

**HOUSE BILL NO. 335**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 1/20/98

Referred: Health, Education and Social Services, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act replacing the Uniform Child Custody Jurisdiction Act with the Uniform  
2 Child Custody Jurisdiction and Enforcement Act; and amending Rules 4 and 62,  
3 Alaska Rules of Civil Procedure, and Rule 205, Alaska Rules of Appellate  
4 Procedure."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* **Section 1.** AS 25.24.150(a) is amended to read:

7 (a) In an action for divorce or for legal separation or for placement of a child  
8 when one or both parents have died, the court may, if it has jurisdiction under  
9 AS 25.30.300 - 25.30.320 [AS 25.30.020], and is an appropriate forum under  
10 AS 25.30.350 and 25.30.360 [AS 25.30.050 AND 25.30.060], during the pendency of  
11 the action, or at the final hearing or at any time thereafter during the minority of a  
12 child of the marriage, make, modify, or vacate an order for the custody of or visitation  
13 with the minor child that may seem necessary or proper, including an order that  
14 provides for visitation by a grandparent or other person if that is in the best interests

1 of the child.

2 \* **Sec. 2.** AS 25.30 is amended by adding new sections to read:

3 **Article 1. Jurisdiction.**

4 **Sec. 25.30.300. Initial child custody jurisdiction.** (a) Except as otherwise  
5 provided in AS 25.30.330, a court of this state has jurisdiction to make an initial child  
6 custody determination only if

7 (1) this state is the home state of the child on the date of the  
8 commencement of the proceeding;

9 (2) this state was the home state of the child within six months before  
10 the commencement of the proceeding and the child is absent from this state but a  
11 parent or person acting as a parent continues to live in this state;

12 (3) a court of another state does not have jurisdiction under provisions  
13 substantially similar to (1) or (2) of this subsection, or a court of the home state of the  
14 child has declined to exercise jurisdiction on the ground that this state is the more  
15 appropriate forum under provisions substantially similar to AS 25.30.360 or 25.30.370,  
16 and

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

20 (B) substantial evidence is available in this state concerning the  
21 child's care, protection, training, and personal relationships;

22 (4) all courts having jurisdiction under the criteria specified in (1) - (3)  
23 of this subsection have declined to exercise jurisdiction on the ground that a court of  
24 this state is the more appropriate forum to determine the custody of the child under  
25 provisions substantially similar to AS 25.30.360 or 25.30.370; or

26 (5) no court of another state would have jurisdiction under the criteria  
27 specified in (1) - (4) of this subsection.

28 (b) The provisions of (a) of this section are the exclusive jurisdictional bases  
29 for making a child custody determination by a court of this state.

30 (c) Physical presence of or personal jurisdiction over a party or a child is not  
31 necessary or sufficient to make a child custody determination.

**Sec 25.30.310. Exclusive, continuing jurisdiction.** (a) Except as otherwise provided in AS 25.30.330, a court of this state that has made a child custody determination consistent with AS 25.30.300 or 25.30.320 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 a person acting as a parent presently resides in this state.

(b) 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 AS 25.30.300.

**Sec. 25.30.320. Jurisdiction to modify determination.** Except as otherwise provided in AS 25.30.330, 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 AS 25.30.300(1), (2), or (3) and

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under provisions substantially similar to AS 25.30.310 or that a court of this state would be a more convenient forum under provisions substantially similar to AS 25.30.360; or

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

**Sec. 25.30.330. 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.

1 (b) If there is no previous child custody determination that is entitled to be  
2 enforced under this chapter and if a child custody proceeding has not been commenced  
3 in a court of a state having jurisdiction under provisions substantially similar to  
4 AS 25.30.300 - 25.30.320, a child custody determination made under this section  
5 remains in effect until an order is obtained from a court of a state having jurisdiction  
6 under AS 25.30.300 - 25.30.320 or provisions substantially similar to AS 25.30.300 -  
7 25.30.320. If a child custody proceeding has not been or is not commenced in a court  
8 of a state having jurisdiction under AS 25.30.300 - 25.30.320 or provisions  
9 substantially similar to AS 25.30.300 - 25.30.320, a child custody determination made  
10 under this section becomes a final determination if it so provides and this state  
11 becomes the home state of the child.

