

CHAPTER 8C  
UNIFORM CHILD-CUSTODY JURISDICTION  
AND ENFORCEMENT ACT

8C-1 SHORT TITLE

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

8C-2 DEFINITIONS

In this chapter:

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

(b) "Child" means an individual who has not attained eighteen (18) years of age.

(c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under this chapter.

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

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

(g) "Home tribe or state" means the tribe or state in which a child lived with a parent or 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

tribe or state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

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

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

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

(k) "Kootenai Lands" shall mean the Kootenai Indian Reservation and other lands over which the Kootenai Tribe of Idaho retains jurisdiction.

(l) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

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

(n) "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 six (6) consecutive months, including any 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 applicable law.

(o) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

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

(q) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(r) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(s) "Tribe" means an Indian Tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(t) "Tribal Court" means the Kootenai Tribal Court.

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

#### 8C-3 PROCEEDINGS GOVERNED BY OTHER LAW.

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

#### 8C-4 APPLICATION TO INDIAN TRIBES

A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.*, is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

#### 8C-5 INTERNATIONAL APPLICATION OF CHAPTER

8C-5.01 Tribal Court shall treat a foreign country as if it were a Tribe or State for the purpose of applying parts 1 and 2 of this chapter.

8C-5.02 Except as otherwise provided in this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional

standards of this chapter must be recognized and enforced under this chapter.

8C-5.03 Tribal Court need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

#### 8C-6 EFFECT OF CHILD CUSTODY DETERMINATION

A child custody determination made by the court that had jurisdiction under this chapter binds all persons who have been served in substantial accordance with the laws of the Kootenai Tribe, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

#### 8C-7 PRIORITY

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

#### 8C-8 NOTICE TO PERSONS OUTSIDE TRIBE

8C-8.01 Notice required for the exercise of jurisdiction when a person is outside Kootenai Lands may be given in a manner prescribed by Chapter 6 of the Kootenai Code or by the law of the Tribe or 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.

8C-8.02 Proof of service may be made in the manner prescribed by Kootenai law or by the law of the Tribe or State in which the service is made.

8C-8.03 Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

#### 8C-9 APPEARANCE AND LIMITED IMMUNITY

8C-9.01 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 of the Kootenai

Tribe 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.

8C-9.02 A person who is subject to personal jurisdiction of the Kootenai Tribe on a basis other than physical presence is not immune from service of process of the Kootenai Tribe. A party present on Kootenai Lands who is subject to the jurisdiction of another jurisdiction is not immune from service of process allowable under the laws of that Tribe or State.

8C-9.03 The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present on Kootenai Lands.

#### 8C-10 COMMUNICATION BETWEEN COURTS

8C-10.01 The Tribal Court may communicate with a court in another jurisdiction concerning a proceeding arising under this chapter.

8C-10.02 The Tribal Court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

8C-10.03 Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

8C-10.04 Except as otherwise provided in Section 8C-10.03, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

8C-10.05 For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

#### 8C-11 TAKING TESTIMONY IN ANOTHER TRIBE OR STATE

8C-11.01 In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located outside Kootenai Lands, including testimony of the parties and the child, by deposition or other means allowable by the Kootenai Tribe for testimony taken in another jurisdiction. The Tribal Court on its own motion may order that the testimony of a person be taken outside Kootenai Lands and may prescribe the manner in which and the terms upon which the testimony is taken.

8C-11.02 The Tribal Court may permit an individual residing in another jurisdiction to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that Tribe or State. The Court shall cooperate with courts of other jurisdictions in designating an appropriate location for the deposition or testimony.

8C-11.03 Documentary evidence transmitted from another jurisdiction to the Tribal 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.

#### 8C-12 COOPERATION BETWEEN COURTS -- PRESERVATION OF RECORDS

8C-12.01 The Tribal Court may request the appropriate court of another jurisdiction to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that jurisdiction;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the Tribal Court a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

8C-12.02 Upon request of a court of another jurisdiction, the Tribal Court may hold a hearing or enter an order described in this section.

8C-12.03 Travel and other necessary and reasonable expenses incurred under this section may be assessed against the parties.

8C-12.04 The Tribal Court shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another jurisdiction, the Tribal Court shall forward a certified copy of those records.

