

SENATE No. 2618

The Commonwealth of Massachusetts

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

SENATE, July 19, 2018

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. 2500),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2618).

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. Chapter 209B of the General Laws is hereby amended by striking out sections
2 1 to 14, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the
3 following 4 articles:-

4 ARTICLE 1. GENERAL PROVISIONS

5 Section 1-101. SHORT TITLE

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

8 Section 1-102. DEFINITIONS

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

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

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

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

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

23 “Child-custody proceeding”, a proceeding in which legal custody, physical custody,
24 parenting time or visitation with respect to a child is an issue. The term shall include a proceeding
25 for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of
26 parental rights and protection from domestic violence, in which the issue may appear. The term
27 shall not include a proceeding involving juvenile delinquency, contractual emancipation or
28 enforcement under article 3.

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

30 “Court”, an entity authorized under the law of a state to establish, enforce or modify a
31 child-custody determination.

32 “Dependent household member”,

33 (1) the spouse of the parent or person acting as a parent;

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

35 (A) is under 18 years of age; or

36 (B) is incapable of self-support because of mental or physical incapacity and is
37 dependent on the parent or person acting as a parent for more than ½ of the child's support;

38 (3) a parent, if the parent is in fact dependent on the parent or person acting as a parent for
39 more than ½ of the parent's support; or

40 (4) an unmarried person of any age who:

41 (A) is placed in the legal custody of the parent or person acting as a parent as a
42 result of an order of a court of competent jurisdiction in a state for a period of not less than 12
43 consecutive months;

44 (B) is dependent on the parent or person acting as a parent for over ½ of the
45 unmarried person's support; or

46 (C) has resided with parent or person acting as a parent for not less than 12
47 consecutive months.

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

53 “Home state”, the state in which a child lived with a parent or a person acting as a parent
54 for not less than 6 consecutive months immediately before the commencement of a child-custody
55 proceeding. For a child less than 6 months of age, “home state” shall mean the state in which the
56 child lived from birth with any of the persons mentioned. A period of temporary absence of any
57 of the mentioned persons is part of the period.

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

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

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

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

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

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

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

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

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

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

77 “Tribe”, an Indian tribe or band or Alaskan Native village that is recognized by federal law
78 or formally acknowledged by a state.

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

81 Section 1-103. PROCEEDINGS GOVERNED BY OTHER LAW

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

84 Section 1-104. APPLICATION TO INDIAN TRIBES

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

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

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

93 Section 1-105. INTERNATIONAL APPLICATION OF ACT

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

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

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

101 Section 1-106. EFFECT OF CHILD-CUSTODY DETERMINATION

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

108 Section 1-107. PRIORITY

109 If a question of existence or exercise of jurisdiction under this act is raised in a child-
110 custody proceeding, the question, upon request of a party, shall be given priority on the calendar
111 and handled expeditiously. A hearing on the matter, allowing for telephonic appearance by the
112 out-of-state party, if requested under subsection (d) of section 1-111, shall occur not more than 60
113 days after the date of request. This court shall issue a written decision on the question of
114 jurisdiction not more than 15 calendar days after the date of the hearing.

115 Section1-108. NOTICE TO PERSONS OUTSIDE STATE

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

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

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

125 Section 1-109. APPEARANCE AND LIMITED IMMUNITY

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

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

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

138 Section 1-110. COMMUNICATION BETWEEN COURTS

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

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

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

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

150 (e) For the purposes of this section, “record” shall mean information that is inscribed on a
151 tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable
152 form.

153 Section 1-111. TAKING TESTIMONY IN ANOTHER STATE

154 (a) In addition to other procedures available to a party, a party to a child-custody proceeding
155 may offer testimony of witnesses who are located in another state, including testimony of the

156 parties and the child, by deposition or other means allowable in the commonwealth for testimony
157 taken in another state. The court on its own motion may order that the testimony of a person be
158 taken in another state and may prescribe the manner in which and the terms upon which the
159 testimony is taken.

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

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

167 (d) If, at any time, an out-of-state party contests the jurisdiction of the court under section
168 2-202 or 2-208 or raises a claim that the court is an inconvenient forum under section 2-207, the
169 party may request to participate electronically or by telephone in a hearing on the issue of
170 jurisdiction or the inconvenience of the forum. In making the request for the electronic or
171 telephonic participation, the party shall provide a reason for the request that shall include, but not
172 be limited to, whether domestic violence or financial hardship prohibits that party from attending
173 a hearing in the commonwealth.

174 If an out-of-state party contests the jurisdiction of the court under section 2-202 or 2-208
175 or raises a claim that the court is an inconvenient forum under section 2-207, the court shall first
176 hold a preliminary hearing at which the requesting party shall be permitted to appear electronically
177 or by telephone to present evidence about the reasons for the inability to attend a hearing in person

178 and whether there are remedial orders that the court may issue that would enable the person to
179 attend a hearing in person.

