SENATE . . . . . No. 2500

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Monday, April 30, 2018

The committee on the Judiciary, to whom was referred the petitions (accompanied by bill, Senate, No. 806) of Cynthia S. Creem for legislation relative to the Uniform Child Custody Jurisdiction and Enforcement Act; (accompanied by bill, House, No. 47) of the Commission on Uniform State Laws as relates to the Uniform Child-Custody Jurisdiction and Enforcement Act; and (accompanied by bill, House, No. 3729) (subject to Joint Rule 12) of James M. Cantwell relative to the child custody jurisdiction and enforcement,- reports the accompanying bill (Senate, No. 2500).

For the committee,
William N. Brownsberger

SENATE . . . . . No. 2500

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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. Chapter 209B of the General Laws is hereby amended by striking out sections 1 to 14, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the following:-

Chapter 209B

ARTICLE 1. GENERAL PROVISIONS

Section 1-101. SHORT TITLE

This act may be cited as the Massachusetts Uniform Child-Custody Jurisdiction and Enforcement Act.

Section 1-102. DEFINITIONS

As used in this chapter the following words shall have the following meanings, unless the context clearly requires otherwise:

"Abandoned", left without provision for reasonable and necessary care or supervision.

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

"Child", an individual who has not attained 18 years of age.

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

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

"Commencement", the filing of the first pleading in a proceeding.

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

"Dependent household member",

(1) The spouse of the parent or person acting as a parent. +

(2) An unmarried child of the parent or person acting as a parent who:

(A) is under 18 years of age; or

(B) is incapable of self-support because of mental or physical incapacity and is dependent on the parent or person acting as a parent for more than one-half of the child's support.

(3) A parent, if the parent is in fact dependent on the parent or person acting as a parent for more than one-half of the parent's support.

(4) An unmarried person of any age who:

(A) is placed in the legal custody of the parent or person acting as a parent as a result of an order of a court of competent jurisdiction in a State for a period of at least 12 consecutive months;

(B) is dependent on the parent or person acting as a parent for over one-half of the unmarried person's support; or

(C) has resided with parent or person acting as a parent for at least 12 consecutive months.

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

“Home state”, the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, “home state” means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

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

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

“Issuing state”, the state in which a child-custody determination is made.

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

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

“Person acting as a parent”, a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within 1 year immediately before the commencement of a child-custody proceeding; and

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

"Physical custody" the physical care and supervision of a child.

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

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

"Warrant", an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Section 1-103. PROCEEDINGS GOVERNED BY OTHER LAW

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

Section 1-104. APPLICATION TO INDIAN TRIBES

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

(b) A court of the commonwealth shall treat a tribe as if it were a state of the United States for the purposes of applying Articles 1 and 2.

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

Section 1-105. INTERNATIONAL APPLICATION OF ACT

(a) A court of the commonwealth shall treat a foreign country as if it were a state of the United States for the purposes of applying Articles 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3.

(c) The court of the commonwealth need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

Section 1-106. EFFECT OF CHILD-CUSTODY DETERMINATION

A child-custody determination made by a court of the commonwealth that had jurisdiction under this act binds all persons who have been served in accordance with the laws of the commonwealth or notified in accordance with section 1-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Section 1-107. PRIORITY

If a question of existence or exercise of jurisdiction under this act is raised in a child-custody proceeding, the question, upon request of a party, shall be given priority on the calendar

and handled expeditiously. A hearing on the matter, allowing for telephonic appearance by the out-of-state party, if requested under subsection (d) of section 1-111, shall occur not later than 60 days from the date of request. This court shall issue a written decision on the question of jurisdiction not later than 15 calendar days from the date of the hearing.

Section1-108. NOTICE TO PERSONS OUTSIDE STATE

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

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

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

Section 1-109. APPEARANCE AND LIMITED IMMUNITY

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in the commonwealth (i) solely by reason of being physically present to participate in a proceeding under this act or (ii) solely by reason of having participated, or of having been physically present for the purpose of participating, in another proceeding.

(b) A person who is subject to personal jurisdiction in the commonwealth on a basis other than physical presence is not immune from service of process in the commonwealth. A party present in the commonwealth who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

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

Section 1-110. COMMUNICATION BETWEEN COURTS

(a) A court of the commonwealth may communicate with a court in another state concerning a proceeding arising under this act.

