

Approved Feb. 7, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Acting Chairperson Pugh at 10:02 a.m. on February 3, 2000 in Room 123-S of the Capitol.

All members were present except: Sen. Emert (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Ron Nelson, Attorney, Shawnee Mission, Kansas
Greg DeBacker, National Congress for Fathers and Children

Others attending: see attached list

The minutes of the February 2nd regular meeting and meeting at the rail were approved on a motion by Senator Donovan, seconded by Senator Oleen. Carried.

SB 382—enacting the Uniform Child-Custody Jurisdiction and Enforcement Act

Conferee Nelson, testifying as a proponent of **SB 382**, presented a brief history of the Uniform Child Custody Jurisdiction Act (UCCJA) and its effectiveness as a tool to be used in jurisdictional disputes over child custody cases. He stated that there had been conflicts in interpretation of the UCCJA by various states and “significant federal laws that impacted on the Act which had been enacted after the original draft of the UCCJA,” consequently the Family Law Committee of NCCUSL worked to draft a revision, the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). He presented a detailed discussion on the revisions and discussed changes made at the recommendation of the 1999 Interim Judiciary Committee. (attachment 1) Lengthy discussion followed.

Conferee DeBacker testified as an opponent of **SB 382** stating that while he agreed with part of the bill, he felt some of the language need revision. He stated that the language changes he offered were a group effort on the part of the NCFC and requested Committee take time to study them. (attachment 2)

The meeting adjourned at 10:55 a.m. The next scheduled meeting is February 7.

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TESTIMONY OF RONALD W. NELSON,

Rose & Nelson, Overland Park, Kansas

Mr. Chairman and Members of the Committee: My name is Ronald W. Nelson. I am a lawyer engaged in private practice in Overland Park, Kansas with approximately 85% of my practice in the area of family law. I am the President Elect of the Kansas Bar Association Family Law Section and I am the Vice Chair of the Child Custody Committee of the American Bar Association Family Law Section. I have written a number of articles and presented seminars on various areas of domestic law, including articles on the Uniform Child Custody Jurisdiction and Enforcement Act. The Kansas Bar Association favors the passage of the Uniform Child Custody Jurisdiction and Enforcement Act.

In 1966 the National Council of Commissioners on Uniform State Laws (a national organization composed of representatives of all 50 states) recommended passage of the Uniform Child Custody Jurisdiction Act. This original recommendation for passage was made “[t]o remedy this intolerable state of affairs [existing at that time] where self-help and the rule of ‘seize-and-run’ prevail rather than the orderly process of the law. . . .” Prefatory Note, Uniform Child Custody Jurisdiction Act, 9 U.L.A. 117 (Part I, 1988). This Act was enacted into law by the state of Kansas in 1978. 1978 Kan. Sess. Laws, Ch. 231. Since the original recommendation by the Uniform Laws Commission, all fifty states have enacted the UCCJA, with Massachusetts being the last state to enact the UCCJA effective December 21, 1983. Mass.Gen.Laws Ann. Ch. 209B, §§1-14.

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Since its enactment, the UCCJA has provided a significant improvement in the way in which jurisdictional disputes have been handled in the states' courts resulting in greater predictability of which state should handle custody disputes and significantly impacting on the practice in existence before passage of the UCCJA of a parent running from state to state to state trying to find a court in which a stay behind parents right could be negatively effected.

As a result of various national studies showing conflicts in interpretation of the UCCJA by various states, as well as significant federal laws that impacted on the Act which had been enacted after the original draft of the UCCJA, the Family Law Committee of NCCUSL determined in 1994 that the Act needed to be revised to ensure consistency and resolve conflicts. Over the next three years, drafting committees worked on revisions to the original UCCJA. At its annual meeting in 1997, the National Conference of Commissioners on Uniform State Laws approved a major revision of the Uniform Child Custody Jurisdiction Act. The revision, titled the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) modifies and supplements the existing UCCJA in a few different ways:

First, it revises the law on child custody jurisdiction in light of significant federal laws which have been enacted since the original drafting date, including the Parental Kidnapping Prevention Act (28 U.S.C. 1738A), the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.), the International Child Abduction Remedies Act (42 U.S.C. § 11601, et seq.), and other significant Acts.

Secondly, the UCCJEA revises the law in consideration of over thirty years of contradictory case law. Over the time since the original UCCJA was enacted some states' courts

have read various important provisions of the Act in diametric opposition to the way in which the Uniform Laws Commission originally anticipated. In some cases, those conflicting interpretations have led to situations in which two states have exercised jurisdiction over the same child although that is exactly the situation the Act sought to avoid. As a result, the Uniform Laws Commission has modified Article 2 of the Act so that it provides a more clear way in which a determination can be made of which State is to exercise original jurisdiction over a child-custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction (which the Kansas Legislature foresaw as a needed addition by adding K.S.A. 38-1335 in 1980). Other aspects of the Article harmonize the law on what happens when simultaneous proceedings occur, application of the “clean hands” doctrine, and rules regarding “inconvenient forum.”

Perhaps the most important inclusion in the UCCJEA and the only significant addition, however, is to be found in Article 3 which provides for an expedited process to enforce child custody and visitation determinations. This Article, for the first time, sets forth a simple and uniform method by which a existing orders of child custody, residency or visitation can be enforced. This Article is based on the provisions of the Hague Convention on International Child Abduction and sets forth strong means for enforcement of those Orders.

The 1999 Interim Judiciary Committee passed out the Uniform Child Custody Jurisdiction and Enforcement Act with various additions necessary to modify all laws affected by child custody jurisdiction issues, making clear (as is intended by the UCCJEA, and as has been found applicable by the Kansas Supreme Court) that actions for guardianship, child in need of care, determination of parentage, and other similar matters are included.

In the Interim Committee hearings, it was suggested that some additional jurisdictional provisions be added to the adoption statutes since the UCCJEA specifically excludes adoptions from its coverage. The reason for this exclusion is because NCCUSL also has recommended for passage a Uniform Adoption Act that includes jurisdictional provisions specific to adoptions. The suggested additions to the Act in the Interim Committee sought to incorporate provisions from the Uniform Adoption Act since, without any addition, the UCCJEA would exclude adoption (see UCCJEA Section 203), but the Kansas Adoption statutes do not include any independent jurisdictional provisions.

In reviewing the various proposals, it appears the Kansas Legislature has two alternatives in dealing with this situation:

First, and easiest, the Legislature could simply remove the exclusion of adoption for the Act. This would be accomplished merely by deleting subsection (a) of UCCJEA 103. This is probably the easiest and best way to deal with this issue. If this is the choice of the Legislature, then Section 103 of the Act (as included in SB382) should be amended as follows:

35 New Sec. 3. (UCCJEA 103). This act does not govern ~~an adoption~~
36 ~~proceeding or~~ a proceeding pertaining to the authorization of emergency
37 medical care for a child. ~~Jurisdiction for adoptions shall be governed by~~
38 ~~K.S.A. 59-2127, and amendments thereto.~~

If this choice is selected, K.S.A. 59-2127(a) can be deleted in total.

