

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

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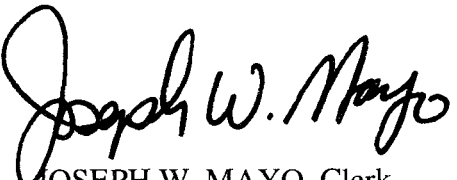
No. 432

H.P. 316

House of Representatives, January 14, 1999

An Act to Adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden.
Cosponsored by Representative MUSE of South Portland, Senators: BENOIT of Franklin,
LONGLEY of Waldo.

Be it enacted by the People of the State of Maine as follows:

2

Uniform Comment

4

PREFATORY NOTE

6

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

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

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

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

36

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

44

46 In 1980, the federal government enacted the Parental
48 Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address
the interstate custody jurisdictional problems that continued to
50 exist after the adoption of the UCCJA. The PKPA mandates that
state authorities give full faith and credit to other states'
custody determinations, so long as those determinations were made

1 in conformity with the provisions of the PKPA. The PKPA
2 provisions regarding bases for jurisdiction, restrictions on
3 modifications, preclusion of simultaneous proceedings, and notice
4 requirements are similar to those in the UCCJA. There are,
5 however, some significant differences. For example, the PKPA
6 authorizes continuing exclusive jurisdiction in the original
7 decree State so long as one parent or the child remains there and
8 that State has continuing jurisdiction under its own law. The
9 UCCJA did not directly address this issue. To further complicate
10 the process, the PKPA partially incorporates state UCCJA law in
11 its language. The relationship between these two statutes became
12 "technical enough to delight a medieval property lawyer." Homer
13 H. Clark, Domestic Relations § 12.5 at 494 (2d ed. 1988).

14
15 As documented in an extensive study by the American Bar
16 Association's Center on Children and the Law, Obstacles to the
17 Recovery and Return of Parentally Abducted Children (1993)
18 (Obstacles Study), inconsistency of interpretation of the UCCJA
19 and the technicalities of applying the PKPA, resulted in a loss
20 of uniformity among the States. The Obstacles Study suggested a
21 number of amendments which would eliminate the inconsistent state
22 interpretations and harmonize the UCCJA with the PKPA.

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

26
27 **1. Home state priority.** The PKPA prioritizes "home state"
28 jurisdiction by requiring that full faith and credit cannot be
29 given to a child custody determination by a State that exercises
30 initial jurisdiction as a "significant connection state" when
31 there is a "home State." Initial custody determinations based on
32 "significant connections" are not entitled to PKPA enforcement
33 unless there is no home State. The UCCJA, however, specifically
34 authorizes four independent bases of jurisdiction without
35 prioritization. Under the UCCJA, a significant connection
36 custody determination may have to be enforced even if it would be
37 denied enforcement under the PKPA. The UCCJEA prioritizes home
38 state jurisdiction in Section 201 [Me. cite section 1745].

39
40 **2. Clarification of emergency jurisdiction.** There are
41 several problems with the current emergency jurisdiction
42 provision of the UCCJA § 3(a)(3). First, the language of the
43 UCCJA does not specify that emergency jurisdiction may be
44 exercised only to protect the child on a temporary basis until
45 the court with appropriate jurisdiction issues a permanent
46 order. Some courts have interpreted the UCCJA language to so
47 provide. Other courts, however, have held that there is no time
48 limit on a custody determination based on emergency

jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 204 [Me. cite section 1748] which addresses these issues.

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

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 110, 202, and 206 [Me. cite sections 1740, 1746, 1750].

2 preventing adverse modification in a new forum all present
3 problems.

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

12 As the Obstacles Study pointed out, the lack of specificity
13 in enforcement procedures has resulted in the law of enforcement
14 evolving differently in different jurisdictions. In one State,
15 it might be common practice to file a Motion to Enforce or a
16 Motion to Grant Full Faith and Credit to initiate an enforcement
17 proceeding. In another State, a Writ of Habeas Corpus or a
18 Citation for Contempt might be commonly used. In some States,
19 Mandamus and Prohibition also may be utilized. All of these
20 enforcement procedures differ from jurisdiction to jurisdiction.
21 While many States tend to limit considerations in enforcement
22 proceedings to whether the court which issued the decree had
23 jurisdiction to make the custody determination, others broaden
24 the considerations to scrutiny of whether enforcement would be in
25 the best interests of the child.

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

38 The provisions of Article 3 [Me. cite subchapter III]
39 provide several remedies for the enforcement of a custody
40 determination. First, there is a simple procedure for
41 registering a custody determination in another State. This will
42 allow a party to know in advance whether that State will
43 recognize the party's custody determination. This is extremely
44 important in estimating the risk of the child's non-return when
45 the child is sent on visitation. The provision should prove to
46 be very useful in international custody cases.

48 Second, the Act provides a swift remedy along the lines of
49 habeas corpus. Time is extremely important in visitation and
50

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

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

22 Third, the enforcing court will be able to utilize an
extraordinary remedy. If the enforcing court is concerned that
24 the parent, who has physical custody of the child, will flee or
harm the child, a warrant to take physical possession of the
26 child is available.

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

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

46 This Act does not authorize the public authorities to be
involved in the action leading up to the making of the custody
48 determination, except when requested by the court, when there is
a violation of the Hague Convention on the Civil Aspects of
50 International Child Abduction, or when the person holding the

2 child has violated a criminal statute. The Act does not mandate
3 that public authorities be involved in all cases. Not all
4 States, or local authorities, have the funds necessary for an
5 effective custody and visitation enforcement program.

6 **Sec. 1. 19-A MRSA §1657, sub-§3**, as enacted by PL 1995, c.
7 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

8
9 **3. Uniform Child Custody Jurisdiction and Enforcement Act.**
10 The jurisdiction granted by this section to make or alter an
11 order concerning parental rights and responsibilities with
12 respect to a minor child is limited by the Uniform Child Custody
13 Jurisdiction and Enforcement Act, if another state may have
14 jurisdiction as provided in that Act.

15 **Sec. 2. 19-A MRSA c. 57**, as enacted by PL 1995, c. 694, Pt. B,
16 §2 and affected by Pt. E, §2, is repealed.

17
18 **Sec. 3. 19-A MRSA c. 58** is enacted to read:

19
20 **CHAPTER 58**
21 **UNIFORM CHILD CUSTODY JURISDICTION**
22 **AND ENFORCEMENT ACT**

23
24 **SUBCHAPTER 1**
25 **GENERAL PROVISIONS**

26
27 **§1731. Short title**

28
29 This chapter may be cited as the Uniform Child Custody
30 Jurisdiction and Enforcement Act.

31
32 **Uniform Comment**

33
34 Section 1 of the UCCJA was a statement of the purposes of
35 the Act. Although extensively cited by courts, it was eliminated
36 because Uniform Acts no longer contain such a section.
37 Nonetheless, this Act should be interpreted according to its
38 purposes which are to:

39
40 (1) Avoid jurisdictional competition and conflict with
41 courts of other States in matters of child custody which have in
42 the past resulted in the shifting of children from State to State
43 with harmful effects on their well-being;

44
45 (2) Promote cooperation with the courts of other States to
46 the end that a custody decree is rendered in that State which can
47 best decide the case in the interest of the child;

2 (3) Discourage the use of the interstate system for
continuing controversies over child custody;

4 (4) Deter abductions of children;

6 (5) Avoid relitigation of custody decisions of other States
in this State;

8 (6) Facilitate the enforcement of custody decrees of other
10 States;

12 **§1732. Definitions**

14 As used in this chapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

18 1. Abandoned. "Abandoned" means left without provision for
reasonable and necessary care or supervision.

20 2. Child. "Child" means an individual who has not attained
22 18 years of age.

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

30 4. Child custody proceeding. "Child custody proceeding"
32 means a proceeding in which legal custody, physical custody or
visitation with respect to a child is an issue. The term
34 includes a proceeding for divorce, separation, neglect, abuse,
dependency, guardianship, paternity, termination of parental
36 rights and protection from domestic violence, in which the issue
may appear. The term does not include a proceeding involving
38 juvenile delinquency, contractual emancipation or enforcement
under subchapter III.

40 5. Commencement. "Commencement" means the filing of the
42 first pleading in a proceeding.

44 6. Court. "Court" means an entity authorized under the law
of a State to establish, enforce or modify a child custody
46 determination.

48 7. Home state. "Home state" means the state in which a
child lived with a parent or a person acting as a parent for at
50 least 6 consecutive months immediately before the commencement of

2 a child custody proceeding. In the case of a child less than 6
4 months of age, the term means the state in which the child lived
6 from birth with any of the persons mentioned. A period of
8 temporary absence of any of the mentioned persons is part of the
10 period.

12 8. Initial determination. "Initial determination" means
14 the first child custody determination concerning a particular
16 child.

18 9. Issuing court. "Issuing court" means the court that
20 makes a child custody determination for which enforcement is
22 sought under this chapter.

24 10. Issuing state. "Issuing state" means the state in
26 which a child custody determination is made.

28 11. Modification. "Modification" means a child custody
30 determination that changes, replaces, supersedes or is otherwise
32 made after a previous determination concerning the same child,
34 whether or not it is made by the court that made the previous
36 determination.

38 12. Person. "Person" means an individual, corporation,
40 business trust, estate, trust, partnership, limited liability
42 company, association, joint venture, government, governmental
44 subdivision, agency or instrumentality, public corporation, or
46 any other legal or commercial entity.

48 13. Person acting as a parent. "Person acting as a parent"
means a person, other than a parent, who:

A. Has physical custody of the child or has had physical
custody for a period of 6 consecutive months, including any
temporary absence, within one year immediately before the
commencement of a child custody proceeding; and

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

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

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

2 16. Tribe. "Tribe" means an Indian tribe or band or an
3 Alaskan Native village recognized by federal law or formally
4 acknowledged by a state.

6 17. Warrant. "Warrant" means an order issued by a court
7 authorizing law enforcement officers to take physical custody of
8 a child.

10 Uniform Comment

12 The UCCJA did not contain a definition of "child." The
13 definition here is taken from the PKPA.

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

20 The definition of "child-custody proceeding" has been
21 expanded from the comparable definition in the UCCJA. These
22 listed proceedings have generally been determined to be the type
23 of proceeding to which the UCCJA and PKPA are applicable. The
24 list of examples removes any controversy about the types of
25 proceedings where a custody determination can occur. Proceedings
26 that affect access to the child are subject to this Act. The
27 inclusion of proceedings related to protection from domestic
28 violence is necessary because in some States domestic violence
29 proceedings may affect custody of and visitation with a child.
30 Juvenile delinquency or proceedings to confer contractual rights
31 are not "custody proceedings" because they do not relate to civil
32 aspects of access to a child. While a determination of paternity
33 is covered under the Uniform Interstate Family Support Act, the
34 custody and visitation aspects of paternity cases are custody
35 proceedings. Cases involving the Hague Convention on the Civil
36 Aspects of International Child Abduction have not been included
37 at this point because custody of the child is not determined in a
38 proceeding under the International Child Abductions Remedies
39 Act. Those proceedings are specially included in the Article 3
40 [Me. cite subchapter III] enforcement process.

42 "Commencement" has been included in the definitions as a
43 replacement for the term "pending" found in the UCCJA. Its
44 inclusion simplifies some of the simultaneous proceedings
45 provisions of this Act.

46 The definition of "home State" has been reworded slightly.
48 No substantive change is intended from the UCCJA.

2 The term "issuing State" is borrowed from UIFSA. In UIFSA,
it refers to the court that issued the support or parentage
4 order. Here, it refers to the State, or the court, which made
the custody determination that is sought to be enforced. It is
used primarily in Article 3 [Me. cite subchapter III].

