

No. 2004-39

## AN ACT

HB 2083

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

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

Section 1. Section 5310 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5310. Modification of existing custody orders.

Any order for the custody of the child of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in [42 Pa.C.S. §§ 5342 (relating to purposes and construction of subchapter) and 5344 (relating to jurisdiction)] *Chapter 54 (relating to uniform child custody jurisdiction and enforcement)*, be modified at any time to an order of shared custody in accordance with this subchapter.

Section 2. Subchapter B of Chapter 53 of Title 23 is repealed.

Section 3. Title 23 is amended by adding a chapter to read:

## CHAPTER 54

## UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT

## Subchapter

- A. General Provisions
- B. Jurisdiction
- C. Enforcement
- D. Intrastate Application
- E. Miscellaneous Provisions

SUBCHAPTER A  
GENERAL PROVISIONS

## Sec.

- 5401. Short title of chapter.
- 5402. Definitions.
- 5403. Proceedings governed by other law.
- 5404. Application to Native American tribes.
- 5405. International application of chapter.
- 5406. Effect of child custody determination.
- 5407. Priority.
- 5408. Notice to persons outside Commonwealth.
- 5409. Appearance and limited immunity.
- 5410. Communication between courts.

5411. Taking testimony in another state.

5412. Cooperation between courts; preservation of records.

§ 5401. Short title of chapter.

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

§ 5402. Definitions.

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

“Abandoned.” Left without provision for reasonable and necessary care or supervision.

“Child.” An individual who has not attained 18 years of age.

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

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

“Commencement.” The filing of the first pleading in a proceeding.

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

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

“Initial determination.” The first child custody determination concerning a particular child.

“Issuing court.” The court that makes a child custody determination for which enforcement is sought under this chapter.

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

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

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

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

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

“Physical custody.” The physical care and supervision of a child.

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

“Tribe.” A Native American tribe or band, or Alaskan Native village, which is recognized by Federal law or formally acknowledged by a state.

“Warrant.” An order issued by a court authorizing law enforcement officers to take physical custody of a child.

§ 5403. Proceedings governed by other law.

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

§ 5404. Application to Native American tribes.

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

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

(c) Tribal custody determinations.—A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter C (relating to enforcement).

§ 5405. International application of chapter.

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

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

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

§ 5406. Effect of child custody determination.

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

§ 5407. Priority.

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

§ 5408. Notice to persons outside Commonwealth.

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

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

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

§ 5409. Appearance and limited immunity.

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

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

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

§ 5410. Communication between courts.

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

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

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

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

(e) Definition.—As used in this section, the term “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 5411. Taking testimony in another state.

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

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

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

§ 5412. Cooperation between courts; preservation of records.

(a) Assistance of another state.—A court of this Commonwealth may request the appropriate court of another state to:

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

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

(b) Assistance to another state.—Upon request of a court of another state, a court of this Commonwealth may hold a hearing, enter an order or forward transcripts, evidence and evaluations described in subsection (a).

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

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

## SUBCHAPTER B JURISDICTION

Sec.

- 5421. Initial child custody jurisdiction.
- 5422. Exclusive, continuing jurisdiction.
- 5423. Jurisdiction to modify determination.
- 5424. Temporary emergency jurisdiction.
- 5425. Notice; opportunity to be heard; joinder.
- 5426. Simultaneous proceedings.
- 5427. Inconvenient forum.
- 5428. Jurisdiction declined by reason of conduct.
- 5429. Information to be submitted to court.
- 5430. Appearance of parties and child.

§ 5421. Initial child custody jurisdiction.

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

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

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

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

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

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

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

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

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

§ 5422. Exclusive, continuing jurisdiction.

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

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

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

(b) Modification where court does not have exclusive, continuing jurisdiction.—A court of this Commonwealth which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 5421.

§ 5423. Jurisdiction to modify determination.

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

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

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

§ 5424. Temporary emergency jurisdiction.

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

(b) No previous custody determination or proceeding.—If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 5421 (relating to initial child custody jurisdiction) through 5423 (relating to jurisdiction to modify determination), a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 5421 through 5423. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 5421 through 5423, a child custody determination made under this section becomes a final determination if it so provides and this Commonwealth becomes the home state of the child.

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

(d) Mandatory communication between courts.—A court of this Commonwealth which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under sections 5421 through 5423, shall immediately communicate with the other court. A court of this Commonwealth which is exercising jurisdiction pursuant to sections 5421 through 5423, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of



another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

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

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

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

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

§ 5426. Simultaneous proceedings.

(a) General rule.—Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under section 5427 (relating to inconvenient forum).

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

(c) Modification.—In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another

state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

- (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;
- (2) enjoin the parties from continuing with the proceeding for enforcement; or
- (3) proceed with the modification under conditions it considers appropriate.

