
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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Session of
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INTRODUCED BY MESSRS. RHODES, BERSON, W. D. HUTCHINSON AND
SCIRICA, MAY 2, 1977

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, DECEMBER 12, 1977

AN ACT

1 Providing for the custody of children.

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

20 Section 1. Short title.

21 This act shall be known and may be cited as the "Commonwealth
22 Child Custody Jurisdiction Act."

23 Section 2. Purposes of act; construction of provisions.

24 (a) The general purposes of this act are to:

25 (1) avoid jurisdictional competition and conflict with
26 courts of the respective counties of the Commonwealth in
27 matters of child custody which have in the past resulted in
28 the shifting of children from county to county with harmful
29 effects on their well-being;

30 (2) promote cooperation among the courts of the

1 Commonwealth to the end that a custody decree is rendered in
2 that jurisdiction which can best decide the case in the
3 interest of the child;

4 (3) assure that litigation concerning the custody of a
5 child take place ordinarily in the jurisdiction with which
6 the child and his family have the closest connection and
7 where significant evidence concerning his care, protection,
8 training and personal relationships is most readily
9 available, and that courts decline the exercise of
10 jurisdiction when the child and his family have a closer
11 connection with another court;

12 (4) discourage continuing controversies over child
13 custody in the interest of greater stability of home
14 environment and of secure family relationships for the child;

15 (5) deter abductions and other unilateral removals of
16 children undertaken to obtain custody awards;

17 (6) avoid relitigation of custody decisions so far as
18 feasible;

19 (7) facilitate the enforcement of custody decrees;

20 (8) promote and expand the exchange of information and
21 other forms of mutual assistance between the courts concerned
22 with the same child; and

23 (9) make uniform the exercise of jurisdiction in the
24 Commonwealth of Pennsylvania.

25 (b) This act shall be construed to promote the general
26 purposes stated in this section.

27 Section 3. Definitions.

28 The following words and phrases when used in this act shall
29 have, unless the context clearly indicates otherwise, the
30 meanings given to them in this section:

1 "Contestant." An institution or a person, including a
2 parent, who claims a right to custody or visitation rights with
3 respect to a child.

4 "Court." Any of the courts of common pleas of the
5 Commonwealth of Pennsylvania before which a custody action is
6 pending.

7 "Custody determination." A court decision and court orders
8 and instructions providing for the custody of a child, including
9 visitation rights; it does not include a decision relating to
10 child support or any other monetary obligation of any person.

11 "Custody proceeding." Proceedings in which a custody
12 determination is one of several issues, such as an action for
13 divorce or separation, and includes child neglect and dependency
14 proceedings.

15 "Decree" or "custody decree." A custody determination
16 contained in a judicial decree or order made in a custody
17 proceeding, and includes an initial decree and a modification
18 decree.

19 "Home jurisdiction." The jurisdiction in which the child
20 immediately preceding the time involved lived with his parents,
21 a parent, a person acting as a parent or in an institution, for
22 at least six consecutive months, and in the case of a child less
23 than six months old the state in which the child lived from
24 birth with any of the persons mentioned. A period of temporary
25 absence of the child from the physical custody of the parent,
26 institution, or person acting as a parent shall not affect the
27 six months or other period.

28 "Initial decree." The first custody decree concerning a
29 particular child.

30 "Modification decree." A custody decree which modifies or

1 replaces a prior decree, whether made by the court which
2 rendered the prior decree or by another court.

3 "Other court" or "another court." Another court of common
4 pleas of the Commonwealth of Pennsylvania other than that court
5 of common pleas before which a custody action is pending.

6 "Other jurisdiction" or "another jurisdiction." The
7 jurisdiction of another judicial district of the Commonwealth of
8 Pennsylvania other than that before which the custody action is
9 pending.

10 "Person acting as parent." A person, other than a parent, or
11 an institution, who has physical custody of a child and who has
12 either been awarded custody by a court or claims a right to
13 custody.

14 "Petitioner." Anyone seeking change in the status of custody
15 of a child either by an affirmative action brought in a court or
16 as a defense to a custody action brought by a person acting as
17 parent who had previously been awarded custody of the child.

18 "Physical custody." Actual possession and control of a
19 child.

20 Section 4. Jurisdiction.

21 (a) A court which is competent to decide child custody
22 matters has jurisdiction to make a child custody determination
23 by initial or modification decree if:

24 (1) this court is the home jurisdiction of the child at
25 the time of commencement of the proceeding, or had been the
26 child's home jurisdiction within six months before
27 commencement of the proceeding and the child is absent from
28 this jurisdiction because of his removal or retention by a
29 person claiming his custody or for other reasons, and a
30 parent or person acting as parent continues to live in this

1 jurisdiction;

2 (2) it is in the best interest of the child that the
3 court assume jurisdiction because the child and his parents,
4 or the child and at least one contestant, have a significant
5 connection with the jurisdiction of the court, and there is
6 available within the jurisdiction of the court substantial
7 evidence concerning the child's present or future care,
8 protection, training, and personal relationships;

9 (3) the child is physically present within the court's
10 jurisdiction and the child has been abandoned or it is
11 necessary in an emergency to protect the child because he has
12 been subjected to or threatened with mistreatment or abuse or
13 is otherwise neglected or dependent;

14 (4) it appears that no other court would have
15 jurisdiction under prerequisites substantially in accordance
16 with paragraphs (1), (2) or (3), or another court has
17 declined to exercise jurisdiction on the ground that the
18 court before which the action is pending is the more
19 appropriate forum to determine the custody of the child, and
20 it is in the best interest of the child that this court
21 assume jurisdiction; or

22 ~~(5) the child welfare agency of the county has made an~~ <—
23 ~~investigation of the home where the child would live if the~~
24 ~~complaint for custody is granted and found it to be fit, that~~
25 ~~court should take jurisdiction, assuming there is not another~~
26 ~~court which would have jurisdiction under the prerequisites~~
27 ~~substantially in accordance with paragraphs (1), (2) or (3)~~
28 ~~of this section.~~

29 (b) Except under paragraphs (3) and (4) of subsection (a),
30 physical presence of the child within the jurisdiction of the

1 court, or of the child and one of the contestants, is not alone
2 sufficient to confer jurisdiction on a court to make a child
3 custody determination.

4 (c) Physical presence of the child, while desirable, is not
5 a prerequisite for jurisdiction to determine his custody.

6 Section 5. Notice and opportunity to be heard.

7 Before making a decree under this act, reasonable notice and
8 opportunity to be heard shall be given to the contestants, any
9 parent whose parental rights have not been previously
10 terminated, and any person or institution that has physical
11 custody of the child. If any of these persons is outside the
12 jurisdiction of the court, notice and opportunity to be heard
13 shall be given pursuant to section 6.

14 Section 6. Notice to persons outside the jurisdiction of the
15 court; submission to jurisdiction.

16 (a) Notice required for the exercise of jurisdiction over a
17 ~~period~~ PERSON outside the jurisdiction of the court shall be <—
18 given in a manner reasonably calculated to give actual notice,
19 and may be:

20 (1) by personal delivery outside the jurisdiction of the
21 court;

22 (2) by any form of mail addressed to the person to be
23 served and requesting a receipt; or

24 (3) as directed by the court including publication, if
25 other means of notification are ineffective.

26 (b) Notice under this section shall be served, mailed or
27 delivered or last published at least 20 days before any hearing.

28 (c) Proof of service outside the jurisdiction of the court
29 may be made by affidavit of the individual who made the service.
30 If service is made by mail, proof may be by receipt signed by

1 the addressee or other evidence of delivery to the addressee.

2 (d) Notice is not required if a person submits to the
3 jurisdiction of the court.

4 Section 7. Simultaneous proceedings in other courts.

5 (a) A court shall not exercise its jurisdiction under this
6 act if at the time of filing the petition a proceeding
7 concerning the custody of the child was pending in another court
8 of another jurisdiction exercising jurisdiction substantially in
9 conformity with this act, unless the proceeding is stayed by the
10 other court because this court is a more appropriate forum or
11 for other reasons.

12 (b) Before hearing the petition in a custody proceeding the
13 court shall examine the pleadings and other information supplied
14 by the parties under section 10 and shall consult the child
15 custody registry established under section 17 concerning the
16 pendency of proceedings with respect to the child in other
17 courts. If the court has reason to believe that proceedings may
18 be pending in another court, it shall direct an inquiry to the
19 court administrator or other appropriate official of the other
20 court.

21 (c) If the court is informed during the course of the
22 proceeding that a proceeding concerning the custody of the child
23 was pending in another court before the court assumed
24 jurisdiction it shall stay the proceeding and communicate with
25 the court in which the other proceeding is pending to the end
26 that the issue may be litigated in the more appropriate forum
27 and that information be exchanged in accordance with sections 20
28 through 23. If a court has made a custody decree before being
29 informed of a pending proceeding in another court, it shall
30 immediately inform that court of the fact. If the court is

1 informed that a proceeding was commenced in another court after
2 it assumed jurisdiction it shall likewise inform the other court
3 to the end that the issues may be litigated in the more
4 appropriate forum.