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

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

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

187 (1) hold an evidentiary hearing;

188 (2) order a person to produce or give evidence pursuant to procedures of that state;

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

191 (4) forward to the court of the commonwealth a certified copy of the transcript of
192 the record of the hearing, the evidence otherwise presented and any evaluation prepared in
193 compliance with the request; and

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

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

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

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

204 ARTICLE 2. JURISDICTION

205 Section 2-201. INITIAL CHILD-CUSTODY JURISDICTION

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

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

212 (2) a court of another state does not have jurisdiction under paragraph (1) or a court
213 of the home state of the child has declined to exercise jurisdiction on the ground that the
214 commonwealth is the more appropriate forum under section 2-207 or 2-208 and:

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

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

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

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

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

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

229 Section 2-202. EXCLUSIVE, CONTINUING JURISDICTION

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

233 (1) a court of the commonwealth determines that neither the child, nor the child and
234 1 parent, nor the child and a person acting as a parent have a significant connection with the
235 commonwealth and that substantial evidence is no longer available in the commonwealth
236 concerning the child's care, protection, training and personal relationships;

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

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

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

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

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

254 Section 2-203. JURISDICTION TO MODIFY DETERMINATION

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

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

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

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

267 Section 2-204. TEMPORARY EMERGENCY JURISDICTION

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

273 (b) If there is no previous child-custody determination that is entitled to be enforced under
274 this act and a child-custody proceeding has not been commenced in a court of a state having
275 jurisdiction under sections 2-201 to 2-203, inclusive, a child-custody determination made under
276 this section remains in effect until an order is obtained from a court of a state having jurisdiction
277 under said sections 2-201 to 2-203, inclusive. If a child-custody proceeding has not been or is not
278 commenced in a court of a state having jurisdiction under sections 2-201 to 2-203, inclusive, a
279 child-custody determination made under this section becomes a final determination, if it so
280 provides and the commonwealth becomes the home state of the child.

281 (c) If there is a previous child-custody determination that is entitled to be enforced under
282 this act or a child-custody proceeding has been commenced in a court of a state having jurisdiction
283 under sections 2-201 to 2-203, inclusive, any order issued by a court of the commonwealth under
284 this section shall specify in the order a period that the court considers adequate to allow the person
285 seeking an order to obtain an order from the state having jurisdiction under said sections 2-201 to
286 2-203, inclusive. The order issued in the commonwealth remains in effect until an order is obtained
287 from the other state within the period specified or the period expires.

288 (d) A court of the commonwealth that has been asked to make a child-custody
289 determination under this section, upon being informed that a child-custody proceeding has been
290 commenced in, or a child-custody determination has been made by, a court of a state having
291 jurisdiction under sections 2-201 to 2-203, inclusive, shall immediately communicate with the
292 other court. A court of the commonwealth that is exercising jurisdiction pursuant to sections 2-201
293 to 2-203, inclusive, upon being informed that a child-custody proceeding has been commenced in,
294 or a child-custody determination has been made by, a court of another state under a statute similar
295 to this section shall immediately communicate with the court of that state to resolve the emergency,
296 protect the safety of the parties and the child and determine a period for the duration of the
297 temporary order.

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

299 (a) Before a child-custody determination is made under this act, notice and an opportunity
300 to be heard in accordance with the standards of section 1-108 shall be given to all persons entitled
301 to notice under the law of the commonwealth as in child-custody proceedings between residents

302 of the commonwealth, any parent whose parental rights have not been previously terminated and
303 any person having physical custody of the child.

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

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

309 Section 2-206. SIMULTANEOUS PROCEEDINGS

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

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

324 (c) In a proceeding to modify a child-custody determination, a court of the commonwealth
325 shall determine whether a proceeding to enforce the determination has been commenced in another
326 state. If a proceeding to enforce a child-custody determination has been commenced in another
327 state, the court may:

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

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

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

332 SECTION 2-207. INCONVENIENT FORUM

333 (a) A court of the commonwealth that has jurisdiction under this act to make a child-
334 custody determination may decline to exercise its jurisdiction at any time if it determines that it is
335 an inconvenient forum under the circumstances and that a court of another state is a more
336 appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the
337 court's own motion or request of another court.

338 (b) Before determining whether it is an inconvenient forum, a court of the commonwealth
339 shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this
340 purpose, the court shall allow the parties to submit information and shall consider all relevant
341 factors including:

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

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

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

347 (4) the relative financial circumstances of the parties;

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

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

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

353 (8) the familiarity of the court of each state with the facts and issues of the pending
354 litigation.

