

1 **UNIFORM CHILD CUSTODY ACT**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lyle W. Hillyard**

5 AN ACT RELATING TO THE JUDICIAL CODE; ENACTING THE UNIFORM CHILD
6 CUSTODY JURISDICTION AND ENFORCEMENT ACT; AND PROVIDING AN EFFECTIVE
7 DATE.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 ENACTS:

10 **78-45c-101**, Utah Code Annotated 1953

11 **78-45c-102**, Utah Code Annotated 1953

12 **78-45c-103**, Utah Code Annotated 1953

13 **78-45c-104**, Utah Code Annotated 1953

14 **78-45c-105**, Utah Code Annotated 1953

15 **78-45c-106**, Utah Code Annotated 1953

16 **78-45c-107**, Utah Code Annotated 1953

17 **78-45c-108**, Utah Code Annotated 1953

18 **78-45c-109**, Utah Code Annotated 1953

19 **78-45c-110**, Utah Code Annotated 1953

20 **78-45c-111**, Utah Code Annotated 1953

21 **78-45c-112**, Utah Code Annotated 1953

22 **78-45c-201**, Utah Code Annotated 1953

23 **78-45c-202**, Utah Code Annotated 1953

24 **78-45c-203**, Utah Code Annotated 1953

25 **78-45c-204**, Utah Code Annotated 1953

26 **78-45c-205**, Utah Code Annotated 1953

27 **78-45c-206**, Utah Code Annotated 1953

- 28 **78-45c-207**, Utah Code Annotated 1953
- 29 **78-45c-208**, Utah Code Annotated 1953
- 30 **78-45c-209**, Utah Code Annotated 1953
- 31 **78-45c-210**, Utah Code Annotated 1953
- 32 **78-45c-301**, Utah Code Annotated 1953
- 33 **78-45c-302**, Utah Code Annotated 1953
- 34 **78-45c-303**, Utah Code Annotated 1953
- 35 **78-45c-304**, Utah Code Annotated 1953
- 36 **78-45c-305**, Utah Code Annotated 1953
- 37 **78-45c-306**, Utah Code Annotated 1953
- 38 **78-45c-307**, Utah Code Annotated 1953
- 39 **78-45c-308**, Utah Code Annotated 1953
- 40 **78-45c-309**, Utah Code Annotated 1953
- 41 **78-45c-310**, Utah Code Annotated 1953
- 42 **78-45c-311**, Utah Code Annotated 1953
- 43 **78-45c-312**, Utah Code Annotated 1953
- 44 **78-45c-313**, Utah Code Annotated 1953
- 45 **78-45c-314**, Utah Code Annotated 1953
- 46 **78-45c-315**, Utah Code Annotated 1953
- 47 **78-45c-316**, Utah Code Annotated 1953
- 48 **78-45c-317**, Utah Code Annotated 1953
- 49 **78-45c-318**, Utah Code Annotated 1953

50 REPEALS:

- 51 **78-45c-1**, as enacted by Chapter 41, Laws of Utah 1980
- 52 **78-45c-2**, as enacted by Chapter 41, Laws of Utah 1980
- 53 **78-45c-3**, as last amended by Chapter 143, Laws of Utah 1990
- 54 **78-45c-4**, as enacted by Chapter 41, Laws of Utah 1980
- 55 **78-45c-5**, as enacted by Chapter 41, Laws of Utah 1980
- 56 **78-45c-6**, as enacted by Chapter 41, Laws of Utah 1980
- 57 **78-45c-7**, as enacted by Chapter 41, Laws of Utah 1980
- 58 **78-45c-8**, as last amended by Chapter 20, Laws of Utah 1995

- 59 **78-45c-9**, as enacted by Chapter 41, Laws of Utah 1980
- 60 **78-45c-10**, as enacted by Chapter 41, Laws of Utah 1980
- 61 **78-45c-11**, as enacted by Chapter 41, Laws of Utah 1980
- 62 **78-45c-12**, as enacted by Chapter 41, Laws of Utah 1980
- 63 **78-45c-13**, as enacted by Chapter 41, Laws of Utah 1980
- 64 **78-45c-14**, as enacted by Chapter 41, Laws of Utah 1980
- 65 **78-45c-15**, as last amended by Chapter 3, Laws of Utah 1993
- 66 **78-45c-16**, as enacted by Chapter 41, Laws of Utah 1980
- 67 **78-45c-17**, as enacted by Chapter 41, Laws of Utah 1980
- 68 **78-45c-18**, as enacted by Chapter 41, Laws of Utah 1980
- 69 **78-45c-19**, as enacted by Chapter 41, Laws of Utah 1980
- 70 **78-45c-20**, as enacted by Chapter 41, Laws of Utah 1980
- 71 **78-45c-21**, as enacted by Chapter 41, Laws of Utah 1980
- 72 **78-45c-22**, as enacted by Chapter 41, Laws of Utah 1980
- 73 **78-45c-23**, as enacted by Chapter 41, Laws of Utah 1980
- 74 **78-45c-24**, as enacted by Chapter 41, Laws of Utah 1980
- 75 **78-45c-25**, as enacted by Chapter 41, Laws of Utah 1980
- 76 **78-45c-26**, as enacted by Chapter 41, Laws of Utah 1980

