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CHAPTER 15.

CHILD CUSTODY AND VISITATION

ARTICLE 1.

GENERAL PROVISIONS

**SECTION 63‑15‑10.** "Tender Years Doctrine" abolished.

The "Tender Years Doctrine" in which there is a preference for awarding a mother custody of a child of tender years is abolished.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑20.** Religious faith.

In placing the child in the custody of an individual or a private agency or institution, the court shall, whenever practicable, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of such child, or, in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑30.** Child's preference.

In determining the best interests of the child, the court must consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑40.** Consideration of domestic violence.

(A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence as defined in Section 16‑25‑20 or Section 16‑25‑65 including, but not limited to:

(1) physical or sexual abuse; and

(2) if appropriate, evidence of which party was the primary aggressor, as defined in Section 16‑25‑70.

(B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑50.** Domestic violence and visitation; payment for treatment.

(A) A court may award visitation to a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, as defined in Section 16‑25‑20 or Section 16‑25‑65, or in cases in which complaints were made against both parties, to the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor under Section 16‑25‑70, only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.

(B) In a visitation order, a court may:

(1) order an exchange of a child to occur in a protected setting;

(2) order visitation supervised by another person or agency;

(3) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to attend and complete, to the satisfaction of the court, a program of intervention for offenders or other designated counseling as a condition of the visitation;

(4) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty‑four hours preceding the visitation;

(5) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay a fee to defray the costs of supervised visitation;

(6) prohibit overnight visitation;

(7) require a bond from a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, from the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, for the return and safety of the child if that person has made a threat to retain the child unlawfully;

(8) impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, and any other household member.

(C) If a court allows a household member to supervise visitation, the court must establish conditions to be followed during the visitation.

(D) A judge may, upon his own motion or upon the motion of any party, prohibit or limit the visitation when necessary to ensure the safety of the child or the parent who is a victim of domestic violence.

(E) If visitation is not allowed or is allowed in a restricted manner to provide for the safety of a child or parent who is a victim of domestic violence, the court may order the address of the child and the victim to be kept confidential.

(F) The court must order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay the actual cost of any medical or psychological treatment for a child who is physically or psychologically injured as a result of one or more acts of domestic violence.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑60.** De facto custodian.

(A) For purposes of this section, "de facto custodian" means, unless the context requires otherwise, a person who has been shown by clear and convincing evidence to have been the primary caregiver for and financial supporter of a child who:

(1) has resided with the person for a period of six months or more if the child is under three years of age; or

(2) has resided with the person for a period of one year or more if the child is three years of age or older.

Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child must not be included in determining whether the child has resided with the person for the required minimum period.

(B) A person is not a de facto custodian of a child until the court determines by clear and convincing evidence that the person meets the definition of de facto custodian with respect to that child. If the court determines a person is a de facto custodian of a child, that person has standing to seek visitation or custody of that child.

(C) The family court may grant visitation or custody of a child to the de facto custodian if it finds by clear and convincing evidence that the child's natural parents are unfit or that other compelling circumstances exist.

(D) No proceeding to establish whether a person is a de facto custodian may be brought concerning a child in the custody of the Department of Social Services.

(E) If the court has determined by clear and convincing evidence that a person is a de facto custodian, the court must join that person in the action as a party needed for just adjudication under the South Carolina Rules of Civil Procedure.

HISTORY: 2008 Act No. 361, Section 2.

ARTICLE 2.

COURT‑ORDERED CHILD CUSTODY

**SECTION 63‑15‑210.** Definitions.

As used in this article:

(1) "Joint custody" means both parents have equal rights and responsibilities for major decisions concerning the child, including the child's education, medical and dental care, extracurricular activities, and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions.