6
8 The term "person" has been added to ensure that the
provisions of this Act apply when the State is the moving party
10 in a custody proceeding or has legal custody of a child. The
definition of "person" is the one that is mandated for all
Uniform Acts.

12
14 The term "person acting as a parent" has been slightly
redefined. It has been broadened from the definition in the
16 UCCJA to include a person who has acted as a parent for a
significant period of time prior to the filing of the custody
18 proceeding as well as a person who currently has physical custody
of the child. In addition, a person acting as a parent must
20 either have legal custody or claim a right to legal custody under
the law of this State. The reference to the law of this State
22 means that a court determines the issue of whether someone is a
"person acting as a parent" under its own law. This reaffirms
24 the traditional view that a court in a child custody case applies
its own substantive law. The court does not have to undertake a
26 choice-of-law analysis to determine whether the individual who is
claiming to be a person acting as a parent has standing to seek
custody of the child.

28
30 The definition of "tribe" is the one mandated for use in
Uniform Acts. Should a State choose to apply this Act to tribal
32 adjudications, this definition should be enacted as well as the
entirety of Section 104 [Me. cite section 1734].

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

44 **§1733. Proceedings governed by other law**

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

50 **Uniform Comment**

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

10 However, there are likely to be a number of instances where
it will be necessary to apply this Act in an adoption
12 proceeding. For example, if a State adopts the UAA then Section
3101 of the Act specifically refers in places to the Uniform
14 Child Custody Jurisdiction Act which will become a reference to
this Act. Second, the UAA requires that if an adoption is denied
16 or set aside, the court is to determine the child's custody. UAA
§ 3704. Those custody proceedings would be subject to this Act.
18 See Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's
Ruminations*, 30 *Fam.L.Q.* 345 (1996).

20 Children that are the subject of interstate placements for
adoption or foster care are governed by the Interstate Compact on
22 the Placement of Children (ICPC). The UAA § 2107 provides that
the provisions of the compact, although not jurisdictional,
24 supply the governing rules for all children who are subject to
it. As stated in the Comments to that section: "Once a court
26 exercises jurisdiction, the ICPC helps determine the legality of
an interstate placement." For a discussion of the relationship
28 between the UCCJA and the ICPC see *J.D.S. v. Franks*, 893 P.2d 732
(Ariz. 1995).

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

38 §1734. Application to Indian tribes

40 1. Proceedings governed by Indian Child Welfare Act. A
42 child custody proceeding that pertains to an Indian child as
defined in the Indian Child Welfare Act, 25 United States Code,
44 Section 1901 et seq., is not subject to this chapter to the
extent that it is governed by the Indian Child Welfare Act.

46 2. Tribe treated as state. A court of this State shall
48 treat a tribe as if it were a state of the United States for the
purpose of applying this subchapter and subchapter II.

50

2 3. Tribal custody determinations. A child custody
3 determination made by a tribe under factual circumstances in
4 substantial conformity with the jurisdictional standards of this
5 chapter must be recognized and enforced under subchapter III.

6 **Uniform Comment**

8 This section allows States the discretion to extend the
9 terms of this Act to Indian tribes by removing the brackets. The
10 definition of "tribe" is found at Section 102(16) [Me. cite
11 section 1732, subsection 16]. This Act does not purport to
12 legislate custody jurisdiction for tribal courts. However, a
13 Tribe could adopt this Act as enabling legislation by simply
14 replacing references to "this State" with "this Tribe."

16 Subsection (a) [Me. cite subsection 1] is not bracketed. If
17 the Indian Child Welfare Act requires that a case be heard in
18 tribal court, then its provisions determine jurisdiction.

20 **§1735. International application of chapter**

22 1. Foreign country treated as a state. A court of this
23 State shall treat a foreign country as if it were a state of the
24 United States for the purpose of applying this subchapter and
25 subchapter II.

26 2. Recognition and enforcement of foreign determination.
27 Except as otherwise provided in subsection 3, a child custody
28 determination made in a foreign country under factual
29 circumstances in substantial conformity with the jurisdictional
30 standards of this chapter must be recognized and enforced under
31 subchapter III.

32 3. Application not required. A court of this State need
33 not apply this chapter if the child custody law of a foreign
34 country violates fundamental principles of human rights.

38 **Uniform Comment**

40 The provisions of this Act have international application to
41 child custody proceedings and determinations of other countries.
42 Another country will be treated as if it were a State of the
43 United States for purposes of applying Articles 1 and 2 [Me. cite
44 subchapters I and II] of this Act. Custody determinations of
45 other countries will be enforced if the facts of the case
46 indicate that jurisdiction was in substantial compliance with the
47 requirements of this Act.

48 In this section, the term "child-custody determination"
49 should be interpreted to include proceedings relating to custody
50

2 or analogous institutions of the other country. See generally,
4 Article 3 of The Hague Convention on Jurisdiction, Applicable
6 Law, Recognition, Enforcement and Co-operation in Respect of
8 Parental Responsibility and Measures for the Protection of
10 Children. 35 I.L.M. 1391 (1996).

12 A court of this State may refuse to apply this Act when the
14 child custody law of the other country violates basic principles
16 relating to the protection of human rights and fundamental
18 freedoms. The same concept is found in of the Section 20 of the
20 Hague Convention on the Civil Aspects of International Child
22 Abduction (return of the child may be refused if this would not
24 be permitted by the fundamental principles of the requested State
26 relating to the protection of human rights and fundamental
28 freedoms). In applying subsection (c) [Me. cite subsection 3],
30 the court's scrutiny should be on the child custody law of the
32 foreign country and not on other aspects of the other legal
34 system. This Act takes no position on what laws relating to
36 child custody would violate fundamental freedoms. While the
38 provision is a traditional one in international agreements, it is
40 invoked only in the most egregious cases.

42 This section is derived from Section 23 of the UCCJA.

44 **§1736. Effect of child custody determination**

46 A child custody determination made by a court of this State
48 that had jurisdiction under this chapter binds all persons who
have been served in accordance with the laws of this State or
notified in accordance with section 1738 or who have submitted to
the jurisdiction of the court and who have been given an
opportunity to be heard. As to those persons, the determination
is conclusive as to all decided issues of law and fact except to
the extent the determination is modified.

36 **Uniform Comment**

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

42 **§1737. Priority**

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

48 **Uniform Comment**

2 No substantive change was made to this section which was
3 Section 24 of the UCCJA. The section is placed toward the
4 beginning of Article 1 [Me. cite subchapter I] to emphasize its
5 importance.

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

10 **§1738. Notice to persons outside State**

11 **1. Notice given by service of process.** Notice required for
12 the exercise of jurisdiction when a person is outside this State
13 may be given in a manner prescribed by the law of this State for
14 service of process or by the law of the state in which the
15 service is made. Notice must be given in a manner reasonably
16 calculated to give actual notice but may be by publication if
17 other means are not effective.

18 **2. Proof of service.** Proof of service may be made in the
19 manner prescribed by the law of this State or by the law of the
20 state in which the service is made.

21 **3. Notice not required.** Notice is not required for the
22 exercise of jurisdiction with respect to a person who submits to
23 the jurisdiction of the court.

24 **Uniform Comment**

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

40 Although Section 105 [Me. cite section 1735] requires
41 foreign countries to be treated as States for purposes of this
42 Act, attorneys should be cautioned about service and notice in
43 foreign countries. Countries have their own rules on service
44

2 which must usually be followed. Attorneys should consult the
Hague Convention on the Service Abroad of Judicial and
4 Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T.
36, T.I.A.S. 6638 (1965).

6 **§1739. Appearance and limited immunity**

8 **1. Not subject to personal jurisdiction for other purpose.**
10 A party to a child custody proceeding, including a modification
12 proceeding, or a petitioner or respondent in a proceeding to
14 enforce or register a child custody determination is not subject
to personal jurisdiction in this State for another proceeding or
purpose solely by reason of having participated or of having been
physically present for the purpose of participating in the
proceeding.

16 **2. Not immune from service of process if subject to**
18 **personal jurisdiction.** A person who is subject to personal
20 jurisdiction in this State on a basis other than physical
presence is not immune from service of process in this State. A
22 party present in this State who is subject to the jurisdiction of
another state is not immune from service of process allowable
under the laws of that state.

24 **3. Immunity does not extend to unrelated acts.** The
26 immunity granted by subsection 1 does not extend to civil
litigation based on acts unrelated to the participation in a
28 proceeding under this chapter committed by an individual while
present in this State.

30 **Uniform Comment**

32
34 This section establishes a general principle that
36 participation in a custody proceeding does not, by itself, give
the court jurisdiction over any issue for which personal
38 jurisdiction over the individual is required. The term
"participate" should be read broadly. For example, if
40 jurisdiction is proper under Article 2 [Me. cite subchapter II],
a respondent in an original custody determination, or a party in
42 a modification determination, should be able to request custody
without this constituting the seeking of affirmative relief that
44 would waive personal jurisdictional objections. Once
jurisdiction is proper under Article 2 [Me. cite subchapter II],
46 a party should not be placed in the dilemma of choosing between
seeking custody or protecting a right not to be subject to a
48 monetary judgment by a court with no other relationship to the
party.

50 This section is comparable to the immunity provision of
UIFSA § 314. A party who is otherwise not subject to personal

2 jurisdiction can appear in a custody proceeding or an enforcement
3 action without being subject to the general jurisdiction of the
4 State by virtue of the appearance. However, if the petitioner
5 would otherwise be subject to the jurisdiction of the State,
6 appearing in a custody proceeding or filing an enforcement
7 proceeding will not provide immunity. Thus, if the non-custodial
8 parent moves from the State that decided the custody
9 determination, that parent is still subject to the state's
10 jurisdiction for enforcement of child support if the child or an
11 individual obligee continues to reside there. See UIFSA § 205.
12 If the non-custodial parent returns to enforce the visitation
13 aspects of the custody determination, the State can utilize any
14 appropriate means to collect the back-due child support.
15 However, the situation is different if both parties move from
16 State A after the determination, with the custodial parent and
17 the child establishing a new home State in State B, and the
18 non-custodial parent moving to State C. The non-custodial parent
19 is not, at this point, subject to the jurisdiction of State B for
20 monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84
21 (1978). If the non-custodial parent comes into State B to
22 enforce the visitation aspects of the determination, the
23 non-custodial parent is not subject to the jurisdiction of State
24 B for those proceedings and issues requiring personal
jurisdiction by filing the enforcement action.

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

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

48 **§1740. Communication between courts**

2 1. Communication permitted. A court of this State may
communicate with a court in another state concerning a proceeding
arising under this chapter.

4
6 2. Participation of parties. The court may allow the
parties to participate in the communication. If the parties are
not able to participate in the communication, they must be given
8 the opportunity to present facts and legal arguments before a
decision on jurisdiction is made.

10
12 3. Communication without informing parties; no record
required. Communication between courts on schedules, calendars,
court records and similar matters may occur without informing the
14 parties. A record need not be made of the communication.

16 4. Communication and informing parties; record required.
Except as otherwise provided in subsection 3, a record must be
made of a communication under this section. The parties must be
18 informed promptly of the communication and granted access to the
record.
20

22 5. Record. For the purposes of this section, "record"
means information that is inscribed on a tangible medium or that
24 is stored in an electronic or other medium and is retrievable in
perceivable form.
26

Uniform Comment

28
30 This section emphasizes the role of judicial
communications. It authorizes a court to communicate concerning
any proceeding arising under this Act. This includes
32 communication with foreign tribunals and tribal courts.
Communication can occur in many different ways such as by
34 telephonic conference and by on-line or other electronic
communication. The Act does not preclude any method of
36 communication and recognizes that there will be increasing use of
modern communication techniques.
38

40 Communication between courts is required under Sections 204,
206, and 306 [Me. cites sections 1748, 1750 and 1766] and
strongly suggested in applying Section 207 [Me. cite section
42 1751]. Apart from those sections, there may be less need under
this Act for courts to communicate concerning jurisdiction due to
44 the prioritization of home state jurisdiction. Communication is
authorized, however, whenever the court finds it would be
46 helpful. The court may authorize the parties to participate in
the communication. However, the Act does not mandate
48 participation. Communication between courts is often difficult
to schedule and participation by the parties may be impractical.

