

1 S.227

2 Introduced by Senator Nitka

3 Referred to Committee on

4 Date:

5 Subject: Domestic relations; uniform child custody jurisdiction and
6 enforcement act

7 Statement of purpose: This bill proposes to revise the law on child custody
8 jurisdiction in light of federal enactments and inconsistent case law among
9 various jurisdictions. The bill provides standards for which states can exercise
10 original jurisdiction over a child custody determination, enunciates a standard
11 of continuing jurisdiction, and clarifies modification jurisdiction. Other
12 aspects of the bill harmonize the law on simultaneous proceedings, clean
13 hands, and forum non conveniens. The bill also proposes to provide for a
14 remedial process to enforce interstate child custody and visitation
15 determinations. In doing so, it brings a uniform procedure to the law of
16 interstate enforcement.

17 An act relating to uniform child custody jurisdiction and enforcement

18 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 15 V.S.A. chapter 20 is added to read:

2 CHAPTER 20. UNIFORM CHILD CUSTODY

3 JURISDICTION AND ENFORCEMENT

4 Subchapter 1. General Provisions

5 § 1061. DEFINITIONS

6 As used in this chapter:

7 (1) “Abandoned” means left without provision for reasonable and
8 necessary care or supervision.

9 (2) “Child” means an individual who has not attained 18 years of age.

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

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

1 (5) “Commencement” means the filing of the first pleading in a
2 proceeding.

3 (6) “Court” means an entity authorized under the law of a state to
4 establish, enforce, or modify a child custody determination.

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

11 (8) “Initial determination” means the first child custody determination
12 concerning a particular child.

13 (9) “Issuing court” means the court that makes a child custody
14 determination for which enforcement is sought under this chapter.

15 (10) “Issuing state” means the state in which a child custody
16 determination is made.

17 (11) “Modification” means a child custody determination that changes,
18 replaces, supersedes, or is otherwise made after a previous determination
19 concerning the same child, whether or not it is made by the court that made the
20 previous determination.

1 (12) “Person” means an individual, corporation, business trust, estate,
2 trust, partnership, limited liability company, association, joint venture,
3 government; governmental subdivision, agency, or instrumentality; public
4 corporation; or any other legal or commercial entity.

5 (13) “Person acting as a parent” means a person, other than a parent,
6 who:

7 (A) has physical custody of the child or has had physical custody for
8 a period of six consecutive months, including any temporary absence, within
9 one year immediately before the commencement of a child custody
10 proceeding; and

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

13 (14) “Physical custody” means the physical care and supervision of a
14 child.

15 (15) “State” means a state of the United States, the District of Columbia,
16 Puerto Rico, the United States Virgin Islands, or any territory or insular
17 possession subject to the jurisdiction of the United States.

18 (16) “Warrant” means an order issued by a court authorizing law
19 enforcement officers to take physical custody of a child.

1 § 1062. PROCEEDINGS GOVERNED BY OTHER LAW

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

4 § 1063. APPLICATION TO INDIAN TRIBES; INTERNATIONAL
5 APPLICATION

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

9 (b) A Vermont court shall treat a foreign country as if it were a state of the
10 United States for the purpose of applying this subchapter and subchapter 2 of
11 this chapter.

12 (c) Except as otherwise provided in subsection (d) of this section, a child
13 custody determination made in a foreign country under factual circumstances
14 in substantial conformity with the jurisdictional standards of this chapter must
15 be recognized and enforced under subchapter 3 of this chapter.

16 (d) A Vermont court need not apply this chapter if the child custody law of
17 a foreign country violates fundamental principles of human rights.

18 § 1064. EFFECT OF CHILD CUSTODY DETERMINATION

19 A child custody determination made by a Vermont court that had
20 jurisdiction under this chapter binds all persons who have been served in
21 accordance with the Vermont laws or notified in accordance with section 1066

1 of this title or who have submitted to the jurisdiction of the court, and who
2 have been given an opportunity to be heard. As to those persons, the
3 determination is conclusive as to all decided issues of law and fact except to
4 the extent the determination is modified.

5 § 1065. PRIORITY

6 If a question of existence or exercise of jurisdiction under this chapter is
7 raised in a child custody proceeding, the question, upon request of a party,
8 must be given priority on the calendar and handled expeditiously.

