

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 494

Short Title: Uniform Child-Custody Act.

(Public)

Sponsors: Representatives Hackney; Barefoot and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"CHAPTER 50A

"UNIFORM CHILD-CUSTODY JURISDICTION ACT. CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.

"PART 1. GENERAL PROVISIONS.

"§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

1 **"§ 50A-102. Definitions.**

2 In this Article:

- 3 (1) 'Abandoned' means left without provision for reasonable and necessary
4 care or supervision.
- 5 (2) 'Child' means an individual who has not attained 18 years of age.
- 6 (3) 'Child-custody determination' means a judgment, decree, or other order
7 of a court providing for the legal custody, physical custody, or visitation
8 with respect to a child. The term includes a permanent, temporary,
9 initial, and modification order. The term does not include an order
10 relating to child support or other monetary obligation of an individual.
- 11 (4) 'Child-custody proceeding' means a proceeding in which legal custody,
12 physical custody, or visitation with respect to a child is an issue. The
13 term includes a proceeding for divorce, separation, neglect, abuse,
14 dependency, guardianship, paternity, termination of parental rights, and
15 protection from domestic violence in which the issue may appear. The
16 term does not include a proceeding involving juvenile delinquency,
17 contractual emancipation, or enforcement under Part 3 of this Article.
- 18 (5) 'Commencement' means the filing of the first pleading in a proceeding.
- 19 (6) 'Court' means an entity authorized under the law of a state to establish,
20 enforce, or modify a child-custody determination.
- 21 (7) 'Home state' means the state in which a child lived with a parent or a
22 person acting as a parent for at least six consecutive months
23 immediately before the commencement of a child-custody proceeding.
24 In the case of a child less than six months of age, the term means the
25 state in which the child lived from birth with any of the persons
26 mentioned. A period of temporary absence of any of the mentioned
27 persons is part of the period.
- 28 (8) 'Initial determination' means the first child-custody determination
29 concerning a particular child.
- 30 (9) 'Issuing court' means the court that makes a child-custody determination
31 for which enforcement is sought under this Article.
- 32 (10) 'Issuing state' means the state in which a child-custody determination is
33 made.
- 34 (11) 'Modification' means a child-custody determination that changes,
35 replaces, supersedes, or is otherwise made after a previous
36 determination concerning the same child, whether or not it is made by
37 the court that made the previous determination.
- 38 (12) 'Person' means an individual, corporation, business trust, estate, trust,
39 partnership, limited liability company, association, joint venture,
40 government, governmental subdivision, agency, or instrumentality;
41 public corporation; or any other legal or commercial entity.
- 42 (13) 'Person acting as a parent' means a person, other than a parent, who:

1 a. Has physical custody of the child or has had physical custody for
2 a period of six consecutive months, including any temporary
3 absence, within one year immediately before the commencement
4 of a child-custody proceeding; and

5 b. Has been awarded legal custody by a court or claims a right to
6 legal custody under the law of this State.

7 (14) 'Physical custody' means the physical care and supervision of a child.

8 (15) 'State' means a state of the United States, the District of Columbia,
9 Puerto Rico, the United States Virgin Islands, or any territory or insular
10 possession subject to the jurisdiction of the United States.

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

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

15 **"§ 50A-103. Proceedings governed by other law.**

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

18 **"§ 50A-104. Application to Indian tribes.**

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

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

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

27 **"§ 50A-105. International application of Article.**

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

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

33 (c) A court of this State need not apply this Article if the child-custody law of a
34 foreign country violates fundamental principles of human rights.

35 **"§ 50A-106. Effect of child-custody determination.**

36 A child-custody determination made by a court of this State that had jurisdiction
37 under this Article binds all persons who have been served in accordance with the laws of
38 this State or notified in accordance with G.S. 50A-108 or who have submitted to the
39 jurisdiction of the court and who have been given an opportunity to be heard. As to those
40 persons, the determination is conclusive as to all decided issues of law and fact except to
41 the extent the determination is modified.

