

SENATE No. 2392

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, June 30, 2016

The committee on Ways and Means, to whom was referred the Senate Bill relative to the Uniform Child Custody Jurisdiction and Enforcement Act (Senate, No. 746),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2392).

For the committee,
Karen E. Spilka

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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. Section 28 of chapter 208 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by adding the following sentence:- The jurisdiction of any
3 court to modify an existing judgment, as to care and custody of a minor child, shall be subject to
4 the Uniform Child-Custody Jurisdiction and Enforcement Act in chapter 209B.

5 SECTION 2. Chapter 209B of the General Laws is hereby amended by striking out
6 sections 1 to 14, inclusive, as appearing in the 2014 Official Edition, and inserting in place
7 thereof the following 4 Articles:-

8 ARTICLE 1. Section 1-101. This act may be cited as the Uniform Child-Custody
9 Jurisdiction and Enforcement Act.

10 Section 1-102. As used in this chapter the following words shall have the following
11 meanings, unless the context clearly requires otherwise:

12 “Abandoned”, left without provision for reasonable and necessary care or supervision.

13 “Abuse”, (i) attempting to cause or causing physical harm; (ii) placing another in fear of
14 imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations
15 by force, threat or duress or engaging or threatening to engage in sexual activity with a
16 dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts
17 designed to induce terror; (v) depriving another of medical care, housing, food or other
18 necessities of life; or (vi) restraining the liberty of another.

19 “Child”, an individual who has not attained 18 years of age.

20 “Child-custody determination”, a judgment, decree or other order of a court providing for
21 the legal custody, physical custody, parenting time or visitation with respect to a child, which
22 shall include a permanent, temporary, initial and modification order; provided, however, that
23 “child-custody determination” shall not include an order relating to child support or other
24 monetary obligations of an individual.

25 “Child-custody proceeding”, a proceeding in which legal custody, physical custody,
26 parenting time or visitation with respect to a child is an issue, which shall include a proceeding
27 for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of
28 parental rights and protection from domestic violence when child-custody may be an issue;
29 provided, however, that “child-custody proceeding” shall not include a proceeding involving
30 juvenile delinquency, contractual emancipation or enforcement under Article 3.

31 “Commencement”, the filing of the first pleading in a proceeding.

32 “Court”, an entity authorized to establish, enforce or modify a child-custody
33 determination.

34 “Domestic violence”, abuse committed by a parent or person acting as a parent against
35 the other parent or person acting as a parent or against a child who is the subject of a proceeding,
36 or against a dependent household member of the other parent or person acting as a parent, which
37 shall include a parent, step-parent, child, step-child, sibling, grandparent or grandchild or persons
38 in a guardianship relationship.

39 “Home state”, the state in which a child lived with a parent or a person acting as a parent
40 for at least 6 consecutive months immediately before the commencement of a child-custody
41 proceeding; provided, however, that in the case of a child less than 6 months of age, “home
42 state” shall be the state in which the child lived from birth with a parent or a person acting as a
43 parent; provided further, that a period of temporary absence of the parent or person acting as a
44 parent shall count as a part the time period.

45 “Initial determination”, the first child-custody determination concerning a particular
46 child.

47 “Issuing court”, the court that makes a child-custody determination for which
48 enforcement is sought under this act.

49 “Issuing state”, the state making a child-custody determination.

50 “Modification” a child-custody determination that changes, replaces, supersedes or is
51 otherwise made after a previous determination concerning the same child, whether or not it is
52 made by the court that made the previous determination.

53 “Person”, includes government, governmental subdivision, agency or instrumentality or
54 other legal or commercial entity.

55 “Person acting as a parent”, a person, other than a parent, who has physical custody of the
56 child or has had physical custody for a period of 6 consecutive months, including any temporary
57 absence, within 1 year immediately before the commencement of a child-custody proceeding and
58 has been awarded legal custody by a court or claims a right to legal custody under the law.

59 “Physical custody” the physical care and supervision of a child.

60 “State”, a state of the United States, the District of Columbia, Puerto Rico, the United
61 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
62 United States.

63 “Tribe”, an Indian tribe, band or Alaskan Native village, which is recognized by federal
64 law or formally acknowledged by a state.

65 “Warrant”, an order issued by a court authorizing law enforcement officers to take
66 physical custody of a child.

67 Section 1-103. This act shall not govern: (i) an adoption proceeding; or (ii) a proceeding
68 pertaining to the authorization of emergency medical care for a child.