Secondly, the Legislature could include modified provisions of the Uniform Adoption Act into the Act. The Interim Committee incorporated the jurisdictional provisions of the UAA into the UCCJEA. However, in reviewing those provisions, it appears there are some additional modifications that need to be made to coordinate those sections with the federal Parental Kidnapping Prevention Act. Those are as follows:

13 Sec. 45. K.S.A. 59-2127 is hereby amended to read as follows: 59-
14 2127. ~~(a) If the basis for venue in an agency adoption is subsection (b)(3)~~
15 ~~of K.S.A. 59-2126 and the petitioner does not reside in Kansas and the~~
16 ~~child to be adopted did not reside in Kansas prior to receipt of custody~~
17 ~~by the agency, the court shall determine whether or not to exercise its~~
18 ~~jurisdiction under this act based on the best interests of the child. For~~
19 ~~this purpose the court shall consider the following factors:~~
20 ~~—(1) If another state recently was the child's or mother's home state;~~
21 ~~—(2) if another state has a closer connection with the child or the child's~~
22 ~~adoptive or genetic parent or parents;~~
23 ~~—(3) if substantial evidence concerning the child's present or future~~
24 ~~care, protection, training and personal relationships is more readily avail-~~
25 ~~able in another state;~~
26 ~~—(4) the unavailability of placement opportunities for such child within~~
27 ~~the state of Kansas; and~~
28 ~~—(5) any other factor the court deems relevant in its determination of~~
29 ~~whether or not to exercise its jurisdiction.~~

30 ~~(a) Except as otherwise provided in subsections (b) and (c), a court~~
31 ~~of this state has jurisdiction over a proceeding for the adoption of a minor~~
32 ~~commenced under this act if:~~

33 ~~(1) Immediately before commencement of the proceeding, the minor~~
34 ~~lived in this state with a parent, a guardian, a prospective adoptive parent,~~
35 ~~or another person acting as parent, for at least six consecutive months,~~
36 ~~excluding periods of temporary absence, or, in the case of a minor under~~
37 ~~six months of age, the minor lived in this state from birth with any of~~
38 ~~those individuals and there is available in this state substantial evidence~~
39 ~~concerning the minor's present or future care;~~

40 ~~(2) a court of another state does not have jurisdiction under paragraph (1), or a~~
41 ~~court of the home state of the child has declined to exercise jurisdiction on the ground that~~
42 ~~this state is the more appropriate forum under section 19 or 20 and amendments thereto,~~
43 ~~and immediately before commencement of the proceeding, the pro-~~
41 ~~spective adoptive parent lived in this state for at least six consecutive~~
42 ~~months, excluding periods of temporary absence, and there is available in~~
43 ~~this state substantial evidence concerning the minor's present or future~~

1 care;

2 (3) a court of another state does not have or has declined to exercise jurisdiction
3 under paragraphs (1) or (2) and the agency that placed the minor for adoption is located in
4 this
5 state and either it is in the best interest of the minor that a court of this state
6 assume jurisdiction because:
7 (A) The minor and the minor's parents, or the minor and the pro-
8 spective adoptive parent, have a significant connection with this state;
9 and/or
10 (B) there is available in this state substantial evidence concerning the
11 minor's present or future care;

12 (4) a court of another state does not have or has declined to exercise jurisdiction
13 under paragraphs (1), (2) or (3) and the minor and the prospective adoptive parent are
14 physically pres-
15 ent in this state and the minor has been abandoned or it is necessary in
16 an emergency to protect the minor because the minor has been subjected
17 to or threatened with mistreatment or abuse; or
18 (5) all courts having jurisdiction under paragraph (1), (2), (3) or (4)
19 have declined to exercise jurisdiction on the ground that a court of this
20 state is the more appropriate forum to determine the custody of the child.
21 (b) A court of this state may not exercise jurisdiction over a proceed-
22 ing for adoption of a minor if at the time the petition for adoption is filed
23 a proceeding concerning the custody or adoption of the minor is pending
24 in a court of another state exercising jurisdiction substantially in conform-
25 ity with the uniform child custody jurisdiction act, or the uniform child
26 custody jurisdiction and enforcement act, or this act unless the proceeding
27 is stayed by the court of the other state.
28 (c) If a court of another state has issued a decree or order concerning
29 the custody of a minor who may be the subject of a proceeding for adop-
30 tion in this state, a court of this state may not exercise jurisdiction over a
31 proceeding for adoption of the minor unless:
32 (1) The court of this state finds that the court of the state which issued
33 the decree or order:
34 (A) Does not have continuing jurisdiction to modify the decree or order
35 under jurisdictional prerequisites substantially in accordance with the
36 uniform child custody jurisdiction act, or the uniform child custody ju-
37 risdiction and enforcement act, or has declined to assume jurisdiction to
38 modify the decree or order, or
39 (B) does not have jurisdiction over a proceeding for adoption sub-
40 stantially in conformity with subsection (a)(1) through (4) or has declined
41 to assume jurisdiction proceeding for adoption; and
42 (2) the court of this state has jurisdiction over the proceeding.
43 (b)(d) Before determining whether or not to exercise its jurisdiction
the court may communicate with a court of another state and exchange
information pertinent to the assumption of jurisdiction by either court
with a view to assuring that jurisdiction will be exercised by such court
of another state and that a forum will be available to the parties.

- 1 ~~(e)~~(e) If the court determines not to exercise its jurisdiction, it may
- 2 dismiss the proceedings, or it may stay the proceedings upon condition
- 3 that an adoption proceeding be promptly commenced in another named
- 4 state or upon any other conditions which may be just and proper.

By adding these provisions, the language complies with the provisions of the federal Parental Kidnapping Prevention Act by including a preference for “home state” jurisdiction and an order for acceptance of jurisdiction if not home state.

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Ronald W. Nelson, preparer

<p style="text-align: center;">UNIFORM CHILD CUSTODY JURISDICTION ACT (as enacted in Kansas in 1978)</p> <p>38-1301 SECTION 1. PURPOSES.</p> <p><i>Purposes of act; construction of provisions.</i></p> <p>(a) The general purposes of this act are to:</p> <p>(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;</p> <p>(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;</p> <p>(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state;</p> <p>(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;</p> <p>(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;</p> <p>(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;</p> <p>(7) facilitate the enforcement of custody decrees of other states;</p> <p>(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and</p>	<p style="text-align: center;">UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT</p> <p style="text-align: center;">GENERAL PROVISIONS</p> <p style="text-align: center;">[ARTICLE] 1</p> <p>NO PURPOSE SECTION. THE UNIFORM LAWS COMMISSIONERS HAVE DETERMINED THAT PURPOSES SECTIONS ARE NO LONGER NECESSARY IN UNIFORM LEGISLATION. THE PURPOSES SECTION HAS BEEN OMITTED AS A MATTER OF STYLE. NONETHELESS, THE UCCJEA SHOULD STILL BE INTERPRETED ACCORDING TO ITS PURSPOSES, WHICH ARE STATED IN THE UCCJA.</p>
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(9) make uniform the law of those states which enact it.

(b) This act shall be construed to promote the general purposes stated in this section.

THE UCCJA "SHORT TITLE" SECTION IS INCLUDED AT 38-1326, AS IN THE UCCJA AT THE END OF THE ACT. THE SHORT TITLE SECTION HAS BEEN MOVED IN THE UCCJEA TO THE BEGINNING OF THE ACT.

{{38-1326

SHORT TITLE.

K.S.A. 38-1301 to 38-1326, inclusive, may be cited as the uniform child custody jurisdiction act.}}

38-1302 SECTION 2. DEFINITIONS.

As used in the uniform child custody Jurisdiction act:

NO COMPARABLE DEFINITION IN THE UCCJA.

NO COMPARABLE DEFINITION IN THE UCCJA. THE UCCJEA DEFINITION FOR "CHILD" IS TAKEN FROM THE FEDERAL PKPA WHICH GOVERNS FULL FAITH AND CREDIT GIVEN TO DECISIONS ON CHILD CUSTODY JURISDICTION DISPUTES.

SEE "CUSTODY DETERMINATION" IN THE UCCJA [SECTION 3(b)]. THE UCCJEA CHANGES THE TERM TO "CHILD-CUSTODY DETERMINATION." NO SUBSTANTIVE CHANGE IS INTENDED BY THE CHANGE IN TERMINOLOGY. THE DEFINITION OF "CHILD-CUSTODY DETERMINATION" NOW CLOSELY TRACKS THE DEFINITION FOUND IN THE PKPA.

SEE "CUSTODY PROCEEDING" IN THE UCCJA [SECTION 3(c)]. THE UCCJEA DEFINITION HAS BEEN EXPANDED ALTHOUGH NO SUBSTANTIVE CHANGE IS INTENDED BY THE CHANGE IN TERMINOLOGY. LISTS OF PROCEEDINGS INCLUDED IN UCCJEA COVERAGE ARE STATED BECAUSE SOME STATES DOMESTIC VIOLENCE STATUTES MAY AFFECT CUSTODY AND

SECTION 101. SHORT TITLE.

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

SECTION 102. DEFINITIONS.

