

Massachusetts UCCJA

Mass. Gen. Laws ch. 209B

§ 1. Definitions.

As used in this chapter the following words, unless the context requires otherwise, shall have the following meanings:--

"Contestant", a person who claims a legal right to custody or visitation with respect to a child;

"Custody determination", any court order, instruction or judgment, whether temporary or final, providing for the custody of or visitation rights with a child; it shall not be deemed to include any order or judgment concerning other child-related matters except to the extent such order of judgment contains a custody determination as above-stated;

"Custody proceeding", includes proceedings in which a custody determination is one of several issues presented for resolution, such as an action for divorce or separation, guardianship, and care and protection;

"Judgment" or "Custody judgment", a custody determination made in a custody proceeding, and includes an initial judgment and a modification judgment;

"Home state", the state in which the child immediately preceding the date of commencement of the custody proceeding resided with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

"Initial judgment", the first custody determination concerning a particular child;

"Modification judgment", a custody determination which modifies or replaces a prior custody determination, whether made by the court which rendered the prior determination or by another court;

"Physical custody", actual possession and control of a child;

"Person acting as parent", a person other than a parent who has physical custody of a child and who has either been awarded custody of a child or claims a legal right to custody and includes an authorized social service agency exercising legal or physical custody of a child; and

"Parent", a biological, foster, or adoptive parent whose parental rights have not previously been terminated;

"State", any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

§ 2. Jurisdiction of Child Custody Matters.

(a) Any court which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification judgment if:

(1) the commonwealth (i) is the home state of the child on the commencement of the custody proceeding, or (ii) had been the child's home state within six months before the date of the commencement of the proceeding and the child is absent from the commonwealth because of his

or her removal or retention by a person claiming his or her custody or for other reasons, and a parent or person acting as parent continues to reside in the commonwealth; or

(2) it appears that no other state would have jurisdiction under paragraph (1) and it is in the best interest of the child that a court of the commonwealth assume jurisdiction because (i) the child and his or her parents, or the child and at least one contestant, have a significant connection with the commonwealth, and (ii) there is available in the commonwealth substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in the commonwealth and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child from abuse or neglect or for other good cause shown, provided that in the event that jurisdictional prerequisites are not established pursuant to any other paragraph of this subsection and a court of another state shall be entitled to assert jurisdiction under any other subparagraph of this paragraph then a court exercising jurisdiction pursuant to this clause of paragraph (3) may do so only by entering such temporary order or orders as it deems necessary unless the court of the other state has declined to exercise jurisdiction, has stayed its proceedings or has otherwise deferred to the jurisdiction of a court of the commonwealth; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2) or (3), or another state has declined to exercise jurisdiction on the ground that the commonwealth is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that a court of the commonwealth assume jurisdiction.

(b) Except under subparagraphs (3) and (4) of paragraph (a), physical presence in the commonwealth of the child or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of the commonwealth to make a custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to make a custody determination.

(d) A court of the commonwealth shall not exercise jurisdiction in any custody proceeding commenced during the pendency of a proceeding in a court of another state where such court of that state is exercising jurisdiction consistently with the provisions of this section for the purpose of making a custody determination, except in accordance with paragraph (3) of subsection (a), unless the court of the other state shall decline jurisdiction pursuant to paragraph (4) of subsection (a) or shall stay its proceedings or otherwise defer to the jurisdiction of a court of the commonwealth.

(e) If a court of another state has made a custody determination in substantial conformity with this chapter, a court of the commonwealth shall not modify that determination unless (1) it appears to the court of the commonwealth that the court which made the custody determination does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or that such court has declined to assume jurisdiction to modify its determination and (2) a court of the commonwealth now has jurisdiction pursuant to this chapter.

§ 3. Matters to Be Stated in Affidavit.

(a) Every party in any custody proceeding shall state in an affidavit which shall be filed together with his first pleading the following information:--

(1) the child's present address of residence;

(2) each address at which the child has resided during the two years immediately prior to the filing of the instant custody proceeding;

(3) the names and, if known, the current residential addresses or, if unknown, the last and usual residential addresses, of all persons who have been parties to any custody proceedings involving the child during the said two-year period, other than any person whose rights have been terminated in any parental rights termination proceeding, and any other persons who, according to the knowledge and belief of the affiant, claim a legal right to the custody or physical possession of the child; and

(4) whether or not the party knows of or has participated in any prior custody proceeding involving the child in the commonwealth or in any other jurisdiction and the nature of his participation, as party, witness, or in any other capacity, in such prior proceeding.

