

**HOUSE . . . . . No. 1657**

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty for legislation to establish a uniform child custody jurisdiction and enforcement law. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

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 The General Laws as appearing in the 2004 Official Edition are  
2 hereby amended by inserting after Chapter 208 the following new  
3 chapter:—

4 **Chapter 208A.**

5 ARTICLE 1.  
6 GENERAL PROVISIONS.

7 Section 101. SHORT TITLE. This Act may be cited as the Uni-  
8 form Child-Custody Jurisdiction and Enforcement Act.

9 Section 102. DEFINITIONS. In this Act:—

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

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

14 (3) “Child-custody determination” means a judgment, decree, or  
15 other order of a court providing for the legal custody, physical cus-  
16 tody, or visitation with respect to a child. The term includes a perma-  
17 nent, temporary, initial, and modification order. The term does not  
18 include an order relating to child support or other monetary obliga-  
19 tion of an individual.

20 (4) “Child-custody proceeding” means a proceeding in which  
21 legal custody, physical custody, or visitation with respect to a child

22 is an issue. The term includes a proceeding for divorce, separation,  
23 neglect, abuse, dependency, guardianship, paternity, termination of  
24 parental rights, and protection from domestic violence, in which the  
25 issue may appear. The term does not include a proceeding involving  
26 juvenile delinquency, contractual emancipation, or enforcement  
27 under Article 3.

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

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

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

39 (8) “Initial determination” means the first child-custody determi-  
40 nation concerning a particular child.

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

43 (10) “Issuing State” means the State in which a child-custody  
44 determination is made.

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

49 (12) “Person” includes government, governmental subdivision,  
50 agency, or instrumentality, or any other legal or commercial entity.

51 (13) “Person acting as a parent” means a person, other than a  
52 parent, who:—

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

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

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

61 (15) “State” means a State of the United States, the District of  
62 Columbia, Puerto Rico, the United States Virgin Islands, or any terri-  
63 tory or insular possession subject to the jurisdiction of the United  
64 States.

65 (16) “Tribe” means an Indian tribe, or band, or Alaskan Native  
66 village, which is recognized by federal law or formally acknowl-  
67 edged by a State.

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

70 Section 103. PROCEEDINGS GOVERNED BY OTHER LAW.

71 This Act does not govern:—

72 (1) An adoption proceeding; or

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

75 Section 104. APPLICATION TO INDIAN TRIBES.

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

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

82 (c) A child-custody determination made by a tribe under factual  
83 circumstances in substantial conformity with the jurisdictional stan-  
84 dards of this Act must be recognized and enforced under the provi-  
85 sions of Article 3.

86 Section 105. INTERNATIONAL APPLICATION OF ACT.

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

89 (b) A child-custody determination made in a foreign country  
90 under factual circumstances in substantial conformity with the juris-  
91 dictional standards of this Act must be recognized and enforced  
92 under Article 3 of this Act.

93 (c) The court need not apply the provisions of this Act when the  
94 child custody law of the other country violates fundamental princi-  
95 ples of human rights.

96 Section 106. BINDING FORCE OF CHILD-CUSTODY  
97 DETERMINATION. A child-custody determination made by a court  
98 of this State that had jurisdiction under this Act binds all persons  
99 who have been served in accordance with the laws of this State or

100 notified in accordance with Section 108 or who have submitted to  
101 the jurisdiction of the court, and who have been given an opportu-  
102 nity to be heard. The determination is conclusive as to them as to all  
103 decided issues of law and fact except to the extent the determination  
104 is modified.

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

109 Section 108. NOTICE TO PERSONS OUTSIDE STATE.

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

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

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

121 Section 109. APPEARANCE AND LIMITED IMMUNITY.

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

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

137 (c) The immunity granted by this section does not extend to civil  
138 litigation based on acts unrelated to the participation in a proceeding

139 under this Act committed by an individual while present in this  
140 State.