9 § 1066. NOTICE TO PERSONS OUTSIDE STATE

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

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

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

19 § 1067. APPEARANCE AND LIMITED IMMUNITY

20 (a) A party to a child custody proceeding, including a modification
21 proceeding, or a petitioner or respondent in a proceeding to enforce or register

1 a child custody determination, is not subject to personal jurisdiction in
2 Vermont for another proceeding or purpose solely by reason of having
3 participated or of having been physically present for the purpose of
4 participating in the proceeding.

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

10 (c) The immunity granted by subsection (a) of this section does not extend
11 to civil litigation based on acts unrelated to the participation in a proceeding
12 under this chapter committed by an individual while present in Vermont.

13 § 1068. COMMUNICATION BETWEEN COURTS

14 (a) A Vermont court may communicate with a court in another state
15 concerning a proceeding arising under this chapter.

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

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

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

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

10 § 1069. TAKING TESTIMONY IN ANOTHER STATE

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

18 (b) A Vermont court may permit an individual residing in another state to
19 be deposed or to testify by telephone, audiovisual means, or other electronic
20 means before a designated court or at another location in that state. A Vermont

1 court shall cooperate with courts of other states in designating an appropriate
2 location for the deposition or testimony.

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

7 § 1070. COOPERATION BETWEEN COURTS; PRESERVATION OF
8 RECORDS

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

10 (1) hold an evidentiary hearing;

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

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

15 (4) forward to the Vermont court a certified copy of the transcript of the
16 record of the hearing, the evidence otherwise presented, and any evaluation
17 prepared in compliance with the request; and

18 (5) order a party to a child custody proceeding or any person having
19 physical custody of the child to appear in the proceeding with or without the
20 child.

1 (b) Upon request of a court of another state, a Vermont court may hold a
2 hearing or enter an order described in subsection (a) of this section.

3 (c) Travel and other necessary and reasonable expenses incurred under
4 subsections (a) and (b) of this section may be assessed against the parties
5 according to Vermont law.

6 (d) A Vermont court shall preserve the pleadings, orders, decrees, records
7 of hearings, evaluations, and other pertinent records with respect to a child
8 custody proceeding until the child attains 18 years of age. Upon appropriate
9 request by a court or law enforcement official of another state, the court shall
10 forward a certified copy of those records.

11 Subchapter 2. Jurisdiction

12 § 1071. INITIAL CHILD CUSTODY JURISDICTION

13 (a) Except as otherwise provided in section 1074 of this title, a Vermont
14 court has jurisdiction to make an initial child custody determination only if:

15 (1) Vermont is the home state of the child on the date of the
16 commencement of the proceeding or was the home state of the child within six
17 months before the commencement of the proceeding and the child is absent
18 from Vermont, but a parent or person acting as a parent continues to live in
19 Vermont;

20 (2) A court of another state does not have jurisdiction under subdivision
21 (1) of this subsection, or a court of the home state of the child has declined to

1 exercise jurisdiction on the ground that Vermont is the more appropriate forum
2 under section 1077 or 1078 of this title, and:

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

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

8 (3) All courts having jurisdiction under subdivision (1) or (2) of this
9 subsection have declined to exercise jurisdiction on the grounds that a Vermont
10 court is the more appropriate forum to determine the custody of the child under
11 section 1077 or 1078 of this title; or

12 (4) No court of any other state would have jurisdiction under the criteria
13 specified in subdivision (1), (2), or (3) of this subsection.

14 (b) Subsection (a) of this section is the exclusive jurisdictional basis for
15 making a child custody determination by a Vermont court.

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

18 § 1072. EXCLUSIVE; CONTINUING JURISDICTION

19 (a) Except as otherwise provided in section 1074 of this title, a Vermont
20 court which has made a child custody determination consistent with section

1 1071 or 1073 of this title has exclusive, continuing jurisdiction over the
2 determination until:

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

8 (2) a Vermont court or a court of another state determines that the child,
9 the child's parents, and any person acting as a parent do not currently reside in
10 Vermont.

11 (b) A Vermont court which has made a child custody determination and
12 does not have exclusive, continuing jurisdiction under this section may modify
13 that determination only if it has jurisdiction to make an initial determination
14 under section 1071 of this title.

