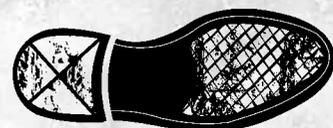
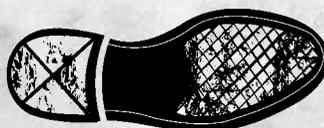
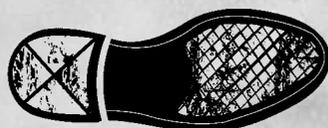
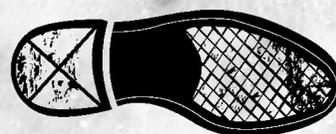
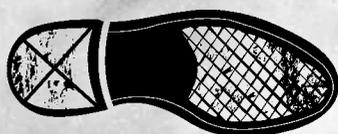
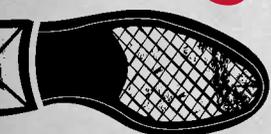


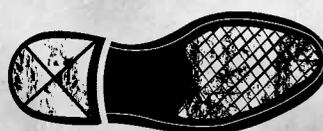
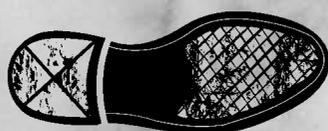
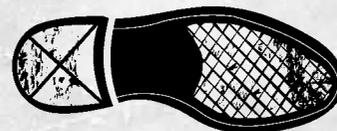
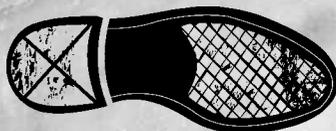
# Clearinghouse REVIEW

November–December 2009  
Volume 43, Numbers 7–8

Journal of  
Poverty Law  
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THE  
SUPREME COURT  
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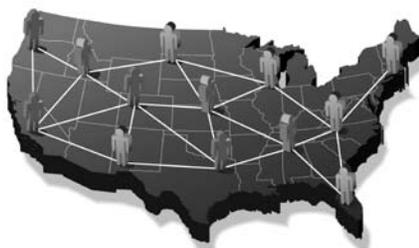
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# Look Both Ways Before You Cross State Lines

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## Using the Uniform Child Custody Jurisdiction and Enforcement Act to Assist Domestic-Violence Survivors

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By Deborah Goelman and Darren Mitchell

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Sarah Ford lived in Des Moines, Iowa, with her husband, John, during nine years of their marriage. They have two children: Annie, 6, and James, 2. John abused Sarah for years, beginning when she was pregnant with Annie. In 2006, when John grabbed Sarah by the hair and pushed her down the stairs, she called the police, but they did not arrest John. After that, John threatened to kill her if she called the police, and he told her that she would never see the children again if she left him.

John often hit the children with a belt, and they are afraid of him. On March 17, after John punched Sarah in front of James, she left home with the children. Sarah sold her wedding ring, purchased bus tickets, and traveled forty hours to get to her sister's home in Florida. Sarah has no income, and John did not send any money for the children, although he knew that she was staying with her sister.

On March 31, John filed for custody in Iowa, and on April 30 he obtained a temporary order granting him sole custody of the children. Although Sarah had notice of the Iowa proceeding, she was too scared to return to Iowa and could not afford the trip, let alone an attorney. Sarah is worried that the children will be removed from her and that John will hurt them.

**A**t the Legal Resource Center on Violence Against Women we talk daily with domestic-violence survivors such as Sarah and with the legal aid attorneys who represent them. These cases raise many complex questions.<sup>1</sup> May Sarah file for custody in Florida, the refuge state to which she fled? Can Sarah do anything to modify the Iowa custody order? May Sarah be charged with kidnapping for fleeing

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<sup>1</sup>For additional information on the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), see Billie Lee Dunford-Jackson, *The Uniform Child Custody Jurisdiction and Enforcement Act: Affording Enhanced Protection for Victims of Domestic Violence and Their Children*, 50 JUVENILE AND FAMILY COURT JOURNAL 55 (1999); Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUMBIA JOURNAL OF GENDER AND THE LAW 101 (2004); Patricia M. Hoff, *The ABCs of the UCCJEA: Interstate Child-Custody Practice Under the New Act*, 32 FAMILY LAW QUARTERLY 267 (1998); Joan Zorza, *The UCCJEA: What Is It and How Does It Affect Battered Women in Child-Custody Disputes*, 27 FORDHAM URBAN LAW JOURNAL 909 (2000).