42 **"§ 50A-107. Priority.**

1 If a question of existence or exercise of jurisdiction under this Article is raised in a
2 child-custody proceeding, the question, upon request of a party, must be given priority on
3 the calendar and handled expeditiously.

4 **"§ 50A-108. Notice to persons outside State.**

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

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

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

14 **"§ 50A-109. Appearance and limited immunity.**

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

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

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

27 **"§ 50A-110. Communication between courts.**

28 (a) A court of this State may communicate with a court in another state concerning
29 a proceeding arising under this Article.

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

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

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

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

42 **"§ 50A-111. Taking testimony in another state.**

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

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

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

15 **"§ 50A-112. Cooperation between courts; preservation of records.**

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

17 (1) Hold an evidentiary hearing;

18 (2) Order a person to produce or give evidence pursuant to procedures of
19 that state;

20 (3) Order that an evaluation be made with respect to the custody of a child
21 involved in a pending proceeding;

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

25 (5) Order a party to a child-custody proceeding or any person having
26 physical custody of the child to appear in the proceeding with or without
27 the child.

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

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

32 (d) A court of this State shall preserve the pleadings, orders, decrees, records of
33 hearings, evaluations, and other pertinent records with respect to a child-custody
34 proceeding until the child attains 18 years of age. Upon appropriate request by a court or
35 law enforcement official of another state, the court shall forward a certified copy of those
36 records.

37 **"PART 2. JURISDICTION.**

38 **"§ 50A-201. Initial child-custody jurisdiction.**

39 (a) Except as otherwise provided in G.S. 50A-204, a court of this State has
40 jurisdiction to make an initial child-custody determination only if:

41 (1) This State is the home state of the child on the date of the
42 commencement of the proceeding, or was the home state of the child
43 within six months before the commencement of the proceeding, and the

1 child is absent from this State but a parent or person acting as a parent
2 continues to live in this State;

3 (2) A court of another state does not have jurisdiction under subdivision (1),
4 or a court of the home state of the child has declined to exercise
5 jurisdiction on the ground that this State is the more appropriate forum
6 under G.S. 50A-207 or G.S. 50A-208, and:

7 a. The child and the child's parents, or the child and at least one
8 parent or a person acting as a parent, have a significant
9 connection with this State other than mere physical presence; and
10 b. Substantial evidence is available in this State concerning the
11 child's care, protection, training, and personal relationships;

12 (3) All courts having jurisdiction under subdivision (1) or (2) have declined
13 to exercise jurisdiction on the ground that a court of this State is the
14 more appropriate forum to determine the custody of the child under G.S.
15 50A-207 or G.S. 50A-208; or

16 (4) No court of any other state would have jurisdiction under the criteria
17 specified in subdivision (1), (2), or (3).

18 (b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody
19 determination by a court of this State.

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

22 **"§ 50A-202. Exclusive, continuing jurisdiction.**

23 (a) Except as otherwise provided in G.S. 50A-204, a court of this State which has
24 made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has
25 exclusive, continuing jurisdiction over the determination until:

26 (1) A court of this State determines that neither the child, the child's
27 parents, and any person acting as a parent do not have a significant
28 connection with this State and that substantial evidence is no longer
29 available in this State concerning the child's care, protection, training,
30 and personal relationships; or

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

34 (b) A court of this State which has made a child-custody determination and does
35 not have exclusive, continuing jurisdiction under this section may modify that
36 determination only if it has jurisdiction to make an initial determination under G.S. 50A-
37 201.

38 **"§ 50A-203. Jurisdiction to modify determination.**

39 Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a
40 child-custody determination made by a court of another state unless a court of this State
41 has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-
42 201(a)(2) and:

1 (1) The court of the other state determines it no longer has exclusive,
2 continuing jurisdiction under G.S. 50A-202 or that a court of this State
3 would be a more convenient forum under G.S. 50A-207; or

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

7 **"§ 50A-204. Temporary emergency jurisdiction.**

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

12 (b) If there is no previous child-custody determination that is entitled to be
13 enforced under this Article and a child-custody proceeding has not been commenced in a
14 court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-
15 custody determination made under this section remains in effect until an order is obtained
16 from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If
17 a child-custody proceeding has not been or is not commenced in a court of a state having
18 jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination
19 made under this section becomes a final determination if it so provides, and this State
20 becomes the home state of the child.