5 Section 8. Inconvenient forum.

6 (a) A court which has jurisdiction under this act to make an
7 initial or modification decree may decline to exercise its
8 jurisdiction any time before making a decree if it finds that it
9 is an inconvenient forum to make a custody determination under
10 the circumstances of the case and that another court is a more
11 appropriate forum.

12 (b) A finding of inconvenient forum may be made upon the
13 court's own motion or upon motion of a contestant or a guardian
14 ad litem or other representative of the child.

15 (c) In determining if it is an inconvenient forum, the court
16 shall consider if it is in the interest of the child that
17 another court assume jurisdiction. For this purpose it may take
18 into account the following factors, among others:

19 (1) if another jurisdiction is or recently was the
20 child's home jurisdiction;

21 (2) if another jurisdiction has a closer connection with
22 the child and his family or with the child and one or more of
23 the contestants;

24 (3) if substantial evidence concerning the child's
25 present or future care, protection, training, and personal
26 relationships is more readily available in another
27 jurisdiction;

28 (4) if the parties have agreed on another forum which is
29 no less appropriate; and

30 (5) if the exercise of jurisdiction by the court would

1 contravene any of the purposes stated in section 2.

2 (d) Before determining whether to decline or retain
3 jurisdiction the court may communicate with another court and
4 exchange information pertinent to the assumption of jurisdiction
5 by either court with a view to assuring that jurisdiction will
6 be exercised by the more appropriate court and that a forum will
7 be available to the parties.

8 (e) If the court finds that it is an inconvenient forum and
9 that a court of another jurisdiction is a more appropriate forum
10 it may dismiss the proceedings, or it may stay the proceedings
11 upon condition that a custody proceeding be promptly commenced
12 in another named jurisdiction or upon any other conditions which
13 may be just and proper, including the condition that a moving
14 party stipulate his consent and submission to the jurisdiction
15 of the other forum.

16 (f) The court may decline to exercise its jurisdiction under
17 this act if a custody determination is incidental to an action
18 for divorce or another proceeding while retaining jurisdiction
19 over the divorce or other proceeding.

20 (g) If it appears to the court that it is clearly an
21 inappropriate forum it may require the party who commenced the
22 proceedings to pay, in addition to the costs of the proceedings,
23 necessary travel and other expenses, including attorneys' fees,
24 incurred by other parties or their witnesses. Payment is to be
25 made to the prothonotary for remittance to the proper party.

26 (h) Upon dismissal or stay of proceedings under this section
27 the court shall inform the court found to be the more
28 appropriate forum of this fact, or if the court which would have
29 jurisdiction is not certainly known, shall transmit the
30 information to its court administrator or other appropriate

1 official for forwarding to the appropriate court.

2 (i) Any communication received from another jurisdiction
3 informing a court of a finding of inconvenient forum because the
4 latter court is the more appropriate forum shall be filed in the
5 custody registry of the appropriate court. Upon assuming
6 jurisdiction the court shall inform the original court of this
7 fact.

8 Section 9. Jurisdiction declined by reason of conduct.

9 ~~(a) If the petitioner for an initial decree has wrongfully~~ <—
10 ~~taken the child from another jurisdiction or has engaged in~~
11 ~~improper conduct intending to benefit his position in a custody~~
12 ~~proceeding the court may decline to exercise jurisdiction if~~
13 ~~this is just and proper under the circumstances.~~

14 (A) IF IT IS JUST AND PROPER UNDER THE CIRCUMSTANCES, WHEN <—
15 THE PETITIONER FOR AN INITIAL DECREE HAS WRONGFULLY TAKEN THE
16 CHILD FROM ANOTHER JURISDICTION OR HAS ENGAGED IN IMPROPER
17 CONDUCT INTENDING TO BENEFIT HIS POSITION IN A CUSTODY
18 PROCEEDING, UPON PRESENTATION OF THE PETITION, THE COURT SHALL
19 DECLINE TO EXERCISE JURISDICTION OR SHALL EXERCISE JURISDICTION
20 ONLY TO ISSUE AN ORDER, PENDING A FULL HEARING IN THE
21 APPROPRIATE JURISDICTION, RETURNING THE PARTIES TO THE CUSTODIAL
22 STATUS QUO EXISTING PRIOR TO THE IMPROPER CONDUCT OR WRONGFUL
23 TAKING UNLESS THE PETITIONER CAN SHOW THAT CONDITIONS IN THE
24 FORMER CUSTODIAL HOUSEHOLD ARE PHYSICALLY OR EMOTIONALLY HARMFUL
25 TO THE CHILD.