2 Phone calls often have to be made after-hours or whenever the
schedules of judges allow.

4 This section does require that a record be made of the
conversation and that the parties have access to that record in
6 order to be informed of the content of the conversation. The
only exception to this requirement is when the communication
8 involves relatively inconsequential matters such as scheduling,
calendars, and court records. Included within this latter type
10 of communication would be matters of cooperation between courts
under Section 112 [Me. cite section 1742]. A record includes
12 notes or transcripts of a court reporter who listened to a
conference call between the courts, an electronic recording of a
14 telephone call, a memorandum or an electronic record of the
communication between the courts, or a memorandum or an
16 electronic record made by a court after the communication.

18 The second sentence of subsection (b) [Me. cite subsection
2] protects the parties against unauthorized ex parte
20 communications. The parties' participation in the communication
may amount to a hearing if there is an opportunity to present
22 facts and jurisdictional arguments. However, absent such an
opportunity, the participation of the parties should not to be
24 considered a substitute for a hearing and the parties must be
given an opportunity to fairly and fully present facts and
26 arguments on the jurisdictional issue before a determination is
made. This may be done through a hearing or, if appropriate, by
28 affidavit or memorandum. The court is expected to set forth the
basis for its jurisdictional decision, including any
30 court-to-court communication which may have been a factor in the
decision.

32 **§1741. Taking testimony in another state**

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

44 **2. Forms of testimony.** A court of this State may permit an
46 individual residing in another state to be deposed or to testify
by telephone, audiovisual means or other electronic means before
48 a designated court or at another location in that state. A court
of this State shall cooperate with courts of other states in

2 designating an appropriate location for the deposition or
3 testimony.

4 3. Exclusion of documentary evidence. Documentary evidence
5 transmitted from another State to a court of this State by
6 technological means that do not produce an original writing may
7 not be excluded from evidence on an objection based on the means
8 of transmission.

10 **Uniform Comment**

12 No substantive changes have been made to subsection (a) [Me.
13 cite subsection 1] which was Section 18 of the UCCJA.

14 Subsections (b) and (c) [Me. cite subsections 2 and 3]
15 merely provide that modern modes of communication are permissible
16 in the taking of testimony and the transmittal of documents. See
17 UIFSA § 316.

20 **§1742. Cooperation between courts; preservation of records**

22 1. Request to court of another state. A court of this
23 State may request the appropriate court of another state to:

24 A. Hold an evidentiary hearing;

26 B. Order a person to produce or give evidence pursuant to
27 procedures of that state;

28 C. Order that an evaluation be made with respect to the
29 custody of a child involved in a pending proceeding;

30 D. Forward to the court of this State a certified copy of
31 the transcript of the record of the hearing, the evidence
32 otherwise presented and any evaluation prepared in
33 compliance with the request; and

34 E. Order a party to a child custody proceeding or any
35 person having physical custody of the child to appear in the
36 proceeding with or without the child.

37 2. Hearing or order upon request by court of another
38 state. Upon request of a court of another state, a court of this
39 State may hold a hearing or enter an order described in
40 subsection 1.

41 3. Assessment of expenses. Travel and other necessary and
42 reasonable expenses incurred under subsections 1 and 2 may be
43 assessed against the parties according to the law of this State.
44

2 4. Preservation of records. A court of this State shall
3 preserve the pleadings, orders, decrees, records of hearings,
4 evaluations and other pertinent records with respect to a child
5 custody proceeding until the child attains 18 years of age. Upon
6 appropriate request by a court or law enforcement official of
7 another state, the court shall forward a certified copy of those
8 records.

10 **Uniform Comment**

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

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

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

33 This section combines the text of Sections 1922 of the UCCJA.

34 **SUBCHAPTER II**
35 **JURISDICTION**

36 **§1745. Initial child custody jurisdiction**

37 **1. Jurisdiction over initial determination. Except as**
38 **otherwise provided in section 1748, a court of this State has**
39 **jurisdiction to make an initial child custody determination only**
40 **if:**

41 **A. This State is the home state of the child on the date of**
42 **the commencement of the proceeding or was the home state of**
43 **the child within 6 months before the commencement of the**
44 **proceeding.**

2 proceeding and the child is absent from this State but a
3 parent or person acting as a parent continues to live in
4 this State;

5 B. A court of another state does not have jurisdiction
6 under paragraph A or a court of the home state of the child
7 has declined to exercise jurisdiction on the ground that
8 this State is the more appropriate forum under section 1751
9 or 1752 and:

10 (1) The child and the child's parents, or the child
11 and at least one parent or a person acting as a parent,
12 have a significant connection with this State other
13 than mere physical presence; and

14 (2) Substantial evidence is available in this State
15 concerning the child's care, protection, training and
16 personal relationships;

17 C. All courts having jurisdiction under paragraph A or B
18 have declined to exercise jurisdiction on the ground that a
19 court of this State is the more appropriate forum to
20 determine the custody of the child under section 1751 or
21 1752; or

22 D. No court of any other state would have jurisdiction
23 under the criteria specified in paragraph A, B or C.

24 2. Exclusive jurisdictional basis. Subsection 1 is the
25 exclusive jurisdictional basis for making a child custody
26 determination by a court of this State.

27 3. Physical presence or personal jurisdiction not necessary
28 or sufficient. Physical presence of or personal jurisdiction
29 over a party or a child is not necessary or sufficient to make a
30 child custody determination.

31 **Uniform Comment**

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

36 **1. Home State Jurisdiction.** The jurisdiction of the home
37 State has been prioritized over other jurisdictional bases.
38 Section 3 of the UCCJA provided four independent and concurrent
39 bases of jurisdiction. The PKPA provides that full faith and
40 credit can only be given to an initial custody determination of a
41 "significant connection" State when there is no home State. This

2 Act prioritizes home state jurisdiction in the same manner as the
3 PKPA thereby eliminating any potential conflict between the two
4 acts.

5
6 The six-month extended home state provision of subsection
7 (a)(1) [Me. cite subsection 1, paragraph A] has been modified
8 slightly from the UCCJA. The UCCJA provided that home state
9 jurisdiction continued for six months when the child had been
10 removed by a person seeking the child's custody or for other
11 reasons and a parent or a person acting as a parent continues to
12 reside in the home State. Under this Act, it is no longer
13 necessary to determine why the child has been removed. The only
14 inquiry relates to the status of the person left behind. This
15 change provides a slightly more refined home state standard than
16 the UCCJA or the PKPA, which also requires a determination that
17 the child has been removed "by a contestant or for other
18 reasons." The scope of the PKPA's provision is theoretically
19 narrower than this Act. However, the phrase "or for other
20 reasons" covers most fact situations where the child is not in
21 the home State and, therefore, the difference has no substantive
22 effect.

23
24 In another sense, the six-month extended home state
25 jurisdiction provision in this Act is narrower than the
26 comparable provision in the PKPA. The PKPA's definition of
27 extended home State is more expansive because it applies whenever
28 a "contestant" remains in the home State. That class of
29 individuals has been eliminated in this Act. This Act retains
30 the original UCCJA classification of "parent or person acting as
31 parent" to define who must remain for a State to exercise the
32 six-month extended home state jurisdiction. This eliminates the
33 undesirable jurisdictional determinations which would occur as a
34 result of differing state substantive laws on visitation
35 involving grandparents and others. For example, if State A's law
36 provided that grandparents could obtain visitation with a child
37 after the death of one of the parents, then the grandparents, who
38 would be considered "contestants" under the PKPA, could file a
39 proceeding within six months after the remaining parent moved and
40 have the case heard in State A. However, if State A did not
41 provide that grandparents could seek visitation under such
42 circumstances, the grandparents would not be considered
43 "contestants" and State B where the child acquired a new home
44 State would provide the only forum. This Act bases jurisdiction
45 on the parent and child or person acting as a parent and child
46 relationship without regard to grandparents or other potential
47 seekers of custody or visitation. There is no conflict with the
48 broader provision of the PKPA. The PKPA in § (c)(1) authorizes
States to narrow the scope of their jurisdiction.

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

8
10 Second, the UCCJA based jurisdiction on the presence of a
significant connection between the child and the child's parents
12 or the child and at least one contestant. This Act requires that
the significant connections be between the child, the child's
parents or the child and a person acting as a parent.

14
16 Third, a significant connection State may assume
jurisdiction only when there is no home State or when the home
18 State decides that the significant connection State would be a
more appropriate forum under Section 207 or 208 [Me. cite section
20 1751 or 1752]. Fourth, the determination of significant
connections has been changed to eliminate the language of
22 "present or future care." The jurisdictional determination
should be made by determining whether there is sufficient
24 evidence in the State for the court to make an informed custody
determination. That evidence might relate to the past as well as
to the "present or future."

26
28 Emergency jurisdiction has been moved to a separate
section. This is to make it clear that the power to protect a
30 child in crisis does not include the power to enter a permanent
order for that child except as provided by that section.

32 Paragraph (a)(3) [Me. cite subsection 1, paragraph C]
provides for jurisdiction when all States with jurisdiction under
34 paragraphs (a)(1) and (2) [Me. cite subsection 1, paragraphs A
and B] determine that this State is a more appropriate forum.
36 The determination would have to be made by all States with
jurisdiction under subsection (a)(1) and (2) [Me. cite subsection
38 1, paragraphs A and B]. Jurisdiction would not exist under this
paragraph because the home State determined it is a more
40 appropriate place to hear the case if there is another State that
could exercise significant connection jurisdiction under
42 subsection (a)(2) [Me. cite subsection 1, paragraph B].

44 Paragraph (a)(4) [Me. cite subsection 1, paragraph D]
retains the concept of jurisdiction by necessity as found in the
46 UCCJA and in the PKPA. This default jurisdiction only occurs if
no other State would have jurisdiction under subsections (a)(1)
48 through (a)(3) [Me cite subsection 1, paragraphs A to C].

2 Subsections (b) and (c) [Me. cite subsections 2 and 3]
3 clearly State the relationship between jurisdiction under this
4 Act and other forms of jurisdiction. Personal jurisdiction over,
5 or the physical presence of, a parent or the child is neither
6 necessary nor required under this Act. In other words neither
7 minimum contacts nor service within the State is required for the
8 court to have jurisdiction to make a custody determination.
9 Further, the presence of minimum contacts or service within the
10 State does not confer jurisdiction to make a custody
11 determination. Subject to Section 204 [Me. cite section 1748],
12 satisfaction of the requirements of subsection (a) [Me. cite
subsection 1] is mandatory.

14 The requirements of this section, plus the notice and
15 hearing provisions of the Act, are all that is necessary to
16 satisfy due process. This Act, like the UCCJA and the PKPA is
17 based on Justice Frankfurter's concurrence in May v. Anderson,
18 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer,
19 the reporter for the UCCJA, no "workable interstate custody law
20 could be built around [Justice] Burton's plurality opinion
21 Bridgette Bodenheimer, The Uniform Child Custody Jurisdiction
22 Act: A Legislative Remedy for Children Caught in the Conflict of
23 Laws, 22 Vand.L.Rev. 1207,1233 (1969). It should also be noted
24 that since jurisdiction to make a child custody determination is
25 subject matter jurisdiction, an agreement of the parties to
26 confer jurisdiction on a court that would not otherwise have
27 jurisdiction under this Act is ineffective.

