

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.