

Interstate Custody: Understanding the UCCJA, the UCCJEA, and the PKPA

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Battered women and their advocates often find themselves involved in a custody dispute that involves more than one state. These disputes may arise after a woman crosses state lines with her children to flee an abusive situation. They may also be the result of an abusive parent kidnapping the couple's children or filing a lawsuit for custody in one state while the woman and children are temporarily visiting a second state. In these and other situations, understanding the laws that govern interstate custody is important.

What Are the UCCJA, the UCCJEA, and the PKPA?

UCCJA stands for the Uniform Child Custody Jurisdiction Act.¹ It is a set of guidelines created in 1968 to help foster uniformity among the states with respect to child custody and enforcement laws. These guidelines have been adopted in some form by all fifty states. The UCCJEA stands for the Uniform Child Custody Jurisdiction and Enforcement Act.² The UCCJEA, issued in 1998, is a new model of the UCCJA. As of July 1999, thirteen states have adopted it, and many other states are expected to adopt it over the next few years.³ The UCCJA and UCCJEA are useful only if your state has adopted them. The PKPA stands for the Parental Kidnapping Prevention Act.⁴ It is a federal law that allows one state to honor and enforce the custody determination of

¹ See Uniform Child Custody Jurisdiction Act, www.law.upenn.edu/bll/ulc/fnact99/1920-69/uccja68.htm [hereinafter UCCJA].

² See Uniform Child-Custody Jurisdiction and Enforcement Act, www.law.upenn.edu/bll/ulc/uccjea/chldcus2.htm [hereinafter UCCJEA].

³ The states are Alabama, 1999 Ala. Acts 438; Alaska, ALASKA STAT. §§ 25.30.3000 to 25.30.910; Arkansas, 1999 Ark. Acts 668; Connecticut, 1999 Conn. Pub. Acts 185; Iowa, 1999 Iowa Legis. Serv. S.F. 367 (West); Maine, 1999 Me. Laws 486; Minnesota, 1999 Minn. Sess. Law Serv. 74 (S.F. 129)(West); Montana, 1999 Mont. Laws 91 (H.B.24); North Carolina, 1999 N.C. Sess. Laws 223; North Dakota, 1999 N.D. Laws 147 (S.B. 2152); Oklahoma, OKLA. STAT. tit. 43, §§ 551-101 to 551-402; Oregon, S.B. 789, 70th Leg. (Ore. 1999) (enacted); and Texas, 1999 Texas Sess. Law Serv. 34 (H.B. 797) (Vernon's).

⁴ See 28 U.S.C. § 1738A (1999).

Parental Kidnapping Prevention Act

The Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A, was enacted about the same time that states were adopting the Uniform Child Custody Jurisdiction Act (UCCJA). The PKPA was enacted for substantially the same reason as the UCCJA—to discourage child snatching and forum shopping and encourage some finality in child custody decisions.

Because the PKPA is a federal statute, it takes precedence over the UCCJA whenever the two conflict. It does not preempt the area of child custody jurisdiction, however. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) controls questions that the PKPA does not cover or clearly resolve.

The PKPA deals primarily with the application of the full-faith-and-credit clause to custody decrees. It comes into question only when there already is a custody decree, and one of the parties is trying either to enforce it or to modify it in another state. However, since this is often likely to occur, albeit less often under the UCCJEA than under the UCCJA, the PKPA should be taken into account at the time the original decree is sought.

The PKPA requires that a state enforce the custody decree of a sister state unless (1) the rendering court did not have jurisdiction (28 U.S.C. § 1738A(c)); (2) the decree was entered without reasonable notice and an opportunity to be heard (28 U.S.C. § 1738A(c)); or (3) the decree was entered while a proceeding was pending before another court that had jurisdiction (28 U.S.C. § 1738A(g)).

The PKPA prohibits a court from modifying a custody decree unless it has jurisdiction and the court of the other state no longer has continuing jurisdiction or has declined to exercise it (28 U.S.C. § 1738A(f)).

Whenever the PKPA calls for a determination that a court has or had jurisdiction, this means that the court must have had jurisdiction under both its own laws and the PKPA jurisdiction provisions (28 U.S.C. § 1738A(c)).

Source: VIRGINIA POVERTY LAW CENTER, VIRGINIA POVERTY LAW MANUAL at DR-58 (2002).

another state as long as the Act's requirements are satisfied.

What Are the Differences Among the UCCJA, UCCJEA, and the PKPA?

There are some important differences among the UCCJA, the UCCJEA, and the PKPA. The UCCJA does not give preference to the child's home state (the state where the child has lived for six months before the custody case) in determining which state has the power to make decisions in a child custody dispute.⁵ The

PKPA does.⁶ Also, the PKPA provides that, once a state has made a custody determination, it has the exclusive power to continue to make all custody determinations as long as one party in the dispute remains in the state. The UCCJA is less clear about whether more than one state may have the power to make custody decisions at a given time.⁷ For those states that have adopted the UCCJEA, these differences are reconciled. The UCCJEA adopts the PKPA provisions that clarify which state may make custody decisions when more than one state is involved.⁸

⁵ See UCCJA.