In this [Act]:

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

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

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

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

<p>VISITATION. THE LISTING ASSISTS IN PROVIDING UNIFORMITY OF INTERPRETATION. CASES INVOLVING THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF CHILD ABDUCTION HAVE NOT BEEN INCLUDED BECAUSE CUSTODY OF THE CHILD IS NOT DETERMINED IN SUCH A PROCEEDING.. THOSE PROCEEDINGS ARE SPECIALLY INCLUDED IN THE ENFORCEMENT ARTICLE [ARTICLE 3].</p> <p>THE WORD "COMMENCEMENT" HAS BEEN INCLUDED IN THE UCCJEA DEFINITIONS AS A REPLACEMENT FOR THE WORD "PENDING" IN THE UCCJA. THE CHANGE TO "COMMENCEMENT" IN THE UCCJEA IS INTENDED TO SIMPLIFY SOME OF THE SIMULTANEOUS PROCEEDINGS PROVISIONS OF THE UCCJEA.</p> <p>UCCJEA SEC. 102(6) HAS NO COMPARABLE DEFINITION IN THE UCCJA.</p> <p>(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.</p> <p>(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.</p> <p>(c) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes proceedings under the Kansas code for care of children.</p>	<p>contractual emancipation, or enforcement under [Article] 3.</p> <p>(5) "Commencement" means the filing of the first pleading in a proceeding.</p> <p>(6) "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.</p> <p>UCCJA TERM "CONTESTANT" HAS BEEN OMITTED FROM THE UCCJEA. RATIONALE FOR INCLUSION IN THE UCCJA WAS NEVER CLEARLY ENUNCIATED. THE TERM HAS SERVED LITTLE PURPOSE AND WHATEVER FUNCTION IT HAD HAS BEEN SUBSUMED BY STATE LAWS ON IDENTIFICATION OF PERSONS WHO HAVE STANDING TO SEEK CHILD CUSTODY OR VISITATION.</p> <p>UCCJA TERMS "CUSTODY DETERMINATION" AND "CUSTODY PROCEEDINGS" HAVE BEEN CHANGED TO "CHILD-CUSTODY DETERMINATION" AND "CHILD-CUSTODY PROCEEDING." NO SUBSTANTIVE CHANGE IS INTENDED BY THE CHANGE IN TERMINOLOGY. THE DEFINITION OF "CHILD-CUSTODY DETERMINATION" NOW CLOSELY TRACKS THE DEFINITION PROVIDED IN THE FEDERAL PKPA. THE LIST OF CUSTODY PROCEEDINGS IS EXPANDED FROM THE COMPARABLE DEFINITION IN THE UCCJA. THE LISTED PROCEEDINGS HAVE GENERALLY BEEN DETERMINED TO BE THE TYPE OF PROCEEDING TO WHICH THE UCCJA AND PKPA ARE APPLICABLE.</p>
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(d) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(e) "Home state" means the state in which the child immediately preceding the time involved lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

THE DEFINITION OF "HOME STATE" HAS BEEN SLIGHTLY REWRITTEN IN THE UCCJEA. NO SUBSTANTIVE CHANGE IS INTENDED FROM THE UCCJA.

(f) "Initial decree" means the first custody decree concerning a particular child.

UCCJA HAS NO COMPARABLE DEFINITION TO UCCJEA 102(9).

UCCJA HAS NO COMPARABLE TERM TO UCCJEA SEC. 102(10). THE UCCJEA TERM "ISSUING STATE" IS BORROWED FROM UIFSA. AS USED IN THE UCCJEA THE TERM REFERS TO THE STATE OR COURT WHICH DECIDED THE CUSTODY DETERMINATION SOUGHT TO BE ENFORCED. IT IS USED PRIMARILY IN ARTICLE 3 [ENFORCEMENT].

UCCJA TERMS "DECREE" AND "CUSTODY DECREE" HAVE BEEN ELIMINATED FROM THE UCCJEA AS DUPLICATIVE OF "CUSTODY DETERMINATION" USED IN THE UCCJEA.

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

THE DEFINITION OF "HOME STATE" HAS BEEN SLIGHTLY REWRITTEN IN THE UCCJEA. NO SUBSTANTIVE CHANGE IS INTENDED FROM THE UCCJA.

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

UCCJA SEC. 3(f) DEFINITION HAS BEEN MODIFIED IN UCCJEA TO MAKE EXPLICIT THE INCLUSION OF TEMPORARY ORDERS IN COVERAGE OF THE ACT. THE UCCJEA SUBSTITUTES "DETERMINATION" FOR THE WORD "DECREE."

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

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

<p>(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.</p> <p>UCCJA SEC. 3(g) DEFINITION HAS BEEN SLIGHTLY REWRITTEN IN UCCJEA SEC. 102(11) TO EXPAND COVERAGE TO INCLUDE TEMPORARY ORDERS.</p> <p>(h) "Physical custody" means actual possession and control of a child.</p> <p>UCCJA HAS NO COMPARABLE DEFINITION TO UCCJEA SEC. 102(12). DEFINITION HAS BEEN ADDED TO THE UCCJEA TO ENSURE THAT PROVISIONS OF THE UCCJEA APPLY WHEN A STATE IS THE MOVING PARTY IN A CUSTODY PROCEEDING OR HAS LEGAL CUSTODY OF THE CHILD.</p> <p>(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.</p> <p>UCCJA SEC. 3(i) DEFINITION HAS BEEN EXPANDED IN UCCJEA SEC. 102(13). UCCJEA HAS BROADENED THE DEFINITION TO INCLUDE A PERSON WHO HAS ACTED AS A PARENT FOR A SIGNIFICANT PERIOD OF TIME PRIOR TO FILING OF THE CUSTODY PROCEEDING AS WELL AS A PERSON WHO HAS CURRENT PHYSICAL CUSTODY OF THE CHILD. IN ADDITION A PERSON ACTING AS A PARENT MUST EITHER HAVE LEGAL CUSTODY OR CLAIM A RIGHT TO LEGAL CUSTODY UNDER THE LAW OF A STATE.</p> <p>UCCJEA SEC. 102(14) CONTAINS DEFINITION SIMILAR TO UCCJA SEC. 2(h) (SEE ABOVE). UCCJEA DEFINITION DE-EMPHASISES "POSSESSION" <i>{{(h) "Physical custody" means actual possession and control of a child.}}</i></p>	<p>(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.</p> <p>UCCJEA SEC. 102(14) CONTAINS DEFINITION SIMILAR TO UCCJA SEC. 3(h). <i>{{(14) "Physical custody" means the physical care and supervision of a child.}}</i></p> <p>(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.</p> <p>(13) "Person acting as a parent" means a person, other than a parent, who:</p> <p>(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and</p> <p>(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.</p> <p>(14) "Physical custody" means the physical care and supervision of a child.</p>
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(j) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

UCCJA CONTAINS NO COMPARABLE DEFINITION TO UCCJEA 102(16). INDIAN TRIBES WERE NOT INCLUDED UNDER THE UCCJA (KANSAS VERSION) AS COMPARABLE TO A "STATE." THE DEFINITION OF "TRIBE" IS THAT MANDATED FOR UNIFORM ACTS.

NO COMPARABLE DEFINITION IN UCCJA BECAUSE NO ENFORCEMENT PROVISIONS WERE INCLUDED IN THE UCCJA WHICH ARE SIMILAR TO THOSE INCLUDED IN THE UCCJEA.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 103 AS THE UCCJA DID NOT EXCLUDE ANY CHILD RELATED ISSUES FROM ITS COVERAGE. PROCEEDINGS PERTAINING TO THE AUTHORIZATION OF EMERGENCY MEDICAL CARE FOR CHILDREN ARE OUTSIDE THE SCOPE OF THE UCCJA AND THE UCCJEA SINCE SUCH PROCEEDINGS ARE NOT CUSTODY DETERMINATIONS. IF A STATE WISHES TO APPLY THE UCCJEA TO ADOPTIONS, THIS SECTION MAY BE OMITTED. IF THE STATE HAS NOT ENACTED THE UNIFORM ADOPTION ACT, IT MAY ENACT THE JURISDICTIONAL PROVISIONS FROM THE UNIFORM ADOPTION ACT.

