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HOUSE BILL 110

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

**RELATING TO CHILD CUSTODY; ENACTING THE UNIFORM CHILD-CUSTODY
JURISDICTION AND ENFORCEMENT ACT; REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

Section 101. SHORT TITLE. -- This act may be cited as the
"Uniform Child-Custody Jurisdiction and Enforcement Act".

Section 102. DEFINITIONS. -- As used in the Uniform Child-
Custody Jurisdiction and Enforcement Act:

(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;

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

8 (4) "child-custody proceeding" means a proceeding
9 in which legal custody, physical custody or visitation with
10 respect to a child is an issue. The term includes a
11 proceeding for divorce, separation, neglect, abuse,
12 dependency, guardianship, paternity, termination of parental
13 rights and protection from domestic violence in which the
14 issue may appear. The term does not include a proceeding
15 involving juvenile delinquency, contractual emancipation or
16 enforcement under Article 3 of the Uniform Child-Custody
17 Jurisdiction and Enforcement Act;

18 (5) "commencement" means the filing of the first
19 pleading in a proceeding;

20 (6) "court" means an entity authorized under the
21 law of a state to establish, enforce or modify a child-custody
22 determination;

23 (7) "home state" means the state in which a child
24 lived with a parent or a person acting as a parent for at
25 least six consecutive months immediately before the

1 commencement of a child-custody proceeding. In the case of a
2 child less than six months of age, the term means the state in
3 which the child lived from birth with any of the persons
4 mentioned. A period of temporary absence of any of the
5 mentioned persons is part of the period;

6 (8) "initial determination" means the first child-
7 custody determination concerning a particular child;

8 (9) "issuing court" means the court that makes a
9 child-custody determination for which enforcement is sought
10 under the Uniform Child-Custody Jurisdiction and Enforcement
11 Act;

12 (10) "issuing state" means the state in which a
13 child-custody determination is made;

14 (11) "modification" means a child-custody
15 determination that changes, replaces, supersedes or is
16 otherwise made after a previous determination concerning the
17 same child, whether or not it is made by the court that made
18 the previous determination;

19 (12) "person" means an individual, corporation,
20 business trust, estate, trust, partnership, limited liability
21 company, association, joint venture, government, governmental
22 subdivision, agency or instrumentality, public corporation or
23 any other legal or commercial entity;

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

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

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

8 (14) "physical custody" means the physical care
9 and supervision of a child;

10 (15) "state" means a state of the United States,
11 the District of Columbia, Puerto Rico, the United States
12 Virgin Islands or any territory or insular possession subject
13 to the jurisdiction of the United States;

14 (16) "tribe" means an Indian tribe or band, or
15 Alaskan Native village, which is recognized by federal law or
16 formally acknowledged by a state; and

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

20 Section 103. PROCEEDINGS GOVERNED BY OTHER LAW. -- The
21 Uniform Child-Custody Jurisdiction and Enforcement Act does
22 not govern an adoption proceeding or a proceeding pertaining
23 to the authorization of emergency medical care for a child.

24 Section 104. APPLICATION TO INDIAN TRIBES. --

25 (a) A child-custody proceeding that pertains to an

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1 Indian child as defined in the Indian Child Welfare Act, 25
2 U.S.C. § 1901 et seq., is not subject to the Uniform Child-
3 Custody Jurisdiction and Enforcement Act to the extent that it
4 is governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as
6 if it were a state of the United States for the purpose of
7 applying Articles 1 and 2 of the Uniform Child-Custody
8 Jurisdiction and Enforcement Act.

9 (c) A child-custody determination made by a tribe
10 under factual circumstances in substantial conformity with the
11 jurisdictional standards of the Uniform Child-Custody
12 Jurisdiction and Enforcement Act must be recognized and
13 enforced under Article 3 of that act.

14 Section 105. INTERNATIONAL APPLICATION OF THE UNIFORM
15 CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT. --

16 (a) A court of this state shall treat a foreign
17 country as if it were a state of the United States for the
18 purpose of applying Articles 1 and 2 of the Uniform Child-
19 Custody Jurisdiction and Enforcement Act.