⁶ See Uniform Child Custody Jurisdiction and Enforcement Act—A Summary, www.nccusl.org/summary/uccjea.html [hereinafter UCCJEA Summary]; see also 28 U.S.C. § 1738A(c)(2)(A)(I).

⁷ See UCCJEA Summary; see also 28 U.S.C. § 1738A(d), (f)–(g).

⁸ See UCCJEA Summary; see also UCCJEA art. 2, §§ 201(a)(1), (202)–(203).

It also creates new provisions requiring states to enforce the custody and visitation determinations of other states.⁹

When May the UCCJA, UCCJEA, or the PKPA Become a Factor in a Custody or Visitation Case Where Domestic Violence Is an Issue?

The UCCJA, UCCJEA, and PKPA help courts determine which state has the authority to make a custody decision when the children and their parents do not all live in the same state. They do not provide guidelines to help courts determine who gets custody or what kind of visitation arrangements should be made. The most common circumstances in which the UCCJA, the UCCJEA, or the PKPA or all three apply are

- where a battered woman and her child flee to another state without a custody or visitation order or in violation of a custody or visitation order or
- where a batterer abducts the child in violation of a custody or visitation order

Why Is an Understanding of the UCCJA, UCCJEA, and the PKPA Important in Child Custody and Visitation Cases Where Domestic Violence Is an Issue?

An understanding of the UCCJA, UCCJEA, and the PKPA is important because these are the provisions that a court looks to in determining whether it has the power to hear an interstate custody case. Battered women must be aware that fleeing with a child for safety reasons does not automatically justify removal of the child in the eyes of the court. Similarly a battered woman whose child is abducted by the batterer must be armed with the legal

basis for securing the return of the child because the longer the child is in a different state, the harder may be to secure the child's return.

How Does a Court Decide Whether It May Hear a Case Under the UCCJA, UCCJEA, or the PKPA?

A court must first decide whether it has jurisdiction in the case. The first question is whether any other state has grounds to hear a case. If so, the court may not make a custody decision. This is because of the provisions that grant jurisdiction to only one state. Two states may not both rule in the same custody case.

If no other state has jurisdiction, then a court must determine if it has the power to make the custody decision. In child custody matters where domestic violence is an issue, there are two "types" of jurisdiction most likely to serve as the basis for a court hearing a case under the UCCJA, UCCJEA, or the PKPA. They are "home state" jurisdiction and "emergency jurisdiction."¹⁰

A "home state" is the state where the child has lived with a parent or an acting parent for at least six consecutive months immediately before the commencement of a child custody proceeding, or from the child's birth until the commencement of the proceeding, if the child is less than 6 months old.¹¹ Under the UCCJEA and the PKPA, jurisdiction based on the "home state" of the child has priority over all other bases for jurisdiction.¹²

"Emergency jurisdiction" is the temporary power of a court to make decisions in a case to protect a child from harm.¹³ In custody or visitation matters where domestic violence is an issue, a court may decide to exercise "emergency" jurisdic-

⁹ See UCCJEA Summary; *see also* UCCJEA art. 3, §§ 301–316.

¹⁰ Two additional jurisdictional bases for a state to hear a custody or visitation matter are "significant connection jurisdiction" and "default jurisdiction," which apply only if no other state would have jurisdiction. *See* UCCJA § 3(a)(2), 3(a)4; UCCJEA art. 2, § 201(2)(A), 201(2)(B)(4); 28 U.S.C. § 1738A(c)(2)(B), 1738A(c)(2)(D).

¹¹ *See* UCCJA § 2(5); UCCJEA art. 1, § 102(7); 28 U.S.C. § 1738A(b)(4).

¹² *See* UCCJEA art. 2, § 201(a)(1); 28 U.S.C. § 1738A(c)(2)(A).

¹³ *See* UCCJA § 3(3)(ii); UCCJEA art. 2, § 204; 28 U.S.C. § 1738A(c)(2)(C)(ii). Under the UCCJEA the court also may act to protect a parent or sibling of the child. *See* UCCJEA art. 2, § 204(a).

tion to protect a battered woman and her child. This type of jurisdiction is temporary and is invoked solely for the purpose of protecting the child until the state that has jurisdiction enters an order. Therefore an order issued by a court exercising “emergency jurisdiction” is not a permanent order regarding custody or visitation.

What if I Am Only Asking the Court to Modify an Existing Custody Order?

The UCCJA, UCCJEA, and the PKPA apply in cases where a person is seeking a modification of a custody or visitation order. A court must meet the standards required for

exercising either home state or emergency jurisdiction before it may modify the order.

May a Court Reject My Request to Exercise Jurisdiction in My Case?

Yes. Under the UCCJA, UCCJEA, and the PKPA a court may decline to hear a case if it appears that the requesting party has “unclean hands”—for example, if a person who alleges safety concerns merely as a pretext for bringing a custody matter in another state. Being prepared to present testimony and other evidence helps you state your case and avoid a denial of jurisdiction on this basis.