

**IC 31-21**

**ARTICLE 21. UNIFORM CHILD CUSTODY JURISDICTION ACT**

**IC 31-21-1**

Chapter 1. Applicability

**IC 31-21-1-1**

**Inapplicability**

Sec. 1. This article does not apply to:

- (1) an adoption proceeding; or
- (2) a proceeding pertaining to the authorization of emergency medical care for a child.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-1-2**

**Child custody determination made by a tribe**

Sec. 2. (a) A child custody proceeding pertaining to an Indian child, as defined in the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), is not subject to this article to the extent that it is governed by the Indian Child Welfare Act.

(b) An Indiana court shall treat a tribe as if the tribe were a state of the United States for purposes of applying IC 31-21-3 through IC 31-21-5.

(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 IC 31-21-6.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-1-3**

**Child custody determination made by a foreign country**

Sec. 3. (a) An Indiana court shall treat a foreign country as if the foreign country were a state of the United States for purposes of applying IC 31-21-3 through IC 31-21-5.

(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 standard of this article must be recognized and enforced under IC 31-21-6.

(c) An Indiana court need not apply this article if the child custody law of a foreign country violates the fundamental principles of human rights.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-2**

### **Chapter 2. Definitions**

#### **IC 31-21-2-1**

##### **Definitions application**

Sec. 1. The definitions in this chapter apply throughout this article.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-2**

##### **"Abandoned"**

Sec. 2. "Abandoned" means left without provision for reasonable and necessary care or supervision.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-3**

##### **"Child"**

Sec. 3. "Child" means a person who is less than eighteen (18) years of age.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-4**

##### **"Child custody determination"**

Sec. 4. (a) "Child custody determination" means a judgment, decree, or other court order providing for:

- (1) legal custody;
- (2) physical custody; or
- (3) visitation;

with respect to a child.

(b) The term does not include an order relating to child support or other monetary obligation of a person.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-5**

##### **"Child custody proceeding"**

Sec. 5. (a) "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:

- (1) dissolution of marriage or legal separation;
- (2) child abuse or neglect;
- (3) guardianship;
- (4) paternity;
- (5) termination of parental rights; and
- (6) protection from domestic violence;

in which the issue of child custody or visitation may appear.

(b) The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement of child custody under IC 31-21-6.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-6****"Commencement"**

Sec. 6. "Commencement" means the filing of the first pleading in a proceeding.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-7****"Court"**

Sec. 7. "Court" means an entity authorized by state law to establish, enforce, or modify a child custody determination.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-8****"Home state"**

Sec. 8. "Home state" means the state in which a child lived with:

- (1) a parent; or
- (2) a person acting as a parent;

for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived since birth with a parent or person acting as a parent. A period of temporary absence of the parent or person acting as a parent is part of the period.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-9****"Initial determination"**

Sec. 9. "Initial determination" means the first child custody determination concerning a child.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-10****"Issuing court"**

Sec. 10. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this article.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-11****"Issuing state"**

Sec. 11. "Issuing state" means the state in which a child custody determination is made.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-2-12****"Modification"**

Sec. 12. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, regardless of whether the determination is made by the court that made the previous

determination.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-13**

#### **"Person"**

Sec. 13. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency or instrumentality, a public corporation, or any other legal or commercial entity.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-14**

#### **"Person acting as a parent"**

Sec. 14. "Person acting as a parent" means a person, other than a parent, who:

- (1) has physical custody of the child or has had physical custody for a period of at least six (6) consecutive months, including a temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and
- (2) has been awarded legal custody by a court or claims a right to legal custody under Indiana law.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-15**

#### **"Petitioner"**

Sec. 15. "Petitioner" means a person who seeks enforcement of:

- (1) an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction; or
- (2) a child custody determination.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-16**

#### **"Physical custody"**

Sec. 16. "Physical custody" means the physical care and supervision of a child.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-17**

#### **"Record"**

Sec. 17. "Record" means information that is:

- (1) inscribed on a tangible medium; or
  - (2) stored in an electronic or other medium;
- and that is retrievable in a perceivable form.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-2-18**

#### **"Respondent"**

Sec. 18. "Respondent" means a person against whom a proceeding has been commenced for enforcement of:

- (1) an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction; or
- (2) a child custody determination.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-19**

##### **"State"**

Sec. 19. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or an insular possession subject to the jurisdiction of the United States.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-20**

##### **"Tribe"**

Sec. 20. "Tribe" means an Indian tribe or band or Alaskan Native village that is:

- (1) recognized by federal law; or
- (2) formally acknowledged by a state.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-2-21**

##### **"Warrant"**

Sec. 21. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-3**

### **Chapter 3. Procedural Considerations**

#### **IC 31-21-3-1**

##### **Binding nature of child custody determination**

Sec. 1. A child custody determination made by an Indiana court that has jurisdiction under this article binds each person who has:

- (1) been served with notice in accordance with Indiana law;
  - (2) been notified in accordance with section 3 of this chapter;
- or

- (3) submitted to the jurisdiction of the court;

and who has been given an opportunity to be heard. A child custody determination described in this section is conclusive as to the decided issues of law and fact except to the extent the determination is modified.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-3-2**

##### **Question of existence or exercise of jurisdiction priority**

Sec. 2. If a question of existence or exercise of jurisdiction under this article is raised in a child custody proceeding, the question, on a request of a party, must be given priority on the court's calendar and handled expeditiously.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-3-3**

##### **Notice for exercise of jurisdiction to a person outside Indiana**

Sec. 3. (a) Notice required for the exercise of jurisdiction when a person is outside Indiana may be given in a manner prescribed by:

- (1) Indiana law for service of process; or
- (2) 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:

- (1) Indiana law; or
- (2) 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.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-3-4**

##### **Party to a child custody proceeding not subject to other proceedings in Indiana**

Sec. 4. 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 Indiana 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.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-3-5**

##### **Persons subject to personal jurisdiction not immune to service of process**

Sec. 5. A person who is subject to personal jurisdiction in Indiana on a basis other than physical presence is not immune from service of process in Indiana. A person present in Indiana who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-3-6**

##### **Limited immunity**

Sec. 6. The immunity granted by section 4 of this chapter does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this article committed by an individual while present in Indiana.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4**

### **Chapter 4. Communication and Cooperation Between Courts**

## **IC 31-21-4-1**

### **Court communication with a court in another state**

Sec. 1. An Indiana court may communicate with a court in another state concerning a proceeding arising under this article.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4-2**

### **Party communication**

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

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4-3**

### **Communication between courts**

Sec. 3. Communication between courts regarding:

- (1) schedules;
- (2) calendars;
- (3) court records; and
- (4) similar matters;

may occur without informing the parties. A record need not be made of the communication.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4-4**

### **Record of communication**

Sec. 4. A record must be made of a communication under sections 1 and 2 of this chapter. The parties must be:

- (1) promptly informed of the communication; and
- (2) granted access to the record.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4-5**

### **Testimony of a witness located in another state**

Sec. 5. 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 Indiana for testimony taken in another state. The court on its own motion may:

- (1) order that the testimony of a person be taken in another state; and
- (2) prescribe the manner in which and the terms on which the testimony is taken.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-4-6**



**Depositions or testimony of a person residing in another state**

Sec. 6. An Indiana court may permit a person residing in another state to be deposed or to testify by:

- (1) telephone;
- (2) audiovisual means; or
- (3) other electronic means;

before a designated court or another location in that state. An Indiana court shall cooperate with courts in other states in designating an appropriate location for the deposition or testimony.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-4-7****Documentary evidence from another state**

Sec. 7. Documentary evidence transmitted from another state to an Indiana court 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.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-4-8****Request by an Indiana court to a court in another state**

Sec. 8. An Indiana court may request the appropriate court of another state to do the following:

