

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1107

Session of  
1977

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

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 23, 1977

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## 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 ~~"Child~~ <—

22 "COMMONWEALTH 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

jurisdiction;

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

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

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

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

(b) Except under paragraphs (3) and (4) of subsection (a), 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 outside the jurisdiction of the court shall be given in a  
18 manner reasonably calculated to give actual notice, and may be:

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

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

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

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

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

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

Section 7. Simultaneous proceedings in other courts.

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

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

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



1 it assumed jurisdiction it shall likewise inform the other court  
2 to the end that the issues may be litigated in the more  
3 appropriate forum.

4 Section 8. Inconvenient forum.

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

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

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

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

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

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

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

29 (5) if the exercise of jurisdiction by the court would  
30 contravene any of the purposes stated in section 2.

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

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

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

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

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

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

Section 9. Jurisdiction declined by reason of conduct.

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

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

(1) improperly removed the child from the physical custody of the person entitled to custody;

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

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

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

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

5 Section 10. Information under oath to be submitted to the  
6 court.

7 (a) Every party in a custody proceeding in his first  
8 pleading or in an affidavit attached to that pleading shall give  
9 information under oath as to the child's present address, the  
10 places where the child has lived within the last five years, and  
11 the names and present addresses of the persons with whom the  
12 child has lived during that period. In this pleading or  
13 affidavit every party shall further declare under oath whether:

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

17 (2) he has information of any custody proceeding  
18 concerning the child pending in a court of this or any other  
19 state; and

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

24 (b) If the declaration as to any of the above items is in  
25 the affirmative the declarant shall give additional information  
26 under oath as required by the court. The court may examine the  
27 parties under oath as to details of the information furnished  
28 and as to other matters pertinent to the court's jurisdiction  
29 and the disposition of the case.

30 (c) Each party has a continuing duty to inform the court of

1 any custody proceeding concerning the child in this or any other  
2 state of which he obtained information during this proceeding.

3 Section 11. Additional parties.

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

13 Section 12. Appearance of parties and the child.

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

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

24 (c) If a party to the proceeding who is outside the court's  
25 jurisdiction is directed to appear under subsection (b) or  
26 desires to appear personally before the court with or without  
27 the child, the court may require another party to pay travel and  
28 other necessary expenses of the party so appearing and of the  
29 child if this is just and proper under the circumstances.

30 Section 13. Binding force of custody decree.

1 A custody decree rendered by a court of this Commonwealth  
2 which has jurisdiction under section 4 binds all parties who  
3 have been served in this State or notified in accordance with  
4 section 6 or who have submitted to the jurisdiction of the  
5 court, and who have been given an opportunity to be heard. As to  
6 these parties the custody decree is conclusive as to all issues  
7 of law and fact decided and as to the custody determination made  
8 unless and until that determination is modified pursuant to law,  
9 including the provisions of this act.

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

11 A court shall recognize and enforce an initial or  
12 modification decree of a court of this Commonwealth which has  
13 assumed jurisdiction under statutory provisions substantially in  
14 accordance with this act or which was made under factual  
15 circumstances meeting the jurisdictional standards of the act,  
16 so long as the decree has not been modified in accordance with  
17 jurisdictional standards substantially similar to those of this  
18 act.

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

20 (a) If another court has made a custody decree, a court  
21 before which a petition for modification is pending shall not  
22 modify the decree of the other court unless it appears to the  
23 court before which the petition is pending that the other court  
24 which rendered the decree does not now have jurisdiction under  
25 jurisdictional prerequisites substantially in accordance with  
26 this act or has declined to assume jurisdiction to modify its  
27 decree and the provisions of section 9(b) of this act will not  
28 be violated by an exercise of jurisdiction by the court before  
29 which the petition is pending.

30 (b) If a court of this Commonwealth is authorized under

1 subsection (a) to modify a custody decree of another court it  
2 shall give due consideration to the transcript of the record and  
3 other documents of all previous proceedings submitted to it in  
4 accordance with section 23.

5 Section 16. Filing and enforcement of custody decree of another  
6 court.

7 (a) A certified copy of a custody decree of another court  
8 whose decrees are recognized under section 14 may be filed in  
9 the office of the prothonotary of any court of common pleas of  
10 this Commonwealth. The prothonotary shall treat the certified  
11 copy of the decree in the same manner as a custody decree of the  
12 recipient court of common pleas in which it is filed. A custody  
13 decree so filed has the same effect and shall be enforced in  
14 like manner as a custody decree rendered by the recipient court.

