



A COMPREHENSIVE GUIDE

The Interstate Child Custody Tool Series



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FREQUENTLY ASKED QUESTIONS

About the Governing Laws



FAQs

Should a survivor leave a state with her children to flee from abuse?

It is critical for survivors to speak directly with an attorney in their state who is knowledgeable about domestic violence and interstate issues before leaving the state with children. Survivors also may call the Legal Resource Center on Violence Against Women (301-270-1550) to discuss interstate issues and be connected to attorneys in the relevant jurisdictions. Attorneys and advocates working with survivors in interstate cases also may contact the Legal Resource Center for relocation checklists, sample pleadings, case law, and information.

Can a survivor legally leave a state with her children to flee from abuse?

Maybe. It depends on the state laws and the facts of the case.

There are three main legal issues to consider:

1. The parental kidnapping law in each state says whether it is legal to leave the state with children. In some states, it may be perfectly fine, while in other states, it could be a crime. Some state laws contain exemptions or defenses related to domestic violence or protecting children.
2. If there already is a custody or visitation order in place, a survivor may not violate the terms of the order. If the order gives the abuser certain times to be with the children, the survivor must comply with the order or try to get the order changed or dismissed before leaving the state.
3. There also may be a relocation law in the state that sets forth certain steps to be taken before moving.

An attorney can explain what the state parental kidnapping and state relocation law says.

Because the legal issues are more complicated if a survivor leaves the state, it may be a good idea for a survivor to talk first with a victim advocate and go somewhere safe WITHIN the state (like a shelter or a safe home). Then the survivor will have the time and privacy to talk with an attorney about moving out of state.

What is the relationship between the federal law (Parental Kidnapping Prevention Act) and the state laws (Uniform Child Custody Jurisdiction Act or Uniform Child Custody Jurisdiction and Enforcement Act) – does one trump the others?

As federal law, the Parental Kidnapping Prevention Act (PKPA) applies across the country. As uniform state laws, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and its predecessor (the UCCJA, which remains in effect only in Massachusetts) apply only in those states that have enacted them. In general, the principles of federalism establish that federal laws trump inconsistent state laws. However, the relationship between the PKPA and state jurisdictional laws is complex and, arguably, there is no direct conflict between these state and federal laws.

The federal and state laws have different purposes. The UCCJEA determines whether a state has the authority to issue, modify, or enforce a child custody order. In contrast, the PKPA simply is a full faith and credit law for custody orders. It tells courts when to honor and enforce custody orders issued by courts in other states.

In addition, the PKPA references state jurisdictional laws, requiring a custody order to have been issued in compliance with the issuing state's jurisdictional law to be entitled to interstate enforcement. Specifically, the federal law states:

“A child custody or visitation determination made by a court of State is consistent with the provisions of this section only if such court has jurisdiction under the law of such State . . .”
28 U.S.C. 1738A(c)(1).

Therefore, a court must adhere to its own jurisdictional law (the UCCJEA in every state but Massachusetts) for a custody order to be entitled to enforcement under both the federal PKPA and state law.

Is a custody provision within a protection order entitled to full faith and credit?

Custody provisions within protection orders are entitled to full faith and credit across state lines as long as they were issued in compliance with the issuing state's laws. This means that the issuing court should have complied with the following types of laws: (1) the state's substantive law permitting the court to issue a custody order, such as the state's domestic relations statute or protection order statute; (2) the state's child custody jurisdictional law, such as the UCCJEA and (3) the state's personal jurisdiction law (including its long-arm statute.) If the issuing court complied with these state laws, custody provisions within protection orders must be honored and enforced across state lines according to the federal PKPA and the VAWA.

Custody provisions within *ex parte* protection orders are entitled to interstate enforcement, but the analysis is slightly different. The legal authority is provided by VAWA, which requires interstate enforcement of *ex parte* orders if notice and opportunity to be heard will be provided within the time required by the issuing state's law, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights. The PKPA, and the UCCJEA do not require courts to enforce *ex parte* orders across state lines, so this is the only situation in which the VAWA would need to be used as an independent source of authority for enforcing custody provisions in protection orders.

Should a domestic violence survivor seek a protection order before fleeing across state lines with children?

Maybe. The decision about whether to file for a protection order is a complex one, and an attorney can give advice needed to make a more informed decision. For many domestic violence survivors, a protection order may stop the abuser from using violence, or it may improve the response by law enforcement. In many states, a protection order can help by awarding temporary custody and child support, or by making the abuser leave the home. Getting a protection order also may help prove to a court later that there has been a history of abuse, which may be useful in custody, immigration and relocation cases. Federal and state laws, called full faith and credit laws, require enforcement of protection orders across state lines. Additionally, if the abuser has no connection with the new state, it may be impossible for a survivor to obtain a protection order there.

However, there also may be reasons not to file for a protection order before relocating. If a survivor wants to leave the state, this may be harder to do if there is a protection order that includes visitation for the abuser (because of the need to comply with the visitation schedule in the order). Getting a protection order in the state that a survivor wants to leave also may make things more complicated because it may give that state more of a reason to hold on to a long-term custody case. An attorney can help a survivor understand the pros and cons of filing for a protection order before relocating.

What else should survivors consider before leaving?

There are a number of factors to consider prior to flight across state lines with children. First, a survivor will need to evaluate what will keep her and the children safe. If she believes that the perpetrator will kill her if she does not leave the state, and that no intervention by law enforcement officers, prosecutors, judges, advocates, or community members can prevent this, this expectation must guide her decision-making. Her decision also will be affected by the protections available in each state, such as family support, economic and employment opportunities, the availability of free or affordable legal representation, and the reliability of systemic responses to domestic violence. Next, understanding the laws related to jurisdiction, relocation, and flight across state or tribal lines is a critical part of assisting survivors to make decisions about their safety.