77 *Be it enacted by the Legislature of the state of Utah:*

78 Section 1. Section **78-45c-101** is enacted to read:

79 **CHAPTER 45c. UTAH UNIFORM CHILD CUSTODY JURISDICTION AND**
 80 **ENFORCEMENT ACT**

81 **Part 1. General Provisions**

82 **78-45c-101. Title.**

83 This chapter is known as the "Utah Uniform Child Custody Jurisdiction and Enforcement
84 Act."

85 Section 2. Section **78-45c-102** is enacted to read:

86 **78-45c-102. Definitions.**

87 As used in this chapter:

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

90 (2) "Child" means an individual under 18 years of age and not married.

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

95 (4) "Child custody proceeding" means a proceeding in which legal custody, physical
96 custody, or visitation with respect to a child is an issue. The term includes a proceeding for
97 divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental
98 rights, and protection from domestic violence, in which the issue may appear. The term does not
99 include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement
100 under Part 3, Enforcement.

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

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

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

109 (8) "Initial determination" means the first child custody determination concerning a
110 particular child.

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

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

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

117 (12) "Person" includes government, governmental subdivision, agency, or instrumentality,
118 or any other legal or commercial entity.

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

120 (a) has physical custody of the child or has had physical custody for a period of six

121 consecutive months, including any temporary absence, within one year immediately before the
122 commencement of a child custody proceeding; and

123 (b) has been awarded legal custody by a court or claims a right to legal custody under the
124 law of this state.

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

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

129 (16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized
130 by federal law or formally acknowledged by a state.

131 (17) "Writ of assistance" means an order issued by a court authorizing law enforcement
132 officers to take physical custody of a child.

133 Section 3. Section **78-45c-103** is enacted to read:

134 **78-45c-103. Proceedings governed by other law.**

135 This chapter does not govern:

136 (1) an adoption proceeding; or

137 (2) a proceeding pertaining to the authorization of emergency medical care for a child.

138 Section 4. Section **78-45c-104** is enacted to read:

139 **78-45c-104. Application to Indian tribes.**

140 (1) A child custody proceeding that pertains to an Indian child as defined in the Indian
141 Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is
142 governed by the Indian Child Welfare Act.

143 (2) A court of this state shall treat a tribe as a state of the United States for purposes of Part
144 1, General Provisions, and Part 2, Jurisdiction.

145 (3) A child custody determination made by a tribe under factual circumstances in
146 substantial conformity with the jurisdictional standards of this chapter shall be recognized and
147 enforced under the provisions of Part 3, Enforcement.

148 Section 5. Section **78-45c-105** is enacted to read:

149 **78-45c-105. International application of chapter.**

150 (1) A court of this state shall treat a foreign country as a state of the United States for
151 purposes of applying Part 1, General Provisions, and Part 2, Jurisdiction.

152 (2) A child custody determination made in a foreign country under factual circumstances
153 in substantial conformity with the jurisdictional standards of this chapter shall be recognized and
154 enforced under Part 3, Enforcement.

155 (3) The court need not apply the provisions of this chapter when the child custody law of
156 the other country violates fundamental principles of human rights.

157 Section 6. Section **78-45c-106** is enacted to read:

158 **78-45c-106. Binding force of child custody determination.**

159 A child custody determination made by a court of this state that had jurisdiction under this
160 chapter binds all persons who have been served in accordance with the laws of this state or notified
161 in accordance with Section 78-45c-108 or who have submitted to the jurisdiction of the court, and
162 who have been given an opportunity to be heard. The determination is conclusive as to them as
163 to all decided issues of law and fact except to the extent the determination is modified.

164 Section 7. Section **78-45c-107** is enacted to read:

165 **78-45c-107. Priority.**

166 If a question of existence or exercise of jurisdiction under this chapter is raised in a child
167 custody proceeding, the question, upon request of a party, shall be given priority on the calendar
168 and handled expeditiously.

