

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1657 OF .]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

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

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

3
4 Chapter 208A
5

6 **ARTICLE 1**

7 **GENERAL PROVISIONS**

8
9
10 **SECTION 101. SHORT TITLE.** This Act may be cited as the Uniform Child-Custody Jurisdiction and
11 Enforcement Act.

12
13 **SECTION 102. DEFINITIONS.** In this Act:

14
15 (1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

16
17 (2) "Child" means an individual who has not attained 18 years of age.

18
19 (3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal
20 custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial,
21 and modification order. The term does not include an order relating to child support or other monetary obligation of
22 an individual.

23
24 (4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with
25 respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency,
26 guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue

27 may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or
28 enforcement under Article 3.

29
30 (5) "Commencement" means the filing of the first pleading in a proceeding.

31
32 (6) "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody
33 determination.

34
35 (7) "Home State" means the State in which a child lived with a parent or a person acting as a parent for at least six
36 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less
37 than six months of age, the term means the State in which the child lived from birth with any of the persons
38 mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

39
40 (8) "Initial determination" means the first child-custody determination concerning a particular child.

41
42 (9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under
43 this Act.

44
45 (10) "Issuing State" means the State in which a child-custody determination is made.

46
47 (11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made
48 after a previous determination concerning the same child, whether or not it is made by the court that made the
49 previous determination.

50
51 (12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or
52 commercial entity.

53
54 (13) "Person acting as a parent" means a person, other than a parent, who:

55
56 (A) has physical custody of the child or has had physical custody for a period of six consecutive months, including
57 any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

58
59 (B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

60
61 (14) "Physical custody" means the physical care and supervision of a child.

62
63 (15) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin
64 Islands, or any territory or insular possession subject to the jurisdiction of the United States.

65
66 (16) "Tribe" means an Indian tribe, or band, or Alaskan Native village, which is recognized by federal law or
67 formally acknowledged by a State.

68
69 (17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a
70 child.

71
72 **SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.** This Act does not govern:

73
74 (1) An adoption proceeding; or

75
76 (2) A proceeding pertaining to the authorization of emergency medical care for a child.

77
78 **SECTION 104. APPLICATION TO INDIAN TRIBES.**

79
80 (a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C.
81 1901 et seq., is not subject to this Act to the extent it is governed by the Indian Child Welfare Act.

82

83 (b) A court of this State shall treat a tribe as a State of the United States for purposes of Articles 1 and 2.
84

85 (c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the
86 jurisdictional standards of this Act must be recognized and enforced under the provisions of Article 3.
87

88 **SECTION 105. INTERNATIONAL APPLICATION OF ACT.**
89

90 (a) A court of this State shall treat a foreign country as a State of the United States for purposes of applying Articles
91 1 and 2.
92

93 (b) A child-custody determination made in a foreign country under factual circumstances in substantial conformity
94 with the jurisdictional standards of this Act must be recognized and enforced under Article 3 of this Act.
95

96 (c) The court need not apply the provisions of this Act when the child custody law of the other country violates
97 fundamental principles of human rights.
98

99 **SECTION 106. BINDING FORCE OF CHILD-CUSTODY DETERMINATION.** A child-custody
100 determination made by a court of this State that had jurisdiction under this Act binds all persons who have been
101 served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to
102 the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as
103 to them as to all decided issues of law and fact except to the extent the determination is modified.
104

105 **SECTION 107. PRIORITY.** If a question of existence or exercise of jurisdiction under this Act is raised in a child-
106 custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled
107 expeditiously.
108

109 **SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.**
110

111 (a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner
112 prescribed by the law of this State for the service of process or by the law of the State in which the service is made.
113 Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other
114 means are not effective.
115

116 (b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in
117 which the service is made.
118

119 (c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of
120 the court.
121

122 **SECTION 109. APPEARANCE AND LIMITED IMMUNITY.**
123

124 (a) A party to a child-custody proceeding who is not subject to personal jurisdiction in this State and is a responding
125 party under Article 2, a party in a proceeding to modify a child-custody determination under Article 2, or a petitioner
126 in a proceeding to enforce or register a child-custody determination under Article 3 may appear and participate in
127 the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.
128

