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# Child Custody Jurisdiction Under the UCCJEA: Navigating the Complexities

Determining Where to Initiate or Maintain a Custody Action and  
Leveraging Enforcement or Modification Remedies

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Today's faculty features:

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# Child Custody Jurisdiction Under the UCCJEA: Navigating the Complexities

Presentation by: Valerie  
Arnold, Lisa Pletcher and John  
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Materials prepared by:

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# Jurisdiction and Enforcement

- **Where should you file for an initial custody or parenting time determination**
- **Where should you file to modify custody or parenting time**
- **Whether an existing custody or parenting time order is enforceable**
- **Mechanisms for enforcement of valid custody and parenting time orders**

# Types of Proceedings (UCCJEA.102)

- legal custody, physical custody, visitation
- permanent, temporary, initial, modification
- Divorce, separation, neglect, abuse, dependency, guardianship, paternity, TPR, protection from domestic violence
- Does not include child support, juvenile delinquency, contractual emancipation, or enforcement proceedings under UCCJEA.301 et al, or adoption

# Important Terms

- Child custody determination: judgment, decree, or order providing for legal custody, physical custody, or visitation with respect to a child (includes permanent, temporary, initial and modification)
- Commencement: the filing of the first pleading in a proceeding
- Home state: where child lived with a parent for at least 6 consecutive months prior to the commencement of the proceeding
- Initial determination: first child custody determination concerning a child

## Important Terms cont.

- Person acting as a parent: has physical custody of the child or has had physical custody for a period of six consecutive months, within one year immediately before the commencement of the proceeding
- State: U.S., District of Columbia, Puerto Rico, U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the U.S. (See UCCJEA.105 state “shall treat foreign country as if it were a state” for purposes of UCCJEA.101 to UCCJEA.210)
- Tribe: Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state
- Warrant: order issued by a court authorizing law enforcement officers to take physical custody of a child

# General Principles

- **Clarity in determining which court has jurisdiction to make a custody determination;**
- **Clarity in determining which court orders are entitled to be enforced;**
- **Deterring parental child abductions**
  - **Interstate respect of custody determinations**
  - **Better certainty of outcomes**
  - **Efficient and cost-effective enforcement remedies**

# Applicable Law

- **Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)**
  - **49 states, DC, Guam and U.S. Virgin Islands**
  - **2011 Introductions – Massachusetts**
  - **Parental Kidnapping and Prevention Act as amended by the Visitation Rights Enforcement Act (PKPA)**
- **Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention)**
- **International Child Abductions Remedy Act**

# Jurisdiction

- **Subject Matter Jurisdiction**
- **Personal Jurisdiction**
- **Long-Arm Jurisdiction over Nonresidents:**
  - Owns, uses, or possesses real or personal property located in the State;
  - Transacts any business in the state;
  - Commits any act in the state causing injury or property damage;
  - Commits any act outside of the state causing injury or property damage in the state, subject to some exceptions

# UCCJEA

## **Jurisdiction in Initial Custody Determinations:**

- Home State Jurisdiction
- Significant Connection Jurisdiction
- Emergency Jurisdiction
- Default Jurisdiction
- More Appropriate Forum

# Required Information (UCCJEA.209)

- **Where the child has lived the past 5 years and with whom**
- **Whether party has participate as a party or witness in another custody proceeding**
- **Whether the party is aware of another related proceeding**
- **Whether another party has custody of the child or claims rights of custody**
- **Exceptions in cases of domestic abuse**

## Home State Jurisdiction

This State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in the state.

The “home state” is defined as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

## Significant Connection Jurisdiction

- The child and the child’s parents, or the child and at least one parent or person acting as parent, have a significant connection with this state other than a mere physical presence; and
- substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

## Emergency Jurisdiction

The child is physically present in the state;  
and

- (1) the child has been abandoned; or
- (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.

## Default (Vacuum) Jurisdiction

Default jurisdiction may be asserted where no other state could accept jurisdiction under home state, significant connection or more appropriate forum jurisdiction, or an eligible state has declined to exercise jurisdiction.

## More Appropriate Forum

All courts having either home state or significant connection jurisdiction have declined to exercise jurisdiction on the ground that a court of this state is a more appropriate court based upon an inconvenient forum analysis or on grounds of misconduct. See UCCJEA.207 and UCCJEA.208.

## Inconvenient Forum (UCCJEA.207)

- Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parent/child
- The length of the time child has resided outside of the state
- The distance between the courts
- The relative financial circumstances of the parties
- Any agreement as to which state should assume jurisdiction
- Nature and location of evidence
- Ability of the court to decide the case expeditiously and the familiarity of the court with the facts and issues

## Declined by Reason of Conduct (UCCJEA.208)

- Whether a party seeking to invoke the jurisdiction of the court has engaged in unjustifiable conduct
- Exceptions:
  - Agreement of the parties;
  - Another state has made a more appropriate forum determination;
  - No other court would have jurisdiction

# MODIFICATION JURISDICTION

## Exclusive Continuing Jurisdiction

- The UCCJEA provides for exclusive continuing jurisdiction in conformity with the PKPA as a first basis for modification jurisdiction.
- If no state has exclusive continuing jurisdiction, then the initial child custody hierarchy should be followed to determine jurisdiction.