141 Section 110. COMMUNICATION BETWEEN COURTS.

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

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

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

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

154 (e) For the purposes of this section, “record” means information  
155 that is inscribed on a tangible medium or that which is stored in an  
156 electronic or other medium and is retrievable in perceivable form. A  
157 record includes notes or transcripts of a court reporter who listened  
158 to a conference call between the courts, an electronic recording of a  
159 telephone call, a memorandum or an electronic record of the com-  
160 munication between the courts, or a memorandum or an electronic  
161 record made by a court after the communication.

162 Section 111. TAKING TESTIMONY IN ANOTHER STATE.

163 (a) In addition to other procedures available to a party, a party to a  
164 child- custody proceeding may offer testimony of witnesses who are  
165 located in another State, including testimony of the parties and the  
166 child, by deposition or other means allowable in this State for testi-  
167 mony taken in another State. The court on its own motion may order  
168 that the testimony of a person be taken in another State and may pre-  
169 scribe the manner in which and the terms upon which the testimony  
170 is taken.

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

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

181 Section 112. COOPERATION BETWEEN COURTS; PRESER-  
182 VATION OF RECORDS.

183 (a) A court of this State may request the appropriate court of  
184 another State to:—

185 (1) hold an evidentiary hearing;

186 (2) order a person to produce or give evidence under procedures  
187 of that State;

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

190 (4) forward to the court of this State a certified copy of the tran-  
191 script of the record of the hearing, the evidence otherwise presented,  
192 and any evaluation prepared in compliance with the request; and

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

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

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

201 (d) A court of this State shall preserve the pleadings, orders,  
202 decrees, records of hearings, evaluations, and other pertinent records  
203 with respect to a child-custody proceeding until the child attains 18  
204 years of age. Upon appropriate request by a court or law enforce-  
205 ment official of another State, the court shall forward a certified  
206 copy of these records.

207 ARTICLE 2.

208 JURISDICTION.

209 Section 201. INITIAL CHILD-CUSTODY JURISDICTION.

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

213 (1) this State is the home State of the child on the date of the com-  
214 mencement of the proceeding, or was the home State of the child  
215 within six months before the commencement of the proceeding and

216 the child is absent from this State but a parent or person acting as a  
217 parent continues to live in this State;

218 (2) a court of another State does not have jurisdiction under para-  
219 graph (1), or a court of the home State of the child has declined to  
220 exercise jurisdiction on the ground that this State is the more appro-  
221 priate forum under Section 207 or 208, and:—

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

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

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

231 (4) no State would have jurisdiction under paragraph (1), (2), or  
232 (3).

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

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

238 Section 202. EXCLUSIVE, CONTINUING JURISDICTION.

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

243 (1) a court of this State determines that neither the child, the child  
244 and one parent, nor the child and a person acting as a parent have a  
245 significant connection with this State and that substantial evidence is  
246 no longer available in this State concerning the child's care, protec-  
247 tion, training, and personal relationships; or

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

251 (3) the court finds that a parent or person acting as a parent who  
252 resides in Massachusetts has engaged in a serious incident or pattern  
253 of abuse as defined by c. 208, §28A against the other parent or  
254 person acting as a parent, or against a child who is the subject of the

255 proceeding. If the court so finds, it shall be presumed that this state  
256 does not have continuing, exclusive jurisdiction over the determina-  
257 tion unless the victim or the victim's custodial parent or guardian  
258 consents to continuing, exclusive jurisdiction; or

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

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

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

269 Section 203. JURISDICTION TO MODIFY CHILD CUSTODY  
270 DETERMINATION. Except as otherwise provided in Section 204, a  
271 court of this State may not modify a child-custody determination  
272 made by a court of another State unless a court of this State has  
273 jurisdiction to make an initial determination under Section 201(a)(1)  
274 or (2) and:—

275 (1) the court of the other State determines it no longer has exclu-  
276 sive, continuing jurisdiction under Section 202 or that a court of this  
277 State would be a more convenient forum under Section 207;