UCCJA DID NOT RECOGNIZE INDIAN TRIBES AS "TRIBUNALS" FOR DETERMINATION OF CHILD CUSTODY MATTERS. UCCJA WAS ENACTED PRIOR TO ENACTMENT OF FEDERAL INDIAN CHILD WELFARE ACT. THIS PROVISION ALLOWS A STATE TO EXTEND THE TERMS OF THE UCCJEA TO INDIAN TRIBAL CUSTODY DECISIONS.

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

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

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

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.

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

SECTION 104. APPLICATION TO INDIAN TRIBES.

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

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

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

INTERNATIONAL APPLICATION OF UCCJA WAS INCLUDED IN SIMILAR PROVISION – See UCCJA SEC23 [KSA 38-1323].

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INTERNATIONAL APPLICATION.

The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.}}

THE COMPARABLE UCCJA PROVISION SEC 23 [KSA 38-1323], INDICATES ONLY THAT THE THEORIES UPON WHICH THE UCCJA IS BASED SHOULD BE APPLIED TO INTERNATIONAL CUSTODY DETERMINATIONS. INCONSISTENT APPLICATION AMONG STATES HAS OCCURRED UNDER THE UCCJA PROVISION. THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION HAD NOT YET BEEN NEGOTIATED AT THE TIME THE UCCJA WAS DRAFTED.

UCCJA SEC. 12 [KSA 38-1312] IS COMPARABLE TO UCCJEA SEC. 106. NO SUBSTANTIVE CHANGES HAVE BEEN MADE TO THIS SECTION.

UCCJA SEC. 24 [KSA 38-1324] IS COMPARABLE TO UCCJEA SEC. 107. NO SUBSTANTIVE CHANGE INTENDED IN UCCJEA. ULC DETERMINED THIS SECTION SHOULD BE PLACED TOWARD THE BEGINNING OF ARTICLE 1 TO EMPHASIZE ITS IMPORTANCE. THE LANGUAGE CHANGE FROM "CASE" TO "QUESTION" IS TO CLARIFY THAT IT IS THE JURISDICTIONAL ISSUE WHICH MUST BE EXPEDITED – NOT THE ENTIRE CUSTODY CASE.

{{38-1324 PRIORITY.

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act the case shall be given calendar priority and handled expeditiously.}}

SECTION 105. INTERNATIONAL APPLICATION OF [ACT].

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

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

(c) The court need not apply the provisions of this [Act] when the child custody law of the other country violates fundamental principles of human rights.

THE UCCJEA PROVISION PROVIDES FOR THOSE CIRCUMSTANCES UNDER WHICH THE COURT NEED NOT APPLY THE PROVISIONS OF THE ACT TO FOREIGN CUSTODY LAW, AS PROVIDED IN THE HAGUE CONVENTION.

SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION.

A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

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

REPLACEMENT OF UCCJA SEC. 5 [KSA 38-1305].
{{38-1305 Notice to persons outside this state;
submission to jurisdiction.

(a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) By personal delivery outside this state in the manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

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

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

(b) Notice under this section shall be served, mailed, or delivered, or last published at least thirty (30) days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.}}

SECTION 108 OF THE UCCJEA AUTHORIZES NOTICE, AND PROOF OF SERVICE, TO BE MADE BY ANY METHOD ALLOWED BY OTHER STATE LAW, RATHER THAN PROVIDING OVERLAPPING METHODS OF NOTICE AND SERVICE. STATE LAW NOW DETERMINES HOW LONG PRIOR TO THE HEARING NOTICE MUST OCCUR. THIS CORRESPONDS WITH THE USE OF LOCAL LAW TO DETERMINE AS MANY ISSUES AS POSSIBLE UNDER THIS ACT. OTHERWISE NO MAJOR SUBSTANTIVE CHANGES WERE MADE TO THIS SECTION.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 109. MUCH OF THE UCCJEA SECTION IS DERIVED FROM UIFSA SEC. 314. ABSENCE OF LIMITED IMMUNITY HAS BEEN DIFFICULT PROBLEM IN UCCJA CASES.

SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

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

<p>UCCJEA SEC. 110 IS AN EXPANSION OF UCCJA SEC. 6(c) [KSA 38-1306(c)]. LANGUAGE HAS BEEN ADDED TO EMPHASIZE THE ROLE OF THE PARTIES IN THE COMMUNICATION PROCESS.</p> <p>NO COMPARABLE PROVISION IN THE UCCJA. UCCJA GRANTED NO RIGHT BY PARTIES TO PARTICIPATE IN COMMUNICATIONS BETWEEN COURTS REGARDING THEIR CASE. UCCJEA SEC. 6(b) INDICATES RIGHT OF PARTIES TO PARTICIPATE IN COURT COMMUNICATIONS. THIS ADDRESSES DUE PROCESS CONCERNS.</p> <p>NO COMPARABLE PROVISION IN THE UCCJA. INDICATES THAT NON- SUBSTANTIVE COMMUNICATIONS NEED NOT INVOLVE THE PARTIES.</p> <p>NO COMPARABLE PROVISION IN THE UCCJA. THE UCCJEA PROVISION IS INCLUDED TO ASSURE PRESERVATION OF AN APPROPRIATE RECORD.</p> <p>DEFINITION OF RECORD NECESSARY TO INDICATE THAT INFORMATION REGARDING THE PROCEEDING IS TO BE IN TANGIBLE FORM.</p>	<p>proceeding.</p> <p>(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.</p> <p>(c) The immunity granted subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.</p> <p>SECTION 110. COMMUNICATION BETWEEN COURTS.</p> <p>(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].</p> <p>(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.</p> <p>(c) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.</p> <p>(d) Except as provided in subsection (c), a record must be made of the communication. The parties must be informed promptly of the communication and granted access to the record.</p> <p>(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.</p>
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UCCJEA SEC. 111 IS COMPARABLE TO UCCJA SEC. 18 [KSA 38-1318]. NO SUBSTANTIVE CHANGES HAVE BEEN MADE. SUBSECTIONS (b) AND (c) OF THE UCCJEA SECTION MERELY PROVIDE THAT MODERN MODES OF COMMUNICATION ARE PERMISSIBLE.

{{38-1318 TAKING TESTIMONY IN ANOTHER STATE.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.}}

UCCJEA SEC 112 COMBINES COMPARABLE UCCJA SECTIONS 19-22 [KSA 38-1319 – KSA 38-1322]. ALSO COMPARABLE TO SOME PROVISIONS IN UCCJA SEC. 6 [KSA 38-1306]. THE SECTION PROVIDES THE MECHANISM FOR COMMUNICATION BETWEEN CONTESTING COURTS. SUBSTANTIVE CHANGES INTENDED ONLY TO SUBSECTION (c).

UCCJEA SEC 112(a) IS COMPARABLE TO UCCJA SEC. 19 [KSA 38-1319]. NO SUBSTANTIVE CHANGE FROM THE UCCJA PROVISIONS.

THE UCCJA TERM "SOCIAL STUDY" HAS BEEN REPLACED BY THE MODERN TERM: "CUSTODY EVALUATION." THE ACT DOES NOT TAKE A POSITION ON THE ADMISSIBILITY OF A CUSTODY EVALUATION PERFORMED IN ANOTHER STATE, BUT MERELY AUTHORIZES A COURT TO SEEK ASSISTANCE OF, OR RENDER ASSISTANCE TO, A COURT OF ANOTHER STATE.

SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.