with the children? How can Sarah find attorneys in Iowa and in Florida to help her protect herself and the children and to respond to John's legal actions? We answer these questions and present an overview of how the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) may be used to assist domestic-violence survivors in interstate cases.<sup>2</sup>

### When Domestic-Violence Survivors Relocate

Survivors of domestic violence find themselves in situations such as Sarah's all too often in this country. To escape abuse and to keep their children safe, many survivors are compelled to flee across state, tribal, or territorial lines. In many cases victims flee to states in which they have family support or a safe place to live with their children.<sup>3</sup> In other cases victims may move because the police, prosecutors, or judges fail to protect them or their children. In a refuge state, victims also may have greater financial resources, such as free housing, child care, or employment opportunities, allowing them to escape from a batterer's economic control.<sup>4</sup>

Despite these compelling reasons for flight, victims often pay a high price when they relocate to escape abuse. Often sur-

vivors are at increased risk of physical violence when they take steps to leave abusers.<sup>5</sup> Batterers perpetrate "separation assault" to prevent a survivor from leaving, to retaliate for the separation, or to force the survivor to return.<sup>6</sup> Studies show that the risk of violence, including sexual assault, is highest immediately following separation and when women attempt permanent separation through legal or other action.<sup>7</sup>

In addition to the risks of separation violence, perpetrators often pursue protracted custody or visitation litigation as a means of controlling their former partners.<sup>8</sup> Batterers may manipulate custody proceedings to obtain information about their former victims, to continue monitoring them, or to create opportunities for contact in order to perpetrate additional violence.<sup>9</sup> Many batterers repeatedly file for modification of custody orders to harass or punish victims for leaving.<sup>10</sup>

As a result, survivors may face ongoing custody litigation in the state from which they fled, or they may be charged with parental kidnapping. The complicated civil and criminal cases that result from relocation are among the most challenging for victims to navigate alone because of the confusing array of laws that may apply. A critical task for legal aid attorneys

<sup>2</sup>Uniform Child Custody Jurisdiction and Enforcement Act (1997) Drafted by the National Conference of Commissioners on Uniform State Laws and by It Approved and Recommended for Enactment in All the States at Its Annual Conference Meeting in Its One-Hundred-and-Sixth Year in Sacramento, California, July 25–August 1, 1997, <http://bit.ly/2OPRBU> (references and annotations current through 2008) [hereinafter UCCJEA].

<sup>3</sup>See Goelman, *supra* note 1, at 109.

<sup>4</sup>*Id.*

<sup>5</sup>Callie Marie Rennison & Sarah Welchans, Bureau of Justice Statistics Special Report, Intimate Partner Violence 1, 5 (2000), <http://bit.ly/2uHwI6> (finding that "the percentage of female murder victims killed by intimate partners has remained at about 30% since 1976" and that "divorced or separated persons were subjected to the highest rates of intimate partner victimization"); see also MINDY ABEL, DENVER METRO DOMESTIC VIOLENCE FATALITY REVIEW 5 (2002) (in 67 percent of the homicides, the victim had expressed a desire to leave or end the relationship).

<sup>6</sup>Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICHIGAN LAW REVIEW 1, 65 (1991).

<sup>7</sup>Walter S. DeKeseredy et al., Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge 2 (2002) (unpublished manuscript presented at annual meeting of the American Society of Criminology, on file with Deborah Goelman and Darren Mitchell).

<sup>8</sup>Daniel G. Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 SOCIAL WORK 51, 53 (1994).

<sup>9</sup>LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 5–10 (2002).

<sup>10</sup>David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge*, BOSTON BAR JOURNAL, July–Aug. 1989, at 23–24; Julie Kuncze Field, *Visiting Danger, Keeping Battered Women and Their Children Safe*, 30 CLEARINGHOUSE REVIEW 295, 304–5 (1996).

is to represent survivors in interstate custody cases to ensure that survivors do not have to choose between preserving their safety and maintaining custody of their children.

### The Applicable Laws

Several federal and state laws govern interstate custody and relocation cases. All fifty states and the District of Columbia have enacted either the Uniform Child Custody Jurisdiction Act (UCCJA) or its replacement, the UCCJEA.<sup>11</sup> These laws dictate the circumstances under which a state court may exercise jurisdiction over a custody case involving more than one state and when an existing custody order may be modified by a court in another state. The newer UCCJEA, with provisions designed to protect domestic-violence survivors, is our focus here.

