utah Decree. CP 73. On December 2, 2009, Inskip filed his Petitioner’s Brief in Support of Petition to Enforce Divorce Decree of Custody in Washington. CP 35-57.

On December 7, 2009, the courts in Washington and Utah, Judge James Doerty and Comm. Blomquist, respectively, conferred on jurisdictional issues. CP 58. At the conference, Inskip and his Washington counsel were present, but Ross was not. CP 58. The Utah court “requested a private conference between the judges” during the conference. CP 64; CP 143. A subsequent telephonic conference between the courts was scheduled for December 10, 2009. CP 58.

At the December 10, 2009 conference, Inskip and his Washington counsel were present, but Ross was again absent. CP 59-60. The courts discussed the jurisdictional issues and, according to the Washington court’s Minute Entry, the case law provided by Inskip appeared to be persuasive, and that it would “issue a written analysis and forward the analysis to the parties and to the Court in Utah.” CP 60. After the conference concluded, the trial court signed Inskip’s Order to Show Cause, noting a hearing for December 17, 2009. CP 60; CP 61-62.

On December 11, 2009, the Washington court issued, its Memorandum Regarding UCCJEA Conferences (“Memorandum”). CP 64-65. In its Memorandum, the trial court concluded:

[That] Ross has declined to abide by the residential provisions of the Decree and restricted Inskip’s access to the child.

...

[That] Inskip’s position (that the SCRA operates to toll the home state calculation under the UCCJEA) is the correct one. The

[SCRA] states “*The period of a service member’s military service may not be included in computing any period limited by law, rule, or order for the bringing of any action or proceeding in a court...*”

...

[That] Inskip is only required to take court action during the times he is not deployed, and he has done so in a timely manner.

...

[And that] Ross should not prevail because of reprehensible conduct. She has taken advantage of the father’s deployment to a war zone, relocated without regard to the notice provisions of either Utah or Washington law, and asserts his lack of availability due to military service as a form of failure to exercise parental functions under the decree. The latter assertion is the most reprehensible and totally contrary to the concept of protecting military service members during deployment in defense of the nation. It is specifically proscribed by RCW 26.09.260, Ch. 502 laws of 2009: “*The court may not consider deployment as part of a failure to exercise residential time.*”

CP 64-65 (emphasis in original).

On December 15, 2009, the Utah court held a hearing, without Inskip present, and Commissioner Blomquist made an oral ruling, considered a “Recommendation” under Utah law, that Utah had exclusive and continuing jurisdiction over the custody of M, but that Washington had the limited jurisdiction to enforce the registered Utah Decree. CP 74; CP 143, ¶12; CP 250, ¶3; CP 256-57, ¶7; CP 282-83, ¶2. Inskip filed an Objection to Commissioner’s Recommendation, noted for hearing in Utah on March 26, 2010. CP 255-59; CP 312-13, ¶3.

**H. Trial Court Grants Ross' Request for a Continuance of the December 17, 2009 Hearing**

On the same day of the scheduled December 17, 2009 hearing in Washington, a half hour before the anticipated 9:00 a.m. hearing time, Ross filed a Motion for Continuance, alleging entitlement to 20 days notice of proceedings, inadequate notice, and a resulting inability of counsel to properly prepare. CP 68-71.

Previously, on November 19, 2009, copies of all documents filed with the court through November 19, 2009, including the Order to Show Cause, were placed in the mail to both Ross and to her Utah counsel. CP 109; CP 117; CP 118. Although actual delivery to Ross was not verified, the documents to Ross contained a declaration of mailing and were sent by certified Mail, Return Receipt requested. CP 109; CP 117. Despite a November 23, 2009 refusal to accept service, (CP 110, CP 119), on November 24, 2009, a set of pleadings was again forwarded to Ross' Utah counsel. CP 110, ¶7; CP 121. On December 2, 2009, an electronic copy of Inskip's Brief in Support of Petition to Enforce and Inskip's supporting Declaration were forwarded to Ross' Utah counsel. CP 111, ¶9; CP 122. On December 3, 2009, request Inskip's counsel again sought acceptance of service from Ross' Utah counsel. Although on December 8, 2009, Utah counsel agreed to accept service of pleadings, CP 111, ¶11; CP 123; CP

124, Ross herself refused to accept service and Utah counsel's ability to accept service of Washington pleadings remained in question. CP 111.

At the hearing on December 17, 2009, the trial court concluded that "the jurisdictional issues require further briefing by the parties", and granted Ross' Motion, continuing Inskip's Show Cause hearing to January 13, 2010. CP 89; CP 90-91.

On January 7, 2010, in wake of Commissioner Blomquist's oral ruling, Ross moved the Utah court to issue a written decision to inform the Washington court of its ruling. CP 282-86. Commissioner Blomquist's oral ruling was memorialized in a written order and findings on February 4, 2010. CP 312.

#### **I. Trial Court Issues January Interim Order**

The scheduled Show Cause hearing was held on January 13, 2010. CP 213-14. During the hearing, both parties presented arguments, and the trial court ruled that "[t]he Court will enforce the order but will not enforce change of the primary situation as perceived by the child." CP 213. The trial court entered an Interim Enforcement of Utah Decree ("Interim Order") that same day, and clarified that the Interim Order was "without prejudice to full enforcement pending further decision regarding UCCJEA issues." CP 216.

**J. Trial Court Dismisses Inskip's Petition For Enforcement and Denies Reconsideration**

On February 4, 2010, the Utah court issued an order concluding that Utah had exclusive jurisdiction in the immediate custody dispute. CP 303; CP 308, ¶2. This was despite the fact that Inskip had timely filed an objection to Commissioner Blomquist's oral ruling from December 15, 2009, that was still pending. CP 308, ¶3. Ross provided the Washington court with this order on February 22, 2010. CP 312-13, ¶3.

In wake of the Utah court's assertion of jurisdiction, the Washington trial court, issued its February 23, 2010 Order on Petition for Enforcement of Utah Decree and Child Custody Determination ("Dismissal Order"). CP 303. In the Dismissal Order, the trial court denied Inskip's Petition and dismissed the proceedings due to Utah's assertion of exclusive jurisdiction on the matter. CP 303.<sup>3</sup> Inskip timely filed a Motion for Reconsideration of the Dismissal Order on March 10, 2010. CP 321-29. The trial court denied the Motion in its March 23, 2010 Order ("Reconsideration Order"). CP 332.

**IV. LEGAL AUTHORITY AND ARGUMENT**

This appeal arose from an expedited enforcement action brought by Appellant Inskip. The primary issues before the Court are 1) whether

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<sup>3</sup> On March 3, 2010, Commissioner Blomquist signed a minute entry that awarded Ross temporary physical custody "as the child's current primary caregiver" and stated that Utah continued to exercise exclusive jurisdiction in the custody matter. CP 314-20.

Washington was obligated to enforce the Utah decree on December 17, 2009; 2) whether Utah lost exclusive jurisdiction to modify the Utah Decree once all parties left Utah to reside in Washington State; and 3) whether the calculation of time spent by Ross and the child in Utah subsequent to Inskip being called into active duty for purposes of establishing home state status was tolled by the relevant provisions of the SCRA/WSCRA.

As the answer to all three inquiries is in the affirmative, Washington had the authority to determine the ultimate disposition of the case, and the trial court therefore erred in dismissing Inskip's Enforcement Petition, and in denying his Motion for Reconsideration.

**A. The UCCJEA and SCRA/WSCRA**

In order to properly apply the law to the facts of this case, it is important to review the history and development of the two primary statutes, the Uniform Child Custody and Jurisdiction and Enforcement Act and the Service Members Civil Relief Act/Washington State Service Members Civil Relief Act.

**1. UCCJEA**

The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), found at 26.27 RCW, establishes the bases for subject

matter jurisdiction in child custody matters.<sup>4</sup> It was adopted in 2001<sup>5</sup> when its predecessor, the Uniform Child Custody and Jurisdiction Act (UCCJA), was simultaneously repealed.<sup>6</sup> The purposes of the UCCJA, which are cited in court opinions in and out of Washington, are applicable to the UCCJEA.<sup>7</sup> The UCCJEA clarifies some areas that resulted in conflicting orders under the UCCJA. It also provides additional remedies that were not previously available for enforcement of decrees.

An important clarification in the UCCJEA that is significant to our case is the prioritization of the child's "home state" as the jurisdictional basis for initial child custody proceedings. RCW 26.27.201. The previous UCCJA provided four separate bases to take initial jurisdiction in child

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<sup>4</sup> A copy of the UCCJEA is attached hereto as **Appendix A**.

<sup>5</sup> The Uniform Child Custody Jurisdiction and Enforcement Act of 1997, 9 Pt IA U.L.A. 1997, was adopted by the National Conference of Commissioners on Uniform State Laws in 1997. In Washington, its predecessor, the UCCJA was adopted in 1979. The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. §1738A which contains the federal rules for full faith and credit for custody decrees was adopted after most states had enacted the Uniform Child Custody Jurisdiction Act of 1968 (UCCJA). PKPA prioritized home state jurisdiction. In order to make state law more compatible with federal law, the UCCJEA clarified some issues that had arisen under the UCCJA. In particular, the UCCJEA provides limits as to when a court can assume jurisdiction in the initial and modification settings. Comments in the uniform law which are not in the Washington codification will be cited to Uniform Laws Annotated. The Comments to the UCCJEA, as promulgated at the National Conference of Commissioners On Uniform State Laws, is attached hereto as **Appendix B**.

<sup>6</sup> Appellant notes that effective July 1, 2000, Utah also adopted the UCCJEA, at UC 78B-13-101 *et. seq.*

<sup>7</sup> Those purposes include avoiding jurisdictional competition and conflicts between states in matters of child custody, encouraging greater stability in the home environment for the child, discouraging the unilateral removal of children to obtain custody awards, and to facilitate the enforcement of custody decrees of other states. **See In Re Custody of Nelsen**, 37 Wn. App. 640, 642, 681 P.2d 1302 (1984) (citation omitted); **see also In Re Marriage of Greenlaw**, 123 Wn.2d 592, 598-99, 869 P.2d 1024 (1994).

custody disputes: 1) home state, 2) significant connections, 3) the child's best interests, and 4) emergency. The UCCJEA eliminated a determination of "best interests" of a child from the jurisdictional inquiry in order to avoid a judicial analysis of substantive issues in the determination of jurisdiction. The current UCCJEA only allows consideration of substantive factors, such as "significant connections", if no state qualifies as the home state. **See Welch-Doden v. Roberts**, 42 P.3d 1166, 1174 (Ariz Ct. App 2002) (citation omitted).<sup>8</sup>

The UCCJEA follows the PKPA approach of barring the use of significant connection jurisdiction if there is a home state that has not declined to exercise jurisdiction. RCW 26.27.201(1)(b). Where custody actions are filed in two states having concurrent jurisdiction, the UCCJEA gives priority to the first action. RCW 26.27.251. However, since the passage of the UCCJEA and the application of home state priority, there are limited opportunities for two states to have jurisdiction.

Although much of the law that developed under the UCCJA is applicable and the court may look to it for guidance, cases that did not utilize the home state priority are inconsistent with the UCCJEA. In

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<sup>8</sup> Absent an emergency, unless Washington has home state jurisdiction, or the child's home state court has declined to exercise jurisdiction, Washington may not exercise initial child custody jurisdiction. RCW 26.27.201(b); **see also In Re Marriage of Hamilton**, 120 Wn. App. 147, 150 n.1, 84 P.3d 259 (2004); **Tostado v. Tostado**, 137 Wn. App. 136, 146, 151 P.3d 1060 (2007).

particular, since the UCCJEA subordinates “significant connection jurisdiction” to the home state in initial custody determinations, any cases relying on significant connections as the basis for jurisdiction where a home state exists would be contrary to current law, unless that home state declined jurisdiction. See UCCJEA §206 cmt., 9 Pt. IA U.L.A. (1997)

## 2. SCRA/WSCRA

In our case, the determination of “home state jurisdiction” must be made in light of the tolling provision and other protections contained in the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. App. §501 *et seq.* Congress has long recognized the need for protective legislation for servicemembers whose service to the nation may compromise their ability to meet obligations and protect their legal interests. The Soldiers’ and Sailors’ Civil Relief Act of 1940 was passed prior to WWII, and was an updated version of a WWI statute. It directed the courts to apply legal principles of equity to determine the appropriate action to take whenever a servicemember’s rights were involved in controversy. The law was repealed in 2003 upon enactment of the SCRA, a modernization and comprehensive restatement of the SCRA and its protections.<sup>9</sup>

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<sup>9</sup> R. Mason, *The Servicemembers Civil Relief Act (SCRA): Does it provide a Private Cause of Action?* CONGRESSIONAL RESEARCH SERVICE, October 8, 2009, available at [www.crs.gov](http://www.crs.gov).

Although unnecessary because of federal supremacy, Washington has confirmed the applicability of the federal statute to its courts.<sup>10</sup> In addition, in 2005, Washington enacted the Washington Service Members Civil Relief Act, 38.42 RCW (WSCRA).<sup>11</sup>

Each year since 2003, Congress has passed new amendments clarifying and/or enlarging the protections offered to servicemembers. However, the purposes and objectives of the SSCRA were the same as those of the SCRA and WSCRA. The United States Supreme Court made it clear over sixty years ago that it [the SCRA/SSCRA] "is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation" **Boone v. Lightner**, 319 U.S. 561, 575, 63 S.Ct. 1223, 1226, 87 L.Ed. 1587 (1943).

In our case, the application of the tolling provision at 50 U.S.C.A. § 526 to the six month calculation for purposes of establishing home state jurisdiction is at issue. The Washington analogue to this statute provides:

The period of a service member's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or

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<sup>10</sup> See RCW 73.16.070.

<sup>11</sup> A copy of the WSCRA is attached hereto as **Appendix C**. Appellant also notes that Utah has adopted the Utah Service Members' Civil Relief Act, at UC 39-7.

against the service member or the service member's heirs, executors, administrators, or assigns.

RCW 38.42.090; **see also** UC 39-7-110 (Utah's version of the provision).

The United States Supreme Court has made it clear that the statutory command found at §526 is unambiguous, unequivocal, and unlimited. **See Convoy v. Aniskoff**, 507 U.S. 511, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993).

Although other sections, such as 50 U.S.C. A. §522<sup>12</sup> condition relief in the form of a stay on a showing of prejudice, this section does not. The only critical factor is military service; once that circumstance is shown, any legal period of limitations is automatically tolled for the duration of service.

In construing the tolling provision of the SCRA in §526, courts around the country have found that this provision of the SCRA was

intended to modify not only those statutes properly called statutes of limitations, by which times are fixed for the bringing of actions, but statutes creating a right of action which did not exist independently of the statute where the time for bringing such an action is limited in some way or a condition precedent is imposed by statute.

**State v Roper**, 168 S.W.3d 577, 586 (Mo. 2005) (citing **Worlow v.**

**Mississippi River Fuel Corp.**, 444 S.W.2d 461, 464 (Mo.1969)).

Further, under the tolling provision, "a statute of limitations will toll

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<sup>12</sup> Corresponding state statutes which condition relief in the form of stay on a showing of prejudice are RCW 38.42.060 and UC 39-7-105.

during the period of service even though the claim accrued and the action could have been commenced prior to the plaintiff's entry into the service.”

**Jones v. Garrett**, 386 P.2d 194 (Kan. 1963).

There are a number of provisions under the SCRA that expressly toll the calculation of time where the servicemember might ordinarily have to take some action to avoid detriment to his or her rights, or where his or her absence from a state is expressly protected from the loss or acquisition of residence for one purpose or another.<sup>13</sup> It would be impossible for Congress to articulate each instance where the tolling provision would apply. For that reason, when construing a statute, the court's primary goal should be to determine and give effect to the legislature's intent and purpose in creating the statute. **Indoor Billboard/ Wash, Inc. v. Telecom of Wash, Inc.**, 162 Wn. 2d 129, 170 P.3d 10 (2007).

In a custody proceeding, a parent's right to raise one's child is at stake. The Supreme Court has found that the right to raise one's children [are] “rights far more precious . . . than property rights.” **Stanley v.**

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<sup>13</sup> For example, rights in public land pursuant to §562, desert land entry rights under §563, mining claims under §564, mineral permits or leases under federal mineral lease laws under §565, and with regards to rights to public lands or mining or mineral lease laws, the suspension of any requirement related to the establishment of residence within a certain time under §568. Moreover, there are other provisions under the SCRA that expressly toll the calculation of residency for specific purposes. Further, for tax purposes, a servicemember's absence cannot be used to lose or acquire residency, §571, and a servicemember's absence may not be the sole reason to deem his or her residence lost or gained under §575.

Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (quoting May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 97 L.Ed. 1221 (1953)). It is the express goal of Congress and the Washington legislature to protect the rights of servicemembers called to active duty. See RCW 38.42.020(3). For the reasons above, and because the Supreme Court mandates that the SCRA be liberally construed, the Washington court must construe the tolling provision of the SCRA to apply to the UCCJEA's calculation of the six-month period of residency which determines the child's home state.

**B. Trial Court Abused Its Discretion in Granting a Continuance of the December 17, 2009 Hearing, Failing to Enforce the Utah Decree, Failing to Strike Inadmissible Hearsay and Settlement Discussions, and Failing to Award Inskip Attorney Fees and Costs.**

A court's decision to grant or deny a motion for continuance is normally reviewed under an abuse of discretion standard. State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 116 (2004) (citations omitted). In exercising its discretion to grant or deny a continuance,

a court may properly consider the necessity of reasonably prompt disposition of the litigation; the needs of the moving party; the possible prejudice to the adverse party, the prior history of the litigation, ...and any other matters that have a material bearing upon the exercise of the discretion vested in the court.

Trummel v. Mitchell, 156 Wn.2d 653, 670-71, 131 P.3d 305 (2006).

**1. Trial court was required to enforce the Utah Decree**

In this case, the trial court had no legal basis upon which to grant a continuance of the show cause hearing. An enforcement proceeding takes precedence over a modification action. See UCCJEA §307 cmt., 9 Pt. IA U.L.A. (1997). The enforcement court is required to communicate with the modification court in order to avoid duplicative litigation. However, if no state has exclusive, continuing jurisdiction, then the ultimate decision regarding the disposition of the case rests with the court having the jurisdiction to modify pursuant to RCW 26.27.221.<sup>14</sup> Regardless, the trial court was obligated to enforce the valid, unmodified, and registered Utah Decree absent a defect in notice to Ross.

Here, Inskip brought an enforcement action, CP 19-21, pursuant to the *expedited enforcement* provisions of the UCCCJEA because Ross had been withholding access to his daughter for approximately three months. CP 93, ¶7. RCW 26.27.471(3) mandates:

Upon the filing of a petition, the court *shall* issue an order directing the Respondent to appear in person ... at a hearing... The hearing must be held *on the next judicial day after service of the [show cause] order unless that date is impossible*. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of the hearing at the request of the Petitioner. (emphasis added).

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<sup>14</sup> Utah's loss of exclusive, continuing jurisdiction, and Washington's acquisition of home state jurisdiction will be discussed further below.

Both the UCCJEA, RCW 26.27.491, and the Order to Appear and Show Cause re: Enforcement dated November 19, 2009, CP 15-16, mandated that the court order the petitioning party [Inskip] to take immediate physical custody of the child at the hearing unless the Respondent, Ross, appeared and established that:

- 1) The child custody determination had not been registered and confirmed and:
  - a) that Utah didn't have jurisdiction to enter the May 4, 2007 order, or
  - b) that the May 4, 2007 Utah order has been modified, stayed, and/or vacated; or
  - c) that [Ross] didn't receive notice as required by RCW 26.27.081, or
- 2) That the registered and confirmed child custody determination had been vacated, stayed, or modified by a court of a state having jurisdiction to do so under RCW 26.27.201-291.

It is undisputed that Inskip properly registered the Utah Decree on November 16, 2009. CP 1-2; CP 13-14. Neither the validity of the Utah Decree nor the jurisdiction of the Utah court to enter the May 4, 2007 custody order in 2007 has been challenged. Likewise, on December 17, 2009, it had not been vacated, stayed, or modified, was undisputed.