26 (b) Unless required in the interest of the child, the court
27 shall not exercise its jurisdiction to modify a custody decree
28 of another court if the petitioner, without consent of the
29 person entitled to custody has:

30 (1) improperly removed the child from the physical

1 custody of the person entitled to custody;

2 (2) has improperly retained the child after a visit or
3 other temporary relinquishment of physical custody; or

4 (3) removed the child from the jurisdiction of the court
5 entering the decree without 20 days written notice to the
6 court entering the decree and any party entitled to custody
7 or visitation rights under the terms of the decree.

8 If the petitioner has violated any provision of a custody decree
9 of another court, the court may decline to exercise its
10 jurisdiction unless the contestant can show that conditions in
11 the custodial household are physically or emotionally harmful to
12 the child. The burden of proof on this issue is on the
13 contestant requesting the court to take jurisdiction.

14 (c) In appropriate cases a court dismissing a petition under
15 this section may charge the petitioner with necessary travel and
16 other expenses, including attorneys' fees, incurred by other
17 parties or their witnesses.

18 Section 10. Information under oath to be submitted to the
19 court.

20 (a) Every party in a custody proceeding in his first
21 pleading or in an affidavit attached to that pleading shall give
22 information under oath as to the child's present address, the
23 places where the child has lived within the last five years, and
24 the names and present addresses of the persons with whom the
25 child has lived during that period. In this pleading or
26 affidavit every party shall further declare under oath whether:

27 (1) he has participated (as a party, witness, or in any
28 other capacity) in any other litigation concerning the
29 custody of the same child in this or any other court;

30 (2) he has information of any custody proceeding

concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items 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 as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 11. Additional parties.

If the court learns from information furnished by the parties pursuant to section 10 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this county he shall be served with process or otherwise notified in accordance with section 6.

Section 12. Appearance of parties and the child.

(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.

1 (b) If a party to the proceeding whose presence is desired
2 by the court is outside the court's jurisdiction with or without
3 the child the court may order that the notice given under
4 section 6 include a statement directing that party to appear
5 personally with or without the child and declaring that failure
6 to appear may result in a decision adverse to that party.

7 (c) If a party to the proceeding who is outside the court's
8 jurisdiction is directed to appear under subsection (b) or
9 desires to appear personally before the court with or without
10 the child, the court may require another party to pay travel and
11 other necessary expenses of the party so appearing and of the
12 child if this is just and proper under the circumstances.

13 Section 13. Binding force of custody decree.

14 A custody decree rendered by a court of this Commonwealth
15 which has jurisdiction under section 4 binds all parties who
16 have been served in this State or notified in accordance with
17 section 6 or who have submitted to the jurisdiction of the
18 court, and who have been given an opportunity to be heard. As to
19 these parties the custody decree is conclusive as to all issues
20 of law and fact decided and as to the custody determination made
21 unless and until that determination is modified pursuant to law,
22 including the provisions of this act.

23 Section 14. Recognition of custody decrees of other courts.

24 A court shall recognize and enforce an initial or
25 modification decree of a court of this Commonwealth which has
26 assumed jurisdiction under statutory provisions substantially in
27 accordance with this act or which was made under factual
28 circumstances meeting the jurisdictional standards of the act,
29 so long as the decree has not been modified in accordance with
30 jurisdictional standards substantially similar to those of this

1 act.

2 Section 15. Modification of custody decrees of other courts.

3 (a) If another court has made a custody decree, a court
4 before which a petition for modification is pending shall not
5 modify the decree of the other court unless it appears to the
6 court before which the petition is pending that the other court
7 which rendered the decree does not now have jurisdiction under
8 jurisdictional prerequisites substantially in accordance with
9 this act or has declined to assume jurisdiction to modify its
10 decree and the provisions of section 9(b) of this act will not
11 be violated by an exercise of jurisdiction by the court before
12 which the petition is pending.

13 (b) If a court of this Commonwealth is authorized under
14 subsection (a) to modify a custody decree of another court it
15 shall give due consideration to the transcript of the record and
16 other documents of all previous proceedings submitted to it in
17 accordance with section 23.

18 Section 16. Filing and enforcement of custody decree of another
19 court.

20 (a) A certified copy of a custody decree of another court
21 whose decrees are recognized under section 14 may be filed in
22 the office of the prothonotary of any court of common pleas of
23 this Commonwealth. The prothonotary shall treat the certified
24 copy of the decree in the same manner as a custody decree of the
25 recipient court of common pleas in which it is filed. A custody
26 decree so filed has the same effect and shall be enforced in
27 like manner as a custody decree rendered by the recipient court.