However, several additional statutes may be relevant to an interstate custody case involving domestic violence, and practitioners should be aware of their potential applicability. On the federal level, the Parental Kidnapping Prevention Act governs interstate enforcement of custody orders.<sup>12</sup> The Act is parallel to the UCCJEA, which was developed in part to ensure the consistency of state and federal law in this area. Another federal statute, the Violence Against Women Act, includes a full-faith-and-credit provision that mandates the interstate enforcement of protection orders, broadly defined to include custody and visitation

provisions within such orders.<sup>13</sup> This law may be helpful in obtaining enforcement of such orders, especially where the order is issued *ex parte*.<sup>14</sup> The final federal statute, the Indian Child Welfare Act, was designed to prevent the removal of Indian children from their families and placement in non-Indian foster care; it may intersect with the UCCJEA in some situations, but the statute explicitly excludes from its purview custody cases between biological parents (whether Native American or not).<sup>15</sup>

On the state level several additional laws may be relevant. State relocation laws generally set forth criteria with which custodial parents must comply before relocating.<sup>16</sup> State full-faith-and-credit laws prescribe how out-of-state protection orders, such as custody and visitation provisions within such orders, must be enforced.<sup>17</sup> On the criminal side, state parental kidnapping or custodial interference laws may impose criminal penalties on survivors who flee across state lines with their children, although many have exemptions or defenses where domestic violence compelled the flight.<sup>18</sup>

### The Uniform Child Custody Jurisdiction and Enforcement Act

Developed in 1968 by the National Conference of Commissioners on Uniform State Laws, the UCCJA was intended to prevent the entry of multiple, inconsistent child custody orders by courts in different states.<sup>19</sup> The overarching goal of

<sup>11</sup>Uniform Child Custody Jurisdiction Act (1968) Drafted by the National Conference of Commissioners on Uniform State Laws and by It Approved and Recommended for Enactment in All the States at Its Annual Conference Meeting in Its Seventy-Seventh Year at Philadelphia, Pennsylvania, July 22–August 1, 1968, <http://bit.ly/4arDqh> [hereinafter UCCJA].

<sup>12</sup>Parental Kidnapping Prevention Act, codified at 28 U.S.C. § 1738A (2005).

<sup>13</sup>Violence Against Women Act, codified at 18 U.S.C. §§ 2265, 2266(5)(B) (2005).

<sup>14</sup>The UCCJEA and the Parental Kidnapping Prevention Act exclude *ex parte* orders from their enforcement provisions because these Acts specify that enforceable orders must have been issued after a hearing (see UCCJEA, *supra* note 2, § 205, cmt.).

<sup>15</sup>Indian Child Welfare Act, codified at 25 U.S.C. § 1903 (2005).

<sup>16</sup>For a discussion of relocation cases involving domestic violence, see Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 UNIVERSITY OF KANSAS LAW REVIEW 433, 449 (1998).

<sup>17</sup>For information about state full-faith-and-credit laws, contact the National Center on Full Faith and Credit at 800.903.0111 ext. 2.

<sup>18</sup>National Clearinghouse for the Defense of Battered Women, *Violence Against Women Online Resources, The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors* (2005), <http://bit.ly/3mHRhj>.

<sup>19</sup>UCCJA, *supra* note 11, § 1(a)(1).

the UCCJA was to deter forum shopping by parents seeking a more sympathetic court.<sup>20</sup> It did not, however, achieve this goal since courts from different states—each having jurisdiction under the UCCJA—still could issue conflicting custody orders. In 1997 the National Conference of Commissioners developed the UCCJEA as a replacement for the UCCJA.

The UCCJEA would harmonize state laws and make them consistent with the governing federal law, such as the Parental Kidnapping Prevention Act and the Violence Against Women Act, which were enacted in 1980 and 1994, respectively.<sup>21</sup> To date, forty-eight states, the District of Columbia, and the U.S. Virgin Islands have replaced the UCCJA with the UCCJEA, and the UCCJEA has been introduced in Vermont and Massachusetts.<sup>22</sup> Unlike the UCCJA, the UCCJEA specifically deals with the effects of domestic violence on interjurisdictional custody cases, both in statutory language and in official commentary.