20 (b) Except as otherwise provided in subsection
21 (c), a child-custody determination made in a foreign country
22 under factual circumstances in substantial conformity with the
23 jurisdictional standards of the Uniform Child-Custody
24 Jurisdiction and Enforcement Act must be recognized and
25 enforced under Article 3 of that act.

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1 (c) A court of this state need not apply the
2 Uniform Child-Custody Jurisdiction and Enforcement Act if the
3 child custody law of a foreign country violates fundamental
4 principles of human rights.

5 Section 106. EFFECT OF CHILD-CUSTODY DETERMINATION. -- A
6 child-custody determination made by a court of this state that
7 had jurisdiction under the Uniform Child-Custody Jurisdiction
8 and Enforcement Act binds all persons who have been served in
9 accordance with the laws of this state or notified in
10 accordance with Section 108 or who have submitted to the
11 jurisdiction of the court, and who have been given an
12 opportunity to be heard. As to those persons, the
13 determination is conclusive as to all decided issues of law
14 and fact except to the extent the determination is modified.

15 Section 107. PRIORITY. -- If a question of existence or
16 exercise of jurisdiction under the Uniform Child-Custody
17 Jurisdiction and Enforcement Act is raised in a child-custody
18 proceeding, the question, upon request of a party, must be
19 given priority on the calendar and handled expeditiously.

20 Section 108. NOTICE TO PERSONS OUTSIDE STATE. --

21 (a) Notice required for the exercise of
22 jurisdiction when a person is outside this state may be given
23 in a manner prescribed by the law of this state for service of
24 process or by the law of the state in which the service is
25 made. Notice must be given in a manner reasonably calculated

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1 to give actual notice but may be by publication if other means
2 are not effective.

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

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

9 Section 109. APPEARANCE AND LIMITED IMMUNITY. --

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

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

23 (c) The immunity granted by subsection (a) does
24 not extend to civil litigation based on acts unrelated to the
25 participation in a proceeding under the Uniform Child-Custody

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1 Jurisdiction and Enforcement Act committed by an individual
2 while present in this state.

3 Section 110. COMMUNICATION BETWEEN COURTS. --

4 (a) A court of this state may communicate with a
5 court in another state concerning a proceeding arising under
6 the Uniform Child-Custody Jurisdiction and Enforcement Act.

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

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

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

20 (e) For the purposes of this section, "record"
21 means information that is inscribed on a tangible medium or
22 that is stored in an electronic or other medium and is
23 retrievable in perceivable form.

24 Section 111. TAKING TESTIMONY IN ANOTHER STATE. --

25 (a) In addition to other procedures available to a

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

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

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

20 Section 112. COOPERATION BETWEEN COURTS--PRESERVATION OF
21 RECORDS. --

22 (a) A court of this state may request the
23 appropriate court of another state to:

- 24 (1) hold an evidentiary hearing;
25 (2) order a person to produce or give evidence

1 pursuant to procedures of that state;

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

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

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

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

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

19 (d) A court of this state shall preserve the
20 pleadings, orders, decrees, records of hearings, evaluations
21 and other pertinent records with respect to a child-custody
22 proceeding until the child attains eighteen years of age.
23 Upon appropriate request by a court or law enforcement
24 official of another state, the court shall forward a certified
25 copy of those records.

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ARTICLE 2

JURISDICTION

Section 201. INITIAL CHILD-CUSTODY JURISDICTION. --

(a) Except as otherwise provided in Section 204, 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 paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 207 or 208 and:

(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

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1 paragraph (1) or (2) have declined to exercise jurisdiction on
2 the ground that a court of this state is the more appropriate
3 forum to determine the custody of the child under Section 207
4 or 208; or

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

8 (b) Subsection (a) is the exclusive jurisdictional
9 basis for making a child-custody determination by a court of
10 this state.