169 Section 8. Section **78-45c-108** is enacted to read:

170 **78-45c-108. Notice to persons outside state.**

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

175 (2) Proof of service may be made in the manner prescribed by the law of this state or by
176 the law of the state in which the service is made.

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

179 Section 9. Section **78-45c-109** is enacted to read:

180 **78-45c-109. Appearance and limited immunity.**

181 (1) A party to a child custody proceeding who is not subject to personal jurisdiction in this
182 state and is a responding party under Part 2, Jurisdiction, a party in a proceeding to modify a child

183 custody determination under Part 2, Jurisdiction, or a petitioner in a proceeding to enforce or
184 register a child custody determination under Part 3, Enforcement, may appear and participate in
185 the proceeding without submitting to personal jurisdiction over the party for another proceeding
186 or purpose.

187 (2) A party is not subject to personal jurisdiction in this state solely by being physically
188 present for the purpose of participating in a proceeding under this chapter. If a party is subject to
189 personal jurisdiction in this state on a basis other than physical presence, the party may be served
190 with process in this state. If a party present in this state is subject to the jurisdiction of another
191 state, service of process allowable under the laws of that state may be accomplished in this state.

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

195 Section 10. Section **78-45c-110** is enacted to read:

196 **78-45c-110. Communication between courts.**

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

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

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

205 (4) Except as provided in Subsection (3), a record shall be made of the communication.
206 The parties shall be informed promptly of the communication and granted access to the record.

207 (5) For the purposes of this section, "record" means information that is inscribed on a
208 tangible medium or that which is stored in an electronic or other medium and is retrievable in
209 perceivable form. A record includes notes or transcripts of a court reporter who listened to a
210 conference call between the courts, an electronic recording of a telephone call, a memorandum or
211 an electronic record of the communication between the courts, or a memorandum or an electronic
212 record made by a court after the communication.

213 Section 11. Section **78-45c-111** is enacted to read:

214 **78-45c-111. Taking testimony in another state.**

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

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

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

228 Section 12. Section **78-45c-112** is enacted to read:

229 **78-45c-112. Cooperation between courts -- Preservation of records.**

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

231 (a) hold an evidentiary hearing;

232 (b) order a person to produce or give evidence under procedures of that state;

233 (c) order that an evaluation be made with respect to the custody of a child involved in a
234 pending proceeding;

235 (d) forward to the court of this state a certified copy of the transcript of the record of the
236 hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the
237 request; and

238 (e) order a party to a child custody proceeding or any person having physical custody of
239 the child to appear in the proceeding with or without the child.

240 (2) Upon request of a court of another state, a court of this state may:

241 (a) hold a hearing or enter an order described in Subsection (1); or

242 (b) order a person in this state to appear alone or with the child in a custody proceeding
243 in another state.

244 (3) A court of this state may condition compliance with a request under Subsection (2)(b)

245 upon assurance by the other state that travel and other necessary expenses will be advanced or
246 reimbursed. If the person who has physical custody of the child cannot be served or fails to obey
247 the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against
248 the person to secure his appearance with the child in the other state.

249 (4) Travel and other necessary and reasonable expenses incurred under Subsections (1) and
250 (2) may be assessed against the parties according to the law of this state.

251 (5) A court of this state shall preserve the pleadings, orders, decrees, records of hearings,
252 evaluations, and other pertinent records with respect to a child custody proceeding until the child
253 attains 18 years of age. Upon appropriate request by a court or law enforcement official of another
254 state, the court shall forward a certified copy of these records.

255 Section 13. Section **78-45c-201** is enacted to read:

256 **Part 2. Jurisdiction**

257 **78-45c-201. Initial child custody jurisdiction.**

258 (1) Except as otherwise provided in Section 78-45c-204, a court of this state has
259 jurisdiction to make an initial child custody determination only if:

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

264 (b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court
265 of the home state of the child has declined to exercise jurisdiction on the ground that this state is
266 the more appropriate forum under Section 78-45c-207 or 78-45c-208; and

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

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

271 (c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise
272 jurisdiction on the ground that a court of this state is the more appropriate forum to determine the
273 custody of the child under Section 78-45c-207 or 78-45c-208; or

274 (d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).

275 (2) Subsection (1) is the exclusive jurisdictional basis for making a child custody

276 determination by a court of this state.

277 (3) Physical presence of, or personal jurisdiction over, a party or a child is neither
278 necessary nor sufficient to make a child custody determination.