The following legal considerations should be taken into account:

- **What type of parental kidnapping, custodial interference, or child concealment law does the original state have?**

A survivor should understand how state law defines parental kidnapping or related crimes. In some states, as long as there is no court order in effect, either parent is entitled to take the child. In other states, even if there is no custody order in effect, removing the child and depriving the other parent of contact with the child is a criminal offense.

- **Is there any defense or exemption related to domestic violence that could protect the survivor from criminal charges if she flees across state lines with the children?**

There are a variety of state law exemptions or affirmative defenses to parental kidnapping charges. Some state laws specifically include flight from domestic violence as an exemption¹ or as an affirmative defense.² A few laws permit flight but require survivors to meet conditions such as making a report to a district attorney and commencing a custody case within a particular time frame.³ Others permit flight to protect the parent⁴ or the child from imminent harm.⁵ Still others have a general “good cause” defense⁶ or rely on the criminal defense of “necessity.”⁷

Prior to fleeing with children, survivors should know whether they may rely on any exemptions or defenses to protect them in criminal cases. Otherwise, they could end up in jail and lose their children. Of course, survivors are likely to require legal counsel to avail themselves of any available legal protections in court or in negotiations with prosecutors.

¹ See, e.g., FLA. STAT. Ch. 787.03(6)(a)(b)(2002).

² See, e.g., 720 Ill. COMP. STAT. 5/10-5(c)(3)(2001).

³ See, e.g., CAL. PEN. CODE § 278.7(c)(2003).

⁴ See, e.g., IDAHO CODE § 18-4506(2)(b)(2002).

⁵ See, e.g., IDAHO CODE § 18-4506(2)(a)(2002).

⁶ See, e.g., HAW. REV. STAT. § 707-726(2)(2001).

⁷ See, e.g., Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985) (defining necessity defense).

- **What type of relocation statute does the state have?**

State civil laws also vary as to whether they permit a parent who has custody of the child to leave the state and under what circumstances.⁸ Depending on the state's relocation law and the usual court rulings in the state, a survivor may need to ask permission from the court prior to relocating. Careful statutory and case law research is necessary to understand the parameters of such laws.

- **Would the survivor be violating a court order by fleeing?**

Courts expect parties to comply with existing court orders. Where possible, survivors should ask a court to modify or dismiss an existing custody or visitation order prior to flight if the relocation will make compliance with the court order impossible. If no order exists, a survivor may seek to obtain a protection order that does not include visitation for the perpetrator since the survivor may be unable to comply with the visitation schedule ordered by the court if she relocates with the children. In some cases, it may be possible to seek permission to relocate with the children as part of a court order.

- **Is a protection order against the perpetrator likely to be effective?**

If a survivor believes that the perpetrator would comply with a protection order and cease the violence, the order could be very helpful. In addition to deterring future violence, in most states, the court may award temporary custody to the survivor, establish a child support payment plan, and require ancillary relief, such as the relinquishment of firearms, to protect the survivor. Studies have found protection orders to be a useful deterrent to violence in many cases.⁹ In other cases, a perpetrator may view the filing of a protection order as a survivor's attempt to separate, ending the perpetrator's ability to control the survivor. Such perpetrators may commit "separation violence," making this time period very dangerous for survivors.¹⁰

- **Is a protection order likely to be helpful in proving a history of violence in the future?**

If the issuing court understands domestic violence, a protection order could be very helpful to the survivor if she needs to document the history of abuse. For example, if she is charged with parental kidnapping when she flees across state lines, the existence of a protection order from the original state can help prove that she fled to escape abuse, rather than to abscond with the children. A protection order that includes findings of abuse also may be helpful in states where courts must consider domestic violence in making jurisdictional decisions or custody determinations.

- **Do the states have different custody laws related to domestic violence?**

Custody laws vary, and one state may consider domestic violence to a greater degree in custody decisions. This legal standard could be important for a survivor to know prior to flight.

⁸ See Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 Kan. L. Rev. 433 (1998).

⁹ See Logan T. K. Logan and Robert Walker, *Civil protective order effectiveness: Justice or just a piece of paper?*, 25 Violence and Victims 332 (2010).

¹⁰ See Kathryn J. Spearman, Jennifer L. Hardesty, Jacquelyn Campbell, *Post-separation abuse: A concept analysis*, 79(4) J. Adv. Nurs. 1225 (2023).

- **Do the states have different laws protecting the confidentiality of information about domestic violence survivors?**

If a domestic violence survivor needs to have identifying information (such as her address or telephone number) kept confidential for safety reasons, she should be aware of what the different states' laws require with respect to confidentiality.

- **Do the states have different forms of economic support available to survivors?**

Survivors may wish to consider whether one state provides greater access to economic support than another. For instance, one state may have transitional housing programs for survivors, more generous public assistance eligibility rules, or better insurance or employment laws with respect to domestic violence. In addition, economic relief within protection orders or other court orders may be easier to obtain in one state.

Is legal assistance more accessible in a particular state?

Survivors may need to know whether pro bono or sliding scale legal representation is more available or more effective in a particular state, since they are likely to need assistance with a range of legal cases. Similarly, legal services organizations or domestic violence programs may have more generous eligibility standards in certain states.

May a court in the new state issue a custody order?

First, it is important for survivors to call the family court in the previous state regularly (about once a week) to be sure that the abuser has not filed for custody there. If the abuser files for custody in the state that the survivor has left, it is important for the survivor to find an attorney in that state and participate in the court proceedings in person or remotely, where permitted.

The new state is limited in its ability to enter a custody order. Generally, it takes six months for a state to become a child's "home state" with the power to enter a custody order (assuming that nothing has been filed in the original state). However, if there has been child abuse or domestic violence, the new state may be able to enter a temporary emergency custody order right away.