69 Section 1-104. (a) A child-custody proceeding that pertains to an Indian child as defined
70 in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this act to the extent it
71 is governed by the Indian Child Welfare Act.

72 (b) For the purposes of Articles 1 and 2, a court shall treat a tribe as a state of the United
73 States.

74 (c) A child-custody determination made by a tribe under factual circumstances in
75 substantial conformity with the jurisdictional standards of this act shall be recognized and
76 enforced under Article 3.

77 Section 1-105. (a) For the purposes of Articles 1 and 2, a court shall treat a foreign
78 country as a state of the United States.

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

82 (c) The court shall not apply this act when the child custody law of a foreign country
83 violates fundamental principles of human rights.

84 Section 1-106. A child-custody determination made by a court that has jurisdiction under
85 this act shall bind persons who have been served in accordance with the laws or notified in
86 accordance with section 1-108 or who have submitted to the jurisdiction of the court and who
87 have been given an opportunity to be heard. The child-custody determination shall be conclusive
88 as to that person and decided issues of law and fact except to the extent the determination is
89 modified.

90 Section 1-107. If a question of existence or exercise of jurisdiction under this act is raised
91 in a child-custody proceeding, the question, upon request of a party, shall be given priority on the
92 calendar and handled expeditiously. A hearing on the matter, allowing for telephonic appearance
93 by the out-of-state party, if requested under subsection (d) of section 1-111, shall occur not later
94 than 60 days from the date of request. This court shall issue a written decision on the question of
95 jurisdiction not later than 15 calendar days from the date of the hearing.

96 Section 1-108. (a) Notice required for the exercise of jurisdiction when a person is outside
97 the commonwealth may be given in a manner prescribed by the law in the commonwealth for the
98 service of process or by the law of the state in which the service is made. Notice shall be given in
99 a manner reasonably calculated to give actual notice, but may be by publication if other means
100 are not effective.

101 (b) Proof of service may be made in the manner prescribed by the law of the
102 commonwealth or by the law of the state in which the service is made.

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

105 Section 1-109. (a) A party to a child-custody proceeding who is not subject to personal
106 jurisdiction in the commonwealth and is a responding party under Article 2, a party in a
107 proceeding to modify a child-custody determination under Article 2, or a plaintiff or petitioner in
108 a proceeding to enforce or register a child-custody determination under Article 3, may appear
109 and participate in the proceeding without submitting to personal jurisdiction over the party for
110 another proceeding or purpose.

111 (b) A party is not subject to personal jurisdiction in the commonwealth solely by being
112 physically present to participate in a proceeding under this act. If a party is subject to personal
113 jurisdiction in the commonwealth on a basis other than physical presence, the party may be
114 served with process in the commonwealth. If a party present in the commonwealth is subject to
115 the jurisdiction of another state, service of process allowable under the laws of that state may be
116 accomplished in the commonwealth.

117 (c) The immunity granted by this section shall not extend to civil litigation based on acts
118 unrelated to the participation in a proceeding under this act committed by an individual while
119 present in the commonwealth.

120 Section 1-110. (a) A court of the commonwealth may communicate with a court in
121 another state concerning a proceeding arising under this act.

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

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

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

130 (e) For the purposes of this section, "record" shall mean information that is inscribed on a
131 tangible medium or that which is stored in an electronic or other medium and is retrievable in
132 perceivable form.

133 Section 1-111. (a) In addition to other procedures available to a party, a party to a child-
134 custody proceeding may offer testimony of witnesses who are located in another state, including
135 testimony of the parties and the child, by deposition or other means allowable in the
136 commonwealth for testimony taken in another state. The court, on its own motion, may order that

137 the testimony of a person be taken in another state and may prescribe the manner in which and
138 the terms upon which the testimony is taken.

139 (b) A court in the commonwealth may permit an individual residing in another state to be
140 deposed or to testify by telephone, audiovisual means or other electronic means before a
141 designated court or at another location in that state. A court in the commonwealth shall cooperate
142 with courts of other states in designating an appropriate location for the deposition or testimony.

143 (c) Documentary evidence transmitted from another state to a court in the commonwealth
144 by technological means that do not produce an original writing may not be excluded from
145 evidence on an objection based on the means of transmission.