### The UCCJEA's Jurisdictional Bases

The UCCJEA establishes four bases under which a court may exercise jurisdiction over a child custody case: *home state*, *significant connection*, *more appropriate forum*, and *last resort*. In addition to these jurisdictional bases, the statute permits a court to exercise *temporary emergency jurisdiction* under certain circumstances. The UCCJEA's jurisdictional bases are set forth as a hierarchy, with home-state jurisdiction given the highest priority. Thus, if there is a state with home-state jurisdiction, only this state may decide the custody case, unless the state declines to exercise jurisdiction, as explained in more detail below.

**Home-State Jurisdiction.** The UCCJEA defines the home state as “the state in which a child lived with a parent or a

person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.”<sup>23</sup> A state has preferred jurisdiction over a child custody case if it is the home state of the child on the date of commencement of the case or, alternatively, if it was the home state of the child within six months before the commencement of the proceeding and the child is absent from the state but a parent or person acting as a parent continues to live in the state.<sup>24</sup> This alternative, which is sometimes referred to as “extended” home-state jurisdiction, can be critical in domestic-violence cases in which the survivor flees the home state with her children for safety reasons. If the left-behind parent remains in the home state and files for custody there within six months of the date that the survivor left with her children, the original state retains preferred jurisdiction under the UCCJEA (as the extended home state) and the survivor may be forced to return to litigate the custody case there, unless the home state declines to exercise jurisdiction (see inconvenient-forum discussion, below).

This is the situation in which Sarah Ford finds herself because John filed for custody in Iowa within two weeks after Sarah fled the state with the children. Thus Iowa has preferred jurisdiction under the UCCJEA because it was the home state within six months of the filing of the custody action. Despite her escape to a safe haven in Florida, Sarah will be forced to litigate custody in Iowa if she cannot persuade a judge to decline jurisdiction.

Practitioners should be aware of two other nuances of home-state jurisdiction under the UCCJEA. First, for children less than 6 months old at the time of filing, the statute defines the home state as “the state in which the child lived from birth with [a parent or person acting as a par-

<sup>20</sup>*Id.*, Prefatory Note at 1.

<sup>21</sup>UCCJEA, Prefatory Note; *id.* § 204 cmt.

<sup>22</sup>See Uniform Law Commissioners, A Few Facts About the Uniform Child Custody Jurisdiction & Enforcement Act (n.d.), <http://bit.ly/8SUNK>.

<sup>23</sup>UCCJEA, *supra* note 2, § 102(7).

<sup>24</sup>*Id.* § 201(a)(1).

ent].”<sup>25</sup> Second, if there is a “temporary absence” of the child or parent(s) from the state, that time period is included in the calculation of the requisite six-month period for home-state jurisdiction.<sup>26</sup> As applied by courts, this means that even an absence of several months may not negate a state’s home-state status if the court finds that a child’s absence from a state is only “temporary.”<sup>27</sup> Under the UCCJEA’s concept of exclusive, continuing jurisdiction, the home state retains jurisdiction over the case unless all of the parties have left the state or the parties no longer have a significant connection with the state and substantial evidence is no longer available there.<sup>28</sup>

#### **Significant-Connection Jurisdiction.**

If there is no state with home-state jurisdiction, or if the home state declines to exercise its jurisdiction, a state having significant-connection jurisdiction may decide a custody case. The two required elements for significant-connection jurisdiction under the UCCJEA are that (1) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, must have “a significant connection with the state other than mere physical presence” and (2) substantial evidence must be available in the state concerning the child’s “care, protection, training, and personal relationships.”<sup>29</sup> In deciding whether to exercise significant-connection jurisdiction, the court must consider the length of time that the child has lived in the state and the nature and location of the relevant evidence—whether the state is home to

such potential sources of evidence as school teachers and counselors, therapists, medical care providers, and the like. This analysis is subject to the court’s discretion, unlike the bright-line rule established for home-state jurisdiction.<sup>30</sup>

#### **More Appropriate Forum Jurisdiction.**

If all states having home-state jurisdiction or significant-connection jurisdiction decline to exercise jurisdiction in favor of another state, that state may exercise more appropriate forum jurisdiction.<sup>31</sup> The statutory grounds, such as consideration of domestic violence, for declining to exercise jurisdiction in favor of a more appropriate forum are described in further detail below.