- (1) Hold an evidentiary hearing.
- (2) Order a person to produce or give evidence under the procedures of the other 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 Indiana court:
  - (A) a certified copy of the transcript of the record of the hearing;
  - (B) the evidence otherwise presented; and
  - (C) an evaluation prepared in compliance with the request.
- (5) Order:
  - (A) a party to a child custody proceeding; or
  - (B) any person having physical custody of the child;to appear in the proceeding with or without the child.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-4-9****Request by a court in another state to an Indiana court**

Sec. 9. On the request of a court of another state, an Indiana court may:

- (1) hold a hearing; and
- (2) enter an order described in section 8 of this chapter.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-4-10****Travel and reasonable expenses**

Sec. 10. Travel and other necessary and reasonable expenses

incurred under sections 8 and 9 of this chapter may be assessed against the parties according to Indiana law.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-4-11**

##### **Preservation of court records**

Sec. 11. An Indiana court shall preserve the:

- (1) pleadings;
- (2) orders;
- (3) decrees;
- (4) records of hearings;
- (5) evaluations; and
- (6) other pertinent records;

with respect to a child custody proceeding until the child becomes eighteen (18) years of age. On appropriate request by a court or law enforcement official of another state, the Indiana court shall forward a certified copy of the records to the court of the other state.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-5**

### **Chapter 5. Jurisdiction**

#### **IC 31-21-5-1**

##### **Jurisdiction requirements**

Sec. 1. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court has jurisdiction to make an initial child custody determination only if one (1) of the following applies:

(1) Indiana 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 (6) months before the commencement of the proceeding, and the child is absent from Indiana but a parent or person acting as a parent continues to live in Indiana.

(2) A court of another state does not have jurisdiction under subdivision (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that Indiana is the more appropriate forum under section 8 or 9 of this chapter, and:

(A) the child and the child's parents, or the child and at least one (1) parent or person acting as a parent, have a significant connection with Indiana other than mere physical presence; and

(B) substantial evidence is available in Indiana concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that an Indiana court is the more appropriate forum to determine the custody of the child under section 8 or 9 of this chapter.

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

(b) The jurisdictional requirements described in this section provide the exclusive jurisdictional basis for making a child custody determination by an Indiana court.

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

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-2**

##### **Exclusive, continuing jurisdiction of child custody cases**

Sec. 2. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court that has made a child custody determination consistent with section 1 or 3 of this chapter has exclusive, continuing jurisdiction over the determination until:

(1) an Indiana court determines that:

(A) neither:

(i) the child;

(ii) the child's parents; nor

(iii) any person acting as a parent;

has a significant connection with Indiana; and  
(B) substantial evidence is no longer available in Indiana concerning the child's care, protection, training, and personal relationships; or  
(2) an Indiana court or a court of another state determines that:  
(A) the child;  
(B) the child's parents; and  
(C) any person acting as a parent;  
do not presently reside in Indiana.  
(b) An Indiana court that:  
(1) has made a child custody determination; and  
(2) does not have exclusive, continuing jurisdiction under this section;  
may modify the determination only if the Indiana court has jurisdiction to make an initial determination under section 1 of this chapter.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-5-3**

#### **Modification of a child custody determination made in another state**

Sec. 3. Except as provided in section 4 of this chapter, an Indiana court may not modify a child custody determination made by a court of another state unless an Indiana court has jurisdiction to make an initial determination under section 1(a)(1) or 1(a)(2) of this chapter and:

- (1) the court of the other state determines that:
  - (A) it no longer has exclusive, continuing jurisdiction under section 2 of this chapter; or
  - (B) an Indiana court would be a more convenient forum under section 8 of this chapter; or
- (2) an Indiana court or a court of the other state determines that:
  - (A) the child;
  - (B) the child's parents; and
  - (C) any person acting as a parent;do not presently reside in the other state.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-5-4**

#### **Temporary emergency jurisdiction; child custody determinations; communication with other courts**

Sec. 4. (a) An Indiana court has temporary emergency jurisdiction if the child is present in Indiana and:

- (1) the child has been abandoned; or
- (2) it is necessary in an emergency to protect the child because:
  - (A) the child;
  - (B) the child's sibling; or
  - (C) the child's parent;is subjected to or threatened with mistreatment or abuse.