279 Section 14. Section **78-45c-202** is enacted to read:

280 **78-45c-202. Exclusive, continuing jurisdiction.**

281 (1) Except as otherwise provided in Section 78-45c-204, a court of this state that has made
282 a child custody determination consistent with Section 78-45c-201 or 78-45c-203 has exclusive,
283 continuing jurisdiction over the determination until:

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

288 (b) a court of this state or a court of another state determines that neither the child, nor a
289 parent, nor any person acting as a parent presently resides in this state.

290 (2) A court of this state that has exclusive, continuing jurisdiction under this section may
291 decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under
292 Section 78-45c-207.

293 (3) A court of this state that has made a child custody determination and does not have
294 exclusive, continuing jurisdiction under this section may modify that determination only if it has
295 jurisdiction to make an initial determination under Section 78-45c-201.

296 Section 15. Section **78-45c-203** is enacted to read:

297 **78-45c-203. Jurisdiction to modify determination.**

298 Except as otherwise provided in Section 78-45c-204, a court of this state may not modify
299 a child custody determination made by a court of another state unless a court of this state has
300 jurisdiction to make an initial determination under Subsection 78-45c-201(1)(a) or (b) and:

301 (1) the court of the other state determines it no longer has exclusive, continuing
302 jurisdiction under Section 78-45c-202 or that a court of this state would be a more convenient
303 forum under Section 78-45c-207; or

304 (2) a court of this state or a court of the other state determines that neither the child, nor
305 a parent, nor any person acting as a parent presently resides in the other state.

306 Section 16. Section **78-45c-204** is enacted to read:

307 **78-45c-204. Temporary emergency jurisdiction.**

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

312 (2) If there is no previous child custody determination that is entitled to be enforced under
313 this chapter, and if no child custody proceeding has been commenced in a court of a state having
314 jurisdiction under Sections 78-45c-201 through 78-45c-203, a child custody determination made
315 under this section remains in effect until an order is obtained from a court of a state having
316 jurisdiction under Sections 78-45c-201 through 78-45c-203. If a child custody proceeding has not
317 been or is not commenced in a court of a state having jurisdiction under Sections 78-45c-201
318 through 78-45c-203, a child custody determination made under this section becomes a final
319 determination, if:

320 (a) it so provides; and

321 (b) this state becomes the home state of the child.

322 (3) If there is a previous child custody determination that is entitled to be enforced under
323 this chapter, or a child custody proceeding has been commenced in a court of a state having
324 jurisdiction under Sections 78-45c-201 through 78-45c-203, any order issued by a court of this
325 state under this section shall specify in the order a period of time which the court considers
326 adequate to allow the person seeking an order to obtain an order from the state having jurisdiction
327 under Sections 78-45c-201 through 78-45c-203. The order issued in this state remains in effect
328 until an order is obtained from the other state within the period specified or the period expires.

329 (4) A court of this state that has been asked to make a child custody determination under
330 this section, upon being informed that a child custody proceeding has been commenced, or a child
331 custody determination has been made, by a court of a state having jurisdiction under Sections
332 78-45c-201 through 78-45c-203, shall immediately communicate with the other court. A court of
333 this state that is exercising jurisdiction pursuant to Sections 78-45c-201 through 78-45c-203, upon
334 being informed that a child custody proceeding has been commenced, or a child custody
335 determination has been made by a court of another state under a statute similar to this section shall
336 immediately communicate with the court of that state. The purpose of the communication is to
337 resolve the emergency, protect the safety of the parties and the child, and determine a period for

338 the duration of the temporary order.

339 Section 17. Section **78-45c-205** is enacted to read:

340 **78-45c-205. Notice -- Opportunity to be heard -- Joinder.**

341 (1) Before a child custody determination is made under this chapter, notice and an
342 opportunity to be heard in accordance with the standards of Section 78-45c-108 shall be given to
343 all persons entitled to notice under the law of this state as in child custody proceedings between
344 residents of this state, any parent whose parental rights have not been previously terminated, and
345 any person having physical custody of the child.

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

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

351 Section 18. Section **78-45c-206** is enacted to read:

352 **78-45c-206. Simultaneous proceedings.**

353 (1) Except as otherwise provided in Section 78-45c-204, a court of this state may not
354 exercise its jurisdiction under this chapter if at the time of the commencement of the proceeding
355 a proceeding concerning the custody of the child had been previously commenced in a court of
356 another state having jurisdiction substantially in conformity with this chapter, unless the
357 proceeding has been terminated or is stayed by the court of the other state because a court of this
358 state is a more convenient forum under Section 78-45c-207.