The sole dispute relevant to the expedited enforcement proceeding is whether or not Ross received proper notice of the show cause hearing pursuant to RCW 26.27.081. Valid service would include service given in a manner reasonably calculated to give actual notice, and can include

personal service or service by mail requesting a return receipt. RCW 26.27.081(1)(a) and (b). Ross received personal service on December 14, 2009, three days prior to the show cause hearing. CP 66-67; CP 68.

Any claim that Ross was entitled to more than one day of notice of the expedited show cause hearing is without merit. A statutory provision's plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. See Tingley v. Haisch, 159 Wn. 2d 652, 152 P. 3d 1020 (2007).

The statutory scheme here is clear. The UCCJEA ordinarily provides a litigant twenty days to contest the validity of a registered child custody determination pursuant to RCW 26.27.441(4). If the litigant fails to do so, the determination is registered by operation of law, RCW 26.27.441(5). However, if a petition is filed pursuant to the expedited enforcement provisions of the UCCJEA, then a litigant may be hailed to court the next judicial day after proper service. RCW 26.27.471(3).<sup>15</sup>

The court abused its discretion by granting Ross' request for a continuance to provide additional briefing on the jurisdictional issues. In addition to considering the above undisputed facts (Utah Decree valid and

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<sup>15</sup> Although Washington's CR6(d) provides a litigant 5 days notice of a motion/ hearing, and King County's LFLR 5(4) provides a litigant 6 days notice, both rules expressly state the exception is if a different period is ordered or directed by the court. In our case, the Respondent was entitled to one day notice and she received 3 days notice.

unmodified, adequate notice of hearing), the court was required to consider the following material facts to make that determination:

- 1) On September 19, 2009, Ross prematurely initiated the litigation in Utah by petitioning to modify the custody decree in question without first complying with the requirement that she mediate the parent plan dispute, CP 28; CP 64 ¶7;
- 2) As of December 17, 2009, Ross had withheld access to M. in violation of the decree for approximately 3 months, CP 93 ¶7;
- 3) Ross had at least two weeks notice and up to one month's notice of the show cause hearing and/ or Inskip's substantive briefing; CP 109-110; CP 117-118; CP 121-122;
- 4) Despite efforts to secure cooperation, Ross refused to accept service, CP 111, and required personal or "proper" service, CP 73;
- 5) Through the Utah proceeding, Ross had briefed jurisdictional issues in legal memorandum which was filed in the Washington court on December 8, CP 235;
- 6) Washington's trial judge had reviewed Ross' memorandum and summarized each party's legal arguments in the Memorandum Regarding UCCJEA Conferences filed December 11, 2009. CP 64-65;
- 7) Inskip strenuously objected to a continuance and there was no agreement by counsel to continue, CP 96-108;
- 8) There is no statutory authority to provide the Respondent an extension, RCW 26.27.471(3);
- 9) No orders were entered December 17 to protect Inskip's relationship with M. from Ross' ongoing interference and unilateral curtailment of parenting time.<sup>16</sup> CP 90; CP 198-201.

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<sup>16</sup> Appellant notes that although the Washington court could have placed the child in Inskip's physical custody here in Washington pursuant to the "whatever relief is normally available to enforce a child custody determination [Utah Decree]" provision at RCW

Consistent with the urgent nature and shortened notice requirement of an expedited proceeding, the UCCJEA provides at RCW 26.27.071:

If a question of existence or exercise of jurisdiction under the UCCJEA is raised in a child custody proceeding, the question, upon proper motion, must be given priority on the calendar and handled *expeditiously*.

(Emphasis added).

Here, there would have been no prejudice to Ross had the court denied the continuance as she had already briefed the jurisdictional issues through Utah counsel, and the court had already reviewed and summarized each party's position in its own memorandum dated December 11, 2009. Given that the expedited enforcement proceeding was necessitated by Ross' unilateral actions in denying Inskip access to his daughter, and then seeking relief prematurely in Utah—causing protracted proceedings in both states—the court further abused its discretion by failing to consider the ongoing harm to Inskip's relationship with M. It is Ross' ultimate position was/is that a return to Washington is too disruptive to M. thereby requiring a modification of the Decree. By granting Ross a continuance, the court maintained the child in Ross' sole custody and rewarded her misconduct and self-help activity.

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26.27.451(1)—it did not have the power, however, to modify the Utah Decree and give Ross custody.

Moreover, it was error for the court to ignore the urgent nature of the expedited proceeding and to instead, grant a lengthy one month continuance. The court's failure to consider the material facts was essentially a reward to Ross for her misconduct to the detriment of Inskip. Finally, the stated basis for the continuance (so that Ross could brief the jurisdictional issue) was untenable and an abuse of discretion. The court had already received legal memorandum from Ross, considered it, and issued its own memorandum summarizing her position.<sup>17</sup>

## **2. The trial court erred in Issuing its January Interim Order**

The December 17, 2009 show cause hearing was continued to January 13, 2010. CP 89-90. In December, the Utah court orally ruled that Washington had limited jurisdiction to enforce the Utah decree. CP 250, ¶256-57; ¶7; CP 282-83, ¶2. It remained undisputed that Inskip had properly registered the Utah Decree, that Utah had jurisdiction to enter it in 2007, and that the Decree had not been modified, stayed, or vacated.

Despite this, at the erroneously-continued show cause hearing on January 13, 2010, the trial court issued its Interim Order; stating that it

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<sup>17</sup> Inskip notes that he moved for an order striking paragraph 4, paragraph 5, and paragraphs 4-7 of Respondent's Motion for Continuance on the basis of lack of foundation, hearsay, and inadmissible settlement discussions. Those portions of Ross' material should have been stricken pursuant to ER 602, ER 802. CP 96-97. If the court relied on the existence of an agreement as the basis for a continuance, it erred because the reliance was not grounded in fact.

would enforce the Utah Decree, but would not change the situation as perceived by the child, thus placing M. in Ross' temporary custody. CP 213. The Interim Order limited Inskip's parenting time to one 4 to 5 day period each month for the months of January through April, 2010, CP 215-16, and it prohibited the parties from exercising parenting time outside of either Utah or Washington. CP 215-16.

The trial court erred in issuing the Interim Order for several reasons. First, Washington was the home state and had initial child custody jurisdiction over any child custody matter. This left the trial court with no legal basis to refuse to enforce the registered Utah Decree—this point is elaborated on below. Second, Utah had already determined that Washington had the limited jurisdiction to enforce the Utah Decree, which contains none of the limitations on Inskip's parenting time with his child as imposed by the Interim Order. CP 3-12. Third, there is no basis under the UCCJEA, or under common law, for the trial court to have issued an "Interim Order" instead of complying with the UCCJEA's mandate.<sup>18</sup>

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<sup>18</sup> Although Washington may exercise temporary emergency jurisdiction pursuant RCW 26.27.231 to protect a child who is threatened with abuse, there are no allegations of abuse in this case. Reliance on that statute would be legal error. Subsection (1) of RCW 26.27.231 defines "temporary emergency." Although subsection (4) more generally states that the courts are to communicate to "resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order", the emergency provisions of this statute only authorize the court to act to protect a child threatened with "abuse." The scope of this emergency provision is made clear at UCCJEA §204 cmt., 9 Pt. IA U.L.A. (1997).,

Finally, the issuance of the Interim Order was error because it served as a de-facto modification of the Utah Decree. Under the UCCJEA, a Washington court may enter a temporary order to enforce visitation rights where a visitation schedule from another state already exists. RCW 26.27.431. Although the court would have some latitude to implement an order by providing for make-up or substitute visitation, see UCCJEA §303 cmt., 9 Pt. IA U.L.A. (1997), this section may not be used as a unlawful pretext for modification. Further, that provision is to restore rights to the aggrieved parent, not to take rights to which he is entitled pursuant to a valid custody decree.

Additionally, if the Washington court believed it had jurisdiction to effectively modify the Utah Decree, that would necessarily mean that Washington had exclusive jurisdiction—therefore making any ultimate deferral to Utah’s assertion of jurisdiction paradoxical. RCW 26.27.221. If the court relied on the temporary visitation section of the UCCJEA, it exceeded its authority and committed legal error.

**C. Trial Court Erred in Dismissing Inskip’s Motion to Enforce Utah Decree and Denying Inskip’s Motion for Reconsideration**

Questions of jurisdiction are reviewed under a de novo standard of review. See Tostado, 137 Wn. App. at 144 (citations omitted). The trial

court erred when it dismissed Inskip's Enforcement Petition on February 23, 2010.

**1. Utah lost its jurisdiction when all parties permanently moved to Washington State.**

Utah lost exclusive, continuing jurisdiction in June of 2007 when all parties complied with the Utah Decree, left Utah, and established residence in the State of Washington. The UCCJEA states that:

(1) ...a court of this state that has made a child custody determination... has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents...do not 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

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

(2) A court of this state that has made a child custody determination and does not have exclusive continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination[.].

RCW 26.27.211; see also UC 78B-13-202.

The National Conference of Commissioners on Uniform State Laws made it clear that the phrase "do not presently reside in this State" is meant to be identical in meaning to the PKPA language "State remains the residence of..." The N.C.C.U.S.L. stated in its comment that those

phrases are the equivalent of the language “continues to reside” which is found in UIFSA.<sup>19</sup> Noting that this phrase which appears in PKPA has been the subject of conflicting case law, it stated :

It is the intention of this Act that<sup>20</sup> . . . . . this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive continuing jurisdiction ceases.”

UCCJEA §303 cmt., 9 Pt. IA U.L.A. (1997)

In its comment, The N.C.C.U.S.L. went on to explain that “do not presently reside” does not mean a technical domicile. For example, if all parties left State A which made the custody determination prior to the commencement of the modification proceeding, either state A or B can decide that state A lost continuing, exclusive jurisdiction. Further, exclusive, continuing jurisdiction is not reestablished if, after all parties leave the state, the non-custodial parent returns. See id., §202 cmt. Once a State has lost exclusive, continuing jurisdiction, it can only modify its own determination if it has jurisdiction under the standards for an initial child custody determination. See RCW 26.27.201 (codification of §201).

The UCCJEA provides for a “determination” before loss of exclusive, continuing jurisdiction. RCW 26.27.211. Because parties can

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<sup>19</sup> The Uniform Interstate Family Support Act (UIFSA), which regulates the processing of all cases in which parties are located in more than one state.

<sup>20</sup> Referring to § 202 (a)(1)(2) which is codified here as RCW 26.27.211(1)(a)(b).

move back and forth, an automatic loss of jurisdiction, without any factual determination, would add uncertainty, diminish the oversight ability of the courts, and increase conflicts between states. Such results would be contrary to the purposes of the UCCJEA. **State v. Donna J.**, 139 N.M. 131, 129 P.3d 167 (2006).

However, it is the fact of relocation, rather than any formal finding, that controls, **Parenting of A.R.K.**, 142 Wn. App. 297, 303-04, 174 P.3d 160 (2007) (citing UCCJEA § 202 cmt., 9 pt. IA U.L.A. 674 (1997)).<sup>21</sup>

Regardless, either Utah or Washington may determine that the parties and child “no longer presently reside” in Utah. RCW 26.27.211(1)(b) or basically, that the parties and child had relocated.<sup>22</sup>

A party's intent when leaving the state is relevant in determining whether an absence is temporary or permanent. **Parenting of A.R.K.**, 142 Wn. App. 303-04 (citing **In re Marriage of Payne**, 79 Wn. App. 43, 52, 899 P.2d 1318 (1995))<sup>23</sup>. In **Payne**, the father’s four-month absence from Virginia was not temporary because he left Virginia with the intention of moving permanently to Washington. In our case, Inskip moved to Washington in 2005, and the Decree recited his intent to return to Seattle

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<sup>21</sup> The **A.R.K.** court was clarifying that jurisdiction is lost unless a modification proceeding has been filed prior to departure from the state.

<sup>22</sup> Utah would not regain its jurisdiction by virtue of Ross arriving at the courthouse first.

<sup>23</sup> In **A.R.K.**, the mother fled Washington to Montana to escape domestic violence, later alleging the move was temporary. The court found the move to be permanent, noting her reasons indicated her motivation for leaving, but did not indicate her intent to return.

after a month abroad, CP 5, and Ross' intent to move from Utah to the Seattle area for the purpose of sharing the parenting of M. on an alternating weekly basis. CP 5. Ross asserted she did not decide to return to Utah until learning Inskip was being deployed, believing that Utah provided her better options. CP 161, ¶¶5-6; CP 172, ¶1; CP 170, ¶7.

Utah lost exclusive, continuing jurisdiction in 2007 when all parties had permanently moved from the state. On August 18, 2008 when Inskip was deployed, Washington was M.'s home state.

**2. Washington has maintained its home state despite the child's absence from the state because its status was tolled by operation of law during the time that Inskip was deployed and Ross and the child resided in Utah**

Further, Washington has maintained its home state status and has jurisdiction to make an initial child custody determination despite M.'s absence from the state. The SCRA, 50 U.S.C. App. §526, and RCW 38.42.090 toll the calculation of the six-month period at RCW 26.27.201(a) for purposes of establishing the home state of a child.

Washington became the child's home state<sup>24</sup> on approximately December 25, 2007, after all parties had moved to Washington and the child had lived here for six months. On August 18, 2008, when Inskip

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<sup>24</sup> "Home state" is defined as the state in which a child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding—and includes temporary absences of the child. RCW 26.27.021(7); UC 78B-13-102(7).

was deployed, CP 30, the parties had lived in Washington continuously for over a year. Because Utah had lost exclusive, continuing jurisdiction, on August 18, 2008 Washington had exclusive jurisdiction to make an initial child custody determination pursuant to RCW 26.27.201.

Although the child actually “lived” in Utah with her mother while Inskip was deployed and on active duty, CP 26, ¶20, and Ross has remained in Utah with the minor child, CP 28, ¶¶27-32, the home state calculation was tolled. The court cannot count one single day that M. lived in Utah with her mother towards the establishment of “home state” in Utah. If Ross had lawfully changed the child’s place of residence from Washington to Utah, the first day that Utah could start counting Utah as the child’s home would be September 13, 2009. That is the date on which Inskip was released from active duty. CP 29, ¶33; CP 30. On September 21, 2009, Washington had home state status and had Initial-Child custody jurisdiction to modify the Utah Decree.

**a) Tolling of the home state calculation applies where the child’s absence is the result of misconduct**

Moreover, where the child is out of state as a result of a parent’s wrongful removal, courts have tolled the home state calculation. In the case of Curtis v. Curtis, 574 So.2d 24, 30 (Miss. 1990), where the

children were in Mississippi in violation of a “perfectly valid Utah custody decree,” and pursuant to an erroneous Mississippi ruling, it stated:

[w]e hold without hesitation that such court ordered involuntary residence does not generate so much as a single tick of the UCCJA’s six consecutive months clock.

**Curtis v. Curtis**, 574 So.2d 24, 30 (Miss. 1990).

Ross’ violation of Washington and Utah relocation statutes and its impact on the issue of jurisdiction is discussed below.

**b) Where a child is absent from the state due to a parent’s military service, the absence is temporary**

Even without federal and state statutes protecting servicemembers, and/or without tolling the statute for equitable reasons, where a child is absent from the state solely as a result of a parent’s military service, that absence is considered a “temporary absence” under the UCCJEA. **See In Re Lewin**, 149 S.W.3d 727, 739 (Tex App. 2004) (citation omitted). Here, Ross was clear that she left the state because Inskip was deployed. CP 83, ¶7; CP 161, ¶5.

Consistent with this out of state case law, both Washington and Utah have statutes protecting the rights of servicemembers in child custody proceedings and expressly preserve the temporary nature of an

exchange of custody resulting from a parent's active duty service. RCW 26.09.260(11)(a) and (b); UC 30-3-40(3).<sup>25</sup>

The relevant portion of Washington's statute provides that:

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment ... that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian ...

(b) The temporary duty, activation ... and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

RCW 26.09.260(11).

The military parent may also delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. RCW 26.09.260 (12).

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<sup>25</sup> Both the holding in Lewin, and the protective provisions of RCW 26.09.260(11) and (12) are consistent with prior case law establishing that it is normal right of decision-making for a parent to designate an alternate caretaker for their child in their absence. See Magnusson v. Johannesson, 108 Wn. App. 109, 113, 29 P.3d 1256 (2001) where father entrusted children at regular intervals while fishing in Alaska; see also In Re Marriage of Taddeo-Smith and Smith, 127 Wn. App. 400, 405-07, 110 P.3d 1192 (2007) ( involuntary transfer where custodial parent was hospitalized).

Here, there is no question that Washington would have had home state jurisdiction to enter a temporary order pursuant to RCW 26.09.260 (11) and/or (12) had Inskip sought relief prior to being deployed. Utah lost jurisdiction and the parties had lived in Washington for 13-14 months. Had he secured a temporary order, regardless of where Ross resided with the minor child, the court would have been mandated to reinstate the 2007 custody provisions within 10 days of his release from active duty.

It is irrelevant that Inskip did not seek a temporary order prior to his deployment in order to maintain the intended protections of 260 (11) and/or (12). First, as discussed earlier, Congress (and Washington legislature) and the U.S. Supreme Court recognize the need to “protect those who have been obligated to drop their own affairs to take up the burdens of the nation”, **Boone v. Lightner**, *supra*. The period of military service may not be included in computing “any period limited by law... or order for bringing any action or proceeding in a court by or against a servicemember.” RCW 38.42.090, UC 39-7-110, 50 U.S.C.A. §526. Because of his deployment and active military service, Inskip was excused from bringing any action from the moment he commenced his active duty until the moment he was released from active duty.

Second, if there was some action Inskip needed to take, the “stay of proceedings” provision at 50 U.S.C.A. §522 provides him a mandatory

90 day stay if he alleges his military service materially affects his ability to appear in the action. This stay of proceeding applies during active duty and until 90 days after termination or release from active duty. As Inskip is a member of the Washington National Guard, pursuant to the WSCRA, he is entitled to a stay of proceedings until 180 days after his release from active duty. RCW 38.42.060.<sup>26</sup>

**3. Trial court had the obligation to determine whether Utah had jurisdiction “in substantial conformity” with the UCCJEA and make findings concluding that Utah had**

The Washington court’s failure to make findings justifying the dismissal of Inskip’s action was also reversible error. Questions of statutory interpretation and questions of jurisdiction are reviewed de novo. In the Utah case of Meyer v. Meyer, 196 P.3d 604 (Utah 2008), there was a jurisdictional dispute between Utah and Kansas regarding an initial child custody determination pertaining to an infant child. The Kansas court asserted “home state” jurisdiction during a telephone conference. Although Utah it had jurisdiction, it deferred to the Kansas court’s conclusion reasoning that it was “left with few choices.” 196 P.3d at 606.

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<sup>26</sup> In family law proceedings, the court may issue a temporary order upon a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. However, any temporary order issued without the service member’s participation shall not set any precedent for the final disposition of the matters addressed therein. RCW 38.42.050(6). The servicemember would have 180 days from termination or release of active duty to seek vacation of the orders. RCW 38.42.050(9).

On appeal, the Meyeres court found Utah, not Kansas had home state jurisdiction, and that the trial court deferred to Kansas based on its erroneous understanding that it was “left with no choices.” Id. at 607. It noted that neither the Kansas court’s determination that it had subject matter jurisdiction nor the Kansas court’s refusal to defer to Utah was relevant to Utah’s jurisdictional analysis. Rather, the statute obligated Utah to examine the documents in the Kansas proceeding and to make its own determination as to whether or not Kansas had jurisdiction in substantial conformity with the provisions of the U.C.C.J.E.A. Id.

Absent findings that Kansas was a more appropriate forum, the appellate court further found it was error to defer to another state that did not have jurisdiction in substantial conformity with the UCCJEA. Id. at 607-08. This makes sense because absent an obligation for each court to examine the record and to make its own independent determination regarding the other states conformity with the U.C.C.J.E.A., a state could assume jurisdiction through pure belligerence.

Such assumptions of jurisdiction would result in increased litigation, chaos, and a lack of predictability regarding jurisdiction. Decrees entered by courts that are not in conformity with the UCCJEA. would not be entitled to full faith and credit for a reason, and it would create hardship for parties if a court held otherwise.

