

SENATE No. 713

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the uniform child custody jurisdiction and enforcement act.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

SENATE No. 713

By Ms. Creem, a petition (accompanied by bill, Senate, No. 713) of Cynthia S. Creem for legislation to establish a uniform child custody jurisdiction and enforcement law. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1578 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the uniform child custody jurisdiction and enforcement act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws as appearing in the 2004 Official Edition are
2 hereby amended by inserting after Chapter 208 the following new chapter:-

3 Chapter 208A

4 ARTICLE 1

5 GENERAL PROVISIONS

6 SECTION 101. SHORT TITLE. This Act may be cited as the Uniform Child-
7 Custody Jurisdiction and Enforcement Act.

8 SECTION 102. DEFINITIONS. In this Act:

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

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

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

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3.

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

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

(7) "Home State" means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age,

the term means the State in which the child lived from birth with any of the persons mentioned.

A period of temporary absence of any of the mentioned persons is part of the period.

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

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

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

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

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

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

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

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

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

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

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

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This Act does not govern:

(1) An adoption proceeding; or

(2) A proceeding pertaining to the authorization of emergency medical care for a child.

SECTION 104. APPLICATION TO INDIAN TRIBES.

(a) 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 Act to the extent it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as a State of the United States for purposes of Articles 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under the provisions of Article 3.

SECTION 105. INTERNATIONAL APPLICATION OF ACT.

(a) A court of this State shall treat a foreign country as a State of the United States for purposes of applying Articles 1 and 2.

(b) A child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under Article 3 of this Act.

(c) The court need not apply the provisions of this Act when the child custody law of the other country violates fundamental principles of human rights.

SECTION 106. BINDING FORCE OF CHILD-CUSTODY

DETERMINATION. A child-custody determination made by a court of this State that had jurisdiction under this Act binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

91 SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

92 (a) Notice required for the exercise of jurisdiction when
93 a person is outside this State may be given in a manner prescribed by the law of this State for the
94 service of process or by the law of the State in which the service is made. Notice must be given
95 in a manner reasonably calculated to give actual notice, but may be by publication if other means
96 are not effective.

97 (b) Proof of service may be made in the manner
98 prescribed by the law of this State or by the law of the State in which the service is made.

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

101 SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

102 (a) A party to a child-custody proceeding who is not
103 subject to personal jurisdiction in this State and is a responding party under Article 2, a party in a
104 proceeding to modify a child-custody determination under Article 2, or a petitioner in a
105 proceeding to enforce or register a child-custody determination under Article 3 may appear and
106 participate in the proceeding without submitting to personal jurisdiction over the party for
107 another proceeding or purpose.

108 (b) A party is not subject to personal jurisdiction in this
109 State solely by being physically present for the purpose of participating in a proceeding under
110 this Act. If a party is subject to personal jurisdiction in this State on a basis other than physical
111 presence, the party may be served with process in this State. If a party present in this State is

subject to the jurisdiction of another State, service of process allowable under the laws of that State may be accomplished in this State.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Act committed by an individual while present in this State.

SECTION 110. COMMUNICATION BETWEEN COURTS.

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

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

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

(d) Except as provided in subsection (c), a record must be made of the communication. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a

133 court reporter who listened to a conference call between the courts, an electronic recording of a
134 telephone call, a memorandum or an electronic record of the communication between the courts,
135 or a memorandum or an electronic record made by a court after the communication.

136 SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

137 (a) In addition to other procedures available to a party, a
138 party to a child- custody proceeding may offer testimony of witnesses who are located in another
139 State, including testimony of the parties and the child, by deposition or other means allowable in
140 this State for testimony taken in another State. The court on its own motion may order that the
141 testimony of a person be taken in another State and may prescribe the manner in which and the
142 terms upon which the testimony is taken.

143 (b) A court of this State may permit an individual
144 residing in another State to be deposed or to testify by telephone, audiovisual means, or other
145 electronic means before a designated court or at another location in that State. A court of this
146 State shall cooperate with courts of other States in designating an appropriate location for the
147 deposition or testimony.

148 (c) Documentary evidence transmitted from another
149 State to a court of this State by technological means that do not produce an original writing may
150 not be excluded from evidence on an objection based on the means of transmission.

151 SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION
152 OF RECORDS.

153 (a) A court of this State may request the appropriate
154 court of another State to:

155 (1) hold an evidentiary hearing;

156 (2) order a person to produce or give evidence under procedures of
157 that State;

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

160 (4) forward to the court of this State a certified copy of the
161 transcript of the record of the hearing, the evidence otherwise presented, and any evaluation
162 prepared in compliance with the request; and

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

165 (b) Upon request of a court of another State, a court of
166 this State may hold a hearing or enter an order described in subsection (a).

167 (c) Travel and other necessary and reasonable expenses
168 incurred under subsections (a) and (b) may be assessed against the parties according to the law of
169 this State.

170 (d) A court of this State shall preserve the pleadings,
171 orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a
172 child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a

court or law enforcement official of another State, the court shall forward a certified copy of these records.

ARTICLE 2

JURISDICTION

SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

(a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) this State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, and:

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

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

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

(4) no State would have jurisdiction under paragraph (1), (2), or (3).

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

(c) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child-custody determination.

SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

(a) Except as otherwise provided in Section 204, a court of this State that has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

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

(2) a court of this State or a court of another State determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this State; or

(3) the court finds that a parent or person acting as a parent who resides in Massachusetts has engaged in a serious incident or pattern of abuse as defined by c. 208, §28A against the other parent or person acting as a parent, or against a child who is the

213 subject of the proceeding. If the court so finds, it shall be presumed that this state does not have
214 continuing, exclusive jurisdiction over the determination unless the victim or the victim's
215 custodial parent or guardian consents to continuing, exclusive jurisdiction; or

216 (4) the parties mutually agree in writing that this state shall no
217 longer have continuing, exclusive jurisdiction and said agreement has been approved by the
218 court.

219 (b) A court of this State that has exclusive, continuing jurisdiction under this
220 section may decline to exercise its jurisdiction if the court determines that it is an inconvenient
221 forum under Section 207.

222 (c) A court of this State that has made a child-custody determination and does
223 not have exclusive, continuing jurisdiction under this section may modify that determination
224 only if it has jurisdiction to make an initial determination under Section 201.