146 (d) If at any time, an out-of-state party contests the jurisdiction of the court under section
147 2-202 or 2-208 or raises a claim that the court is an inconvenient forum under section 2-207, the
148 party may request to participate electronically or by telephone in a hearing on the issue of
149 jurisdiction or the inconvenience of the forum. In making the request for the electronic or
150 telephonic participation, the party shall provide a reason for the request, which shall include, but
151 not be limited to, whether domestic violence or financial hardship prohibits that party from
152 attending a hearing in the commonwealth.

153 If an out-of-state party contests the jurisdiction of the court under section 2-202 or 2-208
154 or raises a claim that the court is an inconvenient forum under section 2-207, the court shall first
155 hold a preliminary hearing at which the requesting party shall be permitted to appear
156 electronically or by telephone to present evidence about the reasons for the inability to attend a
157 hearing in person and whether there are remedial orders that the court may issue that would
158 enable the person to attend a hearing in person.

159 If after a preliminary hearing, the court denies the request made under subsection (d), the
160 court may enter orders necessary to ensure the safety of the child and of the party who made the
161 request. The court may also require another party to pay reasonable and necessary travel and
162 other expenses of the party who made the request.

163 Section 1-112. (a) A court in the commonwealth may request the appropriate court of
164 another state: (1) hold an evidentiary hearing; (2) order a person to produce or give evidence
165 under procedures of that state; (3) order that an evaluation be made with respect to the custody of
166 a child involved in a pending proceeding; (4) forward to the court in the commonwealth a
167 certified copy of the transcript of the record of the hearing, the evidence otherwise presented and
168 any evaluation prepared in compliance with the request; and (5) order a party to a child-custody
169 proceeding or a person having physical custody of the child to appear in the proceeding with or
170 without the child.

171 (b) Upon request of a court of another state, a court in the commonwealth may hold a
172 hearing or enter an order described in subsection (a).

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

175 (d) A court in the commonwealth shall preserve the pleadings, orders, decrees, records of
176 hearings, evaluations and other pertinent records with respect to a child-custody proceeding until
177 the child attains 18 years of age. Upon appropriate request by a court or law enforcement official
178 of another state, the court shall forward a certified copy of these records.

179 ARTICLE 2. Section 2-201. (a) Except as otherwise provided in section 2-204, a court
180 in the commonwealth shall have jurisdiction to make an initial child-custody determination if:

181 (1) the commonwealth is the home state of the child on the date of the
182 commencement of the proceeding or was the home state of the child within 6 months before the
183 commencement of the proceeding and the child is absent from the commonwealth but a parent or
184 person acting as a parent continues to live in the commonwealth;

185 (2) a court of another state does not have jurisdiction under paragraph (1), or a
186 court of the home state of the child has declined to exercise jurisdiction on the ground that the
187 commonwealth is the more appropriate forum under section 2-207 or 2-208 and the child and the
188 child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant
189 connection with the commonwealth other than mere physical presence; and substantial evidence
190 is available in the commonwealth concerning the child's care, protection, training and personal
191 relationships;

192 (3) all courts having jurisdiction under paragraphs (1) or (2) have declined to
193 exercise jurisdiction on the ground that a court in the commonwealth is the more appropriate
194 forum to determine the custody of the child under section 2-207 or 2-208; or

195 (4) no state would have jurisdiction under paragraphs (1), (2) or (3).

196 (b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody
197 determination by a court in the commonwealth.

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

200 Section 2-202. (a) Except as otherwise provided in section 2-204, a court in the
201 commonwealth that has made a child-custody determination consistent with section 2-201 or 2-
202 203 has exclusive, continuing jurisdiction over the determination until:

203 (1) a court in the commonwealth determines that neither the child, the child and 1
204 parent, nor the child and a person acting as a parent have a significant connection with the
205 commonwealth and that substantial evidence is no longer available in the commonwealth
206 concerning the child's care, protection, training and personal relationships;

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

209 (3) the court finds that a parent or person acting as a parent who resides in the
210 commonwealth has engaged in domestic violence against the other parent or person acting as a
211 parent or against the child who is the subject of the proceeding or against a dependent household
212 member of the parent or person acting as a parent, which if the court so finds, it shall be
213 presumed that the commonwealth does not have continuing, exclusive jurisdiction over the
214 determination unless the victim or victim's custodial parent or guardian consents to continuing,
215 exclusive jurisdiction; or

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

218 (b) A court in the commonwealth that has exclusive, continuing jurisdiction under this
219 section may decline to exercise its jurisdiction if the court determines that it is an inconvenient
220 forum under section 2-207.