(b) If:

(1) there is no previous child custody determination that is entitled to be enforced under this article; and

(2) a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

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 1 through 3 of this chapter.

(c) If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter, a child custody determination made under this section becomes a final determination, and, if it so provides, Indiana becomes the home state of the child.

(d) If:

(1) there is a previous child custody determination that is entitled to be enforced under this article; or

(2) a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

an order issued by an Indiana court 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 1 through 3 of this chapter.

(e) The order issued in Indiana remains in effect until an order is obtained from the other state within the period specified or the period expires.

(f) An Indiana court that has been asked to make a child custody determination under this section, on being informed that:

(1) a child custody proceeding has been commenced in; or

(2) a child custody determination has been made by;

a court of a state having jurisdiction under sections 1 through 3 of this chapter, shall immediately communicate with the other court.

(g) An Indiana court that is exercising jurisdiction under sections 1 through 3 of this chapter, on being informed that:

(1) a child custody proceeding has been commenced in; or

(2) 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 the other 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.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-5-5**

### **Notice and opportunity to be heard; intervention and joinder**

Sec. 5. (a) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of IC 31-21-3-3 must be given to the following persons:

(1) Persons entitled to notice under Indiana law as in child custody proceedings between residents of Indiana.

(2) A parent whose parental rights have not been previously

terminated.

(3) 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 Indiana law in the same manner as in child custody proceedings between Indiana residents.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-6**

##### **Proceeding commenced in another state; court review of documents**

Sec. 6. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, unless the proceeding:

(1) has been terminated; or

(2) is stayed by the court of the other state because an Indiana court is a more convenient forum under section 8 of this chapter.

(b) Except as otherwise provided in section 4 of this chapter, an Indiana court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under sections 10 through 13 of this chapter. 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 Indiana court shall:

(1) stay its proceeding; and

(2) 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 Indiana court is a more appropriate forum, the Indiana court shall dismiss the proceeding.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-7**

##### **Proceeding to modify a child custody determination; proceeding commenced in another state**

Sec. 7. In a proceeding to modify a child custody determination, an Indiana court 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 Indiana 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 the Indiana court considers appropriate.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-5-8**

#### **Court declining exercise of jurisdiction**

Sec. 8. (a) An Indiana court that has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if the Indiana court determines that:

- (1) the Indiana court is an inconvenient forum under the circumstances; and
- (2) a court of another state is a more appropriate forum.

The issue of inconvenient forum may be raised on motion of a party, the court's own motion, or request of another court.

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

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child.
- (2) The length of time the child has resided outside Indiana.
- (3) The distance between the Indiana court and the court in the state that would assume jurisdiction.
- (4) The relative financial circumstances of the parties.
- (5) An agreement of the parties as to which state should assume jurisdiction.
- (6) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If an Indiana court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the Indiana court:

- (1) shall stay the proceedings on condition that a child custody proceeding be promptly commenced in another designated state; and
- (2) may impose any other condition the Indiana court considers just and proper.

(d) An Indiana court may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-9**

##### **Court declining exercise of jurisdiction if person engaged in unjustifiable conduct; exceptions; remedies; reasonable expenses**

Sec. 9. (a) Except as otherwise provided in section 4 of this chapter or by any other Indiana law, if an Indiana court 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 child's parents and any person acting as a parent have acquiesced in the exercise of jurisdiction;
- (2) a court of the state otherwise having jurisdiction under sections 1 through 3 of this chapter determines that Indiana is a more appropriate forum under section 8 of this chapter; or
- (3) no court of any other state would have jurisdiction under the criteria specified in sections 1 through 3 of this chapter.