129 (b) A party is not subject to personal jurisdiction in this State solely by being physically present for the purpose of
130 participating in a proceeding under this Act. If a party is subject to personal jurisdiction in this State on a basis other
131 than physical presence, the party may be served with process in this State. If a party present in this State is subject to
132 the jurisdiction of another State, service of process allowable under the laws of that State may be accomplished in
133 this State.
134

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

138 **SECTION 110. COMMUNICATION BETWEEN COURTS.**

- 139
140 (a) A court of this State may communicate with a court in another State concerning a proceeding arising under this
141 Act.
142
143 (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in
144 the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision
145 on jurisdiction is made.
146
147 (c) A communication between courts on schedules, calendars, court records, and similar matters may occur without
148 informing the parties. A record need not be made of that communication.
149
150 (d) Except as provided in subsection (c), a record must be made of the communication. The parties must be informed
151 promptly of the communication and granted access to the record.
152
153 (e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which
154 is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or
155 transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a
156 telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum
157 or an electronic record made by a court after the communication.
158

159 **SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.**
160

- 161 (a) In addition to other procedures available to a party, a party to a child- custody proceeding may offer testimony of
162 witnesses who are located in another State, including testimony of the parties and the child, by deposition or other
163 means allowable in this State for testimony taken in another State. The court on its own motion may order that the
164 testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which
165 the testimony is taken.
166
167 (b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone,
168 audiovisual means, or other electronic means before a designated court or at another location in that State. A court of
169 this State shall cooperate with courts of other States in designating an appropriate location for the deposition or
170 testimony.
171
172 (c) Documentary evidence transmitted from another State to a court of this State by technological means that do not
173 produce an original writing may not be excluded from evidence on an objection based on the means of transmission.
174

175 **SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.**
176

- 177 (a) A court of this State may request the appropriate court of another State to:
178
179 (1) hold an evidentiary hearing;
180
181 (2) order a person to produce or give evidence under procedures of that State;
182
183 (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
184
185 (4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence
186 otherwise presented, and any evaluation prepared in compliance with the request; and
187
188 (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the
189 proceeding with or without the child.
190
191 (b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in
192 subsection (a).
193

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

196
197 (d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other
198 pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate
199 request by a court or law enforcement official of another State, the court shall forward a certified copy of these
200 records.

201
202 **ARTICLE 2**

203
204 **JURISDICTION**

205
206 **SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.**

207
208 (a) Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody
209 determination only if:

210
211 (1) this State is the home State of the child on the date of the commencement of the proceeding, or was the home
212 State of the child within six months before the commencement of the proceeding and the child is absent from this
213 State but a parent or person acting as a parent continues to live in this State;

214
215 (2) a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child
216 has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or
217 208, and:

218
219 (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a
220 significant connection with this State other than mere physical presence; and

221
222 (B) substantial evidence is available in this State concerning the child's care, protection, training, and personal
223 relationships;

224
225 (3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that
226 a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

227
228 (4) no State would have jurisdiction under paragraph (1), (2), or (3).

229
230 (b) Subsection (a) is the exclusive jurisdictional basis for making a child- custody determination by a court of this
231 State.

232
233 (c) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a
234 child-custody determination.

235
236 **SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.**

237
238 (a) Except as otherwise provided in Section 204, a court of this State that has made a child-custody determination
239 consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

240
241 (1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting
242 as a parent have a significant connection with this State and that substantial evidence is no longer available in this
243 State concerning the child's care, protection, training, and personal relationships; or

244
245 (2) a court of this State or a court of another State determines that neither the child, nor a parent, nor any person
246 acting as a parent presently resides in this State; or

247
248 (3) the court finds that a parent or person acting as a parent who resides in Massachusetts has engaged in a serious
249 incident or pattern of abuse as defined by c. 208, §28A against the other parent or person acting as a parent, or

250 against a child who is the subject of the proceeding. If the court so finds, it shall be presumed that this state does not
251 have continuing, exclusive jurisdiction over the determination unless the victim or the victim's custodial parent or
252 guardian consents to continuing, exclusive jurisdiction; or

253
254 (4) the parties mutually agree in writing that this state shall no longer have continuing, exclusive jurisdiction and
255 said agreement has been approved by the court.

256
257 (b) A court of this State that has exclusive, continuing jurisdiction under this section may decline to exercise its
258 jurisdiction if the court determines that it is an inconvenient forum under Section 207.