28 **§1746. Exclusive, continuing jurisdiction**

30
31 **1. Exclusive, continuing jurisdiction.** Except as otherwise
32 provided in section 1748, a court of this State that has made a
33 child custody determination consistent with section 1745 or 1747
34 has exclusive, continuing jurisdiction over the determination
35 until:

36
37 **A. A court of this State determines that neither the child,**
38 **nor the child and one parent, nor the child and a person**
39 **acting as a parent have a significant connection with this**
40 **State and that substantial evidence is no longer available**
41 **in this State concerning the child's care, protection,**
42 **training and personal relationships; or**

43
44 **B. A court of this State or a court of another state**
45 **determines that the child, the child's parents and any**
46 **person acting as a parent do not presently reside in this**
47 **State.**

48
49 **2. Modification without exclusive, continuing**
50 **jurisdiction.** A court of this State that has made a child

2 custody determination and does not have exclusive, continuing
3 jurisdiction under this section may modify that determination
4 only if it has jurisdiction to make an initial determination
5 under section 1745.

6 **Uniform Comment**

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

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

22 1. If a parent or a person acting as a parent remains in
23 the original decree State, continuing jurisdiction is lost when
24 neither the child, the child and a parent, nor the child and a
25 person acting as a parent continue to have a significant
26 connection with the original decree State and there is no longer
27 substantial evidence concerning the child's care, protection,
28 training and personal relations in that State. In other words,
29 even if the child has acquired a new home State, the original
30 decree State retains exclusive, continuing jurisdiction, so long
31 as the general requisites of the "substantial connection"
32 jurisdiction provisions of Section 201 [Me. cite section 1745]
33 are met. If the relationship between the child and the person
34 remaining in the State with exclusive, continuing jurisdiction
35 becomes so attenuated that the court could no longer find
36 significant connections and substantial evidence, jurisdiction
37 would no longer exist.

38 The use of the phrase "a court of this State" under
39 subsection (a)(1) [Me. cite subsection 1, paragraph A] makes it
40 clear that the original decree State is the sole determinant of
41 whether jurisdiction continues. A party seeking to modify a
42 custody determination must obtain an order from the original
43 decree State stating that it no longer has jurisdiction.

46 2. Continuing jurisdiction is lost when the child, the
47 child's parents, and any person acting as a parent no longer
48 reside in the original decree State. The exact language of
49 subparagraph (a)(2) [Me. cite subsection 1, paragraph B] was the
50 subject of considerable debate. Ultimately the Conference

2 settled on the phrase that "a court of this State or a court of
another State determines that the child, the child's parents, and
4 any person acting as a parent do not presently reside in this
State" to determine when the exclusive, continuing jurisdiction
6 of a State ended. The phrase is meant to be identical in meaning
to the language of the PKPA which provides that full faith and
8 credit is to be given to custody determinations made by a State
in the exercise of its continuing jurisdiction when that "State
10 remains the residence of" The phrase is also the
equivalent of the language "continues to reside" which occurs in
12 UIFSA § 205(a)(1) to determine the exclusive, continuing
jurisdiction of the State that made a support order. The phrase
14 "remains the residence of" in the PKPA has been the subject of
conflicting case law. It is the intention of this Act that
16 paragraph (a)(2) [Me. cite subsection 1, paragraph 3] of this
section means that the named persons no longer continue to
18 actually live within the State. Thus, unless a modification
proceeding has been commenced, when the child, the parents, and
all persons acting as parents physically leave the State to live
20 elsewhere, the exclusive, continuing jurisdiction ceases.

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

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

36 The continuing jurisdiction provisions of this section are
narrower than the comparable provisions of the PKPA. That
38 statute authorizes continuing jurisdiction so long as any
"contestant" remains in the original decree State and that State
40 continues to have jurisdiction under its own law. This Act
eliminates the contestant classification. The Conference decided
42 that a remaining grandparent or other third party who claims a
right to visitation, should not suffice to confer exclusive,
44 continuing jurisdiction on the State that made the original
custody determination after the departure of the child, the
46 parents and any person acting as a parent. The significant
connection to the original decree State must relate to the child,
48 the child and a parent, or the child and a person acting as a
parent. This revision does not present a conflict with the
50 PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1)

2 recognizes that States may narrow the class of cases that would
3 be subject to exclusive, continuing jurisdiction. However,
4 during the transition from the UCCJA to this Act, some States may
5 continue to base continuing jurisdiction on the continued
6 presence of a contestant, such as a grandparent. The PKPA will
7 require that such decisions be enforced. The problem will
8 disappear as States adopt this Act to replace the UCCJA.

9
10 Jurisdiction attaches at the commencement of a proceeding.
11 If State A had jurisdiction under this section at the time a
12 modification proceeding was commenced there, it would not be lost
13 by all parties moving out of the State prior to the conclusion of
14 proceeding. State B would not have jurisdiction to hear a
15 modification unless State A decided that State B was more
16 appropriate under Section 207 [Me. cite section 1751].

17
18 Exclusive, continuing jurisdiction is not reestablished if,
19 after the child, the parents, and all persons acting as parents
20 leave the State, the non-custodial parent returns. As subsection
21 (b) [Me. cite subsection 2] provides, once a State has lost
22 exclusive, continuing jurisdiction, it can modify its own
23 determination only if it has jurisdiction under the standards of
24 Section 201 [Me. cite section 1745]. If another State acquires
25 exclusive continuing jurisdiction under this section, then its
26 orders cannot be modified even if this State has once again
27 become the home State of the child.

28 In accordance with the majority of UCCJA case law, the State
29 with exclusive, continuing jurisdiction may relinquish
30 jurisdiction when it determines that another State would be a
31 more convenient forum under the principles of Section 207 [Me.
32 cite section 1751].

33 **§1747. Jurisdiction to modify determination**

34
35 Except as otherwise provided in section 1748, a court of
36 this State may not modify a child custody determination made by a
37 court of another state unless a court of this State has
38 jurisdiction to make an initial determination under section 1745,
39 subsection 1, paragraph A or B and:

40
41 **1. Jurisdiction of other state; more convenient forum.** The
42 court of the other state determines it no longer has exclusive,
43 continuing jurisdiction under section 1746 or that a court of
44 this State would be a more convenient forum under section 1751; or
45

46
47 **2. Not residents of other state.** A court of this State or
48 a court of the other state determines that the child, the child's
49 parents and any person acting as a parent do not presently reside
50 in the other state.

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Uniform Comment

This section complements Section 202 [Me. cite section 1746] and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 [Me. cite section 1746] or that this State would be a more convenient forum under Section 207 [Me. cite section 1751]. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201 [Me. cite section 1745].

§1748. Temporary emergency jurisdiction

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

2. No previous determination and no pending proceeding. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1745 to 1747. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section becomes a final determination, if it so provides, and this State becomes the home state of the child.

3. Previous determination or pending proceeding. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a State having jurisdiction under sections 1745 to 1747, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to

2 obtain an order from the state having jurisdiction under sections
3 1745 to 1747. The order issued in this State remains in effect
4 until an order is obtained from the other state within the period
5 specified or the period expires.

6 4. Communication with court in another state. A court of
7 this State that has been asked to make a child custody
8 determination under this section, upon being informed that a
9 child custody proceeding has been commenced in, or a child
10 custody determination has been made by, a court of a state having
11 jurisdiction under sections 1745 to 1747, shall immediately
12 communicate with the other court. A court of this State that is
13 exercising jurisdiction pursuant to sections 1745 to 1747, upon
14 being informed that a child custody proceeding has been commenced
15 in, or a child custody determination has been made by, a court of
16 another state under a statute similar to this section shall
17 immediately communicate with the court of that state to resolve
18 the emergency, protect the safety of the parties and the child
19 and determine a period for the duration of the temporary order.

20 **Uniform Comment**

21
22
23 The provisions of this section are an elaboration of what
24 was formerly Section 3(a)(3) of the UCCJA. It remains, as
25 Professor Bodenheimer's comments to that section noted, "an
26 extraordinary jurisdiction reserved for extraordinary
27 circumstances."

28
29 This section codifies and clarifies several aspects of what
30 has become common practice in emergency jurisdiction cases under
31 the UCCJA and PKPA. First, a court may take jurisdiction to
32 protect the child even though it can claim neither home State nor
33 significant connection jurisdiction. Second, the duties of
34 States to recognize, enforce and not modify a custody
35 determination of another State do not take precedence over the
36 need to enter a temporary emergency order to protect the child.

37
38 Third, a custody determination made under the emergency
39 jurisdiction provisions of this section is a temporary order.
40 The purpose of the order is to protect the child until the State
41 that has jurisdiction under Sections 201-203 [Me. cite sections
42 1745 to 1747] enters an order.

43
44 Under certain circumstances, however, subsection (b) [Me.
45 cite subsection 2] provides that an emergency custody
46 determination may become a final custody determination. If there
47 is no existing custody determination, and no custody proceeding
48 is filed in a State with jurisdiction under Sections 201-203 [Me.
49 cite sections 1745 to 1747], an emergency custody determination
50 made under this section becomes a final determination, if it so

2 provides, when the State that issues the order becomes the home
State of the child.

4 Subsection (c) [Me. cite subsection 3] is concerned with the
temporary nature of the order when there exists a prior custody
6 order that is entitled to be enforced under this Act or when a
subsequent custody proceeding is filed in a State with
8 jurisdiction under Sections 201-203 [Me. cite sections 1745 to
1747]. Subsection (c) [Me. cite subsection 3] allows the
10 temporary order to remain in effect only so long as is necessary
for the person who obtained the determination under this section
12 to present a case and obtain an order from the State with
jurisdiction under Sections 201-203 [Me. cite sections 1745 to
14 1747]. That time period must be specified in the order. If
there is an existing order by a State with jurisdiction under
16 Sections 201-203 [Me. cite sections 1745 to 1747], that order
need not be reconfirmed. The temporary emergency determination
18 would lapse by its own terms at the end of the specified period
or when an order is obtained from the court with jurisdiction
20 under Sections 202-203 [Me. cite sections 1746 and 1747]. The
court with appropriate jurisdiction also may decide, under the
22 provisions of 207 [Me. cite subsection 1751], that the court that
entered the emergency order is in a better position to address
24 the safety of the person who obtained the emergency order, or the
child, and decline jurisdiction under Section 207 [Me. cite
26 subsection 1751].

28 Any hearing in the State with jurisdiction under Sections
201-203 [Me. cite sections 1745 to 1747] on the temporary
30 emergency determination is subject to the provisions of Sections
111 and 112 [Me. cite sections 1741 and 1742]. These sections
32 facilitate the presentation of testimony and evidence taken out
of State. If there is a concern that the person obtaining the
34 temporary emergency determination under this section would be in
danger upon returning to the State with jurisdiction under
36 Sections 201-203 [Me. cite sections 1745 to 1747], these
provisions should be used.

38 Subsection (d) [Me. cite subsection 4] requires
40 communication between the court of the State that is exercising
jurisdiction under this section and the court of another State
42 that is exercising jurisdiction under Sections 201-203 [Me. cite
sections 1745 to 1747]. The pleading rules of Section 209 [Me.
44 cite section 1753] apply fully to determinations made under this
section. Therefore, a person seeking a temporary emergency
46 custody determination is required to inform the court pursuant to
Section 209(d) [Me. cite section 1753, subsection 4] of any
48 proceeding concerning the child that has been commenced
elsewhere. The person commencing the custody proceeding under
50 Sections 201-203 [Me. cite sections 1745 to 1747] is required

2 under Section 209(a) [Me. cite section 1753, subsection 1] to
inform the court about the temporary emergency proceeding. These
4 pleading requirements are to be strictly followed so that the
courts are able to resolve the emergency, protect the safety of
6 the parties and the child, and determine a period for the
duration of the temporary order.