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

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that State;

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

<p>COMPARABLE TO UCCJA SEC. 19(a) [KSA 38-1319(a).</p> <p>UCCJEA 112(5) IS COMPARABLE TO UCCJA SEC. 19(b) [KSA 38-1319(b)]. COSTS PROVISION OF UCCJA SEC. 19(b) HAS BEEN MOVED TO UCCJEA SEC.(c).</p> <p>COMPARABLE TO UCCJA SEC. 20(a).</p> <p>THE UCCJA COSTS PROVISION HAS BEEN EXPANDED IN THE UCCJEA. THE TERM "EXPENSES" WAS INTENDED BY THE DRAFTERS TO INCLUDE OUT-OF-POCKET COSTS. OVERHEAD COSTS SHOULD NOT BE ASSESSED AS EXPENSES.</p> <p>SUBSECTION (D) IS COMPARABLE TO UCCJA SEC. 21 [KSA 38-1321]. NO SUBSTANTIVE CHANGES WERE MADE.</p>	<p>(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and</p> <p>(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.</p> <p>(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).</p> <p>(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.</p> <p>(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of these records.</p>
<p>38-1303. Jurisdiction.</p> <p>(a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:</p> <p>(1) This state</p> <p>(A) is the home state of the child at the time of commencement of the proceeding, or</p> <p>(B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of the child's removal or retention by a person claiming the child's custody or for other reasons,</p>	<p style="text-align: center;">[ARTICLE] 2 JURISDICTION</p> <p>SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.</p> <p>(a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if:</p> <p>(1) this State</p> <p>is the home State of the child on the date of the commencement of the proceeding, or</p> <p>was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this</p>

<p>and a parent or person acting as parent continues to live in this state; or</p> <p>(2) it is in the best interest of the child that a court of this state assume jurisdiction because</p> <p>(A) the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and</p> <p>(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or</p> <p>(3) the child is physically present in this state and</p> <p>(A) the child has been abandoned or</p> <p>(B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise a child in need of care; or</p> <p>(4) (A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and</p> <p>(B) it is in the best interest of the child that this court assume jurisdiction.</p> <p>(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.</p> <p>(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the child's custody.</p>	<p>State;</p> <p>(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, and:</p> <p>(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this State other than mere physical presence; and</p> <p>(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;</p> <p>(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or</p> <p>(4) no State would have jurisdiction under paragraph (1), (2), or (3).</p> <p>(b) Subsection (a) is the exclusive jurisdictional basis for making a child- custody determination by a court of this State.</p> <p>(c) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.</p> <p>THE BASIC UCCJA JURISDICTION SECTION 3 [KSA 38-1303] HAS BEEN MODIFIED BY THE UCCJEA IN SEVERAL WAYS. THE EXTENDED</p>
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<p>38-1304 Notice and opportunity to be heard.</p> <p>Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to K.S.A. 38-1305.</p>	<p>HOME STATE PROVISION HAS BEEN MODIFIED, IN ACCORDANCE WITH THE DECISION OF THE DRAFTING COMMITTEE, TO APPLY WHENEVER THE CHILD HAS LEFT THE STATE AND A PARENT OR PERSON ACTING AS A PARENT REMAINS. IT IS NO LONGER NECESSARY TO DETERMINE WHY THE CHILD HAS BEEN REMOVED. THE ONLY INQUIRY RELATES TO THE STATUS OF THE PERSON LEFT BEHIND. THIS CHANGE PROVIDES A SLIGHTLY MORE REFINED HOME STATE STANDARD THAN THE PKPA. THE PKPA REQUIRES A DETERMINATION THAT THE CHILD HAS BEEN REMOVED BY A CONTESTANT OR FOR OTHER REASONS.</p> <p>SIGNIFICANT CONNECTION JURISDICTION IS AMENDED IN THREE WAYS. FIRST, THE "BEST INTEREST" LANGUAGE OF THE UCCJA HAS BEEN ELIMINATED. THIS PHRASE TENDED TO CREATE CONFUSION BETWEEN THE JURISDICTIONAL ISSUE AND THE SUBSTANTIVE CUSTODY DETERMINATION. SINCE THE LANGUAGE WAS NOT NECESSARY FOR THE JURISDICTIONAL DETERMINATION, IT HAS BEEN REMOVED. THE SECTION ALSO PRIORITIZES HOME STATE JURISDICTION IN THE SAME MANNER AS THE PKPA. THIS PRIORITIZATION IS NECESSARY TO CONFORM THE UCCJA TO THE PKPA.</p> <p>COMPARABLE TO UCCJEA SEC. 205 ALTHOUGH UCCJEA SEC. 205 DOES NOT ATTEMPT TO DICTATE THOSE PERSONS TO WHOM NOTICE MUST BE GIVEN, WHICH DEPENDS ON LOCAL LAW.</p> <p><i>{{SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.</i></p> <p><i>(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.</i></p> <p><i>(b) This [Act] does not govern the enforceability of a child-custody determination made without notice and an opportunity to be heard.</i></p> <p><i>(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under</i></p>
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38-1305 Notice to persons outside this state; submission to jurisdiction.

(a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) By personal delivery outside this state in the manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

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

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

(b) Notice under this section shall be served, mailed, or delivered, or last published at least thirty (30) days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State.}}

**UCCJA SEC. 5 [KSA 38-1305] HAS BEEN REPLACED BY UCCJEA SEC. 108 TO PROVIDE THAT PROCEDURES ALLOWED BY THE STATE ARE TO BE USED, RATHER THAN SEPARATE UCCJEA PROCEDURES. (SEE ABOVE)
{{SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.**

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

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

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

NO COMPARABLE PROVISION IN THE ORIGINAL UCCJA. UCCJEA SEC. 202 IS SIMILAR TO KSA 38-1335, WHICH IS A KANSAS VARIATION OF THE UCCJA. CONTINUING JURISDICTION IS LOST UNDER UCCJEA SEC. 202 WHEN ALL RELEVANT PARTIES HAVE MOVED OUT OF THE ORIGINAL DECREE STATE. KSA 38-1335 SIMPLY PROVIDED THAT KANSAS COURTS CONTINUED TO HAVE JURISDICTION UNTIL "ANOTHER STATE ASSUMES JURISDICTION."

IF PARTIES SHOULD MOVE OUT OF THE STATE DURING PENDENCY OF A MODIFICATION PROCEEDING, THE STATE WOULD NOT LOSE JURISDICTION UNTIL CONCLUSION OF THAT PROCEEDING.

UCCJEA SEC. 203 IS COMPARABLE TO UCCJA SEC. 14 [KSA 38-1314].

{{38-1314 MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE.

(a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under subsection (a) and K.S.A. 38-1308 modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with K.S.A. 38-1322.

UCCJEA SEC. 203 COMPLEMENTS UCCJEA SEC.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

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

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

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

(b) A court of this State that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section 207.

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

SECTION 203. JURISDICTION TO MODIFY DETERMINATION.

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

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

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

202 AND IS ADDRESSED TO A COURT CONFRONTED WITH A PROCEEDING TO MODIFY A CUSTODY DETERMINATION OF ANOTHER STATE.

UCCJEA SEC. 204 IS AN ELABORATION OF UCCJA SEC. 3(a)(3) [KSA 38-1303(a)(3)]. UCCJEA SEC. 204 "EMERGENCY JURISDICTION" REMAINS "AN EXTRAORDINARY JURISDICTION FOR EXTRAORDINARY CIRCUMSTANCES."

(3) the child is physically present in this state and

(A) the child has been abandoned or

(B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise a child in need of care; or

SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

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

(b) If there is no previous child-custody determination that is entitled to be enforced under this [Act], and if no child-custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if:

(1) it so provides; and

(2) this State becomes the home State of the child.

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

(d) A court of this State that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been

<p>UCCJEA SEC. 205 IS COMPARABLE TO UCCJA SEC. 4 [KSA 38-1304]. UCCJEA SEC. 205 DOES NOT, HOWEVER, ATTEMPT TO DICTATE THOSE PERSONS TO WHOM NOTICE MUST BE GIVEN, WHICH DEPENDS ON LOCAL LAW, AS DID UCCJA SEC. 4. <i>{{38-1304 Notice and opportunity to be heard.</i></p> <p><i>Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to K.S.A. 38-1305.}}</i></p> <p>38-1306 SIMULTANEOUS PROCEEDINGS IN OTHER STATES.</p> <p>(a) A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other</p>	<p>commenced, or a child-custody determination has been made, by a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this State that is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of another State under a statute similar to this section shall immediately communicate with the court of that State. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.</p> <p>SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.</p> <p>(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.</p> <p>(b) This [Act] does not govern the enforceability of a child-custody determination made without notice and an opportunity to be heard.</p> <p>(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State.</p> <p>SECTION 206. SIMULTANEOUS PROCEEDINGS.</p> <p>(a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been previously commenced in a court of another State having jurisdiction substantially in</p>
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state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under K.S.A. 38-1309 shall consult the child custody registry established under K.S.A. 38-1316 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with K.S.A. 38-1319 to 38-1322, inclusive. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

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

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

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

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

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

THE REMANTS OF UCCJA SEC. 6 [KSA 38-1306] ARE INCLUDED IN UCCJEA SEC. 206. THE PROBLEM OF SIMULTANEOUS PROCEEDINGS ARE NO LONGER A SIGNIFIANT ISSUE AS A RESULT OF UCCJEA SEC. 201 WHICH PROVIDES FOR PRIORITIZATION OF JURISDICTIONAL BASIS. UNDER THE UCCJEA SIMULTANEOUS PROCEEDINGS WILL ONLY ARISE WHEN THERE IS NO HOME STATE, NO STATE WITH EXCLUSIVE CONTINUING JURISDICTION AND THERE ARE MORE THAN ONE STATE WITH SIGNIFICANT CONNECTIONS.