(b) Unless the same have already been filed by another party, every party in any custody proceeding shall attach to the affidavit a certified copy of each pleading and of any determination entered in any custody proceeding he knows of or has participated in involving the child in the commonwealth or in any other jurisdiction.

(c) The court may examine any one or more of the parties under oath concerning the information required to be furnished under this section and concerning other matters pertinent to any jurisdictional or other issues before the court.

(d) Each party shall amend the affidavit at any time after filing to inform the court of any custody proceeding filed in any jurisdiction after the date of filing of the instant custody proceeding of which the affiant becomes aware after filing the affidavit and shall further amend the affidavit to include the names and addresses, in conformity with paragraph (3) of subsection (a), of any person of whom the affiant becomes aware after filing the affidavit who claims a legal right to the custody or physical possession of the child.

(e) Notwithstanding the provisions of this section, a court may waive disclosure of the present or prior address of the child or of a contestant when such waiver is necessary to protect the child or the contestant from physical or emotional abuse. Application for an order waiving disclosure under this paragraph shall be made upon such notice as the court shall prescribe. The court shall waive disclosure whenever the present or prior address of the child or of a contestant is a shelter for battered persons and their dependent children. The reasons for waiver of any disclosure requirement of this section shall be stated by the court in the record of the custody proceeding.

(f) The court may impose sanctions against any party who fails to act in conformity with this section without leave of court granted for good cause shown.

§ 4. Parties.

(a) After examination of the pleadings, affidavits, certified copies of the documentation relative to other custody proceedings and such oral testimony as it may require, the court shall determine the proper parties to the custody proceeding.

(b) During the pendency of the proceeding, the court may require the joinder of additional parties and in that event, the court shall specify that such additional parties be served with process in accordance with section five or six, as applicable, or that they be otherwise notified in such manner as the court shall determine.

§ 5. Notice; Waiver of Notice.

(a) Reasonable notice in conformity with section six and an opportunity to be heard shall be given to the contestants, to any parent whose parental rights have not been previously terminated, to any person acting as parent, and to any other persons designated proper parties by the court pursuant to section four, provided that in the event a court of the commonwealth assumes jurisdiction pursuant to clause (ii) of paragraph (3) of subsection (a) of section two, then the court may waive such notice requirement for such period as may be allowed under applicable court rules.

(b) Any notice shall include the nature of the action, copies of all pleadings filed with the court, and the statement that any person so notified may apply to the court concerning allocation of the costs of those reasonable and necessary expenses to be incurred in connection with the custody proceeding in accordance with applicable sections of this chapter.

§ 6. Notice; Voluntary Appearance.

(a) Notice to a person in the commonwealth shall be given in accordance with the applicable Massachusetts rules of court or in any such other manner as is prescribed by law.

(b) Notice required for the exercise of jurisdiction over a person outside the commonwealth shall be given in accordance with the applicable Massachusetts Rules of Court or statute or, in the discretion of the court, in the manner prescribed by the law of the place in which the service is made concerning service of process in an action of its court of general jurisdiction, provided, however, that in no event shall notice under this paragraph be served, mailed, delivered or last published less than twenty days before any custody determination is made in this state, other than a determination made pursuant to clause (ii) of paragraph (3) of subsection (a) of section two.

(c) Proof of service outside the commonwealth may be made by affidavit of the individual who made the service, in accordance with the applicable law or the Massachusetts rules of court, in accordance with the order pursuant to which the service is made, or, in the discretion of the court, otherwise in accordance with the law of the place in which the service is made.

(d) Notice is not required to be given to a contestant who submits to the jurisdiction of the court.

§ 7. Court May Decline Jurisdiction.

(a) A court which has jurisdiction pursuant to section two may decline to exercise its jurisdiction at any time prior to making a custody determination upon finding that its assumption of jurisdiction would be (i) violative of the purposes of this chapter; or (ii) would be based upon the illegal or otherwise wrongful conduct of a party; or (iii) would constitute an inconvenient forum and that a court of another state would constitute a more convenient forum.

(b) A court may decline jurisdiction for any of the reasons set forth in paragraph (a) upon motion of a party or of any representative of the child entitled to appear before the court or upon the court's own motion.

(c) In order to determine whether it is the appropriate forum, a court of the commonwealth may, in its discretion, at any time during the pendency of the custody proceeding, communicate and exchange information with a court or courts of any other relevant jurisdiction.