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

20 **Relationship to Protective Order Proceedings.** The UCCJA and
22 the PKPA were enacted long before the advent of state procedures
on the use of protective orders to alleviate problems of domestic
24 violence. Issues of custody and visitation often arise within
the context of protective order proceedings since the protective
26 order is often invoked to keep one parent away from the other
parent and the children when there is a threat of violence. This
28 Act recognizes that a protective order proceeding will often be
the procedural vehicle for invoking jurisdiction by authorizing a
30 court to assume temporary emergency jurisdiction when the child's
parent or sibling has been subjected to or threatened with
32 mistreatment or abuse.

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

42 Many States authorize the issuance of protective orders in
44 an emergency without notice and hearing. This Act does not
address the propriety of that procedure. It is left to local law
46 to determine the circumstances under which such an order could be
issued, and the type of notice that is required, in a case
48 without an interstate element. However, an order issued after
the assumption of temporary emergency jurisdiction is entitled to
50 interstate enforcement and nonmodification under this Act and the

2 PKPA only if there has been notice and a reasonable opportunity
3 to be heard as set out in Section 205 [Me. cite section 1749].
4 Although VAWA does require that full faith and credit be accorded
5 to ex parte protective orders if notice will be given and there
6 will be a reasonable opportunity to be heard, it does not include
7 a "custody" order within the definition of "protective order."

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

16 **§1749. Notice; opportunity to be heard; joinder**

18 **1. Notice and opportunity to be heard required.** Before a
19 child custody determination is made under this chapter, notice
20 and an opportunity to be heard in accordance with the standards
21 of section 1738 must be given to all persons entitled to notice
22 under the law of this State as in child custody proceedings
23 between residents of this State, any parent whose parental rights
24 have not been previously terminated and any person having
25 physical custody of the child.

26 **2. Enforceability without notice and opportunity to be**
27 **heard.** This chapter does not govern the enforceability of a
28 child custody determination made without notice or an opportunity
29 to be heard.

32 **3. Joinder and intervention of parties.** The obligation to
33 join a party and the right to intervene as a party in a child
34 custody proceeding under this chapter are governed by the law of
35 this State as in child custody proceedings between residents of
36 this State.

38 **Uniform Comment**

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

2 the custody determination to be entitled to full faith and credit
under that Act.

4 State laws also vary with regard to whether a court has the
power to issue an enforceable temporary custody order without
6 notice and hearing in a case without any interstate element.
Such temporary orders may be enforceable, as against due process
8 objections, for a short period of time if issued as a protective
order or a temporary restraining order to protect a child from
10 harm. Whether such orders are enforceable locally is beyond the
scope of this Act. Subsection (b) [Me. cite subsection 2]
12 clearly provides that the validity of such orders and the
enforceability of such orders is governed by the law which
14 authorizes them and not by this Act. An order is entitled to
interstate enforcement and nonmodification under this Act only if
16 there has been notice and an opportunity to be heard. The PKPA,
§ 1738A(e), also requires that a custody determination is
18 entitled to full faith and credit only if there has been notice
and an opportunity to be heard.

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

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

32 §1750. Simultaneous proceedings

34 1. Pending proceeding in another state. Except as
36 otherwise provided in section 1748, a court of this State may not
38 exercise its jurisdiction under this subchapter if, at the time
40 of the commencement of the proceeding, a proceeding concerning
42 the custody of the child has been commenced in a court of another
44 state having jurisdiction substantially in conformity with this
chapter, unless the proceeding has been terminated or is stayed
by the court of the other State because a court of this State is
a more convenient forum under section 1751.

46 2. Examination of documents; communication with court.
48 Except as otherwise provided in section 1748, a court of this
50 State, before hearing a child custody proceeding, shall examine
the court documents and other information supplied by the parties
pursuant to section 1753. If the court determines that a child
custody proceeding has been commenced in a court in another state

2 having jurisdiction substantially in accordance with this
3 chapter, the court of this State shall stay its proceeding and
4 communicate with the court of the other state. If the court of
5 the state having jurisdiction substantially in accordance with
6 this chapter does not determine that the court of this State is a
7 more appropriate forum, the court of this State shall dismiss the
8 proceeding.

9
10 3. Modification proceeding; enforcement proceeding in
11 another state. In a proceeding to modify a child custody
12 determination, a court of this State shall determine whether a
13 proceeding to enforce the determination has been commenced in
14 another state. If a proceeding to enforce a child custody
15 determination has been commenced in another state, the court may:

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

20 B. Enjoin the parties from continuing with the proceeding
21 for enforcement; or

22 C. Proceed with the modification under conditions it
23 considers appropriate.

24
25
26
27
28 **Uniform Comment**

29
30 This section represents the remnants of the simultaneous
31 proceedings provision of the UCCJA § 6. The problem of
32 simultaneous proceedings is no longer a significant issue. Most
33 of the problems have been resolved by the prioritization of home
34 state jurisdiction under Section 201 [Me. cite section 1745]; the
35 exclusive, continuing jurisdiction provisions of Section 202 [Me.
36 cite section 1746]; and the prohibitions on modification of
37 Section 203 [Me. cite section 1747]. If there is a home State,
38 there can be no exercise of significant connection jurisdiction
39 in an initial child custody determination and, therefore, no
40 simultaneous proceedings. If there is a State of exclusive,
41 continuing jurisdiction, there cannot be another State with
42 concurrent jurisdiction and, therefore, no simultaneous
43 proceedings. Of course, the home State, as well as the State
44 with exclusive, continuing jurisdiction, could defer to another
45 State under Section 207 [Me. cite section 1747]. However, that
46 decision is left entirely to the home State or the State with
47 exclusive, continuing jurisdiction.

48 Under this Act, the simultaneous proceedings problem will
49 arise only when there is no home State, no State with exclusive,
50 continuing jurisdiction and more than one significant connection

2 State. For those cases, this section retains the "first in time"
3 rule of the UCCJA. Subsection (b) [Me. cite subsection 2]
4 retains the UCCJA's policy favoring judicial communication.
5 Communication between courts is required when it is determined
6 that a proceeding has been commenced in another State.

7
8 Subsection (c) [Me. cite subsection 3] concerns the problem
9 of simultaneous proceedings in the State with modification
10 jurisdiction and enforcement proceedings under Article 3 [Me.
11 cite subchapter III]. This section authorizes the court with
12 exclusive, continuing jurisdiction to stay the modification
13 proceeding pending the outcome of the enforcement proceeding, to
14 enjoin the parties from continuing with the enforcement
15 proceeding, or to continue the modification proceeding under such
16 conditions as it determines are appropriate. The court may wish
17 to communicate with the enforcement court. However,
18 communication is not mandatory. Although the enforcement State
19 is required by the PKPA to enforce according to its terms a
20 custody determination made consistently with the PKPA, that duty
21 is subject to the decree being modified by a State with the power
22 to do so under the PKPA. An order to enjoin the parties from
23 enforcing the decree is the equivalent of a temporary
24 modification by a State with the authority to do so. The
25 concomitant provision addressed to the enforcement court is
26 Section 306 [Me. cite section 1766] of this Act. That section
27 requires the enforcement court to communicate with the
28 modification court in order to determine what action the
29 modification court wishes the enforcement court to take.

30 The term "pending" that was utilized in the UCCJA section on
31 simultaneous proceeding has been replaced. It has caused
32 considerable confusion in the case law. It has been replaced
33 with the term "commencement of the proceeding" as more accurately
34 reflecting the policy behind this section. The latter term is
35 defined in Section 102(5) [Me. cite section 1732, subsection 5].

36 **§1751. Inconvenient forum**

37
38 **1. Court of this State an inconvenient forum.** A court of
39 this State that has jurisdiction under this chapter to make a
40 child custody determination may decline to exercise its
41 jurisdiction at any time if it determines that it is an
42 inconvenient forum under the circumstances and that a court of
43 another state is a more appropriate forum. The issue of
44 inconvenient forum may be raised upon motion of a party, the
45 court's own motion or request of another court.

46
47 **2. Factors relevant to determining whether inconvenient**
48 **forum.** Before determining whether it is an inconvenient forum, a
49 court of this State shall consider whether it is appropriate for
50

2 a court of another state to exercise jurisdiction. For this
3 purpose, the court shall allow the parties to submit information
4 and shall consider all relevant factors, including:

5 A. Whether domestic violence has occurred and is likely to
6 continue in the future and which state could best protect
7 the parties and the child;

8 B. The length of time the child has resided outside this
9 State;

10 C. The distance between the court in this State and the
11 court in the state that would assume jurisdiction;

12 D. The relative financial circumstances of the parties;

13 E. Any agreement of the parties as to which state should
14 assume jurisdiction;

15 F. The nature and location of the evidence required to
16 resolve the pending litigation, including testimony of the
17 child;

18 G. The ability of the court of each state to decide the
19 issue expeditiously and the procedures necessary to present
20 the evidence; and

21 H. The familiarity of the court of each state with the
22 facts and issues in the pending litigation.

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

29 4. Divorce or other proceeding. A court of this State may
30 decline to exercise its jurisdiction under this chapter if a
31 child custody determination is incidental to an action for
32 divorce or another proceeding while still retaining jurisdiction
33 over the divorce or other proceeding.

34 **Uniform Comment**

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

2 The list of factors that the court may consider has been
3 updated from the UCCJA. The list is not meant to be exclusive.
4 Several provisions require comment. Subparagraph (1) [Me. cite
5 subsection 2, paragraph A] is concerned specifically with
6 domestic violence and other matters affecting the health and
7 safety of the parties. For this purpose, the court should
8 determine whether the parties are located in different States
9 because one party is a victim of domestic violence or child
10 abuse. If domestic violence or child abuse has occurred, this
11 factor authorizes the court to consider which State can best
12 protect the victim from further violence or abuse.

14 In applying subparagraph (3) [Me. cite subsection 2,
15 paragraph C], courts should realize that distance concerns can be
16 alleviated by applying the communication and cooperation
17 provisions of Sections 111 and 112 [Me. cite sections 1741 and
18 1742].

20 In applying subsection (7) [Me. cite subsection 2, paragraph
21 G] on expeditious resolution of the controversy, the court could
22 consider the different procedural and evidentiary laws of the two
23 States, as well as the flexibility of the court dockets. It also
24 should consider the ability of a court to arrive at a solution to
25 all the legal issues surrounding the family. If one State has
26 jurisdiction to decide both the custody and support issues, it
27 would be desirable to determine that State to be the most
28 convenient forum. The same is true when children of the same
29 family live in different States. It would be inappropriate to
30 require parents to have custody proceedings in several States
31 when one State could resolve the custody of all the children.

32 Before determining whether to decline or retain
33 jurisdiction, the court of this State may communicate, in
34 accordance with Section 110 [Me. cite section 1740], with a court
35 of another State and exchange information pertinent to the
36 assumption of jurisdiction by either court.