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

14 Section 202. EXCLUSIVE, CONTINUING JURISDICTION. --

15 (a) Except as otherwise provided in Section 204, a
16 court of this state which has made a child-custody
17 determination consistent with Section 201 or 203 has
18 exclusive, continuing jurisdiction over the determination
19 until:

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

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

5 (b) A court of this state which has made a child-
6 custody determination and does not have exclusive, continuing
7 jurisdiction under this section may modify that determination
8 only if it has jurisdiction to make an initial determination
9 under Section 201.

10 Section 203. JURISDICTION TO MODIFY DETERMINATION. --
11 Except as otherwise provided in Section 204, a court of this
12 state may not modify a child-custody determination made by a
13 court of another state unless a court of this state has
14 jurisdiction to make an initial determination under Section
15 201(a)(1) or (2) and:

16 (1) the court of the other state determines it no
17 longer has exclusive, continuing jurisdiction under Section
18 202 or that a court of this state would be a more convenient
19 forum under Section 207; or

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

24 Section 204. TEMPORARY EMERGENCY JURISDICTION. --

25 (a) A court of this state has temporary emergency

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1 jurisdiction if the child is present in this state and the
2 child has been abandoned or it is necessary in an emergency to
3 protect the child because the child, or a sibling or parent of
4 the child, is subjected to or threatened with mistreatment or
5 abuse.

6 (b) If there is no previous child-custody
7 determination that is entitled to be enforced under the
8 Uniform Child-Custody Jurisdiction and Enforcement Act and a
9 child-custody proceeding has not been commenced in a court of
10 a state having jurisdiction under Sections 201 through 203, a
11 child-custody determination made under this section remains in
12 effect until an order is obtained from a court of a state
13 having jurisdiction under Sections 201 through 203. If a
14 child-custody proceeding has not been or is not commenced in a
15 court of a state having jurisdiction under Sections 201
16 through 203, a child-custody determination made under this
17 section becomes a final determination, if it so provides, and
18 this state becomes the home state of the child.

19 (c) If there is a previous child-custody
20 determination that is entitled to be enforced under the
21 Uniform Child-Custody Jurisdiction and Enforcement Act, or a
22 child-custody proceeding has been commenced in a court of a
23 state having jurisdiction under Sections 201 through 203, any
24 order issued by a court of this state under this section must
25 specify in the order a period that the court considers

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1 adequate to allow the person seeking an order to obtain an
2 order from the state having jurisdiction under Sections 201
3 through 203. The order issued in this state remains in effect
4 until an order is obtained from the other state within the
5 period specified or the period expires.

6 (d) A court of this state which has been asked to
7 make a child-custody determination under this section, upon
8 being informed that a child-custody proceeding has been
9 commenced in, or a child-custody determination has been made
10 by, a court of a state having jurisdiction under Sections 201
11 through 203, shall immediately communicate with the other
12 court. A court of this state which is exercising jurisdiction
13 pursuant to Sections 201 through 203, upon being informed that
14 a child-custody proceeding has been commenced in, or a child-
15 custody determination has been made by, a court of another
16 state under a statute similar to this section, shall
17 immediately communicate with the court of that state to
18 resolve the emergency, protect the safety of the parties and
19 the child and determine a period for the duration of the
20 temporary order.

21 Section 205. NOTICE-- OPPORTUNITY TO BE HEARD--
22 JOINDER. --

23 (a) Before a child-custody determination is made
24 under the Uniform Child-Custody Jurisdiction and Enforcement
25 Act, notice and an opportunity to be heard in accordance with

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1 the standards of Section 108 must be given to all persons
2 entitled to notice under the law of this state as in child-
3 custody proceedings between residents of this state, any
4 parent whose parental rights have not been previously
5 terminated and any person having physical custody of the
6 child.

7 (b) The Uniform Child-Custody Jurisdiction and
8 Enforcement Act does not govern the enforceability of a child-
9 custody determination made without notice or an opportunity to
10 be heard.