15 § 1073. JURISDICTION TO MODIFY DETERMINATION

16 Except as otherwise provided in section 1074 of this title, a Vermont court
17 may not modify a child custody determination made by a court of another state
18 unless a Vermont court has jurisdiction to make an initial determination under
19 subdivision 1071(a)(1) or (2) of this title and:

1 (1) the court of the other state determines it no longer has exclusive,
2 continuing jurisdiction under section 1072 of this title or that a Vermont court
3 would be a more convenient forum under section 1077 of this title; or

4 (2) a Vermont court or a court of the other state determines that the
5 child, the child's parents, and any person acting as a parent do not currently
6 reside in the other state.

7 § 1074. TEMPORARY EMERGENCY JURISDICTION

8 (a) A Vermont court has temporary emergency jurisdiction if the child is
9 present in Vermont, and the child has been abandoned or it is necessary in an
10 emergency to protect the child because the child, or a sibling or parent of the
11 child, is subjected to or threatened with mistreatment or abuse.

12 (b) If there is no previous child custody determination that is entitled to be
13 enforced under this chapter, and a child custody proceeding has not been
14 commenced in a court of a state having jurisdiction under sections 1071–1073
15 of this title, a child custody determination made under this section remains in
16 effect until an order is obtained from a court of a state having jurisdiction
17 under sections 1071–1073 of this title. If a child custody proceeding has not
18 been or is not commenced in a court of a state having jurisdiction under
19 sections 1071–1073 of this title, a child custody determination made under this
20 section becomes a final determination, if it so provides, and Vermont becomes
21 the home state of the child.

1 (c) If there is a previous child custody determination that is entitled to be
2 enforced under this chapter, or a child custody proceeding has been
3 commenced in a court of a state having jurisdiction under sections 1071–1073
4 of this title, any order issued by a Vermont court under this section shall
5 specify in the order a period that the court considers adequate to allow the
6 person seeking an order to obtain an order from the state having jurisdiction
7 under sections 1071–1073 of this title. The order issued in Vermont remains in
8 effect until an order is obtained from the other state within the period specified
9 or the period expires.

10 (d) A Vermont court which has been asked to make a child custody
11 determination under this section upon being informed that a child custody
12 proceeding has been commenced in, or a child custody determination has been
13 made by, a court of a state having jurisdiction under sections 1071–1073 of
14 this title shall immediately communicate with the other court. A Vermont
15 court which is exercising jurisdiction pursuant to sections 1071–1073 of this
16 title, upon being informed that a child custody proceeding has been
17 commenced in, or a child custody determination has been made by, a court of
18 another state under a statute similar to this section, shall immediately
19 communicate with the court of that state to resolve the emergency, protect the
20 safety of the parties and the child, and determine a period for the duration of
21 the temporary order.

1 § 1075. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER

2 (a) Before a child custody determination is made under this chapter, notice
3 and an opportunity to be heard in accordance with the standards of section
4 1066 of this title shall be given to all persons entitled to notice under Vermont
5 law as in child custody proceedings between Vermont residents, any parent
6 whose parental rights have not been previously terminated, and any person
7 having physical custody of the child.

8 (b) This chapter does not govern the enforceability of a child custody
9 determination made without notice or an opportunity to be heard.

10 (c) The obligation to join a party and the right to intervene as a party in a
11 child custody proceeding under this chapter are governed by Vermont law as in
12 child custody proceedings between Vermont residents.

13 § 1076. SIMULTANEOUS PROCEEDINGS

14 (a) Except as otherwise provided in section 1074 of this title, a Vermont
15 court may not exercise its jurisdiction under this subchapter if, at the time of
16 the commencement of the proceeding, a proceeding concerning the custody of
17 the child has been commenced in a court of another state having jurisdiction
18 substantially in conformity with this chapter, unless the proceeding has been
19 terminated or is stayed by the court of the other state because a Vermont court
20 is a more convenient forum under section 1077 of this title.

1 (b) Except as otherwise provided in section 1074 of this title, a Vermont
2 court, before hearing a child custody proceeding, shall examine the court
3 documents and other information supplied by the parties pursuant to section
4 1079 of this title. If the court determines that a child custody proceeding has
5 been commenced in a court in another state having jurisdiction substantially in
6 accordance with this chapter, the Vermont court shall stay its proceeding and
7 communicate with the court of the other state. If the court of the state having
8 jurisdiction substantially in accordance with this chapter does not determine
9 that the Vermont court is a more appropriate forum, the Vermont court shall
10 dismiss the proceeding.