359 (2) Except as otherwise provided in Section 78-45c-204, a court of this state, before
360 hearing a child custody proceeding, shall examine the court documents and other information
361 supplied by the parties pursuant to Section 78-45c-209. If the court determines that a child custody
362 proceeding was previously commenced in a court in another state having jurisdiction substantially
363 in accordance with this chapter, the court of this state shall stay its proceeding and communicate
364 with the court of the other state. If the court of the state having jurisdiction substantially in
365 accordance with this chapter does not determine that the court of this state is a more appropriate
366 forum, the court of this state shall dismiss the proceeding.

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

369 state. If a proceeding to enforce a child custody determination has been commenced in another
370 state, the court may:

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

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

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

375 Section 19. Section **78-45c-207** is enacted to read:

376 **78-45c-207. Inconvenient forum.**

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

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

386 (a) whether domestic violence has occurred and is likely to continue in the future and
387 which state could best protect the parties and the child;

388 (b) the length of time the child has resided outside this state;

389 (c) the distance between the court in this state and the court in the state that would assume
390 jurisdiction;

391 (d) the relative financial circumstances of the parties;

392 (e) any agreement of the parties as to which state should assume jurisdiction;

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

395 (g) the ability of the court of each state to decide the issue expeditiously and the
396 procedures necessary to present the evidence; and

397 (h) the familiarity of the court of each state with the facts and issues of the pending
398 litigation.

399 (3) If a court of this state determines that it is an inconvenient forum and that a court of

400 another state is a more appropriate forum, it shall stay the proceedings upon condition that a child
401 custody proceeding be promptly commenced in another designated state and may impose any other
402 condition the court considers just and proper.

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

406 Section 20. Section **78-45c-208** is enacted to read:

407 **78-45c-208. Jurisdiction declined by reason of conduct.**

408 (1) Except as otherwise provided in Section 78-45c-204 or by other law of this state, if a
409 court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has
410 engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

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

413 (b) a court of the state otherwise having jurisdiction under Sections 78-45c-201 through
414 78-45c-203 determines that this state is a more appropriate forum under Section 78-45c-207; or

415 (c) no other state would have jurisdiction under Sections 78-45c-201 through 78-45c-203.

416 (2) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (1),
417 it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of
418 the wrongful conduct, including staying the proceeding until a child custody proceeding is
419 commenced in a court having jurisdiction under Sections 78-45c-201 through 78-45c-203.

420 (3) If a court dismisses a petition or stays a proceeding because it declines to exercise its
421 jurisdiction pursuant to Subsection (1), it shall charge the party invoking the jurisdiction of the
422 court with necessary and reasonable expenses including costs, communication expenses, attorney's
423 fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course
424 of the proceedings, unless the party from whom fees are sought establishes that the award would
425 be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except
426 as otherwise provided by law other than this chapter.

427 Section 21. Section **78-45c-209** is enacted to read:

428 **78-45c-209. Information to be submitted to court.**

429 (1) In a child custody proceeding, each party, in its first pleading or in an attached
430 affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present

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

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

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

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

444 (2) If the information required by Subsection (1) is not furnished, the court, upon its own
445 motion or that of a party, may stay the proceeding until the information is furnished.

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

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

452 (5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or
453 liberty of a party or child would be put at risk by the disclosure of identifying information, that
454 information shall be sealed and not disclosed to the other party or the public unless the court orders
455 the disclosure to be made after a hearing in which the court takes into consideration the health,
456 safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

457 Section 22. Section **78-45c-210** is enacted to read:

458 **78-45c-210. Appearance of parties and child.**

459 (1) A court of this state may order a party to a child custody proceeding who is in this state
460 to appear before the court personally with or without the child. The court may order any person
461 who is in this state and who has physical custody or control of the child to appear physically with

462 the child.

463 (2) If a party to a child custody proceeding whose presence is desired by the court is
464 outside this state, the court may order that a notice given pursuant to Section 78-45c-108 include
465 a statement directing the party to appear personally with or without the child and declaring that
466 failure to appear may result in a decision adverse to the party.

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

469 (4) If a party to a child custody proceeding who is outside this state is directed to appear
470 under Subsection (2) or desires to appear personally before the court with or without the child, the
471 court may require another party to pay reasonable and necessary travel and other expenses of the
472 party so appearing and of the child.

