

Uniform Child Custody Jurisdiction Act

§ 20-146.1. Definitions.

In this act:

"Child" means an individual who has not attained eighteen years of age.

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

"Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.) of this chapter.

"Commencement" means the filing of the first pleading in a proceeding.

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child custody determination or an entity authorized under the law of another state to establish, enforce or modify a child custody determination.

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

"Initial determination" means the first child custody determination concerning a particular child.

"Issuing court" means the court that makes a child custody determination for which enforcement is sought under this act.

"Issuing state" means the state in which a child custody determination is made.

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

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

"Person acting as a parent" means a person, other than a parent, who has (i) physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding and (ii) been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

"Physical custody" means the physical care and supervision of a child.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(1979, c. 229, § 20-125; 2001, c. 305.)

§ 20-146.2. Proceedings governed by other law.

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

(2001, c. 305.)

§ 20-146.3. Application to Indian tribes.

A. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this act to the extent that it is governed by the Indian Child Welfare Act.

B. A court of this Commonwealth shall treat a tribe as if it were a state of the United States for the purpose of applying this article and Article 2 (§ 20-146.12 et seq.) of this chapter.

C. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 (§ 20-146.22 et seq.) of this chapter.

(2001, c. 305.)

§ 20-146.4. International application.

A. A court of this Commonwealth shall treat a foreign country as if it were a state of the United States for purposes of applying this article and Article 2 (§ 20-146.12 et seq.) of this chapter.

B. Except as otherwise provided in subsection C, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 (§ 20-146.22 et seq.) of this chapter.

C. A court of this Commonwealth need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

(1979, c. 229, § 20-146; 2001, c. 305.)

§ 20-146.5. Effect of child custody determination.

A child custody determination made by a court of this Commonwealth that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this Commonwealth or notified in accordance with § 20-146.7 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided

issues of law and fact except to the extent the determination is modified by a court properly having jurisdiction.

(1979, c. 229, § 20-135; 2001, c. 305.)

§ 20-146.6. Priority.

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

(2001, c. 305.)

§ 20-146.7. Notice to persons outside state.

A. Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may be given in a manner prescribed by the law of this Commonwealth for service of process or by the law of the state in which the service is attempted or made. Notice may also be by certified or registered mail, return receipt requested, addressed to the last known address of the person to be served. Notice must be given in a manner reasonably calculated to give actual notice and an opportunity to be heard but may be by publication pursuant to §§ 8.01-316 and 8.01-317 if other means are not effective.

B. Proof of service may be made in the manner prescribed by the law of this Commonwealth or by the law of the state in which the service is made.

C. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

(1979, c. 229; 1982, c. 483, § 20-128; 2001, c. 305.)

§ 20-146.8. Appearance and limited immunity.

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

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

C. The immunity granted by subsection A does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this Commonwealth.

(2001, c. 305.)

§ 20-146.9. Communication between courts.

A. Before finding and exercising jurisdiction, a court of this Commonwealth shall communicate with the court appearing to have jurisdiction in any other state concerning a proceeding arising under this act.

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

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2001, c. 305.)

§ 20-146.10. Taking testimony in another state.

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

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

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

(1979, c. 229, § 20-141; 2001, c. 305.)

§ 20-146.11. Cooperation between courts; preservation of records.

A. A court of this Commonwealth may request the appropriate court of another state to:

1. Hold an evidentiary hearing;
2. Order a person to produce or give evidence pursuant to procedures of that state;
3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
4. Forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. Upon request of a court of another state, a court of this Commonwealth may hold a hearing or enter an order described in subsection A.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B may be assessed against the parties according to the law of this Commonwealth.

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

(1979, c. 229, §§ 20-142, 20-143, 20-144, 20-145; 2001, c. 305.)

§ 20-146.12. Initial child custody jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

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

2. A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under § 20-146.18 or § 20-146.19, and (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence and (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under subdivision 1 or 2 have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under § 20-146.18 or § 20-146.19; or

4. No court of any other state would have jurisdiction under the criteria specified in subdivision 1, 2, or 3.

B. Subsection A is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.

C. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

(1979, c. 229, § 20-126; 2001, c. 305.)