As our case involved an enforcement action with a pending modification action in another state, the court must construe the requirements of the simultaneous proceedings statute that applies to enforcement proceedings found at RCW 26.27.461. It provides:

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

The N.C.C.U.L.A. commented that an enforcement proceeding takes precedence over a modification action. See UCCJEA §203 cmt., 9 Pt. 1A U.L.A. Further, where there is no state having exclusive, continuing jurisdiction, then the decision [regarding disposition] rests with the state with the jurisdiction to modify pursuant to §203 (located at RCW 26.27. 221). See UCCJEA §203 cmt., 9 Pt. 1A U.L.A.

As stated above, Washington is the child's home state. Utah lost its exclusive, continuing jurisdiction in June of 2007 and has never regained home state status. As Utah had no basis on which to assert jurisdiction to modify its Decree, there was no legal basis for the court's failure to enforce the Utah Decree. Likewise, there was no legal basis for

the Washington court's deference to Utah assertion of jurisdiction and the resulting dismissal of Inskip's enforcement action.

Moreover, as the sole state with either initial child custody jurisdiction or modification jurisdiction, Washington was obligated to make its own independent determination regarding the disposition of the case, which it wholly failed to do. See Meyerers, 196 P.3d at 608.<sup>27</sup>

An enforcement action is a child custody proceeding. Here, the court's terse recitations in its Order on Petition for Enforcement of Utah Decree dated February 23, 2010, CP 303, stated:

Therefore, based on the extensive record in both jurisdictions and the February 4, 2010 order by the Utah court asserting jurisdiction this court defers to the Utah child custody determination, denies the Petition to Enforce the Utah Decree and dismisses this proceeding.

In the Memorandum Regarding UCCJEA Conferences dated December 11, 2009, the Washington court concluded that Washington was the home state, that as of December 11, 2009, the record did not support Ross' position that she was never domiciled in Washington, and that her conduct in removing the child from Washington and then using Inskip's deployment to gain an advantage was reprehensible. CP 64-65. One can only conclude that Washington deferred to Utah, not because it believed

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<sup>27</sup> In addition, Washington's civil rules require findings in any action tried upon the facts without a jury. In final decisions involving child custody, the court is expressly required to set its findings and conclusions out separately. CR 52(a)(2)(B). Again, the trial court made no findings and provided no legal basis for dismissing Inskip's Enforcement Petition in its Dismissal Order. CP 303.

Utah was a more convenient forum, or because Inskip had acted in such a manner that Washington was obligated to decline jurisdiction, but because, like the Meyer case, it erroneously believed it was left with few choices in light of Utah's insistence on asserting jurisdiction. This was reversible error, as such a conclusion had no basis in law

**4. Washington court should have asserted exclusive jurisdiction to enforce the Utah Decree because Utah could not have jurisdiction in "substantial conformity" with the UCCJEA**

As Utah did not have jurisdiction in "substantial conformity" with the UCCJEA, as required by the simultaneous proceedings statute at RCW 26.27.461, the Washington court erred in by failing to assert jurisdiction. Utah did not have jurisdiction "in substantial conformity" with the UCCJEA for two reasons. First, as stated above, Washington is the home state and the sole state with either modification jurisdiction or initial child custody determination jurisdiction. Since Washington is the home state, Utah cannot possibly have jurisdiction to modify "in substantial conformity" with the UCCJEA.

Second, where a person seeking to invoke a state's jurisdiction has engaged in unjustifiable conduct, the court is mandated to decline jurisdiction unless: 1) all parties acquiesce, 2) another court having jurisdiction determines that that court whose jurisdiction is in question is a

more appropriate forum, or 3) no court of any other state would have jurisdiction. RCW 26.27.271(1)(a),(b), and (c); UC 78B-13-208(1)(a),(b),and (c). If Ross has engaged in unjustifiable conduct, even if Utah had exclusive jurisdiction, it would be statutorily mandated to decline jurisdiction.

Both Washington and Utah have relocation acts requiring notice of an intent to relocate the child's residence. Washington's Relocation Act (WRA) RCW 26.09.405-.560 and Utah UC 30-3-37. A copy of the WRA is attached hereto as **Appendix D**. A primary parent who wishes to relocate must give the other 60 days written notice (personal service or mail requiring a return receipt). In the alternative, one must provide notice no more than 5 days of learning of an intended move. RCW 26.09.440(1). Further, the WRA requires that the notice given to the other parent be extremely detailed, including the new home address, telephone, and address for the new school and daycare. RCW 26.09.440(1)(2).

After proper notice, the other parent would have 30 days to file an Objection/Petition Regarding Relocation. RCW 26.09.480 (1). So long as other parent objects within 30 days, the parent wishing to relocate may not relocate the child without a court order. RCW 26.09.480(2). Failure to give notice is grounds for sanctions. RCW 26.09.470(1). The court may consider substantial compliance, whether other parent was

substantially harmed. RCW 26.09.470(2)(d), and any other factor the court deems relevant. RCW 26.09.470(2)(3).

In our case, Ross never gave any notice as required by RCW 26.09.440, nor did she even attempt such notice. This failure is significant, as Ross relocated during a time when Inskip was incapacitated by reason of his military service. Once he understood Ross intended to use his deployment to secure sole custody, he was unable to appear in court to protect his rights and invoke the protections afforded to servicemembers whose ability to exercise parenting time is materially affected because of their service. See RCW 26.09.260(11) and (12), discussed above.

Although facts regarding Ross' informal notice to Inskip is disputed, upon his return, she has retained custody violation of the Utah Decree. Particularly when viewed in light of her obligations pursuant to the WRA, if Utah had jurisdiction, which it did not and does not, then Utah would be statutorily mandated to decline jurisdiction. If Utah failed to decline jurisdiction, it would not be exercising its jurisdiction in substantial conformity with the UCCJEA.

Cases pursuant to UCCJA or pre-UCCJA are instructive on this issue. See, e.g., In Re Custody of Nelsen, 37 Wn.App. 640, 681 P.2d 1302 (1984) (violation of spirit of UCCJA where father failed to inform court out of state order); In Re Marriage of Verbin, 92 Wn.2d 171, 595

P.2d 905 (1979) (unclean hands where mother unable to testify as unaware of proceeding); **In Re the Marriage of Ieronimakis**, 66 Wn. App. 83, 831 P.2d 172 (1992) (no matter how well intentioned, mother unilaterally removed due to alleged violence, jurisdiction declined despite); and **In Re Custody of Thorenson**, 46 Wn. App. 493, 730 P.2d 1380 (1987) (although mother with custody withheld visitation, father’s decree not enforced due to lack of notice).

Unlike the mandatory declination provision of the UCCJEA where there has been unjustified conduct, the UCCJA provided for discretionary declination of jurisdiction if there was “reprehensible” conduct. UCCJA 9 Pt IA U.L.A. (1968). Also, prior to the UCCJA, the court relied on the “unclean hands” doctrine as a basis to decline jurisdiction.

The N.C.C.U.L.A. commented that with the prioritizing of home state jurisdiction, there are fewer instances where a parent may abduct children to another state in an effort to secure an advantage in a child custody proceeding. However, there are still cases where a parent will act in a reprehensible manner, such as removing, secreting, retaining, or restraining a child. See UCCJEA §208 cmt., 9 Pt 1A U.L.A. According to the comment for §208 (RCW 26.27.271), the courts should ensure that an abducting parent does not receive an advantage for his or her unjustifiable conduct. The comment further clarifies that §208 (RCW

26.27.271) applies to situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. A technical illegality or wrong would not invoke this section, such as where a victim of domestic violence flees the state to avoid abuse and thereby violates a joint custody decree; in such a circumstance, the provision would not be automatically invoked. An inquiry would need to take place to determine if the flight were justified under the circumstances. If the conduct is unjustified, however, as it is here, it must decline jurisdiction. See UCCJEA §208 cmt., 9 Pt 1A U.L.A.

In our case, Ross denies unjustifiable conduct. Many of the facts and circumstances surrounding Ross' decision to return to Utah are disputed. However, it is undisputed that once Inskip returned to Washington in August of 2009, Ross refused to reinstate the terms of the 2007 custody decree. CP 28. She did not fulfill the mediation provisions of the 2007 decree and instead, filed a petition for modification in Utah. CP 28. She unilaterally restricted Inskip's access to the minor child, and any access he received was subject to conditions which gave her an advantage in retaining the physical custody in Utah. CP 28-29.

Ultimately, the Washington court dismissed Inskip's case and deferred to Utah's exercise of jurisdiction. But for Ross' unjustified conduct, Utah could not have invoked jurisdiction.

As the UCCJEA mandated Utah to decline jurisdiction in light of Ross' unjustifiable conduct, any assertion of jurisdiction was not in substantial conformity with the UCCJEA. Decrees not entered in conformity with the UCCJEA are not entitled to the full faith and credit of other states under controlling state and federal law. For that reason, Washington committed legal error by failing to assert its own jurisdiction and by failing to enforce Utah Decree.

**5. Trial court erred in denying Inskip's Motion For Reconsideration**

The trial court's denial of Inskip's Motion For Reconsideration on March 23, 2010, CP 332, was also an abuse of discretion and reversible error as the Reconsideration Order provided no reason or basis for the denial. CP 332.

Reconsideration was warranted pursuant to six separate bases pursuant to Washington's civil rules, CR59(a)(1) irregularity in the proceeding which deprived Inskip of due process; CR 59(a)(3) accident or surprise caused the Commissioner Blomquist's February 4, 2010 ruling; CR 59(a)(4) newly discovered evidence regarding the status of the Utah

proceeding after January 13, 2010; CR 59(a)(7) and CR59(8) due to the clear errors in law in continuing the December 17, 2009 show cause hearing and deferring to Utah which does not have jurisdiction in substantial conformity with the UCCJEA; and finally CR 59(a)(9) as substantial justice was not done in light of the strong public policy considerations behind both the SCRA/WSCRA and the UCCJEA and the court's inexplicable failure to abide by the mandates of those statutes.

**D. Appellant Is Entitled to Reasonable Attorneys Fees and Costs at Trial and on Appeal**

RCW 26.27.511(1) provides in part:

The court shall award the prevailing party... necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings[.]

Pursuant to RAP 18.1 Inskip requests his reasonable expenses and costs in the appellate action if he is deemed the prevailing party. Likewise, if he is the prevailing party, Inskip requests a remand for a the mandatory award of legal fees and costs pursuant to RCW 26.27.511. Inskip made this request at the trial level prior to dismissal of the case.

**V. CONCLUSION**

For the reasons set forth above, the designated orders issued by the trial court should be reversed, and the case remanded with instructions from this Court. The Washington Court should assert exclusive

jurisdiction over this custody matter as Washington has exclusive or superior jurisdiction over Utah. In the alternative, the trial court should assert the limited jurisdiction to enforce the Utah Decree, as the Utah court allowed. At a minimum, however, remand is necessary for the trial court to make an independent examination of the case record and provide written justifications for why it does or does not conclude Utah is asserting jurisdiction in "substantial conformity" with the UCCJEA.

Respectfully submitted this 6th day of August, 2010.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on August 6, 2010, I caused the delivery by email pursuant to agreement a copy of the foregoing Brief of Appellant to:

Mary Ross  
Pro Se Respondent  
1233 Bryan Ave.  
Salt Lake City, UT 84106

Dated this 6th day of August, 2010 at Seattle, Washington.

  
\_\_\_\_\_  
Andrekita Silva

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# APPENDIX A

Chapter 26.27 RCW  
Uniform child custody jurisdiction act

RCW Sections

ARTICLE 1.

GENERAL PROVISIONS

- 26.27.011 Short title.
- 26.27.021 Definitions.
- 26.27.031 Proceedings governed by other law.
- 26.27.041 Application to Indian tribes.
- 26.27.051 International application of chapter.
- 26.27.061 Effect of child custody determination.
- 26.27.071 Priority.
- 26.27.081 Notice to persons outside state.
- 26.27.091 Appearance and limited immunity.
- 26.27.101 Communication between courts.
- 26.27.111 Taking testimony in another state.
- 26.27.121 Cooperation between courts -- Preservation of records.

ARTICLE 2

JURISDICTION

- 26.27.201 Initial child custody jurisdiction.
- 26.27.211 Exclusive, continuing jurisdiction.
- 26.27.221 Jurisdiction to modify determination.
- 26.27.231 Temporary emergency jurisdiction.
- 26.27.241 Notice -- Opportunity to be heard -- Joinder.
- 26.27.251 Simultaneous proceedings.
- 26.27.261 Inconvenient forum.
- 26.27.271 Jurisdiction declined by reason of conduct.
- 26.27.281 Information to be submitted to court.
- 26.27.291 Appearance of parties and child.

ARTICLE 3

ENFORCEMENT

- 26.27.401 Definitions.
- 26.27.411 Enforcement under Hague Convention.
- 26.27.421 Duty to enforce.
- 26.27.431 Temporary visitation.
- 26.27.441 Registration of child custody determination.
- 26.27.451 Enforcement of registered determination.
- 26.27.461 Simultaneous proceedings.
- 26.27.471 Expedited enforcement of child custody determination.
- 26.27.481 Service of petition and order.
- 26.27.491 Hearing and order.
- 26.27.501 Authorization to take physical custody of child.
- 26.27.511 Costs, fees, and expenses.
- 26.27.521 Recognition and enforcement.
- 26.27.531 Appeals.
- 26.27.541 Role of prosecutor or attorney general.
- 26.27.551 Role of law enforcement.

26.27.561 Costs and expenses.

#### ARTICLE 4

##### MISCELLANEOUS PROVISIONS

26.27.901 Application -- Construction.

26.27.911 Severability -- 2001 c 65.

26.27.921 Transitional provision.

26.27.931 Captions, article designations, and article headings not law.

26.27.941 Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521.

#### 26.27.011

##### Short title.

This chapter may be cited as the uniform child custody jurisdiction and enforcement act.

[2001 c 65 § 101.]

#### 26.27.021

##### Definitions.

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

- (1) "Abandoned" means left without provision for reasonable and necessary care or supervision.
- (2) "Child" means an individual who has not attained eighteen years of age.
- (3) "Child custody determination" means a judgment, decree, parenting plan, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
- (4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, a parenting plan, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, emancipation proceedings under chapter 13.64 RCW, proceedings under chapter 13.32A RCW, or enforcement under Article 3.
- (5) "Commencement" means the filing of the first pleading in a proceeding.
- (6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a child, parent, or person acting as a parent is part of the period.
- (8) "Initial determination" means the first child custody determination concerning a particular child.
- (9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.
- (10) "Issuing state" means the state in which a child custody determination is made.
- (11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (13) "Person acting as a parent" means a person, other than a parent, who:
  - (a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
  - (b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
- (14) "Physical custody" means the physical care and supervision of a child.
- (15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (16) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.
- (17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

[2001 c 65 § 102.]

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**26.27.031**  
**Proceedings governed by other law.**

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

[2001 c 65 § 103.]

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**26.27.041**  
**Application to Indian tribes.**

(1) A child custody proceeding that pertains to an Indian child as defined in the federal Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., is not subject to this chapter to the extent that it is governed by the federal Indian child welfare act.

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

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

[2001 c 65 § 104.]

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**26.27.051**  
**International application of chapter.**

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

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

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

[2001 c 65 § 105.]

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**26.27.061**  
**Effect of child custody determination.**

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with RCW 26.27.081 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

[2001 c 65 § 106.]

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**26.27.071**  
**Priority.**

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon proper motion, must be given priority on the calendar and handled expeditiously.

[2001 c 65 § 107.]

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**26.27.081**  
**Notice to persons outside state.**

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed for service of process by the law of the state in which the service is made or given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

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

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

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

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

- (a) By affidavit of the individual who made the service;
- (b) In the manner prescribed by the law of this state or the law of the state in which the service is made; or
- (c) As directed by the order under which the service is made.

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

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

[2001 c 65 § 108.]

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#### **26.27.091**

##### **Appearance and limited immunity.**

(1) Except as provided in subsection (2) of this section, a party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

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

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

[2001 c 65 § 109.]

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#### **26.27.101**

##### **Communication between courts.**

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

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

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

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

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

[2001 c 65 § 110.]

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#### **26.27.111**

##### **Taking testimony in another state.**

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

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

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

[2001 c 65 § 111.]

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#### **26.27.121**

##### **Cooperation between courts — Preservation of records.**

(1) A court of this state may request the appropriate court of another state to:

- (a) Hold an evidentiary hearing;
- (b) Order a person to produce or give evidence pursuant to procedures of that state;
- (c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

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

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

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

[2001 c 65 § 112.]

### **26.27.201**

#### **Initial child custody jurisdiction.**

(1) Except as otherwise provided in RCW 26.27.231, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) 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;

(b) A court of another state does not have jurisdiction under (a) 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 RCW 26.27.261 or 26.27.271, and:

(i) 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

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

(c) All courts having jurisdiction under (a) 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 RCW 26.27.261 or 26.27.271; or

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

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

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

[2001 c 65 § 201.]

### **26.27.211**

#### **Exclusive, continuing jurisdiction.**

(1) Except as otherwise provided in RCW 26.27.231, a court of this state that has made a child custody determination consistent with RCW 26.27.201 or 26.27.221 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not 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

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

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under RCW 26.27.201.

[2001 c 65 § 202.]

### **26.27.221**

#### **Jurisdiction to modify determination.**

Except as otherwise provided in RCW 26.27.231, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under RCW 26.27.201(1) (a) or (b) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under RCW 26.27.211 or that a court of this state would be a more convenient forum under RCW 26.27.261; or

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

[2001 c 65 § 203.]

### **26.27.231**

#### **Temporary emergency jurisdiction.**

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

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through 26.27.221. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to RCW 26.27.201 through 26.27.221, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

[2001 c 65 § 204.]

### **26.27.241**

#### **Notice — Opportunity to be heard — Joinder.**

(1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of RCW 26.27.081 must be given to: (a) All persons entitled to notice under the law of this state as in child custody proceedings between residents of this state; (b) any parent whose parental rights have not been previously terminated; and (c) any person having physical custody of the child.

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

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

[2001 c 65 § 205.]

### **26.27.251**

#### **Simultaneous proceedings.**

(1) Except as otherwise provided in RCW 26.27.231, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under RCW 26.27.261.

(2) Except as otherwise provided in RCW 26.27.231, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to RCW 26.27.281. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

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

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

- (b) Enjoin the parties from continuing with the proceeding for enforcement; or
- (c) Proceed with the modification under conditions it considers appropriate.

[2001 c 65 § 206.]

#### 26.27.261

##### Inconvenient forum.

(1) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

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

- (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (b) The length of time the child has resided outside this state;
- (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (d) The relative financial circumstances of the parties;
- (e) Any agreement of the parties as to which state should assume jurisdiction;
- (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (h) The familiarity of the court of each state with the facts and issues in the pending litigation.

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

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

[2001 c 65 § 207.]

#### 26.27.271

##### Jurisdiction declined by reason of conduct.

(1) Except as otherwise provided in RCW 26.27.231 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (b) A court of the state otherwise having jurisdiction under RCW 26.27.201 through 26.27.221 determines that this state is a more appropriate forum under RCW 26.27.261; or
- (c) No court of any other state would have jurisdiction under the criteria specified in RCW 26.27.201 through 26.27.221.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under RCW 26.27.201 through 26.27.221.

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

[2001 c 65 § 208.]

#### 26.27.281

##### Information to be submitted to court.

(1) Subject to laws providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places

where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

- (a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
  - (b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
  - (c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
- (2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.
- (3) If the declaration as to any of the items described in subsection (1)(a) through (c) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
- (4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.
- (5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

[2001 c 65 § 209.]

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#### 26.27.291

##### Appearance of parties and child.

- (1) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.
- (2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to RCW 26.27.081 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
- (3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
- (4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

[2001 c 65 § 210.]

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#### 26.27.401

##### Definitions.

The definitions in this section apply throughout this article, unless the context clearly requires otherwise.

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

[2001 c 65 § 301.]

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#### 26.27.411

##### Enforcement under Hague Convention.

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

[2001 c 65 § 302.]

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#### 26.27.421

##### Duty to enforce.

(1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

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

[2001 c 65 § 303.]

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#### 26.27.431

##### Temporary visitation.

(1) A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

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

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

[2001 c 65 § 304.]

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#### 26.27.441

##### Registration of child custody determination.

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

- (a) A letter or other document requesting registration;
- (b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration, the determination has not been modified; and
- (c) Except as otherwise provided in RCW 26.27.281, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

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

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

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

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

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

- (a) The issuing court did not have jurisdiction under Article 2;
- (b) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2; or
- (c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of RCW 26.27.081, in the proceedings before the court that issued the determination for which registration is sought.

