

Jurisdictional conflicts complicate interstate child custody legal issues

Interstate child custody jurisdiction is a complicated matter because it involves more than one state's custody laws, which at times can be contradictory with one another, and with a federal law that regulates interstate custody. These various laws can create problems for battered women because there isn't a uniform standard for determining interstate child custody jurisdiction. Battered women's advocates should be aware that this is an extremely complex area of law involving jurisdictional questions that might result in parental kidnapping charges and loss of custody for a battered woman. An attorney's services are required.

UNIFORM CHILD CUSTODY JURISDICTION ACT

One of the purposes of the model Uniform Child Custody Jurisdiction Act (UCCJA) is to require all states to give full faith and credit to other states' custody orders. It was drafted in 1968 but required passage in a state to be effective in that state. It provides that a state that is not the home state of the child can assume jurisdiction in an emergency. Some states were slow to adopt the uniform law, and other states that did adopt the law amended it substantially. This caused confusion as to whether states had to recognize custody orders from other states and resulted in conflicts among states as to which had jurisdiction over the child.

The UCCJA has been passed in all states and requires a child to reside in the state for six months before the court has jurisdiction over that child. There are emergency provisions in the act that allow a court to assert jurisdiction sooner if the child is endangered. Although these provisions may be used if no previous custody action has been filed, they generally are not applicable if a proceeding is pending in another state. [See sections 452.440 to 452.550, RSMo.]

This same law could be useful to a battered woman whose abusive partner has fled the state with the children. If a party takes a child to another state in violation of a custody order, the UCCJA can be used to register the Missouri

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**STATES THAT HAVE
ADOPTED THE UNIFORM
CHILD CUSTODY
JURISDICTION AND
ENFORCEMENT ACT**

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Iowa
Kansas
Maine
Michigan
Minnesota
Montana
Nebraska
Nevada
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon
Rhode Island
Tennessee
Texas
Utah
Virginia
Washington
West Virginia

**LEGISLATION
INTRODUCED
IN 2004**

Indiana
Louisiana
Maryland
Massachusetts
Mississippi
Pennsylvania
South Carolina
Wyoming

For more information,
visit the Web site of the
National Conference
of Commissioners on
Uniform State Laws
at www.nccusl.org.

custody decree in the so-called “foreign” state. The custody order then can be enforced in the foreign state by filing a contempt action, a habeas corpus action or a criminal complaint for parental kidnapping.

If this non-custodial parent tries to file a custody action in another state, the UCCJA also can be used to try to stop the action. A provision in the act allows the court to decline jurisdiction if the party has wrongfully taken the child from another state or has engaged in similar “reprehensible conduct.” In cases where no custody action has been filed, the act can be used to try to prevent a person who has taken the child from the other parent from initiating action in another state. In such cases, the act can be used to assert that the child has not been in the state for six months, and, therefore, the court does not have jurisdiction over the child.

PARENTAL KIDNAPPING PREVENTION ACT

The Parental Kidnapping Prevention Act (PKPA) is a federal law that was passed in 1980 to resolve the conflicts arising from the UCCJA and to serve as a deterrent to parental kidnapping. [See 28 U.S.C. Section 1738A.] It provides for full faith and credit to be given to states’ child custody determinations as long as they comply with the requirements of the PKPA. Those requirements are substantially similar to the state UCCJA.

Unlike the UCCJA, the PKPA’s emergency clause allows a state court to assume jurisdiction of and make a custody order regarding a child if the child, the child’s sibling, or the parent of the child is physically present in the state and has been subjected to or threatened with maltreatment or abuse. Also unlike the UCCJA, the PKPA provides that the state which made the original custody order retains jurisdiction over the child. This means that the original state’s courts have the exclusive jurisdiction to modify a custody determination. No other state can make a custody determination with regard to that child as long as the child or one contestant remains in the state in which the original custody order was issued.

The PKPA and the UCCJA are substantially similar but treat emergency jurisdiction and the continuing jurisdiction of the state that made the original custody decree differently. Because the PKPA is a federal law, it preempts the state UCCJA when the two are inconsistent. For example, in *Russell v. Ruth* [115 S.W.3d 404 (MO. App. S.D. 2003)], the appellate court found that the Missouri court could not modify a Kansas custody order without determining if the father still lived in Kansas because the order could not be enforced under the PKPA if Kansas still had jurisdiction over the child.

**UNIFORM CHILD CUSTODY JURISDICTION
AND ENFORCEMENT ACT**

The model Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was written in 1997 by the Uniform Law Commissioners, partially as a result of the inconsistency of the PKPA and the UCCJA and in part because of other jurisdictional questions that have arisen regarding out-of-

state enforcement of Orders of Protection. Thirty-four states and the District of Columbia have passed the UCCJEA. Missouri is not one of these states, but battered women’s advocates should understand the law because they often assist a woman who is from or traveling to a state that has passed the law.

Protection orders are specifically covered by the UCCJEA, even though they are considered temporary orders. A state can assume jurisdiction when a child is present in the state and is endangered, and also when a sibling or parent of the child is present in that state and is subjected to maltreatment or abuse. The court of the state where the child or parent is present can assume jurisdiction, even when there is a prior custody decree from another state or there is an action pending in another state. For this to occur, the court must specify in the temporary emergency order a period of time the court considers adequate to allow the person seeking custody to obtain an order from the state having initial custody jurisdiction. There also must be immediate communication with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine the duration of the temporary order. In addition, the UCCJEA provides that a state can decline jurisdiction if it finds that the state is an inconvenient forum because domestic violence has occurred in that state and is likely to occur in the future and another state could best protect the parties and the child.

The UCCJEA provides that the state that made the custody order retains jurisdiction except under certain circumstances.

Comparison of issues involving UCCJA, PKPA and UCCJEA

ISSUE	UCCJA	PKPA	UCCJEA
<p>What proceedings are covered?</p>	<p>“Custody proceeding includes 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.”</p> <p>In practice, there is a disparity between states as to whether UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights and domestic violence protection orders.</p>	<p>“Custody determination means a judgment, decree or other order of the court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.”</p>	<p>UCCJEA applies to virtually all cases involving the custody of or visitation with a child except adoption, which is governed by IJAA.</p> <p>“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 [the enforcement provisions of this act].”</p>

ISSUE	UCCJA	PKPA	UCCJEA
“Home State Priority”	<p>Home state is defined as “the state in which the child immediately preceding the time involved lived with a parent or person acting as a parent. . . .”</p> <p>Home state is just one of three equally weighted possible bases upon which a state may exercise jurisdiction.</p> <p>The other two bases are:</p> <p>a) “best interest” because of “significant connections” (child and at least one parent) plus substantial evidence in this state; or</p> <p>b) physically present plus abandonment or emergency.</p> <p>Some states have case law which affirms that PKPA mandates home state priority.</p>	<p>Home state is defined the same as under the UCCJA.</p> <p>Home state has priority over any other basis upon which a state could exercise jurisdiction.</p>	<p>Home state is defined as “the state in which the child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.”</p> <p>The UCCJEA is carefully structured so that home state has clear priority.</p>
Effect of domestic violence protection order on jurisdictional issues	<p>Statute does not specify. Practice has often been to “fudge the issue” and not treat domestic violence protection orders as triggering UCCJA/PKPA.</p>		<p>Domestic violence protection orders are specifically included in the definition of “custody proceeding.”</p>
Commencement	<p>Defined by state law – could be time of service or time of filing.</p> <p>Inconsistency among courts as to whether a domestic violence protection order triggers UCCJA/PKPA.</p>		<p>“Commencement means the filing of the first pleading in a proceeding.”</p>
Inconvenient forum	<p>Court may determine that it is an inconvenient forum on its own motion or that of a party or a guardian <i>ad litem</i> for the child.</p> <p>In determining whether it is an inconvenient forum, the court is to consider a variety of factors including whether another state is or recently was the home state, the connections between the other state and the child and at least one contestant, and where substantial evidence lies.</p>	<p>Not directly addressed but there are references to the possibility of a state declining jurisdiction.</p>	<p>Court may determine that it is an inconvenient forum on its own motion or the motion of a party or another court and may decline jurisdiction based on enumerated factors.</p> <p>Factors for inconvenient forum determination are completely different than under UCCJA and PKPA.</p> <p>Factors specifically include “the relative financial situation of the parties” and “whether domestic violence has occurred or is likely to occur in the future and which state could best protect the parties and the child.”</p>