#### **Last-Resort Jurisdiction.**

Last-resort or vacuum jurisdiction is available when no state satisfies the jurisdictional criteria described above.<sup>32</sup> Where a family travels from state to state over an extensive period of time with only brief stays in any one place, a court may have to exercise last-resort jurisdiction so that the parties may obtain a custody determination.

#### **When a Court May Exercise Emergency Jurisdiction**

The expanded emergency jurisdiction under the UCCJEA is a valuable tool for attorneys representing domestic-violence survivors who flee to another jurisdiction. Under the UCCJEA a court may exercise jurisdiction when a parent (or sibling) of a child was abused or threatened with abuse even if the child was not abused.<sup>33</sup> The drafters of the UCCJEA included this

<sup>25</sup>*Id.* § 102(7).

<sup>26</sup>*Id.*

<sup>27</sup>Courts differ in their analysis of what constitutes a temporary absence under the UCCJEA’s home-state-jurisdiction provision (compare *Powell v. Stover*, 165 S.W.3d 322 (Tex. 2005), with *In re Frost*, 681 N.E.2d 1030 (Ill. App. Ct. 1997)).

<sup>28</sup>UCCJEA, *supra* note 2, § 202. The home state, of course, may decline to exercise jurisdiction as explained below.

<sup>29</sup>*Id.* § 201(a)(2).

<sup>30</sup>In the absence of a home state, courts in two or more states conceivably could vie for the right to exercise significant-connection jurisdiction; under such circumstances the statute’s simultaneous-proceedings provision sets forth a “first in time” rule and the other potential significant-connection state(s) must defer to the state in which the first action was commenced unless that state declines to exercise jurisdiction (see UCCJEA, *supra* note 2, § 206 cmt.).

<sup>31</sup>*Id.* § 204(a)(3).

<sup>32</sup>*Id.* § 204(a)(4).

<sup>33</sup>Emergency jurisdiction may be exercised where “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” (*id.* § 204(a) (emphasis added)).

broad definition of emergency jurisdiction in particular to help domestic-violence victims.<sup>34</sup> The provision is critical in domestic-violence cases, such as Sarah's, in which the mother was abused, yet there may not be adequate evidence of child abuse.

However, many professionals may be unaware of the criteria for exercising emergency jurisdiction under the UCCJEA. At the Legal Resource Center we often hear from survivors who are told incorrectly by court clerks, family law attorneys, or even judges that they may not file for custody in a refuge state until they have been there for six months. The UCCJEA's emergency-jurisdiction provision is meant for precisely these kinds of situations, in which a parent or a child is in danger and parent and child have escaped to a safer jurisdiction.

To exercise emergency jurisdiction, a court must determine that there is an emergency and the child must be present in the state.<sup>35</sup> Emergency jurisdiction under the UCCJEA is *temporary* only. The court in the home state (or in the state with preferred jurisdiction) is required to communicate with the court exercising emergency jurisdiction to resolve the emergency, protect the parties and child, and determine the duration of the emergency order.<sup>36</sup> When filing for emergency jurisdiction, attorneys should explain the statutory framework, including this judicial communication requirement. Many judges are willing to exercise emergency jurisdiction temporarily once they understand that there will be an opportunity to communicate with the state with preferred jurisdiction to resolve the question of which state should hear the long-term custody matter.

In Sarah's case a Florida court may exercise temporary emergency jurisdiction to protect her and the children, even though Iowa is the children's home state. The Florida court then would be required to communicate with the Iowa court. This will get information about the abuse to the Iowa court and may lead the Iowa court to decline to exercise jurisdiction over the long-term custody case in favor of Florida. Even if the Iowa judge retains jurisdiction over the long-term custody case, the judge may be more likely to take the domestic violence into account and to revisit the judge's own previous decision, which was based solely on the misleading information from John.

Because the UCCJEA does not specify the procedure and forms necessary for filing for emergency jurisdiction, state procedures vary. In many cases attorneys may file for emergency jurisdiction under the protection-order statute if state law permits courts to enter temporary custody orders as part of protection orders. In fact, commentary on the UCCJEA states "that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse."<sup>37</sup>

There may be a procedural hurdle in some cases to obtaining an emergency custody order through a protection-order proceeding. Under the UCCJEA, personal jurisdiction over a party or a child is not required for the issuance of a custody order.<sup>38</sup> Personal jurisdiction over the respondent, however, is required in most states in order to issue a protection order.<sup>39</sup> In cases in which the

<sup>34</sup>*Id.* § 204 cmt.