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

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

[2001 c 65 § 305.]

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**26.27.451****Enforcement of registered determination.**

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

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

[2001 c 65 § 306.]

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**26.27.461****Simultaneous proceedings.**

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

[2001 c 65 § 307.]

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**26.27.471****Expedited enforcement of child custody determination.**

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

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

- (a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
- (b) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;
- (c) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
- (d) The present physical address of the child and the respondent, if known;
- (e) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and
- (f) If the child custody determination has been registered and confirmed under RCW 26.27.441, the date and place of registration.

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

(4) An order issued under subsection (3) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under RCW 26.27.511, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

- (a) The child custody determination has not been registered and confirmed under RCW 26.27.441 and that:
  - (i) The issuing court did not have jurisdiction under Article 2;
  - (ii) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2;
  - (iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of RCW 26.27.081, in the proceedings before the court that issued the order for which enforcement is sought; or
- (b) The child custody determination for which enforcement is sought was registered and confirmed under RCW 26.27.431, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2.

[2001 c 65 § 308.]

**26.27.481****Service of petition and order.**

Except as otherwise provided in RCW 26.27.501, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

[2001 c 65 § 309.]

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**26.27.491****Hearing and order.**

(1) Unless the court issues a temporary emergency order pursuant to RCW 26.27.231, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- (a) The child custody determination has not been registered and confirmed under RCW 26.27.441 and that:
    - (i) The issuing court did not have jurisdiction under Article 2;
    - (ii) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2; or
    - (iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of RCW 26.27.081, in the proceedings before the court that issued the order for which enforcement is sought; or
  - (b) The child custody determination for which enforcement is sought was registered and confirmed under RCW 26.27.441 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2.
- (2) The court shall award the fees, costs, and expenses authorized under RCW 26.27.511 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.
- (3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
- (4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

[2001 c 65 § 310.]

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**26.27.501****Authorization to take physical custody of child.**

An order under this chapter directing law enforcement to obtain physical custody of the child from the other parent or a third party holding the child may only be sought pursuant to a writ of habeas corpus under chapter 7.36 RCW.

[2001 c 65 § 311.]

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**26.27.511****Costs, fees, and expenses.**

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

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

[2001 c 65 § 312.]

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**26.27.521****Recognition and enforcement.**

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2.

[2001 c 65 § 313.]

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**26.27.531**

**Appeals.**

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases relating to minor children. Unless the court enters a temporary emergency order under RCW 26.27.231, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

[2001 c 65 § 314.]

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**26.27.541****Role of prosecutor or attorney general.**

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

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

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

[2001 c 65 § 315.]

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**26.27.551****Role of law enforcement.**

At the request of a prosecutor or attorney general acting under RCW 26.27.541, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or attorney general with responsibilities under RCW 26.27.541.

[2001 c 65 § 316.]

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**26.27.561****Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or attorney general and law enforcement officers under RCW 26.27.541 or 26.27.551.

[2001 c 65 § 317.]

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**26.27.901****Application — Construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[2001 c 65 § 401.]

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**26.27.911****Severability — 2001 c 65.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2001 c 65 § 402.]

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**26.27.921****Transitional provision.**

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before July 22, 2001, is governed by the law in effect at the time the motion or other request was made.

[2001 c 65 § 404.]

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**26.27.931**

**Captions, article designations, and article headings not law.**

Captions, article designations, and article headings used in this chapter are not any part of the law.

[2001 c 65 § 405.]

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**26.27.941**

**Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 68.]

# APPENDIX B

**UNIFORM CHILD CUSTODY JURISDICTION  
AND ENFORCEMENT ACT (1997)**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR  
ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-SIXTH YEAR  
IN SACRAMENTO, CALIFORNIA  
JULY 25 - AUGUST 1, 1997

*WITH PREFATORY NOTE AND COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*Approved by the American Bar Association  
Nashville, Tennessee, February 4, 1998*

November 20, 1998

## **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)**

**The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction and Enforcement Act (1997) was as follows:**

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# **UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT (1997)**

## **PREFATORY NOTE**

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Article 2 of this Act provides clearer standards for which States can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the article harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Article 3 for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

### **Revision of Uniform Child Custody Jurisdiction Act**

The UCCJA was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice

requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became “technical enough to delight a medieval property lawyer.” Homer H. Clark, *Domestic Relations* § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association’s Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) (*Obstacles Study*), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the States. The *Obstacles Study* suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

**1. Home state priority.** The PKPA prioritizes “home state” jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a “significant connection state” when there is a “home State.” Initial custody determinations based on “significant connections” are not entitled to PKPA enforcement unless there is no home State. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in Section 201.

**2. Clarification of emergency jurisdiction.** There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat

of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 204 which addresses these issues.

**3. Exclusive continuing jurisdiction for the State that entered the decree.** The failure of the UCCJA to clearly enunciate that the decree-granting State retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. Still other States distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 110, 202, and 206.

**4. Specification of what custody proceedings are covered.** The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

**5. Role of “Best Interests.”** The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, the State with the closest connections to, and the most evidence regarding, a child should decide that child’s custody. The “best interest” language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that “best interests” considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term “best interests” in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

**6. Other Changes.** This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

### **Enforcement Provisions**

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the State where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another State. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one State, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In

another State, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some States, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many States tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required – one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Article 3 provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another State. This will allow a party to know in advance whether that State will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Article 2 nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. 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.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all States, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.

**UNIFORM CHILD-CUSTODY JURISDICTION  
AND ENFORCEMENT ACT (1997)**

**[ARTICLE] 1**

**GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

Comment

Section 1 of the UCCJA was a statement of the purposes of the Act. Although extensively cited by courts, it was eliminated because Uniform Acts no longer contain such a section. Nonetheless, this Act should be interpreted according to its purposes which are to:

- (1) Avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being;
- (2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child;
- (3) Discourage the use of the interstate system for continuing controversies over child custody;
- (4) Deter abductions of children;
- (5) Avoid relitigation of custody decisions of other States in this State;
- (6) Facilitate the enforcement of custody decrees of other States;

**SECTION 102. DEFINITIONS.** In this [Act]:

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained 18 years of age.

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

(4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.

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

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

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

(8) “Initial determination” means the first child-custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child-custody determination for which enforcement is sought under this [Act].

(10) “Issuing State” means the State in which a child-custody determination is made.

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

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) “Person acting as a parent” means a person, other than a parent, who:

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

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

(14) “Physical custody” means the physical care and supervision of a child.

(15) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[(16) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.]

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

#### Comment

The UCCJA did not contain a definition of “child.” The definition here is taken from the PKPA.

The definition of “child-custody determination” now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as “managing conservatorship” or “parenting plan.”

The definition of “child-custody proceeding” has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not “custody proceedings” because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Article 3 enforcement process.

“Commencement” has been included in the definitions as a replacement for the term “pending” found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of “home State” has been reworded slightly. No substantive change is intended from the UCCJA.

The term “issuing State” is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Article 3.

The term “person” has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of “person” is the one that is mandated for all Uniform Acts.

The term “person acting as a parent” has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a “person acting as a parent” under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of “tribe” is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104.

The term “contestant” as has been omitted from this revision. It was defined in the UCCJA § 2(1) as “a person, including a parent, who claims a right to custody or visitation rights with respect to a child.” It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined “decree” and “custody decree” has been eliminated as duplicative of the definition of “custody determination.”

**SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.** This

[Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Comment

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most States either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a State adopts the UAA then Section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child's custody. UAA § 3-704. Those custody proceedings would be subject to this Act. See Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations*, 30 Fam.L.Q. 345 (1996).

Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: "Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement." For a discussion of the relationship between the UCCJA and the ICPC see *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All States have procedures which allow the State to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

**SECTION 104. APPLICATION TO INDIAN TRIBES.**

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

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

[(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]

**Comment**

This section allows States the discretion to extend the terms of this Act to Indian tribes by removing the brackets. The definition of “tribe” is found at Section 102(16). This Act does not purport to legislate custody jurisdiction for tribal courts. However, a Tribe could adopt this Act as enabling legislation by simply replacing references to “this State” with “this Tribe.”

Subsection (a) is not bracketed. If the Indian Child Welfare Act requires that a case be heard in tribal court, then its provisions determine jurisdiction.

**SECTION 105. INTERNATIONAL APPLICATION OF [ACT].**

(a) A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.

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

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

#### Comment

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a State of the United States for purposes of applying Articles 1 and 2 of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term “child-custody determination” should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court’s scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from Section 23 of the UCCJA.

**SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.** A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Comment

No substantive changes have been made to this section which was Section 12 of the UCCJA.

**SECTION 107. PRIORITY.** If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Comment

No substantive change was made to this section which was Section 24 of the UCCJA. The section is placed toward the beginning of Article 1 to emphasize its importance.

The language change from “case” to “question” is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

**SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.**

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

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

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

#### Comment

This section authorizes notice and proof of service to be made by any method allowed by either the State which issues the notice or the State where the notice is received. This eliminates the need to specify the type of notice in the Act and therefore the provisions of Section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either State. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either State would authorize notice to be served by a peace officer, such service could be used under this Act.

Although Section 105 requires foreign countries to be treated as States for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

#### **SECTION 109. APPEARANCE AND LIMITED IMMUNITY.**

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

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A

party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.

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

#### Comment

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term “participate” should be read broadly. For example, if jurisdiction is proper under Article 2, a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under Article 2, a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the non-custodial parent moves from the State that decided the custody determination, that parent is still subject to the state’s jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If the non-custodial parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from State A after the determination, with the custodial parent and the child establishing a new home State in State B, and the non-custodial parent moving to State C. The non-custodial parent is not, at this point, subject to the jurisdiction of State B for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into State B to enforce the visitation aspects of the determination, the non-custodial parent is not subject to the jurisdiction of State B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the State for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the non-custodial parent comes into State B to enforce the visitation aspects of the decree, State B cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. Cf. UIFSA § 611 (personally serving the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the State.

#### **SECTION 110. COMMUNICATION BETWEEN COURTS.**

(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].

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

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

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

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

#### Comment

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under Sections 204, 206, and 306 and strongly suggested in applying Section 207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties’ participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be

done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

#### **SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.**

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

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

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

#### **Comment**

No substantive changes have been made to subsection (a) which was Section 18 of the UCCJA.

Subsections (b) and (c) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. See UIFSA § 316.

**SECTION 112. COOPERATION BETWEEN COURTS;  
PRESERVATION OF RECORDS.**

(a) A court of this State may request the appropriate court of another State to:

- (1) hold an evidentiary hearing;
- (2) order a person to produce or give evidence pursuant to procedures of that State;
- (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

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

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

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request

by a court or law enforcement official of another State, the court shall forward a certified copy of those records.

#### Comment

This section is the heart of judicial cooperation provision of this Act. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other States and may assist courts of other States.

The provision on the assessment of costs for travel provided in the UCCJA § 19 has been changed. The UCCJA provided that the costs may be assessed against the parties or the State or county. Assessment of costs against a government entity in a case where the government is not involved is inappropriate and therefore that provision has been removed. In addition, if the State is involved as a party, assessment of costs and expenses against the State must be authorized by other law. It should be noted that the term “expenses” means out-of-pocket costs. Overhead costs should not be assessed as expenses.

No other substantive changes have been made. The term “social study” as used in the UCCJA was replaced with the modern term: “custody evaluation.” The Act does not take a position on the admissibility of a custody evaluation that was conducted in another State. It merely authorizes a court to seek assistance of, or render assistance to, a court of another State.

This section combines the text of Sections 19-22 of the UCCJA.

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**[ARTICLE] 2**  
**JURISDICTION**

**SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.**

(a) Except as otherwise provided in Section 204, 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), 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 207 or 208, 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) 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 207 or 208; or

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(4) no court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) 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 not necessary or sufficient to make a child-custody determination.

#### Comment

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA § 3. However, there have been a number of changes to the jurisdictional bases.

**1. Home State Jurisdiction.** The jurisdiction of the home State has been prioritized over other jurisdictional bases. Section 3 of the UCCJA provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a “significant connection” State when there is no home State. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (a)(1) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child’s custody or for other reasons and a parent or a person acting as a parent continues to reside in the home State. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed “by a contestant or for other reasons.” The scope of the PKPA’s provision is theoretically narrower than this Act. However, the phrase “or for other reasons” covers most fact situations where the child is not in the home State and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision in this Act is narrower than the comparable provision in the PKPA. The PKPA’s definition of extended home State is more expansive because it applies whenever a “contestant” remains in the home State. That class of individuals has been

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eliminated in this Act. This Act retains the original UCCJA classification of “parent or person acting as parent” to define who must remain for a State to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if State A’s law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered “contestants” under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in State A. However, if State A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered “contestants” and State B where the child acquired a new home State would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The PKPA in § (c)(1) authorizes States to narrow the scope of their jurisdiction.

**2. Significant connection jurisdiction.** This jurisdictional basis has been amended in four particulars from the UCCJA. First, the “best interest” language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child’s parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child’s parents or the child and a person acting as a parent.

Third, a significant connection State may assume jurisdiction only when there is no home State or when the home State decides that the significant connection State would be a more appropriate forum under Section 207 or 208. Fourth, the determination of significant connections has been changed to eliminate the language of “present or future care.” The jurisdictional determination should be made by determining whether there is sufficient evidence in the State for the court to make an informed custody determination. That evidence might relate to the past as well as to the “present or future.”

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Paragraph (a)(3) provides for jurisdiction when all States with jurisdiction under paragraphs (a)(1) and (2) determine that this State is a more appropriate forum. The determination would have to be made by all States with jurisdiction

under subsection (a)(1) and (2). Jurisdiction would not exist under this paragraph because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under subsection (a)(2).

Paragraph (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other State would have jurisdiction under subsections (a)(1) through (a)(3).

Subsections (b) and (c) clearly State the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State does not confer jurisdiction to make a custody determination. Subject to Section 204, satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no "workable interstate custody law could be built around [Justice] Burton's plurality opinion ... . Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand.L.Rev. 1207,1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

## **SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.**

(a) Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, nor 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

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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 the child, the child's parents, and any person acting as a parent do not presently reside in this State.

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

#### Comment

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA . Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to the decree State's continuing jurisdiction so long as that State has jurisdiction under its own law and remains the residence of the child or any contestant.

This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law. The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent or a person acting as a parent remains in the original decree State, continuing jurisdiction is lost when neither the child, the child and a parent, nor the child and a person acting as a parent continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State. In other words, even if the child has acquired a new home State, the original decree State retains exclusive, continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of Section 201 are met. If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

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The use of the phrase “a court of this State” under subsection (a)(1) makes it clear that the original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.

2. Continuing jurisdiction is lost when the child, the child’s parents, and any person acting as a parent no longer reside in the original decree State. The exact language of subparagraph (a)(2) was the subject of considerable debate. Ultimately the Conference settled on the phrase that “a court of this State or a court of another State determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this State” to determine when the exclusive, continuing jurisdiction of a State ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a State in the exercise of its continuing jurisdiction when that “State remains the residence of ... .” The phrase is also the equivalent of the language “continues to reside” which occurs in UIFSA § 205(a)(1) to determine the exclusive, continuing jurisdiction of the State that made a support order. The phrase “remains the residence of” in the PKPA has been the subject of conflicting case law. It is the intention of this Act that paragraph (a)(2) of this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.

The phrase “do not presently reside” is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.

If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.

The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any “contestant” remains in the original decree State and that State continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person acting as a parent. The significant connection to the original decree State must relate to the child, the child

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and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1) recognizes that States may narrow the class of cases that would be subject to exclusive, continuing jurisdiction. However, during the transition from the UCCJA to this Act, some States may continue to base continuing jurisdiction on the continued presence of a contestant, such as a grandparent. The PKPA will require that such decisions be enforced. The problem will disappear as States adopt this Act to replace the UCCJA.

Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 207.

Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the State, the non-custodial parent returns. As subsection (b) provides, once a State has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of Section 201. If another State acquires exclusive continuing jurisdiction under this section, then its orders cannot be modified even if this State has once again become the home State of the child.

In accordance with the majority of UCCJA case law, the State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the principles of Section 207.

### **SECTION 203. JURISDICTION TO MODIFY DETERMINATION.**

Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

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(1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or

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

#### Comment

This section complements Section 202 and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this State would be a more convenient forum under Section 207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201.

#### **SECTION 204. TEMPORARY EMERGENCY JURISDICTION.**

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

(b) If there is no previous child-custody determination that is entitled to be enforced under this [Act] and a child-custody proceeding has not been commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-

custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this State becomes the home State of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this [Act], or a child-custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under Sections 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another State under a statute similar to

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this section shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

#### Comment

The provisions of this section are an elaboration of what was formerly Section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home State nor significant connection jurisdiction. Second, the duties of States to recognize, enforce and not modify a custody determination of another State do not take precedence over the need to enter a temporary emergency order to protect the child.

Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order.

Under certain circumstances, however, subsection (b) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a State with jurisdiction under Sections 201-203, an emergency custody determination made under this section becomes a final determination, if it so provides, when the State that issues the order becomes the home State of the child.

Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections 201-203. Subsection (c) allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 201-203. That time period must be specified in the order. If there is an existing order by a State with jurisdiction under Sections 201-203, that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections 202-203. The court with appropriate

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jurisdiction also may decide, under the provisions of 207, that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under Section 207.

Any hearing in the State with jurisdiction under Sections 201-203 on the temporary emergency determination is subject to the provisions of Sections 111 and 112. These sections facilitate the presentation of testimony and evidence taken out of State. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the State with jurisdiction under Sections 201-203, these provisions should be used.

Subsection (d) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 201-203. The pleading rules of Section 209 apply fully to determinations made under this section. Therefore, a person seeking a temporary emergency custody determination is required to inform the court pursuant to Section 209(d) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under Sections 201-203 is required under Section 209(a) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

**Relationship to the PKPA.** The definition of emergency has been modified to harmonize it with the PKPA. The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore "neglect" has been eliminated as a basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.

**Relationship to Protective Order Proceedings.** The UCCJA and the PKPA were enacted long before the advent of state procedures on the use of protective orders to alleviate problems of domestic violence. Issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence. This Act recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction

when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse.

In order for a protective order that contains a custody determination to be enforceable in another State it must comply with the provisions of this Act and the PKPA. Although the Violence Against Women's Act (VAWA), 18 U.S.C. § 2265, does provide an independent basis for the granting of full faith and credit to protective orders, it expressly excludes "custody" orders from the definition of "protective order," 22 U.S.C. § 2266.

Many States authorize the issuance of protective orders in an emergency without notice and hearing. This Act does not address the propriety of that procedure. It is left to local law to determine the circumstances under which such an order could be issued, and the type of notice that is required, in a case without an interstate element. However, an order issued after the assumption of temporary emergency jurisdiction is entitled to interstate enforcement and nonmodification under this Act and the PKPA only if there has been notice and a reasonable opportunity to be heard as set out in Section 205. Although VAWA does require that full faith and credit be accorded to ex parte protective orders if notice will be given and there will be a reasonable opportunity to be heard, it does not include a "custody" order within the definition of "protective order."

VAWA does play an important role in determining whether an emergency exists. That Act requires a court to give full faith and credit to a protective order issued in another State if the order is made in accordance with the VAWA. This would include those findings of fact contained in the order. When a court is deciding whether an emergency exists under this section, it may not relitigate the existence of those factual findings.

#### **SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.**

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

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

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

#### Comment

This section generally continues the notice provisions of the UCCJA. However, it does not attempt to dictate who is entitled to notice. Local rules vary with regard to persons entitled to seek custody of a child. Therefore, this section simply indicates that persons entitled to seek custody should receive notice but leaves the rest of the determination to local law. Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

State laws also vary with regard to whether a court has the power to issue an enforceable temporary custody order without notice and hearing in a case without any interstate element. Such temporary orders may be enforceable, as against due process objections, for a short period of time if issued as a protective order or a temporary restraining order to protect a child from harm. Whether such orders are enforceable locally is beyond the scope of this Act. Subsection (b) clearly provides that the validity of such orders and the enforceability of such orders is governed by the law which authorizes them and not by this Act. An order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard. The PKPA, § 1738A(e), also requires that a custody determination is entitled to full faith and credit only if there has been notice and an opportunity to be heard.

