

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 275 Session of 2003

INTRODUCED BY GREENLEAF, LEMMOND, M. WHITE, BOSCOLA AND MOWERY, FEBRUARY 10, 2003

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 11, 2003

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, further providing for child custody
3 generally and for child custody jurisdiction and enforcement.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 4346 and Chapter 53 of Title 23 of the
7 Pennsylvania Consolidated Statutes are repealed.

8 Section 2. Title 23 is amended by adding chapters to read:

CHAPTER 53

CHILD CUSTODY

11 Sec.

12 5321. Scope.

13 5322. Definitions.

14 5323. Award of custody or visitation.

15 5324. Standing for any form of physical custody, legal
16 custody or visitation.

17 5325. Standing for partial physical custody and visitation.

18 5326. Effect of adoption.

- 1 5327. Presumption in cases concerning primary physical
2 custody.
- 3 5328. Factors to consider when awarding custody.
- 4 5329. Consideration of criminal conviction.
- 5 5330. Consideration of criminal charge.
- 6 5331. Parenting plan.
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- 9 5334. Guardian ad litem for child.
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- 15 § 5321. Scope.

16 This chapter applies to disputes relating to child custody
17 and visitation matters.

18 § 5322. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Abuse." As defined in section 6102 (relating to
23 definitions).

24 "Adult." An individual 18 years of age or older.

25 "Agency." Any organization, society, institution or other
26 entity, including the county children and youth social service
27 agency or court facility, which provides for the care of the
28 child.

29 "Child." An unemancipated individual under 18 years of age.

30 "Legal custody." The right to make major decisions on behalf

1 of the child, including, but not limited to, medical, religious
2 and educational decisions.

3 "Parental duties." Includes meeting the physical, emotional
4 and social needs of the child.

5 "Partial physical custody." The right to assume physical
6 custody of the child for less than a majority of the time.

7 "Physical custody." The actual physical possession and
8 control of a child.

9 "Primary physical custody." The right to assume physical
10 custody of the child for the majority of time.

11 "Relocation." A change in a residence of the child which
12 significantly impairs the ability of a nonrelocating party to
13 exercise custodial rights.

14 "Shared legal custody." The right of more than one
15 individual to legal custody of the child.

16 "Shared physical custody." The right of more than one
17 individual to assume physical custody of the child, each having
18 approximately the same amount of physical custodial time with
19 the child.

20 "Sole legal custody." The right of one individual to
21 exclusive legal custody of the child.

22 "Sole physical custody." The right of one individual to
23 exclusive physical custody of the child.

24 "Supervised visitation." Visitation in which an agency or an
25 adult designated by the court or agreed upon by the parties
26 monitors the interaction between the child and the individual
27 with visitation rights.

28 "Visitation." The right to spend time with the child but not
29 the right to remove the child from the care or control of a
30 custodial party.

1 § 5323. Award of custody or visitation.

2 (a) Types of award.--After considering the factors set forth
3 in section 5328 (relating to factors to consider when awarding
4 custody), the court may award any of the following types of
5 custody and visitation if it is in the best interest of the
6 child:

- 7 (1) Sole legal custody.
- 8 (2) Shared legal custody.
- 9 (3) Sole physical custody.
- 10 (4) Shared physical custody.
- 11 (5) Primary physical custody.
- 12 (6) Partial physical custody.
- 13 (7) Visitation.
- 14 (8) Supervised visitation.

15 (b) Interim award.--The court may issue an interim award of
16 custody or visitation to a party who has standing under section
17 5324 (relating to standing for any form of physical custody,
18 legal custody or visitation) or 5325 (relating to standing for
19 partial physical custody and visitation), in the manner
20 prescribed by the Pennsylvania Rules of Civil Procedure
21 governing special relief in custody and visitation matters.

22 (c) Notice.--Any custody or visitation order shall include
23 notice of a party's obligations under section 5337 (relating to
24 relocation).

25 (d) Enforcement.--In awarding custody or visitation, the
26 court shall specify the terms and conditions of the award in
27 sufficient detail to enable a party to enforce the court order
28 through law enforcement authorities.

29 (e) Contempt for noncompliance with any custody or
30 visitation order.--

1 (1) A party who willfully fails to comply with any
2 custody or visitation order may, as prescribed by general
3 rule, be adjudged in contempt. Contempt shall be punishable
4 by any one or more of the following:

5 (i) Imprisonment for a period of not more than six
6 months.

7 (ii) A fine of not more than \$500.

8 (iii) Probation for a period of not more than six
9 months.

10 (iv) An order for nonrenewal, suspension or denial
11 of operating privilege pursuant to section 4355 (relating
12 to denial or suspension of licenses).

13 (v) Counsel fees and costs.

14 (2) An order committing an individual to jail under this
15 section shall specify the condition which, when fulfilled,
16 will result in the release of that individual.

17 (f) Parties in same residence.--Parties living separate and
18 apart in the same residence may seek relief under this chapter,
19 but any custody or visitation order made under such a
20 circumstance shall be effective only upon:

21 (1) one party physically vacating the residence; or

22 (2) an order awarding one party exclusive possession of
23 the residence.

24 § 5324. Standing for any form of physical custody, legal
25 custody or visitation.

26 The following individuals may file an action under this
27 chapter for any form of physical custody, legal custody or
28 visitation:

29 (1) A parent of the child.

30 (2) A person who stands in loco parentis to the child.

1 (3) A grandparent of the child who is not in loco
2 parentis to the child:

3 (i) whose relationship with the child began either
4 with the consent of a parent of the child or pursuant to
5 a court order;

6 (ii) who assumes or is willing to assume
7 responsibility for the child; and

8 (iii) when one of the following conditions is met:

9 (A) the child has been determined to be a
10 dependent child pursuant to 42 Pa.C.S. Ch. 63
11 (relating to juvenile matters);

12 (B) the child is substantially at risk due to
13 parental abuse, neglect, drug or alcohol abuse or
14 incapacity; or

15 (C) the child has for a period of at least 12
16 consecutive months resided with the grandparent,
17 excluding brief temporary absences of the child from
18 the home, and is removed from the home by the
19 parents, in which case the action must be filed
20 within six months after the removal of the child from
21 the home.

22 § 5325. Standing for partial physical custody and visitation.

23 In addition to situations set forth in section 5324 (relating
24 to standing for any form of physical custody, legal custody or
25 visitation), grandparents and great-grandparents may file an
26 action under this chapter for partial physical custody or
27 visitation in the following situations:

28 (1) where the parent of the child is deceased, a parent
29 or grandparent of the deceased parent may file an action
30 under this section;

1 (2) where the parents of the child have been separated
2 for a period of at least six months or have commenced and
3 continued a proceeding to dissolve their marriage; or

4 (3) when the child has for a period of at least 12
5 consecutive months resided with the grandparent or great-
6 grandparent, excluding brief temporary absences of the child
7 from the home, and is removed from the home by the parents,
8 an action must be filed within six months after the removal
9 of the child from the home.

10 § 5326. Effect of adoption.

11 Any rights to seek physical custody, legal custody or
12 visitation rights and any custody or visitation rights that have
13 been granted under section 5324 (relating to standing for any
14 form of physical custody, legal custody or visitation) or 5325
15 (relating to standing for partial physical custody and
16 visitation) to a grandparent or great-grandparent prior to the
17 adoption of the child by an individual other than a stepparent,
18 grandparent or great-grandparent shall be automatically
19 terminated upon such adoption.

20 § 5327. Presumption in cases concerning primary physical
21 custody.

22 (a) Between parents.--In any action regarding the custody of
23 the child between the parents of the child, there shall be no
24 presumption that custody should be awarded to a particular
25 parent.

26 (b) Between a parent and third party.--In any action
27 regarding the custody of the child between a parent of the child
28 and a nonparent, there shall be a presumption that custody shall
29 be awarded to the parent. The presumption in favor of the parent
30 may be rebutted by clear and convincing evidence.

1 (c) Between third parties.--In any action regarding the
2 custody of the child between a nonparent and another nonparent,
3 there shall be no presumption that custody should be awarded to
4 a particular party.

5 § 5328. Factors to consider when awarding custody.