11 (c) In a proceeding to modify a child custody determination, a Vermont
12 court shall determine whether a proceeding to enforce the determination has
13 been commenced in another state. If a proceeding to enforce a child custody
14 determination has been commenced in another state, the court may:

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

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

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

1 § 1077. INCONVENIENT FORUM

2 (a) A Vermont court which has jurisdiction under this chapter to make a
3 child custody determination may decline to exercise its jurisdiction at any time
4 if it determines that it is an inconvenient forum under the circumstances, and
5 that a court of another state is a more appropriate forum. The issue of
6 inconvenient forum may be raised upon motion of a party, the court's own
7 motion, or a request of another court.

8 (b) Before determining whether it is an inconvenient forum, a Vermont
9 court shall consider whether it is appropriate for a court of another state to
10 exercise jurisdiction. For this purpose, the court shall allow the parties to
11 submit information and shall consider all relevant factors, including:

12 (1) whether domestic violence has occurred and is likely to continue in
13 the future and which state could best protect the parties and the child;

14 (2) the length of time the child has resided outside Vermont;

15 (3) the distance between the Vermont court and the court in the state that
16 would assume jurisdiction;

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

18 (5) any agreement of the parties as to which state should assume
19 jurisdiction;

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

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

3 (8) the familiarity of the court of each state with the facts and issues in
4 the pending litigation.

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

10 (d) A Vermont court may decline to exercise its jurisdiction under this
11 chapter if a child custody determination is incidental to an action for divorce or
12 another proceeding while still retaining jurisdiction over the divorce or other
13 proceeding.

14 § 1078. JURISDICTION DECLINED BY REASON OF CONDUCT

15 (a) Except as otherwise provided in section 1074 of this title or other
16 Vermont law, if a Vermont court has jurisdiction under this chapter because a
17 person seeking to invoke its jurisdiction has engaged in unjustifiable conduct,
18 the court shall decline to exercise its jurisdiction unless:

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

1 (2) a court of the state otherwise having jurisdiction under sections
2 1071–1073 of this title determines that Vermont is a more appropriate forum
3 under section 1077 of this title; or

4 (3) no court of any other state would have jurisdiction under the criteria
5 specified in sections 1071–1073 of this title.

6 (b) If a Vermont court declines to exercise its jurisdiction pursuant to
7 subsection (a) of this section, it may fashion an appropriate remedy to ensure
8 the safety of the child and prevent a repetition of the unjustifiable conduct,
9 including staying the proceeding until a child custody proceeding is
10 commenced in a court having jurisdiction under sections 1071–1073 of this
11 title.

12 (c) If a court dismisses a petition or stays a proceeding because it declines
13 to exercise its jurisdiction pursuant to subsection (a) of this section, it shall
14 assess against the party seeking to invoke its jurisdiction necessary and
15 reasonable expenses, including costs, communication expenses, attorney’s
16 fees, investigative fees, expenses for witnesses, travel expenses, and child care
17 during the course of the proceedings, unless the party from whom fees are
18 sought establishes that the assessment would be clearly inappropriate. The
19 court may not assess fees, costs, or expenses against Vermont unless
20 authorized by law other than this chapter.

1 § 1079. INFORMATION TO BE SUBMITTED TO COURT

2 (a) In accordance with Vermont law regarding the confidentiality of
3 procedures, addresses, and other identifying information in a child custody
4 proceeding, each party, in its first pleading or in an attached affidavit, shall
5 give information, if reasonably ascertainable, under oath as to the child's
6 present address or whereabouts, the places where the child has lived during the
7 last five years, and the names and present addresses of the persons with whom
8 the child has lived during that period. The pleading or affidavit shall state
9 whether the party:

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

14 (2) knows of any other proceeding that could affect the current
15 proceeding, including any proceeding for enforcement and any proceeding
16 relating to domestic violence, protective orders, termination of parental rights,
17 and adoptions and, if so, identify the court, the case number, and the nature of
18 the proceeding; and

19 (3) knows the names and addresses of any person not a party to the
20 proceeding who has physical custody of the child or claims rights of legal

1 custody or physical custody of or visitation with the child and, if so, give the
2 names and addresses of those persons.