Rules requiring joinder of people with an interest in the custody of and visitation with a child also vary widely throughout the country. The UCCJA has a separate section on joinder of parties which has been eliminated. The issue of who is entitled to intervene and who must be joined in a custody proceeding is to be determined by local state law.

A sentence of the UCCJA § 4 which indicated that persons outside the State were to be given notice and an opportunity to be heard in accordance with the provision of that Act has been eliminated as redundant.

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**SECTION 206. SIMULTANEOUS PROCEEDINGS.**

(a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another State having jurisdiction substantially in conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

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

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

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

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

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

#### Comment

This section represents the remnants of the simultaneous proceedings provision of the UCCJA § 6. The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved by the prioritization of home state jurisdiction under Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the prohibitions on modification of Section 203. If there is a home State, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with concurrent jurisdiction and, therefore, no simultaneous proceedings. Of course, the home State, as well as the State with exclusive, continuing jurisdiction, could defer to another State under Section 207. However, that decision is left entirely to the home State or the State with exclusive, continuing jurisdiction.

Under this Act, the simultaneous proceedings problem will arise only when there is no home State, no State with exclusive, continuing jurisdiction and more than one significant connection State. For those cases, this section retains the “first in time” rule of the UCCJA. Subsection (b) retains the UCCJA’s policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another State.

Subsection (c) concerns the problem of simultaneous proceedings in the State with modification jurisdiction and enforcement proceedings under Article 3. This section authorizes the court with exclusive, continuing jurisdiction to stay the modification proceeding pending the outcome of the enforcement proceeding, to enjoin the parties from continuing with the enforcement proceeding, or to continue the modification proceeding under such conditions as it determines are appropriate. The court may wish to communicate with the enforcement court. However,

communication is not mandatory. Although the enforcement State is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a State with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a State with the authority to do so. The concomitant provision addressed to the enforcement court is Section 306 of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term “pending” that was utilized in the UCCJA section on simultaneous proceeding has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term “commencement of the proceeding” as more accurately reflecting the policy behind this section. The latter term is defined in Section 102(5).

#### **SECTION 207. INCONVENIENT FORUM.**

(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.

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

- (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;

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

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which State should assume jurisdiction;

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

(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each State with the facts and issues in the pending litigation.

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

(d) A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

## Comment

This section retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other State.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse.

In applying subparagraph (3), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of Sections 111 and 112.

In applying subsection (7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two States, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one State has jurisdiction to decide both the custody and support issues, it would be desirable to determine that State to be the most convenient forum. The same is true when children of the same family live in different States. It would be inappropriate to require parents to have custody proceedings in several States when one State could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this State may communicate, in accordance with Section 110, with a court of another State and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from Section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.

Second, UCCJA, § 7(g) which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

**SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.**

(a) Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

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

(2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; or

(3) no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203.

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

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party

seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this [Act].

#### Comment

The "Clean Hands" section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the ban on modification in Section 203. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 201, which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long as the first State exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home State, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court's jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court that would otherwise have jurisdiction under this Act. Similarly, if the court that would have jurisdiction finds that the court of this State is a more appropriate forum, the court may hear the case.

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This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section is inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section.

Subsection (b) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another State that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

## **SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.**

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

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

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

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

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

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

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

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

#### Comment

The pleading requirements from Section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of States have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the State requires their applicability. See, e.g., California Family Law Code § 3409(a). If a State does not have local law that provides for protecting names and addresses, then subsection (e) or a similar provision should be adopted. Subsection (e) is based on the National Council of Juvenile and Family Court Judge's, Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (a)(2), the term "proceedings" should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be

disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

#### **SECTION 210. APPEARANCE OF PARTIES AND CHILD.**

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

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

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

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay

reasonable and necessary travel and other expenses of the party so appearing and of the child.

#### Comment

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

**[ARTICLE] 3**  
**ENFORCEMENT**

**SECTION 301. DEFINITIONS.** In this [article]:

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

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

Comment

For purposes of this article, “petitioner” and “respondent” are defined. The definitions clarify certain aspects of the notice and hearing sections.

**SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION.**

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

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

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### SECTION 303. DUTY TO ENFORCE.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].

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

#### Comment

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

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This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification unless the State would have jurisdiction to modify the determination under Article 2.

The remedies provided by this article for the enforcement of a custody determination will normally be used. This article does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

#### **SECTION 304. TEMPORARY VISITATION.**

(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

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

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

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

## Comment

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for “reasonable and seasonable.”

However, a court may not, under subsection (a)(2) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 202 or modification jurisdiction under Section 203. As under Section 204, subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Article 2.

### **SECTION 305. REGISTRATION OF CHILD-CUSTODY**

#### **DETERMINATION.**

(a) A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:

(1) a letter or other document requesting registration;

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

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

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

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

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

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

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

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

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

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the

court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under [Article] 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

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

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

#### Comment

This remainder of this article provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced

before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

**SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.**

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.

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

**Comment**

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Article 2.

**SECTION 307. SIMULTANEOUS PROCEEDINGS.** If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The

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

#### Comment

The pleading rules of Section 308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under Section 202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202, or with modification jurisdiction under Section 203, could enjoin the parties from continuing with the enforcement proceeding.

### **SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.**

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

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

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

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

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

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

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

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

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

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

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

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

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

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

#### Comment

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the

court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term "next judicial day" in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2. The court is also to order payment of the fees and expenses set out in Section 312. The court may set another hearing to determine whether additional relief available under this state's law should be granted.

If the order has been registered and confirmed in accordance with Section 304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2.

**SECTION 309. SERVICE OF PETITION AND ORDER.** Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

Comment

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

**SECTION 310. HEARING AND ORDER.**

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical

custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

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

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

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

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

#### Comment

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Article 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over

the custody proceeding under Section 202, or the court that would have jurisdiction to modify the custody determination under Section 203.

The court shall determine at the hearing whether fees should be awarded under Section 312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

**SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**

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

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

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

- (1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
  - (2) direct law enforcement officers to take physical custody of the child immediately; and
  - (3) provide for the placement of the child pending final relief.
- (d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- (e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

#### Comment

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary restraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is

secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

#### **SECTION 312. COSTS, FEES, AND EXPENSES.**

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

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

#### Comment

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to –

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination ... .

The term “prevailing party” is not given a special definition for this Act. Each State will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

**SECTION 313. RECOGNITION AND ENFORCEMENT.** A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court

of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

Comment

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

**SECTION 314. APPEALS.** An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 204, there is no reason to stay the enforcement of the order pending appeal.

**SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].**

(a) In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a

proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

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

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

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

#### Comment

Sections 315-317 are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, States may locate the authority described in the section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of

income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violated either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a State from authorizing the prosecutor or other public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a "friend of the court." Its role is to ensure that the custody determination is enforced.

Sections 315-317 are limited to cases covered by this Act, i.e. interstate cases. However, States may, if they wish, extend this part of the Act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

**SECTION 316. ROLE OF [LAW ENFORCEMENT].** At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.

Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

**SECTION 317. COSTS AND EXPENSES.** If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.

Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term “direct” indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities’ attorneys.



[ARTICLE] 4

MISCELLANEOUS PROVISIONS

**SECTION 401. APPLICATION AND CONSTRUCTION.** In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**SECTION 402. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 403. EFFECTIVE DATE.** This [Act] takes effect .....

**SECTION 404. REPEALS.** The following acts and parts of acts are hereby repealed:

- (1) The Uniform Child Custody Jurisdiction Act;
- (2) .....
- (3) .....

**SECTION 405. TRANSITIONAL PROVISION.** A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody

determination which was commenced before the effective date of this [Act] is governed by the law in effect at the time the motion or other request was made.

#### Comment

A child custody proceeding will last throughout the minority of the child. The commencement of a child custody proceeding prior to this Act does not mean that jurisdiction will continued to be governed by prior law. The provisions of this act apply if a motion to modify an existing determination is filed after the enactment of this Act. A motion that is filed prior to enactment may be completed under the rules in effect at the time the motion is filed.

# APPENDIX C

Chapter 38.42 RCW  
Service members' civil relief

## RCW Sections

- 38.42.010 Definitions.
- 38.42.020 Applicability of chapter.
- 38.42.030 Protection of persons secondarily liable.
- 38.42.040 Waiver of rights pursuant to written agreement.
- 38.42.050 Protection of service members and their dependents against default judgments.
- 38.42.060 Stay of proceedings when service member has notice.
- 38.42.070 Fines and penalties under contracts.
- 38.42.080 Codefendants.
- 38.42.090 Computation of statutes of limitation.
- 38.42.100 Inappropriate use of chapter.
- 38.42.110 Restructure of business loan interest rate.
- 38.42.900 Short title.
- 38.42.901 Captions not law -- 2005 c 254.
- 38.42.902 Severability -- 2005 c 254.
- 38.42.903 Effective date -- 2005 c 254.
- 38.42.904 Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521.

**38.42.010****Definitions.**

The definitions in this section apply throughout this chapter.

(1) "Business loan" means a loan or extension of credit granted to a business entity that: (a) is owned and operated by a service member, in which the service member is either (i) a sole proprietor, or (ii) the owner of at least fifty percent of the entity; and (b) experiences a material reduction in revenue due to the service member's military service.

(2) "Dependent" means:

(a) The service member's spouse;

(b) The service member's minor child; or

(c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

(3) "Financial institution" means an institution as defined in RCW 30.22.041.

(4) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title 26 RCW, including but not limited to establishment of a temporary child support obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

(5) "Military service" means a service member under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days.

(6) "National guard" has the meaning in RCW 38.04.010.

(7) "Service member" means any resident of Washington state that is a member of the national guard or member of a military reserve component.

[2006 c 253 § 1; 2005 c 254 § 1.]

**38.42.020****Applicability of chapter.**

(1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a defendant. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents.

[2005 c 254 § 2.]

### 38.42.030

#### Protection of persons secondarily liable.

(1) Whenever pursuant to this chapter a court stays, postpones, or suspends (a) the enforcement of an obligation or liability, (b) the prosecution of a suit or proceeding, (c) the entry or enforcement of an order, writ, judgment, or decree, or (d) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this chapter, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment decree.

[2005 c 254 § 3.]

### 38.42.040

#### Waiver of rights pursuant to written agreement.

(1) A service member may waive any of the rights and protections provided by this chapter. In the case of a waiver that permits an action described in subsection (2) of this section, the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the service member's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the service member is not party to that instrument, the service member concerned.

(2) The requirement in subsection (1) of this section for a written waiver applies to the following: (a) The modification, termination, or cancellation of a contract, lease, or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage; and (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased or received under a contract, lease, or bailment.

[2005 c 254 § 4.]

### 38.42.050

#### Protection of service members and their dependents against default judgments.

(1) This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3)(a) To determine whether or not a defendant is a dependent of a person in the military service under this chapter, the plaintiff may serve on or mail via first-class mail to the defendant a written notice in substantially the following form:

**"NOTICE:** State and federal law provide protections to defendants who are on active duty in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice only pertains to a defendant who is a dependent of a member of the national guard or a military reserve component under a call to active service for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights."

(b) If the notice is either served on the defendant twenty or more days prior to an application for an order of default or a default judgment, or mailed to the defendant more than twenty-three days prior to such application, and the defendant fails to timely respond, then for purposes of entry of an order of default or default judgment, the court or administrative tribunal may presume that the defendant is not a dependent of a person in the military service under this chapter.

(c) Nothing prohibits the plaintiff from allowing a defendant more than twenty days to respond to the notice, or from amending the notice to so provide.

(4) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(5) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. The defendant's failure to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant or that counsel has been unable to determine if a meritorious defense exists.

(6) No bar to entry of judgment under subsection (4) of this section or requirement for grant of stay under subsection (5) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(7) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW 38.42.060.

(8) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(9) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

(10) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value.

[2006 c 80 § 1; 2005 c 254 § 5.]

**38.42.060****Stay of proceedings when service member has notice.**

(1) This section applies to any civil action or proceeding in which a defendant at the time of filing an application under this section:

- (a)(i) Is in military service, or it is within one hundred eighty days after termination of or release from military service; or
- (ii) Is a dependent of a service member in military service; and
- (b) Has received actual notice of the action or proceeding.

(2) At any stage before final judgment in a civil action or proceeding in which a service member or his or her dependent described in subsection (1) of this section is a party, the court may on its own motion and shall, upon application by the service member or his or her dependent, stay the action until one hundred eighty days after termination of or release from military service, if the conditions in subsection (3) of this section are met.

(3) An application for a stay under subsection (2) of this section shall include the following:

(a) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; and

(b) A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter.

(4) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

(5) A service member or dependent who is granted a stay of a civil action or proceeding under subsection (2) of this section may apply for an additional stay based on the continuing material affect of military duty on the service member's or dependent's ability to appear. Such application may be made by the service member or his or her dependent at the time of the initial application under subsection (2) of this section or when it appears that the service member or his or her dependent is unable to prosecute or defend the action. The same information required under subsection (3) of this subsection shall be included in an application under this subsection.

(6) If the court refuses to grant an additional stay of proceedings under subsection (2) of this section, the court shall appoint counsel to represent the service member or his or her dependent in the action or proceeding.

(7) A service member or dependent who applies for a stay under this section and is unsuccessful may not seek the protections afforded by RCW 38.42.050.

[2005 c 254 § 6.]

**38.42.070****Fines and penalties under contracts.**

(1) If an action for compliance with the terms of a contract is stayed pursuant to this chapter, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(2) If a service member or his or her dependent fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

- (a)(i) The service member was in military service at the time the fine or penalty was incurred; or
- (ii) The action is against a dependent of the service member and the service member was in military service at the time the fine or penalty was incurred; and
- (b) The ability of the service member or dependent to perform the obligation was materially affected by the military service.

[2005 c 254 § 7.]

**38.42.080****Codefendants.**

If the service member or his or her dependent is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court.

[2005 c 254 § 8.]

**38.42.090****Computation of statutes of limitation.**

(1) The period of a service member's military service may not be included in computing any period limited by law, rule, or order, for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a state, or political subdivision of a state, or the United States by or against the service member or the service member's dependents, heirs, executors, administrators, or assigns.

(2) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(3) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

[2005 c 254 § 9.]

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### **38.42.100**

#### **Inappropriate use of chapter.**

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

[2005 c 254 § 10.]

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### **38.42.110**

#### **Restructure of business loan interest rate.**

(1) Upon the request of a service member with a qualifying business loan, the financial institution must restructure the interest rate of the loan to the equivalent provisions in the federal servicemembers civil relief act (50 U.S.C. App. 501 et seq.). The service member must notify the institution at least five days prior to the beginning of military service and submit official documentation that substantiates their eligibility for the protections of this chapter.

(2) This section applies only to loans with an outstanding balance of less than one hundred thousand dollars at the time the service member is called to military service.

(3) This section applies only to business loans executed on or after January 1, 2007.

[2006 c 253 § 2.]

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### **38.42.900**

#### **Short title.**

This chapter may be known and cited as the Washington service members' civil relief act.

[2005 c 254 § 11.]

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### **38.42.901**

#### **Captions not law — 2005 c 254.**

Captions used in this act are no part of the law.

[2005 c 254 § 12.]

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### **38.42.902**

#### **Severability — 2005 c 254.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2005 c 254 § 14.]

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### **38.42.903**

#### **Effective date — 2005 c 254.**

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2005].

[2005 c 254 § 15.]

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**38.42.904****Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 83.]

# APPENDIX D

Chapter 26.09 RCW  
Dissolution proceedings — legal separation

## RCW Sections

- 26.09.002 Policy.
- 26.09.003 Policy -- Intent -- Findings.
- 26.09.004 Definitions.
- 26.09.006 Mandatory use of approved forms.
- 26.09.010 Civil practice to govern -- Designation of proceedings -- Decrees.
- 26.09.013 Interpretive services -- Literacy assistance -- Guardian ad litem charges -- Telephone or interactive videoconference participation -- Residential time in cases involving domestic violence or child abuse -- Supervised visitation and safe exchange centers.
- 26.09.015 Mediation proceedings.
- 26.09.016 Mediation in cases involving domestic violence or child abuse.
- 26.09.020 Petition -- Dissolution of marriage or domestic partnership, legal separation, or for a declaration concerning validity of marriage or domestic partnership -- Contents -- Parties -- Certificate.
- 26.09.030 Petition for dissolution of marriage or domestic partnership -- Court proceedings, findings -- Transfer to family court -- Legal separation in lieu of dissolution.
- 26.09.040 Petition to have marriage or domestic partnership declared invalid or judicial determination of validity -- Procedure -- Findings -- Grounds -- Legitimacy of children.
- 26.09.050 Decrees -- Contents -- Restraining orders -- Enforcement -- Notice of termination or modification of restraining order.
- 26.09.060 Temporary maintenance or child support -- Temporary restraining order -- Preliminary injunction -- Domestic violence or antiharassment protection order -- Notice of termination or modification of restraining order -- Support debts, notice.
- 26.09.070 Separation contracts.
- 26.09.080 Disposition of property and liabilities -- Factors.
- 26.09.090 Maintenance orders for either spouse or either domestic partner -- Factors.
- 26.09.100 Child support -- Apportionment of expense -- Periodic adjustments or modifications.
- 26.09.105 Child support -- Medical support -- Conditions.
- 26.09.110 Minor or dependent child -- Court appointed attorney to represent -- Payment of costs, fees, and disbursements.
- 26.09.120 Support or maintenance payments -- To whom paid.
- 26.09.135 Order or decree for child support -- Compliance with RCW 26.23.050.
- 26.09.138 Mandatory assignment of public retirement benefits -- Remedies exclusive.
- 26.09.140 Payment of costs, attorney's fees, etc.
- 26.09.150 Decree of dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity -- Finality -- Appeal -- Conversion of decree of legal separation to decree of dissolution -- Name of party.
- 26.09.160 Failure to comply with decree or temporary injunction -- Obligation to make support or maintenance payments or permit contact with children not suspended -- Penalties.
- 26.09.165 Court orders -- Required language.
- 26.09.170 Modification of decree for maintenance or support, property disposition -- Termination of maintenance obligation and child support -- Grounds.
- 26.09.173 Modification of child support order -- Child support order summary report.
- 26.09.175 Modification of order of child support.
- 26.09.181 Procedure for determining permanent parenting plan.
- 26.09.182 Permanent parenting plan -- Determination of relevant information.
- 26.09.184 Permanent parenting plan.
- 26.09.187 Criteria for establishing permanent parenting plan.
- 26.09.191 Restrictions in temporary or permanent parenting plans.
- 26.09.194 Proposed temporary parenting plan -- Temporary order -- Amendment -- Vacation of order.
- 26.09.197 Issuance of temporary parenting plan -- Criteria.
- 26.09.210 Parenting plans -- Interview with child by court -- Advice of professional personnel.
- 26.09.220 Parenting arrangements -- Investigation and report -- Appointment of guardian ad litem.
- 26.09.225 Access to child's education and health care records.
- 26.09.231 Residential time summary report.

- 26.09.240 Visitation rights -- Person other than parent -- Grandparents' visitation rights.
- 26.09.255 Remedies when a child is taken, enticed, or-concealed.
- 26.09.260 Modification of parenting plan or custody decree.
- 26.09.270 Child custody -- Temporary custody order, temporary parenting plan, or modification of custody decree -- Affidavits required.
- 26.09.280 Parenting plan or child support modification or enforcement -- Venue.
- 26.09.285 Designation of custody for the purpose of other state and federal statutes.
- 26.09.290 Final decree of dissolution nunc pro tunc.
- 26.09.300 Restraining orders -- Notice -- Refusal to comply -- Arrest -- Penalty -- Defense -- Peace officers, immunity.
- 26.09.310 Provision of health care to minor -- Immunity of health care provider.