6 (a) Factors.--In ordering any form of custody or visitation,
7 the court shall determine the best interest of the child by
8 considering all relevant factors, including the following:

9 (1) Which party is more likely to encourage and permit
10 frequent and continuing contact between the child and another
11 party.

12 (2) The parental duties performed by each party on
13 behalf of the child.

14 (3) The need for stability and continuity in the child's
15 education, family life and community life.

16 (4) The availability of extended family.

17 (5) The child's sibling relationships.

18 (6) The present and past abuse committed by a party or
19 member of the party's household.

20 (7) The well-reasoned preference of the child, based on
21 the child's maturity and judgment.

22 (8) The attempts of a parent to turn the child against
23 the other parent.

24 (9) Which party is more likely to maintain a loving,
25 stable, consistent and nurturing relationship with the child
26 adequate for the child's emotional needs.

27 (10) Which party is more likely to attend to the daily
28 physical, emotional, developmental, educational and special
29 needs of the child.

30 (11) The proximity of the residences of the parties.

1 (12) Each party's availability to care for the child or
2 ability to make appropriate child care arrangements.

3 (13) The level of conflict between the parties and the
4 willingness and ability of the parties to cooperate with one
5 another.

6 (14) The history of drug or alcohol abuse of a party or
7 member of a party's household.

8 (15) The mental and physical condition of a party or
9 member of a party's household.

10 (16) Any other relevant factor.

11 (b) Grandparents and great-grandparents.--

12 (1) In ordering partial physical custody or visitation
13 to a party who has standing under section 5325(a)(1) or (2)
14 (relating to standing for partial physical custody and
15 visitation), the court shall consider the following:

16 (i) the amount of personal contact between the child
17 and the party prior to the filing of the action;

18 (ii) whether the award interferes with any parent-
19 child relationship; and

20 (iii) whether the award is in the best interest of
21 the child.

22 (2) In ordering partial physical custody or visitation
23 to a parent's parent or grandparent who has standing under
24 section 5325(a)(3), the court shall consider whether the
25 award:

26 (i) interferes with any parent-child relationship;

27 and

28 (ii) is in the best interest of the child.

29 § 5329. Consideration of criminal conviction.

30 (a) Offenses.--Where a party seeks any form of custody or

1 visitation, the court shall consider whether that party or
2 member of that party's household as been convicted of or has
3 pleaded guilty or no contest to any of the following offenses:

4 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

5 (2) 18 Pa.C.S. § 2702 (relating to aggravated assault).

6 (3) 18 Pa.C.S. § 2706 (relating to terroristic threats).

7 (4) 18 Pa.C.S. § ~~2709(b) (relating to harassment and~~ <—

8 ~~stalking)~~ 2709.1 (RELATING TO STALKING). <—

9 (5) 18 Pa.C.S. § 2901 (relating to kidnapping).

10 (6) 18 Pa.C.S. § 2902 (relating to unlawful restraint).

11 (7) 18 Pa.C.S. § 2903 (relating to false imprisonment).

12 (8) 18 Pa.C.S. § 3121 (relating to rape).

13 (9) 18 Pa.C.S. § 3122.1 (relating to statutory sexual
14 assault).

15 (10) 18 Pa.C.S. § 3123 (relating to involuntary deviate
16 sexual intercourse).

17 (11) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

18 (12) 18 Pa.C.S. § 3125 (relating to aggravated indecent
19 assault).

20 (13) 18 Pa.C.S. § 3126 (relating to indecent assault).

21 (14) 18 Pa.C.S. § 3127 (relating to indecent exposure).

22 (15) 18 Pa.C.S. § 3301 (relating to arson and related
23 offenses).

24 (16) 18 Pa.C.S. § 4302 (relating to incest).

25 (17) 18 Pa.C.S. § 4304 (relating to endangering welfare
26 of children).

27 (18) 18 Pa.C.S. § 5902(b) (relating to prostitution and
28 related offenses).

29 (19) 18 Pa.C.S. § 6312 (relating to sexual abuse of
30 children).

1 (20) 23 Pa.C.S. § 6114 (relating to contempt for
2 violation of order or agreement).

3 (21) 75 Pa.C.S. § 3731 (relating to driving under
4 influence of alcohol or controlled substance).

5 (22) Section 13(a)(1) of the act of April 14, 1972
6 (P.L.233, No.64), known as The Controlled Substance, Drug,
7 Device and Cosmetic Act, to the extent that it prohibits the
8 manufacture, sale or delivery, holding, offering for sale or
9 possession of any controlled substance or other drug or
10 device.

11 (b) Parent convicted of murder.--No court shall award
12 custody, partial custody or visitation to a parent who has been
13 convicted of murder under 18 Pa.C.S. § 2502(a) (relating to
14 murder) of the other parent of the child who is the subject of
15 the order unless the child is of suitable age and consents to
16 the order.

17 (c) Initial evaluation.--The court shall provide for an
18 evaluation to determine whether:

19 (1) the party or household member who committed an
20 offense under subsection (a) poses a threat to the child; and

21 (2) counseling is necessary for that party or household
22 member.

23 (d) Counseling.--

24 (1) Where the court determines under subsection (c) that
25 counseling is necessary, it shall appoint a qualified
26 professional specializing in treatment relating to the
27 particular offense to provide counseling to the offending
28 individual.

29 (2) Counseling may include a program of treatment or
30 individual therapy designed to rehabilitate the offending

1 individual which addresses, but is not limited to, issues
2 regarding physical and sexual abuse, the psychology of the
3 offender and the effects of the offense on the victim.

4 (e) Subsequent evaluation.--

5 (1) At any time during or subsequent to the counseling
6 under subsection (d), the court may require another
7 evaluation to determine whether further counseling is
8 necessary.

9 (2) If the court awards custody or visitation to a party
10 who committed an offense under subsection (a) or who shares a
11 household with an individual who committed an offense under
12 subsection (a), the court may require subsequent evaluations
13 on the rehabilitation of the offending individual and the
14 well-being of the child subsequent to the order. If upon
15 review of a subsequent evaluation the court determines that
16 the offending individual poses a threat of physical,
17 emotional or psychological harm to the child, the court may
18 schedule a hearing to modify the custody or visitation order.

19 (f) Costs.--The court may order a party to pay all or part
20 of the costs of the counseling and evaluations under this
21 section.

22 § 5330. Consideration of criminal charge.

23 (a) Expedited hearing.--A party who has obtained information
24 under 42 Pa.C.S. § 1904 (relating to availability of criminal
25 charge information in child custody proceedings) or otherwise
26 about a charge filed against the other party for an offense
27 listed under section 5329(a) (relating to consideration of
28 criminal conviction) may move for a temporary custody or
29 visitation order or modification of an existing custody or
30 visitation order. The court shall hold the hearing under this

1 subsection in an expeditious manner.

2 (b) Risk of harm.--In evaluating any request under
3 subsection (a), the court shall consider whether the party who
4 is or has been charged with an offense set forth in section
5 5329(a) poses a risk of physical, emotional or psychological
6 harm to the child.

7 (c) No prejudice.--Failure to either apply for information
8 under 42 Pa.C.S. § 1904 or act under this section shall not
9 prejudice any party in a custody or visitation proceeding.
10 § 5331. Parenting plan.

11 (a) Purpose.--In a contested custody proceeding, the court
12 shall require the parties to submit parenting plans for the care
13 and custody of the child, to aid the court in resolving the
14 custody dispute. A parenting plan and the position of a party as
15 set forth in that parenting plan shall not be admissible as
16 evidence by another party.

17 (b) Contents.--A parenting plan shall include the following:

18 (1) The schedule for personal care and control of the
19 child, including parenting time, holidays and vacations.

20 (2) The education and religious involvement, if any, of
21 the child.

22 (3) The health care of the child.

23 (4) Child-care arrangements.

24 (5) Transportation arrangements.

25 (6) A procedure by which proposed changes, disputes and
26 alleged breaches of the custody order may be adjudicated or
27 otherwise resolved through mediation, arbitration or other
28 means.

29 (7) Any matter specified by the court.

30 (8) Any other matter that serves the best interest of

1 the child.

2 § 5332. Informational programs.

3 (a) Attendance.--The court may direct the parties to attend
4 informational programs concerning parental duties.