12 (c) If there is a previous child custody determination that is entitled to be  
13 enforced under this chapter or a child custody proceeding has been commenced in a  
14 court of a state having jurisdiction under AS 25.30.300 - 25.30.320 or provisions  
15 substantially similar to AS 25.30.300 - 25.30.320, an order issued by a court of this  
16 state under this section must specify in the order a period that the court considers  
17 adequate to allow the person seeking an order to obtain an order from the state having  
18 jurisdiction under AS 25.30.300 - 25.30.320 or provisions substantially similar to  
19 AS 25.30.300 - 25.30.320. The order issued in this state remains in effect until an  
20 order is obtained from the other state within the period specified or the period expires.

21 (d) A court of this state that has been asked to make a child custody  
22 determination under this section, on being informed that a child custody proceeding  
23 has been commenced in, or a child custody determination has been made by, a court  
24 of a state having jurisdiction under AS 25.30.300 - 25.30.320 or provisions  
25 substantially similar to AS 25.30.300 - 25.30.320 shall immediately communicate with  
26 the other court. A court of this state that is exercising jurisdiction under AS 25.30.300  
27 - 25.30.320, on being informed that a child custody proceeding has been commenced  
28 in, or a child custody determination has been made by, a court of another state under  
29 a statute substantially similar to this section, shall immediately communicate with the  
30 court of that state to resolve the emergency, protect the safety of the parties and the  
31 child, and determine a period for the duration of the temporary order.

**Sec. 25.30.340. Notice; opportunity to be heard; joinder.** (a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with AS 25.30.840 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, a parent whose parental rights have not been previously terminated, and a person having physical custody of the child.

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

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

**Sec. 25.30.350. Simultaneous proceedings.** (a) Except as otherwise provided in AS 25.30.330, a court of this state may not exercise its jurisdiction under AS 25.30.300 - 25.30.390 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 conformity with this chapter unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under provisions substantially similar to AS 25.30.360.

(b) Except as otherwise provided in AS 25.30.330, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under AS 25.30.380. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, 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 chapter 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

1 has been commenced in another state, the court may

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

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

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

9 **Sec. 25.30.360. Inconvenient forum.** (a) A court of this state that has  
10 jurisdiction under this chapter to make a child custody determination may decline to  
11 exercise its jurisdiction at any time if it determines that it is an inconvenient forum  
12 under the circumstances and that a court of another state is a more appropriate forum.  
13 The issue of inconvenient forum may be raised on motion of a party, the court's own  
14 motion, or request of another court.

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

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

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

22 (3) the distance between the court in this state and the court in the state  
23 that would assume jurisdiction;

24 (4) the relative financial circumstances of the parties;

25 (5) an agreement of the parties as to which state should assume  
26 jurisdiction;

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

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

31 (8) the familiarity of the court of each state with the facts and issues

1 in the pending litigation.

2 (c) If a court of this state determines that it is an inconvenient forum and that  
3 a court of another state is a more appropriate forum, it shall stay the proceedings on  
4 condition that a child custody proceeding be promptly commenced in another  
5 designated state and may impose any other condition the court considers just and  
6 proper.

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

11 **Sec. 25.30.370. Jurisdiction declined because of conduct.** (a) Except as  
12 otherwise provided in AS 25.30.330, if a court of this state has jurisdiction under this  
13 chapter because a person invoking the jurisdiction has engaged in wrongful conduct,  
14 the court shall decline to exercise its jurisdiction unless

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

17 (2) a court of the state otherwise having jurisdiction under  
18 AS 25.30.300 - 25.30.320 determines that this state is a more appropriate forum under  
19 provisions substantially similar to AS 25.30.360; or

20 (3) no court of another state would have jurisdiction under the criteria  
21 specified in AS 25.30.300 - 25.30.320.

22 (b) If a court of this state declines to exercise its jurisdiction under (a) of this  
23 section, it may fashion an appropriate remedy to ensure the safety of the child and  
24 prevent a repetition of the wrongful conduct, including staying the proceeding, until  
25 a child custody proceeding is commenced in a court having jurisdiction under  
26 provisions substantially similar to AS 25.30.300 - 25.30.320.