(b) If an Indiana court declines to exercise its jurisdiction under subsection (a), the Indiana court may fashion an appropriate remedy to:

- (1) ensure the safety of the child; and
- (2) 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 1 through 3 of this chapter.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction under subsection (a), the court shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including:

- (1) costs;
- (2) communication expenses;
- (3) attorney's fees;
- (4) investigative fees;
- (5) expenses for witnesses;
- (6) travel expenses; and
- (7) child care 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 the state unless authorized by law other than this article.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-10**

##### **Information required by each party in a child custody proceeding**

Sec. 10. (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 provide information, under oath, regarding:

- (1) the child's present address or whereabouts and the places where the child has lived during the immediately preceding five



- (5) years; and
  - (2) the names and present addresses of the persons with whom the child has lived during that period.
  - (b) The pleading or affidavit must state the following:
    - (1) Whether the party 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:
      - (A) the court;
      - (B) the case number; and
      - (C) the date of the child custody determination, if any.
    - (2) Whether the party knows of a proceeding that may affect the current proceeding, including proceedings for enforcement and proceedings relating to:
      - (A) domestic violence;
      - (B) protective orders;
      - (C) termination of parental rights; and
      - (D) adoptions;and, if so, identify the court, the case number, and the nature of the proceeding.
    - (3) Whether the party knows the names and addresses of a person not a party to the proceeding who:
      - (A) has physical custody of the child; or
      - (B) claims rights of legal custody or physical custody of, or visitation with, the child;and, if so, the names and addresses of the persons.
  - (c) If the information required by subsection (a) is not furnished, the court, on motion of a party or its own motion, may stay the proceeding until the information is furnished.
- As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-11**

##### **Additional information required by each party in a child custody proceeding**

Sec. 11. If the declaration as to any of the items described in section 10(b)(1) through 10(b)(3) of this chapter is in the affirmative, the party 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:

- (1) the court's jurisdiction; and
- (2) the disposition of the case.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-12**

##### **Continuous duty to inform**

Sec. 12. Each party has a continuing duty to inform the court of a proceeding in Indiana or any other state that may affect the current proceeding.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-5-13**

**Information required to be sealed**

Sec. 13. 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:

- (1) takes into consideration the health, safety, or liberty of the party or child; and
- (2) determines that the disclosure is in the interest of justice.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-5-14****Order to appear before the court**

Sec. 14. (a) In a child custody proceeding in Indiana, the court may order a party to the proceeding who is in Indiana to appear before the court in person with or without the child. The court may order any person who:

- (1) is in Indiana; and
- (2) 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 Indiana, the court may order that a notice given under IC 31-21-3-3 include a statement:

- (1) directing the party to appear in person with or without the child; and
- (2) informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter an order necessary to ensure the safety of:

- (1) the child; and
- (2) any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside Indiana:

- (1) is directed to appear under subsection (b); or
- (2) 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 who appears and of the child.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-6**

### **Chapter 6. Enforcement**

#### **IC 31-21-6-1**

##### **Order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction**

Sec. 1. Under this chapter, an Indiana court 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.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-2**

##### **Enforcement of a child custody determination made in another state; remedies**

Sec. 2. (a) An Indiana court shall recognize and enforce a child custody determination of a court of another state if the court of another state exercised jurisdiction in substantial conformity with this article or the determination:

- (1) was made under factual circumstances meeting the jurisdictional standards of this article; and
- (2) has not been modified in accordance with this article.

(b) An Indiana court may use a remedy available under any other Indiana law to enforce a child custody determination made by a court of another state. The remedies provided in this article:

- (1) are cumulative; and
- (2) do not affect the availability of other remedies to enforce a child custody determination.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-3**

##### **Temporary orders**

Sec. 3. (a) An Indiana court that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If an Indiana court makes an order under subsection (a)(2), the Indiana court 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 IC 31-21-5. The order remains in effect until:

- (1) an order is obtained from the court having jurisdiction; or
- (2) the period expires.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-4**

##### **Registry of child custody determinations made in another state;**

**registering court duties; notice requirements**

Sec. 4. (a) A child custody determination issued by a court of another state may be registered in Indiana, with or without a simultaneous request for enforcement, by sending the following to the appropriate Indiana court:

- (1) A letter or other document requesting registration.
- (2) Two (2) copies, including one (1) 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.
- (3) Except as otherwise provided in section 13 of this chapter:
  - (A) the name and address of the person seeking registration; and
  - (B) the name of a 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 (1) copy of the accompanying documents and information, regardless of their form; and
- (2) serve notice on each person named under subsection (a)(3) and provide the person with an opportunity to contest the registration in accordance with this section.