21 (c) If there is a previous child-custody determination that is entitled to be enforced
22 under this Article, or a child-custody proceeding has been commenced in a court of a
23 state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by
24 a court of this State under this section must specify in the order a period that the court
25 considers adequate to allow the person seeking an order to obtain an order from the state
26 having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this
27 State remains in effect until an order is obtained from the other state within the period
28 specified or the period expires.

29 (d) A court of this State which has been asked to make a child-custody
30 determination under this section, upon being informed that a child-custody proceeding
31 has been commenced in, or a child-custody determination has been made by, a court of a
32 state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately
33 communicate with the other court. A court of this State which is exercising jurisdiction
34 pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-
35 custody proceeding has been commenced in, or a child-custody determination has been
36 made by, a court of another state under a statute similar to this section shall immediately
37 communicate with the court of that state to resolve the emergency, protect the safety of
38 the parties and the child, and determine a period for the duration of the temporary order.

39 **"§ 50A-205. Notice; opportunity to be heard; joinder.**

40 (a) Before a child-custody determination is made under this Article, notice and an
41 opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given
42 to all persons entitled to notice under the law of this State as in child-custody proceedings

1 between residents of this State, any parent whose parental rights have not been previously
2 terminated, and any person having physical custody of the child.

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

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

8 **"§ 50A-206. Simultaneous proceedings.**

9 (a) Except as otherwise provided in G.S. 50A-204, a court of this State may not
10 exercise its jurisdiction under this Part if, at the time of the commencement of the
11 proceeding, a proceeding concerning the custody of the child has been commenced in a
12 court of another state having jurisdiction substantially in conformity with this Article,
13 unless the proceeding has been terminated or is stayed by the court of the other state
14 because a court of this State is a more convenient forum under G.S. 50A-207.

15 (b) Except as otherwise provided in G.S. 50A-204, a court of this State, before
16 hearing a child-custody proceeding, shall examine the court documents and other
17 information supplied by the parties pursuant to G.S. 50A-209. If the court determines
18 that a child-custody proceeding has been commenced in a court in another state having
19 jurisdiction substantially in accordance with this Article, the court of this State shall stay
20 its proceeding and communicate with the court of the other state. If the court of the state
21 having jurisdiction substantially in accordance with this Article does not determine that
22 the court of this State is a more appropriate forum, the court of this State shall dismiss the
23 proceeding.

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

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

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

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

34 **"§ 50A-207. Inconvenient forum.**

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

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

- 1 (1) Whether domestic violence has occurred and is likely to continue in the
2 future and which state could best protect the parties and the child;
- 3 (2) The length of time the child has resided outside this State;
- 4 (3) The distance between the court in this State and the court in the state
5 that would assume jurisdiction;
- 6 (4) The relative financial circumstances of the parties;
- 7 (5) Any agreement of the parties as to which state should assume
8 jurisdiction;
- 9 (6) The nature and location of the evidence required to resolve the pending
10 litigation, including testimony of the child;
- 11 (7) The ability of the court of each state to decide the issue expeditiously
12 and the procedures necessary to present the evidence; and
- 13 (8) The familiarity of the court of each state with the facts and issues in the
14 pending litigation.

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

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

22 **"§ 50A-208. Jurisdiction declined by reason of conduct.**

23 (a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a
24 court of this State has jurisdiction under this Article because a person seeking to invoke
25 its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its
26 jurisdiction unless:

- 27 (1) The parents and all persons acting as parents have acquiesced in the
28 exercise of jurisdiction;
- 29 (2) A court of the state otherwise having jurisdiction under G.S. 50A-201
30 through G.S. 50A-203 determines that this State is a more appropriate
31 forum under G.S. 50A-207; or
- 32 (3) No court of any other state would have jurisdiction under the criteria
33 specified in G.S. 50A-201 through G.S. 50A-203.