27 (c) If a court dismisses a petition or stays a proceeding because it declines to  
28 exercise its jurisdiction under (a) of this section, that court shall assess against the  
29 party seeking to invoke its jurisdiction with necessary and reasonable expenses,  
30 including costs, communication expenses, attorney fees, investigative fees, expenses  
31 for witnesses, travel expenses, and child care during the course of the proceedings,

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

4 **Sec. 25.30.380. Information to be submitted to court.** (a) Subject to a  
 5 contravening court order, in a child custody proceeding, each party, in its first pleading  
 6 or in an attached affidavit, shall give information, if reasonably ascertainable, under  
 7 oath as to the child's present address or whereabouts, the places where the child has  
 8 lived during the last five years, and the names and present addresses of the persons  
 9 with whom the child has lived during that period. The pleading or affidavit must state  
 10 whether the party

11 (1) has participated, as a party or witness or in another capacity, in  
 12 another proceeding concerning the custody of or visitation with the child and, if so,  
 13 identify the court, the case number, and the date of the child custody determination,  
 14 if any;

15 (2) knows of a proceeding that could affect the current proceeding,  
 16 including a proceeding for enforcement and a proceeding relating to domestic violence,  
 17 protective orders, termination of parental rights, and adoptions and, if so, identify the  
 18 court, the case number, and the nature of the proceeding; and

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

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

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

31 (d) Each party has a continuing duty to inform the court of a proceeding in



1 this state or in another state that could affect the current proceeding.

2 (e) If a party alleges in an affidavit or a pleading under oath that the health,  
3 safety, or liberty of a party or child would be jeopardized by disclosure of identifying  
4 information, the information shall be sealed and may not be disclosed to the other  
5 party or the public unless the court orders the disclosure to be made after a hearing in  
6 which the court takes into consideration the health, safety, or liberty of the party or  
7 child and determines that the disclosure is in the interest of justice.

8 **Sec. 25.30.390. Appearance of parties and child.** (a) In a child custody  
9 proceeding in this state, the court may order a party to the proceeding who is in this  
10 state to appear before the court personally with or without the child. The court may  
11 order a person who is in this state and who has physical custody or control of the child  
12 to appear in person with the child.

13 (b) If a party to a child custody proceeding whose presence is desired by the  
14 court is outside this state, the court may order that a notice given under AS 25.30.840  
15 include a statement directing the party to appear in person with or without the child  
16 and informing the party that failure to appear may result in a decision adverse to the  
17 party.

18 (c) The court may enter orders necessary to ensure the safety of the child and  
19 of a person ordered to appear under this section.

20 (d) If a party to a child custody proceeding who is outside this state is directed  
21 to appear under (b) of this section or desires to appear in person before the court with  
22 or without the child, the court may require another party to pay reasonable and  
23 necessary travel and other expenses of the party so appearing and of the child.

## 24 **Article 2. Enforcement.**

25 **Sec. 25.30.400. Enforcement under the Hague Convention.** Under  
26 AS 25.30.400 - 25.30.590, a court of this state may enforce an order for the return of  
27 a child made under the Hague Convention on the Civil Aspects of International Child  
28 Abduction as if the order were a child custody determination.

29 **Sec. 25.30.410. Duty to enforce.** (a) A court of this state shall recognize and  
30 enforce a child custody determination of a court of another state if the court of the  
31 other state exercised jurisdiction in substantial conformity with this chapter or the

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

(b) A court of this state may use a remedy available under other law of this state to enforce a child custody determination made by a court of another state. The procedure provided by AS 25.30.400 - 25.30.590 does not affect the availability of other remedies to enforce a child custody determination.

**Sec. 25.30.420. Temporary visitation.** (a) A court of this state that 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 determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under (a)(2) of this section, 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 AS 25.30.300 - 25.30.390. The order remains in effect until an order is obtained from the other court or the period expires.

**Sec. 25.30.430. 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 knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in AS 25.30.380, the name and address of the person seeking registration and the parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

1 (b) On receipt of the documents required by (a) of this section, the registering  
2 court shall

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

6 (2) serve notice on the persons named under (a)(3) of this section and  
7 provide them with an opportunity to contest the registration under this section.

8 (c) The notice required by (b)(2) of this section must state that

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

11 (2) a hearing to contest the validity of the registered determination  
12 must be requested within 20 days after service of notice; and

13 (3) failure to contest the registration will result in confirmation of the  
14 child custody determination and preclude further contest of that determination with  
15 respect to a matter that could have been asserted.