221 (c) A court in the commonwealth that has made a child-custody determination and does
222 not have exclusive, continuing jurisdiction under this section may modify that determination
223 only if it has jurisdiction to make an initial determination under section 2-201.

224 Section 2-203. Except as otherwise provided in section 2-204, a court in the
225 commonwealth shall not modify a child-custody determination made by a court of another state
226 unless the court in the commonwealth has jurisdiction to make an initial determination under
227 paragraphs (1) or (2) of subsection (a) of section 2-201 and:

228 (1) the court of the other state determines it no longer has exclusive, continuing
229 jurisdiction under section 2-202 or that a court in the commonwealth would be a more
230 convenient forum under section 2-207;

231 (2) a court in the commonwealth or a court of the other state determines that neither the
232 child, nor a parent nor any person acting as a parent presently resides in the other state; or

233 (3) the parents or all persons acting as parents have mutually agreed in writing that the
234 commonwealth shall have the authority to modify a determination and the agreement has been
235 approved by the court.

236 Section 2-204. (a) A court in the commonwealth shall have temporary emergency
237 jurisdiction if the child is present in in the commonwealth and the child has been abandoned or it
238 is necessary in an emergency to protect the child because the other parent or person acting as a
239 parent or a child who is the subject of the proceeding or a dependent household member of the
240 other parent or person acting as a parent is subjected to or threatened with mistreatment or abuse.

241 (b) If there is no previous child-custody determination that is entitled to be enforced
242 under this act and if no child-custody proceeding has been commenced in a court of a state
243 having jurisdiction under sections 2-201 to 2-203, inclusive, a child-custody determination made
244 under this section remains in effect until an order is obtained from a court of a state having
245 jurisdiction under said sections 2-201 to 2-203, inclusive. If a child-custody proceeding has not
246 been or is not commenced in a court of a state having jurisdiction under said sections 2-201 to 2-
247 203, inclusive, a child-custody determination made under this section becomes a final
248 determination, if: (1) it so provides; and (2) the commonwealth becomes the home state of the
249 child.

250 (c) If there is a previous child-custody determination that is entitled to be enforced under
251 this act or a child-custody proceeding has been commenced in a court of a state having
252 jurisdiction under sections 2-201 to 2-203, inclusive, any order issued by a court in the
253 commonwealth under this section shall specify in the order a period of time which the court
254 considers adequate to allow the person seeking an order to obtain an order from the state having
255 jurisdiction under said sections 2-201 to 2-203, inclusive. The order issued in the commonwealth
256 shall remain in effect until an order is obtained from the other state within the period specified or
257 the period expires.

258 (d) A court in the commonwealth that has been asked to make a child-custody
259 determination under this section, upon being informed that a child-custody proceeding has been
260 commenced, or a child-custody determination has been made, by a court of a state having
261 jurisdiction under sections 2-201 to 2-203, inclusive, shall immediately communicate with the
262 other court. A court in the commonwealth that is exercising jurisdiction pursuant to said sections
263 2-201 to 2-203, inclusive, upon being informed that a child-custody proceeding has been

264 commenced or a child-custody determination has been made by a court of another state under a
265 statute similar to this section shall immediately communicate with the court of that state. The
266 purpose of the communication is to resolve the emergency, protect the safety of the parties and
267 the child and determine a period for the duration of the temporary order.

268 Section 2-205. (a) Before a child-custody determination is made under this act, notice
269 and an opportunity to be heard in accordance with the standards of section 1-108 shall be given
270 to persons entitled to notice under the law of the commonwealth as in child-custody proceedings
271 between residents of the commonwealth, a parent whose parental rights have not been previously
272 terminated and a person having physical custody of the child.

273 (b) This act shall not govern the enforceability of a child-custody determination made
274 without notice and an opportunity to be heard.

275 (c) The obligation to join a party and the right to intervene as a party in a child-custody
276 proceeding under this act shall be governed by the law of the commonwealth as in child-custody
277 proceedings between residents of the commonwealth.

278 Section 2-206. (a) Except as otherwise provided in section 2-204, a court in the
279 commonwealth shall not exercise its jurisdiction under Article 2 if, at the time of the
280 commencement of the proceeding, a proceeding concerning the custody of the child had been
281 previously commenced in a court of another state having jurisdiction substantially in conformity
282 with this act, unless the proceeding has been terminated or is stayed by the court of the other
283 state because a court in the commonwealth is a more convenient forum under section 2-207.