§ 5427. Inconvenient forum.

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

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

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this Commonwealth;
- (3) the distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

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

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

§ 5428. Jurisdiction declined by reason of conduct.

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

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

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

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

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

(c) Jurisdiction declined; expenses.—If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this Commonwealth unless authorized by law other than this chapter.

§ 5429. Information to be submitted to court.

(a) General rule.—Subject to the rules set forth in Chapter 53 (relating to child custody) providing for the confidentiality of procedures, addresses and other identifying information in a child custody proceeding, each party in its first pleading or in an attached affidavit shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

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

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

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

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

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

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

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

§ 5430. Appearance of parties and child.

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

(b) Party outside this Commonwealth.—If a party to a child custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may order that a notice given pursuant to section 5408 (relating to notice to persons outside Commonwealth) include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

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

(d) Expenses.—If a party to a child custody proceeding who is outside this Commonwealth is directed to appear under subsection (b) or desires to

appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

### SUBCHAPTER C ENFORCEMENT

Sec.

- 5441. Definitions.
- 5442. Enforcement under Hague Convention.
- 5443. Duty to enforce.
- 5444. Temporary visitation.
- 5445. Registration of child custody determination.
- 5446. Enforcement of registered determination.
- 5447. Simultaneous proceedings.
- 5448. Expedited enforcement of child custody determination.
- 5449. Service of petition and order.
- 5450. Hearing and order.
- 5451. Warrant to take physical custody of child.
- 5452. Costs, fees and expenses.
- 5453. Recognition and enforcement.
- 5454. Appeals.
- 5455. Role of prosecutor or public official.
- 5456. Role of law enforcement.
- 5457. Costs and expenses.

§ 5441. Definitions.

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

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

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

§ 5442. Enforcement under Hague Convention.

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

§ 5443. Duty to enforce.

(a) General rule.—A court of this Commonwealth shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the

jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) Remedies.—A court of this Commonwealth may utilize any remedy available under other laws of this Commonwealth to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 5444. Temporary visitation.

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

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

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

§ 5445. Registration of child custody determination.

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

- (1) a letter or other document requesting registration;
- (2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) except as otherwise provided in section 5429 (relating to information to be submitted to court), the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

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

- (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

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

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

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

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

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

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

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

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

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

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

#### § 5446. Enforcement of registered determination.

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

(b) Modification.—A court of this Commonwealth shall recognize and enforce but may not modify, except in accordance with Subchapter B (relating to jurisdiction), a registered child custody determination of a court of another state.

#### § 5447. Simultaneous proceedings.

If a proceeding for enforcement under this subchapter is commenced in a court of this Commonwealth and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Subchapter B (relating to jurisdiction), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the

enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 5448. Expedited enforcement of child custody determination.

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

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

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

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

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

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

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

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

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

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

(1) the child custody determination has not been registered and confirmed under section 5445 and that:



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

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

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

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

§ 5449. Service of petition and order.

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

§ 5450. Hearing and order.

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

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

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

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

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

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

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

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

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

§ 5451. Warrant to take physical custody of child.

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

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

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

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

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

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

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

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

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

§ 5452. Costs, fees and expenses.

(a) General rule.—The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course

of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

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

§ 5453. Recognition and enforcement.

A court of this Commonwealth shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under Subchapter B (relating to jurisdiction).

§ 5454. Appeals.

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

§ 5455. Role of prosecutor or public official.

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

- (1) an existing child custody determination;
- (2) a request to do so from a court in a pending child custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

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

§ 5456. Role of law enforcement.

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

§ 5457. Costs and expenses.

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

SUBCHAPTER D  
INTRASTATE APPLICATION

Sec.

5471. Intrastate application.

§ 5471. Intrastate application.

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

SUBCHAPTER E  
MISCELLANEOUS PROVISIONS

Sec.

5481. Application and construction.

5482. Severability.

§ 5481. Application and construction.

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

§ 5482. Severability.

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

Section 4. Section 5612(c) and (f) of Title 23 are amended to read:

§ 5612. Petition for approval of a designation.

\* \* \*

(c) Jurisdiction.—For purposes of determining jurisdiction under this chapter, the provisions of **[Subchapter B of Chapter 53 (relating to child custody jurisdiction)] Chapter 54 (relating to uniform child custody jurisdiction and enforcement)** shall apply.

\* \* \*

(f) Hearing.—In the event a hearing is required, it shall be conducted in accordance with the proceedings set forth in **[Chapter] Chapters 53 (relating to custody) and 54.**

\* \* \*

Section 5. A proceeding under 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this act is governed by the law in effect at the time the proceeding was initiated.

Section 6. This act shall take effect in 60 days.

APPROVED—The 15th day of June, A.D. 2004.

EDWARD G. RENDELL