NOTICE REQUIREMENTS AND STANDARDS FOR PARENTAL RELOCATION

- 26.09.405 Applicability.
- 26.09.410 Definitions.
- 26.09.420 Grant of authority.
- 26.09.430 Notice requirement.
- 26.09.440 Notice -- Contents and delivery.
- 26.09.450 Notice -- Relocation within the same school district.
- 26.09.460 Limitation of notices.
- 26.09.470 Failure to give notice.
- 26.09.480 Objection to relocation or proposed revised residential schedule.
- 26.09.490 Required provision in residential orders.
- 26.09.500 Failure to object.
- 26.09.510 Temporary orders.
- 26.09.520 Basis for determination.
- 26.09.530 Factor not to be considered.
- 26.09.540 Objections by nonparents.
- 26.09.550 Sanctions.
- 26.09.560 Priority for hearing.
- 26.09.900 Construction -- Pending divorce actions.
- 26.09.901 Conversion of pending action to dissolution proceeding.
- 26.09.902 RCW 26.09.900 and 26.09.901 deemed in effect on July 16, 1973.
- 26.09.907 Construction -- Pending actions as of January 1, 1988.
- 26.09.909 Decrees entered into prior to January 1, 1988.
- 26.09.910 Short title -- 1987 c 460.
- 26.09.911 Section captions -- 1987 c 460.
- 26.09.912 Effective date -- 1987 c 460.
- 26.09.913 Severability -- 1987 c 460.
- 26.09.914 Severability -- 1989 c 375.
- 26.09.915 Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521.

Notes:

Child support enforcement: Chapter 26.18 RCW.

26.09.1002 Support registry: Chapter 26.23 RCW.

Policy.

Domestic violence prevention: Chapter 26.50 RCW.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding involving a child, the parties' parental responsibilities are determined based on the child's best interests. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between a child and his or her parents is central to the child's well-being. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional and physical health and safety. The interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

2007 c 460 Child custody jurisdiction act: Chapter 26.27 RCW.

**Notes:**

**Part headings not law -- 2007 c 496:** "Part headings used in this act are not any part of the law." [2007 c 496 § 804.]

**26.09.003****Policy — Intent — Findings.**

The legislature reaffirms the intent of the current law as expressed in RCW 26.09.002. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the identification of domestic violence as defined in RCW 26.50.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

[2007 c 496 § 102.]

**Notes:**

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**26.09.004****Definitions.**

The definitions in this section apply throughout this chapter.

(1) "Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to perform his or her parenting functions under a temporary or permanent parenting plan. Military duties potentially impacting parenting functions include, but are not limited to:

(a) "Deployment," which means the temporary transfer of a service member serving in an active-duty status to another location in support of a military operation, to include any tour of duty classified by the member's branch of the armed forces as "remote" or "unaccompanied";

(b) "Activation" or "mobilization," which means the call-up of a national guard or reserve service member to extended active-duty status. For purposes of this definition, "mobilization" does not include national guard or reserve annual training, inactive duty days, or drill weekends; or

(c) "Temporary duty," which means the transfer of a service member from one military base or the service member's home to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

(3) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation.

(4) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation which is incorporated in a temporary order.

[2009 c 502 § 1; 2008 c 6 § 1003; 1987 c 460 § 3.]

**Notes:**

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.006**

**Mandatory use of approved forms.**

(1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under this chapter unless on forms approved by the administrator for the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220.

[1992 c 229 § 1; 1990 1st ex.s. c 2 § 26.]

**Notes:**

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**26.09.010****Civil practice to govern — Designation of proceedings — Decrees.**

(1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage or domestic partnership, legal separation or a declaration concerning the validity of a marriage or domestic partnership shall be entitled "In re the marriage of . . . . . and . . . . ." or "In re the domestic partnership of . . . . . and . . . . ." Such proceedings may be filed in the superior court of the county where the petitioner resides.

(3) In cases where there has been no prior proceeding in this state involving the marital or domestic partnership status of the parties or support obligations for a minor child, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of . . . . ."

(4) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage or domestic partnership shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

(7) In order to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent serving in the armed forces receives temporary duty, deployment, activation, or mobilization orders from the military, the court shall, upon motion of such a parent:

(a) For good cause shown, hold an expedited hearing in custody and visitation matters instituted under this chapter when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing; and

(b) Upon reasonable advance notice to the affected parties and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this chapter when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone, video teleconference, or the internet.

[2009 c 502 § 2; 2008 c 6 § 1004; 1989 c 375 § 1; 1987 c 460 § 1; 1975 c 32 § 1; 1973 1st ex.s. c 157 § 1.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.013****Interpretive services — Literacy assistance — Guardian ad litem charges — Telephone or interactive videoconference participation — Residential time in cases involving domestic violence or child abuse — Supervised visitation and safe exchange centers.**

In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardian ad litem, the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;

(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court

shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time.

[2007 c 496 § 401.]

**Notes:**

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**26.09.015**

**Mediation proceedings.**

(1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage or the domestic partnership is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2)(a) Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(b) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. Counties may, and to the extent state funding is provided therefor counties shall, provide both predecree and postdecree mediation at reduced or waived fee to the parties within one year of the filing of the dissolution petition.

(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

[2008 c 6 § 1044; (2008 c 6 § 1043 expired January 1, 2009). Prior: 2007 c 496 § 602; 2007 c 496 § 501; 2005 c 172 § 17; 1991 c 367 § 2; 1989 c 375 § 2; 1986 c 95 § 4.]

**Notes:**

**Effective date -- 2008 c 6 § 1044:** "Section 1044 of this act takes effect January 1, 2009." [2008 c 6 § 1305.]

**Expiration date -- 2008 c 6 § 1043:** "Section 1043 of this act expires January 1, 2009." [2008 c 6 § 1304.]

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Effective dates -- 2007 c 496 §§ 201, 202, 204, and 501:** See note following RCW 26.12.260.

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**Short title -- Captions not law -- Severability -- Effective date -- 2005 c 172:** See RCW 7.07.900 through 7.07.902 and 7.07.904.

**Severability -- 1991 c 367:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 367 § 54.]

**Effective date -- 1991 c 367:** "This act shall take effect September 1, 1991." [1991 c 367 § 55.]

**Captions not law -- 1991 c 367:** "Captions as used in this act do not constitute any part of the law." [1991 c 367 § 57.]

**Mediation testimony competency:** RCW 5.60.070 and 5.60.072.

#### 26.09.016

##### **Mediation in cases involving domestic violence or child abuse.**

Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.

[2007 c 496 § 301.]

##### **Notes:**

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

#### 26.09.020

##### **Petition — Dissolution of marriage or domestic partnership, legal separation, or for a declaration concerning validity of marriage or domestic partnership — Contents — Parties — Certificate.**

(1) A petition in a proceeding for dissolution of marriage or domestic partnership, legal separation, or for a declaration concerning the validity of a marriage or domestic partnership shall allege:

- (a) The last known state of residence of each party, and if a party's last known state of residence is Washington, the last known county of residence;
  - (b) The date and place of the marriage or, for domestic partnerships, the date of registration, and place of residence when the domestic partnership was registered;
  - (c) If the parties are separated the date on which the separation occurred;
  - (d) The names and ages of any child dependent upon either or both spouses or either or both domestic partners and whether the wife or domestic partner is pregnant;
  - (e) Any arrangements as to the residential schedule of, decision making for, dispute resolution for, and support of the children and the maintenance of a spouse or domestic partner;
  - (f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;
  - (g) If the county has established a program under RCW 26.12.260, a statement affirming that the moving party met and conferred with the program prior to filing the petition;
  - (h) The relief sought.
- (2) Either or both parties to the marriage or to the domestic partnership may initiate the proceeding.
- (3) The petitioner shall complete and file with the petition a certificate under RCW 43.70.150 on the form provided by the department of health and the confidential information form under RCW 26.23.050.
- (4) Nothing in this section shall be construed to limit or prohibit the ability of parties to obtain appropriate emergency orders.

[2008 c 6 § 1005; 2007 c 496 § 203; 2001 c 42 § 1; 1997 c 58 § 945. Prior: 1989 1st ex.s. c 9 § 204; 1989 c 375 § 3; 1983 1st ex.s. c 45 § 2; 1973 2nd ex.s. c 23 § 1; 1973 1st ex.s. c 157 § 2.]

##### **Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**Effective date -- 2001 c 42:** "This act takes effect October 1, 2001." [2001 c 42 § 7.]

**Severability -- 2001 c 42:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 42 § 8.]

**Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date -- Severability -- 1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**26.09.030****Petition for dissolution of marriage or domestic partnership — Court proceedings, findings — Transfer to family court — Legal separation in lieu of dissolution.**

When a party who (1) is a resident of this state, or (2) is a member of the armed forces and is stationed in this state, or (3) is married or in a domestic partnership to a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage or dissolution of domestic partnership, and alleges that the marriage or domestic partnership is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

- (a) If the other party joins in the petition or does not deny that the marriage or domestic partnership is irretrievably broken, the court shall enter a decree of dissolution.
- (b) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.
- (c) If the other party denies that the marriage or domestic partnership is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:
  - (i) Make a finding that the marriage or domestic partnership is irretrievably broken and enter a decree of dissolution of the marriage or domestic partnership; or
  - (ii) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:
    - (A) Find that the parties have agreed to reconciliation and dismiss the petition; or
    - (B) Find that the parties have not been reconciled, and that either party continues to allege that the marriage or domestic partnership is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage or domestic partnership.
- (d) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity.
- (e) In considering a petition for dissolution of marriage or domestic partnership, a court shall not use a party's pregnancy as the sole basis for denying or delaying the entry of a decree of dissolution of marriage or domestic partnership. Granting a decree of dissolution of marriage or domestic partnership when a party is pregnant does not affect further proceedings under the uniform parentage act, chapter 26.26 RCW.

[2008 c 6 § 1006; 2005 c 55 § 1; 1996 c 23 § 1; 1973 1st ex.s. c 157 § 3.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.**

**26.09.040****Petition to have marriage or domestic partnership declared invalid or judicial determination of validity — Procedure — Findings — Grounds — Legitimacy of children.**

- (1) While both parties to an alleged marriage or domestic partnership are living, and at least one party is resident in this state or a member of the armed service and stationed in the state, a petition to have the marriage or domestic partnership declared invalid may be sought by:
  - (a) Either or both parties, or the guardian of an incompetent spouse or incompetent domestic partner, for any cause specified in subsection (4) of this section; or
  - (b) Either or both parties, the legal spouse or domestic partner, or a child of either party when it is alleged that either or both parties is married to or in a domestic partnership with another person.
- (2) If the validity of a marriage or domestic partnership is denied or questioned at any time, either or both parties to the marriage or either or both parties to the domestic partnership may petition the court for a judicial determination of the validity of such marriage or domestic partnership.
- (3) In a proceeding to declare the invalidity of a marriage or domestic partnership, the court shall proceed in the manner and shall have the jurisdiction, including the authority to provide for maintenance, a parenting plan for minor children, and division of the property of the parties, provided by this chapter.
- (4) After hearing the evidence concerning the validity of a marriage or domestic partnership, if both parties to the alleged marriage or domestic partnership are still living, the court:
  - (a) If it finds the marriage or domestic partnership to be valid, shall enter a decree of validity;
  - (b) If it finds that:
    - (i) The marriage or domestic partnership should not have been contracted because of age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, a prior domestic partnership of one or both parties that has not been terminated or dissolved, reasons of consanguinity, or because a party lacked capacity to consent to the marriage or domestic partnership, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage or domestic partnership by force or duress, or by fraud involving the essentials of marriage or domestic partnership, and that the parties have not ratified their marriage or domestic partnership by voluntarily cohabiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage or domestic partnership invalid as of the date it was purportedly contracted;

(ii) The marriage or domestic partnership should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or to correct the record and enter a decree declaring such marriage or domestic partnership to be valid for all purposes from the date upon which it was purportedly contracted;

(c) If it finds that a marriage or domestic partnership contracted in a jurisdiction other than this state, was void or voidable under the law of the place where the marriage or domestic partnership was contracted, and in the absence of proof that such marriage or domestic partnership was subsequently validated by the laws of the place of contract or of a subsequent domicile of the parties, shall declare the marriage or domestic partnership invalid as of the date of the marriage or domestic partnership.

(5) Any child of the parties born or conceived during the existence of a marriage or domestic partnership of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage or domestic partnership.

[2008 c 6 § 1007; 1987 c 460 § 4; 1975 c 32 § 2; 1973 1st ex.s. c 157 § 4.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.050**

**Decrees — Contents — Restraining orders — Enforcement — Notice of termination or modification of restraining order.**

(1) In entering a decree of dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity, the court shall determine the marital or domestic partnership status of the parties, make provision for a parenting plan for any minor child of the marriage or domestic partnership, make provision for the support of any child of the marriage or domestic partnership entitled to support, consider or approve provision for the maintenance of either spouse or either domestic partner, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW, and make provision for the change of name of any party.

(2) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(3) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(4) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

[2008 c 6 § 1008; 2000 c 119 § 6; 1995 c 93 § 2; 1994 sp.s. c 7 § 451; 1989 c 375 § 29; 1987 c 460 § 5; 1973 1st ex.s. c 157 § 5.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Finding -- Intent -- Severability -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**26.09.060**

**Temporary maintenance or child support — Temporary restraining order — Preliminary injunction — Domestic violence or antiharassment protection order — Notice of termination or modification of restraining order — Support debts, notice.**

(1) In a proceeding for:

(a) Dissolution of marriage or domestic partnership, legal separation, or a declaration of invalidity; or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;



Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Child abuse, temporary restraining order: RCW 26.44.063.

Ex parte temporary order for protection: RCW 26.50.070.

Orders for protection in cases of domestic violence: RCW 26.50.030.

Orders prohibiting contact: RCW 10.99.040.

## 26.09.070

### Separation contracts.

(1) The parties to a marriage or a domestic partnership, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage or domestic partnership, a decree of legal separation, or declaration of invalidity of their marriage or domestic partnership, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the parenting plan and support for their children and for the release of each other from all obligation except that expressed in the contract.

(2) If the parties to such contract elect to live separate and apart without any court decree, they may record such contract and cause notice thereof to be published in a legal newspaper of the county wherein the parties resided prior to their separation. Recording such contract and publishing notice of the making thereof shall constitute notice to all persons of such separation and of the facts contained in the recorded document.

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage or domestic partnership, for a decree of legal separation, or for a declaration of invalidity of their marriage or domestic partnership, the contract, except for those terms providing for a parenting plan for their children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution. Child support may be included in the separation contract and shall be reviewed in the subsequent proceeding for compliance with RCW 26.19.020.

(4) If the court in an action for dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity finds that the separation contract was unfair at the time of its execution, it may make orders for the maintenance of either party, the disposition of their property and the discharge of their obligations.

(5) Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution, legal separation, or declaration of invalidity, or filed in the action or made an exhibit and incorporated by reference, except that in all cases the terms of the parenting plan shall be set out in the decree, and the parties shall be ordered to comply with its terms.

(6) Terms of the contract set forth or incorporated by reference in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, and are enforceable as contract terms.

(7) When the separation contract so provides, the decree may expressly preclude or limit modification of any provision for maintenance set forth in the decree. Terms of a separation contract pertaining to a parenting plan for the children and, in the absence of express provision to the contrary, terms providing for maintenance set forth or incorporated by reference in the decree are automatically modified by modification of the decree.

(8) If at any time the parties to the separation contract by mutual agreement elect to terminate the separation contract they may do so without formality unless the contract was recorded as in subsection (2) of this section, in which case a statement should be filed terminating the contract.

[2008 c 6 § 1010; 1989 c 375 § 4; 1987 c 460 § 6; 1973 1st ex.s. c 157 § 7.]

#### Notes:

**Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.**

## 26.09.080

### Disposition of property and liabilities — Factors.

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

#### Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

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**26.09.090**

**Maintenance orders for either spouse or either domestic partner — Factors.**

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

**Notes:**

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

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**26.09.100**

**Child support — Apportionment of expense — Periodic adjustments or modifications.**

**\*\*\* CHANGE IN 2010 \*\*\* (SEE 3016-S.SL) \*\*\***

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage or the domestic partnership dependent upon either or both spouses or domestic partners to pay an amount determined under chapter 26.19 RCW.

(2) The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

(3) Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with subsection (2) of this section as to installments accruing subsequent to entry of the court's order on the motion for modification.

(4) The adjustment or modification provision may be modified by the court due to economic hardship consistent with the provisions of RCW 26.09.170(5)(a).

[2008 c 6 § 1013; 1991 sp.s. c 28 § 1; 1990 1st ex.s. c 2 § 1; 1989 c 375 § 7; 1988 c 275 § 9; 1987 c 430 § 3; 1973 1st ex.s. c 157 § 10.]

**Notes:**

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

**Severability -- 1991 sp.s. c 28:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 28 § 9.]

**Effective date -- 1991 sp.s. c 28:** "Sections 1 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect September 1, 1991." [1991 sp.s. c 28 § 10.]

**Captions not law -- 1991 sp.s. c 28:** "Captions as used in this act do not constitute any part of the law." [1991 sp.s. c 28 § 11.]

**Effective dates -- 1990 1st ex.s. c 2:** "(1) Sections 5 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1990].

(2) The remainder of this act shall take effect July 1, 1990." [1990 1st ex.s. c 2 § 30.]

**Severability -- 1990 1st ex.s. c 2:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 1st ex.s. c 2 § 31.]

**Effective dates -- Severability -- 1988 c 275:** See notes following RCW 26.19.001.

**Severability -- 1987 c 430:** See note following RCW 26.09.170.

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## 26.09.105

### Child support — Medical support — Conditions.

(1) Whenever a child support order is entered or modified under this chapter, the court shall require both parents to provide medical support for any child named in the order as provided in this section.

(a) Medical support consists of:

(i) Health insurance coverage; and

(ii) Cash medical support.

(b) Cash medical support consists of:

(i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(ii) A parent's proportionate share of uninsured medical expenses.

(c) Under appropriate circumstances, the court may excuse one parent from the responsibility to provide health insurance coverage or the monthly payment toward the premium.

(d) The court shall always require both parents to contribute their proportionate share of uninsured medical expenses.

(2) Both parents share the obligation to provide medical support for the child or children specified in the order, by providing health insurance coverage or contributing a cash medical support obligation when appropriate, and paying a proportionate share of any uninsured medical expenses.

(3)(a) The court may specify how medical support must be provided by each parent under subsection (4) of this section.

(b) If the court does not specify how medical support will be provided or if neither parent provides proof that he or she is providing health insurance coverage for the child at the time the support order is entered, the division of child support or either parent may enforce a parent's obligation to provide medical support under RCW 26.18.170.

(4)(a) If there is sufficient evidence provided at the time the order is entered, the court may make a determination of which parent must provide coverage and which parent must contribute a sum certain amount as his or her monthly payment toward the premium.

(b) If both parents have available health insurance coverage that is accessible to the child at the time the support order is entered, the court has discretion to order the parent with better coverage to provide the health insurance coverage for the child and the other parent to pay a monthly payment toward the premium. In making the determination of which coverage is better, the court shall consider the needs of the child, the cost and extent of each parent's coverage, and the accessibility of the coverage.

(c) Each parent shall remain responsible for his or her proportionate share of uninsured medical expenses.

(5) The order must provide that if the parties' circumstances change, the parties' medical support obligations will be enforced as provided in RCW 26.18.170.

(6) A parent who is ordered to maintain or provide health insurance coverage may comply with that requirement by:

(a) Providing proof of accessible private insurance coverage for any child named in the order; or

(b) Providing coverage that can be extended to cover the child that is available to that parent through employment or that is union-related, if the cost of such coverage does not exceed twenty-five percent of that parent's basic child support obligation.

(7) The court may order a parent to provide health insurance coverage that exceeds twenty-five percent of that parent's basic support obligation if it is in the best interests of the child to provide coverage.

(8) If the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, the obligated parent shall pay a monthly payment toward the premium.

(9) Each parent is responsible for his or her proportionate share of uninsured medical expenses for the child or children covered by the support order.

(10) The parents must maintain health insurance coverage as required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

(11) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(12) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

(13) A parent ordered to provide health insurance coverage must provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The other parent; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(14) Every order requiring a parent to provide health care or insurance coverage must be entered in compliance with \*RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

(15) When a parent is providing health insurance coverage at the time the order is entered, the premium shall be included in the worksheets for the calculation of child support under chapter 26.19 RCW.

(16) As used in this section:

(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means a combination of: (i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and (ii) a parent's proportionate share of uninsured medical expenses.

(c) "Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(f) "Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed when determining a parent's child support obligation under chapter 26.19 RCW.