284 (b) Except as otherwise provided in section 2-204, a court in the commonwealth, before
285 hearing a child-custody proceeding, shall examine the court documents and other information

286 supplied by the parties pursuant to section 2-209. If the court determines that a child-custody
287 proceeding was previously commenced in a court in another state having jurisdiction
288 substantially in accordance with this act, the court in the commonwealth shall stay its proceeding
289 and communicate with the court of the other state. If the court of the state having jurisdiction
290 substantially in accordance with this act does not determine that the court in the commonwealth
291 is a more appropriate forum, the court in the commonwealth shall dismiss the proceeding.

292 (c) In a proceeding to modify a child-custody determination, a court in the
293 commonwealth shall determine whether a proceeding to enforce the determination has been
294 commenced in another state. If a proceeding to enforce a child-custody determination has been
295 commenced in another state, the court may:

296 (1) stay the proceeding for modification pending the entry of an order of a court
297 of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

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

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

300 SECTION 2-207. (a) A court in the commonwealth that has jurisdiction under this act to
301 make a child-custody determination may decline to exercise its jurisdiction at any time if it
302 determines that it is an inconvenient forum under the circumstances and that a court of another
303 state is a more appropriate forum. The issue of inconvenient forum may be raised upon the
304 court's own motion, request of another court or motion of a party.

305 (b) Before determining whether it is an inconvenient forum, a court in the commonwealth
306 shall consider whether it is appropriate that a court of another state exercise jurisdiction. For this

307 purpose, the court shall allow the parties to submit information and shall consider all relevant
308 factors, including:

309 (1) whether domestic violence has occurred and which state could best protect the
310 parties and the child;

311 (2) the length of time the child has resided outside the commonwealth;

312 (3) the distance between the court in the commonwealth and the court in the state
313 that would assume jurisdiction;

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

316 (5) an agreement of the parties as to which state should assume jurisdiction;

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

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

321 (8) the familiarity of the court of each state with the facts and issues of the
322 pending litigation; and

323 (9) whether the health, safety and liberty of a party or the child is put at risk.

324 (c) If a court in the commonwealth determines that it is an inconvenient forum and that a
325 court of another state is a more appropriate forum, it shall stay the proceedings upon condition

326 that a child-custody proceeding be promptly commenced in another designated state and may
327 impose any other condition the court considers just and proper.

328 (d) A court in the commonwealth may decline to exercise its jurisdiction under this act if
329 a child-custody determination is incidental to an action for divorce or another proceeding while
330 still retaining jurisdiction over the divorce or other proceeding.

331 Section 2-208. (a) Except as otherwise provided in section 2-204 or by another law of
332 the commonwealth, if a court in the commonwealth has jurisdiction under this act because a
333 person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to
334 exercise its jurisdiction unless:

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

337 (2) a court of the state otherwise having jurisdiction under sections 2-201 to 2-
338 203, inclusive, determines that the commonwealth is a more appropriate forum under section 2-
339 207; or

340 (3) no other state would have jurisdiction under said sections 2-201 to 2-203,
341 inclusive.

342 (b) If a court in the commonwealth declines to exercise its jurisdiction pursuant to
343 subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent
344 a repetition of the wrongful conduct, including staying the proceeding until a child-custody
345 proceeding is commenced in a court having jurisdiction under sections 2-201 to 2-203, inclusive.

346 (c) If a court dismisses a complaint or a petition or stays a proceeding because it declines
347 to exercise its jurisdiction under subsection (a), it shall charge the party invoking the jurisdiction
348 of the court with necessary and reasonable expenses including costs, communication expenses,
349 attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during
350 the course of the proceedings, unless the party from whom fees are sought establishes that the
351 award would be clearly inappropriate. The court may not assess fees, costs or expenses against
352 the commonwealth except as otherwise provided by law.

353 Section 2-209. (a) Subject to local law providing for the confidentiality of procedures,
354 addresses and other identifying information, in a child-custody proceeding, each party, in its first
355 pleading or in an affidavit, shall give information, if reasonably ascertainable, under oath as to
356 the child's present address, the places where the child has lived during the last 5 years and the
357 names and present addresses of the persons with whom the child has lived during that period.
358 The pleading or affidavit shall state whether the party:

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

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

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

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

371 (c) If the declaration as to any of the items described in paragraphs (1) to (3), inclusive of
372 subsection (a) is in the affirmative, the declarant shall give additional information under oath as
373 required by the court. The court may examine the parties under oath as to details of the
374 information furnished and other matters pertinent to the court's jurisdiction and the disposition of
375 the case.