38-1307 INCONVENIENT FORUM.

(a) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) If another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and the child's family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in K.S.A. 38-1301.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding

SECTION 207. INCONVENIENT FORUM.

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

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

(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

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

(4) the relative financial circumstances of the parties;

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

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

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

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

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be

be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate such party's consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

38-1308 JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

promptly commenced in another designated State and may impose any other condition the court considers just and proper.

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

SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

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

(2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this

<p>(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment.</p> <p>UCCJEA SEC. 208(c) TRUNCATES THE CLEAN HANDS DOCTRINE OF UCCJA SEC. 8 [KSA 38-1308].</p> <p>38-1309 INFORMATION UNDER OATH TO BE SUBMITTED TO THE COURT.</p> <p>(a) Every party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:</p> <p>(1) The party has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;</p> <p>(2) the party has information of any custody proceeding concerning the child pending in a court of this or any other state; and</p>	<p>State is a more appropriate forum under Section 207; or</p> <p>(3) no other State would have jurisdiction under Sections 201 through 203.</p> <p>(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.</p> <p>(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State except as otherwise provided by law other than this [Act].</p> <p>SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.</p> <p>(a) [Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:</p> <p>(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number of the proceeding, and the date of the child-custody determination, if any;</p> <p>(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and</p>
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<p>(3) the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.</p> <p>(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.</p> <p>(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which the party obtained information during this proceeding.</p> <p>(d) Any party who submits information pursuant to this section knowing the same to be false shall, upon conviction, be deemed guilty of a class C misdemeanor.</p> <p>UCCJEA SEC. 209 (e) INCORPORATES INTO THE SECTION FORMER UCCJA SEC. 10 [KSA 38-1310 AS AN INTEGRAL PART OF THE INFORMATION STATUTE.</p> <p>38-1310 ADDITIONAL PARTIES.</p> <p>If the court learns from information furnished by the parties pursuant to K.S.A. 38-1309 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of such person's joinder as a party. If the person joined as a party is outside this state the person shall be served with process or otherwise notified in accordance with K.S.A. 38-1305.</p>	<p>the case number and the nature of the proceeding; and</p> <p>(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.</p> <p>(b) If the information required by subsection (a) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.</p> <p>(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.</p> <p>(d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.</p> <p>[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]</p>
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<p>38-1311 APPEARANCE OF PARTIES AND CHILD.</p> <p>(a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that the party appear personally with the child.</p> <p>(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under K.S.A. 38-1305 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.</p> <p>(c) If a party to the proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.</p> <p>UCCJEA SEC. 210 CONTAINS NO SIGNIFICANT CHANGES FROM UCCJA SEC. 11 [KSA38-1311] OTHER THAN PROVISION FOR CONSIDERATION OF THE SAFETY OF A CHILD.</p> <p>38-1312 BINDING FORCE AND RES JUDICATA EFFECT OF CUSTODY DECREE.</p> <p>A custody decree rendered by a court of this state which had jurisdiction under K.S.A. 38-1303 binds all parties who have been served in this state or notified in accordance with K.S.A. 38-1305 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.</p>	<p>SECTION 210. APPEARANCE OF PARTIES AND CHILD.</p> <p>(a) A court of this State may order a party to a child-custody proceeding who is in this State to appear before the court personally with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear physically with the child.</p> <p>(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.</p> <p>(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.</p> <p>(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.</p> <p>UCCJA SEC. 12 [K.S.A. 38-1312] IS COMPARABLE TO UCCJEA SEC. 106. NO SUBSTANTIVE CHANGES WERE INTENDED.</p> <p><i>{{SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION. A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.}}</i></p>
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<p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA ARTICLE 3 DEFINITIONS AS THE UCCJA INCLUDED ONLY BASIC ENFORCEMENT PROVISIONS.</p>	<p>[ARTICLE] 3 ENFORCEMENT</p>
<p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 302. UCCJEA SEC. 302 INCLUDES PROVISION FOR RETURN OF CHILD UNDER THE AUTHORITY OF THE FEDERAL INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (42 USC 11601 ET SEQ.)</p>	<p>SECTION 301. DEFINITIONS. In this [article]:</p> <p>(1) "Petitioner" means a person who seeks enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.</p> <p>(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of a child-custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.</p> <p>SECTION 302. SCOPE; TEMPORARY VISITATION.</p> <p>(a) This [article] may be invoked to enforce:</p> <p>(1) a child-custody determination; and</p> <p>(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.</p> <p>(b) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing</p> <p>(1) a visitation schedule made by a court of another State; or</p> <p>(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.</p> <p>(c) If a court of this State makes an order under subparagraph (b)(2), it shall specify in the order a period of time which it considers adequate to allow the person seeking the order to obtain an order from the State having jurisdiction under [Article] 2. The order remains in effect until an order is obtained from the other State or the period expires.</p>

38-1313 RECOGNITION OF OUT-OF-STATE CUSTODY DECREES.

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

UCCJEA SEC. 303 IS BASED ON UCCJA SEC. 13 WHICH CONTAINED THE BASIC UCCJA DUTY TO ENFORCE. THE ORIGINAL UCCJA LANGUAGE HAS BEEN RETAINED AND THE DUTY TO ENFORCE IN THE UCCJEA IS GENERALLY THE SAME AS UNDER THE UCCJA.

38-1314 MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE.

(a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under subsection (a) and K.S.A. 38-1308 modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with K.S.A. 38-1322.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 304. UCCJEA SEC. 304 AUTHORIZES A COURT TO ISSUE A TEMPORARY ORDER IF IT IS NECESSARY TO ENFORCE VISITATION RIGHTS WITHOUT VIOLATING THE RULES ON AGAINST MODIFICATION CONTAINED IN UCCJEA SEC. 303. AN IMPLEMENTING ORDER MAY INCLUDE MAKE-UP VISITATION.

SECTION 303. DUTY TO ENFORCE.

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

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

UCCJA SEC. 14[K.S.A. 38-1314] IS COMPARABLE TO UCCJEA SEC. 203. *SECTION 203. JURISDICTION TO MODIFY DETERMINATION.*

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

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

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

SECTION 304. TEMPORARY VISITATION.

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

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

(2) the visitation provisions of a child-custody

38-1315 FILING AND ENFORCEMENT OF CUSTODY DECREE OF ANOTHER STATE.

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

AS WITH THE UCCJA, REGISTRATION OF A CUSTODY DETERMINATION UNDER THE UCCJEA NEED NOT BE ACCOMPANIED BY A REQUEST FOR ENFORCEMENT.

UCCJA DID NOT PROVIDE ANY ENFORCEMENT PROCEDURES – ONLY METHODS BY WHICH A FOREIGN CUSTODY OR VISITATION DECREE COULD BE REGISTERED AND AN INDICATION THAT THE FOREIGN DECREE WOULD BE SUBJECT TO ANY ENFORCEMENT PROCEDURES APPLICABLE TO IN-STATE DECREES.

determination of another State that does not provide for a specific visitation schedule.

