

SENATE No. 886

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 adoption of the accompanying bill:

An Act relative to the Uniform Child Custody Jurisdiction and Enforcement Act.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 886

By Ms. Creem, a petition (accompanied by bill, Senate, No. 886) of Cynthia Stone Creem for legislation relative to the Uniform Child Custody Jurisdiction and Enforcement Act. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 806 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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
2 sections 1 to 14, inclusive, as appearing in the 2016 Official Edition, and inserting in place
3 thereof the 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
15 dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts
16 designed to induce terror; (v) depriving another of medical care, housing, food or other
17 necessities of life; or (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
22 an 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
25 proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity,
26 termination of parental rights and protection from domestic violence, in which the issue may
27 appear. The term shall not include a proceeding involving juvenile delinquency, contractual
28 emancipation or 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 dependent
37 on the parent or person acting as a parent for more than $\frac{1}{2}$ 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
39 for more than $\frac{1}{2}$ 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 result of
42 an order of a court of competent jurisdiction in a state for a period of not less than 12 consecutive
43 months;

44 (B) is dependent on the parent or person acting as a parent for over $\frac{1}{2}$ of the unmarried
45 person's support; or

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

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

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

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

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

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

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

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

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

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

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

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

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

83 Section 1-103. PROCEEDINGS GOVERNED BY OTHER LAW

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

86 Section 1-104. APPLICATION TO INDIAN TRIBES

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

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

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

95 Section 1-105. INTERNATIONAL APPLICATION OF ACT

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

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

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

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

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

108 persons, the determination is conclusive as to all decided issues of law and fact except to the
109 extent the determination is modified.

110 Section 1-107. PRIORITY

111 If a question of existence or exercise of jurisdiction under this act is raised in a child-
112 custody proceeding, the question, upon request of a party, shall be given priority on the calendar
113 and handled expeditiously. A hearing on the matter, allowing for telephonic appearance by the
114 out-of-state party, if requested under subsection (d) of section 1-111, shall occur not more than
115 60 days after the date of request. This court shall issue a written decision on the question of
116 jurisdiction not more than 15 calendar days after the date of the hearing.

117 Section 1-108. NOTICE TO PERSONS OUTSIDE STATE

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

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

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

127 Section 1-109. APPEARANCE AND LIMITED IMMUNITY

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

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

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

141 Section 1-110. COMMUNICATION BETWEEN COURTS

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

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

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

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

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

156 Section 1-111. TAKING TESTIMONY IN ANOTHER STATE

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

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

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

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

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

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

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

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

190 (1) hold an evidentiary hearing;

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

192 (3) order that an evaluation be made with respect to the custody of a child involved in a

193 pending proceeding;

194 (4) forward to the court of the commonwealth a certified copy of the transcript of the

195 record of the hearing, the evidence otherwise presented and any evaluation prepared in

196 compliance with the request; and

197 (5) order a party to a child-custody proceeding or a person having physical custody of the

198 child to appear in the proceeding with or without the child.

199 (b) Upon request of a court of another state, a court of the commonwealth may hold a

200 hearing or enter an order described in subsection (a).

201 (c) Travel and other necessary and reasonable expenses incurred under subsections (a)

202 and (b) may be assessed against the parties according to the law of the commonwealth.

203 (d) A court of the commonwealth shall preserve the pleadings, orders, decrees, records of

204 hearings, evaluations and other pertinent records with respect to a child-custody proceeding until

205 the child attains 18 years of age. Upon appropriate request by a court or law enforcement official

206 of another state, the court shall forward a certified copy of those records.

207 ARTICLE 2. JURISDICTION

208 Section 2-201. INITIAL CHILD-CUSTODY JURISDICTION

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

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

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

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

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

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

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

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

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

232 Section 2-202. EXCLUSIVE, CONTINUING JURISDICTION

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

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

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

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

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

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

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

257 Section 2-203. JURISDICTION TO MODIFY DETERMINATION

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

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

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

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

270 Section 2-204. TEMPORARY EMERGENCY JURISDICTION

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

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

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

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

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

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

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

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

313 Section 2-206. SIMULTANEOUS PROCEEDINGS

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

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

328 (c) In a proceeding to modify a child-custody determination, a court of the
329 commonwealth shall determine whether a proceeding to enforce the determination has been
330 commenced in another state. If a proceeding to enforce a child-custody determination has been
331 commenced in another state, the court may:

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

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

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

336 SECTION 2-207. INCONVENIENT FORUM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

415 (e) If a party alleges in an affidavit or a pleading under oath that the health, safety or
416 liberty of a party or child would be jeopardized by disclosure of identifying information, the

417 information shall be sealed and shall not be disclosed to the other party or the public unless the
418 court orders the disclosure to be made after a hearing in which the court takes into consideration
419 the health, safety or liberty of the party or child and determines that the disclosure is in the
420 interest of justice.

421 Section 2-210. APPEARANCE OF PARTIES AND CHILD

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

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

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

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

437 ARTICLE 3. ENFORCEMENT

438 Section 3-301. DEFINITIONS

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

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

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

447 Section 3-302. ENFORCEMENT UNDER HAGUE CONVENTION.

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

451 Section 3-303. DUTY TO ENFORCE

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

457 (b) A court of the commonwealth may utilize any remedy available under other law of
458 the commonwealth to enforce a child-custody determination made by a court of another state.

459 The remedies provided in article 3 are cumulative and shall not affect the availability of other
460 remedies to enforce a child-custody determination.

461 Section 3-304. TEMPORARY VISITATION

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

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

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

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

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

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

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

476 (2) 2 copies, including 1 certified copy, of the determination sought to be registered and a
477 statement under penalty of perjury that to the best of the knowledge and belief of the person
478 seeking registration the order has not been modified; and

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

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

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

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

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

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

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

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

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

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

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

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

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

511 Section 3-306. ENFORCEMENT OF REGISTERED DETERMINATION

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

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

518 Section 3-307. SIMULTANEOUS PROCEEDINGS

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

521 pending in a court of another state having jurisdiction to modify the determination under article
522 2, the enforcing court shall immediately communicate with the modifying court. The proceeding
523 for enforcement continues unless the enforcing court, after consultation with the modifying
524 court, stays or dismisses the proceeding.

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

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

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

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

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

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

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

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

544 (6) if the child-custody determination has been registered and confirmed under section 3-
545 305, the date and place of registration.

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

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

557 (1) the child-custody determination has not been registered and confirmed under section
558 3-305 and that:

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

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

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

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

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

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

572 Section 3-310. HEARING AND ORDER

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

577 (1) the child-custody determination has not been registered and confirmed under section
578 3-305 and that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

631 Section 3-313. RECOGNITION AND ENFORCEMENT

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

636 Section 3-314. APPEALS

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

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

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

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

647 (1) an existing child-custody determination;

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

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

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

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

654 Section 3-316. ROLE OF LAW ENFORCEMENT

655 At the request of a prosecutor or other appropriate public official acting under section 3-
656 315, a law enforcement officer may take any lawful action reasonably necessary to locate a child
657 or a party and assist a prosecutor or appropriate public official with responsibilities under said
658 section 3-315.

659 Section 3-317. COSTS AND EXPENSES

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

663 ARTICLE 4. MISCELLANEOUS PROVISIONS

664 Section 4-401. APPLICATION AND CONSTRUCTION

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

667 Section 4-402. SEVERABILITY CLAUSE

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

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

675 SECTION 3. This act shall take effect on January 1, 2020.