473 Section 23. Section **78-45c-301** is enacted to read:

474 **Part 3. Enforcement**

475 **78-45c-301. Definitions.**

476 As used in this part:

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

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

483 Section 24. Section **78-45c-302** is enacted to read:

484 **78-45c-302. Scope -- Hague Convention Enforcement.**

485 This chapter may be invoked to enforce:

486 (1) a child custody determination; and

487 (2) an order for the return of the child made under the Hague Convention on the Civil
488 Aspects of International Child Abduction.

489 Section 25. Section **78-45c-303** is enacted to read:

490 **78-45c-303. Duty to enforce.**

491 (1) A court of this state shall recognize and enforce a child custody determination of a
492 court of another state if the latter court exercised jurisdiction that was in substantial conformity

493 with this chapter or the determination was made under factual circumstances meeting the
494 jurisdictional standards of this chapter and the determination has not been modified in accordance
495 with this chapter.

496 (2) A court may utilize any remedy available under other law of this state to enforce a child
497 custody determination made by a court of another state. The procedure provided by this part does
498 not affect the availability of other remedies to enforce a child custody determination.

499 Section 26. Section **78-45c-304** is enacted to read:

500 **78-45c-304. Temporary visitation.**

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

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

504 (b) the visitation provisions of a child custody determination of another state that does not
505 provide for a specific visitation schedule.

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

510 Section 27. Section **78-45c-305** is enacted to read:

511 **78-45c-305. Registration of child custody determination.**

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

515 (a) a letter or other document requesting registration;

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

519 (c) except as otherwise provided in Section 78-45c-209, the name and address of the
520 person seeking registration and any parent or person acting as a parent who has been awarded
521 custody or visitation in the child custody determination sought to be registered.

522 (2) On receipt of the documents required by Subsection (1), the registering court shall:

523 (a) cause the determination to be filed as a foreign judgment, together with one copy of

524 any accompanying documents and information, regardless of their form; and

525 (b) serve notice upon the persons named pursuant to Subsection (1)(c) and provide them
526 with an opportunity to contest the registration in accordance with this section.

527 (3) The notice required by Subsection (2)(b) shall state:

528 (a) that a registered determination is enforceable as of the date of the registration in the
529 same manner as a determination issued by a court of this state;

530 (b) that a hearing to contest the validity of the registered determination shall be requested
531 within 20 days after service of notice; and

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

535 (4) A person seeking to contest the validity of a registered order shall request a hearing
536 within 20 days after service of the notice. At that hearing, the court shall confirm the registered
537 order unless the person contesting registration establishes that:

538 (a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

539 (b) the child custody determination sought to be registered has been vacated, stayed, or
540 modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or

541 (c) the person contesting registration was entitled to notice, but notice was not given in
542 accordance with the standards of Section 78-45c-108 in the proceedings before the court that
543 issued the order for which registration is sought.

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

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

550 Section 28. Section **78-45c-306** is enacted to read:

551 **78-45c-306. Enforcement of registered determination.**

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

554 (2) A court of this state shall recognize and enforce, but may not modify except in

555 accordance with Part 2, Jurisdiction, a registered child custody determination of another state.

556 Section 29. Section **78-45c-307** is enacted to read:

557 **78-45c-307. Simultaneous proceedings.**

558 If a proceeding for enforcement under this part has been or is commenced in this state and
559 a court of this state determines that a proceeding to modify the determination has been commenced
560 in another state having jurisdiction to modify the determination under Part 2, Jurisdiction, the
561 enforcing court shall immediately communicate with the modifying court. The proceeding for
562 enforcement continues unless the enforcing court, after consultation with the modifying court,
563 stays or dismisses the proceeding.

564 Section 30. Section **78-45c-308** is enacted to read:

565 **78-45c-308. Expedited enforcement of child custody determination.**

566 (1) A petition under this part shall be verified. Certified copies of all orders sought to be
567 enforced and of the order confirming registration, if any, shall be attached to the petition. A copy
568 of a certified copy of an order may be attached instead of the original.

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

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

572 (b) whether the determination for which enforcement is sought has been vacated, stayed,
573 or modified by a court whose decision shall be enforced under this chapter or federal law and, if
574 so, identify the court, the case number of the proceeding, and the action taken;

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

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

580 (e) whether relief in addition to the immediate physical custody of the child and attorney's
581 fees is sought, including a request for assistance from law enforcement officials and, if so, the
582 relief sought.

583 (3) If the child custody determination has been registered and confirmed under Section
584 78-45c-305, the petition shall also state the date and place of registration.

585 (4) The court shall issue an order directing the respondent to appear with or without the

586 child at a hearing and may enter any orders necessary to ensure the safety of the parties and the
587 child.