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

19 (1) the issuing court did not have jurisdiction under provisions  
20 substantially similar to AS 25.30.300 - 25.30.390;

21 (2) the child custody determination sought to be registered has been  
22 vacated, stayed, or modified by a court having jurisdiction to do so under provisions  
23 substantially similar to AS 25.30.300 - 25.30.390; or

24 (3) the person contesting registration was entitled to notice, but notice  
25 was not given in accordance with provisions substantially similar to AS 25.30.840 in  
26 the proceedings before the court that issued the order for which registration is sought.

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

30 (f) Confirmation of a registered order, whether by operation of law or after  
31 notice and hearing, precludes further contest of the order with respect to a matter that

could have been asserted at the time of registration.

**Sec. 25.30.440. Enforcement of registered determination.** (a) A court of this state may grant relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify except in accordance with AS 25.30.300 - 25.30.390, a registered child custody determination of a court of another state.

**Sec. 25.30.450. Simultaneous proceedings.** If a proceeding for enforcement under AS 25.30.400 - 25.30.590 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under provisions substantially similar to AS 25.30.400 - 25.30.590, 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.

**Sec. 25.30.460. Expedited enforcement of child custody determination.** (a) A petition under AS 25.30.400 - 25.30.590 must be verified. A certified copy, or a copy of a certified copy, of the orders sought to be enforced and of an order, if any, confirming registration must be attached to the petition.

(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 on 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 chapter and, if so, must identify the court, the case number, and the nature of the proceeding;
- (3) whether a 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, must identify the court, the case number, and the nature of the proceeding;
- (4) the present physical address of the child and the respondent, if

1 known;

2 (5) whether relief in addition to the immediate physical custody of the  
3 child and attorneys fees is sought, including a request for assistance from law  
4 enforcement officials and, if so, the relief sought; and

5 (6) if the child custody determination has been registered and confirmed  
6 under AS 25.30.430, the date and place of registration.

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

13 (d) An order issued under (c) of this section must state the time and place of  
14 the hearing and advise the respondent that, at the hearing, the court will order that the  
15 petitioner may take immediate physical custody of the child and the payment of fees,  
16 costs, and expenses under AS 25.30.500 and may schedule a hearing to determine  
17 whether further relief is appropriate unless the respondent appears and establishes that

18 (1) the child custody determination has not been registered and  
19 confirmed under AS 25.30.430, and that

20 (A) the issuing court did not have jurisdiction under provisions  
21 substantially similar to AS 25.30.300 - 25.30.390;

22 (B) the child custody determination for which enforcement is  
23 sought has been vacated, stayed, or modified by a court having jurisdiction to  
24 do so under provisions substantially similar to AS 25.30.300 - 25.30.390; or

25 (C) the respondent was entitled to notice, but notice was not  
26 given in accordance with provisions substantially similar to AS 25.30.840 in  
27 the proceedings before the court that issued the order for which enforcement  
28 is sought; or

29 (2) the child custody determination for which enforcement is sought  
30 was registered and confirmed under AS 25.30.430 but has been vacated, stayed, or  
31 modified by a court having jurisdiction to do so under provisions substantially similar

1 to AS 25.30.300 - 25.30.390.

2 **Sec. 25.30.470. Service of petition and order.** Except as otherwise provided  
3 in AS 25.30.490, the petition and order shall be served, by a method authorized by the  
4 law of this state, on the respondent and a person who has physical custody of the  
5 child.

6 **Sec. 25.30.480. Hearing and order.** (a) Unless the court issues a temporary  
7 emergency order under AS 25.30.330, on a finding that a petitioner is entitled to  
8 immediate physical custody of the child, the court shall order that the petitioner may  
9 take immediate physical custody of the child unless the respondent establishes that

10 (1) the child custody determination has not been registered and  
11 confirmed under AS 25.30.430 and that

12 (A) the issuing court did not have jurisdiction under provisions  
13 substantially similar to AS 25.30.300 - 25.30.390;

14 (B) the child custody determination for which enforcement is  
15 sought has been vacated, stayed, or modified by a court having jurisdiction to  
16 do so under AS 25.30.300 - 25.30.390 or provisions substantially similar to  
17 AS 25.30.300 - 25.30.390; or

18 (C) the respondent was entitled to notice, but notice was not  
19 given in accordance with AS 25.30.840 or provisions substantially similar to  
20 AS 25.30.300 - 25.30.390 in the proceedings before the court that issued the  
21 order for which enforcement is sought; or

22 (2) the child custody determination for which enforcement is sought  
23 was registered and confirmed under AS 25.30.430 but has been vacated, stayed, or  
24 modified by a court having jurisdiction to do so under AS 25.30.300 - 25.30.390 or  
25 provisions substantially similar to AS 25.30.300 - 25.30.390.