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

6 (c) If the declaration as to any of the items described in subdivisions
7 (a)(1)–(3) of this section is in the affirmative, the declarant shall give
8 additional information under oath as required by the court. The court may
9 examine the parties under oath as to details of the information furnished and
10 other matters pertinent to the court’s jurisdiction and the disposition of the
11 case.

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

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

1 § 1080. APPEARANCE OF PARTIES AND CHILD

2 (a) In a child custody proceeding in Vermont, the court may order a party
3 to the proceeding who is in Vermont to appear before the court in person with
4 or without the child. The court may order any person who is in Vermont and
5 who has physical custody or control of the child to appear in person with the
6 child.

7 (b) If a party to a child custody proceeding whose presence is desired by
8 the court is outside Vermont, the court may order that a notice given pursuant
9 to section 1066 of this title include a statement directing the party to appear in
10 person with or without the child and informing the party that failure to appear
11 may result in a decision adverse to the party.

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

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

19 Subchapter 3. Enforcement

20 § 1081. DEFINITIONS

21 As used in this subchapter:

1 (1) “Petitioner” means a person who seeks enforcement of an order for
2 return of a child under the Hague Convention on the Civil Aspects of
3 International Child Abduction or enforcement of a child custody
4 determination.

5 (2) “Respondent” means a person against whom a proceeding has been
6 commenced for enforcement of an order for return of a child under the Hague
7 Convention on the Civil Aspects of International Child Abduction or
8 enforcement of a child custody determination.

9 § 1082. ENFORCEMENT UNDER HAGUE CONVENTION

10 Under this subchapter, a Vermont court may enforce an order for the return
11 of the child made under the Hague Convention on the Civil Aspects of
12 International Child Abduction as if it were a child custody determination.

13 § 1083. DUTY TO ENFORCE

14 (a) A Vermont court shall recognize and enforce a child custody
15 determination of a court of another state if the latter court exercised
16 jurisdiction in substantial conformity with this chapter or the determination
17 was made under factual circumstances meeting the jurisdictional standards of
18 this chapter and if the determination has not been modified in accordance with
19 this chapter.

20 (b) A Vermont court may utilize any remedy available under Vermont law
21 to enforce a child custody determination made by a court of another state. The

1 remedies provided in this subchapter are cumulative and do not affect the
2 availability of other remedies to enforce a child custody determination.

3 § 1084. TEMPORARY VISITATION

4 (a) A Vermont court which does not have jurisdiction to modify a child
5 custody determination may issue a temporary order enforcing:

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

7 (2) the visitation provisions of a child custody determination of another
8 state that does not provide for a specific visitation schedule.

9 (b) If a Vermont court makes an order under subdivision (a)(2) of this
10 section, it shall specify in the order a period that it considers adequate to allow
11 the petitioner to obtain an order from a court having jurisdiction under the
12 criteria specified in subchapter 2 of this chapter. The order remains in effect
13 until an order is obtained from the other court or until the period expires.

14 § 1085. REGISTRATION OF CHILD CUSTODY DETERMINATION

15 (a) A child custody determination issued by a court of another state may be
16 registered in Vermont, with or without a simultaneous request for enforcement,
17 by sending to the Vermont family court in the county in which a person listed
18 in subdivision (3) of this subsection or the child resides:

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

20 (2) two copies, including one certified copy, of the determination sought
21 to be registered and a statement under penalty of perjury that to the best of the

1 knowledge and belief of the person seeking registration the order has not been
2 modified; and

3 (3) except as otherwise provided in section 1079 of this title, the name
4 and address of the person seeking registration and any parent or person acting
5 as a parent who has been awarded custody or visitation in the child custody
6 determination sought to be registered.

7 (b) On receipt of the documents required by subsection (a) of this section,
8 the court administrator shall:

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

12 (2) serve notice upon the persons named pursuant to subdivision (a)(3)
13 of this section and provide them with an opportunity to contest the registration
14 in accordance with this section.