588 (5) The hearing shall be held on the next judicial day following service of process unless
589 that date is impossible. In that event, the court shall hold the hearing on the first day possible. The
590 court may extend the date of hearing at the request of the petitioner.

591 (6) The order shall state the time and place of the hearing and shall advise the respondent
592 that at the hearing the court will order the delivery of the child and the payment of fees, costs, and
593 expenses under Section 78-45c-312, and may set an additional hearing to determine whether
594 further relief is appropriate, unless the respondent appears and establishes that:

595 (a) the child custody determination has not been registered and confirmed under Section
596 78-45c-305, and that:

597 (i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

598 (ii) the child custody determination for which enforcement is sought has been vacated,
599 stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or
600 federal law; or

601 (iii) the respondent was entitled to notice, but notice was not given in accordance with the
602 standards of Section 78-45c-108 in the proceedings before the court that issued the order for which
603 enforcement is sought; or

604 (b) the child custody determination for which enforcement is sought was registered and
605 confirmed under Section 78-45c-305, but has been vacated, stayed, or modified by a court of a
606 state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

607 Section 31. Section **78-45c-309** is enacted to read:

608 **78-45c-309. Service of petition and order.**

609 Except as otherwise provided in Section 78-45c-311, the petition and order shall be served,
610 by any method authorized by the law of this state, upon respondent and any person who has
611 physical custody of the child.

612 Section 32. Section **78-45c-310** is enacted to read:

613 **78-45c-310. Hearing and order.**

614 (1) Unless the court enters a temporary emergency order pursuant to Section 78-45c-204,
615 upon a finding that a petitioner is entitled to the physical custody of the child immediately, the
616 court shall order the child delivered to the petitioner unless the respondent establishes that:

617 (a) the child custody determination has not been registered and confirmed under Section
618 78-45c-305, and that:

619 (i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

620 (ii) the child custody determination for which enforcement is sought has been vacated,
621 stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or
622 federal law; or

623 (iii) the respondent was entitled to notice, but notice was not given in accordance with the
624 standards of Section 78-45c-108 in the proceedings before the court that issued the order for which
625 enforcement is sought; or

626 (b) the child custody determination for which enforcement is sought was registered and
627 confirmed under Section 78-45c-305, but has been vacated, stayed, or modified by a court of a
628 state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

629 (2) The court shall award the fees, costs, and expenses authorized under Section
630 78-45c-312 and may grant additional relief, including a request for the assistance of law
631 enforcement officials, and set a further hearing to determine whether additional relief is
632 appropriate.

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

635 (4) A privilege against disclosure of communications between spouses and a defense of
636 immunity based on the relationship of husband and wife or parent and child may not be invoked
637 in a proceeding under this chapter.

638 Section 33. Section **78-45c-311** is enacted to read:

639 **78-45c-311. Writ to take physical custody of child.**

640 (1) Upon the filing of a petition seeking enforcement of a child custody determination, the
641 petitioner may file a verified application for the issuance of a writ of assistance to take physical
642 custody of the child if the child is likely to suffer serious imminent physical harm or removal from
643 this state.

644 (2) If the court, upon the testimony of the petitioner or other witness, finds that the child
645 is likely to suffer serious imminent physical harm or be imminently removed from this state, it may
646 issue a writ of assistance to take physical custody of the child. The petition shall be heard within
647 72 hours after the writ is executed. The writ shall include the statements required by Subsection

648 78-45c-308(2).

649 (3) A writ to take physical custody of a child shall:

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

652 (b) direct law enforcement officers to take physical custody of the child immediately; and

653 (c) provide for the placement of the child pending final relief.

654 (4) The respondent shall be served with the petition, writ, and order immediately after the
655 child is taken into physical custody.

656 (5) A writ of assistance to take physical custody of a child is enforceable throughout this
657 state. If the court finds on the basis of the testimony of the petitioner or other witness that a less
658 intrusive remedy is not effective, it may authorize law enforcement officers to enter private
659 property to take physical custody of the child. If required by the exigency of the case, the court
660 may authorize law enforcement officers to make a forcible entry at any hour.

661 (6) The court may impose conditions upon placement of a child to ensure the appearance
662 of the child and the child's custodian.

663 Section 34. Section **78-45c-312** is enacted to read:

664 **78-45c-312. Costs, fees, and expenses.**

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

670 (2) The court may not assess fees, costs, or expenses against a state except as otherwise
671 provided by law other than this chapter.