26 (b) The court shall award the fees, costs, and expenses authorized under  
27 AS 25.30.500 and may grant additional relief, including a request for the assistance of  
28 law enforcement officials, and set a further hearing to determine whether additional  
29 relief is appropriate.

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

1 refusal.

2 (d) A privilege against disclosure of communications between spouses and a  
3 defense of immunity based on the relationship of husband and wife or parent and child  
4 may not be invoked in a proceeding under AS 25.30.400 - 25.30.590.

5 **Sec. 25.30.490. Warrant to take physical custody of child.** (a) On the filing  
6 of a petition seeking enforcement of a child custody determination, the petitioner may  
7 file a verified application for the issuance of a warrant to take physical custody of the  
8 child if the child is imminently likely either to suffer serious physical harm or to be  
9 removed from this state.

10 (b) If the court, on the testimony of the petitioner or other witness, finds that  
11 the child is imminently likely to suffer serious physical harm or to be removed from  
12 this state, it may issue a warrant to take physical custody of the child. The petition  
13 must be heard on the next judicial day after the warrant is executed unless that date  
14 is impossible. In that event, the court shall hold the hearing on the first judicial day  
15 possible. The application for the warrant must include the statements required for  
16 petitions under AS 25.30.460(b).

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

18 (1) recite the facts on which a conclusion of imminent serious physical  
19 harm or removal from the state is based;

20 (2) direct law enforcement officers to take physical custody of the child  
21 immediately; and

22 (3) provide for the placement of the child pending final relief.

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

25 (e) A warrant to take physical custody of a child is enforceable throughout this  
26 state. If the court finds on the basis of the testimony of the petitioner or other witness  
27 that a less intrusive remedy is not effective, it may authorize law enforcement officers  
28 to enter private property to take physical custody of the child. If required by exigent  
29 circumstances, the court may authorize law enforcement officers to make a forcible  
30 entry at any hour.

31 (f) The court may impose conditions on placement of a child to ensure the

1 appearance of the child and the child's custodian.

2 **Sec. 25.30.500. Costs, fees, and expenses.** (a) To the extent authorized by  
3 court rules, the court shall award the prevailing party, including a state, necessary and  
4 reasonable expenses incurred by or on behalf of the party, including costs,  
5 communication expenses, attorney fees, investigative fees, expenses for witnesses,  
6 travel expenses, and child care expenses incurred during the course of the proceedings,  
7 unless the party from whom costs, fees, or expenses are sought establishes that the  
8 award would be clearly inappropriate.

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

11 **Sec. 25.30.510. Recognition and enforcement.** A court of this state shall give  
12 full faith and credit to an order issued by another state consistent with this chapter if  
13 the order enforces a child custody determination by a court of another state unless the  
14 order has been vacated, stayed, or modified by a court having jurisdiction to do so  
15 under AS 25.30.300 - 25.30.390 or provisions substantially similar to AS 25.30.300 -  
16 25.30.390.

17 **Sec. 25.30.520. Appeals.** An appeal taken from a final order in a proceeding  
18 under AS 25.30.400 - 25.30.590 shall be given calendar priority to the extent allowed  
19 for other civil appellate cases and shall be handled expeditiously. Unless the court  
20 enters a temporary emergency order under AS 25.30.330, the enforcing court may not  
21 stay an order enforcing a child custody determination pending appeal.

22 **Sec. 25.30.590. Definitions.** In AS 25.30.400 - 25.30.590,

23 (1) "petitioner" means a person who seeks enforcement of an order for  
24 the return of the child under the Hague Convention on the Civil Aspects of  
25 International Child Abduction or enforcement of a child custody determination;

26 (2) "respondent" means a person against whom a proceeding has been  
27 commenced for enforcement of an order for the return of the child under the Hague  
28 Convention on the Civil Aspects of International Child Abduction or enforcement of  
29 a child custody determination.

### 30 **Article 3. Miscellaneous Provisions.**

31 **Sec. 25.30.800. Proceedings governed by other law.** (a) This chapter does



1 not govern an adoption proceeding or a proceeding pertaining to the authorization of  
2 emergency medical care for a child.

3 (b) A child custody proceeding that pertains to an Indian child as defined in  
4 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act) is not subject to this chapter to the  
5 extent that it is governed by 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act).