15 (c) The notice required by subdivision (b)(2) of this section shall state that:

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

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

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

4 (d) A person seeking to contest the validity of a registered order must
5 request a hearing before the court in the county in which such person or the
6 child resides within 20 days after service of the notice. At that hearing, the
7 court shall confirm the registered order unless the person contesting
8 registration establishes that:

9 (1) the issuing court did not have jurisdiction under subchapter 2 of this
10 chapter;

11 (2) the child custody determination sought to be registered has been
12 vacated, stayed, or modified by a court having jurisdiction to do so under
13 subchapter 2 of this chapter; or

14 (3) the person contesting registration was entitled to notice, but notice
15 was not given in accordance with the standards of section 1066 of this title in
16 the proceedings before the court that issued the order for which registration is
17 sought.

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

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

4 § 1086. ENFORCEMENT OF REGISTERED DETERMINATION

5 (a) A Vermont court may grant any relief normally available under
6 Vermont law to enforce a registered child custody determination made by a
7 court of another state.

8 (b) A Vermont court shall recognize and enforce but may not modify,
9 except in accordance with subchapter 2 of this chapter, a registered child
10 custody determination of a court of another state.

11 § 1087. SIMULTANEOUS PROCEEDINGS

12 If a proceeding for enforcement under this subchapter is commenced in a
13 Vermont court and the court determines that a proceeding to modify the
14 determination is pending in a court of another state having jurisdiction to
15 modify the determination under subchapter 2 of this chapter, the enforcing
16 court shall immediately communicate with the modifying court. The
17 proceeding for enforcement shall continue unless the enforcing court, after
18 consultation with the modifying court, stays or dismisses the proceeding.

1 § 1088. EXPEDITED ENFORCEMENT OF CHILD CUSTODY

2 DETERMINATION

3 (a) A petition under this subchapter shall be verified. Certified copies of all
4 orders sought to be enforced and of any order confirming registration shall be
5 attached to the petition. A copy of a certified copy of an order may be attached
6 instead of the original.

7 (b) A petition for enforcement of a child custody determination shall state:

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

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

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

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

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

4 (6) if the child custody determination has been registered and confirmed
5 under section 1085 of this title, the date and place of registration.

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

13 (d) An order issued under subsection (c) of this section shall state the time
14 and place of the hearing and advise the respondent that at the hearing the court
15 will order that the petitioner may take immediate physical custody of the child
16 and will order the payment of fees, costs, and expenses under section 1092 of
17 this title, and the order may schedule a hearing to determine whether further
18 relief is appropriate, unless the respondent appears and establishes that:

19 (1) the child custody determination has not been registered and
20 confirmed under section 1085 of this title and:

1 (A) the issuing court did not have jurisdiction under subchapter 2 of
2 this chapter;

3 (B) the child custody determination for which enforcement is sought
4 has been vacated, stayed, or modified by a court having jurisdiction to do so
5 under subchapter 2 of this chapter; or

6 (C) the respondent was entitled to notice, but notice was not given in
7 accordance with the standards of section 1066 of this title, in the proceedings
8 before the court that issued the order for which enforcement is sought; or

9 (2) the child custody determination for which enforcement is sought was
10 registered and confirmed under section 1084 of this title but has been vacated,
11 stayed, or modified by a court of a state having jurisdiction to do so under
12 subchapter 2 of this chapter.

13 (e) Except as otherwise provided in section 1090 of this title, the petition
14 and order shall be served by any method authorized by Vermont law upon the
15 respondent and any person who has physical custody of the child.

16 § 1089. HEARING AND ORDER

17 (a) Unless the court issues a temporary emergency order pursuant to
18 section 1074 of this title, upon a finding that a petitioner is entitled to
19 immediate physical custody of the child, the court shall order that the petitioner
20 may take immediate physical custody of the child unless the respondent
21 establishes that:

1 (1) the child custody determination has not been registered and
2 confirmed under section 1085 of this title and that:

3 (A) the issuing court did not have jurisdiction under subchapter 2 of
4 this chapter;

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

8 (C) the respondent was entitled to notice, but notice was not given in
9 accordance with the standards of section 1066 of this title, in the proceedings
10 before the court that issued the order for which enforcement is sought; or

11 (2) the child custody determination for which enforcement is sought was
12 registered and confirmed under section 1085 of this title but has been vacated,
13 stayed, or modified by a court of a state having jurisdiction to do so under
14 subchapter 2 of this chapter.

