

INTERSTATE CHILD CUSTODY

A Practitioner's Guide to the Uniform Child Custody Jurisdiction Act (UCCJA)

WHAT TYPE OF LAW IS IT?

The UCCJA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws. A few years ago, every state had enacted its own version of the UCCJA. Today, many states have replaced the UCCJA with a newer uniform law, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

WHY WAS IT DEVELOPED?

The UCCJA was drafted in 1968 to help states avoid jurisdictional conflicts and re-litigation of custody decisions issued by courts in other states. The UCCJA attempted to deter abductions, to protect the custody or visitation interests of the "left-behind" parent, and to promote interstate cooperation in custody matters by setting forth jurisdictional rules for custody determinations.

HOW DOES IT WORK?

The UCCJA 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 UCCJA sets forth four bases for jurisdiction: home state, significant connection, emergency, and more appropriate forum. A court may not exercise jurisdiction if a proceeding is pending elsewhere consistent with the

UCCJA.

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.

Emergency-

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 has been subjected to or threatened with mistreatment or abuse or is otherwise neglected.

In some states, the state's version of the UCCJA or case law extends emergency jurisdiction to domestic violence cases where a parent was abused or threatened, even if the child was not physically abused.

More appropriate forum-

This type of jurisdiction exists when no other state has home state, significant connection or emergency jurisdiction, or when another state has declined to exercise jurisdiction because this state is the more appropriate forum.

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 may consider the following factors:

- Is another state the child's home state?
- Does another state have a closer connection with the child and his or her family?
- Is evidence concerning the child's care, protection, training, and personal relationships more readily available in another state?
- Have the parties agreed on another forum that is no less appropriate?
- Would the exercise of jurisdiction by a court of this state contravene any of the purposes stated in the UCCJA?

Domestic violence is not included explicitly as a factor in the statute, but case law in many states has held that courts may consider domestic violence 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 wrongfully taken the child from another state or engaged in similar misconduct. 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.

Case law in many states has held that the "clean hands doctrine" should not be used to penalize victims of domestic violence who flee across state lines with the children to escape abuse. Nonetheless, there is a risk that a court may find that a victim has acted with unclean hands under such circumstances.

Judicial communication:

The UCCJA requires courts in different jurisdictions to communicate when they are aware that custody proceedings are pending simultaneously in more than one state.

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 and litigate custody cases elsewhere.

Information which must be submitted to the court:

The UCCJA 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 victim or child's location could be dangerous. In some states, the state version of the UCCJA or case law permits courts to waive disclosure of such information if it would be harmful.

Notice and opportunity to be heard:

Reasonable 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 UCCJA. See the Violence Against Women Act summary for a potential argument to use when seeking enforcement of an ex parte custody order in another jurisdiction.

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