(2) "Sole custody" means a person, including, but not limited to, a parent who has temporary or permanent custody of a child and, unless otherwise provided for by court order, the rights and responsibilities for major decisions concerning the child, including the child's education, medical and dental care, extracurricular activities, and religious training.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

**SECTION 63‑15‑220.** Parenting plans.

(A) At all temporary hearings where custody is contested, each parent must prepare, file, and submit to the court a parenting plan, which reflects parental preferences, the allocation of parenting time to be spent with each parent, and major decisions, including, but not limited to, the child's education, medical and dental care, extracurricular activities and religious training. However, the parties may elect to prepare, file, and submit a joint parenting plan. The court shall issue temporary and final custody orders only after considering these parenting plans; however, the failure by a party to submit a parenting plan to the court does not preclude the court from issuing a temporary or final custody order.

(B) At the final hearing, either party may file and submit an updated parenting plan for the court's consideration.

(C) The South Carolina Supreme Court shall develop rules and forms for the implementation of the parenting plan.

HISTORY: 2012 Act No. 259, Section 1, eff August 17, 2012.

**SECTION 63‑15‑230.** Final custody determination; considerations.

(A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

(B) The court may award joint custody to both parents or sole custody to either parent.

(C) If custody is contested or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody, and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.

(D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

**SECTION 63‑15‑240.** Contents of order for custody affecting rights and responsibilities of parents; best interests of the child.

(A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

(1) the approval of a parenting plan;

(2) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent;

(3) the award of joint custody, in which case the order must include:

(a) residential arrangements with each parent in accordance with the needs of each child; and

(b) how consultations and communications between the parents will take place, generally and specifically, with regard to major decisions concerning the child's health, medical and dental care, education, extracurricular activities, and religious training;

(4) other custody arrangements as the court may determine to be in the best interest of the child.

(B) In issuing or modifying a custody order, the court must consider the best interest of the child, which may include, but is not limited to:

(1) the temperament and developmental needs of the child;

(2) the capacity and the disposition of the parents to understand and meet the needs of the child;

(3) the preferences of each child;

(4) the wishes of the parents as to custody;

(5) the past and current interaction and relationship of the child with each parent, the child's siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child;

(6) the actions of each parent to encourage the continuing parent‑child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

(7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;

(8) any effort by one parent to disparage the other parent in front of the child;

(9) the ability of each parent to be actively involved in the life of the child;

(10) the child's adjustment to his or her home, school, and community environments;

(11) the stability of the child's existing and proposed residences;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

(13) the child's cultural and spiritual background;

(14) whether the child or a sibling of the child has been abused or neglected;

(15) whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

(16) whether one parent has relocated more than one hundred miles from the child's primary residence in the past year, unless the parent relocated for safety reasons; and

(17) other factors as the court considers necessary.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

**SECTION 63‑15‑250.** Telephonic and electronic communication between minor child and parents.

In addition to all rights and duties given to parents pursuant to Section 63‑5‑30:

(A) when a court orders sole custody to one parent, the custodial parent, except in cases of abuse, neglect, or abandonment, should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child; and

(B) when a court orders joint custody to both parents, each parent should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the other parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

**SECTION 63‑15‑260.** Equal access to educational and medical records of child by parents.

Notwithstanding the custody arrangement and in addition to all rights and duties given to parents pursuant to Section 63‑5‑30, each parent has equal access and the same right to obtain all educational records and medical records of his or her minor children and the right to participate in the children's school activities and extracurricular activities that are held in public locations unless prohibited by an order of the court or State law.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

ARTICLE 3.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

SUBARTICLE 1.

GENERAL PROVISIONS

**SECTION 63‑15‑300.** Citation.

This article may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".

HISTORY: 2008 Act No. 361, Section 2.

As used in this article:

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

(2) "Child" means an individual who has not attained eighteen 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, contractual emancipation, or enforcement under Subarticle 3.

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

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

(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.

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

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

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

(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.

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

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

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

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

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

(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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑304.** Exemption proceedings.

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑306.** Indian children proceedings exempt.