15 (b) The court shall award the fees, costs, and expenses authorized under
16 section 1091 of this title and may grant additional relief, including a request for
17 the assistance of law enforcement officials, and set a further hearing to
18 determine whether additional relief is appropriate.

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

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

4 § 1090. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

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

9 (b) If the court, upon the testimony of the petitioner or other witness, finds
10 that the child is imminently likely to suffer serious physical harm or to be
11 removed from Vermont, it may issue a warrant to take physical custody of the
12 child. The petition must be heard on the next judicial day after the warrant is
13 executed unless that date is impossible. In that event, the court shall hold the
14 hearing on the first judicial day possible. The application for the warrant must
15 include the statements required by subsection 1088(b) of this title.

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

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

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

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

1 (d) The respondent must be served with the petition, warrant, and order
2 immediately after the child is taken into physical custody.

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

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

11 § 1091. COSTS, FEES, AND EXPENSES

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

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

1 § 1092. RECOGNITION AND ENFORCEMENT; APPEALS

2 (a) A Vermont court shall accord full faith and credit to an order issued by
3 another state and consistent with this chapter which enforces a child custody
4 determination by a court of another state unless the order has been vacated,
5 stayed, or modified by a court having jurisdiction to do so under subchapter 2
6 of this chapter.

7 (b) An appeal may be taken from a final order in a proceeding under this
8 subchapter in accordance with the Vermont Rules of Appellate Procedure.
9 Unless the court enters a temporary emergency order under section 1074 of
10 this title, the enforcing court may not stay an order enforcing a child custody
11 determination pending appeal.

12 § 1093. ROLE OF ATTORNEY GENERAL; ROLE OF LAW

13 ENFORCEMENT

14 (a) In a case arising under this chapter or involving the Hague Convention
15 on the Civil Aspects of International Child Abduction, the attorney general
16 may take any lawful action, including resort to a proceeding under this
17 subchapter or any other available civil proceeding to locate a child, obtain the
18 return of a child, or enforce a child custody determination if there is:

19 (1) an existing child custody determination;

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

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

2 (4) a reasonable belief that the child has been wrongfully removed or

3 retained in violation of the Hague Convention on the Civil Aspects of

4 International Child Abduction.

5 (b) The attorney general acting under this section acts on behalf of the court
6 and shall not represent any party.

7 (c) At the request of the attorney general acting under this section, a law
8 enforcement officer may take any lawful action reasonably necessary to locate
9 a child or a party and assist the attorney general with responsibilities under this
10 section.

11 § 1094. COSTS AND EXPENSES

12 If the respondent is not the prevailing party, the court may assess against the
13 respondent all direct expenses and costs incurred by the attorney general and
14 law enforcement officers under section 1093 of this title.

15 Subchapter 4. Miscellaneous Provisions

16 § 1096. APPLICATION AND CONSTRUCTION

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

1 Sec. 2. 4 V.S.A. § 454 is amended to read:

2 § 454. JURISDICTION

3 Notwithstanding any other provision of law to the contrary, the family court
4 shall have exclusive jurisdiction to hear and dispose of the following
5 proceedings filed or pending on or after October 1, 1990. The family court
6 shall also have exclusive jurisdiction to hear and dispose of any requests to
7 modify or enforce any orders issued by the district or superior court relating to
8 the following proceedings:

9 * * *

10 (7) All uniform child custody proceedings filed pursuant to chapter ~~49~~
11 20 of Title 15.

12 Sec. 3. 15 V.S.A. § 665 is amended to read:

13 § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF
14 THE CHILD

15 * * *

16 (e) The jurisdiction granted by this section shall be limited by the Uniform
17 Child Custody Jurisdiction and Enforcement Act, if another state has
18 jurisdiction as provided in that act. For the purposes of interpreting that act
19 and any other provision of law which refers to a custodial parent, including but
20 not limited to section 2451 of Title 13, the parent with physical responsibility
21 shall be considered the custodial parent.

1 Sec. 4. EFFECTIVE DATE AND TRANSITIONAL PROVISION

2 This act shall take effect November 1, 2010. A motion or other request for
3 relief made in a child custody proceeding or to enforce a child custody
4 determination which was commenced before the effective date of this act is
5 governed by the law in effect at the time the motion or other request was made.