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

- (1) A registered determination is enforceable as of the date of the registration in the same manner as a child custody determination issued by an Indiana court.
- (2) A hearing to contest the validity of the registered determination must be requested not more than twenty (20) days after service of notice.
- (3) Failure to contest the registration shall:
  - (A) result in confirmation of the child custody determination; and
  - (B) preclude further contest of that determination with respect to a matter that may have otherwise been asserted.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-6-5****Hearing to contest validity of a registered order**

Sec. 5. (a) A person seeking to contest the validity of a registered order must request a hearing not more than twenty (20) days after service of the notice. At the hearing, the court shall confirm the registered order unless the person contesting the registration establishes that:

- (1) the issuing court did not have jurisdiction under IC 31-21-5;
- (2) the child custody determination sought to be registered has been:

(A) vacated;  
(B) stayed; or  
(C) modified;  
by a court having jurisdiction to do so under IC 31-21-5; or  
(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of IC 31-21-3-3 in the proceedings before the court that issued the order for which registration is sought.  
(b) If a timely request for a hearing to contest the validity of the registration is not made:  
(1) the registration is confirmed as a matter of law; and  
(2) the person requesting registration and each person served must be notified of the confirmation.  
(c) Confirmation of a registered order whether:  
(1) by operation of law; or  
(2) after notice and hearing;  
precludes further contest of the order with respect to a matter that may have been asserted at the time of registration.  
*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-6**

##### **Enforcement of registered child custody determinations**

Sec. 6. (a) An Indiana court may grant a relief normally available under Indiana law to enforce a registered child custody determination made by a court of another state.

(b) An Indiana court shall recognize and enforce, but may not modify, except in accordance with IC 31-21-5, a registered child custody determination of a court of another state.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-7**

##### **Proceedings pending in another state**

Sec. 7. If a proceeding for enforcement under this article is commenced in an Indiana court 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 IC 31-21-5, 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.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-8**

##### **Petition verification requirements**

Sec. 8. (a) A petition under this article must be verified. Certified copies of:

(1) the orders sought to be enforced; and  
(2) an 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 the following:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied on in exercising jurisdiction and, if so, what the basis was.

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this article and, if so, identify:

(A) the court;

(B) the case number; and

(C) the nature of the proceeding.

(3) Whether a proceeding has been commenced that may affect the current proceeding, including proceedings relating to:

(A) domestic violence;

(B) protective orders;

(C) termination of parental rights; and

(D) 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.

(6) If the child custody determination has been registered and confirmed under sections 4 and 5 of this chapter, the date and place of registration.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-9**

#### **Court duties after petition is filed**

Sec. 9. (a) On the filing of a petition, the court:

(1) shall issue an order directing the respondent to appear in person with or without the child at a hearing; and

(2) may enter an 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 holding the hearing on 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.

(b) An order issued under subsection (a) 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 15 of this chapter 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 sections 4 and 5 of this chapter and that:

- (A) the issuing court did not have jurisdiction under IC 31-21-5;
  - (B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction under IC 31-21-5; or
  - (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of IC 31-21-3-3 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 sections 4 and 5 of this chapter but has been vacated, stayed, or modified by a court of a state having jurisdiction under IC 31-21-5.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-10**

#### **Service of petition**

Sec. 10. Except as otherwise provided in section 13 or 14 of this chapter, the petition and order must be served, by a method authorized by Indiana law, on the respondent and any person who has physical custody of the child.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-11**

