



## **Key Provisions of UCCJA, PKPA, UCCJEA, & ICWA and Improvements Made by the UCCJEA for Battered Women<sup>1</sup>**

### **Overview of Attached Chart**

#### **Critical Inquiry: Is there a prior state or tribal court order regarding child custody?**

**If no:** See page 2 to determine which court has initial jurisdiction, paying careful attention to whether ICWA applies.

Once you've determined a Court has initial jurisdiction:

- should the Court decline jurisdiction? (see pages 5-6)

If the Court does not have initial jurisdiction (from page 2):

- can the Court exercise emergency jurisdiction? (see page 3)

**If yes:** See page 4 regarding modification jurisdiction.

If the Court has jurisdiction to modify:

- should the Court decline its jurisdiction? (see pages 5-6)

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# Key Provisions of UCCJA, PKPA, UCCJEA, & ICWA and Improvements Made by the UCCJEA for Battered Women<sup>2</sup>

## PKPA<sup>3</sup>

## UCCJEA<sup>4</sup>

## UCCJA<sup>5</sup>

## ICWA<sup>6</sup>

	PKPA <sup>3</sup>	UCCJEA <sup>4</sup>	UCCJA <sup>5</sup>	ICWA <sup>6</sup>
<p><b>Initial Jurisdiction</b> (no prior court order regarding “custody”)</p> <p><i>Note: PKPA and UCCJEA give clear priority to home state jurisdiction. UCCJA does not give home state priority; instead it is one of three equally weighted bases for jurisdiction.</i></p> <p><i>Note: PKPA and UCCJEA both define emergency jurisdiction more broadly than UCCJA, to include not just abuse perpetrated on subject child, but also on parent or sibling of child.. (UCCJEA temporary emergency jurisdiction discussed below.)</i></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, &amp; 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>	<p>Requirements of §3:</p> <p>Any one of these criteria must be satisfied:</p> <p>1) forum state is home state of child (or was within last six months and a parent or person acting as parent lives in the state);</p> <p>2) forum state has a significant connection with the child and one of the parents and substantial evidence regarding child’s present or future care, protection, training and personal relationships, or</p> <p>3) child is physically present within the jurisdiction and either has been abandoned or is threatened with child abuse, or</p> <p>4) no other state has jurisdiction under above-stated criteria or has declined, and it is in best interest of child that this state assert jurisdiction.</p>	<p>Requirements of §1911:</p> <p>(a) Indian tribe has exclusive jurisdiction over a child custody proceeding involving an Indian child who resides or is domiciled within the reservation, except where such jurisdiction is otherwise vested in the State by existing federal law;</p> <p>(b) in any State court proceeding for foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe, provided the transfer be subject to declination by the tribal court of such tribe;</p> <p>(c) in any State court proceeding for foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding;</p> <p>(d) every court shall give full faith and credit to any proceedings of Indian tribal court.</p> <p><b>Definitions:</b></p> <p>§1903(1) defines “<u>child custody proceeding</u>” to include foster care placement, termination of parental rights, preadoptive placement, and adoptive placement.</p> <p>§1903(3) defines “<u>Indian</u>” as any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation.</p> <p>§1903(4) defines “<u>Indian child</u>” as an unmarried person who is under age 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member</p>

	PKPA	UCCJEA	UCCJA	ICWA
<p><b>Emergency Jurisdiction</b></p> <p><i>Note: UCCJEA makes a major improvement from the UCCJA for battered women. When a woman flees to S2 to escape abuse, this provision permits S2 to assume jurisdiction, enabling the woman to protect not only the subject child, but herself and 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"> <li>1) child has been abandoned, or</li> <li>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.</li> </ol> <p><i>Note: This definition does not include neglect, but directly addresses dv.</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"> <li>1) has been abandoned, or</li> <li>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.</li> </ol> <p>Emergency jurisdiction is usually only temporary but can evolve into home state jurisdiction as follows:</p> <ol style="list-style-type: none"> <li>1) State with home state or continuing jurisdiction declines on basis of inconvenient forum.</li> <li>2) If there is no prior order, and if there is no proceeding pending in the state with home state jurisdiction an emergency order will remain in effect until an order is obtained from the court having proper jurisdiction.</li> </ol>	<p>§3 provides that emergency jurisdiction may be exercised when child is physically present in the state and:</p> <ol style="list-style-type: none"> <li>1) child has been abandoned, or</li> <li>2) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent.</li> </ol>	<p>See page 1, “Initial Jurisdiction” to analyze whether the tribal court has exclusive or concurrent jurisdiction; whether the proceeding could be transferred to tribal court, and/or who may intervene. If the ICWA requires the case be heard in tribal court, ICWA’s provisions determine jurisdiction (not the UCCJEA or UCCJA).</p>