(g) "Monthly payment toward the premium" means a parent's contribution toward premiums paid by the other parent or the state for insurance coverage for the child, which is based on the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation.

(17) The department of social and health services has rule-making authority to enact rules in compliance with 45 C.F.R. Parts 302, 303, 304, 305, and 308.

[2009 c 476 § 1; 1994 c 230 § 1; 1989 c 416 § 1; 1985 c 108 § 1; 1984 c 201 § 1.]

**Notes:**

\*Reviser's note: The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8, which was vetoed by the governor.

Effective date -- 2009 c 476: "This act takes effect October 1, 2009." [2009 c 476 § 10]

**26.09.110**

**Minor or dependent child — Court appointed attorney to represent — Payment of costs, fees, and disbursements.**

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to provision for the parenting plan in an action for dissolution of marriage or domestic partnership, legal separation, or declaration concerning the validity of a marriage or domestic partnership. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county.

[2008 c 6 § 1014; 1987 c 460 § 11; 1973 1st ex.s. c 157 § 11.]

**Notes:**

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Process -- Domestic relations actions: Rules of court: CR 4.1.

**26.09.120**

**Support or maintenance payments — To whom paid.**

(1) The court shall order support payments, including maintenance if child support is ordered, to be made to the Washington state support registry, or the person entitled to receive the payments under an order approved by the court as provided in RCW 26.23.050.

(2) Maintenance payments, when ordered in an action where there is no dependent child, may be ordered to be paid to the person entitled to receive the

payments, or the clerk of the court as trustee for remittance to the persons entitled to receive the payments.

(3) If support or maintenance payments are made to the clerk of court, the clerk:

(a) Shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order;

(b) May by local court rule accept only certified funds or cash as payment; and

(c) Shall accept only certified funds or cash for five years in all cases after one check has been returned for nonsufficient funds or account closure.

(4) The parties affected by the order shall inform the registry through which the payments are ordered to be paid of any change of address or of other conditions that may affect the administration of the order.

[2008 c 6 § 1015; 1994 c 230 § 2; 1989 c 360 § 11. Prior: 1987 c 435 § 15; 1987 c 363 § 5; 1983 1st ex.s. c 45 § 3; 1973 1st ex.s. c 157 § 12.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Effective date -- 1987 c 435:** See RCW 26.23.900.

**26.09.135**

**Order or decree for child support — Compliance with RCW 26.23.050.**

Every court order or decree establishing a child support obligation shall be entered in compliance with the provisions of RCW 26.23.050.

[1987 c 435 § 16; 1986 c 138 § 1; 1984 c 260 § 21.]

**Notes:**

**Effective date -- 1987 c 435:** See RCW 26.23.900.

**Severability -- 1984 c 260:** See RCW 26.18.900.

**26.09.138**

**Mandatory assignment of public retirement benefits — Remedies exclusive.**

(1) Any obligee of a court order or decree establishing a spousal maintenance obligation may seek a mandatory benefits assignment order under chapter 41.50 RCW if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems.

(2) Any court order or decree establishing a spousal maintenance obligation may state that, if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order under chapter 41.50 RCW without prior notice to the obligor. Any such court order or decree may also, or in the alternative, contain a provision that would allow the department to make a direct payment of all or part of a withdrawal of accumulated contributions pursuant to RCW 41.50.550(3). Failure to include this provision does not affect the validity of the court order or decree establishing the spousal maintenance, nor does such failure affect the general applicability of RCW 41.50.500 through 41.50.650 to such obligations.

(3) The remedies in RCW 41.50.530 through 41.50.630 are the exclusive provisions of law enforceable against the department of retirement systems in connection with any action for enforcement of a spousal maintenance obligation ordered pursuant to a divorce, dissolution, or legal separation, and no other remedy ordered by a court under this chapter shall be enforceable against the department of retirement systems for collection of spousal maintenance.

(4)(a) Nothing in this section regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an ex spouse to receive direct payment of retirement benefits payable pursuant to: (i) A court decree of dissolution or legal separation; or (ii) any court order or court-approved property settlement agreement; or (iii) incident to any court decree of dissolution or legal separation, if such dissolution orders fully comply with RCW 41.50.670 and 41.50.700, or as applicable, RCW 2.10.180, 2.12.090, \*41.04.310, 41.04.320, 41.04.330, \*\*41.26.180, 41.32.052, 41.40.052, or 43.43.310 as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991.

(b) Persons whose dissolution orders as defined in RCW 41.50.500(3) were entered between July 1, 1987, and July 28, 1991, shall be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders filed with the department comply or are amended to comply with RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, \*\*41.26.180, 41.32.052, 41.40.052, or 43.43.310.

[1991 c 365 § 24; 1987 c 326 § 26.]

**Notes:**

**Reviser's note:** \*(1) RCW 41.04.310, 41.04.320, and 41.04.330 were repealed by 1987 c 326 § 21, effective July 1, 1987.

\*\*\*(2) RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

**26.09.140**

**Payment of attorney's fees — Note following RCW 41.50.500.**

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums

**Effective date** — 1987 c 326. See RCW 26.09.001.

for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name.

[1973 1st ex.s. c 157 § 14.]

### 26.09.150

#### Decree of dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity — Finality — Appeal — Conversion of decree of legal separation to decree of dissolution — Name of party.

(1) A decree of dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity is final when entered, subject to the right of appeal. An appeal which does not challenge the finding that the marriage or domestic partnership is irretrievably broken or was invalid, does not delay the finality of the dissolution or declaration of invalidity and either party may remarry or enter into a domestic partnership pending such an appeal.

(2)(a) No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage or domestic partnership. The clerk of court shall complete the certificate as provided for in "RCW 70.58.200 on the form provided by the department of health. On or before the tenth day of each month, the clerk of the court shall forward to the state registrar of vital statistics the certificate of each decree of divorce, dissolution of marriage or domestic partnership, annulment, or separate maintenance granted during the preceding month.

(b) Once a month, the state registrar of vital statistics shall prepare a list of persons for whom a certificate of dissolution of domestic partnership was transmitted to the registrar and was not included in a previous list, and shall supply the list to the secretary of state.

(3) Upon request of a party whose marriage or domestic partnership is dissolved or declared invalid, the court shall order a former name restored or the court may, in its discretion, order a change to another name.

[2008 c 6 § 1016. Prior: 1989 1st ex.s. c 9 § 205; 1989 c 375 § 30; 1973 1st ex.s. c 157 § 15.]

#### Notes:

\*Reviser's note: RCW 70.58.200 was repealed by 1991 c 96 § 6.

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective date -- Severability -- 1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effect of entry of a decree of dissolution of marriage or a declaration of invalidity or certification of termination of a state registered domestic partnership on nonprobate assets: RCW 11.07.010.

### 26.09.160

#### Failure to comply with decree or temporary injunction — Obligation to make support or maintenance payments or permit contact with children not suspended — Penalties.

(1) The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended. An attempt by a parent, in either the negotiation or the performance of a parenting plan, to condition one aspect of the parenting plan upon another, to condition payment of child support upon an aspect of the parenting plan, to refuse to pay ordered child support, to refuse to perform the duties provided in the parenting plan, or to hinder the performance by the other parent of duties provided in the parenting plan, shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court.

(2)(a) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(b) If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:

(i) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

(ii) The parent to pay, to the moving party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(iii) The parent to pay, to the moving party, a civil penalty, not less than the sum of one hundred dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days.

(3) On a second failure within three years to comply with a residential provision of a court-ordered parenting plan, a motion may be filed to initiate contempt of

court proceedings according to the procedure set forth in subsection (2)(a) and (b) of this section. On a finding of contempt under this subsection, the court shall order:

(a) The noncomplying parent to provide the other parent or party additional time with the child. The additional time shall be twice the amount of the time missed with the child, due to the parent's noncompliance;

(b) The noncomplying parent to pay, to the other parent or party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(c) The noncomplying parent to pay, to the moving party, a civil penalty of not less than two hundred fifty dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order but in no event for more than one hundred eighty days.

(4) For purposes of subsections (1), (2), and (3) of this section, the parent shall be deemed to have the present ability to comply with the order establishing residential provisions unless he or she establishes otherwise by a preponderance of the evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of a court-ordered parenting plan by a preponderance of the evidence.

(5) Any monetary award ordered under subsections (1), (2), and (3) of this section may be enforced, by the party to whom it is awarded, in the same manner as a civil judgment.

(6) Subsections (1), (2), and (3) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court and is in addition to any other contempt power the court may possess.

(7) Upon motion for contempt of court under subsections (1) through (3) of this section, if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorneys' fees, and a civil penalty of not less than one hundred dollars.

[1991 c 367 § 4; 1989 c 318 § 1; 1987 c 460 § 12; 1973 1st ex.s. c 157 § 16.]

**Notes:**

**Severability -- Effective date -- Captions not law -- 1991 c 367:** See notes following RCW 26.09.015.

**Severability -- 1989 c 318:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 318 § 6.]

**26.09.165**

**Court orders — Required language.**

All court orders containing parenting plan provisions or orders of contempt, entered pursuant to RCW 26.09.160, shall include the following language:

WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.060(2) or 9A.40.070(2). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

[1994 c 162 § 2; 1989 c 318 § 4.]

**Notes:**

**Severability -- 1989 c 318:** See note following RCW 26.09.160.

**26.09.170**

**Modification of decree for maintenance or support, property disposition — Termination of maintenance obligation and child support — Grounds.**

\*\*\* CHANGE IN 2010 \*\*\* (SEE 3016-S.SL) \*\*\*

(1) Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in subsections (5), (6), (9), and (10) of this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, the support provisions of the order are terminated upon the

marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

- (a) If the order in practice works a severe economic hardship on either party or the child;
- (b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;
- (c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or
- (d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

(6) An order or decree entered prior to June 7, 1984, may be modified without showing a substantial change of circumstances if the requested modification is to:

- (a) Require health insurance coverage for a child named therein; or
  - (b) Modify an existing order for health insurance coverage.
- (7) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(8) The department of social and health services may file an action to modify an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is twenty-five percent or more below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order. The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(9)(a) All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.

(b) A party may petition for modification in cases of substantially changed circumstances under subsection (1) of this section at any time. However, if relief is granted under subsection (1) of this section, twenty-four months must pass before a motion for an adjustment under (a) of this subsection may be filed.

(c) If, pursuant to (a) of this subsection or subsection (10) of this section, the court adjusts or modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for an adjustment under (a) of this subsection may be filed.

(d) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to subsection (1) of this section alleging that increase constitutes a substantial change of circumstances.

(e) The department of social and health services may file an action at any time to modify an order of child support in cases of substantially changed circumstances if public assistance money is being paid to or for the benefit of the child. The determination of the existence of substantially changed circumstances by the department that lead to the filing of an action to modify the order of child support is not binding upon the court.

(10) An order of child support may be adjusted twenty-four months from the date of the entry of the decree or the last adjustment or modification, whichever is later, based upon changes in the economic table or standards in chapter 26.19 RCW.

[2008 c 6 § 1017; 2002 c 199 § 1; 1997 c 58 § 910; 1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.s. c 2 § 2; 1989 c 416 § 3; 1988 c 275 § 17; 1987 c 430 § 1; 1973 1st ex.s. c 157 § 17.]

#### Notes:

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28:** See notes following RCW 26.09.100.

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective dates -- Severability -- 1988 c 275:** See notes following RCW 26.19.001.

**Severability -- 1987 c 430:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 430 § 4.]

#### 26.09.173

##### Modification of child support order — Child support order summary report.

The party seeking the establishment or modification of a child support order shall file with the clerk of the court the child support order summary report. The summary report shall be on the form developed by the administrator for the courts pursuant to RCW 26.18.210. The party must complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis.

[2007 c 313 § 2; 1990 1st ex.s. c 2 § 23.]

**Notes:**

**Findings -- 2007 c 313:** See note following RCW 26.19.025.

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**26.09.175****Modification of order of child support.**

**\*\*\* CHANGE IN 2010 \*\*\* (SEE 3016-S.SL) \*\*\***

(1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. The petition shall be in the form prescribed by the administrator for the courts. There shall be a fee of twenty dollars for the filing of a petition for modification of dissolution.

(2) The petitioner shall serve upon the other party the summons, a copy of the petition, and the worksheets in the form prescribed by the administrator for the courts. If the modification proceeding is the first action filed in this state, service shall be made by personal service. If the decree to be modified was entered in this state, service shall be by personal service or by any form of mail requiring a return receipt. If the support obligation has been assigned to the state pursuant to RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030, the summons, petition, and worksheets shall also be served on the attorney general; except that notice shall be given to the office of the prosecuting attorney for the county in which the action is filed in lieu of the office of the attorney general in those counties and in the types of cases as designated by the office of the attorney general by letter sent to the presiding superior court judge of that county. Proof of service shall be filed with the court.

(3) The responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. The responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

(4) At any time after responsive pleadings are filed, either party may schedule the matter for hearing.

(5) Unless both parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (6) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

(6) A party seeking authority to present oral testimony on the petition to modify a support order shall file an appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include, but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony.

[2002 c 199 § 2; 1992 c 229 § 3; 1991 c 367 § 6; 1990 1st ex.s. c 2 § 3; 1987 c 430 § 2.]

**Notes:**

**Severability -- Effective date -- Captions not law -- 1991 c 367:** See notes following RCW 26.09.015.

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Severability -- 1987 c 430:** See note following RCW 26.09.170.

**26.09.181****Procedure for determining permanent parenting plan.**

(1) SUBMISSION OF PROPOSED PLANS. (a) In any proceeding under this chapter, except a modification, each party shall file and serve a proposed permanent parenting plan on or before the earliest date of:

(i) Thirty days after filing and service by either party of a notice for trial; or

(ii) One hundred eighty days after commencement of the action which one hundred eighty day period may be extended by stipulation of the parties.

(b) In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification.

(c) No proposed permanent parenting plan shall be required after filing of an agreed permanent parenting plan, after entry of a final decree, or after dismissal of the cause of action.

(d) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default adopting that party's parenting plan if the other party has failed to file a proposed parenting plan as required in this section.

(2) AMENDING PROPOSED PARENTING PLANS. Either party may file and serve an amended proposed permanent parenting plan according to the rules for amending pleadings.

(3) GOOD FAITH PROPOSAL. The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(4) AGREED PERMANENT PARENTING PLANS. The parents may make an agreed permanent parenting plan.

(5) **MANDATORY SETTLEMENT CONFERENCE.** Where mandatory settlement conferences are provided under court rule, the parents shall attend a mandatory settlement conference. The mandatory settlement conference shall be presided over by a judge or a court commissioner, who shall apply the criteria in RCW 26.09.187 and 26.09.191. The parents shall in good faith review the proposed terms of the parenting plans and any other issues relevant to the cause of action with the presiding judge or court commissioner. Facts and legal issues that are not then in dispute shall be entered as stipulations for purposes of final hearing or trial in the matter.

(6) **TRIAL SETTING.** Trial dates for actions involving minor children brought under this chapter shall receive priority.

(7) **ENTRY OF FINAL ORDER.** The final order or decree shall be entered not sooner than ninety days after filing and service.

This subsection does not apply to decrees of legal separation.

[1989 2nd ex.s. c 2 § 1; 1989 c 375 § 8; 1987 c 460 § 7.]

## 26.09.182

### Permanent parenting plan — Determination of relevant information.

Before entering a permanent parenting plan, the court shall determine the existence of any information and proceedings relevant to the placement of the child that are available in the judicial information system and databases.

[2007 c 496 § 304.]

#### Notes:

**Part headings not law -- 2007 c 496: See note following RCW 26.09.002.**

## 26.09.184

### Permanent parenting plan.

(1) **OBJECTIVES.** The objectives of the permanent parenting plan are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) **CONTENTS OF THE PERMANENT PARENTING PLAN.** The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) **CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN.** In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) **DISPUTE RESOLUTION.** A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

- (a) Preference shall be given to carrying out the parenting plan;
- (b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;
- (e) The parties have the right of review from the dispute resolution process to the superior court; and
- (f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(5) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.

(6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section.

[2007 c 496 § 601; 1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

#### Notes:

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**Severability -- Effective date -- Captions not law -- 1991 c 367:** See notes following RCW 26.09.015.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction -- Obligations not suspended: RCW 26.09.160.

#### 26.09.187

##### Criteria for establishing permanent parenting plan.

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

- (a) Differences between the parents that would substantially inhibit their effective participation in any designated process;
- (b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and
- (c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

##### (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

- (i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and
- (ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

- (i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;
- (ii) Both parents are opposed to mutual decision making;
- (iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

- (i) The existence of a limitation under RCW 26.09.191;
- (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);
- (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and
- (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

##### (3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
  - (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
  - (iii) Each parent's past and potential for future performance of parenting functions as defined in \*RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
  - (iv) The emotional needs and developmental level of the child;
  - (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
  - (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
  - (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.
- Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

**Notes:**

\*Reviser's note: RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

**26.09.191**

**Restrictions in temporary or permanent parenting plans.**

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

- (A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;
- (B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;
- (C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;
- (D) RCW 9A.44.089;
- (E) RCW 9A.44.093;
- (F) RCW 9A.44.096;
- (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;
- (H) Chapter 9.68A RCW;
- (I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;
- (J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

- (A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- (B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- (C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- (D) RCW 9A.44.089;
- (E) RCW 9A.44.093;
- (F) RCW 9A.44.096;
- (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;
- (H) Chapter 9.68A RCW;
- (I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;
- (J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- (a) A parent's neglect or substantial nonperformance of parenting functions;
- (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
- (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

[2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

#### Notes:

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**Effective date -- 2004 c 38:** See note following RCW 18.155.075.

**Effective date -- 1996 c 303:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

**Effective date -- 1994 c 267:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

#### 26.09.194

#### Proposed temporary parenting plan — Temporary order — Amendment — Vacation of order.

(1) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be accompanied by an affidavit or declaration which shall state at a minimum the following:

- (a) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding twelve months;
- (b) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;
- (c) The parents' work and child-care schedules for the preceding twelve months;
- (d) The parents' current work and child-care schedules; and

(e) Any of the circumstances set forth in RCW 26.09.191 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(2) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(a) A schedule for the child's time with each parent when appropriate;

(b) Designation of a temporary residence for the child;

(c) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with RCW 26.09.187(2), neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(d) Provisions for temporary support for the child; and

(e) Restraining orders, if applicable, under RCW 26.09.060.

(3) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(4) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of RCW 26.09.191 and is in the best interest of the child.

(5) If a proceeding for dissolution of marriage or dissolution of domestic partnership, legal separation, or declaration of invalidity is dismissed, any temporary order or temporary parenting plan is vacated.

[2008 c 6 § 1045; 1987 c 460 § 13.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.197**

**Issuance of temporary parenting plan — Criteria.**

After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) The relative strength, nature, and stability of the child's relationship with each parent; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

[2007 c 496 § 604; 1987 c 460 § 14.]

**Notes:**

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

**26.09.210**

**Parenting plans — Interview with child by court — Advice of professional personnel.**

The court may interview the child in chambers to ascertain the child's wishes as to the child's residential schedule in a proceeding for dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

[2008 c 6 § 1018; 1987 c 460 § 15; 1973 1st ex.s. c 157 § 21.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.220**

**Parenting arrangements — Investigation and report — Appointment of guardian ad litem.**

(1) The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

[1993 c 289 § 1; 1989 c 375 § 12; 1987 c 460 § 16; 1973 1st ex.s. c 157 § 22.]

### 26.09.225

#### Access to child's education and health care records.

(1) Each parent shall have full and equal access to the education and health care records of the child absent a court order to the contrary. Neither parent may veto the access requested by the other parent.

(2) Educational records are limited to academic, attendance, and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school for all periods for which child support is paid or the child is the dependent in fact of the parent requesting access to the records.

(3) Educational records of postsecondary educational institutions are limited to enrollment and academic records necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090.

[1991 sp.s. c 28 § 3; 1990 1st ex.s. c 2 § 18; 1987 c 460 § 17.]

#### Notes:

**Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28:** See notes following RCW 26.09.100.

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

### 26.09.231

#### Residential time summary report.

The parties to dissolution matters shall file with the clerk of the court the residential time summary report. The summary report shall be on the form developed by the administrative office of the courts in consultation with the department of social and health services division of child support. The parties must complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis.

[2007 c 496 § 701.]