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

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

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

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

Section 1-111. TAKING TESTIMONY IN ANOTHER STATE

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

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

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

(d) If at any time, an out-of-state party contests the jurisdiction of the court under section 2-202 or 2-208 or raises a claim that the court is an inconvenient forum under section 2-207, the party may request to participate electronically or by telephone in a hearing on the issue of jurisdiction or the inconvenience of the forum. In making the request for the electronic or telephonic participation, the party shall provide a reason for the request, which shall include, but

not be limited to, whether domestic violence or financial hardship prohibits that party from attending a hearing in the commonwealth.

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

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

Section 1-112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS

(a) A court of the commonwealth may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to 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 the commonwealth 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 a 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 the commonwealth 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 the commonwealth.

(d) A court of the commonwealth 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 those records.

ARTICLE 2. JURISDICTION

Section 2-201. INITIAL CHILD-CUSTODY JURISDICTION

(a) Except as otherwise provided in section 2-204, a court of the commonwealth has jurisdiction to make an initial child-custody determination only if:

(1) the commonwealth 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 6 months before the commencement of the proceeding and the child is absent from the commonwealth but a parent or person acting as a parent continues to live in the commonwealth;

(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 the commonwealth is the more appropriate forum under section 2-207 or 2-208, and:

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

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

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

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

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

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

Section 2-202. EXCLUSIVE, CONTINUING JURISDICTION

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

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

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

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

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

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

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

Section 2-203. JURISDICTION TO MODIFY DETERMINATION

Except as otherwise provided in section 2-204, a court of the commonwealth may not modify a child-custody determination made by a court of another state unless a court of the commonwealth has jurisdiction to make an initial determination under section 2-201 (a) (1) or (2) and:

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

(2) a court of the commonwealth or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state; or

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

Section 2-204. TEMPORARY EMERGENCY JURISDICTION

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

(b) If there is no previous child-custody determination that is entitled to be enforced under this act and a child-custody proceeding has not been commenced in a court of a state

having jurisdiction under sections 2-201 through 2-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 2-201 through 2-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 2-201 through 2-203, a child-custody determination made under this section becomes a final determination, if it so provides and the commonwealth becomes the home state of the child.

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

(d) A court of the commonwealth which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under sections 2-201 through 2-203, shall immediately communicate with the other court. A court of the commonwealth which is exercising jurisdiction pursuant to sections 2-201 through 2-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the

emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Section 2-205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER

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

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

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

Section 2-206. SIMULTANEOUS PROCEEDINGS

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

(b) Except as otherwise provided in section 2-204, a court of the commonwealth, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 2-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of the commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of the commonwealth is a more appropriate forum, the court of the commonwealth shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of the commonwealth 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 2-207. INCONVENIENT FORUM

(a) A court of the commonwealth which 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 motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of the commonwealth shall consider whether it is appropriate for a court of another state to 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 the commonwealth;

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

(4) the relative financial circumstances of the parties;

(5) an 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 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.

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

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

Section 2-208. JURISDICTION DECLINED BY REASON OF CONDUCT

(a) Except as otherwise provided in section 2-204 or by another law of the commonwealth, if a court of the commonwealth has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

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

(2) a court of the state otherwise having jurisdiction under sections 2-201 through 2-203 determines that the commonwealth is a more appropriate forum under section 2-207; or

(3) no court of any other state would have jurisdiction under the criteria specified in sections 2-201 through 2-203.

(b) If a court of the commonwealth declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent

a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 2-201 through 2-203.

(c) If a court dismisses a complaint or a petition or stays a proceeding because it declines to exercise its jurisdiction under subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against the commonwealth unless authorized by law other than this act.

Section 2-209. INFORMATION TO BE SUBMITTED TO COURT

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

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

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders,

termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

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

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

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

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

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Section 2-210. APPEARANCE OF PARTIES AND CHILD

(a) In a child-custody proceeding in the commonwealth, the court may order a party to the proceeding who is in the commonwealth to appear before the court in person with or without the child. The court may order any person who is in the commonwealth and who has physical custody or control of the child to appear in person with the child.

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

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

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

ARTICLE 3. ENFORCEMENT

Section 3-301. DEFINITIONS

As used in Article 3, the following words shall have the following meanings, unless the context clearly requires otherwise:

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

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

Section 3-302. SCOPE; TEMPORARY VISITATION.