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

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

284 Section 204. TEMPORARY EMERGENCY JURISDICTION.

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

290 (b) If there is no previous child-custody determination that is enti-  
291 tled to be enforced under this Act, and if no child-custody pro-  
292 ceeding has been commenced in a court of a State having  
293 jurisdiction under Sections 201 through 203, a child-custody deter-

294 mination made under this section remains in effect until an order is  
295 obtained from a court of a State having jurisdiction under Sections  
296 201 through 203. If a child-custody proceeding has not been or is not  
297 commenced in a court of a State having jurisdiction under Sections  
298 201 through 203, a child-custody determination made under this  
299 section becomes a final determination, if:—

300 (1) it so provides; and

301 (2) this State becomes the home State of the child.

302 (c) If there is a previous child-custody determination that is enti-  
303 tled to be enforced under this Act, or a child-custody proceeding has  
304 been commenced in a court of a State having jurisdiction under Sec-  
305 tions 201 through 203, any order issued by a court of this State under  
306 this section must specify in the order a period of time which the  
307 court considers adequate to allow the person seeking an order to  
308 obtain an order from the State having jurisdiction under Sections 201  
309 through 203. The order issued in this State remains in effect until an  
310 order is obtained from the other State within the period specified or  
311 the period expires.

312 (d) A court of this State that has been asked to make a child-cus-  
313 tody determination under this section, upon being informed that a  
314 child-custody proceeding has been commenced, or a child-custody  
315 determination has been made, by a court of a State having jurisdic-  
316 tion under Sections 201 through 203, shall immediately communi-  
317 cate with the other court. A court of this State that is exercising  
318 jurisdiction pursuant to Sections 201 through 203, upon being  
319 informed that a child-custody proceeding has been commenced, or a  
320 child-custody determination has been made by a court of another  
321 State under a statute similar to this section shall immediately com-  
322 municate with the court of that State. The purpose of the communi-  
323 cation is to resolve the emergency, protect the safety of the parties  
324 and the child, and determine a period for the duration of the tempo-  
325 rary order.

326 Section 205. NOTICE; OPPORTUNITY TO BE HEARD;  
327 JOINDER.

328 (a) Before a child-custody determination is made under this Act,  
329 notice and an opportunity to be heard in accordance with the stan-  
330 dards of Section 108 must be given to all persons entitled to notice  
331 under the law of this State as in child-custody proceedings between  
332 residents of this State, any parent whose parental rights have not

333 been previously terminated, and any person having physical custody  
334 of the child.

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

337 (c) The obligation to join a party and the right to intervene as a  
338 party in a child-custody proceeding under this Act are governed by  
339 the law of this State as in child-custody proceedings between resi-  
340 dents of this State.

341 Section 206. SIMULTANEOUS PROCEEDINGS.

342 (a) Except as otherwise provided in Section 204, a court of this  
343 State may not exercise its jurisdiction under this Article if, at the  
344 time of the commencement of the proceeding, a proceeding con-  
345 cerning the custody of the child had been previously commenced in  
346 a court of another State having jurisdiction substantially in confor-  
347 mity with this Act, unless the proceeding has been terminated or is  
348 stayed by the court of the other State because a court of this State is  
349 a more convenient forum under Section 207.

350 (b) Except as otherwise provided in Section 204, a court of this  
351 State, before hearing a child-custody proceeding, shall examine the  
352 court documents and other information supplied by the parties pur-  
353 suant to Section 209. If the court determines that a child-custody  
354 proceeding was previously commenced in a court in another State  
355 having jurisdiction substantially in accordance with this Act, the  
356 court of this State shall stay its proceeding and communicate with  
357 the court of the other State. If the court of the State having jurisdic-  
358 tion substantially in accordance with this Act does not determine  
359 that the court of this State is a more appropriate forum, the court of  
360 this State shall dismiss the proceeding.

