SENATE DOCKET, NO. 1284 FILED ON: 1/18/2013

SENATE . . . . . No. 711

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:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*

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SENATE . . . . . No. 711

By Ms. Creem, a petition (accompanied by bill, Senate, No. 711) of Cynthia S. Creem for legislation relative to the uniform child custody jurisdiction and enforcement ac. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *28* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

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

Chapter 208A

ARTICLE 1

GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. 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

14 includes a permanent, temporary, initial, and modification order. The term does not include an
15 order relating to child support or other monetary obligation of an individual.

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

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

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

25 (7) "Home State" means the State in which a child lived with a parent or a person acting
26 as a parent for at least six consecutive months immediately before the commencement of a child-
27 custody proceeding. In the case of a child less than six months of age, the term means the State
28 in which the child lived from birth with any of the persons mentioned. A period of temporary
29 absence of any of the mentioned persons is part of the period.

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (1) An adoption proceeding; or

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

58 SECTION 104. APPLICATION TO INDIAN TRIBES.

59 (a) A child-custody proceeding that pertains to an Indian child as defined in the Indian
60 Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this Act to the extent it is governed
61 by the Indian Child Welfare Act.

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

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

67 SECTION 105. INTERNATIONAL APPLICATION OF ACT.

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

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

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

75 SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION.
76 A child-custody determination made by a court of this State that had jurisdiction under this Act

77 binds all persons who have been served in accordance with the laws of this State or notified in
78 accordance with Section 108 or who have submitted to the jurisdiction of the court, and who
79 have been given an opportunity to be heard. The determination is conclusive as to them as to all
80 decided issues of law and fact except to the extent the determination is modified.

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

84 SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

93 SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

94 (a) A party to a child-custody proceeding who is not subject to personal jurisdiction in
95 this State and is a responding party under Article 2, a party in a proceeding to modify a child-
96 custody determination under Article 2, or a petitioner in a proceeding to enforce or register a
97 child-custody determination under Article 3 may appear and participate in the proceeding
98 without submitting to personal jurisdiction over the party for another proceeding or purpose.

99 (b) A party is not subject to personal jurisdiction in this State solely by being physically
100 present for the purpose of participating in a proceeding under this Act. If a party is subject to
101 personal jurisdiction in this State on a basis other than physical presence, the party may be
102 served with process in this State. If a party present in this State is subject to the jurisdiction of
103 another State, service of process allowable under the laws of that State may be accomplished in
104 this State.

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

108 SECTION 110. COMMUNICATION BETWEEN COURTS.

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

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

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

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

119 (e) For the purposes of this section, "record" means information that is inscribed on a
120 tangible medium or that which is stored in an electronic or other medium and is retrievable in
121 perceivable form. A record includes notes or transcripts of a court reporter who listened to a
122 conference call between the courts, an electronic recording of a telephone call, a memorandum or
123 an electronic record of the communication between the courts, or a memorandum or an
124 electronic record made by a court after the communication.

125 SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

139 SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF
140 RECORDS.

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

142 (1) hold an evidentiary hearing;

143 (2) order a person to produce or give evidence under procedures of that 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 court of this State 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.

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

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

(d) A court of this State 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 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;

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

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

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

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

184 SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

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

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

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

194 (3) the court finds that a parent or person acting as a parent who resides in
195 Massachusetts has engaged in a serious incident or pattern of abuse as defined by c. 208, §28A
196 against the other parent or person acting as a parent, or against a child who is the subject of the
197 proceeding. If the court so finds, it shall be presumed that this state does not have continuing,
198 exclusive jurisdiction over the determination unless the victim or the victim's custodial parent or
199 guardian consents to continuing, exclusive jurisdiction; or

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

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

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

208 SECTION 203. JURISDICTION TO MODIFY CHILD CUSTODY
209 DETERMINATION. Except as otherwise provided in Section 204, a court of this State may not
210 modify a child-custody determination made by a court of another State unless a court of this
211 State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

212 (1) the court of the other State determines it no longer has exclusive, continuing
213 jurisdiction under Section 202 or that a court of this State would be a more convenient forum
214 under Section 207;

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

217 (3) the parents or all persons acting as parents have mutually agreed in writing that this
218 state shall have the authority to modify a determination and such agreement has been approved
219 by the court.