If a judge enters an emergency order, he or she then must contact the judge in the original state. The fact that a court has entered an emergency order will not take jurisdiction away from the state that has the power to hear the long-term custody case, although the original state may choose to relinquish jurisdiction, based on a finding that the refuge state is a more appropriate forum under the UCCJEA's inconvenient forum provision.

When can a court modify a custody or visitation order issued by a court in another state?

The PKPA gives continuing jurisdiction to the state that issued an initial custody determination consistent with the PKPA. The issuing state retains jurisdiction as long as it has jurisdiction under state law and at least one parent or the child continues to live there. A court may modify a custody or visitation order from another state only if 1) it has jurisdiction to do so, and 2) the court of the initial state no longer has jurisdiction or has declined to exercise it.

Similarly, under the UCCJEA, the concept of “exclusive, continuing jurisdiction” limits the ability of a new state to modify a valid existing custody order or to enter a new one governing the same parties and child if there is an existing order.¹¹

The new state court may modify the existing order only if:

1. The court in the original decree state found that no one has a significant connection with the state and that there is no longer substantial evidence in the state; or
2. The new court determines that the child, the parents, and any person acting as a parent do not presently reside in the original decree state; or
3. The original court declines to exercise modification jurisdiction on inconvenient forum grounds; or
4. The new court determines that it has temporary emergency jurisdiction (requires judicial communication with the issuing court to determine next steps).

What steps should a survivor take to enforce a custody order across state lines?

If an abuser takes the children to another state or withholds them in violation of a custody order, survivors (ideally represented by a knowledgeable attorney) may take several steps to enforce the order and recover the children, including:

1. Seeking immediate enforcement by law enforcement by providing a copy of the court order that has been violated. Depending on the state law, law enforcement may be able to act unilaterally based upon the violation of the order.
2. If the order is not an *ex parte* order, seeking a “pick-up” order from the appropriate court in the state where the children are located. The UCCJEA’s enforcement provisions authorize such an order, and if the court finds that the abuser might flee with the children it may issue an *ex parte* pick-up order.
3. Pursue criminal charges for parental kidnapping (sometimes called custodial interference or child concealment) against the abuser. If the potential charge is a felony, it may be possible to work with local law enforcement or prosecutor’s office to enlist the FBI to track down the abuser and return the children. This is through a federal Unlawful Flight To Avoid Prosecution (UFAP) Warrant.¹²

Other tools in this series include case law summaries, a frequently asked questions guide, and guides to other relevant statutes. For copies of these tools or for technical assistance, please visit www.bwjp.org, e-mail ncffc@bwjp.org, or call **800-903-0111**, prompt 2 or **703-312-7922**.

¹¹ UCCJEA Sec. 202.

¹² 18 U.S.C. § 1073.

This resource was supported by Grant No. #90EV0548-01-00 awarded by the Department of Health and Human Services. The viewpoints contained in this document are solely the responsibility of the author(s) and do not represent the official views or policies of the department and do not in any way constitute an endorsement by the Department of Health and Human Services.



A PRACTITIONER'S GUIDE TO THE

Violence Against Women Act (VAWA)



Overview



What type of law is it?

The VAWA is a federal law. Its official citation is as follows: Pub. L. No. 103-322, Pub. L. No. 106-386, Pub. L. No. 109-162, Pub. L. No. 113-4, Pub. L. No. 117-103, (codified in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).



Why was it enacted?

The comprehensive federal law was designed to prevent violent crimes against women, hold perpetrators accountable, enhance victim safety, and improve systemic responses to domestic violence, sexual assault and stalking. The VAWA was enacted in 1994 and amended in 2000, 2005, 2013, and 2022.



How does it work?

Among other provisions, the VAWA contains full faith and credit provisions requiring courts and law enforcement to honor and enforce protection orders issued by courts in other states or tribes as long as the orders meet certain requirements. As federal law, the VAWA trumps state law when there is a conflict between the two.

In addition, the Parental Kidnapping Prevention Act (PKPA), which was amended in 2000 as part of the VAWA reauthorization that year, tells courts when to honor and enforce custody determinations issued by courts in other jurisdictions.



What are the significant provisions related to domestic violence and custody?

Full faith and credit for protection orders

Under the VAWA, jurisdictions must honor and enforce certain orders of protection issued by courts in other jurisdictions (18 U.S.C. §§ 2265-2266). The mandate covers protection orders issued to prevent violence, threats, harassment, proximity, or contact, including temporary and final orders issued by civil and criminal courts. For a protection order to be enforceable across state or tribal lines, it must meet the following conditions: 1) the court that issued the order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case, and 2) the respondent must have had notice and an opportunity to be heard.

Custody provisions within protection orders are required to be enforced nationwide under the VAWA

The VAWA, as amended in 2005, explicitly defines the term “protection order” to include “any support, child custody or visitation provisions” issued as part of the order. Thus, the statute’s full faith and credit provisions, which mandate enforcement of a “protection order,” require interstate enforcement of custody provisions within protection orders. There is no doubt that custody provisions within protection orders must be enforced when they comply with the PKPA and with state jurisdictional laws, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). However, the VAWA could be viewed as an independent source of authority requiring custody provisions within protection orders to be enforced across state or tribal lines even when the PKPA and state jurisdictional laws do not require enforcement.

There is only one situation in which the VAWA would need to be used as an independent source of authority for enforcing custody provisions in protection orders. This is where interstate enforcement of an *ex parte* order is sought; the PKPA, the Uniform Child Custody Jurisdiction Act (UCCJA), and the UCCJEA do not require courts to enforce *ex parte* orders across state lines. VAWA, by contrast, covers *ex parte* orders, and so could be useful when custody provisions are issued in *ex parte* protection orders. In the vast majority of cases, however, the VAWA would not need to be used as an independent source of authority.