5 (b) Process not delayed.--Subsequent proceedings and the
6 entry of any order or decree shall not be delayed because of the
7 lack of participation in any informational program by one of the
8 parties.

9 (c) Costs.--The court may order a party to pay all or part
10 of the costs of the information programs under this section.

11 § 5333. Counseling as part of order.

12 (a) Attendance.--The court may, as part of a custody or
13 visitation order, require the parties to attend counseling
14 sessions.

15 (b) Abuse.--In situations involving abuse, the court may
16 order individual counseling for the abuser.

17 (c) Verification.--Each party's participation in the
18 counseling sessions shall be verified by the counselor.

19 (d) Costs.--The court may order a party to pay all or part
20 of the costs of the counseling sessions under this section.

21 § 5334. Guardian ad litem for child.

22 (a) Appointment.--The court may appoint a guardian ad litem
23 for the child. The court shall specify the terms of the
24 appointment, including the role, duties and scope of authority
25 of the guardian ad litem.

26 (b) Investigation and report.--The guardian ad litem shall
27 investigate and report to the court information relevant to the
28 custody or visitation proceeding.

29 (c) Abuse.--If substantial allegations of abuse of the child
30 are made, the court shall appoint a guardian ad litem for the

1 child if:

2 (1) counsel for the child is not appointed under section
3 5335 (relating to counsel for child); or

4 (2) the court is satisfied that the relevant information
5 will be presented to the court only with such appointment.

6 (d) Subject to examination.--A guardian ad litem who submits
7 a report or makes a recommendation to the court shall be subject
8 to examination by the parties.

9 (e) Costs.--The court may order a party to pay all or part
10 of the costs of appointing a guardian ad litem under this
11 section.

12 § 5335. Counsel for child.

13 (a) Appointment.--The court may appoint counsel to represent
14 the child if the court determines that the appointment will
15 assist in resolving the issues in the custody or visitation
16 proceeding.

17 (b) Abuse.--Substantial allegations of abuse of the child
18 constitute a reasonable basis for appointing counsel for the
19 child.

20 (c) Not subject to examination.--Counsel appointed by the
21 court for the child shall not be subject to examination unless
22 such counsel testifies in the matter.

23 (d) Costs.--The court may order a party to pay all or part
24 of the costs of appointing counsel for the child under this
25 section.

26 § 5336. Access to records and information.

27 (a) General rule.--Except as provided in subsections (b) and
28 (c):

29 (1) A parent or party granted custody or visitation
30 under section 5323 (relating to award of custody or

1 visitation) shall be provided access to:

2 (i) the medical, dental, religious and school
3 records of the child;

4 (ii) the address of the child and any other party;
5 and

6 (iii) any other information that the court deems
7 necessary or proper.

8 (2) Upon request, a parent, party or entity possessing
9 any information set forth in paragraph (1) shall provide it
10 to any parent or party granted custody or visitation.

11 (b) Nondisclosure of confidential information.--The court
12 shall not order the disclosure of any of the following
13 information to any parent or party granted custody or
14 visitation:

15 (1) The address of a victim of abuse.

16 (2) Confidential information from an abuse counselor or
17 shelter.

18 (3) Information independently protected from disclosure
19 by the child's right to confidentiality under the act of July
20 9, 1976 (P.L.817, No.143), known as the Mental Health
21 Procedures Act, or any other statute.

22 (c) Other information.--The court may determine not to
23 release information set forth in subsection (a), in which case
24 it shall state the reason for its denial on the record.

25 § 5337. Relocation.

26 (a) Applicability.--This section applies to any proposed
27 relocation.

28 (b) General rule.--No relocation shall occur unless:

29 (1) every individual who has custody or visitation
30 rights to the child consents to the proposed relocation; or

1 (2) the court approves the proposed relocation.

2 (c) Notice.--

3 (1) The party proposing the relocation shall notify
4 every other individual who has custody or visitation rights
5 to the child.

6 (2) Reasonable notice shall be given no later than:

7 (i) the 60th day before the date of the proposed
8 relocation; or

9 (ii) the 10th day after the date that the individual
10 knows of the relocation, if:

11 (A) the individual did not know and could not
12 reasonably have known of the relocation in sufficient
13 time to comply with the 60-day notice; and

14 (B) it is not reasonably possible to delay the
15 date of relocation so as to comply with the 60-day
16 notice.

17 (3) Except as provided by section 5336 (relating to
18 access to records and information), the following
19 information, if available, must be included with the notice
20 of the proposed relocation:

21 (i) The address of the intended new residence.

22 (ii) The mailing address, if not the same as the
23 address of the intended new residence.

24 (iii) The home telephone number of the intended new
25 residence.

26 (iv) The name of the new school district and school.

27 (v) The date of the proposed relocation.

28 (vi) The reasons for the proposed relocation.

29 (vii) A proposal for a revised custody or visitation
30 schedule.

1 (viii) Any other information which the party
2 proposing the relocation deems appropriate.

3 (ix) A warning to the nonrelocating party that if
4 the nonrelocating party does not file with the court an
5 objection to the proposed relocation within 30 days after
6 receipt of the notice, that party shall be foreclosed
7 from objecting to the relocation.

8 (4) If any of the information set forth in paragraph (3)
9 is not known when the notice is sent but is later made known
10 to the party proposing the relocation, then that party shall
11 promptly inform every individual who received notice under
12 this subsection.

13 (d) Objection to proposed relocation.--

14 (1) A party entitled to receive notice may file with the
15 court an objection to the proposed relocation and seek a
16 temporary or permanent order to prevent the relocation.

17 (2) An objection made under this subsection shall be
18 filed with the court within 30 days of receipt of the
19 proposed relocation notice.

20 (3) If notice of the proposed relocation has been
21 properly given and no objection to the proposed relocation
22 has been filed in court, then it shall be presumed that the
23 nonrelocating party has consented to the proposed relocation.

24 (4) If a party entitled to notice does not file with the
25 court an objection to the relocation within 30 days after
26 receipt of the notice but later petitions the court for
27 review of the custodial arrangements, the court shall not
28 accept testimony challenging the relocation.

29 (e) Confirmation of relocation.--If no objection to the
30 proposed relocation is filed under subsection (d), the party

1 proposing the relocation may file the following with the court
2 prior to the relocation:

3 (1) an affidavit stating that the party provided notice
4 to every individual entitled to notice, the time to file an
5 objection to the proposed relocation has passed and no
6 individual entitled to receive notice has filed an objection
7 to the proposed relocation;

8 (2) a petition to confirm the relocation and modify any
9 existing custody or visitation order; and

10 (3) a proposed order containing the information set
11 forth in subsection (c)(3).

12 (f) Hearing.--

13 (1) The court shall hold an expedited full hearing on
14 the proposed relocation after a timely objection has been
15 filed and before the relocation occurs unless exigent
16 circumstances exist, in which case the relocation may occur
17 pending an expedited full hearing.

18 (2) If the court approves the proposed relocation, it
19 shall:

20 (i) modify any existing custody or visitation order;

21 or

22 (ii) establish the terms and conditions of a custody
23 or visitation order.

24 (g) Relocation factors.--In determining whether to grant a
25 proposed relocation, the court shall consider the following
26 factors:

27 (1) The nature, quality, extent of involvement and
28 duration of the child's relationship with the party proposing
29 to relocate and with the nonrelocating party, siblings and
30 other significant persons in the child's life.

1 (2) The age, developmental stage, needs of the child and
2 the likely impact the relocation will have on the child's
3 physical, educational and emotional development, taking into
4 consideration any special needs of the child.

5 (3) The feasibility of preserving the relationship
6 between the nonrelocating party and the child through
7 suitable custody arrangements, considering the logistics and
8 financial circumstances of the parties.

9 (4) The child's preference, taking into consideration
10 the age and maturity of the child.

11 (5) Whether there is an established pattern of conduct
12 of either party to promote or thwart the relationship of the
13 child and the other party.

14 (6) Whether the relocation will enhance the general
15 quality of life for the party seeking the relocation,
16 including, but not limited to, financial or emotional benefit
17 or educational opportunity.

18 (7) Whether the relocation will enhance the general
19 quality of life for the child, including, but not limited to,
20 financial or emotional benefit or educational opportunity.

21 (8) The reasons and motivation of each party for seeking
22 or opposing the relocation.

23 (9) Any other factor affecting the best interest of the
24 child.

25 (h) Burden of proof.--

26 (1) The party proposing the relocation has the burden of
27 establishing that the relocation will serve the best interest
28 of the child as shown under the factors set forth in
29 subsection (g).

30 (2) Each party has the burden of establishing the

1 integrity of that party's motives in either seeking the
2 relocation or seeking to prevent the relocation.

3 (i) Failure to provide reasonable notice.--The court may
4 consider a failure to provide reasonable notice of a proposed
5 relocation as:

6 (1) a factor in making a determination regarding the
7 relocation;

8 (2) a factor in determining whether custody or
9 visitation rights should be modified;

10 (3) a basis for ordering the return of the child to the
11 nonrelocating party if the relocation has occurred without
12 reasonable notice;

13 (4) sufficient cause to order the party proposing the
14 relocation to pay reasonable expenses and counsel fees
15 incurred by the party objecting to the relocation; and

16 (5) a ground for contempt and the imposition of
17 sanctions against the party proposing the relocation.

18 (j) Effect of relocation prior to hearing.--If a party
19 relocates with the child prior to a full expedited hearing, the
20 court shall not confer any presumption in favor of the
21 relocation.

22 § 5338. Modification of existing order.

23 (a) Best interest of the child.--Upon petition, a court may
24 modify a custody or visitation order to serve the best interest
25 of the child.

26 (b) Applicability.--This section shall apply to any custody
27 or visitation order entered by a court of this Commonwealth or
28 any other state subject to the jurisdictional requirements set
29 forth in Chapter 54 (relating to uniform child custody
30 jurisdiction and enforcement).

1 § 5339. Award of counsel fees, costs and expenses.

2 Under this chapter, a court may award reasonable interim or
3 final counsel fees, costs and expenses to any party, based on
4 any relevant factor including, but not limited to, the
5 following:

6 (1) The good faith conduct of the parties.

7 (2) The relative financial resources of the parties,
8 including the ability of a party to participate in custody
9 litigation.

10 (3) The need of a party to engage experts.

11 (4) The best interest of the child.

12 CHAPTER 54

13 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT

14 Subchapter

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20 SUBCHAPTER A

21 GENERAL PROVISIONS

22 Sec.

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5 § 5401. Short title of chapter.

6 This chapter shall be known and may be cited as the Uniform
7 Child Custody Jurisdiction and Enforcement Act.

8 § 5402. Definitions.

9 The following words and phrases when used in this chapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Abandoned." Left without provision for reasonable and
13 necessary care or supervision.

14 "Child." An individual who has not attained 18 years of age.

15 "Child custody determination." A judgment, decree or other
16 order of a court providing for legal custody, physical custody
17 or visitation with respect to a child. The term includes a
18 permanent, temporary, initial and modification order. The term
19 does not include an order relating to child support or other
20 monetary obligation of an individual.

21 "Child custody proceeding." A proceeding in which legal
22 custody, physical custody or visitation with respect to a child
23 is an issue. The term includes a proceeding for divorce,
24 separation, neglect, abuse, dependency, guardianship, paternity,
25 termination of parental rights and protection from domestic
26 violence, in which the issue may appear. The term does not
27 include a proceeding involving juvenile delinquency, contractual
28 emancipation or enforcement under Subchapter C (relating to
29 enforcement).

30 "Commencement." The filing of the first pleading in a

1 proceeding.

2 "Court." An entity authorized under the law of a state to
3 establish, enforce or modify a child custody determination.

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

11 "Initial determination." The first child custody
12 determination concerning a particular child.

13 "Issuing court." The court that makes a child custody
14 determination for which enforcement is sought under this
15 chapter.

16 "Modification." A child custody determination that changes,
17 replaces, supersedes or is otherwise made after a previous
18 determination concerning the same child, whether or not it is
19 made by the court that made the previous determination.

20 "Person." An individual, corporation, business trust,
21 estate, trust, partnership, limited liability company,
22 association, joint venture, government or governmental
23 subdivision, agency or instrumentality, public corporation or
24 any other legal or commercial entity.

25 "Person acting as a parent." A person, other than a parent,
26 who:

27 (1) has physical custody of the child or has had
28 physical custody for a period of six consecutive months,
29 including any temporary absence, within one year immediately
30 before the commencement of a child custody proceeding; and

1 (2) has been awarded legal custody by a court or claims
2 a right to legal custody under the laws of this Commonwealth.

3 "Physical custody." The physical care and supervision of a
4 child.

5 "State." A state of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands or any
7 territory or insular possession subject to the jurisdiction of
8 the United States.

9 "Tribe." A Native American tribe or band, or Alaskan Native
10 village, which is recognized by Federal law or formally
11 acknowledged by a state.

12 "Warrant." An order issued by a court authorizing law
13 enforcement officers to take physical custody of a child.

14 § 5403. Proceedings governed by other law.

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

18 § 5404. Application to Native American tribes.

19 (a) Primacy of Indian Child Welfare Act.--A child custody
20 proceeding that pertains to a Native American child as defined
21 in the Indian Child Welfare Act of 1978 (Public Law 95-608, 25
22 U.S.C. § 1901 et seq.) is not subject to this chapter to the
23 extent that it is governed by the Indian Child Welfare Act of
24 1978.

25 (b) Tribe treated as state.--A court of this Commonwealth
26 shall treat a tribe as if it were a state of the United States
27 for the purpose of applying Subchapter B (relating to
28 jurisdiction) and this subchapter.

29 (c) Tribal custody determinations.--A child custody
30 determination made by a tribe under factual circumstances in

1 substantial conformity with the jurisdictional standards of this
2 chapter must be recognized and enforced under Subchapter C
3 (relating to enforcement).

4 § 5405. International application of chapter.

5 (a) Foreign country treated as state.--A court of this
6 Commonwealth shall treat a foreign country as if it were a state
7 of the United States for the purpose of applying Subchapter B
8 (relating to jurisdiction) and this subchapter.

9 (b) Foreign custody determinations.--Except as otherwise
10 provided in subsection (c), a child custody determination made
11 in a foreign country under factual circumstances in substantial
12 conformity with the jurisdictional standards of this chapter
13 must be recognized and enforced under Subchapter C (relating to
14 enforcement).

15 (c) Violation of human rights.--A court of this Commonwealth
16 need not apply this chapter if the child custody law of a
17 foreign country violates fundamental principles of human rights.

18 § 5406. Effect of child custody determination.

19 A child custody determination made by a court of this
20 Commonwealth that had jurisdiction under this chapter binds all
21 persons who have been served in accordance with the laws of this
22 Commonwealth or notified in accordance with section 5408
23 (relating to notice to persons outside Commonwealth) or who have
24 submitted to the jurisdiction of the court and who have been
25 given an opportunity to be heard. As to those persons, the
26 determination is conclusive as to all decided issues of law and
27 fact except to the extent the determination is modified.

28 § 5407. Priority.

29 If a question of existence or exercise of jurisdiction under
30 this chapter is raised in a child custody proceeding, the

1 question, upon request of a party, must be given priority on the
2 calendar and handled expeditiously.

3 § 5408. Notice to persons outside Commonwealth.

4 (a) General rule.--Notice required for the exercise of
5 jurisdiction when a person is outside this Commonwealth may be
6 given in a manner prescribed by the laws of this Commonwealth
7 for service of process or by the law of the state in which the
8 service is made. Notice must be given in a manner reasonably
9 calculated to give actual notice but may be by publication if
10 other means are not effective.

11 (b) Proof of service.--Proof of service may be made in the
12 manner prescribed by the laws of this Commonwealth or by the law
13 of the state in which the service is made.

14 (c) Submission to jurisdiction.--Notice is not required for
15 the exercise of jurisdiction with respect to a person who
16 submits to the jurisdiction of the court.

17 § 5409. Appearance and limited immunity.

18 (a) General rule.--A party to a child custody proceeding,
19 including a modification proceeding or a petitioner or
20 respondent in a proceeding to enforce or register a child
21 custody determination, is not subject to personal jurisdiction
22 in this Commonwealth for another proceeding or purpose solely by
23 reason of having participated or of having been physically
24 present for the purpose of participating in the proceeding.