<sup>35</sup>*Id.* § 204(a).

<sup>36</sup>*Id.* § 204(d).

<sup>37</sup>*Id.* § 204 cmt.

<sup>38</sup>See *id.* § 201(c) ("[P]ersonal jurisdiction over[] a party or a child is not necessary or sufficient to make a child-custody determination.").

<sup>39</sup>However, increasingly some state courts are not requiring personal jurisdiction over a respondent to issue injunctive relief (e.g., no-contact, stay-away, and do-not-abuse provisions) (see, e.g., *Caplan v. Donovan*, 879 N.E.2d 117 (Mass. 2008) (see also cases cited therein)).

perpetrator threatens the victim in the new state (in person, over the telephone, or by electronic mail), or in which the perpetrator has business dealings, family ties, or other connections to the new state, “minimum contacts” most likely will be established.

In a case like Sarah’s, however, in which John has no connection with Florida (the refuge state), obtaining a protection order may not be possible because the court will not have personal jurisdiction over John. However, Sarah still may file for emergency jurisdiction under the UCCJEA through a different type of proceeding, such as filing for emergency custody under the domestic-relations laws. Regardless of the procedural mechanism, to obtain an emergency order, attorneys must submit evidence establishing the emergency, including evidence of abuse of the parent or the child or both.

#### **When a Court with Preferred Jurisdiction May Decline Jurisdiction**

The UCCJEA’s inconvenient-forum provision allows a court in the state with preferred jurisdiction to decline to exercise jurisdiction if it determines that it is an inconvenient forum and that there is another more appropriate forum.<sup>40</sup> This provision can be tremendously useful in cases in which a victim of domestic violence fled from the home state to escape abuse. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.<sup>41</sup>

The UCCJEA explicitly directs courts to consider domestic violence when determining whether to decline jurisdiction. In fact, in deciding whether another court is a more convenient forum, courts must consider several factors including “whether domestic violence has occurred and is likely to continue in the future and

which State could best protect the parties and the child.”<sup>42</sup> In official commentary the UCCJEA directs courts to determine whether the parties are located in different states because one party is a victim of domestic violence or child abuse.<sup>43</sup>

The statutory factors which courts must consider in deciding inconvenient-forum motions include the following:

- whether domestic violence occurred and is likely to continue and which state could best protect the parties and the child;
- the length of time the child has resided outside the state;
- the distance between the two courts;
- the relative finances of the parties;
- the agreement of the parties;
- the nature and location of the evidence including the child’s testimony;
- the ability of each court to decide the issue expeditiously and the procedures necessary to present the evidence; and
- the familiarity of each court with the facts and issues in the pending litigation.<sup>44</sup>

If a trial court does not consider each of these statutory factors and permit a party or an attorney to present the facts and legal argument prior to making a jurisdictional decision, the case could be ripe for appeal.<sup>45</sup>

In Sarah’s case her attorney might present evidence of the domestic violence and the child abuse (primarily Sarah’s testimony, perhaps a police report from 2006, perhaps testimony of neighbors who have heard the abuse or teachers who have observed the children’s behavior) and argue that Florida could best protect Sarah and the children because they

<sup>40</sup>UCCJEA, *supra* note 2, § 207.

<sup>41</sup>*Id.* § 207(a).

<sup>42</sup>*Id.* § 207(b).

<sup>43</sup>*Id.* § 207 cmt.

<sup>44</sup>*Id.* § 207(b).

<sup>45</sup>See *id.* §§ 110(b), 207(b); *In re Stoneman v. Drollinger*, 64 P.3d 997 (Mont. 2003).

would remain safe from John. Moreover, in Florida Sarah has family and financial resources, which could help prevent violence. The distance between Iowa and Florida and Sarah's lack of present income also would weigh in favor of Iowa transferring jurisdiction to Florida. John's attorney might counter that the children had lived outside Iowa only for a short time and that much of the evidence about the children's lives would be found in Iowa.