Victims of domestic violence, sexual assault, and stalking may not be required to pay fees related to protection order and criminal domestic violence cases

The VAWA requires certain grantees, including states receiving STOP Violence Against Women Formula Grants, to certify that their laws, practices and policies do not require victims to pay filing, issuance, registration, or service costs for domestic violence, sexual assault, or stalking protection order or criminal domestic violence cases. All states currently receive these formula grants, so victims should not be required to pay such costs in any state.

This means that a victim who is trying to get a custody provision in an out of state protection order enforced should not have to pay any registration or filing costs.

Eliminates registration/filing prerequisites for enforcement of out of state or tribal protection orders

States and tribes are prohibited from requiring registration or filing as a prerequisite to enforcing out of state or tribal orders of protection.

Prohibits notification to respondent

The VAWA prohibits states and tribes from requiring notification to perpetrators when victims register out of state or tribal protection orders unless the victim requests the notification.

Amends emergency jurisdiction under the PKPA

In 2000, the VAWA broadened the PKPA’s definition of “emergency jurisdiction” to cover domestic violence cases consistent with new state jurisdictional laws. Under the amended PKPA, a court may exercise emergency jurisdiction if the child is physically present in the state and the child has

been abandoned or it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse.

This means that when a victim of domestic violence flees across state lines with the children, if the refuge state exercises emergency jurisdiction when the children were not abused physically, other states must give full faith and credit to that order.

Protects victims' confidential information

Under the VAWA, as amended in 2005 and 2013, all grantees and subgrantees providing victim services are prohibited from sharing personally identifying information about victims without "informed, written, reasonably time-limited consent." In addition, grantee programs may not ask victims to share such information as a condition of eligibility for services, nor may programs share personally identifying information to comply with Federal, State, Tribal, or territorial reporting, evaluation, or data collection requirements. In 2013, the VAWA was amended to clarify that grantees must not disclose, reveal, or release any personally identifying information regardless of whether the information has been "encoded, encrypted, hashed, or otherwise protected."

Recognizes Tribes' jurisdiction over non-Indian defendants in domestic and dating violence cases

In 2013, the VAWA was amended to clarify that Tribes have inherent authority to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over both Indian and non-Indian defendants who commit acts of domestic violence or dating violence or who violate certain protection orders on Tribal lands. In addition, the amendment recognizes that Tribes have sovereign power to issue and enforce civil protection orders against both Indians and non-Indians. Exercise of such authority is wholly voluntary for the Tribes. OVW announced a new grant program to support Tribal government efforts to exercise SDVCJ in May 2016.

In 2022, the VAWA was further amended to change the name SDVCJ to Special Tribal Criminal Jurisdiction to reflect an expansion of the crimes covered by the law, as well as to incorporate additional enhancements in the Tribes' criminal jurisdiction over non-Indian offenders.



VAWA grant programs with particular relevance to protection orders and child custody issues

Legal Assistance for Victims (LAV) Program

Increases the availability of civil and criminal legal assistance needed to effectively aid adult and youth (ages 11 to 24) victims of domestic violence, dating violence, stalking, or sexual assault by providing funds for comprehensive direct legal services to victims in legal matters relating to or arising out of that abuse or violence. "Legal assistance" is defined to include protection order, divorce, parental rights, child support, and other legal matters.

Grants to Support Families in the Justice System (known as "Justice for Families")

Improves the response of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault, and stalking, or in cases involving allegations of child sexual abuse.

Grants to Improve Criminal Justice Responses Program

Encourages state, local, and tribal governments, and courts to improve the criminal justice response to domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law, and to seek safety and autonomy for victims, by requiring the coordinated involvement of the entire criminal justice system.



Other Current VAWA Grant Programs

Formula Grant Programs

- STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program
- Sexual Assault Services Formula Grant Program
- State and Territorial Sexual Assault and Domestic Violence Coalitions Program
- Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program

Discretionary Grant Programs

- Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies
- Enhanced Training and Services to End Abuse in Later Life Program
- Grants to Enhance Culturally Specific Services for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program
- Grants for Outreach and Services to Underserved Populations
- Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program
- Rural Sexual Assault, Domestic Violence, Dating Violence and Stalking Program
- Grants to Tribal Governments to Exercise Special Tribal Criminal Jurisdiction Program
- Sexual Assault Services Culturally Specific Program
- Training and Services to End Violence Against Individuals with Disabilities and Deaf People Program
- Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program
- Tribal Governments Program
- Tribal Sexual Assault Services Program

This resource was supported by Grant No. #90EV0548-01-00 awarded by the Department of Health and Human Services. The viewpoints contained in this document are solely the responsibility of the author(s) and do not represent the official views or policies of the department and do not in any way constitute an endorsement by the Department of Health and Human Services.



A PRACTITIONER'S GUIDE TO THE

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)



Overview



What type of law is it?

The UCCJEA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission). All states, the District of Columbia, Guam, and the Virgin Islands have enacted the UCCJEA, with the exception of Massachusetts.



Why was it developed?

The UCCJEA was drafted in 1997 to help reconcile differences between the UCCJA and federal laws such as the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act (VAWA).



How does it work?

The UCCJEA is a uniform state law regarding jurisdiction in child custody cases. It specifies **which court** should decide a custody case, not how the court should decide the case. It also establishes processes for interstate enforcement of custody orders.



What are the significant provisions related to domestic violence?

Jurisdictional bases:

The UCCJEA sets forth four bases for jurisdiction: home state, significant connection, more appropriate forum, and no other state or “vacuum.” Importantly, the UCCJEA also provides for temporary emergency jurisdiction, which may be exercised in an emergency even when none of the other four jurisdictional bases applies. The UCCJEA prioritizes home state jurisdiction, and, except in emergencies, a court may not exercise jurisdiction if a proceeding is pending elsewhere consistent with the UCCJEA. [This preference for home state jurisdiction is consistent with the federal Parental Kidnapping Prevention Act.]

Home state-

The home state is the state where the child lived with a parent or a person acting as a parent for at least 6 months immediately before the custody action was filed. Priority to exercise child custody jurisdiction is given to the child’s current home state or to a state that was the child’s home state within 6 months before the case began.

Under the “extended home state rule,” when a domestic violence survivor flees with the children to a new state, the court in the home state will have jurisdiction to hear a custody case filed by the left-behind parent within six months of the move. However, the court may decline jurisdiction due to the safety of the parties and other factors.

Significant connection-

In the absence of a home state or “extended home state,” a state may exercise significant connection jurisdiction if the child and at least one parent have a significant connection with the state. There must be substantial evidence in the state concerning the child’s care, protection, training, and personal relationships.

More appropriate forum-

This type of jurisdiction exists when all courts that have either home state or significant connection jurisdiction have declined to exercise jurisdiction because a court of this state is the more appropriate forum.

No other state or “vacuum”-

This type of jurisdiction is available only when no state satisfies any of the three jurisdictional bases described above. For instance, a court may need to exercise this form of jurisdiction where a family has traveled from state to state with only brief stays in any one place.

Emergency-

A court may exercise emergency jurisdiction if the child is present in the state and the child has been abandoned or 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. Emergency jurisdiction is temporary, but under certain circumstances, such orders can become final.

Under the UCCJEA, a court can exercise emergency jurisdiction in domestic violence cases where one parent (but not the child) has been abused by the other parent.

A court should always first assess whether an emergency exists to determine whether it should exercise temporary emergency jurisdiction to protect a parent and child, which it may do even if none of the other jurisdictional bases applies.

Inconvenient forum:

A court having jurisdiction under one of the jurisdictional bases above may decline to exercise jurisdiction if it finds that it is an inconvenient forum and a court in another state is a more appropriate forum. Courts must consider the following factors:

- Whether domestic violence has occurred and is likely to continue and which state could best protect the parties and the child
- The length of time the child resided outside the state
- The distance between the state declining jurisdiction and the state that would assume jurisdiction
- The financial circumstances of the parties
- Any agreement of the parties as to which state should assume jurisdiction
- The nature and location of the evidence, including the testimony of the child
- The ability of the court in each state to decide the issue quickly and the procedures necessary to present the evidence
- The familiarity of the court of each state with the facts and issues in the pending litigation

Domestic violence is included explicitly as the first factor that courts must consider when making inconvenient forum decisions. Some courts have found that this factor requires that their jurisdictional decisions prioritize the safety of domestic violence victims over the other factors.

Declining jurisdiction by reason of conduct:

A court having jurisdiction under one of the jurisdictional bases must, except in limited circumstances, decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct, sometimes called the “clean hands doctrine.” This ensures that a party who has committed objectionable acts may not gain a jurisdictional advantage.

The “clean hands doctrine” permits courts to decline to exercise jurisdiction where domestic violence perpetrators have abducted the children and disappeared.

The UCCJEA comments specify that “domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal.”

Exclusive, continuing jurisdiction:

Under the UCCJEA, the state that issued the original custody order retains exclusive jurisdiction until it determines that the child, the child’s parents, and any person acting as a parent no longer have a significant connection with the state or until any state determines that the child, the child’s parents, and any person acting as a parent no longer reside in the issuing state.

Jurisdiction to modify determination:

A state court may modify a child custody determination from another state only if it has jurisdiction to make an initial determination, and one of four situations is present:

1. The issuing court or the new court finds that all of the parties have left the issuing state; or
2. The issuing court finds that the parties no longer have a significant connection with the state and that substantial evidence is no longer available there; or
3. The issuing court decides to decline to exercise jurisdiction in favor of another state (see Inconvenient forum above); or
4. The new court finds that it has grounds to exercise temporary emergency jurisdiction.

Judicial communication:

The UCCJEA requires courts in different jurisdictions to communicate when one court exercises emergency jurisdiction in order to resolve the emergency, protect the safety of the child and parties, and determine the duration of the temporary order. The final decision over long-term jurisdiction remains with the court in the home state (or the state with preferred jurisdiction). Generally, the parties must have an opportunity to be heard before a jurisdictional decision is made, and the courts must make a record of the communication. The UCCJEA also requires courts to communicate when they are aware that simultaneous proceedings are pending in different jurisdictions.

Judicial communication can be critical to victim safety in domestic violence cases because it ensures that a court is not receiving information only from the perpetrator.

Interstate cooperation:

Judges may request that a court in another state hold a hearing, order a party to produce evidence or appear at a hearing, conduct social studies regarding custody, or forward hearing transcripts. A party may offer testimony of witnesses located in another state, or a court may order testimony to be taken elsewhere.

Interstate discovery tools can help survivors remain in safe locations while litigating custody cases elsewhere. Courts should permit victims who have fled for their safety to remain in the refuge state and testify by video or other audio-visual means in custody hearings taking place in another state.

Information which must be submitted to the court:

The UCCJEA requires parties to include the following information in pleadings: the child's present address; the places the child has lived during the past five years; the names and addresses of the persons with whom the child has lived; information about other pending or completed custody cases involving the child; information about other persons with custody or visitation claims.

In domestic violence cases, disclosing information about the location of the victim or child could be dangerous. The UCCJEA recognizes this danger and recommends that identifying information about survivors and children be kept confidential and sealed by courts. Some states include instructions on how to keep this information confidential in their court forms and instruction sheets.

Notice and opportunity to be heard:

Notice and opportunity to be heard must be given to all relevant parties. This means that ex parte custody orders (orders issued without the presence of the other parent at the court hearing) are not governed by the UCCJEA and the statute does not require interstate enforcement of such orders.