(A) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC Section 1901 et seq., is not subject to this article 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 the purpose of applying Subarticles 1 and 2.

(C) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under Subarticle 3.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑308.** Recognition of foreign country custody.

(A) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Subarticles 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 article must be recognized and enforced under Subarticle 3.

(C) A court of this State need not apply this article if the child custody law of a foreign country violates fundamental principles of human rights.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑310.** Determinations binding.

A child custody determination made by a court of this State that had jurisdiction under this article binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 63‑15‑314 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑312.** Jurisdiction issues take priority.

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑314.** Notice; proof of service; submission to jurisdiction.

(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 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑316.** 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 proceeding.

(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.

(C) The immunity granted by 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑318.** Communication with out‑of‑state courts.

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

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

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

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

(E) For the purposes of 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑320.** Testimony of out‑of‑state witnesses.

(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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑322.** Request for hearing in another state; 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 eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

HISTORY: 2008 Act No. 361, Section 2.

SUBARTICLE 2.

JURISDICTION

**SECTION 63‑15‑330.** Basis for jurisdiction.

(A) Except as otherwise provided in Section 63‑15‑336, a court of this State has jurisdiction to make an initial child custody determination only if:

(1) this State is the home state of the child on the date of the commencement of the proceeding, or 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 State;

(2) a court of another state does not have jurisdiction under item (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 63‑15‑342 or 63‑15‑344, and:

(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

(b) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) all courts, having jurisdiction under item (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 63‑15‑342 or 63‑15‑344; or

(4) no court of any other state would have jurisdiction under the criteria specified in item (1), (2), or (3).

(B) Subsection (A) is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑332.** Exclusive, continuing jurisdiction.

(A) Except as otherwise provided in Section 63‑15‑336, a court of this State which has made a child custody determination consistent with Section 63‑15‑330 or 63‑15‑334 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not 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 the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(B) A court of this State which 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 63‑15‑330.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑334.** Custody modification by another state.

Except as otherwise provided in Section 63‑15‑336, 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 63‑15‑330(A)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 63‑15‑332 or that a court of this State would be a more convenient forum under Section 63‑15‑342; or

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑336.** Temporary 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 article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, 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 63‑15‑330 through 63‑15‑334. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, a child custody determination made under this section becomes a final determination, if it so provides and this State becomes the home state of the child.

(C) If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334. 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 which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 63‑15‑330 through 63‑15‑334, shall immediately communicate with the other court. A court of this State, which is exercising jurisdiction pursuant to Sections 63‑15‑330 through 63‑15‑334, upon being informed that a child custody proceeding has been commenced in, 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 to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑338.** Notice; obligation to join party and right to intervene.

(A) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of Section 63‑15‑314 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.

(B) This article 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 article are governed by the law of this State as in child custody proceedings between residents of this State.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑340.** Stays of other proceedings.

(A) Except as otherwise provided in Section 63‑15‑336, a court of this State may not exercise its jurisdiction under this subarticle if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, 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 63‑15‑342.

(B) Except as otherwise provided in Section 63‑15‑336, 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 63‑15‑346. 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 article, 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 article 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑342.** Inconvenient forum.

(A) A court of this State, which has jurisdiction under this article 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 motion of a party, the court's own motion, or request of another court.

(B) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to 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 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 in 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 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 article 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑344.** Unjustifiable jurisdiction.

(A) Except as otherwise provided in Section 63‑15‑336 or by other law of this State, if a court of this State has jurisdiction under this article because a person seeking to invoke its 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 63‑15‑330 through 63‑15‑334 determines that this State is a more appropriate forum under Section 63‑15‑342; or

(3) no court of any other state would have jurisdiction under the criteria specified in Sections 63‑15‑330 through 63‑15‑334.

(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 unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 63‑15‑330 through 63‑15‑334.

(C) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (A), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and childcare during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this article.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑346.** Information regarding other proceedings.