220 SECTION 204. TEMPORARY EMERGENCY JURISDICTION.

221 (a) A court of this State has temporary emergency jurisdiction if the child is present in
222 this State and the child has been abandoned or it is necessary in an emergency to protect the child
223 because the child, or a sibling or parent of the child, is subjected to or threatened with
224 mistreatment or abuse.

225 (b) If there is no previous child-custody determination that is entitled to be enforced
226 under this Act, and if no child-custody proceeding has been commenced in a court of a State
227 having jurisdiction under Sections 201 through 203, a child-custody determination made under
228 this section remains in effect until an order is obtained from a court of a State having jurisdiction
229 under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced
230 in a court of a State having jurisdiction under Sections 201 through 203, a child-custody
231 determination made under this section becomes a final determination, if:

232 (1) it so provides; and

233 (2) this State becomes the home State of the child.

234 (c) If there is a previous child-custody determination that is entitled to be enforced under
235 this Act, or a child-custody proceeding has been commenced in a court of a State having
236 jurisdiction under Sections 201 through 203, any order issued by a court of this State under this
237 section must specify in the order a period of time which the court considers adequate to allow the
238 person seeking an order to obtain an order from the State having jurisdiction under Sections 201
239 through 203. The order issued in this State remains in effect until an order is obtained from the
240 other State within the period specified or the period expires.

241 (d) A court of this State that has been asked to make a child-custody determination under
242 this section, upon being informed that a child-custody proceeding has been commenced, or a
243 child-custody determination has been made, by a court of a State having jurisdiction under
244 Sections 201 through 203, shall immediately communicate with the other court. A court of this
245 State that is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed
246 that a child-custody proceeding has been commenced, or a child-custody determination has been
247 made by a court of another State under a statute similar to this section shall immediately
248 communicate with the court of that State. The purpose of the communication is to resolve the
249 emergency, protect the safety of the parties and the child, and determine a period for the duration
250 of the temporary order.

251 SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.

252 (a) Before a child-custody determination is made under this Act, notice and an
253 opportunity to be heard in accordance with the standards of Section 108 must be given to all
254 persons entitled to notice under the law of this State as in child-custody proceedings between
255 residents of this State, any parent whose parental rights have not been previously terminated, and
256 any person having physical custody of the child.

257 (b) This Act does not govern the enforceability of a child-custody determination made
258 without notice and an opportunity to be heard.

259 (c) The obligation to join a party and the right to intervene as a party in a child-custody
260 proceeding under this Act are governed by the law of this State as in child-custody proceedings
261 between residents of this State.

262 SECTION 206. SIMULTANEOUS PROCEEDINGS.

263 (a) Except as otherwise provided in Section 204, a court of this State may not exercise its
264 jurisdiction under this Article if, at the time of the commencement of the proceeding, a
265 proceeding concerning the custody of the child had been previously commenced in a court of
266 another State having jurisdiction substantially in conformity with this Act, unless the proceeding
267 has been terminated or is stayed by the court of the other State because a court of this State is a
268 more convenient forum under Section 207.

269 (b) Except as otherwise provided in Section 204, a court of this State, before hearing a
270 child-custody proceeding, shall examine the court documents and other information supplied by
271 the parties pursuant to Section 209. If the court determines that a child-custody proceeding was
272 previously commenced in a court in another State having jurisdiction substantially in accordance
273 with this Act, the court of this State shall stay its proceeding and communicate with the court of
274 the other State. If the court of the State having jurisdiction substantially in accordance with this
275 Act does not determine that the court of this State is a more appropriate forum, the court of this
276 State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State 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 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 it considers appropriate.