Enforcement

The UCCJEA provides enforcement provisions for child custody orders across state and international lines. Article 3 requires enforcement of out-of-state orders in substantial conformity with the statute, sets forth an optional process for registration of out-of-state orders to facilitate enforcement, provides for expedited enforcement of orders in emergencies, authorizes courts to enter warrants for law enforcement to take physical custody of children, and includes additional enforcement provisions.



Does the UCCJEA apply to custody orders entered by courts in foreign countries?

Yes, courts are required to treat foreign countries as if they were states and apply the UCCJEA accordingly.



Does the UCCJEA apply to custody orders entered by tribal courts?

If a state has enacted the optional UCCJEA provision regarding tribes (as most have), states must treat tribal court orders as if they were entered by another state. Because tribes are sovereign nations, however, each tribe has its own child custody jurisdiction law.



How can I learn more about the UCCJEA?

The Legal Resource Center on Violence Against Women provides trainings on the UCCJEA and assistance in individual cases (see www.lrcvaw.org or call **301-270-1550**).

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The SAFeR Approach

SAFeR is an approach to decision making in family law matters. Using this framework, we can improve the safety and outcomes for survivors and their children. **SAFeR** consists of four steps:

1. Screening for violence
2. Assessing the full nature and context
3. Focusing on the effects of GBV
4. Responding to the lived experience of the violence

Watch the video: A SAFeR Approach to Decision Making

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A PRACTITIONER'S GUIDE TO THE

Parental Kidnapping Prevention Act (PKPA) 28 U.S.C. § 1738A



Overview



What type of law is it?

The PKPA is a federal law.



Why was it enacted?

The PKPA was enacted in 1980 to resolve jurisdictional conflicts in child custody cases. It was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. In addition, as part of the Violence Against Women Act of 2000, the PKPA's definition of "emergency jurisdiction" was broadened to cover domestic violence cases consistent with new state jurisdictional laws.



How does it work?

The PKPA is a full faith and credit law. It tells courts when to honor and enforce custody determinations issued by courts in other states or tribes. As federal law, it trumps state law when there is a conflict between the two.

The PKPA does not tell courts when they should exercise jurisdiction over a new custody matter. That is determined by state or tribal jurisdictional laws (e.g., the Uniform Child Custody Jurisdiction and Enforcement Act). Courts must, however, follow the PKPA's dictates whenever:

1. they are deciding whether to enforce a custody determination made by a court in another state or tribe;
2. they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction; and
3. they are asked to modify an existing custody or visitation order from another jurisdiction.



What are the significant provisions related to domestic violence?

Jurisdictional bases:

The PKPA sets forth four ways in which courts can exercise jurisdiction such that the resulting custody order is entitled to full faith and credit: home state, significant connection, emergency, and more appropriate forum. The PKPA gives the child's home state preferred jurisdiction and prohibits a court from exercising jurisdiction if a valid custody proceeding already is pending in another state.

Home state-

The home state is the state where the child lived with a parent or a person acting as a parent for at least 6 months immediately before the custody action was filed. The PKPA confers preferred jurisdiction on a state if it is the child's current home state or if it was the child's home state within 6 months before the case began.

Significant connection-

A state may exercise significant connection jurisdiction only if there is no home state. The child and at least one parent must have a significant connection with the state, and there must be substantial evidence in the state concerning the child's care, protection, training, and personal relationships.

Emergency-

The PKPA confers full faith and credit on a court order issued based on emergency jurisdiction if the child was physically present in the state and the child had been abandoned or it was necessary in an emergency to protect the child because the child, a sibling, or parent of the child had been subjected to or threatened with mistreatment or abuse.

This means that when a victim of domestic violence flees across state lines with the children, the refuge state may exercise emergency jurisdiction even if the children were not abused physically or threatened with abuse, so long as a sibling or a parent was abused or threatened.

No other state or more appropriate forum-

This type of jurisdiction exists when no other state has home state, significant connection, continuing, or emergency jurisdiction, or another state has declined to exercise jurisdiction on the ground that the state whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child.

Modifying custody and visitation orders:

The PKPA gives continuing jurisdiction to the state that issued the initial custody determination consistent with the PKPA. This state retains jurisdiction as long as it has jurisdiction under state law and at least one contestant¹ or the child continues to live there.

A court may modify a custody or visitation order from another state only if (1) it has jurisdiction to do so, and (2) the court of the initial state no longer has jurisdiction or has declined to exercise it.

¹ The PKPA defines a "contestant" as a person including a parent or a grandparent who claims a right to custody or visitation of a child. 28 U.S.C. 1738A(b)(2).

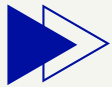
Notice and opportunity to be heard:

Full faith and credit is required only if all relevant parties have received notice and an opportunity to be heard. This excludes *ex parte* custody orders (orders issued without the presence of the other parent or an opportunity for that parent to be heard during the court hearing).



Is the PKPA enforceable in federal court?

No, the Supreme Court ruled in *Thompson v. Thompson* that the PKPA does not create a cause of action in federal court. 484 U.S. 174 (1988).



Does the PKPA apply to custody orders issued by tribal courts?

Courts are divided over whether the PKPA applies to tribal jurisdictions. Some jurisdictions have held that tribes should be treated as "states" under the PKPA. See *In re Larch*, 872 F.2d 66, 68 (4th Cir. 1989) (holding that the Cherokee tribe is a "state" for purposes of the PKPA).

Other courts have concluded that tribes should not be treated as "states" for the purpose of full faith and credit in a child-custody context. See, e.g., *Nygaard v. Taylor*, 602 F. Supp. 3d 1172 (D.S.D. 2022); *Garcia v. Gutierrez*, 147 N.M. 105 (2009).

John v. Baker, 982 P.2d 738, 762 (Alaska 1999) (concluding that "the PKPA does not accord full faith and credit to tribal judgments").



Does the PKPA apply to custody orders outside of the United States?

The PKPA applies only to court determinations within the United States and its territories.

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AT A GLANCE

Indian Child Welfare Act (ICWA) 25 U.S.C. § 1901 et. seq.



Overview



What type of law is it?

The ICWA is a federal law.



Why was it enacted?

The ICWA was enacted in 1978 to protect Indian children and to promote the stability and security of Indian tribes and families. The law was drafted in response to the actions of state courts and child protective services agencies that were removing large numbers of Indian children from their families and placing them in non-Indian foster and adoptive homes. The ICWA was designed to prevent the unwarranted removal of Indian children from their families. When removal is necessary, the ICWA helps ensure that Indian children retain ties to their culture and to the tribes with which the children are affiliated.



How does it work?

The ICWA is a jurisdictional law. It establishes minimum federal standards for the removal of Indian children from their families and grants Indian tribes exclusive jurisdiction in specifically defined child custody proceedings.



What are the significant provisions related to domestic violence?

Definition of child custody proceedings

Under the ICWA, child custody proceedings include foster care placement, termination of parental rights, preadoptive placement and postadoptive placement proceedings involving Indian children. While the ICWA does not address directly domestic violence, as a matter of practice, many foster care or termination of parental rights cases stem from domestic violence. In these cases, Indian tribes have exclusive jurisdiction.

Protection order proceedings and custody proceedings between two biological parents often involve domestic violence. The ICWA does not govern these types of proceedings—unless custody may be granted by the court to someone other than the parents. The law likely will apply in adoption cases, including step-parent adoptions.

Standard to terminate parental rights

No termination of parental rights may be ordered absent a determination, supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

This provision may raise the issue of whether observing domestic violence is likely to “result in serious emotional or physical damage” to children.

Declining jurisdiction

When a party in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or improperly retained custody, the court shall decline jurisdiction and return the child to the parent or Indian custodian unless returning the child would subject the child to a substantial and immediate danger or threat.

Intersection with the UCCJEA

The UCCJEA states explicitly that the UCCJEA does not apply to proceedings governed by the ICWA. Moreover, the UCCJEA gives states the option to extend the UCCJEA to custody determinations made by Indian tribal courts.

Notice requirements

When a state court knows or has reason to know that an Indian child is involved in a case, the party seeking the foster care placement or termination of parental rights shall notify the parent or Indian custodian and the Indian child’s tribe. If they cannot be found, such notice shall be given to the Secretary, who shall have 15 days to provide the required notice to the parent or Indian custodian and to the tribe. No proceeding shall take place until at least 10 days after receipt of notice, with up to 20 additional days available upon request.

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CHILD CUSTODY JURISDICTION IN
CASES INVOLVING DOMESTIC VIOLENCE:

Key Provisions of the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction and Enforcement Act



Overview

STEP-BY-STEP PROCESS:



1. Is there an emergency such that the court should exercise temporary emergency jurisdiction?

See page 3 for that determination.



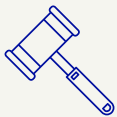
2. Is there a prior state or tribal court order regarding child custody?

See page 4 to determine if there is continuing jurisdiction in the issuing state or Tribe and if there is jurisdiction to modify the existing child custody order.



3. If there is no prior state or tribal court order, does the court have initial child custody jurisdiction?

See page 2 to determine which court has initial jurisdiction.



4. Once you've determined a court has either initial jurisdiction or jurisdiction to modify, should the court decline jurisdiction?

See pages 5 and 6 for this determination.

KEY PROVISIONS OF THE PKPA AND UCCJEA²

	PKPA³	UCCJEA⁴
<p>Initial Jurisdiction (no prior court order regarding “custody”)</p> <p>Note: PKPA and UCCJEA give clear priority to home state jurisdiction.</p> <p>Note: PKPA and UCCJEA both define emergency jurisdiction broadly to include not just abuse perpetrated on the subject child, but also on a parent or sibling of the child. (UCCJEA temporary emergency jurisdiction, discussed below.)</p>	<p>Requirements of §1738A(c):</p> <p>1) forum state must have jurisdiction according to own state law (UCCJA or -JEA);</p> <p>2) forum state must satisfy one of following conditions:</p> <p>a) state is now (or was within last six months) the child’s home state;</p> <p>b) if there is no home state, and it is in the best interest of the child that forum state assumes jurisdiction because the child and parents or the child and one contestant have a significant connection (other than mere presence) with the state and there is substantial evidence concerning the child’s present or future care, protection, training and personal relationships; or</p> <p>c) the child is physically present in the forum state and:</p> <p>i) child has been abandoned, or</p> <p>ii) it is necessary in an emergency to protect the child because the child, a sibling, or a parent has been subjected to or threatened with mistreatment or abuse; or</p> <p>d) no other state has jurisdiction or another state has declined jurisdiction because this state is the more appropriate forum to determine custody and it is in the best interest of child that this court assert jurisdiction.</p>	<p>Requirements of §201:</p> <p>1) forum state is child’s home state, or was the home state within last six months and a parent or person acting as a parent lives in the state;</p> <p>2) another state does not have home state jurisdiction, or the home state has declined jurisdiction on the ground that this state is more appropriate forum; and</p> <p>(i) child and at least one person acting as parent have a significant connection with this state (other than mere physical presence); and</p> <p>(ii) substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships;</p> <p>3) all courts having jurisdiction under (1) and (2) above have declined on ground that this state is more appropriate forum, or</p> <p>4) no other state has jurisdiction under above stated criteria.</p>

	PKPA	UCCJEA
<p>Emergency Jurisdiction</p> <p><i>Note: Under the UCCJEA, when a parent flees across state lines to escape abuse, this provision permits the new state to assume temporary emergency jurisdiction, enabling the parent to protect not only the subject child, but their own safety and that of the child’s siblings. It tells the courts of both states that the safety of the parties and the child are of primary concern.</i></p>	<p>§1738A(c) provides that emergency jurisdiction may be exercised when child is physically present in state and:</p> <ol style="list-style-type: none"> 1) child has been abandoned, or 2) it is necessary in an emergency to protect the child because the child, a sibling or parent of the child has been subjected to or threatened with mistreatment or abuse. <p><i>Note: This definition directly addresses domestic violence.</i></p>	<p>§204 provides that temporary emergency jurisdiction may be used when the child is physically present in the state and:</p> <ol style="list-style-type: none"> 1) has been abandoned, or 2) 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>Emergency jurisdiction is usually only temporary but an emergency order can become a final order if the order so provides and the state becomes the home state of the child (i.e., six months elapse without commencement of a child custody proceeding in the original home state.)</p>

	PKPA	UCCJEA
Modification Jurisdiction	<p>§1738A(f) says a state may modify another state's custody order if:</p> <ol style="list-style-type: none"> 1) the modifying state has what would otherwise be initial jurisdiction (under its own state law, the UCCJEA in all states but Massachusetts), and 2) the original state no longer has jurisdiction, or has declined to exercise jurisdiction to modify its prior order. <p>How do you know if the original state "no longer has" jurisdiction to modify its order? (See below.)</p>	<p>§203 says no state⁵ may modify another state's decree unless:</p> <ol style="list-style-type: none"> 1) the modifying state has jurisdiction to make an initial (UCCJEA) custody determination; and 2) One of the following two determinations are made: <ol style="list-style-type: none"> i) the original state decides it no longer has exclusive, continuing jurisdiction, or relinquishes jurisdiction; or ii) any state decides that all parties and the child no longer live in the original state.
Exclusive, continuing jurisdiction ("continuing jurisdiction" under the PKPA)	<p>§1738A(d) clarifies when the original state has continuing jurisdiction:</p> <ol style="list-style-type: none"> 1) if the initial custody order was made consistent with the PKPA, 2) the original state presently has a basis for proper jurisdiction under its own law (UCCJA/JEA), and 3) the original state remains the residence of a child or contestant. 	<p>§202 provides that the original state has exclusive, continuing jurisdiction until:</p> <ol style="list-style-type: none"> 1) it decides that neither the child, parents or person acting as parent have a significant connection with the state and that substantial evidence is no longer available concerning the child's care, protection, training and personal relationships; or 2) any state determines that neither the child nor any parent/person acting as parent resides in the original state.

	PKPA	UCCJEA
<p>Inconvenient Forum Factors</p> <p><i>Note: The decision to relinquish jurisdiction is made by the state that has preferred jurisdiction (usually the court in the home state.)</i></p> <p><i>Note: UCCJEA’s explicit mention of domestic violence as a factor, as well as the relative financial positions of the parties, is critical in cases involving abuse. One state supreme court has found that “the UCCJEA places domestic violence at the top of the list of factors that courts are required to evaluate when determining whether to decline jurisdiction as an inconvenient forum for child custody proceedings” and directed trial courts “to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA”</i></p> <p>6</p>	<p>This issue is not directly addressed.</p>	<p>§207 says forum court must decide whether it is appropriate for another state to exercise jurisdiction by considering eight mandatory factors: 1) whether domestic violence has occurred and is likely to continue, and which state could best protect the parties and the child; 2) how long child has lived out of state; 3) distance between court in this state and court in other state; 4) relative financial circumstances of parties; 5) any agreement of parties re which state should have jurisdiction; 6) nature and location of evidence required to resolve the pending litigation, including testimony of child; 7) ability of court of each state to decide issue expeditiously and procedures necessary to present the evidence; and 8) familiarity of court of each state with the facts and issues in the pending litigation.</p>

	PKPA	UCCJEA
<p>Unjustifiable Conduct/ Unclean Hands</p> <p><i>Note: The state with preferred jurisdiction (usually the home state) applies the “unclean hands” doctrine if it gained jurisdiction due to a party’s misconduct.</i></p>	<p>Not directly addressed.</p>	<p>§208 provides that when a state has jurisdiction because of a party’s unjustifiable conduct, the court shall decline jurisdiction, unless: 1) the parties acquiesce to it; 2) the court that otherwise has jurisdiction says the other state is a more appropriate forum; or 3) no other state would have jurisdiction.</p> <p><i>Note: Commentary for §208 (which defines unjustifiable conduct) states: “Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal.”</i></p> <p><i>Thus, if a parent flees with a child to escape domestic violence and in the process violates a decree, the case should not be automatically dismissed under this section. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline jurisdiction.</i></p>

	PKPA	UCCJEA
Effect of a protection order addressing child custody	Not directly addressed.	§102 states that protection orders are specifically included in the definition of “custody proceeding.”
Notice When a Person is Outside the State	§1738A(e) requires reasonable notice and an opportunity to be heard.	§108 provides that notice may be given under either state’s notice laws or by publication if other means are not effective.

¹ This chart was prepared in April 2005 by Tamara Kuennen, Assistant Professor of Law, University of Denver Sturm College of Law, updated by the Legal Resource Center on Violence Against Women in 2016, and updated again by the NCPOFFC in July 2023.

² Note that this document does not address the Uniform Child Custody Jurisdiction Act, which has been replaced by the UCCJEA in all of the states and the District of Columbia except for Massachusetts.

³ 28 U.S.C. 1738A (1994).

⁴ For the full text of the Act, see www.nccusl.org.

⁵ The UCCJEA includes an optional provision (§ 104) directing courts to treat Indian tribes the same as other states when applying the statute.

⁶ *In Re Stoneman v. Drollinger*, 64 P.3d 997 (Mont. 2003).

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