11 (c) The obligation to join a party and the right
12 to intervene as a party in a child-custody proceeding under
13 the Uniform Child-Custody Jurisdiction and Enforcement Act are
14 governed by the law of this state as in child-custody
15 proceedings between residents of this state.

16 Section 206. SIMULTANEOUS PROCEEDINGS. --

17 (a) Except as otherwise provided in Section 204, a
18 court of this state may not exercise its jurisdiction under
19 Article 2 of the Uniform Child-Custody Jurisdiction and
20 Enforcement Act if, at the time of the commencement of the
21 proceeding, a proceeding concerning the custody of the child
22 has been commenced in a court of another state having
23 jurisdiction substantially in conformity with the Uniform
24 Child-Custody Jurisdiction and Enforcement Act, unless the
25 proceeding has been terminated or is stayed by the court of

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1 the other state because a court of this state is a more
2 convenient forum under Section 207.

3 (b) Except as otherwise provided in Section 204, a
4 court of this state, before hearing a child-custody
5 proceeding, shall examine the court documents and other
6 information supplied by the parties pursuant to Section 209.
7 If the court determines that a child-custody proceeding has
8 been commenced in a court in another state having jurisdiction
9 substantially in accordance with the Uniform Child-Custody
10 Jurisdiction and Enforcement Act, the court of this state
11 shall stay its proceeding and communicate with the court of
12 the other state. If the court of the state having
13 jurisdiction substantially in accordance with the Uniform
14 Child-Custody Jurisdiction and Enforcement Act does not
15 determine that the court of this state is a more appropriate
16 forum, the court of this state shall dismiss the proceeding.

17 (c) In a proceeding to modify a child-custody
18 determination, a court of this state shall determine whether a
19 proceeding to enforce the determination has been commenced in
20 another state. If a proceeding to enforce a child-custody
21 determination has been commenced in another state, the court
22 may:

23 (1) stay the proceeding for modification
24 pending the entry of an order of a court of the other state
25 enforcing, staying, denying or dismissing the proceeding for

1 enforcement;

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

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

6 Section 207. INCONVENIENT FORUM --

7 (a) A court of this state which has jurisdiction
8 under the Uniform Child-Custody Jurisdiction and Enforcement
9 Act to make a child-custody determination may decline to
10 exercise its jurisdiction at any time if it determines that it
11 is an inconvenient forum under the circumstances and that a
12 court of another state is a more appropriate forum. The issue
13 of inconvenient forum may be raised upon motion of a party,
14 the court's own motion or request of another court.

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

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

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

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

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

6 (5) any agreement of the parties as to which
7 state should assume jurisdiction;

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

11 (7) the ability of the court of each state to
12 decide the issue expeditiously and the procedures necessary to
13 present the evidence; and

14 (8) the familiarity of the court of each state
15 with the facts and issues in the pending litigation.

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

22 (d) A court of this state may decline to exercise
23 its jurisdiction under the Uniform Child-Custody Jurisdiction
24 and Enforcement Act if a child-custody determination is
25 incidental to an action for divorce or another proceeding

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1 while still retaining jurisdiction over the divorce or other
2 proceeding.

3 Section 208. JURISDICTION DECLINED BY REASON OF
4 CONDUCT. --

5 (a) Except as otherwise provided in Section 204 or
6 by other law of this state, if a court of this state has
7 jurisdiction under the Uniform Child-Custody Jurisdiction and
8 Enforcement Act because a person seeking to invoke its
9 jurisdiction has engaged in unjustifiable conduct, the court
10 shall decline to exercise its jurisdiction unless:

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

13 (2) a court of the state otherwise having
14 jurisdiction under Sections 201 through 203 determines that
15 this state is a more appropriate forum under Section 207; or

16 (3) no court of any other state would have
17 jurisdiction under the criteria specified in Sections 201
18 through 203.

19 (b) If a court of this state declines to exercise
20 its jurisdiction pursuant to subsection (a), it may fashion an
21 appropriate remedy to ensure the safety of the child and
22 prevent a repetition of the unjustifiable conduct, including
23 staying the proceeding until a child-custody proceeding is
24 commenced in a court having jurisdiction under Sections 201
25 through 203.