34 (b) If a court of this State declines to exercise its jurisdiction pursuant to
35 subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and
36 prevent a repetition of the unjustifiable conduct, including staying the proceeding until a
37 child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-
38 201 through G.S. 50A-203.

39 (c) If a court dismisses a petition or stays a proceeding because it declines to
40 exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking
41 to invoke its jurisdiction necessary and reasonable expenses including costs,
42 communication expenses, attorneys' fees, investigative fees, expenses for witnesses,
43 travel expenses, and child care during the course of the proceedings, unless the party

1 from whom fees are sought establishes that the assessment would be clearly
2 inappropriate. The court may not assess fees, costs, or expenses against this State unless
3 authorized by law other than this Article.

4 **"§ 50A-209. Information to be submitted to court.**

5 (a) In a child-custody proceeding, each party, in its first pleading or in an attached
6 affidavit, shall give information, if reasonably ascertainable, under oath as to the child's
7 present address or whereabouts, the places where the child has lived during the last five
8 years, and the names and present addresses of the persons with whom the child has lived
9 during that period. The pleading or affidavit must state whether the party:

10 (1) Has participated, as a party or witness or in any other capacity, in any
11 other proceeding concerning the custody of or visitation with the child
12 and, if so, the pleading or affidavit shall identify the court, the case
13 number, and the date of the child-custody determination, if any;

14 (2) Knows of any proceeding that could affect the current proceeding,
15 including proceedings for enforcement and proceedings relating to
16 domestic violence, protective orders, termination of parental rights, and
17 adoptions and, if so, the pleading or affidavit shall identify the court, the
18 case number, and the nature of the proceeding; and

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

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

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

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

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

39 **"§ 50A-210. Appearance of parties and child.**

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

1 (b) If a party to a child-custody proceeding whose presence is desired by the court
2 is outside this State, the court may order that a notice given pursuant to G.S. 50A-108
3 include a statement directing the party to appear in person with or without the child and
4 informing the party that failure to appear may result in a decision adverse to the party.

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

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

11 **"PART 3. ENFORCEMENT.**

12 **"§ 50A-301. Definitions.**

13 In this Part:

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

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

22 **"§ 50A-302. Enforcement under Hague Convention.**

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

26 **"§ 50A-303. Duty to enforce.**

27 (a) A court of this State shall recognize and enforce a child-custody determination
28 of a court of another state if the latter court exercised jurisdiction in substantial
29 conformity with this Article or the determination was made under factual circumstances
30 meeting the jurisdictional standards of this Article, and the determination has not been
31 modified in accordance with this Article.

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

36 **"§ 50A-304. Temporary visitation.**

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

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

40 (2) The visitation provisions of a child-custody determination of another
41 state that does not provide for a specific visitation schedule.

42 (b) If a court of this State makes an order under subsection (a)(2) of this section, it
43 shall specify in the order a period that it considers adequate to allow the petitioner to

1 obtain an order from a court having jurisdiction under the criteria specified in Part 2. The
2 order remains in effect until an order is obtained from the other court or the period
3 expires.

4 **"§ 50A-305. Registration of child-custody determination.**

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

8 (1) A letter or other document requesting registration;

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

13 (3) Except as otherwise provided in G.S. 50A-209, the name and address of
14 the person seeking registration and any parent or person acting as a
15 parent who has been awarded custody or visitation in the child-custody
16 determination sought to be registered.

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

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

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

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

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

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

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

34 (d) A person seeking to contest the validity of a registered order must request a
35 hearing within 20 days after service of the notice. At that hearing, the court shall confirm
36 the registered order unless the person contesting registration establishes that:

37 (1) The issuing court did not have jurisdiction under Part 2;

38 (2) The child-custody determination sought to be registered has been
39 vacated, stayed, or modified by a court having jurisdiction to do so
40 under Part 2; or

41 (3) The person contesting registration was entitled to notice, but notice was
42 not given in accordance with the standards of G.S. 50A-108 in the

1 proceedings before the court that issued the order for which registration
2 is sought.