(A) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, 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 or whereabouts, 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:

(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, and the date of the child custody determination, if any;

(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, the case number, and the nature of the proceeding; and

(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.

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

(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.

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

(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 jeopardized by disclosure of identifying information, the information must be sealed and may not be 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑348.** Persons requested to appear.

(A) In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person 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 in person with the child.

(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 63‑15‑314 includes a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(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.

(D) If a party to a child custody proceeding who is outside of 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.

HISTORY: 2008 Act No. 361, Section 2.

SUBARTICLE 3.

ENFORCEMENT

**SECTION 63‑15‑350.** Definitions.

As used in this subarticle:

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

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑352.** Enforcement under Hague Convention.

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑354.** Enforcing other states' orders.

(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 in substantial conformity with this article or the determination was made under factual circumstances meeting the jurisdictional standards of this article and the determination has not been modified in accordance with this article.

(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 subarticle are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑356.** 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 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 Subarticle 2. The order remains in effect until an order is obtained from the other court or the period expires.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑358.** Registration of out‑of‑state custody order.

(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 63‑15‑346, 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 subsection (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 that:

(1) 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;

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

(3) 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.

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

(1) the issuing court did not have jurisdiction under Subarticle 2;

(2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Subarticle 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which registration is sought.

(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.

(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 that could have been asserted at the time of registration.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑360.** Enforcement of registered order.

(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.

(B) A court of this State shall recognize and enforce, but may not modify, except in accordance with Subarticle 2, a registered child custody determination of a court of another state.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑362.** Modification pending out‑of‑state.

If a proceeding for enforcement under this subarticle 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 Subarticle 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑364.** Enforcement petition.

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

(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 article and, if so, identify the court, the case number, and the nature of the proceeding;

(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, the case number, and the nature of the proceeding;

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

(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; and

(6) if the child custody determination has been registered and confirmed under Section 63‑15‑358, the date and place of registration.

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

(D) An order issued under subsection (C) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 63‑15‑372, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under Section 63‑15‑358 and that:

(a) the issuing court did not have jurisdiction under Subarticle 2;

(b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Subarticle 2;

(c) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under Section 63‑15‑356, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subarticle 2.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑366.** Service of petition and order.

Except as otherwise provided in Section 63‑15‑370, 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑368.** Physical custody of child.

(A) Unless the court issues a temporary emergency order pursuant to Section 63‑15‑336, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under Section 63‑15‑358 and that:

(a) the issuing court did not have jurisdiction under Subarticle 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 Subarticle 2; or

(c) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 63‑15‑314, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under Section 63‑15‑358 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subarticle 2.

(B) The court shall award the fees, costs, and expenses authorized under Section 63‑15‑372 and may grant additional 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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑370.** Warrant to take physical custody.

(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 immediately likely to suffer serious physical harm or be removed from this State.

(B) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be 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 unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 63‑15‑364(B).

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

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

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

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

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

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

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑372.** Costs.

(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 childcare 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 unless authorized by law other than this article.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑374.** Full faith and credit.

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

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑376.** Appeals.

An appeal may be taken from a final order in a proceeding under this subarticle in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 63‑15‑336, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑378.** Remedies.

(A) In a case arising under this article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under this subarticle 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 to do so from a court in a pending child custody proceeding;

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

(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.

(B) A prosecutor acting under this section acts on behalf of the court and may not represent any party.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑380.** Assistance of law enforcement.

At the request of a prosecutor acting under Section 63‑15‑378, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under Section 63‑15‑378.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑382.** Assessment of assistance costs.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under Section 63‑15‑378 or 63‑15‑380.

HISTORY: 2008 Act No. 361, Section 2.

SUBARTICLE 4.

MISCELLANEOUS PROVISIONS

**SECTION 63‑15‑390.** Uniformity of application.

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.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑392.** Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑15‑394.** Applicability to prior proceedings.

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination 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.

HISTORY: 2008 Act No. 361, Section 2.