There are cases urging courts, when considering jurisdictional issues, to prioritize the safety of domestic-violence victims.<sup>46</sup> In *Stoneman v. Drollinger* the mother relocated from Montana to Washington with four children, and the Washington trial court issued a permanent protection order.<sup>47</sup> The mother then filed a motion requesting that the Montana court decline jurisdiction under the UCCJEA; the trial court denied the motion. The Supreme Court of Montana, reversing the trial court, held that the trial court, when evaluating whether transfer of proceedings to Washington was appropriate, failed to consider which forum could best protect the mother and children from further abuse.<sup>48</sup>

The Supreme Court of Montana held 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."<sup>49</sup> It ordered the trial court to communicate with the Washington court and to decline jurisdiction based on inconvenient forum.<sup>50</sup> Further, the Supreme Court of Montana urged trial

courts "to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA."<sup>51</sup>

The UCCJEA has provisions that require (or, in other instances, authorize) courts to communicate with courts in other jurisdictions regarding specific cases.<sup>52</sup> As explained, the communication standards can work to protect survivors such as Sarah when an abusive parent remains in the home state and otherwise would give a one-sided account of the case.

### Other Tools Available in Interstate Cases

The UCCJEA also has provisions permitting interstate discovery in cases where traveling to another jurisdiction to litigate a party's case would be unsafe or too difficult for the party. A party may offer testimony of witnesses located in another state, or a court may order testimony to be taken elsewhere.<sup>53</sup> This could permit a survivor such as Sarah to remain in a refuge state such as Florida even if the home state retains jurisdiction. Technological advances, such as telephones, audiovisual equipment, or other electronic means, may be utilized to keep survivors safe.<sup>54</sup> A court also may request that a court in another state take any of the following steps: hold an evidentiary hearing, order a person to give evidence, order a custody evaluation to be made, forward copies of transcripts, or order parties to appear.<sup>55</sup>

### How We Can Help

Attorneys may confront a confusing array of laws when they are asked to rep-

<sup>46</sup>See *Drollinger*, 64 P.3d at 997; *Jeanne E.M. v. Lindey M.M.*, 734 N.Y.S.2d 837 (2001).

<sup>47</sup>*Drollinger*, 64 P.3d at 999.

<sup>48</sup>*Id.* at 1004.

<sup>49</sup>*Id.* at 1002.

<sup>50</sup>*Id.* at 1004.

<sup>51</sup>*Id.* at 1002.

<sup>52</sup>UCCJEA, *supra* note 2, §§ 110, 204(d), 206(b), 307.

<sup>53</sup>*Id.* § 111.

<sup>54</sup>*Id.* § 111(b).

<sup>55</sup>*Id.* § 112.

resent survivors in interstate custody cases involving domestic violence. The Legal Resource Center offers free telephone and in-person training programs on the UCCJEA and related laws.<sup>56</sup> The Legal Resource Center's website, at [www.lrcvaw.org](http://www.lrcvaw.org), has the text of the relevant state and federal laws and information for survivors, victim advocates, and attorneys. The Legal Resource Center also provides technical assistance for attorneys in these cases—sample pleadings, a discussion of the relevant statutory provisions, and obtaining representation for clients in another jurisdiction.

### How You Can Help

Domestic-violence survivors who flee for their lives or to protect their children across state lines and then face complex jurisdictional issues need legal aid attorneys' critical assistance. However, some legal aid program staff members tell survivors that they cannot represent them if

they flee the jurisdiction to escape abuse. While we understand the terrible pressures under which legal aid programs operate and the need to allocate resources accordingly, these jurisdictional cases cry out for legal representation and often present a finite legal question that can be resolved quickly. *Pro se* litigants are at a disadvantage in attempting to make jurisdictional arguments under the UCCJEA, and often batterers litigate child custody cases with a vengeance.

Many legal aid program staff members recognize the safety risks for survivors and for their children in these kinds of cases. We work across the country with dedicated attorneys who successfully argue "emergency-jurisdiction" or "inconvenient-forum" motions that allow victims to remain safe in new locations. Making technical legal arguments that result in safer lives for survivors and their children, legal aid attorneys find these cases to be some of the most rewarding for themselves and their clients.

### COMMENTS?

We invite you to fill out the comment form at [www.povertylaw.org/reviewsurvey](http://www.povertylaw.org/reviewsurvey). Thank you.

—The Editors

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<sup>56</sup>The Legal Resource Center is supported by Grant No. 2004-WT-AX-K079 from the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed here are ours and do not necessarily reflect the views of the Office on Violence Against Women.

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