SECTION 207. INCONVENIENT FORUM.

(a) A court of this State that has jurisdiction under this Act to make a child-custody determination 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 State is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate that a court of another State exercise jurisdiction. For this purpose, the 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 State could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the State that would assume jurisdiction;

(4) the relative financial circumstances of the parties and the effect of such circumstance on the ability to litigate in a foreign jurisdiction;

(5) any 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 testimony of the child;

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

(8) the familiarity of the court of each State with the facts and issues of the pending litigation.

309 (c) If a court of this State determines that it is an inconvenient forum and that a court of
310 another State is a more appropriate forum, it shall stay the proceedings upon condition that a
311 child-custody proceeding be promptly commenced in another designated State and may impose
312 any other condition the court considers just and proper.

313 (d) A court of this State may decline to exercise its jurisdiction under this Act if a child-
314 custody determination is incidental to an action for divorce or another proceeding while still
315 retaining jurisdiction over the divorce or other proceeding.

316 SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.

317 (a) Except as otherwise provided in Section 204 or by other law of this State, if a court of
318 this State has jurisdiction under this Act because a person invoking the jurisdiction has engaged
319 in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

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

322 (2) a court of the State otherwise having jurisdiction under Sections 201 through
323 203 determines that this State is a more appropriate forum under Section 207; or

324 (3) no other State would have jurisdiction under Sections 201 through 203.

325 (b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it
326 may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of
327 the wrongful conduct, including staying the proceeding until a child-custody proceeding is
328 commenced in a court having jurisdiction under Sections 201 through 203.

329 (c) If a court dismisses a petition or stays a proceeding because it declines to exercise its
330 jurisdiction pursuant to subsection (a), it shall charge the party invoking the jurisdiction of the
331 court with necessary and reasonable expenses including costs, communication expenses,
332 attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during
333 the course of the proceedings, unless the party from whom fees are sought establishes that the
334 award would be clearly inappropriate. The court may not assess fees, costs, or expenses against
335 this State except as otherwise provided by law other than this Act.

336 SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.

337 (a) Subject to local law providing for the confidentiality of procedures, addresses, and
338 other identifying information, in a child-custody proceeding, each party, in its first pleading or in
339 an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the
340 child's present address, the places where the child has lived during the last five years, and the
341 names and present addresses of the persons with whom the child has lived during that period.
342 The pleading or affidavit must state whether the party:

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

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

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

353 (b) If the information required by subsection (a) is not furnished, the court, upon its own
354 motion or that of a party, may stay the proceeding until the information is furnished.

355 (c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in
356 the affirmative, the declarant shall give additional information under oath as required by the
357 court. The court may examine the parties under oath as to details of the information furnished
358 and other matters pertinent to the court's jurisdiction and the disposition of the case.

359 (d) Each party has a continuing duty to inform the court of any proceeding in this or any
360 other State that could affect the current proceeding.

361 (e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or
362 liberty of a party or child would be put at risk by the disclosure of identifying information, that
363 information shall be sealed and not disclosed to the other party or the public unless the court
364 orders the disclosure to be made after a hearing in which the court takes into consideration the
365 health, safety, or liberty of the party or child and determines that the disclosure is in the interest
366 of justice.

367 SECTION 210. APPEARANCE OF PARTIES AND CHILD.

368 (a) A court of this State may order a party to a child-custody proceeding who is in this
369 State to appear before the court personally with or without the child. The court may order any
370 person who is in this State and who has physical custody or control of the child to appear
371 physically with the child.

372 (b) If a party to a child-custody proceeding whose presence is desired by the court is
373 outside this State, the court may order that a notice given pursuant to Section 108 include a
374 statement directing the party to appear personally with or without the child and declaring that
375 failure to appear may result in a decision adverse to the party.