8C-13 INITIAL CHILD CUSTODY JURISDICTION

8C-13.01 Except as otherwise provided by Kootenai law, the Tribal Court has jurisdiction to make an initial child custody determination only if:

(1) The Kootenai Tribe is the child's Home Tribe on the date of the commencement of the proceeding, or was the Home Tribe of the child within six (6) months before the commencement of the proceeding and the child is absent from the Kootenai Tribe but a parent or person acting as a parent continues to live within the jurisdiction of the Kootenai Tribe;

(2) A court of another jurisdiction does not have jurisdiction under paragraph (1) of this section, or a court of the home tribe or state of the child has declined to exercise jurisdiction on the grounds that the Kootenai Tribe is the more appropriate forum under the Uniform Child Custody Jurisdiction and Enforcement Act, and:

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

(b) Substantial evidence is available to the Kootenai Tribe concerning the child's care,

protection, training and personal relationships;

(3) All courts having jurisdiction under this section have declined to exercise jurisdiction on the ground that the Tribal Court is the more appropriate forum to determine the custody of the child; or

(4) No other court would have jurisdiction under the criteria specified in this section.

8C-13.02 Section 8C-13.01 of this section is the exclusive jurisdictional basis for making a child custody determination by the Tribal Court.

8C-13.03 Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

8C-14 EXCLUSIVE, CONTINUING JURISDICTION

8C-14.01 Except as otherwise provided in Kootenai law, if the Tribal Court has made a child custody determination consistent with Kootenai law, it has exclusive, continuing jurisdiction over the determination until:

(1) The Tribal Court determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with the Tribe and that substantial evidence is no longer available to the Kootenai Tribe concerning the child's care, protection, training and personal relationships; or

(2) Tribal Court or a court of another jurisdiction determines that the child, the child's parents, and any person acting as a parent do not presently reside on Kootenai Lands.

8C-14.02 In the event the Tribal Court has made a child custody determination and does not have exclusive, continuing jurisdiction under this section, it may modify that determination only if it has jurisdiction to make an initial determination under this chapter.

8C-15 JURISDICTION TO MODIFY DETERMINATION

8C-15.01 Except as otherwise provided by law, the Tribal Court may not modify a child

custody determination made by a court of another jurisdiction unless the Tribal Court has jurisdiction to make an initial determination, and:

8C-15.02 The court of the other jurisdiction determines it no longer has exclusive, continuing jurisdiction under this chapter; or

8C-15.03 The Tribal Court or a court of the other state or tribe determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state or tribe.

#### 8C-16 TEMPORARY EMERGENCY JURISDICTION

8C-16.01 Tribal Court has temporary emergency jurisdiction if the child is present on Kootenai Lands and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

8C-16.02 If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in Tribal Court, a child custody determination made under this section remains in effect until an order is obtained from a court having jurisdiction. If a child custody proceeding has not been or is not commenced in a court having jurisdiction, a child custody determination made under this section becomes a final determination, if it so provides and the Tribe becomes the home tribe of the child.

8C-16.03 If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court having jurisdiction, any order issued by the Tribal Court under this section must specify in the order a period that the Tribal Court considers adequate to allow the person seeking an order to obtain an order from the court having jurisdiction under applicable law. The order issued in Tribal Court remains in effect until an order is obtained from the other jurisdiction within the period specified or the period expires.

8C-16.04 The Tribal Court, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another jurisdiction

under a statute similar to this section shall immediately communicate with that court to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

#### 8C-17 NOTICE -- OPPORTUNITY TO BE HEARD – JOINDER

8C-17.01 Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with Kootenai law must be given to all persons entitled to notice under Kootenai law as in child custody proceedings between members of the Tribe, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

8C-17.02 This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

8C-17.03 The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by Kootenai law as in child custody proceedings between members of the Tribe.

#### 8C-18 SIMULTANEOUS PROCEEDINGS

8C-18.01 Except as otherwise provided in this chapter, the Tribal Court may not exercise its jurisdiction 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 jurisdiction having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other jurisdiction because the Tribal Court is a more convenient forum.

8C-18.02 Except as otherwise provided in this chapter, the Tribal Court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties. If the court determines that a child custody proceeding has been commenced in a court in another jurisdiction substantially in accordance with this chapter, the Tribal Court shall stay its proceeding and communicate with the other court. If the other court having jurisdiction substantially in accordance with this chapter does not determine

that the Tribal Court is a more appropriate forum, the Tribal Court shall dismiss the proceeding.

8C-18.03 In a proceeding to modify a child custody determination, the Tribal Court shall determine whether a proceeding to enforce the determination has been commenced in another state or tribe. If a proceeding to enforce a child custody determination has been commenced in another state or tribe, the court may:

(1) Stay the proceeding for modification pending the entry of an order of the other court enforcing, staying, denying or dismissing the proceeding for enforcement;

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

(3) Proceed with the modification under conditions it considers appropriate.

#### X-19 INCONVENIENT FORUM

8C-19.01 The Tribal Court may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another jurisdiction is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the Tribal Court's own motion or request of another court.