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

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

9 **"§ 50A-306. Enforcement of registered determination.**

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

13 (b) A court of this State shall recognize and enforce, but may not modify, except in
14 accordance with Part 2, a registered child-custody determination of a court of another
15 state.

16 **"§ 50A-307. Simultaneous proceedings.**

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

23 **"§ 50A-308. Expedited enforcement of child-custody determination.**

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

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

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

31 (2) Whether the determination for which enforcement is sought has been
32 vacated, stayed, or modified by a court whose decision must be enforced
33 under this Article and, if so, identify the court, the case number, and the
34 nature of the proceeding;

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

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

40 (5) Whether relief in addition to the immediate physical custody of the child
41 and attorneys' fees is sought, including a request for assistance from law
42 enforcement officials and, if so, the relief sought; and

1 (6) If the child-custody determination has been registered and confirmed
2 under G.S. 50A-305, the date and place of registration.

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

9 (d) An order issued under subsection (c) must state the time and place of the
10 hearing and advise the respondent that at the hearing the court will order that the
11 petitioner may take immediate physical custody of the child and the payment of fees,
12 costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine
13 whether further relief is appropriate, unless the respondent appears and establishes that:

14 (1) The child-custody determination has not been registered and confirmed
15 under G.S. 50A-305 and that:

- 16 a. The issuing court did not have jurisdiction under Part 2;
17 b. The child-custody determination for which enforcement is sought
18 has been vacated, stayed, or modified by a court having
19 jurisdiction to do so under Part 2;
20 c. The respondent was entitled to notice, but notice was not given in
21 accordance with the standards of G.S. 50A-108 in the
22 proceedings before the court that issued the order for which
23 enforcement is sought; or

24 (2) The child-custody determination for which enforcement is sought was
25 registered and confirmed under G.S. 50A-304, but has been vacated,
26 stayed, or modified by a court of a state having jurisdiction to do so
27 under Part 2.

28 **"§ 50A-309. Service of petition and order.**

29 Except as otherwise provided in G.S. 50A-311, the petition and order must be served,
30 by any method authorized by the law of this State, upon respondent and any person who
31 has physical custody of the child.

32 **"§ 50A-310. Hearing and order.**

33 (a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204
34 upon a finding that a petitioner is entitled to immediate physical custody of the child, the
35 court shall order that the petitioner may take immediate physical custody of the child
36 unless the respondent establishes that:

37 (1) The child-custody determination has not been registered and confirmed
38 under G.S. 50A-305 and that:

- 39 a. The issuing court did not have jurisdiction under Part 2;
40 b. The child-custody determination for which enforcement is sought
41 has been vacated, stayed, or modified by a court of a state having
42 jurisdiction to do so under Part 2; or

1 c. The respondent was entitled to notice, but notice was not given in
2 accordance with the standards of G.S. 50A-108 in the
3 proceedings before the court that issued the order for which
4 enforcement is sought; or

5 (2) The child-custody determination for which enforcement is sought was
6 registered and confirmed under G.S. 50A-305 but has been vacated,
7 stayed, or modified by a court of a state having jurisdiction to do so
8 under Part 2.

9 (b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-
10 312 and may grant additional relief, including a request for the assistance of law
11 enforcement officials, and set a further hearing to determine whether additional relief is
12 appropriate.

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

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

18 **"§ 50A-311. Warrant to take physical custody of child.**

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

23 (b) If the court, upon the testimony of the petitioner or other witness, finds that the
24 child is imminently likely to suffer serious physical harm or be removed from this State,
25 it may issue a warrant to take physical custody of the child. The petition must be heard
26 on the next judicial day after the warrant is executed unless that date is impossible. In
27 that event, the court shall hold the hearing on the first judicial day possible. The
28 application for the warrant must include the statements required by G.S. 50A-308(b).

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

30 (1) Recite the facts upon which a conclusion of imminent serious physical
31 harm or removal from the jurisdiction is based;

32 (2) Direct law enforcement officers to take physical custody of the child
33 immediately; and

34 (3) Provide for the placement of the child pending final relief.