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

378 (d) If a party to a child-custody proceeding who is outside this State is directed to appear
379 under subsection (b) or desires to appear personally before the court with or without the child,
380 the court may require another party to pay reasonable and necessary travel and other expenses of
381 the party so appearing and of the child.

382 ARTICLE 3

383 ENFORCEMENT

384 SECTION 301. DEFINITIONS. In this Article:

385 (1) "Petitioner" means a person who seeks enforcement of a child-custody determination
386 or enforcement of an order for the return of the child under the Hague Convention on the Civil
387 Aspects of International Child Abduction.

388 (2) "Respondent" means a person against whom a proceeding has been commenced for
389 enforcement of a child-custody determination or enforcement of an order for the return of the
390 child under the Hague Convention on the Civil Aspects of International Child Abduction.

391 SECTION 302. SCOPE; TEMPORARY VISITATION.

392 (a) This Article may be invoked to enforce:

393 (1) a child-custody determination; and

394 (2) an order for the return of the child made under the Hague Convention on the Civil
395 Aspects of International Child Abduction.

396 (b) A court of this State which does not have jurisdiction to modify a child-custody
397 determination, may issue a temporary order enforcing

398 (1) a visitation schedule made by a court of another State; or

399 (2) the visitation provisions of a child-custody determination of another State that does
400 not provide for a specific visitation schedule.

401 (c) If a court of this State makes an order under subparagraph (b)(2), it shall specify in the
402 order a period of time which it considers adequate to allow the person seeking the order to obtain
403 an order from the State having jurisdiction under Article 2. The order remains in effect until an
404 order is obtained from the other State or the period expires.

405 SECTION 303. DUTY TO ENFORCE.

406 (a) A court of this State shall recognize and enforce a child-custody determination of a
407 court of another State if the latter court exercised jurisdiction that was in substantial conformity
408 with this Act or the determination was made under factual circumstances meeting the
409 jurisdictional standards of this Act and the determination has not been modified in accordance
410 with this Act.

411 (b) A court may utilize any remedy available under other law of this State to enforce a
412 child-custody determination made by a court of another State. The procedure provided by this
413 Article does not affect the availability of other remedies to enforce a child-custody
414 determination.

415 SECTION 304. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

416 (a) A child-custody determination issued by a court of another State may be registered in
417 this State, with or without a simultaneous request for enforcement, by sending to the appropriate
418 court in this State:

419 (1) a letter or other document requesting registration;

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

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

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

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

429 (2) serve notice upon the persons named pursuant to (a)(3) and provide them with an
430 opportunity to contest the registration in accordance with this section.

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

432 (1) that a registered determination is enforceable as of the date of the registration in the
433 same manner as a determination issued by a court of this State;

434 (2) that a hearing to contest the validity of the registered determination must be requested
435 within 20 days after service of notice; and

436 (3) that failure to contest the registration will result in confirmation of the child-custody
437 determination and preclude further contest of that determination with respect to any matter that
438 could have been asserted.

439 (d) A person seeking to contest the validity of a registered order must request a hearing
440 within 20 days after service of the notice. At that hearing, the court shall confirm the registered
441 order unless the person contesting registration establishes that:

442 (1) the issuing court did not have jurisdiction under Article 2;

443 (2) the child-custody determination sought to be registered has been vacated, stayed, or
444 modified by a court of a State having jurisdiction to do so under Article 2; or

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

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

451 (f) Confirmation of a registered order, whether by operation of law or after notice and
452 hearing, precludes further contest of the order with respect to any matter which could have been
453 asserted at the time of registration.

454 SECTION 305. ENFORCEMENT OF REGISTERED DETERMINATION.

455 (a) A court of this State may grant any relief normally available under the law of this
456 State to enforce a registered child-custody determination made by a court of another State.

457 (b) A court of this State shall recognize and enforce, but may not modify except in
458 accordance with Article 2, a registered child-custody determination of another State.