6 **Sec. 25.30.810. International application of chapter.** (a) A court of this  
7 state shall treat a foreign country as if it were a state of the United States for the  
8 purpose of applying AS 25.30.400 - 25.30.590.

9 (b) Except as provided in (c) of this section, a child custody determination  
10 made in a foreign country under factual circumstances in substantial conformity with  
11 the jurisdictional standards of this chapter shall be recognized and enforced under  
12 AS 25.30.400 - 25.30.590.

13 (c) A court of this state is not required to apply this chapter to a child custody  
14 determination made in a foreign country when the child custody law of the other  
15 country violates fundamental principles of human rights.

16 **Sec. 25.30.820. Effect of child custody determination.** A child custody  
17 determination made by a court of this state that had jurisdiction under this chapter  
18 binds all persons who have been served notice under Rule 4, Alaska Rules of Civil  
19 Procedure, who have been notified under AS 25.30.840, or who have submitted to the  
20 jurisdiction of the court, and who have been given an opportunity to be heard. As to  
21 those persons, the determination is conclusive as to all decided issues of law and fact  
22 except to the extent the determination is modified.

23 **Sec. 25.30.830. Priority.** If a question of existence or exercise of jurisdiction  
24 under this chapter is raised in a child custody proceeding, the question, on request of  
25 a party, shall be given priority on the calendar and handled expeditiously.

26 **Sec. 25.30.840. Notice to persons outside the state.** (a) Notice required for  
27 the exercise of jurisdiction when a person is outside this state may be given under Rule  
28 4, Alaska Rules of Civil Procedure, or in a manner prescribed by the law of the state  
29 in which the service is made. Notice shall be given in a manner reasonably calculated  
30 to give actual notice but may be by publication if other means are not effective.

31 (b) Proof of service may be made under Rule 4, Alaska Rules of Civil

1 Procedure, or in the manner prescribed by the law of the state in which the service is  
2 made.

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

5 **Sec. 25.30.850. Appearance and limited immunity.** (a) A party to a child  
6 custody proceeding, including a modification proceeding, or a petitioner or respondent  
7 in a proceeding to enforce or register a child custody determination is not subject to  
8 personal jurisdiction in this state for another proceeding or purpose solely because of  
9 having participated, or having been physically present for the purpose of participating,  
10 in the proceeding.

11 (b) A party who is subject to personal jurisdiction in this state on a basis other  
12 than physical presence is not immune from service of process in this state. A party  
13 present in the state who is subject to the jurisdiction of another state is not immune  
14 from service of process allowable under the laws of that state.

15 (c) The immunity granted by (a) of this section does not extend to civil  
16 litigation based on acts unrelated to the participation in a proceeding under this chapter  
17 committed by an individual while present in this state.

18 **Sec. 25.30.860. Communication between courts.** (a) A court of this state  
19 may communicate with a court in another state concerning a proceeding arising under  
20 this chapter.

21 (b) The court may allow the parties to participate in the communication. If  
22 the parties are not able to participate in the communication, they shall be given the  
23 opportunity to present facts and legal arguments before a decision on jurisdiction is  
24 made.

25 (c) Communication between courts on schedules, calendars, court records, and  
26 similar matters may occur without informing the parties, and a record need not be  
27 made of the communication.

28 (d) Except as provided in (c) of this section, a record shall be made of a  
29 communication under this section. The parties must be informed promptly of the  
30 communication and granted access to the record.

31 (e) In this section, "record" means information that is inscribed on a tangible

medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Sec. 25.30.870. 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 on 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.

**Sec. 25.30.880. 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 under 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 a person having physical custody of the child to appear in the proceeding with or without the child.

(b) On request of a court of another state, a court of this state may hold a hearing or enter an order described in (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under (a) and (b) of this section 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. On appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

#### **Article 4. General Provisions.**

**Sec. 25.30.901. Application and construction.** In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact laws substantially similar.

**Sec. 25.30.903. Severability clause.** If a provision of this chapter or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and, to this end, the provisions of this chapter are severable.