35 (d) The respondent must be served with the petition, warrant, and order
36 immediately after the child is taken into physical custody.

37 (e) A warrant to take physical custody of a child is enforceable throughout this
38 State. If the court finds on the basis of the testimony of the petitioner or other witness
39 that a less intrusive remedy is not effective, it may authorize law enforcement officers to
40 enter private property to take physical custody of the child. If required by exigent
41 circumstances of the case, the court may authorize law enforcement officers to make a
42 forcible entry at any hour.

1 (f) The court may impose conditions upon placement of a child to ensure the
2 appearance of the child and the child's custodian.

3 **"§ 50A-312. Costs, fees, and expenses.**

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

10 (b) The court may not assess fees, costs, or expenses against a state unless
11 authorized by law other than this Article.

12 **"§ 50A-313. Recognition and enforcement.**

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

17 **"§ 50A-314. Appeals.**

18 An appeal may be taken from a final order in a proceeding under this Part in
19 accordance with expedited appellate procedures in other civil cases. Unless the court
20 enters a temporary emergency order under G.S. 50A-204, the enforcing court may not
21 stay an order enforcing a child-custody determination pending appeal.

22 **"§ 50A-315. Role of prosecutor or public official.**

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

28 (1) An existing child-custody determination;

29 (2) A request to do so from a court in a pending child-custody proceeding;

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

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

34 (b) A prosecutor or appropriate public official acting under this section acts on
35 behalf of the court and may not represent any party.

36 **"§ 50A-316. Role of law enforcement.**

37 At the request of a prosecutor or other appropriate public official acting under G.S.
38 50A-315, a law enforcement officer may take any lawful action reasonably necessary to
39 locate a child or a party and assist a prosecutor or appropriate public official with
40 responsibilities under G.S. 50A-315.

41 **"§ 50A-317. Costs and expenses.**

1 If the respondent is not the prevailing party, the court may assess against the
2 respondent all direct expenses and costs incurred by the prosecutor or other appropriate
3 public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316."

4 Section 4. G.S. 1C-1702(1) reads as rewritten:

5 "(1) 'Foreign Judgment' means any judgment, decree, or order of a court of
6 the United States or a court of any other state which is entitled to full
7 faith and credit in this State, except a '~~support order,~~' child-support
8 order', as defined in G.S. ~~52A-3(14)~~ 52C-1-101 or a 'custody decree,' as defined in G.S. ~~50A-~~
9 ~~2(4)~~ 50A-102. ~~(The Uniform Child Custody Jurisdiction Act)."~~

10 Section 5. G.S. 7B-1100(4), as enacted by Section 6 of S.L. 1998-202, reads
11 as rewritten:

12 "(4) This Article shall not be used to circumvent the provisions of Chapter
13 50A of the General Statutes, the ~~Uniform Child Custody Jurisdiction Act.~~
14 Child-Custody Jurisdiction and Enforcement Act."

15 Section 6. G.S. 7B-1101, as enacted by Section 6 of S.L. 1998-202, reads as
16 rewritten:

17 "**§ 7B-1101. Jurisdiction.**

18 The court shall have exclusive original jurisdiction to hear and determine any petition
19 relating to termination of parental rights to any juvenile who resides in, is found in, or is
20 in the legal or actual custody of a county department of social services or licensed child-
21 placing agency in the district at the time of filing of the petition. The court shall have
22 jurisdiction to terminate the parental rights of any parent irrespective of the age of the
23 parent. The parent has the right to counsel and to appointed counsel in cases of indigency
24 unless the parent waives the right. The fees of appointed counsel shall be borne by the
25 Administrative Office of the Courts. In addition to the right to appointed counsel set forth
26 above, a guardian ad litem shall be appointed in accordance with the provisions of G.S.
27 1A-1, Rule 17, to represent a parent in the following cases:

28 (1) Where it is alleged that a parent's rights should be terminated pursuant
29 to G.S. 7B-1110(6); or

30 (2) Where the parent is under the age of 18 years.