15 (b) A person violating a custody decree of one court which  
16 makes it necessary to enforce the decree in another court may be  
17 required to pay necessary travel and other expenses, including  
18 attorneys' fees, incurred by the party entitled to the custody  
19 and his witnesses.

20 Section 17. Registry of custody decrees and proceedings of  
21 other courts.

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

24 (1) Certified copies of custody decrees of other courts  
25 received for filing.

26 (2) Communications as to the pendency of custody  
27 proceedings in other jurisdictions.

28 (3) Communications concerning a finding of inconvenient  
29 forum by another court of another jurisdiction.

30 (4) Other communications or documents concerning custody

1 proceedings in another jurisdiction which may affect the  
2 jurisdiction of the court or the disposition to be made by it  
3 in a custody proceeding.

4 Section 18. Certified copies of custody decree.

5 The prothonotary of any court of common pleas of this  
6 Commonwealth, at the request of any other court or at the  
7 request of any person who is affected by or has a legitimate  
8 interest in a custody decree, shall certify and forward a copy  
9 of the decree to that court or person.

10 Section 19. Taking testimony in another jurisdiction.

11 In addition to other procedural devices available to a party,  
12 any party to the proceeding or a guardian ad litem or other  
13 representative of the child may adduce testimony of witnesses,  
14 including parties and the child, by deposition or otherwise, in  
15 another jurisdiction. The court on its own motion may direct  
16 that the testimony of a person be taken in another jurisdiction  
17 and may prescribe the manner in which and the terms upon which  
18 the testimony shall be taken.

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

21 (a) A court may request the appropriate court of another  
22 jurisdiction to hold a hearing to adduce evidence, to order a  
23 party to produce or give evidence under any proper procedure, or  
24 to have social studies made with respect to the custody of a  
25 child involved in proceedings pending in the court; and to  
26 forward to the court certified copies of the transcript of the  
27 record of the hearing, the evidence otherwise adduced, or any  
28 social studies prepared in compliance with the request. The cost  
29 of the services may be assessed against the parties or, if  
30 necessary, ordered paid by the county.



1 (b) A court before which a custody proceeding is pending may  
2 request the appropriate court of another jurisdiction to order a  
3 party to that proceeding to appear in the court before which the  
4 proceeding is pending and if that party has physical custody of  
5 the child, to appear with the child. The request may state that  
6 travel and other necessary expenses of the party and of the  
7 child whose appearance is desired will be assessed against  
8 another party or will otherwise be paid.

9 Section 21. Assistance to courts of other jurisdictions.

10 (a) Upon request of the court of another jurisdiction a  
11 court which is competent to hear custody matters may order a  
12 person to appear to adduce evidence or to produce or give  
13 evidence under other procedures available or may order social  
14 studies to be made for use in a custody proceeding in another  
15 jurisdiction. A certified copy of the transcript of the record  
16 of the hearing or the evidence otherwise adduced, any  
17 psychological studies and any social studies prepared shall be  
18 forwarded to the requesting court.

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

22 (c) Upon request of the court of another jurisdiction, a  
23 competent court may order a person within its jurisdiction to  
24 appear alone or with the child in a custody proceeding in  
25 another jurisdiction. The court may condition compliance with  
26 the request upon assurance by the other court that travel and  
27 other necessary expenses will be advanced or reimbursed.

28 Section 22. Preservation of documents for use in other  
29 jurisdictions.

30 In any custody proceeding in this Commonwealth the court

1 shall preserve the pleadings, orders and decrees, any record  
2 that has been made of its hearings, social studies, and other  
3 pertinent documents until the child reaches 18 years of age.  
4 Upon appropriate request of the court of another jurisdiction  
5 the court shall forward to the other court certified copies of  
6 any or all of such documents.

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

8 If a custody decree has been rendered in another jurisdiction  
9 concerning a child involved in a pending custody proceeding, the  
10 court before which the custody proceeding is pending upon taking  
11 jurisdiction of the case shall request of the court of another  
12 jurisdiction a certified copy of the transcript of any court  
13 record and other documents mentioned in section 22.

14 Section 24. Priority.

15 Upon the request of a party to a custody proceeding which  
16 raises a question of existence or exercise of jurisdiction under  
17 this act the case shall be given calendar priority and handled  
18 expeditiously.

19 Section 25. Repeal.

20 All acts and parts of acts are repealed insofar as they are  
21 inconsistent with this act.

22 Section 26. Effective date.

23 This act shall take effect in 60 days.