459 SECTION 306. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement
460 under this Article has been or is commenced in this State and a court of this State determines that
461 a proceeding to modify the determination has been commenced in another State having
462 jurisdiction to modify the determination under Article 2, the enforcing court shall immediately
463 communicate with the modifying court. The proceeding for enforcement continues unless the
464 enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

465 SECTION 307. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY
466 DETERMINATION.

467 (a) A petition under this Article must be verified. Certified copies of all orders sought to
468 be enforced and of the order confirming registration, if any, must be attached to the petition. A
469 copy of a certified copy of an order may be attached instead of the original.

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

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

473 (2) whether the determination for which enforcement is sought has been vacated, stayed,
474 or modified by a court whose decision must be enforced under this Act or federal law and, if so,
475 identify the court, the case number of the proceeding, and the action taken;

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

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

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

484 (c) If the child-custody determination has been registered and confirmed under Section
485 304, the petition must also state the date and place of registration.

486 (d) The court shall issue an order directing the respondent to appear with or without the
487 child at a hearing and may enter any orders necessary to ensure the safety of the parties and the
488 child.

489 (e) The hearing must be held on the next judicial day following service of process unless
490 that date is impossible. In that event, the court must hold the hearing on the first day possible.
491 The court may extend the date of hearing at the request of the petitioner.

492 (f) The order must state the time and place of the hearing and must advise the respondent
493 that at the hearing the court will order the delivery of the child and the payment of fees, costs,
494 and expenses under Section 311, and may set an additional hearing to determine whether further
495 relief is appropriate, unless the respondent appears and establishes that:

496 (1) the child-custody determination has not been registered and confirmed under Section
497 304, and that

498 (A) the issuing court did not have jurisdiction under Article 2;

499 (B) the child-custody determination for which enforcement is sought has been vacated,
500 stayed, or modified by a court of a State having jurisdiction to do so under Article 2 or federal
501 law; or

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

505 (2) the child-custody determination for which enforcement is sought was registered and
506 confirmed under Section 304, but has been vacated, stayed or modified by a court of a State
507 having jurisdiction to do so under Article 2 or federal law.

508 SECTION 308. SERVICE OF PETITION AND ORDER. Except as otherwise
509 provided in Section 310, the petition and order must be served, by any method authorized by the
510 law of this State, upon respondent and any person who has physical custody of the child.

511 SECTION 309. HEARING AND ORDER.

512 (a) Unless the court enters a temporary emergency order pursuant to Section 204, upon a
513 finding that a petitioner is entitled to the physical custody of the child immediately, the court
514 shall order the child delivered to the petitioner unless the respondent establishes that:

515 (1) the child-custody determination has not been registered and confirmed under Section
516 304, and that

517 (A) the issuing court did not have jurisdiction under Article 2;

518 (B) the child-custody determination for which enforcement is sought has been vacated,
519 stayed or modified by a court of a State having jurisdiction to do so under Article 2 or federal
520 law; or

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

524 (2) the child-custody determination for which enforcement is sought was registered and
525 confirmed under Section 304, but has been vacated, stayed or modified by a court of a State
526 having jurisdiction to do so under Article 2 or federal law.

527 (b) The court shall award the fees, costs, and expenses authorized under Section 311 and
528 may grant additional relief, including a request for the assistance of law enforcement officials,
529 and set a further hearing to determine whether additional relief is appropriate.

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

532 (d) A privilege against disclosure of communications between spouses and a defense of
533 immunity based on the relationship of husband and wife or parent and child may not be invoked
534 in a proceeding under this Article.

535 SECTION 310. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

536 (a) Upon the filing of a petition seeking enforcement of a child-custody determination,
537 the petitioner may file a verified application for the issuance of a warrant to take physical
538 custody of the child if the child is likely to suffer serious imminent physical harm or removal
539 from this State.