376 (d) Each party has a continuing duty to inform the court of any proceeding in the
377 commonwealth or any other state that could affect the current proceeding.

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

384 Section 2-210. (a) A court in the commonwealth may order a party to a child-custody
385 proceeding who is in the commonwealth to appear before the court personally with or without
386 the child. The court may order any person who is in the commonwealth and who has physical
387 custody or control of the child to appear physically with the child.

388 (b) Subject to subsection (d) of section 1-111, if a party to a child-custody proceeding
389 whose presence is desired by the court is outside the commonwealth, the court may order that a
390 notice given pursuant to section 1-108 include a statement directing the party to appear
391 personally with or without the child and declaring that failure to appear may result in a decision
392 adverse to the party.

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

395 (d) If a party to a child-custody proceeding who is outside the commonwealth is directed
396 to appear under subsection (b) or desires to appear personally before the court with or without
397 the child, the court may require another party to pay reasonable and necessary travel and other
398 expenses of the party so appearing and of the child.

399 ARTICLE 3. Section 3-301. As used in Article 3, the following words shall have the
400 following meanings unless the context requires otherwise:

401 “Plaintiff” or “Petitioner”, a person who seeks enforcement of a child-custody
402 determination or enforcement of an order for the return of the child under the Hague Convention
403 on the Civil Aspects of International Child Abduction.

404 “Defendant” or “Respondent”, a person against whom a proceeding has been commenced
405 for enforcement of a child-custody determination or enforcement of an order for the return of the
406 child under the Hague Convention on the Civil Aspects of International Child Abduction.

407 Section 3-302. (a) Article 3 may be invoked to enforce: (1) a child-custody
408 determination of another state; and (2) an order for the return of the child made under the Hague
409 Convention on the Civil Aspects of International Child Abduction.

410 (b) A court in the commonwealth that does not have jurisdiction to modify a child-
411 custody determination, may issue a temporary order enforcing: (1) a parenting plan or visitation
412 schedule made by a court of another state; or (2) the parenting plan or visitation provisions of a
413 child-custody determination of another state that does not provide for a specific visitation
414 schedule.

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

419 Section 3-303. (a) A court in the commonwealth shall recognize and enforce a child-
420 custody determination of a court of another state if the latter court exercised jurisdiction that was
421 in substantial conformity with this act or the determination was made under factual
422 circumstances meeting the jurisdictional standards of this act and the determination has not been
423 modified in accordance with this act.

424 (b) A court may utilize any remedy available under the laws of the commonwealth to
425 enforce a child-custody determination made by a court of another state. The procedure provided
426 by Article 3 does not affect the availability of other remedies to enforce a child-custody
427 determination.

428 Section 3-304. (a) A child-custody determination issued by a court of another state may
429 be registered in the commonwealth, with or without a simultaneous request for enforcement, by
430 sending to the appropriate court in the commonwealth: (1) a letter or other document requesting
431 registration; (2) 2 copies, including 1 certified copy, of the determination sought to be registered
432 and a statement under penalty of perjury that to the best of the knowledge and belief of the
433 person seeking registration the order has not been modified; and (3) except as otherwise provided
434 in section 2-209, the name and address of the person seeking registration and any parent or
435 person acting as a parent who has been awarded custody or visitation in the child-custody
436 determination sought to be registered.

437 (b) On receipt of the documents required by subsection (a), the registering court shall: (1)
438 cause the determination to be filed as a foreign judgment, together with 1 copy of any
439 accompanying documents and information, regardless of their form; and (2) serve notice upon
440 the persons named pursuant to paragraph (3) of subsection (a) and provide them with an
441 opportunity to contest the registration in accordance with this section.

442 (c) The notice required by paragraph (2) of subsection (b) shall state: (1) that a registered
443 determination is enforceable as of the date of the registration in the same manner as a
444 determination issued by a court in the commonwealth; (2) that a hearing to contest the validity of
445 the registered determination shall be requested within 20 days after service of notice; and (3) that
446 failure to contest the registration shall result in confirmation of the child-custody determination
447 and preclude further contest of that determination with respect to any matter that could have been
448 asserted.

449 (d) A person seeking to contest the validity of a registered order shall request a hearing
450 within 20 days after service of the notice. At that hearing, the court shall confirm the registered
451 order unless the person contesting registration establishes that: (1) the issuing court did not have
452 jurisdiction under Article 2; (2) the child-custody determination sought to be registered has been
453 vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2; or
454 (3) the person contesting registration was entitled to notice, but notice was not given in
455 accordance with the standards of section 1-108 in the proceedings before the court that issued the
456 order for which registration is sought.