ISSUE	UCCJA	PKPA	UCCJEA
<p>Continuing jurisdiction/ jurisdiction to modify</p>	<p>A court should not modify a custody decree entered by another state unless the other state no longer has UCCJA jurisdiction (i.e. jurisdiction under home state, significant contacts) or has declined jurisdiction.</p> <p>The state being asked to modify makes the determination whether the other state has lost jurisdiction.</p> <p>Although the model UCCJA defines “custody decree” broadly, in practice, a court being asked to enter an initial custody order in a dissolution or parentage action may not interpret the term “custody decree” to include a domestic violence protection order.</p>	<p>PKPA provides that a court which previously has “made a child custody determination” consistent with PKPA has continuing jurisdiction as long as:</p> <p>a) the court has jurisdiction according to its own state law; and</p> <p>b) “such state remains the residence of the child or of any contestant.”</p> <p>In other words, under PKPA, if anyone remains in the decree state, jurisdiction in that state remains.</p> <p>This continuing jurisdiction is exclusive: “A court of this state may modify a determination of the custody of the same child made by another state only if . . . the court of the other state no longer has jurisdiction, or it has declined to exercise such jurisdiction.”</p> <p>“Custody determination” is a more inclusive term than “custody decree” and more readily lends itself to an interpretation that includes domestic violence protection orders.</p>	<p>“Modification means a child custody determination that changes, replaces, supercedes, 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.” The state that previously exercised jurisdiction has exclusive, continuing jurisdiction unless:</p> <p>a) the decree state makes an express determination that “it no longer has a significant connection with the child or with the child and one parent (or person acting as parent), and that substantial evidence is no longer available. . . .” or</p> <p>b) a state (decree state or other state) makes a finding that neither the child, the parent(s), nor person acting as a parent currently reside in the state.</p> <p>Only the decree state can make the determination that there is no longer a significant connection and substantial evidence.</p>
<p>Role of “best interests of child” in jurisdictional evaluation</p>	<p>“Best interests” language appears throughout UCCJA.</p> <p>a) It is part of the “significant connection/substantial evidence” theory of jurisdiction.</p> <p>b) It is part of the “no other state has jurisdiction” theory of jurisdiction.</p> <p>c) It is part of the inconvenient forum determination.</p>	<p>Also uses “best interest” language.</p>	<p>This language is eliminated so that courts will not collapse legal issues relating to jurisdiction with those relating to the merits of the case. [See prefatory note to UCCJEA.]</p> <p>However, issues of the safety of the child can be considered in the context of a request for use of emergency jurisdiction or in considering an argument that the home state/continuing jurisdiction state should decline jurisdiction.</p>
<p>Wrongful conduct</p>	<p>The court “may” decline to exercise jurisdiction if “the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct” if “this is just and proper under the circumstances.”</p>	<p>No comment.</p>	<p>“Unjustifiable conduct,” if found, requires declination of jurisdiction. Commissioners’ comments specifically state that domestic violence victims should not be penalized for flight.</p>
<p>Process for intrastate communication</p>			<p>Requires a record to be kept of communications between courts. Requires that the parties have an opportunity to submit materials for consideration by the court(s). Does not require that the parties be allowed to participate in the communication.</p>