#### Notes:

**Part headings not law -- 2007 c 496:** See note following RCW 26.09.002.

### 26.09.240

#### Visitation rights — Person other than parent — Grandparents' visitation rights.

(1) A person other than a parent may petition the court for visitation with a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding. A person other than a parent may not petition for visitation under this section unless the child's parent or parents have commenced an action under this chapter.

(2) A petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides.

(3) A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought. If the petition or motion is dismissed for failure to establish the existence of a significant relationship, the petitioner or intervenor shall be ordered to pay reasonable attorney's fees and costs to the parent, parents, other custodian, or representative of the child who responds to this petition or motion.

(4) The court may order visitation between the petitioner or intervenor and the child between whom a significant relationship exists upon a finding supported by the evidence that the visitation is in the child's best interests.

(5)(a) Visitation with a grandparent shall be presumed to be in the child's best interests when a significant relationship has been shown to exist. This presumption may be rebutted by a preponderance of evidence showing that visitation would endanger the child's physical, mental, or emotional health.

(b) If the court finds that reasonable visitation by a grandparent would be in the child's best interest except for hostilities that exist between the grandparent and one or both of the parents or person with whom the child lives, the court may set the matter for mediation under RCW 26.09.015.

(6) The court may consider the following factors when making a determination of the child's best interests:

- (a) The strength of the relationship between the child and the petitioner;
- (b) The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;
- (c) The nature and reason for either parent's objection to granting the petitioner visitation;
- (d) The effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (e) The residential time sharing arrangements between the parents;
- (f) The good faith of the petitioner;
- (g) Any criminal history or history of physical, emotional, or sexual abuse or neglect by the petitioner; and
- (h) Any other factor relevant to the child's best interest.

(7) The restrictions of RCW 26.09.191 that apply to parents shall be applied to a petitioner or intervenor who is not a parent. The nature and extent of visitation, subject to these restrictions, is in the discretion of the court.

(8) The court may order an investigation and report concerning the proposed visitation or may appoint a guardian ad litem as provided in RCW 26.09.220.

(9) Visitation granted pursuant to this section shall be incorporated into the parenting plan for the child.

(10) The court may modify or terminate visitation rights granted pursuant to this section in any subsequent modification action upon a showing that the visitation is no longer in the best interest of the child.

[1996 c 177 § 1; 1989 c 375 § 13; 1987 c 460 § 18; 1977 ex.s. c 271 § 1; 1973 1st ex.s. c 157 § 24.]

**Notes:**

**Reviser's note:** This section was declared unconstitutional and invalid by the Washington State Supreme Court in "*In re Parentage of C.A.M.A.*," No. 75262-1, April 7, 2005.

**26.09.255**

**Remedies when a child is taken, enticed, or concealed.**

(1) A relative may bring civil action against any other relative if, with intent to deny access to a child by that relative of the child who has a right to physical custody of or visitation with the child or a parent with whom the child resides pursuant to a parenting plan order, the relative takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but not limited to, investigative services and reasonable attorneys' fees.

(2) "Relative" means an ancestor, descendant, or sibling including a relative of the same degree through marriage, domestic partnership, or adoption, or a spouse or domestic partner.

[2008 c 6 § 1019; 1987 c 460 § 22; 1984 c 95 § 6.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability -- 1984 c 95:** See note following RCW 9A.40.060.

**26.09.260**

**Modification of parenting plan or custody decree.**

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

- (a) The parents agree to the modification;
- (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
- (c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or

9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

[2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

Notes:

**Applicability -- 2000 c 21:** See RCW 26.09.405.

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**Severability -- Effective date -- Captions not law -- 1991 c 367:** See notes following RCW 26.09.015.

**Severability -- 1989 c 318:** See note following RCW 26.09.160.

#### 26.09.270

##### **Child custody — Temporary custody order, temporary parenting plan, or modification of custody decree — Affidavits required.**

A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

[1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

#### 26.09.280

##### **Parenting plan or child support modification or enforcement — Venue.**

Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage or domestic partnership, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage or the domestic partnership may be brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing.

[2008 c 6 § 1020; 1991 c 367 § 10; 1987 c 460 § 20; 1975 c 32 § 4; 1973 1st ex.s. c 157 § 28.]

##### **Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability -- Effective date -- Captions not law -- 1991 c 367:** See notes following RCW 26.09.015.

#### 26.09.285

##### **Designation of custody for the purpose of other state and federal statutes.**

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes.

[1989 c 375 § 16; 1987 c 460 § 21.]

#### 26.09.290

##### **Final decree of dissolution nunc pro tunc.**

Whenever either of the parties in an action for dissolution of marriage or domestic partnership is, under the law, entitled to a final judgment, but by mistake, negligence, or inadvertence the same has not been signed, filed, or entered, if no appeal has been taken from the interlocutory order or motion for a new trial made, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed, and entered therein granting the dissolution as of the date when the same could have been given or made by the court if applied for. The court may cause such final judgment to be signed, dated, filed, and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered where by mistake, negligence or inadvertence the same has not been signed, filed, or entered as soon as such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage or any domestic partnership of either of such parties subsequent to six months after the granting of the interlocutory order as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof.

[2008 c 6 § 1021; 1973 1st ex.s. c 157 § 29.]

##### **Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

#### 26.09.300

##### **Restraining orders — Notice — Refusal to comply — Arrest — Penalty — Defense — Peace officers, immunity.**

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, is punishable under RCW 26.50.110.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

[2000 c 119 § 21; 1995 c 248 § 9; 1995 c 246 § 27; 1984 c 263 § 28; 1974 ex.s. c 99 § 1.]

**Notes:**

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Severability -- 1995 c 246:** See note following RCW 26.50.010.

**Effective date -- Severability -- 1984 c 263:** See RCW 26.50.901 and 26.50.902.

**26.09.310**

**Provision of health care to minor — Immunity of health care provider.**

No health care provider or facility, or their agent, shall be liable for damages in any civil action brought by a parent or guardian based only on a lack of the parent or guardian's consent for medical care of a minor child, if consent to the care has been given by a parent or guardian of the minor. The immunity provided by this section shall apply regardless of whether:

(1) The parents are married, unmarried, in a domestic partnership or not, or separated at the time of consent or treatment;

(2) The consenting parent is, or is not, a custodial parent of the minor;

(3) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW;

(4) The action or suit is brought by or on behalf of the nonconsenting parent, the minor child, or any other person.

[2008 c 6 § 1022; 1989 c 377 § 1.]

**Notes:**

**Part headings not law -- Severability -- 2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.405**

**Applicability.**

(1) The provisions of RCW 26.09.405 through 26.09.560 and the chapter 21, Laws of 2000 amendments to RCW 26.09.260, 26.10.190, and 26.26.160 apply to a

court order regarding residential time or visitation with a child issued:

- (a) After June 8, 2000; and
- (b) Before June 8, 2000, if the existing court order does not expressly govern relocation of the child.

(2) To the extent that a provision of RCW 26.09.405 through 26.09.560 and the chapter 21, Laws of 2000 amendments to RCW 26.09.260, 26.10.190, and 26.26.160 conflicts with the express terms of a court order existing prior to June 8, 2000, then RCW 26.09.405 through 26.09.560 and the chapter 21, Laws of 2000 amendments to RCW 26.09.260, 26.10.190, and 26.26.160 do not apply to those terms of that order governing relocation of the child.

(3) The provisions of RCW 26.09.405 through 26.09.560 do not apply to visitation orders entered in dependency proceedings as provided in RCW 13.34.385. [2008 c 259 § 2; 2000 c 21 § 3.]

**Notes:**

**Intent -- 2000 c 21:** "By this act, the legislature intends to supersede the state supreme court's decisions *In Re the Marriage of Littlefield*, 133 Wn.2d 39 (1997), and *In Re the Marriage of Pape*, Docket No. 67527-9, December 23, 1999." [2000 c 21 § 1.]

**Captions not law -- 2000 c 21:** "Captions used in this act are not any part of the law." [2000 c 21 § 22.]

**26.09.410  
Definitions.**

The definitions in this section apply throughout RCW 26.09.405 through 26.09.560 and 26.09.260 unless the context clearly requires otherwise.

- (1) "Court order" means a temporary or permanent parenting plan, custody order, visitation order, or other order governing the residence of a child under this title.
- (2) "Relocate" means a change in principal residence either permanently or for a protracted period of time.

[2000 c 21 § 2.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.420  
Grant of authority.**

When entering or modifying a court order, the court has the authority to allow or not allow a person to relocate the child.

[2000 c 21 § 4.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.430  
Notice requirement.**

Except as provided in RCW 26.09.460, a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in RCW 26.09.440 and 26.09.450.

[2000 c 21 § 5.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.440  
Notice — Contents and delivery.**

(1) Except as provided in RCW 26.09.450 and 26.09.460, the notice of an intended relocation of the child must be given by:

- (a) Personal service or any form of mail requiring a return receipt; and
- (b) No less than:

(i) Sixty days before the date of the intended relocation of the child; or

(ii) No more than five days after the date that the person knows the information required to be furnished under subsection (2) of this section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-days' notice, and it is not reasonable to delay the relocation.

(2)(a) The notice of intended relocation of the child must include: (i) An address at which service of process may be accomplished during the period for objection; (ii) a brief statement of the specific reasons for the intended relocation of the child; and (iii) a notice to the nonrelocating person that an objection to the intended relocation of the child or to the relocating person's proposed revised residential schedule must be filed with the court and served on the opposing person within thirty days or the relocation of the child will be permitted and the residential schedule may be modified pursuant to RCW 26.09.500. The notice shall not be deemed to be in substantial compliance for purposes of RCW 26.09.470 unless the notice contains the following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."

(b) Except as provided in RCW 26.09.450 and 26.09.460, the following information shall also be included in every notice of intended relocation of the child, if available:

(i) The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;

(ii) The new mailing address, if different from the intended new residence address;

(iii) The new home telephone number;

(iv) The name and address of the child's new school and day care facility, if applicable;

(v) The date of the intended relocation of the child; and

(vi) A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.

(3) A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

[2000 c 21 § 6.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.450**

**Notice — Relocation within the same school district.**

(1) When the intended relocation of the child is within the school district in which the child currently resides the majority of the time, the person intending to relocate the child, in lieu of notice prescribed in RCW 26.09.440, may provide actual notice by any reasonable means to every other person entitled to residential time or visitation with the child under a court order.

(2) A person who is entitled to residential time or visitation with the child under a court order may not object to the intended relocation of the child within the school district in which the child currently resides the majority of the time, but he or she retains the right to move for modification under RCW 26.09.260.

[2000 c 21 § 7.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.460**

**Limitation of notices.**

(1) If a person intending to relocate the child is entering a domestic violence shelter due to the danger imposed by another person, notice may be delayed for twenty-one days. This section shall not be construed to compel the disclosure by any domestic violence shelter of information protected by confidentiality except as provided by RCW 70.123.075 or equivalent laws of the state in which the shelter is located.

(2) If a person intending to relocate the child is a participant in the address confidentiality program pursuant to chapter 40.24 RCW or has a court order which permits the party to withhold some or all of the information required by RCW 26.09.440(2)(b), the confidential or protected information is not required to be given with the notice.

(3) If a person intending to relocate the child is relocating to avoid a clear, immediate, and unreasonable risk to the health or safety of a person or the child, notice may be delayed for twenty-one days.

(4) A person intending to relocate the child who believes that his or her health or safety or the health or safety of the child would be unreasonably put at risk by notice or disclosure of certain information in the notice may request an ex parte hearing with the court to have all or part of the notice requirements waived. If the court finds that the health or safety of a person or a child would be unreasonably put at risk by notice or the disclosure of certain information in the notice, the court may:

(a) Order that the notice requirements be less than complete or waived to the extent necessary to protect confidentiality or the health or safety of a person or child; or

(b) Provide such other relief as the court finds necessary to facilitate the legitimate needs of the parties and the best interests of the child under the circumstances.

(5) This section does not deprive a person entitled to residential time or visitation with a child under a court order the opportunity to object to the intended relocation of the child or the proposed revised residential schedule before the relocation occurs.

[2000 c 21 § 8.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.470  
Failure to give notice.**

(1) The failure to provide the required notice is grounds for sanctions, including contempt if applicable.

(2) In determining whether a person has failed to comply with the notice requirements for the purposes of this section, the court may consider whether:

(a) The person has substantially complied with the notice requirements;

(b) The court order in effect at the time of the relocation was issued prior to June 8, 2000, and the person substantially complied with the notice requirements, if any, in the existing order;

(c) A waiver of notice was granted;

(d) A person entitled to receive notice was substantially harmed; and

(e) Any other factor the court deems relevant.

(3) A person entitled to file an objection to the intended relocation of the child may file such objection whether or not the person has received proper notice.

[2000 c 21 § 9.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.480  
Objection to relocation or proposed revised residential schedule.**

(1) A party objecting to the intended relocation of the child or the relocating parent's proposed revised residential schedule shall do so by filing the objection with the court and serving the objection on the relocating party and all other persons entitled by court order to residential time or visitation with the child by means of personal service or mailing by any form of mail requiring a return receipt to the relocating party at the address designated for service on the notice of intended relocation and to other parties requiring notice at their mailing address. The objection must be filed and served, including a three-day waiting period if the objection is served by mail, within thirty days of receipt of the notice of intended relocation of the child. The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief.

(2) Unless the special circumstances described in RCW 26.09.460 apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child during the period in which a party may object. The order required under this subsection may be obtained ex parte. If the objecting party notes a court hearing to prevent the relocation of the child for a date not more than fifteen days following timely service of an objection to relocation, the party intending to relocate the child shall not change the principal residence of the child pending the hearing unless the special circumstances described in RCW 26.09.460(3) apply.

(3) The administrator for the courts shall develop a standard form, separate from existing dissolution or modification forms, for use in filing an objection to relocation of the child or objection of the relocating person's proposed revised residential schedule.

[2000 c 21 § 10.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.490  
Required provision in residential orders.**

Unless waived by court order, after June 8, 2000, every court order shall include a clear restatement of the provisions in RCW 26.09.430 through 26.09.480.

[2000 c 21 § 11.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

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**26.09.500**

**Failure to object.**

(1) Except for good cause shown, if a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, then the relocation of the child shall be permitted.

(2) A nonobjecting person shall be entitled to the residential time or visitation with the child specified in the proposed residential schedule included with the relocation notice.

(3) Any person entitled to residential time or visitation with a child under a court order retains his or her right to move for modification under RCW 26.09.260.

(4) If a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, a person entitled to residential time with the child may not be held in contempt of court for any act or omission that is in compliance with the proposed revised residential schedule set forth in the notice given.

(5) Any party entitled to residential time or visitation with the child under a court order may, after thirty days have elapsed since the receipt of the notice, obtain ex parte and file with the court an order modifying the residential schedule in conformity with the relocating party's proposed residential schedule specified in the notice upon filing a copy of the notice and proof of service of such notice. A party may obtain ex parte and file with the court an order modifying the residential schedule in conformity with the proposed residential schedule specified in the notice before the thirty days have elapsed if the party files a copy of the notice, proof of service of such notice, and proof that no objection will be filed.

[2000 c 21 § 12.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

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**26.09.510**

**Temporary orders.**

(1) The court may grant a temporary order restraining relocation of the child, or ordering return of the child if the child's relocation has occurred, if the court finds:

(a) The required notice of an intended relocation of the child was not provided in a timely manner and the nonrelocating party was substantially prejudiced;

(b) The relocation of the child has occurred without agreement of the parties, court order, or the notice required by RCW 26.09.405 through 26.09.560 and the chapter 21, Laws of 2000 amendments to RCW 26.09.260, 26.10.190, and 26.26.160; or

(c) After examining evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will not approve the intended relocation of the child or no circumstances exist sufficient to warrant a relocation of the child prior to a final determination at trial.

(2) The court may grant a temporary order authorizing the intended relocation of the child pending final hearing if the court finds:

(a) The required notice of an intended relocation of the child was provided in a timely manner or that the circumstances otherwise warrant issuance of a temporary order in the absence of compliance with the notice requirements and issues an order for a revised schedule for residential time with the child; and

(b) After examining the evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will approve the intended relocation of the child.

[2000 c 21 § 13.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

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**26.09.520**

**Basis for determination.**

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

(2) Prior agreements of the parties;

- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

[2000 c 21 § 14.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.530**

**Factor not to be considered.**

In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.

[2000 c 21 § 15.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.540**

**Objections by nonparents.**

A court may not restrict the right of a parent to relocate the child when the sole objection to the relocation is from a third party, unless that third party is entitled to residential time or visitation under a court order and has served as the primary residential care provider to the child for a substantial period of time during the thirty-six consecutive months preceding the intended relocation.

[2000 c 21 § 16.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.550**

**Sanctions.**

The court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

[2000 c 21 § 17.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.**

**26.09.560**

**Priority for hearing.**

A hearing involving relocations or intended relocations of children shall be accorded priority on the court's motion calendar and trial docket.

[2000 c 21 § 18.]

**Notes:**

**Intent -- Captions not law -- 2000 c 21:** See notes following RCW 26.09.405.

**26.09.900**

**Construction — Pending divorce actions.**

Notwithstanding the repeals of prior laws enumerated in section 30, chapter 157, Laws of 1973 1st ex. sess., actions for divorce which were properly and validly pending in the superior courts of this state as of the effective date of such repealer (July 15, 1973) shall be governed and may be pursued to conclusion under the provisions of law applicable thereto at the time of commencement of such action and all decrees and orders heretofore or hereafter in all other respects regularly entered in such proceedings are declared valid: PROVIDED, That upon proper cause being shown at any time before final decree, the court may convert such action to an action for dissolution of marriage as provided for in RCW 26.09.901.

[1974 ex.s. c 15 § 1.]

**26.09.901**

**Conversion of pending action to dissolution proceeding.**

Any divorce action which was filed prior to July 15, 1973 and for which a final decree has not been entered on February 11, 1974, may, upon order of the superior court having jurisdiction over such proceeding for good cause shown, be converted to a dissolution proceeding and thereafter be continued under the provisions of this chapter.

[1974 ex.s. c 15 § 2.]

**26.09.902**

**RCW 26.09.900 and 26.09.901 deemed in effect on July 16, 1973.**

The provisions of RCW 26.09.900 and 26.09.901 are remedial and procedural and shall be construed to have been in effect as of July 16, 1973.

[1974 ex.s. c 15 § 3.]

**26.09.907**

**Construction — Pending actions as of January 1, 1988.**

Notwithstanding the repeals of prior laws, actions which were properly and validly pending in the superior courts of this state as of January 1, 1988, shall not be governed by chapter 460, Laws of 1987 but shall be governed by the provisions of law in effect on December 31, 1987.

[1989 c 375 § 17; 1987 c 460 § 23.]

**26.09.909**

**Decrees entered into prior to January 1, 1988.**

(1) Decrees under this chapter involving child custody, visitation, or child support entered in actions commenced prior to January 1, 1988, shall be deemed to be parenting plans for purposes of this chapter.

(2) The enactment of the 1987 revisions to this chapter does not constitute substantially changed circumstances for the purposes of modifying decrees entered under this chapter in actions commenced prior to January 1, 1988, involving child custody, visitation, or child support. Any action to modify any decree involving child custody, visitation, child support, or a parenting plan shall be governed by the provisions of this chapter.

(3) Actions brought for clarification or interpretation of decrees entered under this chapter in actions commenced prior to January 1, 1988, shall be determined under the law in effect immediately prior to January 1, 1988.

[1990 1st ex.s. c 2 § 16; 1989 c 375 § 18; 1987 c 460 § 24.]

**Notes:**

**Effective dates -- Severability -- 1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**26.09.910**  
**Short title — 1987 c 460.**

This act shall be known as the parenting act of 1987.

[1987 c 460 § 57.]

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**26.09.911**  
**Section captions — 1987 c 460.**

Section captions as used in this act do not constitute any part of the law.

[1987 c 460 § 58.]

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**26.09.912**  
**Effective date — 1987 c 460.**

This act shall take effect on January 1, 1988.

[1987 c 460 § 59.]

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**26.09.913**  
**Severability — 1987 c 460.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

[1987 c 460 § 60.]

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**26.09.914**  
**Severability — 1989 c 375.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 375 § 33.]

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**26.09.915**  
**Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 65.]