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1 (c) If a court dismisses a petition or stays a
2 proceeding because it declines to exercise its jurisdiction
3 pursuant to subsection (a), it shall assess against the party
4 seeking to invoke its jurisdiction necessary and reasonable
5 expenses, including costs, communication expenses, attorney's
6 fees, investigative fees, expenses for witnesses, travel
7 expenses and child care expenses during the course of the
8 proceedings, unless the party from whom fees are sought
9 establishes that the assessment would be clearly
10 inappropriate. The court may not assess fees, costs or
11 expenses against this state unless authorized by law other
12 than the Uniform Child-Custody Jurisdiction and Enforcement
13 Act.

14 Section 209. INFORMATION TO BE SUBMITTED TO COURT. --

15 (a) Subject to local law providing for the
16 confidentiality of procedures, addresses and other identifying
17 information in a child-custody proceeding, each party, in its
18 first pleading or in an attached affidavit, shall give
19 information, if reasonably ascertainable, under oath as to the
20 child's present address or whereabouts, the places where the
21 child has lived during the last five years and the names and
22 present addresses of the persons with whom the child has lived
23 during that period. The pleading or affidavit must state
24 whether the party:

25 (1) has participated, as a party or witness or

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1 in any other capacity, in any other proceeding concerning the
2 custody of or visitation with the child and, if so, identify
3 the court, the case number and the date of the child-custody
4 determination, if any;

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

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

16 (b) If the information required by subsection (a)
17 is not furnished, the court, upon motion of a party or its own
18 motion, may stay the proceeding until the information is
19 furnished.

20 (c) If the declaration as to any of the items
21 described in subsection (a)(1) through (3) is in the
22 affirmative, the declarant shall give additional information
23 under oath as required by the court. The court may examine
24 the parties under oath as to details of the information
25 furnished and other matters pertinent to the court's

1 jurisdiction and the disposition of the case.

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

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

14 Section 210. APPEARANCE OF PARTIES AND CHILD. --

15 (a) In a child-custody proceeding in this state,
16 the court may order a party to the proceeding who is in this
17 state to appear before the court in person with or without the
18 child. The court may order any person who is in this state
19 and who has physical custody or control of the child to appear
20 in person with the child.

21 (b) If a party to a child-custody proceeding whose
22 presence is desired by the court is outside this state, the
23 court may order that a notice given pursuant to Section 108
24 include a statement directing the party to appear in person
25 with or without the child and informing the party that failure

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1 to appear may result in a decision adverse to the party.

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

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

11 ARTICLE 3
12 ENFORCEMENT

13 Section 301. DEFINITIONS. --As used in Article 3 of the
14 Uniform Child-Custody Jurisdiction and Enforcement Act:

15 (1) "petitioner" means a person who seeks
16 enforcement of an order for return of a child under the Hague
17 Convention on the Civil Aspects of International Child
18 Abduction or enforcement of a child-custody determination; and

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

24 Section 302. ENFORCEMENT UNDER HAGUE CONVENTION. -- Under
25 Article 3 of the Uniform Child-Custody Jurisdiction and

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1 Enforcement Act, a court of this state may enforce an order
2 for the return of a child made under the Hague Convention on
3 the Civil Aspects of International Child Abduction as if it
4 were a child-custody determination.

5 Section 303. DUTY TO ENFORCE. --

6 (a) A court of this state shall recognize and
7 enforce a child-custody determination of a court of another
8 state if the latter court exercised jurisdiction in
9 substantial conformity with the Uniform Child-Custody
10 Jurisdiction and Enforcement Act or if the determination was
11 made under factual circumstances meeting the jurisdictional
12 standards of that act and the determination has not been
13 modified in accordance with that act.

