

# Adoption of Uniform Child-Custody Jurisdiction and Enforcement Act

(Legislative Session 2003/04)

## Background

In a mobile society, it is not unusual for families to move between states on several occasions within their lifetimes. Couple this mobility with a high divorce rate, and interstate child-custody issues emerge with frequency. The interstate jurisdictional issues associated with these circumstances present challenging questions for courts to resolve. For example, are custody determinations made in other states enforceable in Pennsylvania? If so, what are the procedures for enforcement? Under what circumstances are parents able to move their children from one state to another? What custody process should states follow if a victim of domestic violence and her/his children flee from their state of origin to Pennsylvania?

For many decades, Pennsylvania has recognized that interstate child-custody cases pose complex problems for courts, particularly in the context of domestic violence and other contentious family law cases. In response, Pennsylvania adopted the Uniform Child-Custody Jurisdiction Act.<sup>1</sup>

### The Uniform Child-Custody Jurisdiction Act (UCCJA)

Before 1968, states made jurisdiction decisions in custody cases based upon the child's presence in the state. While seemingly sensible, this process provided parents with legal incentives to abduct children from states offering an unfavorable custody decision and move to a more amendable state. Because multiple states claimed jurisdiction over custody cases, enforcement of custody determinations became difficult or, in some cases, impossible.

In an effort to curb the resulting confusion, the National Conference of Commissioners of Uniform State Laws (NCCUSL) drafted the Uniform Child-Custody Jurisdiction Act (UCCJA) in 1968. The UCCJA prohibits modification of custody and visitation orders made by other states and requires that states enforce these orders. However, the UCCJA does not provide enforcement procedures to carry out the latter requirement. Litigants across the country are, instead, left to discover the many and varied local procedures for enforcement without uniform guidance. This involves great time and expense for both the litigants and the states.

The UCCJA also attempts to remove the incentive for interstate child abduction. Except in emergency cases, the UCCJA does not depend upon a child's physical presence in a state as grounds for exercising jurisdiction. The UCCJA bases court jurisdiction on a child's close affiliation with a state. Thus, the UCCJA allows a parent to petition for custody in the child's home state, even after the child has been removed from the state by the other parent. In addition, the UCCJA gives courts jurisdiction over cases in which the child may have a significant connection to the jurisdiction. In other words, two states may be able to claim jurisdiction over a custody case, given the child's "significant connection" to both her state of origin and the state in which she currently resides.

### PCADV's Position

**The Pennsylvania Coalition Against Domestic Violence (PCADV) supports the adoption of the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) in Pennsylvania. PCADV believes that the UCCJEA will help create uniformity in the interstate custody process, reduce interstate parental kidnapping, provide children with more stability, decrease the time and cost of litigation, and offer additional safeguards for families experiencing domestic violence.**

<sup>1</sup> The Pennsylvania legislature adopted UCCJA language on June 30, 1977.



## **The Parental Kidnapping Prevention Act (PKPA)**

Clearly, the problems surrounding child abductions and forum shopping were not alleviated by states' adoption of the UCCJA. Consequently, Congress passed the Parental Kidnapping Prevention Act (PKPA) in 1980 to close some of these gaps. Specifically, the PKPA prioritizes home state jurisdiction in custody cases. The PKPA's home state priority is designed to prevent a "significant connection state" from exercising jurisdiction over a matter when the child who is the subject of the proceeding has a "home state". In short, the PKPA requires courts to refrain from exercising jurisdiction over a custody case while another state is processing a custody and/or visitation case for the same child.

Over 20 years after passage, the PKPA has not resolved the problems with the UCCJA and its varied applications around the country. This is largely due to courts' confusion regarding the inconsistencies between the UCCJA and the PKPA. Furthermore, many attorneys and judges ignore or are unaware of the PKPA's impact on UCCJA practice. As a result, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) to reduce this confusion by supplanting the UCCJA.<sup>2</sup> Currently, 30 states have enacted the UCCJEA and at least six additional state legislatures are in the process of passage.

