



THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

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It used to be very difficult for a custodial parent to move with the children to another state. In recent years, however, it has become increasingly easier for parents with custody to relocate. With this increased mobility, the rules regarding interstate child custody have become more prominent. The Uniform Child Custody Jurisdiction Act (UCCJA) resolved many of the problems inherent in interstate child custody jurisdiction.

A few years ago, a new uniform act, the

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), was adopted. The UCCJEA has strengthened the rules for determining interstate custody jurisdiction. The act has also established uniform methods for the enforcement of visitation and custody orders. As of January 1, 2001, 21 states had adopted a version of the UCCJEA, and the rest were still operating under the state's adopted version of the UCCJA.

Although the federal custody jurisdiction act, the Federal Parental Kidnaping Act (28 U.S.C. § 1738A), preempts a state's law, this preemption is not a serious issue because the provisions of the UCCJEA have been made consistent with the federal

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law. There is a significant amount of case law interpreting the prior uniform act as enacted by each state, and those cases should still be controlling to the extent that the relevant portions of the two acts have not changed.

The UCCJEA is divided into four parts. The first part contains general provisions, including definitions. The second concerns jurisdiction, the heart of the UCCJEA. The third part provides procedures for registering and having out-of-state custody orders enforced. The fourth part contains a few miscellaneous provisions.

Determining Jurisdiction under the UCCJEA

The UCCJEA provides the exclusive means for determining the forum for almost all custody and visitation issues between two states, or between a state and another country. The intent of the UCCJEA is to provide that only one state (or country) has jurisdiction at any given point in time. This is referred to as “continuing, exclusive jurisdiction.” If a court learns that an action is pending in another state, the two courts are obliged to communicate with each other to determine which is the proper forum.

The first issue to address is whether the court is being asked to produce the first court order concerning custody of the child (called the initial custody order), or whether modification of a custody order is sought. The UCCJEA contains several sections empowering a court to make a temporary order in emergency situations to protect the safety of the child; these sections are exceptions to all of the other jurisdictional rules.

A court can issue an initial custody order if one of the following four conditions exist. If the proposed forum is the child’s “home state,” then that state has “home state jurisdiction.” The state where the child lived for the six months immediately preceding the commencement of the action is known as the “home state.” Home state jurisdiction takes priority over all other bases for jurisdiction, and the home

state is the exclusive forum for an initial custody order whether or not an action has been filed in the home state. Even if the child is absent from the state at the time the action is filed, home state jurisdiction exists if the forum was the home state of the child within the six months prior to filing the action. The child’s absence from the forum may be disregarded in determining the child’s home state if the absence is considered “temporary.”

Next in priority is “substantial connection jurisdiction.” This is satisfied when the following three elements are met: (1) no other state has home state jurisdiction, or the home state has declined to exercise jurisdiction on the grounds that the proposed forum is the “more appropriate forum”; (2) the child and at least one parent (or person acting as a parent) have a significant connection with the forum beyond physical presence; and (3) substantial evidence is available in the forum concerning the child’s care, protection, training, and personal relationships. This evidence is evaluated as of the date when the court determines jurisdiction, not for prior months as with a determination of the child’s home state. Many cases have revolved around the issue of whether or not the child’s contacts with the forum are significant enough to confer jurisdiction.

A state may also exercise jurisdiction if all other states with home state and significant connection jurisdiction decline to exercise jurisdiction on the ground that the proposed forum is the “more appropriate forum” (also referred to as the “inconvenient forum” doctrine). Finally, a state has jurisdiction by “default” if no other state (or country) has jurisdiction under any of the three other tests. Familiar jurisdictional rules

for other situations do not apply to child custody. Physical presence of a party in a state does not by itself confer jurisdiction under the UCCJEA. Also, if actions are filed in two jurisdictions, the state in which the action was filed first does not take priority. Jurisdiction must be established according to one of the four tests.

A court can decline to exercise jurisdiction on two grounds. First, the court can determine that it is an inconvenient forum. Various factors that the court should consider are specified in the UCCJEA, including the location of the evidence, relative financial burdens of the alternative forums to the parties, and the familiarity of the court with the issues and facts of the case. Second, a court can decline to exercise jurisdiction if one of the parents “engaged in unjustifiable conduct.” A typical example of such conduct is a parent’s removal of a child to a different state for the sole purpose of creating jurisdiction in the other state.

The UCCJEA requires each party to file a declaration setting forth the residence of the children for the past five years, and other information relevant to jurisdiction. For example, the parties must inform the court if a custody proceeding is pending in another state.





The UCCJEA also contains procedures for giving notice of hearings to the other party. Generally, notice must be given in the same manner as service of process in the forum state, or in the manner allowed by the law of the state in which service is made.

Because the UCCJEA provides for continuing, exclusive jurisdiction by one state, jurisdiction to modify an out-of-state custody order only exists in limited circumstances. To modify an out-of-state order, the forum state must have either home state or significant connection jurisdiction, and meet one of the following: (1) the other state must determine that neither the child, nor the child and a parent, has a significant connection with that state and that substantial evidence is no longer available in that state concerning the child's care, protection, training, and personal relationships; (2) the other state must determine that the proposed forum is a more convenient forum for the custody proceeding; and (3) either state determines that the child, the child's parents, and any person acting as

the child's parent no longer reside in the other state.

How It Works

An example demonstrating the application of these rules involves the case of a mother with primary custody moving from State A to State B. A year or so after the move, one parent wants to bring a motion to change custody. Mother should consider bringing an inconvenient forum motion in State A asking for that state to relinquish its continuing, exclusive jurisdiction and to determine that State B is a more convenient forum for the litigation. Considering that the child attends school in State B, the pediatrician is located in State B, and after-school activities are all in State B, the scales seem inherently tipped in favor of the forum non-convenience motion being granted.

However, in a leading California case on a forum non-convenience motion, *Pieri v Superior Court* (1 Cal. App. 4th 114, 1 Cal. Rptr. 2d 742 (1991)), the mother's (who had primary custody) motion for California to relinquish jurisdiction to Switzerland was denied because evidence could be gathered in Switzerland and brought to California, and additional evidence of the father's visitation with the child was located in California.

If a client is contemplating filing an action involving custody, and the other parent has moved out of the state with the children, it is very important to file the action before the six-month deadline or else the child's home state can be changed to the other state. COUNCIL

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