#### **Orders concerning physical custody of a child**

Sec. 11. Unless the court issues a temporary emergency order under IC 31-21-5-4 on 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 sections 4 and 5 of this chapter and that:
  - (A) the issuing court did not have jurisdiction under IC 31-21-5;
  - (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 IC 31-21-5; or
  - (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of IC 31-21-3-3 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 sections 4 and 5 of this chapter but has been vacated, stayed, or modified by a court of a state having jurisdiction under IC 31-21-5.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-12**

#### **Fees, costs, and expenses; request for assistance of law**

**enforcement; additional relief; refusal to testify; spousal privilege**

Sec. 12. (a) The court:

- (1) shall award the fees, costs, and expenses authorized under section 15 of this chapter; and
- (2) may grant additional relief, including a request for the assistance of law enforcement officials, and set a hearing to determine whether additional relief is appropriate.

(b) 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.

(c) 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 chapter.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-6-13**

**Application for issuance of a warrant to take physical custody of a child**

Sec. 13. (a) On 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:

- (1) suffer serious physical harm; or
- (2) be removed from Indiana.

(b) If the court, on the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from Indiana, the court 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 hearing the petition on 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 8(b) of this chapter.

*As added by P.L.138-2007, SEC.45.*

**IC 31-21-6-14**

**Information on a warrant to take physical custody of a child**

Sec. 14. (a) A warrant to take physical custody of a child must:

- (1) recite the facts on 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.

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

(c) A warrant to take physical custody of a child is enforceable throughout Indiana. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, the court 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.

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

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-15**

##### **Reasonable expenses awards**

Sec. 15. (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including:

- (1) costs;
- (2) communication expenses;
- (3) attorney's fees;
- (4) investigative fees;
- (5) expenses for witnesses;
- (6) travel expenses; and
- (7) child care during the course of the proceedings;

unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

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

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-16**

##### **Full faith and credit to out-of-state orders**

Sec. 16. An Indiana court shall accord full faith and credit to an order issued by another state and consistent with this article that 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 under IC 31-21-5.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-17**

##### **Appeals**

Sec. 17. An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under IC 31-21-5-4, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-6-18**

##### **Proceeding to locate a child**

Sec. 18. (a) In a case arising under this article or involving the Hague Convention on the Civil Aspects of International Child Abduction, a prosecuting attorney or other appropriate public official may take a lawful action, including resorting to a proceeding under

this article or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) an existing child custody determination;
- (2) a request 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 prosecuting attorney or other appropriate public official acting under this section acts on behalf of the court and may not represent a party.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-19**

#### **Law enforcement officer actions**

Sec. 19. At the request of a prosecuting attorney or other appropriate public official acting under section 18 of this chapter, a law enforcement officer may:

- (1) take a lawful action reasonably necessary to locate a child or a party; and
- (2) assist a prosecuting attorney or appropriate public official with responsibilities under section 18 of this chapter.

*As added by P.L.138-2007, SEC.45.*

### **IC 31-21-6-20**

#### **Assessment of costs**

Sec. 20. If the respondent is not the prevailing party, the court may assess against the respondent the direct expenses and costs incurred by the prosecuting attorney or other appropriate public official and law enforcement officers under section 18 or 19 of this chapter.

*As added by P.L.138-2007, SEC.45.*

## **IC 31-21-7**

### **Chapter 7. Miscellaneous Provisions**

#### **IC 31-21-7-1**

##### **Uniformity of the law**

Sec. 1. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-7-2**

##### **Invalidity of provisions**

Sec. 2. If a provision of this article or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

*As added by P.L.138-2007, SEC.45.*

#### **IC 31-21-7-3**

##### **Request for relief prior to July 1, 2007**

Sec. 3. A motion or other request for relief made:

- (1) in a child custody proceeding; or
- (2) to enforce a child custody determination;

that was commenced before July 1, 2007, is governed by the law in effect at the time the motion or other request was made.

*As added by P.L.138-2007, SEC.45.*