25 (b) Service.--A person who is subject to personal
26 jurisdiction in this Commonwealth on a basis other than physical
27 presence is not immune from service of process in this
28 Commonwealth. A party present in this Commonwealth who is
29 subject to the jurisdiction of another state is not immune from
30 service of process allowable under the laws of that state.

1 (c) Acts committed while in this Commonwealth.--The immunity
2 granted by subsection (a) does not extend to civil litigation
3 based on acts unrelated to the participation in a proceeding
4 under this chapter committed by an individual while present in
5 this Commonwealth.

6 § 5410. Communication between courts.

7 (a) General rule.--A court of this Commonwealth may
8 communicate with a court in another state concerning a
9 proceeding arising under this chapter.

10 (b) Participation of parties.--The court may allow the
11 parties to participate in the communication. If the parties are
12 not able to participate in the communication, they must be given
13 the opportunity to present facts and legal arguments before a
14 decision on jurisdiction is made.

15 (c) Matters of cooperation between courts.--Communication
16 between courts on schedules, calendars, court records and
17 similar matters may occur without informing the parties. A
18 record need not be made of the communication.

19 (d) Record.--Except as otherwise provided in subsection (c),
20 a record must be made of a communication under this section. The
21 parties must be informed promptly of the communication and
22 granted access to the record.

23 (e) Definition.--As used in this section, the term "record"
24 means information that is inscribed on a tangible medium or that
25 is stored in an electronic or other medium and is retrievable in
26 perceivable form.

27 § 5411. Taking testimony in another state.

28 (a) General rule.--In addition to other procedures available
29 to a party, a party to a child custody proceeding may offer
30 testimony of witnesses who are located in another state,

1 including testimony of the parties and the child, by deposition
2 or other means allowable in this Commonwealth for testimony
3 taken in another state. The court on its own motion may order
4 that the testimony of a person be taken in another state and may
5 prescribe the manner in which and the terms upon which the
6 testimony is taken.

7 (b) Means and location.--A court of this Commonwealth may
8 permit an individual residing in another state to be deposed or
9 to testify by telephone, audiovisual means or other electronic
10 means before a designated court or at another location in that
11 state. A court of this Commonwealth shall cooperate with courts
12 of other states in designating an appropriate location for the
13 deposition or testimony.

14 (c) Transmission of documentary evidence.--Documentary
15 evidence transmitted from another state to a court of this
16 Commonwealth by technological means that do not produce an
17 original writing may not be excluded from evidence on an
18 objection based on the means of transmission.

19 § 5412. Cooperation between courts; preservation of records.

20 (a) Assistance of another state.--A court of this
21 Commonwealth may request the appropriate court of another state
22 to:

- 23 (1) hold an evidentiary hearing;
- 24 (2) order a person to produce or give evidence pursuant
25 to procedures of that state;
- 26 (3) order that an evaluation be made with respect to the
27 custody of a child involved in a pending proceeding;
- 28 (4) forward to the court of this Commonwealth a
29 certified copy of the transcript of the record of the
30 hearing, the evidence otherwise presented and any evaluation

1 prepared in compliance with the request; and

2 (5) order a party to a child custody proceeding or any
3 person having physical custody of the child to appear in the
4 proceeding with or without the child.

5 (b) Assistance to another state.--Upon request of a court of
6 another state, a court of this Commonwealth may hold a hearing
7 or enter an order described in subsection (a).

8 (c) Expenses.--Travel and other necessary and reasonable
9 expenses incurred under subsections (a) and (b) may be assessed
10 against the parties according to the laws of this Commonwealth.

11 (d) Preservation of records.--A court of this Commonwealth
12 shall preserve the pleadings, orders, decrees, records of
13 hearings, evaluations and other pertinent records with respect
14 to a child custody proceeding until the child attains 18 years
15 of age. Upon appropriate request by a court or law enforcement
16 official of another state, the court shall forward a certified
17 copy of those records.

18 SUBCHAPTER B

19 JURISDICTION

20 Sec.

21 5421. Initial child custody jurisdiction.

22 5422. Exclusive, continuing jurisdiction.

23 5423. Jurisdiction to modify determination.

24 5424. Temporary emergency jurisdiction.

25 5425. Notice; opportunity to be heard; joinder.

26 5426. Simultaneous proceedings.

27 5427. Inconvenient forum.

28 5428. Jurisdiction declined by reason of conduct.

29 5429. Information to be submitted to court.

30 5430. Appearance of parties and child.

1 § 5421. Initial child custody jurisdiction.

2 (a) General rule.--Except as otherwise provided in section
3 5424 (relating to temporary emergency jurisdiction), a court of
4 this Commonwealth has jurisdiction to make an initial child
5 custody determination only if:

6 (1) this Commonwealth is the home state of the child on
7 the date of the commencement of the proceeding, or was the
8 home state of the child within six months before the
9 commencement of the proceeding and the child is absent from
10 this Commonwealth but a parent or person acting as a parent
11 continues to live in this Commonwealth;

12 (2) a court of another state does not have jurisdiction
13 under paragraph (1), or a court of the home state of the
14 child has declined to exercise jurisdiction on the ground
15 that this Commonwealth is the more appropriate forum under
16 section 5427 (relating to inconvenient forum) or 5428
17 (relating to jurisdiction declined by reason of conduct),
18 and:

19 (i) the child and the child's parents, or the child
20 and at least one parent or a person acting as a parent,
21 have a significant connection with this Commonwealth
22 other than mere physical presence; and

23 (ii) substantial evidence is available in this
24 Commonwealth concerning the child's care, protection,
25 training and personal relationships;

26 (3) all courts having jurisdiction under paragraph (1)
27 or (2) have declined to exercise jurisdiction on the ground
28 that a court of this Commonwealth is the more appropriate
29 forum to determine the custody of the child under section
30 5427 or 5428; or

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

3 (b) Exclusive jurisdictional basis.--Subsection (a) is the
4 exclusive jurisdictional basis for making a child custody
5 determination by a court of this Commonwealth.

6 (c) Physical presence and personal jurisdiction
7 unnecessary.--Physical presence of or personal jurisdiction over
8 a party or a child is not necessary or sufficient to make a
9 child custody determination.

10 § 5422. Exclusive, continuing jurisdiction.

11 (a) General rule.--Except as otherwise provided in section
12 5424 (relating to temporary emergency jurisdiction), a court of
13 this Commonwealth which has made a child custody determination
14 consistent with section 5421 (relating to initial child custody
15 jurisdiction) or section 5423 (relating to jurisdiction to
16 modify determination) has exclusive, continuing jurisdiction
17 over the determination until:

18 (1) a court of this Commonwealth determines that neither
19 the child, nor the child and one parent, nor the child and a
20 person acting as a parent have a significant connection with
21 this Commonwealth and that substantial evidence is no longer
22 available in this Commonwealth concerning the child's care,
23 protection, training and personal relationships; or

24 (2) a court of this Commonwealth or a court of another
25 state determines that the child, the child's parents and any
26 person acting as a parent do not presently reside in this
27 Commonwealth.

28 (b) Modification where court does not have exclusive,
29 continuing jurisdiction.--A court of this Commonwealth which has
30 made a child custody determination and does not have exclusive,

1 continuing jurisdiction under this section may modify that
2 determination only if it has jurisdiction to make an initial
3 determination under section 5421.

4 § 5423. Jurisdiction to modify determination.

5 Except as otherwise provided in section 5424 (relating to
6 temporary emergency jurisdiction), a court of this Commonwealth
7 may not modify a child custody determination made by a court of
8 another state unless a court of this Commonwealth has
9 jurisdiction to make an initial determination under section 5421
10 (a)(1) or (2) (relating to initial child custody jurisdiction)
11 and:

12 (1) the court of the other state determines it no longer
13 has exclusive, continuing jurisdiction under section 5422
14 (relating to exclusive, continuing jurisdiction) or that a
15 court of this Commonwealth would be a more convenient forum
16 under section 5427 (relating to inconvenient forum); or

17 (2) a court of this Commonwealth or a court of the other
18 state determines that the child, the child's parents and any
19 person acting as a parent do not presently reside in the
20 other state.

21 § 5424. Temporary emergency jurisdiction.