672 Section 35. Section **78-45c-313** is enacted to read:

673 **78-45c-313. Recognition and enforcement.**

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

677 Section 36. Section **78-45c-314** is enacted to read:

678 **78-45c-314. Appeals.**

679 An appeal may be taken from a final order in a proceeding under this chapter in accordance
680 with expedited appellate procedures in other civil cases. Unless the court enters a temporary
681 emergency order under Section 78-45c-204, the enforcing court may not stay an order enforcing
682 a child custody determination pending appeal.

683 Section 37. Section **78-45c-315** is enacted to read:

684 **78-45c-315. Role of prosecutor or attorney general.**

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

689 (a) an existing child custody determination;

690 (b) a request from a court in a pending child custody case;

691 (c) a reasonable belief that a criminal statute has been violated; or

692 (d) a reasonable belief that the child has been wrongfully removed or retained in violation

693 of the Hague Convention on the Civil Aspects of International Child Abduction.

694 (2) A prosecutor or attorney general acts on behalf of the court and may not represent any
695 party to a child custody determination.

696 Section 38. Section **78-45c-316** is enacted to read:

697 **78-45c-316. Role of law enforcement.**

698 At the request of a prosecutor or the Attorney General acting under Section 78-45c-315,
699 a law enforcement officer may take any lawful action reasonably necessary to locate a child or a
700 party and assist a prosecutor or Attorney General with responsibilities under Section 78-45c-315.

701 Section 39. Section **78-45c-317** is enacted to read:

702 **78-45c-317. Costs and expenses.**

703 If the respondent is not the prevailing party, the court may assess against the respondent
704 all direct expenses and costs incurred by the prosecutor or Attorney General and law enforcement
705 officers under Section 78-45c-315 or 78-45c-316.

706 Section 40. Section **78-45c-318** is enacted to read:

707 **78-45c-318. Transitional provision.**

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

710 the time the motion or other request was made.

711 Section 41. **Repealer.**

712 This act repeals:

713 Section **78-45c-1, Purposes -- Construction.**

714 Section **78-45c-2, Definitions.**

715 Section **78-45c-3, Bases of jurisdiction in this state.**

716 Section **78-45c-4, Persons to be notified and heard.**

717 Section **78-45c-5, Service of notice outside state -- Proof of service -- Submission to**
718 **jurisdiction.**

719 Section **78-45c-6, Proceedings pending elsewhere -- Jurisdiction not exercised --**
720 **Inquiry to other state -- Information exchange -- Stay of proceeding on notice of another**
721 **proceeding.**

722 Section **78-45c-7, Declining jurisdiction on finding of inconvenient forum -- Factors**
723 **in determination -- Communication with other court -- Awarding costs.**

724 Section **78-45c-8, Misconduct of petitioner as basis for refusing jurisdiction -- Notice**
725 **to another jurisdiction -- Ordering petitioner to appear in other court or to return child**
726 **--Awarding costs.**

727 Section **78-45c-9, Information as to custody of child and litigation concerning required**
728 **in pleadings -- Verification -- Continuing duty to inform court.**

729 Section **78-45c-10, Joinder of persons having custody or claiming custody or visitation**
730 **rights.**

731 Section **78-45c-11, Ordering party to appear -- Enforcement -- Out-of-state party --**
732 **Travel and other expenses.**

733 Section **78-45c-12, Parties bound by custody decree -- Conclusive unless modified.**

734 Section **78-45c-13, Recognition and enforcement of foreign decrees.**

735 Section **78-45c-14, Modification of foreign decree -- Prerequisites -- Factors**
736 **considered.**

737 Section **78-45c-15, Filing foreign decree -- Effect -- Enforcement -- Award of expenses.**

738 Section **78-45c-16, Registry maintained by clerk of court -- Documents entered.**

739 Section **78-45c-17, Certified copies of decrees furnished by clerk of court.**

740 Section **78-45c-18, Taking testimony of persons in other states.**

741 Section 78-45c-19, Request to court of another state to take evidence, to make studies
742 or to order appearance of party -- Payment of costs.

743 Section 78-45c-20, Taking evidence for use in court of another state -- Ordering
744 appearance in another state -- Costs -- Enforcement.

745 Section 78-45c-21, Preservation of records of proceedings -- Furnishing copies to other
746 state courts.

747 Section 78-45c-22, Requesting court records from another state.

748 Section 78-45c-23, Foreign countries -- Application of general policies.

749 Section 78-45c-24, Priority on court calendar.

750 Section 78-45c-25, Notices -- Orders to appear -- Manner of service.

751 Section 78-45c-26, Short title.

752 Section 42. Effective date.

753 This act takes effect on July 1, 2000.

Legislative Review Note
as of 12-8-99 12:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel