

No. 1978-47

## AN ACT

HB 1107

Providing for the custody of children.

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

Section 1. Short title.

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

Section 2. Purposes of act; construction of provisions.

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

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

(2) promote cooperation among the courts of the Commonwealth to the end that a custody decree is rendered in that jurisdiction which can best decide the case in the interest of the child;

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

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

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

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

(7) facilitate the enforcement of custody decrees;

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

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

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

### Section 3. Definitions.

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

“Contestant.” An institution or a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

“Court.” Any of the courts of common pleas of the Commonwealth of Pennsylvania before which a custody action is pending.

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

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

“Decree” or “custody decree.” A custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

“Home jurisdiction.” The jurisdiction in which the child immediately

preceding the time involved lived with his parents, a parent, a person acting as a parent or in an institution, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of the child from the physical custody of the parent, institution, or person acting as a parent shall not affect the six months or other period.

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

“Modification decree.” A custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

“Other court” or “another court.” Another court of common pleas of the Commonwealth of Pennsylvania other than that court of common pleas before which a custody action is pending.

“Other jurisdiction” or “another jurisdiction.” The jurisdiction of another judicial district of the Commonwealth of Pennsylvania other than that before which the custody action is pending.

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

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

“Physical custody.” Actual possession and control of a child.

#### Section 4. Jurisdiction.

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

(1) this court is the home jurisdiction of the child at the time of commencement of the proceeding, or had been the child's home jurisdiction within six months before commencement of the proceeding and the child is absent from this jurisdiction because of his removal or retention by a person claiming his custody or for other reasons, and a 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; or

(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.

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

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

#### Section 5. Notice and opportunity to be heard.

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

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

(a) Notice required for the exercise of jurisdiction over a person outside the jurisdiction of the court shall be given in a manner reasonably calculated to give actual notice, and may be:

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

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

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

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

(c) Proof of service outside the jurisdiction of the court may be made by affidavit of the individual who made the service. If service is made by mail, proof may be by receipt signed by 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 is 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 it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Section 8. Inconvenient forum.

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

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

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

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

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

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

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

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

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

(e) If the court finds that it is an inconvenient forum and that a court of another jurisdiction is a more appropriate forum it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody

proceeding be promptly commenced in another named jurisdiction or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

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

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

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction is not certainly known, shall transmit the information to its court administrator or other appropriate 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 it is just and proper under the circumstances, when 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, upon presentation of the petition, the court shall decline to exercise jurisdiction or shall exercise jurisdiction only to issue an order, pending a full hearing in the appropriate jurisdiction, returning the parties to the custodial status quo existing prior to the improper conduct or wrongful taking unless the petitioner can show that conditions in the former custodial household are physically or emotionally harmful to the child.

(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 shall 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.

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

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

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

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

(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.

(b) If a party to the proceeding whose presence is desired by the court is outside the court's jurisdiction with or without the child the court may

order that the notice given under section 6 include a statement directing that 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 court's jurisdiction 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 travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

**Section 13. Binding force of custody decree.**

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

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

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

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

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

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

**Section 16. Filing and enforcement of custody decree of another court.**

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

(b) A person violating a custody decree of one court which makes it



necessary to enforce the decree in another court may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody and his witnesses.

**Section 17. Registry of custody decrees and proceedings of other courts.**

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

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

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

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

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

**Section 18. Certified copies of custody decree.**

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

**Section 19. Taking testimony in another jurisdiction.**

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 jurisdiction. The court on its own motion may direct that the testimony of a person be taken in another jurisdiction and may prescribe the manner in which and the terms upon which the testimony shall be taken.

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

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

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

**Section 21. Assistance to courts of other jurisdictions.**

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

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

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

**Section 22. Preservation of documents for use in other jurisdictions.**

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

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

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

**Section 24. Priority.**

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

**Section 25. Repeal.**

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

**Section 26. Effective date.**

This act shall take effect in 60 days.

APPROVED—The 28th day of April, A. D. 1978.

MILTON J. SHAPP