22 (a) General rule.--A court of this Commonwealth has
23 temporary emergency jurisdiction if the child is present in this
24 Commonwealth and the child has been abandoned or it is necessary
25 in an emergency to protect the child because the child or a
26 sibling or parent of the child is subjected to or threatened
27 with mistreatment or abuse.

28 (b) No previous custody determination or proceeding.--If
29 there is no previous child custody determination that is
30 entitled to be enforced under this chapter and a child custody

1 proceeding has not been commenced in a court of a state having
2 jurisdiction under sections 5421 (relating to initial child
3 custody jurisdiction) through 5423 (relating to jurisdiction to
4 modify determination), a child custody determination made under
5 this section remains in effect until an order is obtained from a
6 court of a state having jurisdiction under sections 5421 through
7 5423. If a child custody proceeding has not been or is not
8 commenced in a court of a state having jurisdiction under
9 sections 5421 through 5423, a child custody determination made
10 under this section becomes a final determination if it so
11 provides and this Commonwealth becomes the home state of the
12 child.

13 (c) Previous custody determination or proceeding.--If there
14 is a previous child custody determination that is entitled to be
15 enforced under this chapter or a child custody proceeding has
16 been commenced in a court of a state having jurisdiction under
17 sections 5421 through 5423, any order issued by a court of this
18 Commonwealth under this section must specify in the order a
19 period that the court considers adequate to allow the person
20 seeking an order to obtain an order from the state having
21 jurisdiction under sections 5421 through 5423. The order issued
22 in this Commonwealth remains in effect until an order is
23 obtained from the other state within the period specified or the
24 period expires.

25 (d) Mandatory communication between courts.--A court of this
26 Commonwealth which has been asked to make a child custody
27 determination under this section, upon being informed that a
28 child custody proceeding has been commenced in or a child
29 custody determination has been made by a court of a state having
30 jurisdiction under sections 5421 through 5423, shall immediately

1 communicate with the other court. A court of this Commonwealth
2 which is exercising jurisdiction pursuant to sections 5421
3 through 5423, upon being informed that a child custody
4 proceeding has been commenced in or a child custody
5 determination has been made by a court of another state under a
6 statute similar to this section, shall immediately communicate
7 with the court of that state to resolve the emergency, protect
8 the safety of the parties and the child and determine a period
9 for the duration of the temporary order.

10 § 5425. Notice; opportunity to be heard; joinder.

11 (a) General rule.--Before a child custody determination is
12 made under this chapter, notice and an opportunity to be heard
13 in accordance with the standards of section 5408 (relating to
14 notice to persons outside Commonwealth) must be given to all
15 persons entitled to notice under the laws of this Commonwealth
16 as in child custody proceedings between residents of this
17 Commonwealth, any parent whose parental rights have not been
18 previously terminated and any person having physical custody of
19 the child.

20 (b) Lack of notice or opportunity to be heard.--This chapter
21 does not govern the enforceability of a child custody
22 determination made without notice or any opportunity to be
23 heard.

24 (c) Joinder and intervention.--The obligation to join a
25 party and the right to intervene as a party in a child custody
26 proceeding under this chapter are governed by the laws of this
27 Commonwealth as in child custody proceedings between residents
28 of this Commonwealth.

29 § 5426. Simultaneous proceedings.

30 (a) General rule.--Except as otherwise provided in section

1 5424 (relating to temporary emergency jurisdiction), a court of
2 this Commonwealth may not exercise its jurisdiction under this
3 subchapter if, at the time of the commencement of the
4 proceeding, a proceeding concerning the custody of the child has
5 been commenced in a court of another state having jurisdiction
6 substantially in conformity with this chapter, unless the
7 proceeding has been terminated or is stayed by the court of the
8 other state because a court of this Commonwealth is a more
9 convenient forum under section 5427 (relating to inconvenient
10 forum).

11 (b) Stay; communication with other court.--Except as
12 otherwise provided in section 5424, a court of this
13 Commonwealth, before hearing a child custody proceeding, shall
14 examine the court documents and other information supplied by
15 the parties pursuant to section 5429 (relating to information to
16 be submitted to court). If the court determines that a child
17 custody proceeding has been commenced in a court in another
18 state having jurisdiction substantially in accordance with this
19 chapter, the court of this Commonwealth shall stay its
20 proceeding and communicate with the court of the other state. If
21 the court of the state having jurisdiction substantially in
22 accordance with this chapter does not determine that the court
23 of this Commonwealth is a more appropriate forum, the court of
24 this Commonwealth shall dismiss the proceeding.

25 (c) Modification.--In a proceeding to modify a child custody
26 determination, a court of this Commonwealth shall determine
27 whether a proceeding to enforce the determination has been
28 commenced in another state. If a proceeding to enforce a child
29 custody determination has been commenced in another state, the
30 court may:

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

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

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

9 § 5427. Inconvenient forum.

10 (a) General rule.--A court of this Commonwealth which has
11 jurisdiction under this chapter to make a child custody
12 determination may decline to exercise its jurisdiction at any
13 time if it determines that it is an inconvenient forum under the
14 circumstances and that a court of another state is a more
15 appropriate forum. The issue of inconvenient forum may be raised
16 upon motion of a party, the court's own motion or request of
17 another court.

18 (b) Factors.--Before determining whether it is an
19 inconvenient forum, a court of this Commonwealth shall consider
20 whether it is appropriate for a court of another state to
21 exercise jurisdiction. For this purpose, the court shall allow
22 the parties to submit information and shall consider all
23 relevant factors, including:

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

27 (2) the length of time the child has resided outside
28 this Commonwealth;

29 (3) the distance between the court in this Commonwealth
30 and the court in the state that would assume jurisdiction;

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

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

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

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

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

12 (c) Stay.--If a court of this Commonwealth determines that
13 it is an inconvenient forum and that a court of another state is
14 a more appropriate forum, it shall stay the proceedings upon
15 condition that a child custody proceeding be promptly commenced
16 in another designated state and may impose any other condition
17 the court considers just and proper.

18 (d) Jurisdiction declined.--A court of this Commonwealth may
19 decline to exercise its jurisdiction under this chapter if a
20 child custody determination is incidental to an action for
21 divorce or another proceeding while still retaining jurisdiction
22 over the divorce or other proceeding.

23 § 5428. Jurisdiction declined by reason of conduct.

24 (a) General rule.--Except as otherwise provided in section
25 5424 (relating to temporary emergency jurisdiction) or by other
26 laws of this Commonwealth, if a court of this Commonwealth has
27 jurisdiction under this chapter because a person seeking to
28 invoke its jurisdiction has engaged in unjustifiable conduct,
29 the court shall decline to exercise its jurisdiction unless:

30 (1) the parents and all persons acting as parents have

1 acquiesced in the exercise of jurisdiction;

2 (2) a court of the state otherwise having jurisdiction
3 under sections 5421 (relating to initial child custody
4 jurisdiction) through 5423 (relating to jurisdiction to
5 modify determination) determines that this Commonwealth is a
6 more appropriate forum under section 5427 (relating to
7 inconvenient forum); or

8 (3) no court of any other state would have jurisdiction
9 under the criteria specified in sections 5421 through 5423.

10 (b) Jurisdiction declined; remedy.--If a court of this
11 Commonwealth declines to exercise its jurisdiction pursuant to
12 subsection (a), it may fashion an appropriate remedy to ensure
13 the safety of the child and prevent a repetition of the
14 unjustifiable conduct, including staying the proceeding until a
15 child custody proceeding is commenced in a court having
16 jurisdiction under sections 5421 through 5423.

17 (c) Jurisdiction declined, expenses.--If a court dismisses a
18 petition or stays a proceeding because it declines to exercise
19 its jurisdiction pursuant to subsection (a), it shall assess
20 against the party seeking to invoke its jurisdiction necessary
21 and reasonable expenses, including costs, communication
22 expenses, attorney fees, investigative fees, expenses for
23 witnesses, travel expenses and child care during the course of
24 the proceedings unless the party from whom fees are sought
25 establishes that the assessment would be clearly inappropriate.
26 The court may not assess fees, costs or expenses against this
27 Commonwealth unless authorized by law other than this chapter.
28 § 5429. Information to be submitted to court.