38 There are two departures from Section 7 of the UCCJA.
39 First, the court may not simply dismiss the action. To do so
40 would leave the case in limbo. Rather the court shall stay the
41 case and direct the parties to file in the State that has been
42 found to be the more convenient forum. The court is also
43 authorized to impose any other conditions it considers
44 appropriate. This might include the issuance of temporary
45 custody orders during the time necessary to commence a proceeding
46 in the designated State, dismissing the case if the custody
47 proceeding is not commenced in the other State or resuming
48 jurisdiction if a court of the other State refuses to take the
49 case.
50

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

§1752. Jurisdiction declined by reason of conduct

10 **1. Jurisdiction based on unjustifiable conduct.** Except as
12 otherwise provided in section 1748 or by other law of this State,
14 if a court of this State has jurisdiction under this chapter
because a person seeking to invoke its jurisdiction has engaged
in unjustifiable conduct, the court shall decline to exercise its
jurisdiction unless:

16 **A. The parents and all persons acting as parents have**
18 **acquiesced in the exercise of jurisdiction;**

20 **B. A court of the state otherwise having jurisdiction under**
22 **sections 1745 to 1747 determines that this State is a more**
appropriate forum under section 1751; or

24 **C. No court of any other state would have jurisdiction**
under the criteria specified in sections 1745 to 1747.

26 **2. Appropriate remedy.** If a court of this State declines
28 to exercise its jurisdiction pursuant to subsection 1, it may
fashion an appropriate remedy to ensure the safety of the child
30 and prevent a repetition of the unjustifiable conduct, including
staying the proceeding until a child custody proceeding is
32 commenced in a court having jurisdiction under sections 1745 to
1747.

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

46 **Uniform Comment**

48 The "Clean Hands" section of the UCCJA has been truncated in
50 this Act. Since there is no longer a multiplicity of
jurisdictions which could take cognizance of a child-custody

proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201 [Me. cite section 1745]; the exclusive, continuing jurisdiction provisions of Section 202 [Me. cite section 1746]; and the ban on modification in Section 203 [Me. cite section 1747]. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 201 [Me. cite section 1745], which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long as the first State exercises exclusive, continuing jurisdiction.

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

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 202 [Me. cite section 1746] has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section is inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A

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

16 Subsection (b) [Me. cite subsection 2] authorizes the court
to fashion an appropriate remedy for the safety of the child and
18 to prevent a repetition of the unjustified conduct. Thus, it
would be appropriate for the court to notify the other parent and
20 to provide for foster care for the child until the child is
returned to the other parent. The court could also stay the
22 proceeding and require that a custody proceeding be instituted in
another State that would have jurisdiction under this Act. It
24 should be noted that the court is not making a forum non
conveniens analysis in this section. If the conduct is
26 unjustifiable, it must decline jurisdiction. It may, however,
retain jurisdiction until a custody proceeding is commenced in
28 the appropriate tribunal if such retention is necessary to
prevent a repetition of the wrongful conduct or to ensure the
30 safety of the child.

32 The attorney's fee standard for this section is patterned
after the International Child Abduction Remedies Act, 42 U.S.C. §
34 11607(b)(3). The assessed costs and fees are to be paid to the
respondent who established that jurisdiction was based on
36 unjustifiable conduct.

38 **§1753. Information to be submitted to court**

40 **1. Required information.** In a child custody proceeding,
42 each party, in its first pleading or in an attached affidavit,
shall give information, if reasonably ascertainable, under oath
44 as to the child's present address or whereabouts, the places
where the child has lived during the last 5 years and the names
46 and present addresses of the persons with whom the child has
lived during that period. The pleading or affidavit must state
48 whether the party:

50 A. Has participated, as a party or witness or in any other
capacity, in any other proceeding concerning the custody of

2 or visitation with the child and, if so, identify the court,
3 the case number and the date of the child custody
4 determination, if any;

6 B. Knows of any proceeding that could affect the current
7 proceeding, including proceedings for enforcement and
8 proceedings relating to domestic violence, protective
9 orders, termination of parental rights and adoptions and, if
10 so, identify the court, the case number and the nature of
11 the proceeding; and

12 C. Knows the names and addresses of any person not a party
13 to the proceeding who has physical custody of the child or
14 claims rights of legal custody or physical custody of, or
15 visitation with, the child and, if so, the names and
16 addresses of those persons.

18 2. Stay until information furnished. If the information
19 required by subsection 1 is not furnished, the court, upon motion
20 of a party or its own motion, may stay the proceeding until the
21 information is furnished.

22 3. Additional information. If the declaration as to any of
23 the items described in subsection 1, paragraphs A to C is in the
24 affirmative, the declarant shall give additional information
25 under oath as required by the court. The court may examine the
26 parties under oath as to details of the information furnished and
27 other matters pertinent to the court's jurisdiction and the
28 disposition of the case.

30 4. Continuing duty to inform court. Each party has a
31 continuing duty to inform the court of any proceeding in this or
32 any other State that could affect the current proceeding.

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

44 **Uniform Comment**

46 The pleading requirements from Section 9 of the UCCJA are
47 generally carried over into this Act. However, the information
48 is made subject to local law on the protection of names and other
49 identifying information in certain cases. A number of States

2 have enacted laws relating to the protection of victims in
3 domestic violence and child abuse cases which provide for the
4 confidentiality of victims names, addresses, and other
5 information. These procedures must be followed if the
6 child-custody proceeding of the State requires their
7 applicability. See, e.g., California Family Law Code § 3409(a).
8 If a State does not have local law that provides for protecting
9 names and addresses, then subsection (e) [Me. cite subsection 5]
10 or a similar provision should be adopted. Subsection (e) [Me.
11 cite subsection 5] is based on the National Council of Juvenile
12 and Family Court Judge's, Model Code on Domestic and Family
13 Violence § 304(c). There are other models to choose from, in
14 particular UIFSA § 312.

15 In subsection (a)(2) [Me. cite subsection 1, paragraph B],
16 the term "proceedings" should be read broadly to include more
17 than custody proceedings. Thus, if one parent was being
18 criminally prosecuted for child abuse or custodial interference,
19 those proceedings should be disclosed. If the child is subject
20 to the Interstate Compact on the Placement of Children, facts
21 relating to compliance with the Compact should be disclosed in
22 the pleading or affidavit.

23 Subsection (b) [Me. cite subsection 2] has been added. It
24 authorizes the court to stay the proceeding until the information
25 required in subsection (a) [Me. cite subsection 1] has been
26 disclosed, although failure to provide the information does not
27 deprive the court of jurisdiction to hear the case. This follows
28 the majority of jurisdictions which held that failure to comply
29 with the pleading requirements of the UCCJA did not deprive the
30 court of jurisdiction to make a custody determination.

31 **§1754. Appearance of parties and child**

32
33 **1. Appearance of party or other persons in this State.** In
34 a child custody proceeding in this State, the court may order a
35 party to the proceeding who is in this State to appear before the
36 court in person with or without the child. The court may order
37 any person who is in this State and who has physical custody or
38 control of the child to appear in person with the child.

39
40 **2. Appearance of party outside this State.** If a party to a
41 child custody proceeding whose presence is desired by the court
42 is outside this State, the court may order that a notice given
43 pursuant to section 1738 include a statement directing the party
44 to appear in person with or without the child and informing the
45 party that failure to appear may result in a decision adverse to
46 the party.
47
48

2 3. Orders to ensure safety. The court may enter any orders
necessary to ensure the safety of the child and of any person
4 ordered to appear under this section.

6 4. Payment of travel and other expenses. If a party to a
child custody proceeding who is outside this State is directed to
8 appear under subsection 2 or desires to appear personally before
the court with or without the child, the court may require
10 another party to pay reasonable and necessary travel and other
expenses of the party so appearing and of the child.

12 **Uniform Comment**

14 No major changes have been made to this section which was
Section 11 of the UCCJA. Language was added to subsection (a)
16 [Me. cite subsection 1] to authorize the court to require a
non-party who has physical custody of the child to produce the
18 child.

20 Subsection (c) [Me. cite subsection 3] authorizes the court
to enter orders providing for the safety of the child and the
22 person ordered to appear with the child. If safety is a major
concern, the court, as an alternative to ordering a party to
24 appear with the child, could order and arrange for the party's
testimony to be taken in another State under Section 111 [Me.
26 cite section 1741]. This alternative might be important when
there are safety concerns regarding requiring victims of domestic
28 violence or child abuse to travel to the jurisdiction where the
abuser resides.

30 **SUBCHAPTER III**
32 **ENFORCEMENT**

34 **§1761. Definitions**

36 As used in this subchapter, unless the context otherwise
indicates, the following terms have the following meanings.

38
40 1. **Petitioner.** "Petitioner" means a person who seeks
enforcement of an order for return of a child under the Hague
42 Convention on the Civil Aspects of International Child Abduction
or enforcement of a child custody determination.

44
46 2. **Respondent.** "Respondent" means a person against whom a
proceeding has been commenced for enforcement of an order for
48 return of a child under the Hague Convention on the Civil Aspects
of International Child Abduction or enforcement of a child
custody determination.

50 **Uniform Comment**

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

6 **§1762. Enforcement under Hague Convention**

8 Under this subchapter a court of this State may enforce an
10 order for the return of the child made under the Hague Convention
12 on the Civil Aspects of International Child Abduction as if it
14 were a child custody determination.

14 **Uniform Comment**

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

26 **§1763. Duty to enforce**

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

36 **2. Remedies.** A court of this State may utilize any remedy
38 available under other law of this State to enforce a child
40 custody determination made by a court of another state. The
42 remedies provided in this subchapter are cumulative and do not
affect the availability of other remedies to enforce a child
custody determination.

44 **Uniform Comment**

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

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

22
24 This section also incorporates the concept of Section 15 of
the UCCJA to the effect that a custody determination of another
State will be enforced in the same manner as a custody
26 determination made by a court of this State. Whatever remedies
are available to enforce a local determination can be utilized to
28 enforce a custody determination of another State. However, it
remains a custody determination of the State that issued it. A
30 child-custody determination of another State is not subject to
modification unless the State would have jurisdiction to modify
32 the determination under Article 2 [Me. cite subchapter II].

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

46 **§1764. Temporary visitation**

48 **1. Temporary order for enforcement.** A court of this State
that does not have jurisdiction to modify a child custody
50 determination may issue a temporary order enforcing:

2 registered in this State, with or without a simultaneous request
3 for enforcement, by sending to the appropriate court in this
4 State:

5 A. A letter or other document requesting registration;

6 B. Two copies, including one certified copy, of the
7 determination sought to be registered and a statement under
8 penalty of perjury that to the best of the knowledge and
9 belief of the person seeking registration the order has not
10 been modified; and

11 C. Except as otherwise provided in section 1753, the name
12 and address of the person seeking registration and any
13 parent or person acting as a parent who has been awarded
14 custody or visitation in the child custody determination
15 sought to be registered.

16 2. Filing and notice. On receipt of the documents required
17 by subsection 1, the registering tribunal shall:

18 A. Cause the determination to be filed as a foreign
19 judgment, together with one copy of any accompanying
20 documents and information, regardless of their form; and

21 B. Serve notice upon the persons named pursuant to
22 subsection 1, paragraph C and provide them with an
23 opportunity to contest the registration in accordance with
24 this section.

25 3. Information in notice. The notice required by
26 subsection 2, paragraph B must state that:

27 A. A registered determination is enforceable as of the date
28 of the registration in the same manner as a determination
29 issued by a court of this State;

30 B. A hearing to contest the validity of the registered
31 determination must be requested within 20 days after service
32 of notice; and

33 C. Failure to contest the registration will result in
34 confirmation of the child custody determination and preclude
35 further contest of that determination with respect to any
36 matter that could have been asserted.

37 4. Hearing to contest. A person seeking to contest the
38 validity of a registered order must request a hearing within 20
39 days after service of the notice. At that hearing, the court
40 shall:

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

4 A. The issuing court did not have jurisdiction under
5 subchapter II;

6 B. The child custody determination sought to be registered
7 has been vacated, stayed or modified by a court having
8 jurisdiction to do so under subchapter II; or

9 C. The person contesting registration was entitled to
10 notice, but notice was not given in accordance with the
11 standards of section 1738, in the proceedings before the
12 court that issued the order for which registration is sought.