8C-19.02 Before determining whether it is an inconvenient forum, the Tribal Court shall consider whether it is appropriate for a court of another jurisdiction to exercise jurisdiction. For this purpose, the Tribal Court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which jurisdiction could best protect the parties and the child;

(2) The length of time the child has resided outside Kootenai Lands;

(3) The distance between the Tribal Court and the other court that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state or tribe should assume jurisdiction;

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

(7) The ability of the court of each jurisdiction to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each jurisdiction with the facts and issues in the pending litigation.

8C-19.03 If the Tribal Court determines that it is an inconvenient forum and that a court of another jurisdiction is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated jurisdiction and may impose any other condition the Court considers just and proper.

8C-19.04 The Tribal Court may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

#### 8C-20 JURISDICTION DECLINED BY REASON OF CONDUCT

8C-20.01 Except as otherwise provided by law, if the Tribal Court has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the Tribal Court shall decline to exercise its jurisdiction unless:

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

(2) Another court otherwise having jurisdiction under the law determines that the Tribal Court is a more appropriate forum; or

(3) No court of any other jurisdiction would have jurisdiction under the criteria specified in this chapter.

8C-20.02 If the Tribal Court declines to exercise its jurisdiction pursuant to this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction.

8C-20.03 If the Tribal Court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and 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 Tribal Court may not assess fees, costs or expenses against the Tribe unless authorized by law other than this chapter.

#### 8C-21 INFORMATION TO BE SUBMITTED TO COURT

8C-21.01 In a child custody proceeding each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

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

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of

legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

8C-21.02 If the information required by Section 8C-21.01 is not furnished, the Tribal Court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

8C-21.03 If the declaration as to any of the items described in Section 8C-21.01 is in the affirmative, the declarant shall give additional information under oath as required by the Tribal Court. The Tribal Court may examine the parties under oath as to details of the information furnished and other matters pertinent to the Tribal Court's jurisdiction and the disposition of the case.

8C-21.04 Each party has a continuing duty to inform the Tribal Court of any proceeding in any jurisdiction that could affect the current proceeding.

#### 8C-22 APPEARANCE OF PARTIES AND CHILD

8C-22.01 In a child custody proceeding, the Tribal Court may order a party to the proceeding who is a Tribal member to appear before the Tribal Court in person with or without the child. The Tribal Court may order any person who is a Tribal member and who has physical custody or control of the child to appear in person with the child.

8C-22.02 If a party to a child custody proceeding whose presence is desired by the Tribal Court is outside Kootenai Lands, the Tribal Court may order notice be given pursuant to this chapter, including a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

8C-22.03 The Tribal Court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

8C-22.04 If a party to a child custody proceeding who is outside Kootenai Lands is directed to appear under this section or desires to appear personally before the Tribal Court with or without the child, the Tribal Court may require another party to pay reasonable and necessary

travel and other expenses of the party so appearing and of the child.

#### 8C-23 ENFORCEMENT UNDER HAGUE CONVENTION

Under this chapter, the Tribal 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.

#### 8C-24 DUTY TO ENFORCE

8C-24.01 The Tribal Court shall recognize and enforce a child custody determination of a court of another jurisdiction if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

8C-24.02 The Tribal Court may utilize any remedy available under tribal or other applicable law to enforce a child custody determination made by a court of another jurisdiction. The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

#### 8C-25 TEMPORARY VISITATION

8C-25.01 If the Tribal Court does not have jurisdiction to modify a child custody determination, it may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another jurisdiction; or

(2) The visitation provisions of a child custody determination of another jurisdiction that does not provide for a specific visitation schedule.

8C-25.02 If the Tribal Court makes an order under this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

#### 8C-26 REGISTRATION OF CHILD CUSTODY DETERMINATION

8C-26.01 A child custody determination issued by a court of another jurisdiction may be registered in the Tribal Court, with or without a simultaneous request for enforcement, by sending to the Tribal Court Clerk:

(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; and

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

8C-26.02 On receipt of the documents required by this section, the Tribal Court shall:

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

(2) Serve notice upon the persons named pursuant to this section and provide them with an opportunity to contest the registration in accordance with this section.

8C-26.03 The notice required by this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by the Tribal Court.

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

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

8C-26.04 A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the Tribal Court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under this chapter;

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

(3) The person contesting registration was entitled to notice, but notice was not given in substantial accordance with Kootenai law in the proceedings before the court that issued the order for which registration is sought.

8C-26.05 If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

8C-26.06 Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

#### 8C-27 ENFORCEMENT OF REGISTERED DETERMINATION

8C-27.01 The Tribal Court may grant any relief normally available under applicable law to enforce a registered child custody determination made by a court of another jurisdiction.

8C-27.02 The Tribal Court shall recognize and enforce, but may not modify, except in accordance this chapter, a registered child custody determination of a court of another jurisdiction.