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

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

463 Section 3-305. (a) A court in the commonwealth may grant any relief normally available
464 under the law of the commonwealth to enforce a registered child-custody determination made by
465 a court of another state.

466 (b) A court in the commonwealth shall recognize and enforce, but shall not modify
467 except in accordance with Article 2, a registered child-custody determination of another state.

468 Section 3-306. If a proceeding for enforcement under Article 3 has been or is commenced
469 in the commonwealth and a court in the commonwealth determines that a proceeding to modify
470 the determination has been commenced in another state having jurisdiction to modify the

471 determination under Article 2, the enforcing court shall immediately communicate with the
472 modifying court. The proceeding for enforcement continues unless the enforcing court, after
473 consultation with the modifying court, stays or dismisses the proceeding.

474 Section 3-307. (a) A complaint or petition under this section shall be verified. Certified
475 copies of all orders sought to be enforced and of the order confirming registration, if any, shall
476 be attached to the petition. A copy of a certified copy of an order may be attached instead of the
477 original.

478 (b) A complaint or petition for enforcement of a child-custody determination shall state:
479 (1) whether the court that issued the determination identified the jurisdictional basis it relied
480 upon in exercising jurisdiction and, if so, what the basis was; (2) whether the determination for
481 which enforcement is sought has been vacated, stayed or modified by a court whose decision
482 shall be enforced under this act or federal law and, if so, identify the court, the case number of
483 the proceeding and the action taken; (3) whether any proceeding has been commenced that could
484 affect the current proceeding, including proceedings relating to domestic violence, protective
485 orders, termination of parental rights and adoptions and, if so, identify the court and the case
486 number and the nature of the proceeding; (4) the present physical address of the child and the
487 defendant or respondent, if known; and (5) whether relief in addition to the immediate physical
488 custody of the child and attorney's fees is sought, including a request for assistance from law
489 enforcement officials and, if so, the relief sought.

490 (c) If the child-custody determination has been registered and confirmed under section 3-
491 304, the complaint or petition shall also state the date and place of registration.

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

495 (e) The hearing shall be held on the next judicial day following service of process unless
496 that date is impossible. In that event, the court shall hold the hearing on the first day possible.
497 The court may extend the date of the hearing at the request of the plaintiff or petitioner.

498 (f) The order shall state the time and place of the hearing and shall advise the defendant
499 or respondent that at the hearing the court will order the delivery of the child and the payment of
500 fees, costs and expenses under section 3-311 and may set an additional hearing to determine
501 whether further relief is appropriate, unless the defendant or respondent appears and establishes
502 that:

503 (1) the child-custody determination has not been registered and confirmed under
504 section 3-304 and that: (A) the issuing court did not have jurisdiction under Article 2; (B) the
505 child-custody determination for which enforcement is sought has been vacated, stayed or
506 modified by a court of a state having jurisdiction to do so under Article 2 or federal law; or (C)
507 the respondent was entitled to notice, but notice was not given in accordance with the standards
508 of section 1-108 in the proceedings before the court that issued the order for which enforcement
509 is sought; or

510 (2) the child-custody determination for which enforcement is sought was
511 registered and confirmed under section 3-304, but has been vacated, stayed or modified by a
512 court of a state having jurisdiction to do so under Article 2 or federal law.

513 Section 3-308. Except as otherwise provided in section 3-310, the petition and order shall
514 be served, by any method authorized by the law of the commonwealth, upon the respondent and
515 any person who has physical custody of the child.

516 Section 3-309. (a) Unless the court enters a temporary emergency order pursuant to
517 section 2-204, upon a finding that a petitioner is entitled to the physical custody of the child
518 immediately, the court shall order the child delivered to the petitioner unless the respondent
519 establishes that:

520 (1) the child-custody determination has not been registered and confirmed under
521 section 3-304, and that: (A) the issuing court did not have jurisdiction under Article 2; (B) the
522 child-custody determination for which enforcement is sought has been vacated, stayed or
523 modified by a court of a state having jurisdiction to do so under Article 2 or federal law; or (C)
524 the defendant or respondent was entitled to notice, but notice was not given in accordance with
525 the standards of section 1-108 in the proceedings before the court that issued the order for which
526 enforcement is sought; or

527 (2) the child-custody determination for which enforcement is sought was
528 registered and confirmed under section 3-304, but has been vacated, stayed or modified by a
529 court of a state having jurisdiction to do so under Article 2 or federal law.