ISSUE	UCCJA	PKPA	UCCJEA
<p>Emergency jurisdiction</p>	<p>Emergency jurisdiction may be exercised when the child is physically present in the state and</p> <p>a) the child has been abandoned; or</p> <p>b) “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.”</p> <p>UCCJA is silent on the question of the length of time for which a court may exercise emergency jurisdiction.</p> <p>Some states have case law that indicates emergency jurisdiction is only for temporary use until the proper state can assert jurisdiction or decline it.</p> <p>Other states have interpreted UCCJA to allow permanent assumption of jurisdiction if criteria for emergency exercise of jurisdiction are satisfied initially.</p>	<p>Emergency jurisdiction may be exercised when the child is physically present in the state and</p> <p>a) the child has been abandoned; or</p> <p>b) it is necessary in an emergency to protect the child because the child, a sibling of the child, or the parent of the child has been subjected to or threatened with mistreatment or abuse.</p> <p>This definition does not include neglect.</p> <p>Like UCCJA, PKPA is silent as to the length of time that emergency jurisdiction can address.</p>	<p>“Temporary emergency jurisdiction” may be used when the child is present in the state and</p> <p>a) has been abandoned; or</p> <p>b) “it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.”</p> <p>This definition directly addresses domestic violence.</p> <p>This definition does not include neglect.</p> <p>Emergency jurisdiction is usually only temporary but can evolve into home state jurisdiction when:</p> <p>a) The state with home state or continuing jurisdiction declines on the basis of inconvenient forum. [Domestic violence is an enumerated factor to be considered.]</p> <p>b) If there is no prior child custody determination from another state and if there is no proceeding pending in the state with home state jurisdiction, an emergency order will remain in effect until an order is obtained from the court having proper jurisdiction. If the temporary order so provides it can automatically become permanent if a child custody proceeding in the state that initially had UCCJEA jurisdiction loses it with the passage of time and the emergency order state becomes the home state.</p> <p>If there is a prior custody decree or a proceeding pending in a state with proper UCCJEA jurisdiction, the court entering an emergency order shall specify an amount of time within which the other litigant must obtain a court order from the proper state. Under this scenario, the emergency order lasts until it is replaced by an order from the proper forum, or until the time period set forth in the emergency order expires.</p> <p>The statute does not say what happens next under this scenario. It seems that the state with proper jurisdiction would still have to officially decline.</p>

ISSUE	UCCJA	PKPA	UCCJEA
Visitation enforcement	No specific provisions.	No specific provisions.	<p>An initial purpose of UCCJEA drafters was to create a process for interstate enforcement of visitation rights.</p> <p>UCCJEA provides for “temporary visitation order” where the state without UCCJEA jurisdiction to modify may enter an order to enforce visitation provisions of the court order from the other state or may enter an order adding specificity to an order that states “reasonable visitation.”</p> <p>This authority is supposed to be used only to make temporary orders to enforce visitation, not to modify a custody order, even temporarily.</p>
Notice to persons outside state	<p>Notice “shall be given in a manner reasonably calculated to give actual notice” and may be by personal delivery in the manner prescribed by the state being asked to enter the custody decree, in the manner prescribed by the law of the place in which service is made, by any form of mail addressed to the person and requiring a receipt, or as directed by the court.</p> <p>Time requirement for how much notice before any hearing.</p>	<p>Requires “reasonable notice and an opportunity to be heard.”</p> <p>PKPA provides that full faith and credit shall be given to child custody determinations “made consistently” with the provisions of PKPA.</p>	<p>Notice to a person outside of the state may be given in the manner prescribed by either the state in which the order is sought or in the state where the other parent or person entitled to notice is to be found. Notice “must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.”</p> <p>Lack of proposed notice is one of the few bases upon which a litigant can object to registration or enforcement of a custody order. [Ex Parte Orders of Protection would not comply with UCCJEA.]</p>
Simultaneous proceedings in other states	<p>“A court of this state shall not exercise its jurisdiction under [the UCCJA] if, at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction in conformity with this act” unless that action is stayed because this state is a more convenient forum.</p> <p>“If a court learns that another matter was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the other court. . . .”</p>	<p>A court of this state “shall not” exercise jurisdiction in any proceeding for a custody determination “commenced during the pendency” of a proceeding in a court of another state where such court of that other state is exercising jurisdiction consistently with the provisions of this section.”</p>	<p>Court “may not” exercise jurisdiction if, at the time of commencement of the proceeding, a proceeding is pending in another state that is exercising jurisdiction “substantially in conformity with this act.”</p> <p>The court being asked to modify a custody order has a duty to determine whether a proceeding to enforce visitation of that order is pending in another state. If so, it may:</p> <ol style="list-style-type: none"> stay the modification proceeding; enjoin the parties from proceeding with the visitation proceeding; proceed with the modification as it deems appropriate.