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

18 6. Further contest precluded. Confirmation of a registered
19 order, whether by operation of law or after notice and hearing,
20 precludes further contest of the order with respect to any matter
21 that could have been asserted at the time of registration.

22 **Uniform Comment**

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

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

30 A custody determination can be registered without any
31 accompanying request for enforcement. This may be of significant
32 assistance in international cases. For example, the custodial
33 parent under a foreign custody order can receive an advance
34 determination of whether that order would be recognized and
35 enforced before sending the child to the United States for
36 visitation. Article 26 of the 1996 Hague Convention on
37 Jurisdiction, Applicable Law, Recognition and Cooperation in
38 Respect of Parental Responsibility and Measures for the
39 Protection of Children, 35 I.L.M. 1391 (1996), requires those
40 States which accede to the Convention to provide such a procedure.

41 **§1766. Enforcement of registered determination**

2 1. Any relief normally available. A court of this State
4 may grant any relief normally available under the law of this
6 State to enforce a registered child custody determination made by
8 a court of another state.

10 2. Recognition and enforcement without modification. A
12 court of this State shall recognize and enforce, but may not
14 modify, except in accordance with subchapter II, a registered
16 child custody determination of a court of another state.

18 **Uniform Comment**

20 A registered child-custody determination can be enforced as
22 if it was a child-custody determination of this State. However,
24 it remains a custody determination of the State that issued it.
26 A registered custody order is not subject to modification unless
28 the State would have jurisdiction to modify the order under
30 Article 2 [Me. cite subchapter II].

32 **§1767. Simultaneous proceedings**

34 If a proceeding for enforcement under this subchapter is
36 commenced in a court of this State and the court determines that
38 a proceeding to modify the determination is pending in a court of
40 another state having jurisdiction to modify the determination
42 under subchapter II, the enforcing court shall immediately
44 communicate with the modifying court. The proceeding for
46 enforcement continues unless the enforcing court, after
48 consultation with the modifying court, stays or dismisses the
50 proceeding.

52 **Uniform Comment**

54 The pleading rules of Section 308 [Me. cite section 1768],
56 require the parties to disclose any pending proceedings.
58 Normally, an enforcement proceeding will take precedence over a
60 modification action since the PKPA requires enforcement of child
62 custody determinations made in accordance with its terms.
64 However, the enforcement court must communicate with the
66 modification court in order to avoid duplicative litigation. The
68 courts might decide that the court with jurisdiction under
70 Article 2 [Me. cite subchapter II] shall continue with the
72 modification action and stay the enforcement proceeding. Or they
74 might decide that the enforcement proceeding shall go forward.
76 The ultimate decision rests with the court having exclusive,
78 continuing jurisdiction under Section 202 [Me. cite section
80 1746], or if there is no State with exclusive, continuing
82 jurisdiction, then the decision rests with the State that would
84 have jurisdiction to modify under Section 203 [Me. cite section

1747]. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202 [Me. cite section 1746], or with modification jurisdiction under Section 203 [Me. cite section 1747], could enjoin the parties from continuing with the enforcement proceeding.

§1768. Expedited enforcement of child custody determination

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

2. Petition contents. A petition for enforcement of a child custody determination must state:

A. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

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

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

D. The present physical address of the child and the respondent, if known;

E. Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

F. If the child custody determination has been registered and confirmed under section 1765, the date and place of registration.

2 3. Order directing appearance; hearing. 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 order necessary to ensure the safety of
6 the parties and the child. The hearing must be held on the next
judicial day after service of the order unless that date is
8 impossible. In that event, the court shall hold the hearing on
the first judicial day possible. The court may extend the date
of hearing at the request of the petitioner.

10 4. Contents of order. An order issued under subsection 3
12 must state the time and place of the hearing and advise the
respondent that at the hearing the court will order that the
14 petitioner may take immediate physical custody of the child and
the payment of fees, costs and expenses under section 1772 and
16 may schedule a hearing to determine whether further relief is
appropriate, unless the respondent appears and establishes that:

18 A. The child custody determination has not been registered
20 and confirmed under section 1765 and that:

22 (1) The issuing court did not have jurisdiction under
subchapter II;

24 (2) The child custody determination for which
26 enforcement is sought has been vacated, stayed or
modified by a court having jurisdiction to do so under
28 subchapter II;

30 (3) The respondent was entitled to notice, but notice
was not given in accordance with the standards of
32 section 1738, in the proceedings before the court that
issued the order for which enforcement is sought; or

34 B. The child custody determination for which enforcement is
36 sought was registered and confirmed under section 1764, but
has been vacated, stayed or modified by a court of a state
38 having jurisdiction to do so under subchapter II.

40 **Uniform Comment**

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

46 The petition is intended to provide the court with as much
information as possible. Attaching certified copies of all
48 orders sought to be enforced allows the court to have the
necessary information. Most of the information relates to the
50 permissible scope of the court's inquiry. The petitioner has the

2 responsibility to inform the court of all proceedings that would
affect the current enforcement action. Specific mention is made
4 of certain proceedings to ensure that they are disclosed. A
"procedure relating to domestic violence" includes not only
6 protective order proceedings but also criminal prosecutions for
child abuse or domestic violence.

8 The order requires the respondent to appear at a hearing on
the next judicial day. The term "next judicial day" in this
10 section means the next day when a judge is at the courthouse. At
the hearing, the court will order the child to be delivered to
12 the petitioner unless the respondent is prepared to assert that
the issuing State lacked jurisdiction, that notice was not given
14 in accordance with Section 108 [Me. cite section 1738], or that
the order sought to be enforced has been vacated, modified, or
16 stayed by a court with jurisdiction to do so under Article 2 [Me.
cite subchapter II]. The court is also to order payment of the
18 fees and expenses set out in Section 312 [Me. cite section
1772]. The court may set another hearing to determine whether
20 additional relief available under this state's law should be
granted.

22
24 If the order has been registered and confirmed in accordance
with Section 304 [Me. cite section 1764], the only defense to
26 enforcement is that the order has been vacated, stayed or
modified since the registration proceeding by a court with
jurisdiction to do so under Article 2 [Me. cite subchapter II].

28 **§1769. Service of petition and order**

30
32 Except as otherwise provided in section 1771, the petition
and order must be served by any method authorized by the law of
34 this State upon the respondent and any person who has physical
custody of the child.

36 **Uniform Comment**

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

40 **§1770. Hearing and order**

42
44 1. Immediate physical custody of child. Unless the court
issues a temporary emergency order pursuant to section 1748, upon
46 a finding that a petitioner is entitled to immediate physical
custody of the child, the court shall order that the petitioner
48 may take immediate physical custody of the child unless the
respondent establishes that:

2 A. The child custody determination has not been registered
3 and confirmed under section 1765 and that:

4 (1) The issuing court did not have jurisdiction under
5 subchapter II;

6 (2) The child custody determination for which
7 enforcement is sought has been vacated, stayed or
8 modified by a court of a state having jurisdiction to
9 do so under subchapter II; or

10 (3) The respondent was entitled to notice, but notice
11 was not given in accordance with the standards of
12 section 1738, in the proceedings before the court that
13 issued the order for which enforcement is sought; or

14 B. The child custody determination for which enforcement is
15 sought was registered and confirmed under section 1765 but
16 has been vacated, stayed or modified by a court of a state
17 having jurisdiction to do so under subchapter II.

18 2. Award of fees, costs and expenses. The court shall
19 award the fees, costs and expenses authorized under section 1772
20 and may grant additional relief, including a request for the
21 assistance of law enforcement officials, and set a further
22 hearing to determine whether additional relief is appropriate.

23 3. Refusal to answer. If a party called to testify refuses
24 to answer on the ground that the testimony may be
25 self-incriminating, the court may draw an adverse inference from
26 the refusal.

27 4. Privilege and immunity may not be invoked. A privilege
28 against disclosure of communications between spouses and a
29 defense of immunity based on the relationship of husband and wife
30 or parent and child may not be invoked in a proceeding under this
31 subchapter.

32 **Uniform Comment**

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

40 The certified copy, or a copy of the certified copy, of the
41 custody determination entitling the petitioner to the child is
42

2 prima facie evidence of the issuing court's jurisdiction to enter
3 the order. If the order is one that is entitled to be enforced
4 under Article 2 [Me. cite subchapter II] and if it has been
5 violated, the burden shifts to the respondent to show that the
6 custody determination is not entitled to enforcement.

7
8 It is a defense to enforcement that another jurisdiction has
9 issued a custody determination that is required to be enforced
10 under Article 2 [Me. cite subchapter II]. An example is when one
11 court has based its original custody determination on the UCCJA §
12 3(a)(2) (significant connections) and another jurisdiction has
13 rendered an original custody determination based on the UCCJA §
14 3(a)(1) (home State). When this occurs, Article 2 [Me. cite
15 subchapter II] of this Act, as well as the PKPA, mandate that the
16 home state determination be enforced in all other States,
17 including the State that rendered the significant connections
18 determination.

19
20 Lack of notice in accordance with Section 108 [Me. cite
21 section 1738] by a person entitled to notice and opportunity to
22 be heard at the original custody determination is a defense to
23 enforcement of the custody determination. The scope of the
24 defense under this Act is the same as the defense would be under
25 the law of the State that issued the notice. Thus, if the
26 defense of lack of notice would not be available under local law
27 if the respondent purposely hid from the petitioner, took
28 deliberate steps to avoid service of process or elected not to
29 participate in the initial proceedings, the defense would also
30 not be available under this Act.

31
32 There are no other defenses to an enforcement action. If
33 the child would be endangered by the enforcement of a custody or
34 visitation order, there may be a basis for the assumption of
35 emergency jurisdiction under Section 204 [Me. cite section 1748]
36 of this Act. Upon the finding of an emergency, the court issues
37 a temporary order and directs the parties to proceed either in
38 the court that is exercising continuing jurisdiction over the
39 custody proceeding under Section 202 [Me. cite section 1746], or
40 the court that would have jurisdiction to modify the custody
41 determination under Section 203 [Me. cite section 1747].

42
43 The court shall determine at the hearing whether fees should
44 be awarded under Section 312 [Me. cite section 1772]. If so, it
45 should order them paid. The court may determine if additional
46 relief is appropriate, including requesting law enforcement
47 officers to assist the petitioner in the enforcement of the
48 order. The court may set a hearing to determine whether further
relief should be granted.

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

8 **§1771. Warrant to take physical custody of child**

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

16 **2. Issuance of warrant; hearing.** If the court, upon the
testimony of the petitioner or other witness, finds that the
18 child is imminently likely to suffer serious physical harm or be
removed from this State, it may issue a warrant to take physical
20 custody of the child. The petition must be heard on the next
judicial day after the warrant is executed unless that date is
22 impossible. In that event, the court shall hold the hearing on
the first judicial day possible. The application for the warrant
24 must include the statements required by section 1768, subsection
2.

26 **3. Contents of warrant.** A warrant to take physical custody
28 of a child must:

30 **A. Recite the facts upon which a conclusion of imminent**
serious physical harm or removal from the jurisdiction is
32 based;

34 **B. Direct law enforcement officers to take physical custody**
of the child immediately; and

36 **C. Provide for the placement of the child pending final**
38 relief.

40 **4. Service of petition, warrant, order.** The respondent
must be served with the petition, warrant and order immediately
42 after the child is taken into physical custody.