# MODIFICATION JURISDICTION

## Exclusive Continuing Jurisdiction

A court shall have exclusive continuing jurisdiction until:

- a court of this state determines that the child, the child’ s parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’ s care, protection, training, and personal relationships; or
- a court of this state or a court of another state determines that the child, the child’ s parents and any person acting as a parent do not presently reside in this state.

# MODIFICATION JURISDICTION

## Exclusive Continuing Jurisdiction

- Exclusive continuing jurisdiction may be overridden by an assertion of emergency jurisdiction, if only on a temporary basis.
- Exclusive continuing jurisdiction trumps home state jurisdiction unless the state with exclusive continuing jurisdiction declines jurisdiction.

## **Consideration of Hague Convention in determining jurisdiction**

Place of Habitual Residence: The Hague Convention does not define a child's habitual residence except to provide that it is the place where the child resided habitually at the time "immediately before the removal or retention."

- the concept of “habitual residence” is distinct from the concept of domicile and the UCCJEA’s definition of “home state.”
- In determining the child’s place of habitual residence, the court must consider that a child can have only one habitual residence and that the habitual residence must encompass some form of settled purpose.
- This “settled purposed must be from the child’s perspective, although parental intent is also taken into account.”

Silverman v. Silverman, 338 F. 3d 866 (U.S. 8<sup>th</sup> Ct. App. 2003)

# Simultaneous Proceedings

- Stay of Proceedings  
(UCCJEA.206/UCCJEA.307)
- Communication between the Courts  
(UCCJEA.110)
- Arguments for exercising jurisdiction  
(UCCJEA.207)
- First filing

# Enforcement

- Applied to int'l determinations if made in substantial conformity with jurisdictional standards (UCCJEA.105)
- Does not apply if child custody law violates fundamental principles of human rights
- Applies to Hague Order for return of a child (UCCJEA.302)

# Registration under UCCJEA

1. A letter or other document requesting registration
2. Two copies, including one certified of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the party the order has not been modified
3. The name and address of the person seeking registration and any parent or person acting as parent who has been awarded custody or visitation (unless disclosure of an address would jeopardize the health, safety or liberty of the party or child)

# Doctrine of Comity

A court may recognize and enforce the judgment of a foreign state under the doctrine of comity if reasonable notice and opportunity to be heard were afforded, and if other requirements of basic fairness were met. Nicol v. Tanner, 310 Minn. 68, 78, 256 N.W.2d 796, 802 (Minn. 1976). Reasons for finding that comity should not be accorded may be based upon lack of jurisdiction, notice, opportunity to participate or fraud. Nicol v. Tanner, at 77-78, 801-2 (citations omitted).

A state may recognize a foreign marriage if it is valid under the law of the place where the marriage is contracted. See Ma. v. Ma, 483 N.W.2d 732, 735 (citing Laikola v. Engineered Concrete, 277 N.W.2d. 53, 65-45 (Minn. 1979)(citation omitted)). Similarly, courts must accord comity to a customary divorce performed in a foreign country if it is valid under the law of the place where the divorce is contracted. See e.g., T.T. v. K.A., No. xx08 (N.Y.S. June 18, 2008).

- Petition with certified copy of foreign determination with certified translation

# **ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS**

**Expedited enforcement of an existing custody/parenting time determination**

# Expedited Enforcement of a Child Custody Determination

- Jurisdictional basis for issuing court's exercise of jurisdiction
- Whether the determination sought to be enforced has been vacated, stayed or modified
- Whether there is a simultaneous proceeding that could affect the current enforcement proceeding
- The physical address of the child and the respondent, if known
- Whether the relief, in addition to the immediate physical custody of the child and fees is sought, including requests for assistance from law enforcement
- Whether the child custody determination has been registered in the enforcing state

# **INTERSTATE ENFORCEMENT OF CHILD- CUSTODY DETERMINATIONS**

**Warrant to take physical custody of a child in case of risk of immediate  
physical harm or threat of abduction**

# Warrant to Take Physical Custody of a Child

The Application for a Warrant to Take Physical Custody of a Child must be verified and contain the following:

- Jurisdictional basis for the exercise of jurisdiction
- Whether the determination has been vacated, stayed or modified
- Whether there is a simultaneous proceeding that could affect the current proceeding
- The physical address of the child and the respondent, if known
- Whether the relief, in addition to the immediate physical custody of the child and fees is sought, including requests for assistance from law enforcement
- Whether the determination has been registered in the enforcing state

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# Warrant to Take Physical Custody of a Child

The Warrant to Take Physical Custody of a Child must :

- Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based
- Direct law enforcement officers to take physical custody of the child immediately
- Provide for the placement of the child pending final relief.
  
- The Respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

# Child Custody Orders

- Define custody designations
- Obtain sole custody if possible
- Provide a detailed parent access schedule that can be easily interpreted and enforced
- Require separate certified court order for a parent to travel across state or international lines
- Require that passports for the child and/or parents be held during parenting time
- Require bond for parenting time

## Steps in Recovering an Abducted Child:

- Contact law enforcement in the state from which the child was abducted
- Contact the National Center for Missing and Exploited Children
- Obtain an emergency custody order/warrant from the state from which the child was taken
- Contact an attorney in the country where the child is believed to be located (the Central Authority in the foreign state may provide one at no charge)
- File an application for the return of the child under the Hague Convention
- Obtain a Certificate of Wrongfulness under Article 15 of the Hague Convention from the state from which the child was abducted, if appropriate



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