**Sec. 25.30.909. Definitions.** In this chapter,

(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, including a permanent, temporary, initial, and modification order, except that 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, including 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, except that the term does not include a proceeding

1 involving juvenile delinquency, contractual emancipation, or enforcement under  
 2 AS 25.30.400 - 25.30.590 or provisions substantially similar to AS 25.30.400 -  
 3 25.30.590;

4 (5) “commencement” means the filing of the first pleading in a  
 5 proceeding;

6 (6) “court” means an entity authorized under the law of a state to  
 7 establish, enforce, or modify a child custody determination;

8 (7) “home state” means the state in which a child lived with a parent  
 9 or a person acting as a parent for at least six consecutive months, including any  
 10 temporary absences of the child or parent or person acting as a parent, immediately  
 11 before the commencement of a child custody proceeding, except that, in the case of  
 12 a child who is less than six months of age, the term means the state in which the child  
 13 lived from birth with any of the persons mentioned, including any temporary absences;

14 (8) “initial determination” means the first child custody determination  
 15 concerning a particular child;

16 (9) “issuing court” means the court that makes a child custody  
 17 determination for which enforcement is sought under this chapter;

18 (10) “issuing state” means the state in which a child custody  
 19 determination is made;

20 (11) “modification” means a child custody determination that changes,  
 21 replaces, supersedes, or is otherwise made after a previous determination concerning  
 22 the same child, whether or not it is made by the court that made the previous  
 23 determination;

24 (12) “person” means a natural person, a corporation, a business trust,  
 25 an estate, a trust, a partnership, a limited liability company, an association, a joint  
 26 venture, a government or a governmental subdivision, an agency, an instrumentality,  
 27 a public corporation, or any other legal or commercial entity;

28 (13) “person acting as a parent” means a person, other than a parent,  
 29 who

30 (A) has physical custody of a child or has had physical custody  
 31 for a period of six consecutive months, including temporary absence, within

1                   one year immediately before the commencement of a child custody proceeding;  
2                   and

3                               (B) has been awarded legal custody by a court or claims a right  
4                   to legal custody under the law of this state;

5                               (14) “physical custody” means the physical care and supervision of a  
6                   child;

7                               (15) “state” means a state of the United States, the District of  
8                   Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular  
9                   possession subject to the jurisdiction of the United States;

10                              (16) “warrant” means an order issued by a court authorizing law  
11                   enforcement officers to take physical custody of a child.

12       \* **Sec. 3.** AS 25.30.910 is amended to read:

13                              **Sec. 25.30.910. Short title.** This chapter may be cited as the Uniform Child  
14                   Custody Jurisdiction **and Enforcement** Act.

15       \* **Sec. 4.** AS 25.30.010, 25.30.020, 25.30.030, 25.30.040, 25.30.050, 25.30.060, 25.30.070,  
16       25.30.080, 25.30.090, 25.30.100, 25.30.110, 25.30.120, 25.30.130, 25.30.140, 25.30.150,  
17       25.30.160, 25.30.170, 25.30.180, 25.30.190, 25.30.200, 25.30.210, 25.30.220, 25.30.230, and  
18       25.30.900 are repealed.

19       \* **Sec. 5.** COURT RULE CHANGE; SERVICE. (a) To the extent that AS 25.30.840,  
20       enacted by sec. 2 of this Act, allows service and proof of service to be given in a manner  
21       prescribed by the law of another state, this Act has the effect of amending Rule 4, Alaska  
22       Rules of Civil Procedure.

23                   (b) The provisions of AS 25.30.840, enacted by sec. 2 of this Act, that allow service  
24       and proof of service to be given in a manner prescribed by the law of another state take effect  
25       only if (a) of this section receives the two-thirds majority vote of each house required by art.  
26       IV, sec. 15, Constitution of the State of Alaska.

27       \* **Sec. 6.** COURT RULE CHANGE; STAYS. (a) The second sentence of AS 25.30.520,  
28       enacted by sec. 2 of this Act, has the effect of amending Rule 62, Alaska Rules of Civil  
29       Procedure, and Rule 205, Alaska Rules of Appellate Procedure, by prohibiting a court from  
30       granting a stay, pending appeal, under certain circumstances.

31                   (b) The second sentence of AS 25.20.520, enacted by sec. 2 of this Act, takes effect

- 1 only if (a) of this section receives the two-thirds majority vote of each house required by art.  
2 IV, sec. 15, Constitution of the State of Alaska.
- 3 \* **Sec. 7. APPLICABILITY.** A motion or other request for relief that was made before the  
4 effective date of this Act is governed by the law in effect at the time the motion or other  
5 request was made if the motion or other request was made in a child custody proceeding or  
6 to enforce a child custody determination.