

**SENATE . . . . . No. 00713**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Cynthia S. Creem*

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*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.

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PETITION OF:

NAME:

*Cynthia S. Creem*

DISTRICT/ADDRESS:

*First Middlesex and Norfolk*

# SENATE . . . . . No. 00713

By Ms. Creem, petition (accompanied by bill, Senate, No. 713) of Creem for legislation to establish a uniform child custody jurisdiction and enforcement law [Joint Committee on the Judiciary].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1578 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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. The General Laws as appearing in the 2004 Official Edition are hereby  
2 amended by inserting after Chapter 208 the following new chapter:-

3 Chapter 208A

4 ARTICLE 1

5 GENERAL PROVISIONS

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

8                   SECTION 102. DEFINITIONS. In this Act:

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

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

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

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

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

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

25                   (7) "Home State" means the State in which a child lived with a parent or a  
26 person acting as a parent for at least six consecutive months immediately before the  
27 commencement of a child-custody proceeding. In the case of a child less than six months of age,

28 the term means the State in which the child lived from birth with any of the persons mentioned.  
29 A period of temporary absence of any of the mentioned persons is part of the period.

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

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

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

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

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

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

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

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

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

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

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

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

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

57 (1) An adoption proceeding; or

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

60 SECTION 104. APPLICATION TO INDIAN TRIBES.

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

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

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

69 SECTION 105. INTERNATIONAL APPLICATION OF ACT.

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

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

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

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

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

86 SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

96 SECTION 109. APPEARANCE AND LIMITED IMMUNITY.

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

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

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

112 SECTION 110. COMMUNICATION BETWEEN COURTS.

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

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

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

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

125 (e) For the purposes of this section, "record" means information  
126 that is inscribed on a tangible medium or that which is stored in an electronic or other medium  
127 and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter  
128 who listened to a conference call between the courts, an electronic recording of a telephone call,



129 a memorandum or an electronic record of the communication between the courts, or a  
130 memorandum or an electronic record made by a court after the communication.

131 SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

146 SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF  
147 RECORDS.

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

- 150 (1) hold an evidentiary hearing;
- 151 (2) order a person to produce or give evidence under procedures of that  
152 State;
- 153 (3) order that an evaluation be made with respect to the custody of a child  
154 involved in a pending proceeding;
- 155 (4) forward to the court of this State a certified copy of the transcript of the  
156 record of the hearing, the evidence otherwise presented, and any evaluation prepared in  
157 compliance with the request; and
- 158 (5) order a party to a child-custody proceeding or any person having  
159 physical custody of the child to appear in the proceeding with or without the child.
- 160 (b) Upon request of a court of another State, a court of this State  
161 may hold a hearing or enter an order described in subsection (a).
- 162 (c) Travel and other necessary and reasonable expenses incurred  
163 under subsections (a) and (b) may be assessed against the parties according to the law of this  
164 State.
- 165 (d) A court of this State shall preserve the pleadings, orders,  
166 decrees, records of hearings, evaluations, and other pertinent records with respect to a child-  
167 custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or  
168 law enforcement official of another State, the court shall forward a certified copy of these  
169 records.

171 JURISDICTION

172 SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.

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

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

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

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

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

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

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

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

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

195 SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.

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

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

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

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

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

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

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