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

SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

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

(1) a letter or other document requesting registration;

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

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

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

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

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

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

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

<p>(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or such party's witnesses.</p>	<p>(2) that a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and</p> <p>(3) that failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.</p> <p>(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:</p> <p>(1) the issuing court did not have jurisdiction under [Article] 2;</p> <p>(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or</p> <p>(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which registration is sought.</p> <p>(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.</p> <p>(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.</p> <p>SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.</p> <p>(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.</p> <p>(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2 ,</p>
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<p>UCCJEA SEC. 306(a) IS SIMILAR TO THE SECOND CLAUSE OF UCCJA 15 [KSA 38-1315] WHICH PROVIDES: <i>"A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state."</i></p> <p>38-1316 REGISTRY OF OUT-OF-STATE CUSTODY DECREES AND PROCEEDINGS.</p> <p>The clerk of each district court shall maintain a registry in which the clerk shall enter the following:</p> <p>(a) Certified copies of custody decrees of other states received for filing;</p> <p>(b) communications as to the pendency of custody proceedings in other states;</p> <p>(c) communications concerning a finding of inconvenient forum by a court of another state; and</p> <p>(d) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.</p> <p>UCCJEA SEC. 307 IS SIMILAR TO, BUT HAS A DIFFERENT PURPOSE THAN EITHER UCCJA SEC. 6 [KSA 38-1306] OR UCCJEA SEC. 206, BOTH OF WHICH DEAL WITH SIMULTANEOUS PROCEEDINGS TO ESTABLISH OR MODIFY CHILD-CUSTODY DETERMINATIONS. UCCJEA SEC. 307 DEALS WITH AN AUTHORIZATION FOR COURTS OF DIFFERENT STATES TO ENGAGE IN SIMULTANEOUS ENFORCEMENT PROCEEDINGS AND REQUIRES THE PARTIES TO DISCLOSE ANY PENDING ENFORCEMENT PROCEEDINGS IN ANOTHER STATE.</p> <p>38-1317 CERTIFIED COPIES OF CUSTODY DECREE.</p> <p>The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.</p>	<p>a registered child-custody determination of another State.</p> <p>UCCJEA CONTAINS NO COMPARABLE PROVISION TO UCCJA SEC. 16[K.S.A. 38-1316]. THE UCCJEA DOES NOT INCLUDE A DESIGNATION OF REGISTRY AS DID THE UCCJA. THE UCCJEA PROVIDES ONLY THE MECHANISMS BY WHICH SUCH RECORDS ARE FILED.</p> <p>SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [article] has been or is commenced in this State and a court of this State determines that a proceeding to modify the determination has been commenced in another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.</p> <p>UCCJA SEC. 17 [KSA 38-1317] IS SUBSUMED BY UCCJEA SEC. 307.</p>
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UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 308 SINCE UCCJA DID NOT PROVIDE ANY INDEPENDENT ENFORCEMENT PROCEDURES.

UCCJEA SEC. 308 PROVIDES THE NORMAL PROCEDURE FOR ENFORCEMENT OF INTERSTATE CASES. THE PROCEDURE IS BASED ON A SUMMARY PROCEDURE SIMILAR TO HABEAS CORPUS.

THE PETITION FOR ENFORCEMENT UNDER THE UCCJEA IS INTENDED TO PROVIDE A COURT AS MUCH INFORMATION AS POSSIBLE.

SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.

- (a) A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.
- (b) A petition for enforcement of a child-custody determination must state:
- (1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
 - (2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;
 - (3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;
 - (4) the present physical address of the child and the respondent, if known; and
 - (5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought.
- (c) If the child-custody determination has been registered and confirmed under Section 304, the petition must also state the date and place of registration.
- (d) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.
- (e) The hearing must be held on the next judicial day following service of process unless that date is impossible. In that event, the court must hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.

<p>38-1318 TAKING TESTIMONY IN ANOTHER STATE.</p> <p>In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.</p>	<p>(f) The order must state the time and place of the hearing and must advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under Section 311, and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:</p> <p>(1) the child-custody determination has not been registered and confirmed under Section 304, and that</p> <p>(A) the issuing court did not have jurisdiction under [Article] 2;</p> <p>(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2 or federal law; or</p> <p>(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or</p> <p>(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under [Article] 2 or federal law.</p> <p>UCCJA SEC. 18[K.S.A. 38-1318] IS COMPARABLE TO UCCJEA SEC. 111. {{SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.</p> <p><i>(a) In addition to other procedures available to a party, a party to a child- custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.</i></p> <p><i>(b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for</i></p>
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<p>38-1319 HEARINGS AND STUDIES IN ANOTHER STATE; ORDERS TO APPEAR.</p> <p>(a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the county.</p> <p>(b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.</p>	<p><i>the deposition or testimony.</i></p> <p><i>(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.</i></p> <p>UCCJA SEC. 19[K.S.A. 38-1319] IS SIMILAR TO UCCJEA SEC. 112.</p> <p>SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.</p> <p><i>(a) A court of this State may request the appropriate court of another State to:</i></p> <p><i>(1) hold an evidentiary hearing;</i></p> <p><i>(2) order a person to produce or give evidence pursuant to procedures of that State;</i></p> <p><i>(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;</i></p> <p><i>(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and</i></p> <p><i>(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.</i></p> <p><i>(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).</i></p> <p><i>(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.</i></p> <p><i>(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of these records.</i></p>
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38-1320 ASSISTANCE TO COURTS OF OTHER STATES.

(a) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this state may voluntarily give testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

**38-1321
PRESERVATION OF DOCUMENTS FOR USE IN OTHER STATES.**

In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen (18) years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

**UCCJA SEC. 20 [KSA 38-1320] PROVISIONS ARE INCLUDED IN UCCJEA SEC. 112. (SEE ABOVE)
{{SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.**

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

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that State;

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

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

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

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

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

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

UCCJA SEC. 21 [KSA 38-1321] PROVISIONS INCLUDED IN UCCJEA SEC. 112. (SEE ABOVE)

<p>38-1322 REQUESTS FOR COURT RECORDS OF OTHER STATES.</p> <p>If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in K.S.A. 38-1321.</p> <p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 308 SINCE UCCJA CONTAINED ONLY BASIC REGISTRATION PROVISIONS.</p> <p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 310 SINCE UCCJA CONTAINS ONLY BASIC REGISTRATION PROVISIONS.</p>	<p>UCCJA SEC. 22 [KSA 38-1322] PROVISIONS INCLUDED IN UCCJEA SEC. 112. (SEE ABOVE)</p> <p>SECTION 308. SERVICE OF PETITION AND ORDER. Except as otherwise provided in Section 310, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.</p> <p>SECTION 310. HEARING AND ORDER.</p> <p>(a) Unless the court enters a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:</p> <ul style="list-style-type: none">(1) the child-custody determination has not been registered and confirmed under Section 305, and that <ul style="list-style-type: none">(A) the issuing court did not have jurisdiction under [Article] 2;(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a State having jurisdiction to do so under [Article] 2; or(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or <ul style="list-style-type: none">(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under [Article] 2. <p>(b) The court shall award the fees, costs, and expenses authorized under Section 311 and may grant additional</p>
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38-1323

INTERNATIONAL APPLICATION.

The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

38-1324 PRIORITY.

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act the case shall be given calendar priority and handled expeditiously.

relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

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

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

UCCJA SEC. 23 [K.S.A. 38-1323] IS COMPARABLE TO UCCJEA SEC. 105.

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

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

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

(c) The court need not apply the provisions of this [Act] when the child custody law of the other country violates fundamental principles of human rights.

THE UCCJA INCLUDED ONLY GENERAL INDICATION THAT THE PRINCIPALS OF THE UCCJA WERE TO BE APPLIED TO INTERNATIONAL SITUATIONS.

UCCJA SEC. 24 [K.S.A. 38-1324] IS COMPARABLE TO UCCJEA SEC. 107.