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

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

362 Section 2-208. JURISDICTION DECLINED BY REASON OF CONDUCT

363 (a) Except as otherwise provided in section 2-204 or by another law of the commonwealth,
364 if a court of the commonwealth has jurisdiction under this act because a person seeking to invoke

365 its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its
366 jurisdiction unless:

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

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

371 (3) no court of any other state would have jurisdiction under the criteria specified
372 in sections 2-201 to 2-203, inclusive.

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

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

384 Section 2-209. INFORMATION TO BE SUBMITTED TO COURT

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

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

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

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

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

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

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

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

414 Section 2-210. APPEARANCE OF PARTIES AND CHILD

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

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

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

426 (d) If a party to a child-custody proceeding who is outside the commonwealth is directed
427 to appear under subsection (b) or desires to appear personally before the court with or without the

428 child, the court may require another party to pay reasonable and necessary travel and other
429 expenses of the party so appearing and of the child.

430 ARTICLE 3. ENFORCEMENT

431 Section 3-301. DEFINITIONS

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

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

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

440 Section 3-302. ENFORCEMENT UNDER HAGUE CONVENTION.

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

444 Section 3-303. DUTY TO ENFORCE

445 (a) A court of the commonwealth shall recognize and enforce a child-custody
446 determination of a court of another state if the latter court exercised jurisdiction in substantial
447 conformity with this act or the determination was made under factual circumstances meeting the

448 jurisdictional standards of this act and the determination has not been modified in accordance with
449 this act.

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

454 Section 3-304. TEMPORARY VISITATION

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

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

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

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

464 Section 3-305. REGISTRATION OF CHILD-CUSTODY DETERMINATION

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

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

469 (2) 2 copies, including 1 certified copy, of the determination sought to be registered
470 and a statement under penalty of perjury that to the best of the knowledge and belief of the person
471 seeking registration the order has not been modified; and

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

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

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

481 (c) The notice required by clause (2) of subsection (b) shall state that:

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

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

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

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

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

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

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

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

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

504 Section 3-306. ENFORCEMENT OF REGISTERED DETERMINATION

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

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

510 Section 3-307. SIMULTANEOUS PROCEEDINGS

511 If a proceeding for enforcement under article 3 is commenced in a court of the
512 commonwealth and the court determines that a proceeding to modify the determination is pending
513 in a court of another state having jurisdiction to modify the determination under article 2, the
514 enforcing court shall immediately communicate with the modifying court. The proceeding for
515 enforcement continues unless the enforcing court, after consultation with the modifying court,
516 stays or dismisses the proceeding.

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

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

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

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

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

528 (3) whether any proceeding has been commenced that could affect the current
529 proceeding, including proceedings relating to domestic violence, protective orders, termination of

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

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

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

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

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

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

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

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

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

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

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

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

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

565 Section 3-310. HEARING AND ORDER

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

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

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

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

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

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

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

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

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

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

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

595 (b) If the court, upon the testimony of the plaintiff or petitioner or other witness, finds that
596 the child is imminently likely to suffer serious physical harm or be removed from the
597 commonwealth, it may issue a warrant to take physical custody of the child. The complaint or
598 petition shall be heard on the next judicial day after the warrant is executed unless it is impossible
599 on that date. In that event, the court shall hold the hearing on the first judicial day possible. The
600 application for the warrant shall include the statements required by subsection (b) of section 3-
601 308.

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

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

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

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

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

610 (e) A warrant to take physical custody of a child is enforceable throughout the
611 commonwealth. If the court finds on the basis of the testimony of the plaintiff or petitioner or other

612 witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to
613 enter private property to take physical custody of the child. If required by the exigency
614 circumstances of the case, the court may authorize law enforcement officers to make a forcible
615 entry at any hour.

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

618 Section 3-312. COSTS, FEES, AND EXPENSES

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

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

626 Section 3-313. RECOGNITION AND ENFORCEMENT

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

631 Section 3-314. APPEALS

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

636 Section 3-315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL

637 (a) In a case arising under this act or involving the Hague Convention on the Civil Aspects
638 of International Child Abduction, the prosecutor or other appropriate public official may take any
639 lawful action, including resort to a proceeding under article 3 or any other available civil
640 proceeding to locate a child, to obtain the return of a child or enforce a child-custody determination
641 if there is:

642 (1) an existing child-custody determination;

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

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

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

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

649 Section 3-316. ROLE OF LAW ENFORCEMENT

650 At the request of a prosecutor or other appropriate public official acting under section 3-
651 315, a law enforcement officer may take any lawful action reasonably necessary to locate a child

652 or a party and assist a prosecutor or appropriate public official with responsibilities under said
653 section 3-315.

654 Section 3-317. COSTS AND EXPENSES

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

658 ARTICLE 4. MISCELLANEOUS PROVISIONS

659 Section 4-401. APPLICATION AND CONSTRUCTION

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

662 Section 4-402. SEVERABILITY CLAUSE

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

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

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