



A PRACTITIONER'S GUIDE TO THE

Parental Kidnapping Prevention Act (PKPA) 28 U.S.C. § 1738A



Overview



What type of law is it?

The PKPA is a federal law.



Why was it enacted?

The PKPA was enacted in 1980 to resolve jurisdictional conflicts in child custody cases. It was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. In addition, as part of the Violence Against Women Act of 2000, the PKPA's definition of "emergency jurisdiction" was broadened to cover domestic violence cases consistent with new state jurisdictional laws.



How does it work?

The PKPA is a full faith and credit law. It tells courts when to honor and enforce custody determinations issued by courts in other states or tribes. As federal law, it trumps state law when there is a conflict between the two.

The PKPA does not tell courts when they should exercise jurisdiction over a new custody matter. That is determined by state or tribal jurisdictional laws (e.g., the Uniform Child Custody Jurisdiction and Enforcement Act). Courts must, however, follow the PKPA's dictates whenever:

1. they are deciding whether to enforce a custody determination made by a court in another state or tribe;
2. they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction; and
3. they are asked to modify an existing custody or visitation order from another jurisdiction.



What are the significant provisions related to domestic violence?

Jurisdictional bases:

The PKPA sets forth four ways in which courts can exercise jurisdiction such that the resulting custody order is entitled to full faith and credit: home state, significant connection, emergency, and more appropriate forum. The PKPA gives the child's home state preferred jurisdiction and prohibits a court from exercising jurisdiction if a valid custody proceeding already is pending in another state.

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. The PKPA confers preferred jurisdiction on a state if it is the child's current home state or if it was the child's home state within 6 months before the case began.

Significant connection-

A state may exercise significant connection jurisdiction only if there is no home state. The child and at least one parent must have a significant connection with the state, and there must be substantial evidence in the state concerning the child's care, protection, training, and personal relationships.

Emergency-

The PKPA confers full faith and credit on a court order issued based on emergency jurisdiction if the child was physically present in the state and the child had been abandoned or it was necessary in an emergency to protect the child because the child, a sibling, or parent of the child had been subjected to or threatened with mistreatment or abuse.

This means that when a victim of domestic violence flees across state lines with the children, the refuge state may exercise emergency jurisdiction even if the children were not abused physically or threatened with abuse, so long as a sibling or a parent was abused or threatened.

No other state or more appropriate forum-

This type of jurisdiction exists when no other state has home state, significant connection, continuing, or emergency jurisdiction, or another state has declined to exercise jurisdiction on the ground that the state whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child.

Modifying custody and visitation orders:

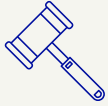
The PKPA gives continuing jurisdiction to the state that issued the initial custody determination consistent with the PKPA. This state retains jurisdiction as long as it has jurisdiction under state law and at least one contestant¹ or the child continues to live there.

A court may modify a custody or visitation order from another state only if (1) it has jurisdiction to do so, and (2) the court of the initial state no longer has jurisdiction or has declined to exercise it.

¹ The PKPA defines a "contestant" as a person including a parent or a grandparent who claims a right to custody or visitation of a child. 28 U.S.C. 1738A(b)(2).

Notice and opportunity to be heard:

Full faith and credit is required only if all relevant parties have received notice and an opportunity to be heard. This excludes *ex parte* custody orders (orders issued without the presence of the other parent or an opportunity for that parent to be heard during the court hearing).



Is the PKPA enforceable in federal court?

No, the Supreme Court ruled in *Thompson v. Thompson* that the PKPA does not create a cause of action in federal court. 484 U.S. 174 (1988).



Does the PKPA apply to custody orders issued by tribal courts?

Courts are divided over whether the PKPA applies to tribal jurisdictions. Some jurisdictions have held that tribes should be treated as "states" under the PKPA. See *In re Larch*, 872 F.2d 66, 68 (4th Cir. 1989) (holding that the Cherokee tribe is a "state" for purposes of the PKPA).

Other courts have concluded that tribes should not be treated as "states" for the purpose of full faith and credit in a child-custody context. See, e.g., *Nygaard v. Taylor*, 602 F. Supp. 3d 1172 (D.S.D. 2022); *Garcia v. Gutierrez*, 147 N.M. 105 (2009).

John v. Baker, 982 P.2d 738, 762 (Alaska 1999) (concluding that "the PKPA does not accord full faith and credit to tribal judgments").



Does the PKPA apply to custody orders outside of the United States?

The PKPA applies only to court determinations within the United States and its territories.

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