44 **5. Enforcement of warrant.** A warrant to take physical
custody of a child is enforceable throughout this State. If the
46 court finds on the basis of the testimony of the petitioner or
other witness that a less intrusive remedy is not effective, it
48 may authorize law enforcement officers to enter private property
to take physical custody of the child. If required by exigent

2 circumstances of the case, the court may authorize law
enforcement officers to make a forcible entry at any hour.

4 6. Conditions to ensure appearance. The court may impose
conditions upon placement of a child to ensure the appearance of
6 the child and the child's custodian.

8 **Uniform Comment**

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

20 The term "harm" cannot be totally defined and, as in the
22 issuance of temporary restraining orders, the appropriate issuance
of a warrant is left to the circumstances of the case. Those
24 circumstances include cases where the respondent is the subject
of a criminal proceeding as well as situations where the
26 respondent is secreting the child in violation of a court order,
abusing the child, a flight risk and other circumstances that the
28 court concludes make the issuance of notice a danger to the
child. The court must hear the testimony of the petitioner or
30 another witness prior to issuing the warrant. The testimony may
be heard in person, via telephone, or by any other means
32 acceptable under local law. The court must State the reasons for
the issuance of the warrant. The warrant can be enforced by law
34 enforcement officers wherever the child is found in the State.
The warrant may authorize entry upon private property to pick up
36 the child if no less intrusive means are possible. In
extraordinary cases, the warrant may authorize law enforcement to
38 make a forcible entry at any hour.

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

2 proceeding through an attorney and is not present before the
3 court.

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

10 **§1772. Costs, fees and expenses**

12 **1. Award to prevailing party; exception.** The court shall
13 award the prevailing party, including a state, necessary and
14 reasonable expenses incurred by or on behalf of the party,
15 including costs, communication expenses, attorney's fees,
16 investigative fees, expenses for witnesses, travel expenses and
17 child care during the course of the proceedings, unless the party
18 from whom fees or expenses are sought establishes that the award
19 would be clearly inappropriate.

20 **2. Award against a state.** The court may not assess fees,
21 costs or expenses against a state unless authorized by law other
22 than this chapter.

24 **Uniform Comment**

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

34 The non-prevailing party has the burden of showing that such
35 an award would be clearly inappropriate. Fees and costs may be
36 inappropriate if their payment would cause the parent and child
37 to seek public assistance.

38 This section implements the policies of Section 8(c) of
39 Pub.L. 96-611 (part of the PKPA) which provides that:

42 In furtherance of the purposes of section 1738A of title 28,
43 United States Code [this section], as added by subsection (a) of
44 this section, State courts are encouraged to - (2) award to the
45 person entitled to custody or visitation pursuant to a custody
46 determination which is consistent with the provisions of such
47 section 1738A [this section], necessary travel expenses,
48 attorneys' fees, costs of private investigations, witness fees or
49 expenses, and other expenses incurred in connection with such
50 custody determination

2 The term "prevailing party" is not given a special
definition for this Act. Each State will apply its own standard.

4
6 Subsection (b) [Me. cite subsection 2] was added to ensure
that this section would not apply to the State unless otherwise
authorized. The language is taken from UIFSA § 313 (court may
8 assess costs against obligee or support enforcement agency only
if allowed by local law).

10 **§1773. Recognition and enforcement**

12
14 A court of this State shall accord full faith and credit to
an order issued by another state and consistent with this chapter
that enforces a child custody determination by a court of another
16 state unless the order has been vacated, stayed or modified by a
court having jurisdiction to do so under subchapter II.

18 **Uniform Comment**

20
22 The enforcement order, to be effective, must also be
enforced by other States. This section requires courts of this
State to enforce and not modify enforcement orders issued by
24 other States when made consistently with the provisions of this
Act.

26 **§1774. Appeals**

28
30 An appeal may be taken from a final order in a proceeding
under this subchapter in accordance with expedited appellate
procedures in other civil cases. Unless the court enters a
32 temporary emergency order under section 1764, the enforcing court
may not stay an order enforcing a child custody determination
34 pending appeal.

36 **Uniform Comment**

38 The order may be appealed as an expedited civil matter. An
enforcement order should not be stayed by the court. Provisions
40 for a stay would defeat the purpose of having a quick enforcement
procedure. If there is a risk of serious mistreatment or abuse
42 to the child, a petition to assume emergency jurisdiction must be
filed under Section 204 [Me. cite section 1748]. This section
44 leaves intact the possibility of obtaining an extraordinary
remedy such as mandamus or prohibition from an appellate court to
46 stay the court's enforcement action. In many States, it is not
possible to limit the constitutional authority of appellate
48 courts to issue a stay. However, unless the information before
the appellate panel indicates that emergency jurisdiction would

2 be assumed under Section 204 [Me. cite section 1748], there is no
3 reason to stay the enforcement of the order pending appeal.

4 **§1775. Role of prosecutor**

6 **1. Action by prosecutor.** In a case arising under this
7 chapter or involving the Hague Convention on the Civil Aspects of
8 International Child Abduction, the prosecutor may take any lawful
9 action, including resorting to a proceeding under this subchapter
10 or any other available civil proceeding to locate a child, obtain
11 the return of a child or enforce a child custody determination if
12 there is:

14 **A. An existing child custody determination;**

16 **B. A request to do so from a court in a pending child
17 custody proceeding;**

18 **C. A reasonable belief that a criminal statute has been
19 violated; or**

22 **D. A reasonable belief that the child has been wrongfully
23 removed or retained in violation of the Hague Convention on
24 the Civil Aspects of International Child Abduction.**

26 **2. Prosecutor acts on behalf of court.** A prosecutor acting
27 under this section acts on behalf of the court and may not
28 represent any party.

30 **Uniform Comment**

32 Sections 315-317 [Me. cite sections 1775 to 1777] are
33 derived from the recommendations of the Obstacles Study that urge
34 a role for public authorities in civil enforcement of custody and
35 visitation determinations. One of the basic policies behind this
36 approach is that, as is the case with child support, the
37 involvement of public authorities will encourage the parties to
38 abide by the terms of the court order. The prosecutor usually
39 would be the most appropriate public official to exercise
40 authority under this section. However, States may locate the
41 authority described in the section in the most appropriate public
42 office for their governmental structure. The authority could be,
43 for example, the Friend of the Court Office or the Attorney
44 General. If the parties know that prosecutors and law
45 enforcement officers are available to help secure the return of a
46 child, the parties may be deterred from interfering with the
47 exercise of rights established by court order.

48 The use of public authorities should provide a more
50 effective method of remedying violations of the custody

2 determination. Most parties do not have the resources to enforce
a custody determination in another jurisdiction. The
4 availability of the prosecutor or other government official as an
enforcement agency will help ensure that remedies of this Act can
6 be made available regardless of income level. In addition, the
prosecutor may have resources to draw on that are unavailable to
the average litigant.

8
10 The role of the public authorities should generally not
begin until there is a custody determination that is sought to be
12 enforced. The Act does not authorize the public authorities to
be involved in the action leading up to the making of the custody
14 determination, except when requested by the court, when there is
a violation the Hague Convention on the Civil Aspects of
16 International Child Abduction, or when the person holding the
child has violated a criminal statute. This Act does not mandate
18 that the public authorities be involved in all cases referred to
it. There is only so much time and money available for
20 enforcement proceedings. Therefore, the public authorities
eventually will develop guidelines to determine which cases will
receive priority.

22
24 The use of civil procedures instead of, or in addition to,
filing and prosecuting criminal charges enlarges the prosecutor's
26 options and may provide a more economical and less disruptive
means of solving problems of criminal abduction and retention.
28 With the use of criminal proceedings alone, the procedure may be
inadequate to ensure the return of the child. The civil options
30 would permit the prosecutor to resolve that recurring and often
frustrating problem.

32 A concern was expressed about whether allowing the
prosecutor to use civil means as a method of settling a child
34 abduction violated either DR 7105(A) of the Code of Professional
Responsibility or Model Rule of Professional Responsibility 4.4.
36 Both provisions either explicitly or implicitly disapprove of a
lawyer threatening criminal action to gain an advantage in a
38 civil case. However, the prohibition relates to threats that are
solely to gain an advantage in a civil case. If the prosecutor
40 has a good faith reason for pursuing the criminal action, there
is no ethical violation. See Committee on Legal Ethics v.
42 Printz, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to
press criminal charges against a client's former employee unless
44 employee made restitution).

46 It must be emphasized that the public authorities do not
become involved in the merits of the case. They are authorized
48 only to locate the child and enforce the custody determination.
The public authority is authorized by this section to utilize any
50 civil proceeding to secure the enforcement of the custody

2 determination. In most jurisdictions, that would be a proceeding
under this Act. If the prosecutor proceeds pursuant to this Act,
4 the prosecutor is subject to its provisions. There is nothing in
this Act that would prevent a State from authorizing the
6 prosecutor or other public official to use additional remedies
beyond those provided in this Act.

8 The public authority does not represent any party to the
custody determination. It acts as a "friend of the court." Its
10 role is to ensure that the custody determination is enforced.

12 Sections 315-317 [Me. cite sections 1775 to 1777] are
limited to cases covered by this Act, i.e. interstate cases.
14 However, States may, if they wish, extend this part of the Act to
intrastate cases.

16 It should also be noted that the provisions of this section
18 relate to the civil enforcement of child custody determinations.
Nothing in this section is meant to detract from the ability of
20 the prosecutor to use criminal provisions in child abduction
cases.

22 **§1776. Role of law enforcement**

24 At the request of a prosecutor acting under section 1775, a
26 law enforcement officer may take any lawful action reasonably
necessary to locate a child or a party and assist a prosecutor
28 with responsibilities under section 1775.

30 **Uniform Comment**

32 This section authorizes law enforcement officials to assist
in locating a child and enforcing a custody determination when
34 requested to do so by the public authorities. It is to be read
as an enabling provision. Whether law enforcement officials have
36 discretion in responding to a request by the prosecutor or other
public official is a matter of local law.

38 **§1777. Costs and expenses**

40 If the respondent is not the prevailing party, the court may
42 assess against the respondent all direct expenses and costs
incurred by the prosecutor and law enforcement officers under
44 section 1775 or 1776.

46 **Uniform Comment**

48 One of the major problems of utilizing public officials to
locate children and enforce custody and visitation determinations
50 is cost. This section authorizes the prosecutor and law

2 enforcement to recover costs against the non-prevailing party.
3 The use of the term "direct" indicates that overhead is not a
4 recoverable cost. This section cannot be used to recover the
5 value of the time spent by the public authorities' attorneys.

6 **SUBCHAPTER IV**
7 **MISCELLANEOUS PROVISIONS**

8 **§1781. Application and construction**

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

16 **§1782. Effective date**

18 This chapter takes effect January 1, 2000.

20 **§1783. Transitional provision**

22 A motion or other request for relief made in a child custody
24 proceeding or to enforce a child custody determination that was
commenced before January 1, 2000 is governed by the law in effect
at the time the motion or other request was made.

26 **Uniform Comment**

28 A child custody proceeding will last throughout the minority
30 of the child. The commencement of a child custody proceeding
32 prior to this Act does not mean that jurisdiction will continued
34 to be governed by prior law. The provisions of this act apply if
36 a motion to modify an existing determination is filed after the
enactment of this Act. A motion that is filed prior to enactment
may be completed under the rules in effect at the time the motion
is filed.

38 **Sec. 4. Effective date.** This Act is effective January 1, 2000.

40 **SUMMARY**

42 This bill repeals the Maine Revised Statutes, Title 19-A,
44 chapter 57, the Uniform Child Custody Jurisdiction Act and
replaces it with an updated version, the Uniform Child Custody
Jurisdiction and Enforcement Act.