29 (a) General rule.--Subject to the rules set forth in Chapter
30 53 (relating to child custody) providing for the confidentiality

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

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

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

20 (3) knows the names and addresses of any person not a
21 party to the proceeding who has physical custody of the child
22 or claims rights of legal custody or physical custody of or
23 visitation with the child and, if so, the names and addresses
24 of those persons.

25 (b) Stay.--If the information required by subsection (a) is
26 not furnished, the court, upon motion of a party or its own
27 motion, may stay the proceeding until the information is
28 furnished.

29 (c) Additional information.--If the declaration as to any of
30 the items described in subsection (a)(1) through (3) is in the

1 affirmative, the declarant shall give additional information
2 under oath as required by the court. The court may examine the
3 parties under oath as to details of the information furnished
4 and other matters pertinent to the court's jurisdiction and the
5 disposition of the case.

6 (d) Duty to disclose other proceedings.--Each party has a
7 continuing duty to inform the court of any proceeding in this
8 Commonwealth or any other state that could affect the current
9 proceeding.

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

19 § 5430. Appearance of parties and child.

20 (a) General rule.--In a child custody proceeding in this
21 Commonwealth, the court may order a party to the proceeding who
22 is in this Commonwealth to appear before the court in person
23 with or without the child. The court may order any person who is
24 in this Commonwealth and who has physical custody or control of
25 the child to appear in person with the child.

26 (b) Party outside this Commonwealth.--If a party to a child
27 custody proceeding whose presence is desired by the court is
28 outside this Commonwealth, the court may order that a notice
29 given pursuant to section 5408 (relating to notice to persons
30 outside Commonwealth) include a statement directing the party to

1 appear in person with or without the child and informing the
2 party that failure to appear may result in a decision adverse to
3 the party.

4 (c) Personal safety.--The court may enter any orders
5 necessary to ensure the safety of the child and of any person
6 ordered to appear under this section.

7 (d) Expenses.--If a party to a child custody proceeding who
8 is outside this Commonwealth is directed to appear under
9 subsection (b) or desires to appear personally before the court
10 with or without the child, the court may require another party
11 to pay reasonable and necessary travel and other expenses of the
12 party so appearing and of the child.

13 SUBCHAPTER C

14 ENFORCEMENT

15 Sec.

16 5441. Definitions.

17 5442. Enforcement under Hague Convention.

18 5443. Duty to enforce.

19 5444. Temporary visitation.

20 5445. Registration of child custody determination.

21 5446. Enforcement of registered determination.

22 5447. Simultaneous proceedings.

23 5448. Expedited enforcement of child custody determination.

24 5449. Service of petition and order.

25 5450. Hearing and order.

26 5451. Warrant to take physical custody of child.

27 5452. Costs, fees and expenses.

28 5453. Recognition and enforcement.

29 5454. Appeals.

30 5455. Role of prosecutor or public official.

1 5456. Role of law enforcement.

2 5457. Costs and expenses.

3 § 5441. Definitions.

4 The following words and phrases when used in this subchapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Petitioner." A person who seeks enforcement of an order for
8 return of a child under the Hague Convention on the Civil
9 Aspects of International Child Abduction or enforcement of a
10 child custody determination.

11 "Respondent." A person against whom a proceeding has been
12 commenced for enforcement of an order for return of a child
13 under the Hague Convention on the Civil Aspects of International
14 Child Abduction or enforcement of a child custody determination.

15 § 5442. Enforcement under Hague Convention.

16 Under this subchapter a court of this Commonwealth may
17 enforce an order for the return of the child made under the
18 Hague Convention on the Civil Aspects of International Child
19 Abduction as if it were a child custody determination.

20 § 5443. Duty to enforce.

21 (a) General rule.--A court of this Commonwealth shall
22 recognize and enforce a child custody determination of a court
23 of another state if the latter court exercised jurisdiction in
24 substantial conformity with this chapter or the determination
25 was made under factual circumstances meeting the jurisdictional
26 standards of this chapter and the determination has not been
27 modified in accordance with this chapter.

28 (b) Remedies.--A court of this Commonwealth may utilize any
29 remedy available under other laws of this Commonwealth to
30 enforce a child custody determination made by a court of another

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

4 § 5444. Temporary visitation.

5 (a) General rule.--A court of this Commonwealth which does
6 not have jurisdiction to modify a child custody determination
7 may issue a temporary order enforcing:

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

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

13 (b) Time to obtain permanent change in visitation.--If a
14 court of this Commonwealth makes an order under subsection
15 (a)(2), it shall specify in the order a period that it considers
16 adequate to allow the petitioner to obtain an order from a court
17 having jurisdiction under the criteria specified in Subchapter B
18 (relating to jurisdiction). The order remains in effect until an
19 order is obtained from the other court or the period expires.

20 § 5445. Registration of child custody determination.

21 (a) General rule.--A child custody determination issued by a
22 court of another state may be registered in this Commonwealth,
23 with or without a simultaneous request for enforcement, by
24 sending to the appropriate court in this Commonwealth:

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

26 (2) two copies, including one certified copy, of the
27 determination sought to be registered and a statement under
28 penalty of perjury that to the best of the knowledge and
29 belief of the person seeking registration the order has not
30 been modified; and

1 (3) except as otherwise provided in section 5429
2 (relating to information to be submitted to court), the name
3 and address of the person seeking registration and any parent
4 or person acting as a parent who has been awarded custody or
5 visitation in the child custody determination sought to be
6 registered.

7 (b) Duties of registering court.--On receipt of the
8 documents required by subsection (a), the registering court
9 shall:

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

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

16 (c) Notice.--The notice required by subsection (b)(2) must
17 state that:

18 (1) a registered determination is enforceable as of the
19 date of the registration in the same manner as a
20 determination issued by a court of this Commonwealth;

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

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

28 (d) Contest over validity of registered order.--A person
29 seeking to contest the validity of a registered order must
30 request a hearing within 20 days after service of the notice. At

1 that hearing, the court shall confirm the registered order
2 unless the person contesting registration establishes that:

3 (1) the issuing court did not have jurisdiction under
4 Subchapter B (relating to jurisdiction);

5 (2) the child custody determination sought to be
6 registered has been vacated, stayed or modified by a court
7 having jurisdiction to do so under Subchapter B; or

8 (3) the person contesting registration was entitled to
9 notice, but notice was not given in accordance with the
10 standards of section 5408 (relating to notice to persons
11 outside Commonwealth), in the proceedings before the court
12 that issued the order for which registration is sought.

13 (e) Failure to contest.--If a timely request for a hearing
14 to contest the validity of the registration is not made, the
15 registration is confirmed as a matter of law and the person
16 requesting registration and all persons served must be notified
17 of the confirmation.

18 (f) Res judicata.--Confirmation of a registered order,
19 whether by operation of law or after notice and hearing,
20 precludes further contest of the order with respect to any
21 matter that could have been asserted at the time of
22 registration.

23 § 5446. Enforcement of registered determination.

24 (a) General rule.--A court of this Commonwealth may grant
25 any relief normally available under the laws of this
26 Commonwealth to enforce a registered child custody determination
27 made by a court of another state.

28 (b) Modification.--A court of this Commonwealth shall
29 recognize and enforce, but may not modify, except in accordance
30 with Subchapter B (relating to jurisdiction), a registered child

1 custody determination of a court of another state.

2 § 5447. Simultaneous proceedings.

3 If a proceeding for enforcement under this subchapter is
4 commenced in a court of this Commonwealth and the court
5 determines that a proceeding to modify the determination is
6 pending in a court of another state having jurisdiction to
7 modify the determination under Subchapter B (relating to
8 jurisdiction), the enforcing court shall immediately communicate
9 with the modifying court. The proceeding for enforcement
10 continues unless the enforcing court, after consultation with
11 the modifying court, stays or dismisses the proceeding.

12 § 5448. Expedited enforcement of child custody determination.

13 (a) Verification.--A petition under this subchapter must be
14 verified. Certified copies of all orders sought to be enforced
15 and of any order confirming registration must be attached to the
16 petition. A copy of a certified copy of an order may be attached
17 instead of the original.