14 (b) A court of this state may utilize any remedy
15 available under other law of this state to enforce a child-
16 custody determination made by a court of another state. The
17 remedies provided in Article 3 of the Uniform Child-Custody
18 Jurisdiction and Enforcement Act are cumulative and do not
19 affect the availability of other remedies to enforce a child-
20 custody determination.

21 Section 304. TEMPORARY VISITATION. --

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

25 (1) a visitation schedule made by a court of

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1 another state; or

2 (2) the visitation provisions of a child-
3 custody determination of another state that does not provide
4 for a specific visitation schedule.

5 (b) If a court of this state makes an order under
6 subsection (a)(2), it shall specify in the order a period that
7 it considers adequate to allow the petitioner to obtain an
8 order from a court having jurisdiction under the criteria
9 specified in Article 2 of the Uniform Child-Custody
10 Jurisdiction and Enforcement Act. The order remains in effect
11 until an order is obtained from the other court or the period
12 expires.

13 Section 305. REGISTRATION OF CHILD-CUSTODY
14 DETERMINATION. --

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

19 (1) a letter or other document requesting
20 registration;

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

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1 (3) except as otherwise provided in Section
2 209, the name and address of the person seeking registration
3 and any parent or person acting as a parent who has been
4 awarded custody or visitation in the child-custody
5 determination sought to be registered.

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

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

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

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

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

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

23 (3) failure to contest the registration will
24 result in confirmation of the child-custody determination and
25 preclude further contest of that determination with respect to

1 any matter that could have been asserted.

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

7 (1) the issuing court did not have
8 jurisdiction under Article 2 of the Uniform Child-Custody
9 Jurisdiction and Enforcement Act;

10 (2) the child-custody determination sought to
11 be registered has been vacated, stayed or modified by a court
12 having jurisdiction to do so under Article 2 of the Uniform
13 Child-Custody Jurisdiction and Enforcement Act; or

14 (3) the person contesting registration was
15 entitled to notice, but notice was not given in accordance
16 with the standards of Section 108, in the proceedings before
17 the court that issued the order for which registration is
18 sought.

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

24 (f) Confirmation of a registered order, whether by
25 operation of law or after notice and hearing, precludes

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1 further contest of the order with respect to any matter that
2 could have been asserted at the time of registration.

3 Section 306. ENFORCEMENT OF REGISTERED DETERMINATION. --

4 (a) A court of this state may grant any relief
5 normally available under the law of this state to enforce a
6 registered child-custody determination made by a court of
7 another state.

8 (b) A court of this state shall recognize and
9 enforce, but may not modify, except in accordance with Article
10 2 of the Uniform Child-Custody Jurisdiction and Enforcement
11 Act, a registered child-custody determination of a court of
12 another state.

13 Section 307. SIMULTANEOUS PROCEEDINGS. -- If a proceeding
14 for enforcement under Article 3 of the Uniform Child-Custody
15 Jurisdiction and Enforcement Act is commenced in a court of
16 this state and the court determines that a proceeding to
17 modify the determination is pending in a court of another
18 state having jurisdiction to modify the determination under
19 Article 2 of the Uniform Child-Custody Jurisdiction and
20 Enforcement Act, the enforcing court shall immediately
21 communicate with the modifying court. The proceeding for
22 enforcement continues unless the enforcing court, after
23 consultation with the modifying court, stays or dismisses the
24 proceeding.

25 Section 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY

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1 DETERMINATION. --

2 (a) A petition under Article 3 of the Uniform
3 Child-Custody Jurisdiction and Enforcement Act must be
4 verified. Certified copies of all orders sought to be
5 enforced and of any order confirming registration must be
6 attached to the petition. A copy of a certified copy of an
7 order may be attached instead of the original.