§ 20-146.13. Exclusive, continuing jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth that has made a child custody determination consistent with § 20-146.12 or § 20-146.14 has exclusive, continuing jurisdiction as long as the child, the child's parents, or any person acting as a parent continue to live in this Commonwealth.

B. A court of this Commonwealth that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 20-146.12.

(2001, c. 305.)

§ 20-146.14. Jurisdiction to modify determination.

Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under subdivision A 1 or A 2 of § 20-146.12 and:

1. The court of the other state determines that it no longer has exclusive, continuing jurisdiction under § 20-146.13 or that a court of this Commonwealth would be a more convenient forum under § 20-146.18; or
2. A court of this Commonwealth or a court of the other state determines that neither the child, the child's parents, nor any person acting as a parent presently reside in the other state.

(1979, c. 229, § 20-137; 2001, c. 305.)

§ 20-146.15. Temporary emergency jurisdiction.

A. A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or if it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to mistreatment or abuse or placed in reasonable apprehension of mistreatment or abuse or there is reasonable apprehension that such person is threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section becomes a final determination, if it so provides and this Commonwealth becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, any order issued by a court of this Commonwealth under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. The order issued in this Commonwealth remains in effect until an order is obtained from the other state within the period specified or until the period expires.

D. A court of this Commonwealth that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, shall immediately communicate with the other court. A court of this Commonwealth that is exercising jurisdiction pursuant to §§ 20-146.12, 20-146.13 or § 20-146.14, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(2001, c. 305.)

§ 20-146.16. Notice; opportunity to be heard; joinder.

A. Before a child's custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of § 20-146.7 must be given to all persons entitled to notice under the laws of this Commonwealth as in child custody proceedings between residents of this Commonwealth, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

B. The laws of the Commonwealth shall govern the enforceability of a child custody determination made without actual notice or an opportunity to be heard.

C. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by the laws of this Commonwealth as in child custody proceedings between residents of this Commonwealth.

(1979, c. 229, §§ 20-127, 20-133; 2001, c. 305.)

§ 20-146.17. Simultaneous proceedings.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been previously commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under § 20-146.18.

B. Except as otherwise provided in § 20-146.15, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 20-146.20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
2. Enjoin the parties from continuing with the proceeding for enforcement; or
3. Proceed with the modification under conditions it considers appropriate.

(1979, c. 229, § 20-129; 2001, c. 305.)

§ 20-146.18. Inconvenient forum.

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

B. Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to present evidence and shall consider all relevant factors, including:

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

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

D. A court of this Commonwealth may decline to exercise its jurisdiction under this act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

(1979, c. 229, § 20-130; 2001, c. 305.)

§ 20-146.19. Jurisdiction declined by reason of conduct.

A. Except as otherwise provided in § 20-146.15 or by other law of this Commonwealth, if a court of this Commonwealth has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
2. A court of the state otherwise having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14 determines that this Commonwealth is a more appropriate forum under § 20-146.18; or

3. No court of any other state would have jurisdiction under the criteria specified in subsection B.

B. If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection A, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14.

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

(1979, c. 229, § 20-131; 2001, c. 305.)

§ 20-146.20. Information to be submitted to court.

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the past five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

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

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

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

B. If the information required by subsection A is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in subdivisions A 1, A 2 and A 3 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child. In such a hearing the court shall make a written finding that the disclosure is or is not in the interest of justice.

Such hearing and written finding of the issue of disclosure shall be held and made by the court within fifteen days of the filing of a pleading.

(1979, c. 229; 1982, c. 519, § 20-132; 2001, c. 305.)

§ 20-146.21. Appearance of parties and child.

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

B. If a party to a child custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may direct the party to appear in person with or without the child and inform the party that failure to appear may result in a decision adverse to the party.

C. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

D. If a party to a child custody proceeding who is outside this Commonwealth is directed to appear under subsection B or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

(1979, c. 229, § 20-134; 2001, c. 305.)