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

NO SUBSTANTIVE CHANGE WAS MADE IN UCCJEA. ULC DETERMINED THIS SECTION SHOULD BE PLACED TOWARD THE BEGINNING OF ARTICLE 1 TO EMPHASIZE ITS IMPORTANCE. THE LANGUAGE CHANGE FROM "CASE" TO "QUESTION" IS TO CLARIFY THAT IT IS THE

<p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 311. UCCJEA SEC. 311 PROVIDES A REMEDY FOR EMERGENCY SITUATIONS WHERE THERE IS REASON TO BELIEVE THE CHILD WILL SUFFER IMMINENT, SERIOUS PHYSICAL HARM OR BE REMOVED FROM THE JURISDICTION.</p>	<p>JURISDICTIONAL ISSUE WHICH MUST BE EXPEDITED – NOT THE ENTIRE CUSTODY CASE.</p>
	<p>SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.</p>
	<p>(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this State.</p>
	<p>(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed. The warrant must include the statements required by Section 307(b).</p>
	<p>(c) A warrant to take physical custody of a child must:</p>
	<p>(1) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;</p>
	<p>(2) direct law enforcement officers to take physical custody of the child immediately; and</p>
	<p>(3) provide for the placement of the child pending final relief.</p>
	<p>(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.</p>
	<p>(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.</p>
	<p>(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.</p>

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 312 AS THE UCCJA DID NOT INCLUDE OTHER THAN BASIC REGISTRATION PROCEDURES. UCCJEA SEC. 312 IS DERIVED FROM THE FEDERAL INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (42 USC 11607(b)(3)). NORMALLY THE COURT WILL AWARD FEES AND COSTS AGAINST THE NON-PREVAILING PARTY. THE NON-PREVAILING PARTY HAS THE BURDEN TO SHOW THE AWARD OF FEES WOULD BE CLEARLY INAPPROPRIATE.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 312 SINCE THE UCCJA INCLUDED ONLY BASIC REGISTRATION PROCEDURES. ENFORCEMENT, TO BE EFFECTIVE, MUST BE ENFORCABLE IN OTHER STATES; THEREFORE, THIS PROVISION IS NECESSARY.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 314. UCCJEA PROVISION RECOGNIZES THAT APPEALS OF ENFORCEMENT MATTERS SHOULD BE EXPEDITED BUT LEAVES THAT PROCEDURE TO EACH INDIVIDUAL STATE.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 315 SINCE THE HAGUE CONVENTION HAD NOT YET BEEN NEGOTIATED. UCCJEA SEC. 315 IS LIMITED TO INTERSTATE CASES.

SECTION 312. COSTS, FEES, AND EXPENSES.

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

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

SECTION 312. RECOGNITION AND ENFORCEMENT. A court of this State shall accord full faith and credit to an order made consistently with this [Act] which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court authorized to do so under [Article] 2.

SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].

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

(1) an existing child-custody determination;

(2) a request from a court in a pending child-custody case;

(3) a reasonable belief that a criminal statute has been

<p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 316 SINCE ONLY BASIC REGISTRATIONS PROCEDURES WERE INCLUDED IN THE UCCJA. UCCJEA SEC. 316 AUTHORIZES ASSISTANCE IN LOCATING A CHILD AND ENFORCING CHILD CUSTODY DETERMINATIONS. UCCJEA SEC. 316 IS LIMITED TO INTERSTATE CASES.</p> <p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 317 SINCE UCCJA CONTAINED ONLY BASIC REGISTRATION PROCEDURES. UCCJEA SEC. 317 AUTHORIZES ASSISTANCE IN LOCATING A CHILD AND ENFORCING CHILD CUSTODY DETERMINATIONS. UCCJEA SEC. 317 IS LIMITED TO INTERSTATE CASES.</p> <p>UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 401, ALTHOUGH UNIFORMITY WAS EXPRESS PURPOSE OF THE UCCJA.</p> <p>38-1325 SEVERABILITY.</p> <p>If any provision of this act or the Application thereof to any person or Circumstances is held invalid, its invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.</p>	<p>violated; or</p> <p>(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.</p> <p>(b) A [prosecutor or appropriate public official] acts on behalf of the court and may not represent any party to a child-custody determination.</p> <p>SECTION 316. ROLE OF [LAW ENFORCEMENT]. At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.</p> <p>SECTION 317. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.</p> <p style="text-align: center;">[ARTICLE] 4 MISCELLANEOUS PROVISIONS</p> <p>SECTION 401. APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.</p> <p>SECTION 402. SEVERABILITY CLAUSE.</p> <p>If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.</p>
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38-1326
SHORT TITLE.

K.S.A. 38-1301 to 38-1326, inclusive, may be cited as the uniform child custody jurisdiction act.

38-1327 – 38-1334 Reserved.

UCCJA CONTAINS NO COMPARABLE PROVISION TO UCCJEA SEC. 405.

38-1335 CONTINUATION OF JURISDICTION UNTIL ASSUMED BY ANOTHER STATE.

(a) The provisions of the uniform child custody jurisdiction act notwithstanding, the district court, having assumed jurisdiction to make a custody determination regarding a child, shall continue to have such jurisdiction until such time as a court of another state assumes jurisdiction to make a custody determination regarding the child.

(b) The definitions provided in ksa 38-1302 shall apply to the terms used in this section.

THE UCCJEA HAS MOVED THE SHORT TITLE SECTION FROM THE END OF THE ACT (AS IN THE UCCJA) TO THE BEGINNING OF THE ACT. *{{SECTION 101. SHORT TITLE.*

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

SECTION 403. EFFECTIVE DATE. This [Act] takes effect

SECTION 404. REPEALS. The following acts and parts of acts are hereby repealed:

- (1) The Uniform Child Custody Jurisdiction Act;
- (2)
- (3)

SECTION 405. TRANSITIONAL PROVISION. A motion or other request for relief made in a child-custody or enforcement proceeding which was commenced before the effective date of this [Act] is governed by the law in effect at the time the motion or other request was made.

K.S.A. 38-1335 IS NOT A PROVISION IN THE ORIGINAL UCCJA. UCCJEA SEC. 202 IS SIMILAR TO KSA 38-1335, WHICH IS A KANSAS VARIATION OF THE UCCJA. CONTINUING JURISDICTION IS LOST UNDER UCCJEA SEC. 202 WHEN ALL RELEVANT PARTIES HAVE MOVED OUT OF THE ORIGINAL DECREE STATE. KSA 38-1335 SIMPLY PROVIDED THAT KANSAS COURTS CONTINUED TO HAVE JURISDICTION UNTIL "ANOTHER STATE ASSUMES JURISDICTION."

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

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

- (1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with*

	<p><i>this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or</i></p> <p><i>(2) a court of this State or a court of another State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this State.</i></p> <p><i>(b) A court of this State that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section 207.</i></p> <p><i>(c) A court of this State that has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.</i></p>
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The state of Kansas has other business pertaining to parents rights, aka child custody, that is far more important to spend time on than HB2488 and UCCJEA, namely House Substitute for SB 150.

This bill, HB 2488, needs much work, and many amendments.
See also the Docking Institute Report on the Kansas Citizen Justice Initiative.

Page 1 lines 30 and 32---strike the words neglect, abuse, and domestic violence.

These issues belong in criminal court, and heresay is allowed in civil court. Punishment for perjury in civil court is next to non-existent. Judges allow heresay and there are Law Journal articles and books pertaining to this at Washburn Law Library.

Page 6 & 7 New Sec. 16---strike entire section, in particular lines 36 thru 40 on p.6 and lines 29 and 30 on p.7.

Can you imagine the legal bills of trying to prove your innocence in a foreign state or country. It used to be innocent until proven guilty. This needs to be kept in the home state, otherwise we will continue to see even more flight from this state, with Kansas children in tow. Just as no other state should have jurisdiction over alleged criminal charges in Kansas, we should not have jurisdiction over alleged criminal charges in other states. With the Census taking place, can we afford to lose more children.

Page 8 & 9 New Sec. 19 entire section in particular line 1 & 2 on p.9.

Page 10 New Sec. 21---strike entire section.
Proceedings do not equal guilt. Due process of law is demanded by the Constitution.

Page 16 New Sec. 33 (e)---???

Page 18 line 18---change "age of 21 years" to "age of 18 years"

Page 22--- change custody to "parental rights and duties"

Page 28 line 25 (A) Joint "Shared" "parental rights and duties"

Page 28 line 42 change visitation to "parenting time"

Page 30 Line 36---Maintenance.
Include "Maintenance to be paid until such time as the recipient of the maintenance remarries or co-habitates with another partner."

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