#### 8C-28 SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under this chapter is commenced in Tribal Court and the Tribal Court determines that a proceeding to modify the

determination is pending in a court of another jurisdiction having jurisdiction to modify the determination under this chapter, the Tribal Court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the Tribal Court, after consultation with the modifying court, stays or dismisses the proceeding.

#### 8C-29 EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION

8C-29.01 A petition for enforcement of a child custody determination must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

8C-29.02 A petition for enforcement of a child custody determination must state:

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

(2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

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

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

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

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

8C-29.03 Upon the filing of a petition, the Tribal Court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the Tribal Court shall hold the hearing on the first judicial day possible. The Tribal Court may extend the date of hearing at the request of the petitioner.

8C-29.04 An order issued under this section must state the time and place of the hearing and advise the respondent that at the hearing the Tribal Court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses, 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 Kootenai law, and that:

(a) The issuing court did not have jurisdiction under this chapter;

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

(c) The respondent was entitled to notice, but notice was not given in substantial accordance with Kootenai law 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 applicable law, but has been vacated, stayed or modified by a court of a state or tribe having jurisdiction to do so under this chapter.

### 8C-30 SERVICE OF PETITION AND ORDER

Except as otherwise provided in this chapter, the petition and order must be served by any method authorized by Kootenai law upon respondent and any person who has physical custody of the child.

### 8C-31 HEARING AND ORDER

8C-31.01 Unless the Tribal Court issues a temporary emergency order pursuant to this chapter, upon a finding that a petitioner is entitled to immediate physical custody of the child, the Tribal 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 this chapter, and that:

(a) The issuing court did not have jurisdiction under this chapter;

(b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state or tribe having jurisdiction to do so under this chapter; or

(c) The respondent was entitled to notice, but notice was not given in substantial accordance with the standards of this chapter 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 this chapter, but has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter.

8C-31.02 The Tribal Court shall award the fees, costs and expenses authorized under this chapter, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

8C-31.03 If a party called to testify refuses to answer on the ground that the testimony may be self incriminating, the Tribal Court may draw an adverse inference from the refusal.

8C-31.04 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 child custody enforcement proceeding under this chapter.

8C-32 WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

8C-32.01 Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from Kootenai Lands.

8C-32.02 If the Tribal Court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from Kootenai Lands, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the Tribal Court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 8C-29, Expedited Enforcement of a Child Custody Determination.

8C-32.03 A warrant to take physical custody of a child must:

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

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

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

8C-32.04 The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

8C-32.05 A warrant to take physical custody of a child is enforceable throughout Kootenai Lands. If the Tribal Court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the Tribal Court may authorize law enforcement officers to make a forcible entry at any hour.

8C-32.06 The Tribal Court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

8C-33 COSTS -- FEES -- EXPENSES

8C-33.01 The Tribal Court shall award the prevailing party, including a state or tribe, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and 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.

8C-33.02 The Tribal Court may not assess fees, costs or expenses against another jurisdiction unless authorized by law other than this chapter.

8C-34 RECOGNITION AND ENFORCEMENT

The Tribal Court shall accord full faith and credit to an order issued by another jurisdiction and consistent with this chapter which enforces a child custody determination by a court of another jurisdiction, unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter.

8C-35 APPEALS

An appeal may be taken from a final order in a proceeding under this chapter. The Tribal Court shall make every effort to expedite the appeal. Unless the Tribal Court enters a temporary emergency order under section 8C-16 the Tribal Court may not stay an order enforcing a child custody determination pending appeal.

8C-36 ROLE OF TRIBAL ATTORNEY

8C-36.01 In a case arising under this chapter or involving the Hague Convention on the civil aspects of international child abduction, the Tribal Attorney may take any lawful action, including resort to a proceeding under this chapter 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.

8C-36.02 The Tribal Attorney acting under this section acts on behalf of the Tribal Court and may not represent any party.

8C-37 ROLE OF LAW ENFORCEMENT

At the request of the Tribal Attorney acting under section 8C-36, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the Tribal Attorney with responsibilities under 8C-36.

8C-38 COSTS AND EXPENSES

If the respondent is not the prevailing party, the Tribal Court may assess against the respondent all direct expenses and costs incurred by the Tribal Attorney and law enforcement officers under 8C-36 and 8C-37.

8C-39 APPLICATION AND CONSTRUCTION

In applying and construing this chapter, otherwise known as the Uniform Child Custody Jurisdiction and Enforcement Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among jurisdictions that enact it.

8C-40 SEVERABILITY CLAUSE

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

8C-41 TRANSITIONAL PROVISION

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this chapter as the Uniform Child Custody Jurisdiction and Enforcement Act is governed by the law in effect at the time the motion or other request was made.