ISSUE	UCCJA	PKPA	UCCJEA
Registration procedure	<p>Courts are supposed to maintain a registry for filing of out-of-state decrees. Such filed decrees are supposed to be “enforced in like manner as a custody decree rendered by a court of this state.”</p> <p>Clerks are supposed to retain copies of out-of-state decrees received for filing, communications as to the pendency of proceedings in other states, communications concerning a finding of inconvenient forum by another state, and other communications or documents that may affect the jurisdiction of the court.</p>	<p>Silent on this issue.</p>	<p>UCCJEA creates a registration process for out-of-state orders. The court receiving the order to be registered must “serve” all parents and persons acting as parents with notice of the request for registration and copies of all the paperwork submitted to the court with the request for registration. The out-of-state judgment must be certified; for other documents, no particular form is required.</p> <p>The people notified of the intended registration must request a hearing within 20 days if they wish to contest the registration. The hearing is about the validity of the order only. The issues are:</p> <ol style="list-style-type: none"> whether issuing court had UCCJEA jurisdiction; whether respondent received UCCJEA-compliant notice; whether the order has been stayed, vacated or modified. <p>If a timely request for a hearing to challenge the validity of the order is not made, the registration is confirmed as a matter of law and precludes further contest of the order with respect to any matter that could have been contested at the time of registration.</p>
Enforcement mechanisms	<p>UCCJA does not provide any enforcement mechanisms.</p> <p>Various procedures are used in different states, such as Motion to Enforce, Motion to Grant Full Faith and Credit, Writ of Habeas Corpus, Citation for Contempt, Mandamus, or Prohibition.</p> <p>In practice, proceedings to recover the child often become hearings on the merits.</p>	<p>PKPA directs states to enforce orders issued consistently with PKPA.</p>	<ol style="list-style-type: none"> To enforce visitation – temporary orders regarding visitation. Registration – lets parents know whether the state in which the order is being registered will honor the order. To enforce custody provisions – “Turbo Habeas” proceeding; a hearing 24 hours after service where only issues to be litigated are: <ol style="list-style-type: none"> whether issuing court had UCCJEA jurisdiction; whether respondent received UCCJEA-compliant notice; whether the order has been stayed, vacated or modified. To enforce custody provisions where there is flight risk – warrant to take physical custody of child; no notice; enforcement hearing on next judicial day. <p>Court enforcing orders must communicate with any court in which a modification proceeding is pending.</p>

VENUE CHANGE DUE TO DOMESTIC VIOLENCE

E.M. v. M.M., 734 N.Y.S.2d 837 (N.Y. Family Court 2001)
UCCJEA used to deny change of venue due to domestic violence

The court denied a change of venue request to a father in a custody case, finding that due to “demonstrated acts of domestic violence . . . it would not serve the ends of justice to deprive the mother of her safe harbor in Albany County.” The father was seeking to have the proceedings moved to the town in which the couple had lived. The mother, who fled from that town because of the abuse, wished to have the case tried in the county of her current residence. The court cited the UCCJEA and the International Parental Kidnapping Act for the proposition that judges may consider domestic violence in determining the issue of venue.

Stoneman v. Drollinger, 64 P.3d 997 (Mont. 2003)
UCCJEA used to grant change of venue as requested due to domestic violence

Drollinger moved to transfer the remand of the custody case that was pending in Montana to Washington, the state to which she and the children had relocated because of the extensive domestic violence that she had suffered at the hands of her husband. The trial court denied the motion. The appellate court reversed and remanded the decision, finding that the trial court had abused its discretion in denying Drollinger’s motion. The UCCJEA provides that the home state of the children at the time the original custody order was issued retains jurisdiction to hear the case, unless the court declines to exercise jurisdiction on the basis that it is an inconvenient forum. The UCCJEA provides that a court can make that determination if domestic violence has occurred, is likely to continue in the future and another state could best protect the parties and the child. The appellate court found that the trial court should have granted Drollinger’s motion given the extensive record of domestic violence in the case and the threat to the safety of Drollinger and the children if she had to litigate the case in Montana.