

Part 3 Enforcement

78B-13-301 Definitions.

As used in this part:

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

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-302 Scope -- Hague Convention Enforcement.

This chapter may be invoked to enforce:

- (1) a child custody determination; and
- (2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-303 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 that was 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 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 procedure provided by this part does not affect the availability of other remedies to enforce a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-304 Temporary parent-time.

- (1) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:
 - (a) a parent-time schedule made by a court of another state; or
 - (b) the parent-time provisions of a child custody determination of another state that does not provide for a specific parent-time schedule.
- (2) If a court of this state makes an order under Subsection (1)(b), 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 Part 2, Jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-305 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 district 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 order has not been modified; and
 - (c) except as otherwise provided in Section 78B-13-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or parent-time in the child custody determination sought to be registered.
- (2) On receipt of the documents required by Subsection (1), 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) and provide them with an opportunity to contest the registration in accordance with this section.
- (3) The notice required by Subsection (2)(b) shall state:
 - (a) that 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) that a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and
 - (c) that 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 order shall 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:
 - (a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;
 - (b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or
 - (c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 in the proceedings before the court that issued the order 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 shall be notified of the confirmation.
- (6) 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 which could have been asserted at the time of registration.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-306 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 Part 2, Jurisdiction, a registered child custody determination of another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-307 Simultaneous proceedings.

If a proceeding for enforcement under this part has been or is commenced in this state and a court of this state determines that a proceeding to modify the determination has been commenced in another state having jurisdiction to modify the determination under Part 2, Jurisdiction, 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.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-308 Expedited enforcement of child custody determination.

- (1) A petition under this part shall be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, shall 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 shall 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 shall be enforced under this chapter or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;
 - (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 and the case number and the nature of the proceeding;
 - (d) the present physical address of the child and the respondent, if known; and
 - (e) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.
- (3) If the child custody determination has been registered and confirmed under Section 78B-13-305, the petition shall also state the date and place of registration.
- (4) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.
- (5) The hearing shall be held on the next judicial day following service of process unless that date is impossible. In that event, the court shall hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.
- (6) The order shall state the time and place of the hearing and shall advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under Section 78B-13-312, and may set an additional 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 Section 78B-13-305, and that:
 - (i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;
 - (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 Part 2, Jurisdiction, or federal law; or

- (iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 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 Section 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-309 Service of petition and order.

Except as otherwise provided in Section 78B-13-311, the petition and order shall be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-310 Hearing and order.

- (1) Unless the court enters a temporary emergency order pursuant to Section 78B-13-204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:
 - (a) the child custody determination has not been registered and confirmed under Section 78B-13-305, and that:
 - (i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;
 - (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 Part 2, Jurisdiction, or federal law; or
 - (iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 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 Section 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.
- (2) The court shall award the fees, costs, and expenses authorized under Section 78B-13-312 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.
- (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 chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-311 Writ to take physical custody of child.

- (1) 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 writ of assistance to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this state.

- (2) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this state, it may issue a writ of assistance to take physical custody of the child. The petition shall be heard within 72 hours after the writ is executed. The writ shall include the statements required by Subsection 78B-13-308(2).
- (3) A writ to take physical custody of a child shall:
 - (a) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;
 - (b) direct law enforcement officers to take physical custody of the child immediately; and
 - (c) provide for the placement of the child pending final relief.
- (4) The respondent shall be served with the petition, writ, and order immediately after the child is taken into physical custody.
- (5) A writ of assistance 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 the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-312 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, attorney 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 except as otherwise provided by law other than this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-313 Recognition and enforcement.

A court of this state shall accord full faith and credit to an order made consistently with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court authorized to do so under Part 2, Jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-314 Appeals.

An appeal may be taken from an order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 78B-13-204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-315 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 resort to a proceeding under this chapter 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 from a court in a pending child custody case;
 - (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 acts on behalf of the court and may not represent any party to a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-316 Role of law enforcement.

At the request of a prosecutor or the attorney general acting under Section 78B-13-315 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 Section 78B-13-315.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-317 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 attorney general and law enforcement officers under Section 78B-13-315 or 78B-13-316.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-318 Transitional provision.

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

Renumbered and Amended by Chapter 3, 2008 General Session