28 (b) A person violating a custody decree of one court which
29 makes it necessary to enforce the decree in another court may be
30 required to pay necessary travel and other expenses, including

1 attorneys' fees, incurred by the party entitled to the custody
2 and his witnesses.

3 Section 17. Registry of custody decrees and proceedings of
4 other courts.

5 The prothonotary of each court of common pleas shall maintain
6 a registry in which he shall enter the following:

7 (1) Certified copies of custody decrees of other courts
8 received for filing.

9 (2) Communications as to the pendency of custody
10 proceedings in other jurisdictions.

11 (3) Communications concerning a finding of inconvenient
12 forum by another court of another jurisdiction.

13 (4) Other communications or documents concerning custody
14 proceedings in another jurisdiction which may affect the
15 jurisdiction of the court or the disposition to be made by it
16 in a custody proceeding.

17 Section 18. Certified copies of custody decree.

18 The prothonotary of any court of common pleas of this
19 Commonwealth, at the request of any other court or at the
20 request of any person who is affected by or has a legitimate
21 interest in a custody decree, shall certify and forward a copy
22 of the decree to that court or person.

23 Section 19. Taking testimony in another jurisdiction.

24 In addition to other procedural devices available to a party,
25 any party to the proceeding or a guardian ad litem or other
26 representative of the child may adduce testimony of witnesses,
27 including parties and the child, by deposition or otherwise, in
28 another jurisdiction. The court on its own motion may direct
29 that the testimony of a person be taken in another jurisdiction
30 and may prescribe the manner in which and the terms upon which

1 the testimony shall be taken.

2 Section 20. Hearings and studies in another jurisdiction;
3 orders to appear.

4 (a) A court may request the appropriate court of another
5 jurisdiction to hold a hearing to adduce evidence, to order a
6 party to produce or give evidence under any proper procedure, or
7 to have social studies made with respect to the custody of a
8 child involved in proceedings pending in the court; and to
9 forward to the court certified copies of the transcript of the
10 record of the hearing, the evidence otherwise adduced, or any
11 social studies prepared in compliance with the request. The cost
12 of the services may be assessed against the parties or, if
13 necessary, ordered paid by the county.

14 (b) A court before which a custody proceeding is pending may
15 request the appropriate court of another jurisdiction to order a
16 party to that proceeding to appear in the court before which the
17 proceeding is pending and if that party has physical custody of
18 the child, to appear with the child. The request may state that
19 travel and other necessary expenses of the party and of the
20 child whose appearance is desired will be assessed against
21 another party or will otherwise be paid.

22 Section 21. Assistance to courts of other jurisdictions.

23 (a) Upon request of the court of another jurisdiction a
24 court which is competent to hear custody matters may order a
25 person to appear to adduce evidence or to produce or give
26 evidence under other procedures available or may order social
27 studies to be made for use in a custody proceeding in another
28 jurisdiction. A certified copy of the transcript of the record
29 of the hearing or the evidence otherwise adduced, any
30 psychological studies and any social studies prepared shall be

1 forwarded to the requesting court.

2 (b) A person within the court's jurisdiction may voluntarily
3 give his testimony or statement in the jurisdiction for use in a
4 custody proceeding outside the jurisdiction.

5 (c) Upon request of the court of another jurisdiction, a
6 competent court may order a person within its jurisdiction to
7 appear alone or with the child in a custody proceeding in
8 another jurisdiction. The court may condition compliance with
9 the request upon assurance by the other court that travel and
10 other necessary expenses will be advanced or reimbursed.

11 Section 22. Preservation of documents for use in other
12 jurisdictions.

13 In any custody proceeding in this Commonwealth the court
14 shall preserve the pleadings, orders and decrees, any record
15 that has been made of its hearings, social studies, and other
16 pertinent documents until the child reaches 18 years of age.
17 Upon appropriate request of the court of another jurisdiction
18 the court shall forward to the other court certified copies of
19 any or all of such documents.

20 Section 23. Request for court records of another jurisdiction.

21 If a custody decree has been rendered in another jurisdiction
22 concerning a child involved in a pending custody proceeding, the
23 court before which the custody proceeding is pending upon taking
24 jurisdiction of the case shall request of the court of another
25 jurisdiction a certified copy of the transcript of any court
26 record and other documents mentioned in section 22.

27 Section 24. Priority.

28 Upon the request of a party to a custody proceeding which
29 raises a question of existence or exercise of jurisdiction under
30 this act the case shall be given calendar priority and handled

1 expeditiously.

2 Section 25. Repeal.

3 All acts and parts of acts are repealed insofar as they are
4 inconsistent with this act.

5 Section 26. Effective date.

6 This act shall take effect in 60 days.