259
260 (c) A court of this State that has made a child-custody determination and does not have exclusive, continuing
261 jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial
262 determination under Section 201.

263
264 **SECTION 203. JURISDICTION TO MODIFY CHILD CUSTODY DETERMINATION.** Except as otherwise
265 provided in Section 204, a court of this State may not modify a child-custody determination made by a court of
266 another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or
267 (2) and:

268
269 (1) the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or
270 that a court of this State would be a more convenient forum under Section 207;

271
272 (2) a court of this State or a court of the other State determines that neither the child, nor a parent, nor any person
273 acting as a parent presently resides in the other State; or

274
275 (3) the parents or all persons acting as parents have mutually agreed in writing that this state shall have the authority
276 to modify a determination and such agreement has been approved by the court.

277
278 **SECTION 204. TEMPORARY EMERGENCY JURISDICTION.**

279
280 (a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has
281 been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the
282 child, is subjected to or threatened with mistreatment or abuse.

283
284 (b) If there is no previous child-custody determination that is entitled to be enforced under this Act, and if no child-
285 custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, a
286 child-custody determination made under this section remains in effect until an order is obtained from a court of a
287 State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not
288 commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination
289 made under this section becomes a final determination, if:

290
291 (1) it so provides; and
292 (2) this State becomes the home State of the child.

293
294 (c) If there is a previous child-custody determination that is entitled to be enforced under this Act, or a child-custody
295 proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, any order
296 issued by a court of this State under this section must specify in the order a period of time which the court considers
297 adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under Sections
298 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State
299 within the period specified or the period expires.

300
301 (d) A court of this State that has been asked to make a child-custody determination under this section, upon being
302 informed that a child-custody proceeding has been commenced, or a child-custody determination has been made, by
303 a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other
304 court. A court of this State that is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed
305 that a child-custody proceeding has been commenced, or a child-custody determination has been made by a court of

306 another State under a statute similar to this section shall immediately communicate with the court of that State. The
307 purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and
308 determine a period for the duration of the temporary order.

309
310 **SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.**

311
312 (a) Before a child-custody determination is made under this Act, notice and an opportunity to be heard in accordance
313 with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in
314 child-custody proceedings between residents of this State, any parent whose parental rights have not been previously
315 terminated, and any person having physical custody of the child.

316
317 (b) This Act does not govern the enforceability of a child-custody determination made without notice and an
318 opportunity to be heard.

319
320 (c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Act
321 are governed by the law of this State as in child-custody proceedings between residents of this State.

322
323 **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

324
325 (a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this
326 Article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had
327 been previously commenced in a court of another State having jurisdiction substantially in conformity with this Act,
328 unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is
329 a more convenient forum under Section 207.

330
331 (b) Except as otherwise provided in Section 204, a court of this State, before hearing a child-custody proceeding,
332 shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court
333 determines that a child-custody proceeding was previously commenced in a court in another State having
334 jurisdiction substantially in accordance with this Act, the court of this State shall stay its proceeding and
335 communicate with the court of the other State. If the court of the State having jurisdiction substantially in
336 accordance with this Act does not determine that the court of this State is a more appropriate forum, the court of this
337 State shall dismiss the proceeding.

338
339 (c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a
340 proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-
341 custody determination has been commenced in another State, the court may:

342
343 (1) stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying,
344 denying, or dismissing the proceeding for enforcement;

345
346 (2) enjoin the parties from continuing with the proceeding for enforcement; or

347
348 (3) proceed with the modification under conditions it considers appropriate.

349
350 **SECTION 207. INCONVENIENT FORUM.**

351
352 (a) A court of this State that has jurisdiction under this Act to make a child-custody determination may decline to
353 exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that
354 a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's
355 own motion, request of another court, or motion of a party.