Under Article 3 a court of the commonwealth may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

Section 3-303. DUTY TO ENFORCE

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

(b) A court of the commonwealth may utilize any remedy available under other law of the commonwealth to enforce a child-custody determination made by a court of another state. The remedies provided in Article 3 are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

Section 3-304. TEMPORARY VISITATION

(a) A court of the commonwealth which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

(1) a parenting plan or visitation schedule made by a court of another state; or

(2) the parenting plan or visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of the commonwealth makes an order under subparagraph (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2. The order remains in effect until an order is obtained from the other state or the period expires.

Section 3-305. REGISTRATION OF CHILD-CUSTODY DETERMINATION

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

(1) a letter or other document requesting registration;

(2) 2 copies, including 1 certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in section 2-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, parenting time or visitation in the child-custody determination sought to be registered.

(b)

(1) On receipt of the documents required by subsection (a), the registering court shall cause the determination to be filed as a foreign judgment, together with 1 copy of any accompanying documents and information, regardless of their form.

(2) The person seeking registration shall serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

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

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of the commonwealth;

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

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

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

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

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

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 1-108, in the proceedings before the court that issued the order for which registration is sought.

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

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

Section 3-306. ENFORCEMENT OF REGISTERED DETERMINATION

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

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

Section 3-307. SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under Article 3 is commenced in a court of the commonwealth and the court determines that a proceeding to modify the determination is

pending in a court of another state having jurisdiction to modify the determination under Article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Section 3-308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION

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

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

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

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

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

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

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

(6) if the child-custody determination has been registered and confirmed under section 3-305, the date and place of registration.

(c) Upon the filing of a complaint or petition, the court shall issue an order directing the defendant or respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of the hearing at the request of the plaintiff or petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and shall advise the defendant or respondent that at the hearing the court will order that the plaintiff or petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 3-312, and may schedule a hearing to determine whether further relief is appropriate, unless the defendant or respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under section 3-305 and that:

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

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

(C) the defendant or respondent was entitled to notice, but notice was not given in accordance with the standards of section 1-108, in the proceedings before the court that issued the order for which enforcement is sought; or

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

Section 3-309. SERVICE OF COMPLAINT OR PETITION AND ORDER

Except as otherwise provided in section 3-311, the complaint or petition and order shall be served, by any method authorized by the law of the commonwealth, upon the respondent and any person who has physical custody of the child.

Section 3-310. HEARING AND ORDER

(a) Unless the court enters a temporary emergency order pursuant to section 2-204, upon a finding that a plaintiff or petitioner is entitled to immediate physical custody of the child, the court shall order that the plaintiff or petitioner may take immediate physical custody of the child unless the defendant or respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under section 3-305, and that:

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

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

(C) the defendant or respondent was entitled to notice, but notice was not given in accordance with the standards of section 1-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under section 3-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 or federal law.

(b) The court shall award the fees, costs, and expenses authorized under section 3-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

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

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

Section 3-311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

(a) Upon the filing of a complaint or petition seeking enforcement of a child-custody determination, the plaintiff or petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from the commonwealth.

(b) If the court, upon the testimony of the plaintiff or petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from the

commonwealth, it may issue a warrant to take physical custody of the child. The complaint or petition must be heard on the next judicial day after the warrant is executed unless it is impossible on that date. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 3-308(b).

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

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

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

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

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

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

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

Section 3-312. COSTS, FEES, AND EXPENSES

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

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than this act.

Section 3-313. RECOGNITION AND ENFORCEMENT

A court of the commonwealth shall accord full faith and credit to an order issued by another state and consistent with this act which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2.

Section 3-314. APPEALS

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

Section 3-315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL

(a) In a case arising under this act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under Article 3 or any other available

civil proceeding to locate a child, obtain the return of a child or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

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

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

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

Section 3-316. ROLE OF LAW ENFORCEMENT

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

Section 3-317. COSTS AND EXPENSES

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

ARTICLE 4. MISCELLANEOUS PROVISIONS

Section 4-401. APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 4-402. SEVERABILITY CLAUSE

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

SECTION 2. A motion or other request for relief made in a child-custody proceeding or to enforce a child custody determination which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

SECTION 3. This act shall take effect on July 1, 2019.