

INTERSTATE CHILD CUSTODY

A Practitioner's Guide to the

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

WHAT TYPE OF LAW IS IT?

The UCCJEA is a uniform state law¹ drafted by the National Conference of Commissioners on Uniform State Laws. Many states have replaced the older Uniform Child Custody Jurisdiction Act (UCCJA) with the UCCJEA. At present, more than thirty states have enacted their own versions of the UCCJEA.

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.

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 jurisdiction. The UCCJEA prioritizes home state jurisdiction, and, except in emergencies, a court may not exercise jurisdiction if a proceeding is pending elsewhere consistent with

¹ A uniform law is only operative in a state in which the legislature has enacted it.

the UCCJEA. [This preference for home state jurisdiction is consistent with the federal Parental Kidnapping Prevention Act. In contrast, the UCCJA does not prioritize home state jurisdiction.]

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. Home state jurisdiction exists in the child's current home state or in a state that was the child's home state within 6 months before the case began.

Significant connection-

A state has 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 both the home state and the significant connection jurisdiction have declined to exercise jurisdiction on the grounds that a court of another state is the more appropriate forum.

No Other State Jurisdiction-

This type of jurisdiction exists when no court of any other state would have home state, significant connection or more appropriate forum jurisdiction.

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.

Inconvenient forum:

A court having jurisdiction under one of the jurisdictional bases above may decline to exercise jurisdiction if 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.

Declining jurisdiction by reason of conduct:

A court having jurisdiction under one of the jurisdictional bases may decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct, sometimes called the “clean hands doctrine.” The “clean hands doctrine” 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 original custody decree-granting state 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 decree-granting 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 1) a court in the state that issued the original order determines that it no longer has jurisdiction or declines jurisdiction, or 2) a court in either state determines that the child, the child’s parents, and a person acting as a parent no longer reside in the state that issued the original order.

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. 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 discovery:

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.

Interstate discovery tools can help survivors remain in safe locations while litigating custody cases elsewhere.

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.

Notice and opportunity to be heard:

Notice and opportunity to be heard must be given to all relevant parties.

Ex parte orders are not entitled to full faith and credit under the UCCJEA, but the Comment to the UCCJEA states that the law that authorizes ex parte orders, such as a state protection order statute, governs their enforceability.