356
357 (b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is
358 appropriate that a court of another State exercise jurisdiction. For this purpose, the court shall allow the parties to
359 submit information and shall consider all relevant factors, including:

360

- 361 (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect
362 the parties and the child;
363
364 (2) the length of time the child has resided outside this State;
365
366 (3) the distance between the court in this State and the court in the State that would assume jurisdiction;
367
368 (4) the relative financial circumstances of the parties and the effect of such circumstance on the ability to litigate in a
369 foreign jurisdiction;
370
371 (5) any agreement of the parties as to which State should assume jurisdiction;
372
373 (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the
374 child;
375
376 (7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the
377 evidence; and
378
379 (8) the familiarity of the court of each State with the facts and issues of the pending litigation.
380
381 (c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more
382 appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly
383 commenced in another designated State and may impose any other condition the court considers just and proper.
384
385 (d) A court of this State may decline to exercise its jurisdiction under this Act if a child-custody determination is
386 incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other
387 proceeding.
388

389 **SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.**
390

- 391 (a) Except as otherwise provided in Section 204 or by other law of this State, if a court of this State has jurisdiction
392 under this Act because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall
393 decline to exercise its jurisdiction unless:
394
395 (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
396
397 (2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a
398 more appropriate forum under Section 207; or
399
400 (3) no other State would have jurisdiction under Sections 201 through 203.
401
402 (b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an
403 appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including
404 staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections
405 201 through 203.
406
407 (c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to
408 subsection (a), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses
409 including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses,
410 and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the
411 award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State except as
412 otherwise provided by law other than this Act.
413
414
415

416 **SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.**

417
418 (a) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information,
419 in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if
420 reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the
421 last five years, and the names and present addresses of the persons with whom the child has lived during that period.
422 The pleading or affidavit must state whether the party:

423
424 (1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of
425 or visitation with the child and, if so, identify the court, the case number of the proceeding, and the date of the child-
426 custody determination, if any;

427
428 (2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and
429 proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so,
430 identify the court and the case number and the nature of the proceeding; and

431
432 (3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child
433 or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and
434 addresses of those persons.

435
436 (b) If the information required by subsection (a) is not furnished, the court, upon its own motion or that of a party,
437 may stay the proceeding until the information is furnished.

438
439 (c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the
440 declarant shall give additional information under oath as required by the court. The court may examine the parties
441 under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the
442 disposition of the case.

443
444 (d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect
445 the current proceeding.

446
447 (e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child
448 would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed
449 to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court
450 takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the
451 interest of justice.

452
453 **SECTION 210. APPEARANCE OF PARTIES AND CHILD.**

454
455 (a) A court of this State may order a party to a child-custody proceeding who is in this State to appear before the
456 court personally with or without the child. The court may order any person who is in this State and who has physical
457 custody or control of the child to appear physically with the child.

458
459 (b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court
460 may order that a notice given pursuant to Section 108 include a statement directing the party to appear personally
461 with or without the child and declaring that failure to appear may result in a decision adverse to the party.

462
463 (c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear
464 under this section.

465
466 (d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or
467 desires to appear personally before the court with or without the child, the court may require another party to pay
468 reasonable and necessary travel and other expenses of the party so appearing and of the child.

469
470 **ARTICLE 3**

471 **ENFORCEMENT**
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SECTION 301. DEFINITIONS. In this Article:

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

SECTION 302. SCOPE; TEMPORARY VISITATION.

(a) This Article may be invoked to enforce:

- (1) a child-custody determination; and
 - (2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.
- (b) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing
- (1) a visitation schedule made by a court of another State; or
 - (2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

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

SECTION 303. DUTY TO ENFORCE.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction that was 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 may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The procedure provided by this Article does not affect the availability of other remedies to enforce a child-custody determination.

SECTION 304. REGISTRATION OF CHILD-CUSTODY DETERMINATION.

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

- (1) a letter or other document requesting registration;
- (2) two copies, including one 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

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

530
531 (b) On receipt of the documents required by subsection (a), the registering court shall:

532
533 (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying
534 documents and information, regardless of their form; and

535
536 (2) serve notice upon the persons named pursuant to (a)(3) and provide them with an opportunity to contest the
537 registration in accordance with this section.

538
539 (c) The notice required by subsection (b)(2) must state:

540
541 (1) that a registered determination is enforceable as of the date of the registration in the same manner as a
542 determination issued by a court of this State;

543
544 (2) that a hearing to contest the validity of the registered determination must be requested within 20 days after
545 service of notice; and

546
547 (3) that failure to contest the registration will result in confirmation of the child-custody determination and preclude
548 further contest of that determination with respect to any matter that could have been asserted.

549
550 (d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service
551 of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration
552 establishes that:

553
554 (1) the issuing court did not have jurisdiction under Article 2;

555
556 (2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a
557 State having jurisdiction to do so under Article 2; or

558
559 (3) the person contesting registration was entitled to notice, but notice was not given in accordance with the
560 standards of Section 108 in the proceedings before the court that issued the order for which registration is sought.