361 (c) In a proceeding to modify a child-custody determination, a  
362 court of this State shall determine whether a proceeding to enforce  
363 the determination has been commenced in another State. If a pro-  
364 ceeding to enforce a child-custody determination has been com-  
365 menced in another State, the court may:—

366 (1) stay the proceeding for modification pending the entry of an  
367 order of a court of the other State enforcing, staying, denying, or dis-  
368 missing the proceeding for enforcement;

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

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

373 Section 207. INCONVENIENT FORUM.

374 (a) A court of this State that has jurisdiction under this Act to  
375 make a child-custody determination may decline to exercise its juris-  
376 diction at any time if it determines that it is an inconvenient forum  
377 under the circumstances and that a court of another State is a more  
378 appropriate forum. The issue of inconvenient forum may be raised  
379 upon the court's own motion, request of another court, or motion of  
380 a party.

381 (b) Before determining whether it is an inconvenient forum, a  
382 court of this State shall consider whether it is appropriate that a court  
383 of another State exercise jurisdiction. For this purpose, the court  
384 shall allow the parties to submit information and shall consider all  
385 relevant factors, including:—

386 (1) whether domestic violence has occurred and is likely to con-  
387 tinue in the future and which State could best protect the parties and  
388 the child;

389 (2) the length of time the child has resided outside this State;

390 (3) the distance between the court in this State and the court in the  
391 State that would assume jurisdiction;

392 (4) the relative financial circumstances of the parties and the  
393 effect of such circumstance on the ability to litigate in a foreign  
394 jurisdiction;

395 (5) any agreement of the parties as to which State should assume  
396 jurisdiction;

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

399 (7) the ability of the court of each State to decide the issue expedi-  
400 tiously and the procedures necessary to present the evidence; and

401 (8) the familiarity of the court of each State with the facts and  
402 issues of the pending litigation.

403 (c) If a court of this State determines that it is an inconvenient  
404 forum and that a court of another State is a more appropriate forum,  
405 it shall stay the proceedings upon condition that a child-custody pro-  
406 ceeding be promptly commenced in another designated State and  
407 may impose any other condition the court considers just and proper.

408 (d) A court of this State may decline to exercise its jurisdiction  
409 under this Act if a child-custody determination is incidental to an

410 action for divorce or another proceeding while still retaining juris-  
411 diction over the divorce or other proceeding.

412 Section 208. JURISDICTION DECLINED BY REASON OF  
413 CONDUCT.

414 (a) Except as otherwise provided in Section 204 or by other law  
415 of this State, if a court of this State has jurisdiction under this Act  
416 because a person invoking the jurisdiction has engaged in unjustifi-  
417 able conduct, the court shall decline to exercise its jurisdiction  
418 unless:—

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

421 (2) a court of the State otherwise having jurisdiction under Sec-  
422 tions 201 through 203 determines that this State is a more appro-  
423 priate forum under Section 207; or

424 (3) no other State would have jurisdiction under Sections 201  
425 through 203.

426 (b) If a court of this State declines to exercise its jurisdiction pur-  
427 suant to subsection (a), it may fashion an appropriate remedy to  
428 ensure the safety of the child and prevent a repetition of the  
429 wrongful conduct, including staying the proceeding until a child-  
430 custody proceeding is commenced in a court having jurisdiction  
431 under Sections 201 through 203.

432 (c) If a court dismisses a petition or stays a proceeding because it  
433 declines to exercise its jurisdiction pursuant to subsection (a), it shall  
434 charge the party invoking the jurisdiction of the court with necessary  
435 and reasonable expenses including costs, communication expenses,  
436 attorney's fees, investigative fees, expenses for witnesses, travel  
437 expenses, and child care during the course of the proceedings, unless  
438 the party from whom fees are sought establishes that the award  
439 would be clearly inappropriate. The court may not assess fees, costs,  
440 or expenses against this State except as otherwise provided by law  
441 other than this Act.