(d) For the purposes of this section, a court may consider the following factors:

(1) whether another state is or recently was the child's home state;

(2) whether another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) whether more substantial evidence concerning the child's present or future care, protection, training, and personal relationships is available or whether such evidence is more readily available in another state;

(4) whether the parties have agreed on another forum which is not less appropriate; and

(5) whether the exercise of jurisdiction by a court of the commonwealth would contravene any of the purposes of this chapter.

(e) If a court shall find that a court of another jurisdiction is or may be a more appropriate forum under the terms of this chapter for the adjudication of the custody proceeding, it may do one or more of the following:

(1) dismiss the proceeding with or without prejudice;

(2) vacate any order or judgment already entered;

(3) stay the proceeding upon condition that a custody proceeding be initiated or prosecuted in another state in a timely manner or upon any other condition that the court might deem just;

(4) retain jurisdiction over any action to which the custody proceeding is incident, while declining to render a custody determination;

(5) enter such temporary order or orders as may be required, in the court's discretion, pursuant to clause (ii) of paragraph (3) of section two;

(6) assess any or all of the costs of the custody proceeding in this state, having due regard for the purposes of this chapter, including the reasonable travel and other expenses of any party and his or her witnesses, the reasonable attorneys' fees of any party, the costs of the court's communications and information exchanges with other courts and the fees and costs of any person entitled to appear before the court as the representative of a child;

(7) assess sanctions against any party whom the court finds has engaged in illegal or otherwise wrongful conduct;

(8) enter any other order or judgment which may be meet and just under the circumstances of the case.

(f) A court shall communicate to the court of any other relevant jurisdiction any determination or finding made pursuant to this section.

§ 8. Ordering Personal Appearance.

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

(b) If a party to the proceeding whose presence is desired by the court is outside the commonwealth with or without the child, the court may order that the notice given under section five include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside the commonwealth is directed to appear under paragraph (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk or register of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

§ 9. Taking of Testimony of Out-of-State Witnesses.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct 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 shall be taken.

§ 10. Requesting Assistance of Courts of Other States.

(a) A court of the commonwealth may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have an investigation made with respect to the custody of a child involved in proceedings pending in the court of the commonwealth; and to forward to the court of the commonwealth certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any investigation prepared in compliance with the request. The cost of these services may be assessed against the parties.

(b) A court of the commonwealth may request the appropriate court of another state to order a party to custody proceedings pending in the court of the commonwealth to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other reasonable and necessary expenses of the party and of the child whose appearance is desired may be assessed against another party or may otherwise be paid.

§ 11. Assisting Courts of Other States.

(a) Upon request of the court of another state the courts of the commonwealth which are competent to hear custody matters may order a person in the commonwealth to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in the commonwealth or may order investigations to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and of any investigation shall be forwarded by the clerk or register of the court to the requesting court.

(b) Upon request of the court of another state a competent court of the commonwealth may order a person in the commonwealth to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

Notwithstanding any provision of this chapter to the contrary, no child shall be ordered or compelled to appear or attend such proceeding in another state when, after a hearing a judge makes a finding that there is probable cause to believe that such child may be placed in jeopardy or exposed to risk of mental or physical harm by such return to said other state.

§ 12. Enforcement of Judgments from Other States.

(a) A certified copy of a custody judgment of another state may be filed in the office of the clerk or register of any court of competent jurisdiction in the commonwealth. The clerk or register shall treat the judgment in the same manner as a custody judgment of a court of the commonwealth. A custody judgment so filed has the same effect and shall be enforced in like manner as a custody judgment rendered by a court of the commonwealth.

(b) A person violating a custody judgment of another state the violation of which makes it necessary to enforce the judgment in the commonwealth may be required to pay the reasonable and necessary travel, witness and other expenses, including attorneys' fees, incurred by the party entitled to custody of the child.

§ 13. Preservation of Pleadings, Orders and Judgments; Transfer to Other Courts.

In any custody proceeding in the commonwealth the court shall preserve the pleadings, orders and judgments and any record that has been made of its hearings, investigations and other pertinent documents until the child reaches eighteen years of age. Upon appropriate request of the court of another state and receipt of payment therefor the court shall forward to the other court certified copies of any or all of such documents.

§ 14. Recognition of Judgments of Courts of Other Nations.

To the extent that the legal institutions of other nations have rendered custody determinations in substantial conformity with the provisions of this chapter, the courts of the commonwealth shall grant due recognition to such determinations.