540 (b) If the court, upon the testimony of the petitioner or other witness, finds that the child
541 is likely to suffer serious imminent physical harm or be imminently removed from this State, it
542 may issue a warrant to take physical custody of the child. The petition must be heard on the next
543 judicial day after the warrant is executed. The warrant must include the statements required by
544 Section 307(b).

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

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

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

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

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

552 (e) A warrant to take physical custody of a child is enforceable throughout this State. If
553 the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive
554 remedy is not effective, it may authorize law enforcement officers to enter private property to
555 take physical custody of the child. If required by the exigency of the case, the court may
556 authorize law enforcement officers to make a forcible entry at any hour.

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

559 SECTION 311. COSTS, FEES, AND EXPENSES.

560 (a) The court shall award the prevailing party, including a State, necessary and reasonable
561 expenses incurred by or on behalf of the party, including costs, communication expenses,
562 attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during
563 the course of the proceedings, unless the party from whom fees or expenses are sought
564 establishes that the award would be clearly inappropriate.

565 (b) The court may not assess fees, costs, or expenses against a State except as otherwise
566 provided by law other than this Act.

567 SECTION 312. RECOGNITION AND ENFORCEMENT. A court of this State shall
568 accord full faith and credit to an order made consistently with this Act which enforces a child-
569 custody determination by a court of another State unless the order has been vacated, stayed, or
570 modified by a court authorized to do so under Article 2.

571 SECTION 313. APPEALS. An appeal may be taken from a final order in a
572 proceeding under this Article in accordance with expedited appellate procedures in other civil
573 cases. Unless the court enters a temporary emergency order under Section 204, the enforcing
574 court may not stay an order enforcing a child-custody determination pending appeal.

575 SECTION 314. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.

576 (a) In a case arising under this Act or involving the Hague Convention on the Civil
577 Aspects of International Child Abduction, the prosecutor or other appropriate public official may
578 take any lawful action, including resort to a proceeding under this Article or any other available
579 civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody
580 determination if there is:

581 (1) an existing child-custody determination;

582 (2) a request from a court in a pending child-custody case;

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

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

586 (b) A prosecutor or appropriate public official acts on behalf of the court and may not
587 represent any party to a child-custody determination.

588 SECTION 315. ROLE OF LAW ENFORCEMENT. At the request of a
589 prosecutor or other appropriate public official acting under Section 314, a law enforcement
590 officer may take any lawful action reasonably necessary to locate a child or a party and assist a
591 prosecutor or appropriate public official with responsibilities under Section 314.

592 SECTION 316. COSTS AND EXPENSES. If the respondent is not the prevailing
593 party, the court may assess against the respondent all direct expenses and costs incurred by the
594 prosecutor or other appropriate public official and law enforcement officers under Section 314 or
595 315.

596 ARTICLE 4

597 MISCELLANEOUS PROVISIONS

598 SECTION 401. APPLICATION AND CONSTRUCTION. In applying and construing
599 this Uniform Act, consideration must be given to the need to promote uniformity of the law with
600 respect to its subject matter among States that enact it.

601 SECTION 402. SEVERABILITY CLAUSE. If any provision of this Act or its
602 application to any person or circumstance is held invalid, the invalidity does not affect other
603 provisions or applications of this Act which can be given effect without the invalid provision or
604 application, and to this end the provisions of this Act are severable.

605 SECTION 2. The Uniform Child Custody Jurisdiction Act, G. L. c. 209B, is hereby
606 repealed.

607 SECTION 3. G.L. c. 208, §28 is amended by adding at the end thereof the jurisdiction of
608 any court to modify an existing judgment as to care and custody of a minor child and shall be
609 subject to the provisions of the Massachusetts Uniform Child Custody Jurisdiction Act.

610 SECTION 4. This Act takes effect on July first, two thousand and twelve. A motion or
611 other request for relief made in a child-custody or enforcement proceeding that was commenced
612 before the effective date of this Act is governed by the law in effect at the time the motion or
613 other request was made.