442 Section 209. INFORMATION TO BE SUBMITTED TO COURT.

443 (a) Subject to local law providing for the confidentiality of proce-  
444 dures, addresses, and other identifying information, in a child-cus-  
445 tody proceeding, each party, in its first pleading or in an attached  
446 affidavit, shall give information, if reasonably ascertainable, under  
447 oath as to the child's present address, the places where the child has  
448 lived during the last five years, and the names and present addresses

449 of the persons with whom the child has lived during that period. The  
450 pleading or affidavit must state whether the party:—

451 (1) has participated, as a party or witness or in any other capacity,  
452 in any other proceeding concerning the custody of or visitation with  
453 the child and, if so, identify the court, the case number of the pro-  
454 ceeding, and the date of the child-custody determination, if any;

455 (2) knows of any proceeding that could affect the current pro-  
456 ceeding, including proceedings for enforcement and proceedings  
457 relating to domestic violence, protective orders, termination of  
458 parental rights, and adoptions and, if so, identify the court and the  
459 case number and the nature of the proceeding; and

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

464 (b) If the information required by subsection (a) is not furnished,  
465 the court, upon its own motion or that of a party, may stay the pro-  
466 ceeding until the information is furnished.

467 (c) If the declaration as to any of the items described in subsection  
468 (a)(1) through (3) is in the affirmative, the declarant shall give addi-  
469 tional information under oath as required by the court. The court  
470 may examine the parties under oath as to details of the information  
471 furnished and other matters pertinent to the court's jurisdiction and  
472 the disposition of the case.

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

476 (e) If a party alleges in an affidavit or a pleading under oath that  
477 the health, safety, or liberty of a party or child would be put at risk  
478 by the disclosure of identifying information, that information shall  
479 be sealed and not disclosed to the other party or the public unless the  
480 court orders the disclosure to be made after a hearing in which the  
481 court takes into consideration the health, safety, or liberty of the  
482 party or child and determines that the disclosure is in the interest of  
483 justice.

484 Section 210. APPEARANCE OF PARTIES AND CHILD.

485 (a) A court of this State may order a party to a child-custody pro-  
486 ceeding who is in this State to appear before the court personally  
487 with or without the child. The court may order any person who is in

488 this State and who has physical custody or control of the child to  
489 appear physically with the child.

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

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

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

503 ARTICLE 3.

504 ENFORCEMENT.

505 Section 301. DEFINITIONS. In this Article:—

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

510 (2) “Respondent” means a person against whom a proceeding has  
511 been commenced for enforcement of a child-custody determination  
512 or enforcement of an order for the return of the child under the  
513 Hague Convention on the Civil Aspects of International Child  
514 Abduction.

515 Section 302. SCOPE; TEMPORARY VISITATION.

516 (a) This Article may be invoked to enforce:—

517 (1) a child-custody determination; and

518 (2) an order for the return of the child made under the Hague  
519 Convention on the Civil Aspects of International Child Abduction.

520 (b) A court of this State which does not have jurisdiction to  
521 modify a child-custody determination, may issue a temporary order  
522 enforcing

523 (1) a visitation schedule made by a court of another State; or

524 (2) the visitation provisions of a child-custody determination of  
525 another State that does not provide for a specific visitation schedule.

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

532 Section 303. DUTY TO ENFORCE.

533 (a) A court of this State shall recognize and enforce a child-cus-  
534 tody determination of a court of another State if the latter court exer-  
535 cised jurisdiction that was in substantial conformity with this Act or  
536 the determination was made under factual circumstances meeting the  
537 jurisdictional standards of this Act and the determination has not  
538 been modified in accordance with this Act.

539 (b) A court may utilize any remedy available under other law of  
540 this State to enforce a child-custody determination made by a court  
541 of another State. The procedure provided by this Article does not  
542 affect the availability of other remedies to enforce a child-custody  
543 determination.