18 (b) Petition.--A petition for enforcement of a child custody
19 determination must state:

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

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

28 (3) whether any proceeding has been commenced that could
29 affect the current proceeding, including proceedings relating
30 to domestic violence, protective orders, termination of

1 parental rights and adoptions and, if so, identify the court,
2 the case number and the nature of the proceeding;

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

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

9 (6) if the child custody determination has been
10 registered and confirmed under section 5445 (relating to
11 registration of child custody determination), the date and
12 place of registration.

13 (c) Hearing.--Upon the filing of a petition, the court shall
14 issue an order directing the respondent to appear in person with
15 or without the child at a hearing and may enter any order
16 necessary to ensure the safety of the parties and the child. The
17 hearing must be held on the next judicial day after service of
18 the order unless that date is impossible. In that event, the
19 court shall hold the hearing on the first judicial day possible.
20 The court may extend the date of hearing at the request of the
21 petitioner.

22 (d) Contest over validity of custody determination.--An
23 order issued under subsection (c) must state the time and place
24 of the hearing and advise the respondent that at the hearing the
25 court will order that the petitioner may take immediate physical
26 custody of the child and the payment of fees, costs and expenses
27 under section 5452 (relating to costs, fees and expenses) and
28 may schedule a hearing to determine whether further relief is
29 appropriate unless the respondent appears and establishes that:

30 (1) the child custody determination has not been

1 registered and confirmed under section 5445 and that:

2 (i) the issuing court did not have jurisdiction
3 under Subchapter B (relating to jurisdiction);

4 (ii) the child custody determination for which
5 enforcement is sought has been vacated, stayed or
6 modified by a court having jurisdiction to do so under
7 Subchapter B; or

8 (iii) the respondent was entitled to notice, but
9 notice was not given in accordance with the standards of
10 section 5408 (relating to notice to persons outside
11 Commonwealth), in the proceedings before the court that
12 issued the order for which enforcement is sought; or

13 (2) the child custody determination for which
14 enforcement is sought was registered and confirmed under
15 section 5444 (relating to temporary visitation), but has been
16 vacated, stayed or modified by a court of a state having
17 jurisdiction to do so under Subchapter B.

18 § 5449. Service of petition and order.

19 Except as otherwise provided in section 5451 (relating to
20 warrant to take physical custody of child), the petition and
21 order must be served by any method authorized by the laws of
22 this Commonwealth upon respondent and any person who has
23 physical custody of the child.

24 § 5450. Hearing and order.

25 (a) General rule.--Unless the court issues a temporary
26 emergency order pursuant to section 5424 (relating to temporary
27 emergency jurisdiction), upon a finding that a petitioner is
28 entitled to immediate physical custody of the child, the court
29 shall order that the petitioner may take immediate physical
30 custody of the child unless the respondent establishes that:

1 (1) the child custody determination has not been
2 registered and confirmed under section 5445 (relating to
3 registration of child custody determination) and that:

4 (i) the issuing court did not have jurisdiction
5 under Subchapter B (relating to jurisdiction);

6 (ii) the child custody determination for which
7 enforcement is sought has been vacated, stayed or
8 modified by a court of a state having jurisdiction to do
9 so under Subchapter B; or

10 (iii) the respondent was entitled to notice, but
11 notice was not given in accordance with the standards of
12 section 5408 (relating to notice to persons outside
13 Commonwealth), in the proceedings before the court that
14 issued the order for which enforcement is sought; or

15 (2) the child custody determination for which
16 enforcement is sought was registered and confirmed under
17 section 5445 but has been vacated, stayed or modified by a
18 court of a state having jurisdiction to do so under
19 Subchapter B.

20 (b) Costs, fees and expenses.--The court shall award the
21 costs, fees and expenses authorized under section 5452 (relating
22 to costs, fees and expenses) and may grant additional relief,
23 including a request for the assistance of law enforcement
24 officials, and set a further hearing to determine whether
25 additional relief is appropriate.

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

30 (d) Spousal privilege unavailable.--A privilege against

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

5 § 5451. Warrant to take physical custody of child.

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

12 (b) Petition.--If the court, upon the testimony of the
13 petitioner or other witness, finds that the child is imminently
14 likely to suffer serious physical harm or be removed from this
15 Commonwealth, it may issue a warrant to take physical custody of
16 the child. The petition must be heard on the next judicial day
17 after the warrant is executed unless that date is impossible. In
18 that event, the court shall hold the hearing on the first
19 judicial day possible. The application for the warrant must
20 include the statements required by section 5448(b) (relating to
21 expedited enforcement of child custody determination).

22 (c) Warrant.--A warrant to take physical custody of a child
23 must:

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

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

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

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

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

12 (f) Appearance of child.--The court may impose conditions
13 upon placement of a child to ensure the appearance of the child
14 and the child's custodian.

15 § 5452. Costs, fees and expenses.

16 (a) General rule.--The court shall award the prevailing
17 party, including a state, necessary and reasonable expenses
18 incurred by or on behalf of the party, including costs,
19 communication expenses, attorney fees, investigative fees,
20 expenses for witnesses, travel expenses and child care during
21 the course of the proceedings, unless the party from whom fees
22 or expenses are sought establishes that the award would be
23 clearly inappropriate.

24 (b) Assessment against a state.--The court may not assess
25 fees, costs or expenses against a state unless authorized by law
26 other than this chapter.

27 § 5453. Recognition and enforcement.

28 A court of this Commonwealth shall accord full faith and
29 credit to an order issued by another state and consistent with
30 this chapter which enforces a child custody determination by a

1 court of another state unless the order has been vacated, stayed
2 or modified by a court having jurisdiction to do so under
3 Subchapter B (relating to jurisdiction).

4 § 5454. Appeals.

5 An appeal may be taken from a final order in a proceeding
6 under this subchapter in accordance with expedited appellate
7 procedures in other civil cases. Unless the court enters a
8 temporary emergency order under section 5424 (relating to
9 temporary emergency jurisdiction), the enforcing court may not
10 stay an order enforcing a child custody determination pending
11 appeal.

12 5455. Role of prosecutor or public official.

13 (a) General rule.--In a case arising under this chapter or
14 involving the Hague Convention on the Civil Aspects of
15 International Child Abduction, the prosecutor or other
16 appropriate public official may take any lawful action,
17 including resort to a proceeding under this subchapter or any
18 other available civil proceeding to locate a child, obtain the
19 return of a child or enforce a child custody determination if
20 there is:

21 (1) an existing child custody determination;

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

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

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

30 (b) Authority.--A prosecutor or appropriate public official

1 acting under this section acts on behalf of the court and may
2 not represent any party.

3 § 5456. Role of law enforcement.

4 At the request of a prosecutor or other appropriate public
5 official acting under section 5455 (relating to role of
6 prosecutor or public official), a law enforcement officer may
7 take any lawful action reasonably necessary to locate a child or
8 a party and assist a prosecutor or appropriate public official
9 with responsibilities under section 5455.

10 § 5457. Costs and expenses.

11 If the respondent is not the prevailing party, the court may
12 assess against the respondent all direct expenses and costs
13 incurred by the prosecutor or other appropriate public official
14 and law enforcement officers under section 5455 (relating to
15 role of prosecutor or public official) or 5456 (relating to role
16 of law enforcement).

17 SUBCHAPTER D

18 INTRASTATE APPLICATION

19 Sec.

20 5471. Intrastate application.

21 § 5471. Intrastate application.

22 The provisions of this chapter allocating jurisdiction and
23 functions between and among courts of different states shall
24 also allocate jurisdiction and functions between and among the
25 courts of common pleas of this Commonwealth.

26 SUBCHAPTER E

27 MISCELLANEOUS PROVISIONS

28 Sec.

29 5481. Application and construction.

30 5482. Severability.

1 § 5481. Application and construction.

2 In applying and construing this chapter, consideration must
3 be given to the need to promote uniformity of the law with
4 respect to its subject matter among states that enact it.

5 § 5482. Severability.

6 If any provision of this chapter or its application to any
7 person or circumstance is held invalid, the invalidity does not
8 affect other provisions or applications of this chapter which
9 can be given effect without the invalid provision or
10 application, and to this end the provisions of this chapter are
11 severable.

12 Section 3. A proceeding under 23 Pa.C.S. Ch. 53 which was
13 commenced before the effective date of this act is governed by
14 the law in effect at the time the proceeding was initiated.

15 Section 4. This act shall take effect in 60 days.