530 (b) The court shall award the fees, costs and expenses authorized under section 3-311 and
531 may grant additional relief, including a request for the assistance of law enforcement officials
532 and set a further hearing to determine whether additional relief is appropriate.

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

535 (d) A privilege against disclosure of communications between spouses and a defense of
536 immunity based on the relationship of husband and wife or parent and child shall not be invoked
537 in a proceeding under Article 3.

538 Section 3-310. (a) Upon the filing of a complaint or petition seeking enforcement of a
539 child-custody determination, the plaintiff or petitioner may file a verified application for the
540 issuance of a warrant to take physical custody of the child if the child is likely to suffer serious
541 imminent physical harm or removal from the commonwealth.

542 (b) If the court, upon the testimony of the plaintiff or petitioner or other witness, finds
543 that the child is likely to suffer serious imminent physical harm or be imminently removed from
544 the commonwealth, it may issue a warrant to take physical custody of the child. The complaint or
545 petition shall be heard on the next judicial day after the warrant is executed. The warrant shall
546 include the statements required by subsection (b) of section 3-307.

547 (c) A warrant to take physical custody of a child shall: (1) recite the facts upon which a
548 conclusion of serious imminent physical harm or removal from the jurisdiction is based; (2)
549 direct law enforcement officers to take physical custody of the child immediately; and (3)
550 provide for the placement of the child pending final relief.

551 (d) The defendant or respondent shall be served with the complaint or petition, warrant
552 and order immediately after the child is taken into physical custody.

553 (e) A warrant to take physical custody of a child is enforceable throughout the
554 commonwealth. If the court finds on the basis of the testimony of the petitioner or other witness
555 that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter

556 private property to take physical custody of the child. If required by the exigency of the case, the
557 court may authorize law enforcement officers to make a forcible entry at any hour.

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

560 Section 3-311. (a) The court shall award the prevailing party, including a state, necessary
561 and reasonable expenses incurred by or on behalf of the party, including costs, communication
562 expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child
563 care during the course of the proceedings, unless the party from whom fees or expenses are
564 sought establishes that the award would be clearly inappropriate.

565 (b) The court shall not assess fees, costs or expenses against a state except as otherwise
566 provided by law.

567 Section 3-312. A court in the commonwealth shall accord full faith and credit to an order
568 made consistently with this act which enforces a child-custody determination by a court of
569 another state unless the order has been vacated, stayed or modified by a court authorized to do so
570 under Article 2.

571 Section 3-313. An appeal may be taken from a final order in a proceeding under Article 3
572 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a
573 temporary emergency order under section 2-204, the enforcing court shall not stay an order
574 enforcing a child-custody determination pending appeal.

575 Section 3-314. (a) In a case arising under this act or involving the Hague Convention on
576 the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public

577 official may take any lawful action, including resort to a proceeding under Article 3 or any other
578 available civil proceeding to locate a child, obtain the return of a child or enforce a child-custody
579 determination if there is: (1) an existing child-custody determination; (2) a request from a court
580 in a pending child-custody case; (3) a reasonable belief that a criminal statute has been violated;
581 or (4) a reasonable belief that the child has been wrongfully removed or retained in violation of
582 the Hague Convention on the Civil Aspects of International Child Abduction.

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

585 Section 3-315. At the request of a prosecutor or other appropriate public official acting
586 under section 3-314, a law enforcement officer may take any lawful action reasonably necessary
587 to locate a child or a party and assist a prosecutor or appropriate public official with
588 responsibilities under said section 3-314.

589 Section 3-316. If the respondent is not the prevailing party, the court may assess against
590 the respondent all direct expenses and costs incurred by the prosecutor or other appropriate
591 public official and law enforcement officers under sections 3-314 or 3-315.

592 ARTICLE 4. Section 4-401. In applying and construing this act, consideration shall be
593 given to the need to promote uniformity of the law with respect to its subject matter among states
594 that enact it.

595 Section 4-402. If any provision of this act or its application to any person or circumstance
596 is held invalid, the invalidity does not affect other provisions or applications of this act which
597 can be given effect without the invalid provision or application, and to this end the provisions of
598 this act are severable.

599 SECTION 3. A motion or other request for relief made in a child-custody or enforcement
600 proceeding that was commenced before the effective date of this act is governed by the law in
601 effect at the time the motion or other request was made.