



**CHILD CUSTODY JURISDICTION IN  
CASES INVOLVING DOMESTIC VIOLENCE:**

# **Key Provisions of the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

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# Overview

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## STEP-BY-STEP PROCESS:



**1. Is there an emergency such that the court should exercise temporary emergency jurisdiction?**

See page 3 for that determination.



**2. Is there a prior state or tribal court order regarding child custody?**

See page 4 to determine if there is continuing jurisdiction in the issuing state or Tribe and if there is jurisdiction to modify the existing child custody order.



**3. If there is no prior state or tribal court order, does the court have initial child custody jurisdiction?**

See page 2 to determine which court has initial jurisdiction.



**4. Once you've determined a court has either initial jurisdiction or jurisdiction to modify, should the court decline jurisdiction?**

See pages 5 and 6 for this determination.

# KEY PROVISIONS OF THE PKPA AND UCCJEA<sup>2</sup>

	<b>PKPA<sup>3</sup></b>	<b>UCCJEA<sup>4</sup></b>
<p><b>Initial Jurisdiction</b> (no prior court order regarding “custody”)</p> <p><b>Note:</b> PKPA and UCCJEA give clear priority to home state jurisdiction.</p> <p><b>Note:</b> PKPA and UCCJEA both define emergency jurisdiction broadly to include not just abuse perpetrated on the subject child, but also on a parent or sibling of the child. (UCCJEA temporary emergency jurisdiction, discussed below.)</p>	<p><b>Requirements of §1738A(c):</b></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><b>Requirements of §201:</b></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, and 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>

	PKPA	UCCJEA
<p><b>Emergency Jurisdiction</b></p> <p><i><b>Note:</b> Under the UCCJEA, when a parent flees across state lines to escape abuse, this provision permits the new state to assume temporary emergency jurisdiction, enabling the parent to protect not only the subject child, but their own safety and that of 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><b>Note:</b> This definition directly addresses domestic violence.</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 an emergency order can become a final order if the order so provides and the state becomes the home state of the child (i.e., six months elapse without commencement of a child custody proceeding in the original home state.)</p>

	<b>PKPA</b>	<b>UCCJEA</b>
<b>Modification Jurisdiction</b>	<p>§1738A(f) says a state may modify another state's custody order if:</p> <ol style="list-style-type: none"> <li>1) the modifying state has what would otherwise be initial jurisdiction (under its own state law, the UCCJEA in all states but Massachusetts),</li> <li>and</li> <li>2) the original state no longer has jurisdiction, or has declined to exercise jurisdiction to modify its prior order.</li> </ol> <p>How do you know if the original state "no longer has" jurisdiction to modify its order? (See below.)</p>	<p>§203 says no state<sup>5</sup> may modify another state's decree unless:</p> <ol style="list-style-type: none"> <li>1) the modifying state has jurisdiction to make an initial (UCCJEA) custody determination; and</li> <li>2) One of the following two determinations are made: <ol style="list-style-type: none"> <li>i) the original state decides it no longer has exclusive, continuing jurisdiction, or relinquishes jurisdiction; or</li> <li>ii) any state decides that all parties and the child no longer live in the original state.</li> </ol> </li> </ol>
<b>Exclusive, continuing jurisdiction ("continuing jurisdiction" under the PKPA)</b>	<p>§1738A(d) clarifies when the original state has continuing jurisdiction:</p> <ol style="list-style-type: none"> <li>1) if the initial custody order was made consistent with the PKPA,</li> <li>2) the original state presently has a basis for proper jurisdiction under its own law (UCCJA/JEA),</li> <li>and</li> <li>3) the original state remains the residence of a child or contestant.</li> </ol>	<p>§202 provides that the original state has exclusive, continuing jurisdiction until:</p> <ol style="list-style-type: none"> <li>1) it decides that neither the child, parents or person acting as parent have a significant connection with the state and that substantial evidence is no longer available concerning the child's care, protection, training and personal relationships; or</li> <li>2) any state determines that neither the child nor any parent/person acting as parent resides in the original state.</li> </ol>

	PKPA	UCCJEA
<p><b>Inconvenient Forum Factors</b></p> <p><i>Note: The decision to relinquish jurisdiction is made by the state that has preferred jurisdiction (usually the court in the home state.)</i></p> <p><i>Note: UCCJEA’s explicit mention of domestic violence as a factor, as well as the relative financial positions of the parties, is critical in cases involving abuse. One state supreme court has found 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” and directed trial courts “to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA”</i></p> <p>6</p>	<p>This issue is not directly addressed.</p>	<p>§207 says forum court must decide whether it is appropriate for another state to exercise jurisdiction by considering eight mandatory factors: 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>

	PKPA	UCCJEA
<p><b>Unjustifiable Conduct/ Unclean Hands</b></p> <p><i>Note: The state with preferred jurisdiction (usually the home state) applies the “unclean hands” doctrine if it gained jurisdiction due to a party’s misconduct.</i></p>	<p>Not directly addressed.</p>	<p>§208 provides that when a state has jurisdiction because of a party’s unjustifiable conduct, the court shall decline jurisdiction, unless: 1) the parties acquiesce to it; 2) the court that otherwise has jurisdiction says the other state is a 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.”</i></p> <p><i>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>

	<b>PKPA</b>	<b>UCCJEA</b>
<b>Effect of a protection order addressing child custody</b>	Not directly addressed.	§102 states that protection orders are specifically included in the definition of “custody proceeding.”
<b>Notice When a Person is Outside the State</b>	§1738A(e) requires reasonable notice and an opportunity to be heard.	§108 provides that notice may be given under either state’s notice laws or by publication if other means are not effective.

<sup>1</sup> This chart was prepared in April 2005 by Tamara Kuennen, Assistant Professor of Law, University of Denver Sturm College of Law, updated by the Legal Resource Center on Violence Against Women in 2016, and updated again by the NCPOFFC in July 2023.

<sup>2</sup> Note that this document does not address the Uniform Child Custody Jurisdiction Act, which has been replaced by the UCCJEA in all of the states and the District of Columbia except for Massachusetts.

<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> The UCCJEA includes an optional provision (§ 104) directing courts to treat Indian tribes the same as other states when applying the statute.

<sup>6</sup> *In Re Stoneman v. Drollinger*, 64 P.3d 997 (Mont. 2003).

## **National Legal Center on Children and Domestic Violence**

**National Legal Center on Children and Domestic Violence**, provides technical assistance and training on the intersections of family law, child support, and child welfare when there is domestic violence.

The National Legal Center on Children and Domestic Violence exists to improve safety for gender-based violence survivors and their children. We do this by centering the needs and lived experiences of survivors and their children and providing evidence-informed expertise to systems practitioners, advocates, and survivors.

In 2009, BWJP's National Child Custody Project developed the **SAFeR approach** to decision-making in family law matters. This approach was developed in response to concerns voiced by advocates and survivors who observed that systems professionals needed new methods and procedures to address the intersection of child custody and domestic violence.

## **The SAFeR Approach**

**SAFeR** is an approach to decision making in family law matters. Using this framework, we can improve the safety and outcomes for survivors and their children. **SAFeR** consists of four steps:

1. Screening for violence
2. Assessing the full nature and context
3. Focusing on the effects of GBV
4. Responding to the lived experience of the violence

## **Watch the video: A SAFeR Approach to Decision Making**

Training and Technical Assistance is available by contacting [NLLCDV@bwjp.org](mailto:NLLCDV@bwjp.org)

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