544 Section 304. REGISTRATION OF CHILD-CUSTODY DETER-  
545 MINATION.

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

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

551 (2) two copies, including one certified copy, of the determination  
552 sought to be registered, and a statement under penalty of perjury that  
553 to the best of the knowledge and belief of the person seeking regis-  
554 tration the order has not been modified; and

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

559 (b) On receipt of the documents required by subsection (a), the  
560 registering court shall:—

561 (1) cause the determination to be filed as a foreign judgment,  
562 together with one copy of any accompanying documents and infor-  
563 mation, regardless of their form; and

564 (2) serve notice upon the persons named pursuant to (a)(3) and  
565 provide them with an opportunity to contest the registration in accor-  
566 dance with this section.

567 (c) The notice required by subsection (b)(2) must state:—

568 (1) that a registered determination is enforceable as of the date of  
569 the registration in the same manner as a determination issued by a  
570 court of this State;

571 (2) that a hearing to contest the validity of the registered determi-  
572 nation must be requested within 20 days after service of notice; and

573 (3) that failure to contest the registration will result in confirma-  
574 tion of the child-custody determination and preclude further contest  
575 of that determination with respect to any matter that could have been  
576 asserted.

577 (d) A person seeking to contest the validity of a registered order  
578 must request a hearing within 20 days after service of the notice. At  
579 that hearing, the court shall confirm the registered order unless the  
580 person contesting registration establishes that:—

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

582 (2) the child-custody determination sought to be registered has  
583 been vacated, stayed, or modified by a court of a State having juris-  
584 diction to do so under Article 2; or

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

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

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

597 Section 305. ENFORCEMENT OF REGISTERED DETERMI-  
598 NATION.

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

602 (b) A court of this State shall recognize and enforce, but may not  
603 modify except in accordance with Article 2, a registered child-cus-  
604 tody determination of another State.

605 Section 306. SIMULTANEOUS PROCEEDINGS. If a proceeding  
606 for enforcement under this Article has been or is commenced in this  
607 State and a court of this State determines that a proceeding to modify  
608 the determination has been commenced in another State having  
609 jurisdiction to modify the determination under Article 2, the  
610 enforcing court shall immediately communicate with the modifying  
611 court. The proceeding for enforcement continues unless the  
612 enforcing court, after consultation with the modifying court, stays or  
613 dismisses the proceeding.

614 Section 307. EXPEDITED ENFORCEMENT OF CHILD-CUS-  
615 TODY DETERMINATION.

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

620 (b) A petition for enforcement of a child-custody determination  
621 must state:—

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

625 (2) whether the determination for which enforcement is sought  
626 has been vacated, stayed, or modified by a court whose decision  
627 must be enforced under this Act or federal law and, if so, identify the  
628 court, the case number of the proceeding, and the action taken;

629 (3) whether any proceeding has been commenced that could affect  
630 the current proceeding, including proceedings relating to domestic  
631 violence, protective orders, termination of parental rights, and adop-  
632 tions and, if so, identify the court and the case number and the nature  
633 of the proceeding;

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

636 (5) whether relief in addition to the immediate physical custody of  
637 the child and attorney's fees is sought, including a request for assis-  
638 tance from law enforcement officials and, if so, the relief sought.

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

642 (d) The court shall issue an order directing the respondent to  
643 appear with or without the child at a hearing and may enter any  
644 orders necessary to ensure the safety of the parties and the child.

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

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

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

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

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

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

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

669 Section 308. SERVICE OF PETITION AND ORDER. Except as  
670 otherwise provided in Section 310, the petition and order must be  
671 served, by any method authorized by the law of this State, upon  
672 respondent and any person who has physical custody of the child.

673 Section 309. HEARING AND ORDER.

674 (a) Unless the court enters a temporary emergency order pursuant  
675 to Section 204, upon a finding that a petitioner is entitled to the  
676 physical custody of the child immediately, the court shall order the

677 child delivered to the petitioner unless the respondent establishes  
678 that:—

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

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

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

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

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

693 (b) The court shall award the fees, costs, and expenses authorized  
694 under Section 311 and may grant additional relief, including a  
695 request for the assistance of law enforcement officials, and set a fur-  
696 ther hearing to determine whether additional relief is appropriate.