561
562 (e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is
563 confirmed as a matter of law and the person requesting registration and all persons served must be notified of the
564 confirmation.

565
566 (f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further
567 contest of the order with respect to any matter which could have been asserted at the time of registration.

568
569 **SECTION 305. ENFORCEMENT OF REGISTERED DETERMINATION.**

570
571 (a) A court of this State may grant any relief normally available under the law of this State to enforce a registered
572 child-custody determination made by a court of another State.

573
574 (b) A court of this State shall recognize and enforce, but may not modify except in accordance with Article 2, a
575 registered child-custody determination of another State.

576
577 **SECTION 306. SIMULTANEOUS PROCEEDINGS.** If a proceeding for enforcement under this Article has been
578 or is commenced in this State and a court of this State determines that a proceeding to modify the determination has
579 been commenced in another State having jurisdiction to modify the determination under Article 2, the enforcing
580 court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless
581 the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

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SECTION 307. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.

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

(b) A 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 must be enforced under this Act or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(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 and the case number and the nature of the proceeding;

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

(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.

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

(d) The court shall issue an order directing the 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.

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

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

(1) the child-custody determination has not been registered and confirmed under Section 304, 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 federal law; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 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 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under Article 2 or federal law.

639 **SECTION 308. SERVICE OF PETITION AND ORDER.** Except as otherwise provided in Section 310, the
640 petition and order must be served, by any method authorized by the law of this State, upon respondent and any
641 person who has physical custody of the child.
642

643 **SECTION 309. HEARING AND ORDER.**
644

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

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

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

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

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

654 (2) the child-custody determination for which enforcement is sought was registered and confirmed under Section
655 304, but has been vacated, stayed or modified by a court of a State having jurisdiction to do so under Article 2 or
656 federal law.

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

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

662 (d) A privilege against disclosure of communications between spouses and a defense of immunity based on the
663 relationship of husband and wife or parent and child may not be invoked in a proceeding under this Article.
664

665 **SECTION 310. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**
666

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

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

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

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

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

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

679 (d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into
680 physical custody.
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696 (e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis
697 of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law
698 enforcement officers to enter private property to take physical custody of the child. If required by the exigency of
699 the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

700
701 (f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's
702 custodian.

703
704 **SECTION 311. COSTS, FEES, AND EXPENSES.**
705

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

710
711 (b) The court may not assess fees, costs, or expenses against a State except as otherwise provided by law other than
712 this Act.

713
714 **SECTION 312. RECOGNITION AND ENFORCEMENT.** A court of this State shall accord full faith and credit
715 to an order made consistently with this Act which enforces a child-custody determination by a court of another State
716 unless the order has been vacated, stayed, or modified by a court authorized to do so under Article 2.

717
718 **SECTION 313. APPEALS.** An appeal may be taken from a final order in a proceeding under this [article] in
719 accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency
720 order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending
721 appeal.

722
723 **SECTION 314. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.**
724

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

- 729
730 (1) an existing child-custody determination;
731
732 (2) a request from a court in a pending child-custody case;
733
734 (3) a reasonable belief that a criminal statute has been violated; or
735
736 (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention
737 on the Civil Aspects of International Child Abduction.

738
739 (b) A prosecutor or appropriate public official acts on behalf of the court and may not represent any party to a child-
740 custody determination.

741
742 **SECTION 315. ROLE OF LAW ENFORCEMENT.** At the request of a prosecutor or other appropriate public
743 official acting under Section 314, a law enforcement officer may take any lawful action reasonably necessary to
744 locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 314.

745
746 **SECTION 316. COSTS AND EXPENSES.** If the respondent is not the prevailing party, the court may assess
747 against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official
748 and law enforcement officers under Section 314 or 315.

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ARTICLE 4

MISCELLANEOUS PROVISIONS

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

SECTION 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 403. EFFECTIVE DATE. This Act takes effect on January 1, 2005

SECTION 404. REPEALS AND AMENDMENTS.

(1) The Uniform Child Custody Jurisdiction Act, G. L. c. 209B, is hereby repealed.

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

SECTION 405. TRANSITIONAL PROVISION. A motion or other request for relief made in a child-custody or enforcement proceeding that 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.