	PKPA	UCCJEA	UCCJA	ICWA
<b>Modification Jurisdiction</b>	<p>§1738A(f) says S2<sup>7</sup> can modify if:</p> <p>1) S2 has what would otherwise be initial jurisdiction (under its own state law, whether UCCJA or UCCJEA) to do so, and</p> <p>2) S1 no longer has PKPA jurisdiction, or has declined to exercise jurisdiction to modify its prior order.</p> <p>How do you know if S1 “no longer has” jurisdiction to modify its order? (See below.)</p>	<p>§203 says no other state<sup>8</sup> can modify S1’s decree unless:</p> <p>1) S2 has jurisdiction to make an initial (-JEA) custody determination; and</p> <p>2) One of the following two determinations are made:</p> <p>i) S1 decides it no longer has exclusive, continuing jurisdiction, or S1 says S2 would be more convenient forum; or</p> <p>ii) S1 or S2 decides all parties and the child no longer live in S1.</p>	<p>§3 says S2 can not modify unless:</p> <p>1) S1 no longer has UCCJA jurisdiction (home state, significant contacts, emergency, etc) or</p> <p>2) S1 has declined jurisdiction, and</p> <p>3) S2 has jurisdiction (home state, significant contacts, etc)</p>	<p>§1911(d) provides that every court shall give full faith and credit to any Indian child custody proceedings of an Indian tribal court. However, the ICWA does not make explicit mention of the requirements for jurisdiction to modify.</p>
<b>Continuing, exclusive jurisdiction (aka “CEJ”)</b>	<p>§1738A(d) clarifies when S1 has <i>continuing jurisdiction</i>:</p> <p>1) if the initial custody order was made consistent with the PKPA,</p> <p>2) S1 presently has a basis for proper jurisdiction under its own law (UCCJA/JEA), and</p> <p>3) S1 remains the residence of a child <u>or</u> contestant.</p>	<p>§202 provides that S1 has continuing, exclusive jurisdiction until:</p> <p>1) S1 decides that neither the child, parents or person acting as parent have a significant connection with S1 and that substantial evidence is no longer available in S1 concerning the child’s care, protection, training &amp; personal relationships; or</p> <p>2) S1 or S2 determines that <u>neither</u> the child nor any parent/person acting as parent resides in S1.</p>	<p>No mention of this concept.</p>	<p>No mention of this concept.</p>

	PKPA	UCCJEA	UCCJA
<p><b>Inconvenient Forum Factors</b></p> <p><i>Note: This doctrine only comes into play after a determination of which state has proper jurisdiction, based on home state, significant connection, appropriate forum or “no other state.”</i></p> <p><i>Note: UCCJEA’s explicit mention of domestic violence as a factor, as well as relative financial positions of parties (for majority of battered women who are denied access to funds or are fleeing abusers) are great improvements from UCCJA for battered women.</i></p>	<p>This issue is not directly addressed but there are references to the possibility of a state declining jurisdiction.</p>	<p>§207 says forum court should decide whether it is appropriate for another state to exercise jurisdiction by considering: 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>	<p>§7 provides the court will determine whether it is in the interest of the child that another state assume jurisdiction by considering: 1) if another state is or recently was child’s home state; 2) if another state has closer connections with child and a contestant; 3) if substantial evidence re future care, protection, training, and personal relationships is more readily available elsewhere; 4) prior agreement of parties re jurisdiction; 5) if exercising jurisdiction thwarts the purposes of the UCCJA (preventing forum shopping and child snatching; creating secure, stable environment for child).</p> <p><i>Note: No mention of domestic violence.</i></p>

	PKPA	UCCJEA	UCCJA
<p><b>Unjustifiable Conduct/ Unclean Hands</b></p> <p><i>Note: This doctrine only comes into play after a determination of which state has proper jurisdiction, based on home state, significant connection, appropriate forum, or “no other state.”</i></p>	No comment.	<p>§208 says that when a party can assert proper jurisdiction (alleging home state, significant connection, etc) because of unjustifiable conduct, court shall decline jurisdiction, unless: 1) parties acquiesce to it; 2) court that otherwise has jurisdiction says other state is 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.” 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>	<p>§8 provides that the court may decline to exercise initial jurisdiction if petitioner wrongfully took child from a state (or engaged in other similar reprehensible conduct) if it is just and proper under the circumstances.</p> <p>In a modification case, S2 will not take jurisdiction if petitioner improperly removed child from state, without consent of party entitled to custody, or improperly kept child after visitation, or if petitioner violated custody order in any other way and court deems it just and proper not to exercise jurisdiction in the circumstances.</p>

	PKPA	UCCJEA	UCCJA
<b>Effect of DVPO</b>	Not directly addressed.	§102 states that DVPOs are specifically included in the definition of “custody proceeding.”	Does not specify.
<b>Notice When a Person is Outside the State</b>	§1738A(e) requires reasonable notice and an opportunity to be heard.	<p>§108 provides that notice may be given under either state’s notice laws or by publication if other means are not effective.</p> <p><i>Note: This provision protects fleeing battered women by allowing her to bind abuser to the custody determination by serving him notice; also prevents her from being subject to federal kidnapping charges in cases where he has filed an action in the home state without ever giving her notice, but the court nevertheless defaults her and awards him custody.</i></p>	§5 provides notice be given in a manner reasonably calculated to give actual notice, and may be by personal delivery in the manner prescribed by the state being asked to enter the custody decree, in the manner prescribed by the law of the place in which service is made, by any form of mail addressed to the person and requiring a receipt, or as directed by the court.

<sup>1</sup> This chart was prepared in April 2005 by Tamara Kuennen, Assistant Professor of Law, University of Denver Sturm College of Law.

<sup>2</sup> To determine which states have adopted the UCCJEA vs. the UCCJA, see [www.nccusl.org](http://www.nccusl.org), and then check your jurisdiction’s statutes to determine whether those statutes adopt the Act in whole or in part.

<sup>3</sup> 28 U.S.C. 1738A (1994).

<sup>4</sup> For the full text of the Act, see [www.nccusl.org](http://www.nccusl.org).

<sup>5</sup> For the full text of the Act, see [www.nccusl.org](http://www.nccusl.org).

<sup>6</sup> 25 U.S.C 1901, *et seq.* (1978). See your jurisdiction’s juvenile and/or family codes to determine whether and how ICWA has been adopted.

<sup>7</sup> “S2” stands for “State 2” and “S1” means “State 1” for purposes of discussing modification jurisdiction.

<sup>8</sup> The UCCJEA declares (in § 104) that states are to treat Indian tribes the same as other states when applying the UCCJEA.