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

10 (1) whether the court that issued the
11 determination identified the jurisdictional basis it relied
12 upon in exercising jurisdiction and, if so, what the basis
13 was;

14 (2) whether the determination for which
15 enforcement is sought has been vacated, stayed or modified by
16 a court whose decision must be enforced under the Uniform
17 Child-Custody Jurisdiction and Enforcement Act and, if so,
18 identify the court, the case number and the nature of the
19 proceeding;

20 (3) whether any proceeding has been commenced
21 that could affect the current proceeding, including
22 proceedings relating to domestic violence, protective orders,
23 termination of parental rights and adoptions and, if so,
24 identify the court, the case number and the nature of the
25 proceeding;

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

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

7 (6) if the child-custody determination has
8 been registered and confirmed under Section 305, the date and
9 place of registration.

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

19 (d) An order issued under subsection (c) must
20 state the time and place of the hearing and advise the
21 respondent that at the hearing the court will order that the
22 petitioner may take immediate physical custody of the child
23 and the payment of fees, costs and expenses under Section 312
24 and may schedule a hearing to determine whether further relief
25 is appropriate, unless the respondent appears and establishes

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1 that:

2 (1) the child-custody determination has not
3 been registered and confirmed under Section 305 and that:

4 (A) the issuing court did not have
5 jurisdiction under Article 2 of the Uniform Child-Custody
6 Jurisdiction and Enforcement Act;

7 (B) the child-custody determination for
8 which enforcement is sought has been vacated, stayed or
9 modified by a court having jurisdiction to do so under Article
10 2 of the Uniform Child-Custody Jurisdiction and Enforcement
11 Act; and

12 (C) the respondent was entitled to
13 notice, but notice was not given in accordance with the
14 standards of Section 108 in the proceedings before the court
15 that issued the order for which enforcement is sought; or

16 (2) the child-custody determination for which
17 enforcement is sought was registered and confirmed under
18 Section 305, but has been vacated, stayed or modified by a
19 court of a state having jurisdiction to do so under Article 2
20 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

21 Section 309. SERVICE OF PETITION AND ORDER. -- Except as
22 otherwise provided in Section 311, the petition and order must
23 be served, by any method authorized by the law of this state,
24 upon the respondent and any person who has physical custody of
25 the child.

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1 Section 310. HEARING AND ORDER. --

2 (a) Unless the court issues a temporary emergency
3 order pursuant to Section 204, upon a finding that a
4 petitioner is entitled to immediate physical custody of the
5 child, the court shall order that the petitioner may take
6 immediate physical custody of the child unless the respondent
7 establishes that:

8 (1) the child-custody determination has not
9 been registered and confirmed under Section 305 and that:

10 (A) the issuing court did not have
11 jurisdiction under Article 2 of the Uniform Child-Custody
12 Jurisdiction and Enforcement Act;

13 (B) the child-custody determination for
14 which enforcement is sought has been vacated, stayed or
15 modified by a court of a state having jurisdiction to do so
16 under Article 2 of the Uniform Child-Custody Jurisdiction and
17 Enforcement Act; or

18 (C) the respondent was entitled to
19 notice, but notice was not given in accordance with the
20 standards of Section 108 in the proceedings before the court
21 that issued the order for which enforcement is sought; or

22 (2) the child-custody determination for which
23 enforcement is sought was registered and confirmed under
24 Section 305 but has been vacated, stayed or modified by a
25 court of a state having jurisdiction to do so under Article 2

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1 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

2 (b) The court shall award the fees, costs and
3 expenses authorized under Section 312 and may grant additional
4 relief, including a request for the assistance of law
5 enforcement officials, and set a further hearing to determine
6 whether additional relief is appropriate.

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

10 (d) A privilege against disclosure of
11 communications between spouses and a defense of immunity based
12 on the relationship of husband and wife or parent and child
13 may not be invoked in a proceeding under Article 3 of the
14 Uniform Child-Custody Jurisdiction and Enforcement Act.

15 Section 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. --

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

22 (b) If the court, upon the testimony of the
23 petitioner or other witness, finds that the child is imminently
24 likely to suffer serious physical harm or be removed from this
25 state, it may issue a warrant to take physical custody of the

1 child. The petition must be heard on the next judicial day
2 after the warrant is executed unless that date is impossible.
3 In that event, the court shall hold the hearing on the first
4 judicial day possible. The application for the warrant must
5 include the statements required by Section 308(b).