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

700 (d) A privilege against disclosure of communications between  
701 spouses and a defense of immunity based on the relationship of hus-  
702 band and wife or parent and child may not be invoked in a pro-  
703 ceeding under this Article.

704 Section 310. WARRANT TO TAKE PHYSICAL CUSTODY OF  
705 CHILD.

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

711 (b) If the court, upon the testimony of the petitioner or other wit-  
712 ness, finds that the child is likely to suffer serious imminent physical  
713 harm or be imminently removed from this State, it may issue a war-  
714 rant to take physical custody of the child. The petition must be heard

715 on the next judicial day after the warrant is executed. The warrant  
716 must include the statements required by Section 307(b).

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

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

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

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

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

725 (e) A warrant to take physical custody of a child is enforceable  
726 throughout this State. If the court finds on the basis of the testimony  
727 of the petitioner or other witness that a less intrusive remedy is not  
728 effective, it may authorize law enforcement officers to enter private  
729 property to take physical custody of the child. If required by the exi-  
730 gency of the case, the court may authorize law enforcement officers  
731 to make a forcible entry at any hour.

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

734 Section 311. COSTS, FEES, AND EXPENSES.

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

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

744 Section 312. RECOGNITION AND ENFORCEMENT. A court  
745 of this State shall accord full faith and credit to an order made con-  
746 sistent with this Act which enforces a child-custody determination  
747 by a court of another State unless the order has been vacated, stayed,  
748 or modified by a court authorized to do so under Article 2.

749 Section 313. APPEALS. An appeal may be taken from a final  
750 order in a proceeding under this [article] in accordance with expe-  
751 dited appellate procedures in other civil cases. Unless the court  
752 enters a temporary emergency order under Section 204, the

753 enforcing court may not stay an order enforcing a child-custody  
754 determination pending appeal.

755 Section 314. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.

756 (a) In a case arising under this Act or involving the Hague Con-  
757 vention on the Civil Aspects of International Child Abduction, the  
758 prosecutor or other appropriate public official may take any lawful  
759 action, including resort to a proceeding under this Article or any  
760 other available civil proceeding to locate a child, obtain the return of  
761 a child, or enforce a child-custody determination if there is:—

762 (1) an existing child-custody determination;

763 (2) a request from a court in a pending child-custody case;

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

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

768 (b) A prosecutor or appropriate public official acts on behalf of  
769 the court and may not represent any party to a child-custody deter-  
770 mination.

771 Section 315. ROLE OF LAW ENFORCEMENT. At the request  
772 of a prosecutor or other appropriate public official acting under  
773 Section 314, a law enforcement officer may take any lawful action  
774 reasonably necessary to locate a child or a party and assist a prose-  
775 cutor or appropriate public official with responsibilities under  
776 Section 314.

777 Section 316. COSTS AND EXPENSES. If the respondent is not  
778 the prevailing party, the court may assess against the respondent all  
779 direct expenses and costs incurred by the prosecutor or other appro-  
780 priate public official and law enforcement officers under Section 314  
781 or 315.

782 ARTICLE 4.

783 MISCELLANEOUS PROVISIONS.

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

788 Section 402. SEVERABILITY CLAUSE. If any provision of this  
789 Act or its application to any person or circumstance is held invalid,  
790 the invalidity does not affect other provisions or applications of this

791 Act which can be given effect without the invalid provision or appli-  
792 cation, and to this end the provisions of this Act are severable.

793 Section 403. EFFECTIVE DATE. This Act takes effect on Jan-  
794 uary 1, 2005.

795 Section 404. REPEALS AND AMENDMENTS.

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

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

802 Section 405. TRANSITIONAL PROVISION. A motion or other  
803 request for relief made in a child-custody or enforcement proceeding  
804 that was commenced before the effective date of this Act is gov-  
805 erned by the law in effect at the time the motion or other request was  
806 made.