31 The fees of the guardian ad litem shall be borne by the Administrative Office of the
32 Courts when the court finds that the respondent is indigent. In other cases the fees of the
33 court-appointed guardian ad litem shall be a proper charge against the respondent if the
34 respondent does not secure private legal counsel. Provided, that before exercising
35 jurisdiction under this Article, the court shall find that it would have jurisdiction to make
36 a child-custody determination under the provisions of G.S. ~~50A-3~~ 50A-201, 50A-203, or
37 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for
38 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes
39 generally."

40 Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads
41 as rewritten:
42

1 "(7) That the petition has not been filed to circumvent the provisions of
2 Article 2 of Chapter 50A of the General Statutes, the Uniform Child
3 Custody Jurisdiction Act. Child-Custody Jurisdiction and Enforcement
4 Act."

5 Section 8. G.S. 48-2-100(c) reads as rewritten:

6 "(c) The courts of this State shall not exercise jurisdiction under this Chapter if at
7 the time the petition for adoption is filed, a court of any other state is exercising
8 jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act,
9 Uniform Child-Custody Jurisdiction and Enforcement Act, G.S. 50A-1, et seq. Article 2 of
10 Chapter 50A of the General Statutes."

11 Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

12 "(4) Any information required by the Uniform Child Custody Jurisdiction Act,
13 Uniform Child Custody Jurisdiction and Enforcement Act, G.S. 50A-1,
14 et seq. Article 2 of Chapter 50A of the General Statutes, which is known
15 to the petitioner;".

16 Section 10. G.S. 50-11.2 reads as rewritten:

17 "**§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and**
18 **maintenance of minor children.**

19 Where the court has the requisite jurisdiction and upon proper pleadings and proper
20 and due notice to all interested parties the judgment in a divorce action may contain such
21 provisions respecting care, custody, tuition and maintenance of the minor children of the
22 marriage as the court may adjudge; and from time to time such provisions may be
23 modified upon due notice and hearing and a showing of a substantial change in condition;
24 and if there be no minor children, the judgment may so state. The jurisdictional
25 requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a
26 custody decree."

27 Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

28 "(2) The courts of this State shall have jurisdiction to enter orders providing
29 for the custody of a minor child under the provisions of G.S. ~~50A-3.~~
30 50A-201, 50A-202, and 50A-204."

31 Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

32 "(1) Service of process in civil actions for the custody of minor children
33 shall be as in other civil actions. Motions for support of a minor child in
34 a pending action may be made on 10 days notice to the other parties and
35 compliance with G.S. 50-13.5(e). Motions for custody of a minor child
36 in a pending action may be made on 10 days notice to the other parties
37 and after compliance with G.S. ~~50A-4.~~ 50A-205."

38 Section 13. G.S. 50-13.7 reads as rewritten:

39 "**§ 50-13.7. Modification of order for child support or custody.**

40 (a) An order of a court of this State for support of a minor child may be modified
41 or vacated at any time, upon motion in the cause and a showing of changed circumstances
42 by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject
43 to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of

1 this State for custody of a minor child may be modified or vacated at any time, upon
2 motion in the cause and a showing of changed circumstances by either party or anyone
3 interested.

4 (b) When an order for support of a minor child has been entered by a court of
5 another state, a court of this State may, upon gaining jurisdiction, and upon a showing of
6 changed circumstances, enter a new order for support which modifies or supersedes such
7 order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of
8 G.S. ~~50A-3~~, 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child
9 has been entered by a court of another state, a court of this State may, upon gaining
10 jurisdiction, and a showing of changed circumstances, enter a new order for custody
11 which modifies or supersedes such order for custody."

12 Section 14. The Revisor of Statutes shall cause to be printed along with this
13 act all relevant portions of the official comments to the Uniform Child-Custody
14 Jurisdiction and Enforcement Act as the Revisor deems appropriate.

15 Section 15. This act becomes effective October 1, 1999, and applies to causes
16 of action arising on or after that date.