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

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

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

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

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

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

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

4 Section 312. COSTS, FEES AND EXPENSES. --

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

13 (b) The court may not assess fees, costs or
14 expenses against a state unless authorized by law other than
15 the Uniform Child-Custody Jurisdiction and Enforcement Act.

16 Section 313. RECOGNITION AND ENFORCEMENT. -- A court of
17 this state shall accord full faith and credit to an order
18 issued by another state and consistent with the Uniform Child-
19 Custody Jurisdiction and Enforcement Act which enforces a
20 child-custody determination by a court of another state, unless
21 the order has been vacated, stayed or modified by a court
22 having jurisdiction to do so under Article 2 of that act.

23 Section 314. APPEALS. -- An appeal may be taken from a
24 final order in a proceeding under Article 3 of the Uniform
25 Child-Custody Jurisdiction and Enforcement Act in accordance

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1 with expedited appellate procedures in other civil cases.

2 Unless the court enters a temporary emergency order under
3 Section 204, the enforcing court may not stay an order
4 enforcing a child-custody determination pending appeal.

5 Section 315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL. --

6 (a) In a case arising under the Uniform Child-
7 Custody Jurisdiction and Enforcement Act or involving the Hague
8 Convention on the Civil Aspects of International Child
9 Abduction, the prosecutor or other appropriate public official
10 may take any lawful action, including resort to a proceeding
11 under Article 3 of the Uniform Child-Custody Jurisdiction and
12 Enforcement Act or any other available civil proceeding, to
13 locate a child, obtain the return of a child or enforce a
14 child-custody determination if there is:

15 (1) an existing child-custody determination;

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

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

20 (4) a reasonable belief that the child has been
21 wrongfully removed or retained in violation of the Hague
22 Convention on the Civil Aspects of International Child
23 Abduction.

24 (b) A prosecutor or appropriate public official
25 acting under this section acts on behalf of the court and may

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1 not represent any party.

2 Section 316. **ROLE OF LAW ENFORCEMENT.** --At the request of
3 a prosecutor or other appropriate public official acting under
4 Section 315, a law enforcement officer may take any lawful
5 action reasonably necessary to locate a child or a party and
6 assist a prosecutor or appropriate public official with
7 responsibilities under Section 315.

8 Section 317. **COSTS AND EXPENSES.** --If the respondent is
9 not the prevailing party, the court may assess against the
10 respondent all direct expenses and costs incurred by the
11 prosecutor or other appropriate public official and law
12 enforcement officers under Section 315 or 316.

13 **ARTICLE 4**

14 **MISCELLANEOUS PROVISIONS**

15 Section 401. **APPLICATION AND CONSTRUCTION.** --In applying
16 and construing the Uniform Child-Custody Jurisdiction and
17 Enforcement Act, consideration must be given to the need to
18 promote uniformity of the law with respect to its subject
19 matter among states that enact it.

20 Section 402. **SEVERABILITY CLAUSE.** --If any provision of
21 the Uniform Child-Custody Jurisdiction and Enforcement Act or
22 its application to any person or circumstance is held invalid,
23 the invalidity does not affect other provisions or applications
24 of that act which can be given effect without the invalid
25 provision or application and to this end the provisions of the

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1 act are severable.

2 Section 403. TRANSITIONAL PROVISION. -- A motion or other
3 request for relief made in a child-custody proceeding or to
4 enforce a child-custody determination which was commenced
5 before the effective date of the Uniform Child-Custody
6 Jurisdiction and Enforcement Act is governed by the law in
7 effect at the time the motion or other request was made.

8 Section 404. REPEAL. -- Sections 40-10-1 through 40-10-24
9 NMSA 1978 (being Laws 1981, Chapter 119, Sections 1 through 23
10 and 25, as amended) are repealed.

11 Section 405. EFFECTIVE DATE. -- The effective date of the
12 provisions of this act is July 1, 2001.