



A PRACTITIONER'S GUIDE TO THE

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)



Overview



What type of law is it?

The UCCJEA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission). All states, the District of Columbia, Guam, and the Virgin Islands have enacted the UCCJEA, with the exception of Massachusetts.



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. It also establishes processes for interstate enforcement of custody orders.



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 or “vacuum.” Importantly, the UCCJEA also provides for temporary emergency jurisdiction, which may be exercised in an emergency even when none of the other four jurisdictional bases applies. The UCCJEA prioritizes home state jurisdiction, and, except in emergencies, a court may not exercise jurisdiction if a proceeding is pending elsewhere consistent with the UCCJEA. [This preference for home state jurisdiction is consistent with the federal Parental Kidnapping Prevention Act.]

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. Priority to exercise child custody jurisdiction is given to the child’s current home state or to a state that was the child’s home state within 6 months before the case began.

Under the “extended home state rule,” when a domestic violence survivor flees with the children to a new state, the court in the home state will have jurisdiction to hear a custody case filed by the left-behind parent within six months of the move. However, the court may decline jurisdiction due to the safety of the parties and other factors.

Significant connection-

In the absence of a home state or “extended home state,” a state may exercise 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 all courts that have either home state or significant connection jurisdiction have declined to exercise jurisdiction because a court of this state is the more appropriate forum.

No other state or “vacuum”-

This type of jurisdiction is available only when no state satisfies any of the three jurisdictional bases described above. For instance, a court may need to exercise this form of jurisdiction where a family has traveled from state to state with only brief stays in any one place.

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.

A court should always first assess whether an emergency exists to determine whether it should exercise temporary emergency jurisdiction to protect a parent and child, which it may do even if none of the other jurisdictional bases applies.

Inconvenient forum:

A court having jurisdiction under one of the jurisdictional bases above may decline to exercise jurisdiction if it finds that 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. Some courts have found that this factor requires that their jurisdictional decisions prioritize the safety of domestic violence victims over the other factors.

Declining jurisdiction by reason of conduct:

A court having jurisdiction under one of the jurisdictional bases must, except in limited circumstances, decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct, sometimes called the “clean hands doctrine.” This 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 state that issued the original custody order 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 issuing 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 one of four situations is present:

1. The issuing court or the new court finds that all of the parties have left the issuing state; or
2. The issuing court finds that the parties no longer have a significant connection with the state and that substantial evidence is no longer available there; or
3. The issuing court decides to decline to exercise jurisdiction in favor of another state (see Inconvenient forum above); or
4. The new court finds that it has grounds to exercise temporary emergency jurisdiction.

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. The final decision over long-term jurisdiction remains with the court in the home state (or the state with preferred jurisdiction). 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 cooperation:

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. A party may offer testimony of witnesses located in another state, or a court may order testimony to be taken elsewhere.

Interstate discovery tools can help survivors remain in safe locations while litigating custody cases elsewhere. Courts should permit victims who have fled for their safety to remain in the refuge state and testify by video or other audio-visual means in custody hearings taking place in another state.

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. Some states include instructions on how to keep this information confidential in their court forms and instruction sheets.

Notice and opportunity to be heard:

Notice and opportunity to be heard must be given to all relevant parties. This means that ex parte custody orders (orders issued without the presence of the other parent at the court hearing) are not governed by the UCCJEA and the statute does not require interstate enforcement of such orders.

Enforcement

The UCCJEA provides enforcement provisions for child custody orders across state and international lines. Article 3 requires enforcement of out-of-state orders in substantial conformity with the statute, sets forth an optional process for registration of out-of-state orders to facilitate enforcement, provides for expedited enforcement of orders in emergencies, authorizes courts to enter warrants for law enforcement to take physical custody of children, and includes additional enforcement provisions.



Does the UCCJEA apply to custody orders entered by courts in foreign countries?

Yes, courts are required to treat foreign countries as if they were states and apply the UCCJEA accordingly.



Does the UCCJEA apply to custody orders entered by tribal courts?

If a state has enacted the optional UCCJEA provision regarding tribes (as most have), states must treat tribal court orders as if they were entered by another state. Because tribes are sovereign nations, however, each tribe has its own child custody jurisdiction law.



How can I learn more about the UCCJEA?

The Legal Resource Center on Violence Against Women provides trainings on the UCCJEA and assistance in individual cases (see www.lrcvaw.org or call **301-270-1550**).

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

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