## **The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)**

The UCCJEA is a uniform state law designed to deter interstate parental kidnapping and promote the uniform application of jurisdiction and enforcement provisions in interstate child-custody and visitation cases. It is designed to eliminate the contradictory processes put forward by the UCCJA and the PKPA. As such, the UCCJEA is meant to be a replacement for the UCCJA, not a supplement.

The UCCJEA governs state courts' jurisdiction to make and modify child-custody determinations including those associated with visitation orders, divorce, separation, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence. The UCCJEA is not applicable to child support proceedings and adoption cases.

The UCCJEA only offers guidance on interstate jurisdiction and enforcement matters; it does not provide standards for substantive custody decisions. In its capacity to guide the jurisdiction and enforcement decisions of states in child-custody cases, the UCCJEA is a marked improvement over the UCCJA. Specifically, the UCCJEA does as follows:

- ★ grants priority to home state jurisdiction;
- ★ preserves exclusive, continuing jurisdiction in the decree state, if that state determines that it has a basis for exercising jurisdiction. Such jurisdiction continues until the child, his or her parents, and any person acting as the child's parent move away from the decree state;
- ★ authorizes courts to exercise emergency jurisdiction in cases involving domestic violence and limits the relief available in emergency cases to temporary custody orders;
- ★ redefines the rules governing forum determination;
- ★ directs courts to decline jurisdiction created by unjustifiable conduct;
- ★ provides procedures for enforcement of interstate custody and visitation determinations;
- ★ creates a registration process for interstate custody determinations; and
- ★ authorizes issuance of warrants directing law enforcement to protect children at risk of being removed from the state.

In essence, the UCCJEA provides clear guidance to courts and law enforcement officials while reducing the time and cost associated with custody and visitation litigation. Finally, the UCCJEA assists in state compliance with federal law, including PKPA and the Violence Against Women Act.

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<sup>2</sup> The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the UCCJEA in 1997.



## Rationale

★ **The UCCJEA helps to create uniformity in the interstate custody process.**

The UCCJEA prioritizes home state jurisdiction in child-custody cases and codifies the principle of exclusive, continuing jurisdiction. These provisions clarify where child-custody proceedings should be brought and substantially reduce the number of competing custody proceedings in other states.<sup>3</sup>

Moreover, 30 states have enacted the UCCJEA and at least six others are in the process of doing so. Adopting the UCCJEA in Pennsylvania will help to unify jurisdiction laws across the nation.

★ **The UCCJEA improves civil interstate custody enforcement.**

The UCCJEA requires state courts to recognize and enforce child-custody determinations made in other states. This duty to enforce is largely congruous to that in the UCCJA. However, the UCCJEA delineates interstate enforcement procedures to enhance enforcement mechanisms available under state law. Such procedures are conspicuously absent from the UCCJA.

Specifically, the UCCJEA creates a voluntary registration process of out-of-state custody orders, expedited enforcement procedures, temporary visitation orders, authority to take physical custody of a child in danger of abduction, and public enforcement procedures. These tools give law enforcement officials both the authority and guidance to enforce civil, interstate custody determinations.

★ **The UCCJEA reduces interstate parental kidnapping and forum shopping.**

The UCCJA provides four jurisdictional bases from which a parent or guardian may petition for custody and/or visitation: “home state”, “significant connection”, “emergency”, and “last resort” jurisdictions. Unfortunately, the UCCJA does not prioritize these bases; therefore, parents are offered multiple venues from which to choose. This ambiguity increases the likelihood of forum shopping and even parental kidnapping.

Alternatively, the UCCJEA offers five jurisdictional bases from which a parent or guardian may petition for custody and/or visitation: “home state”, “significant connection”, “temporary emergency”, “more appropriate forum”, and “no other state” or “vacuum” jurisdictions. Unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction for all non-emergency cases.<sup>4</sup> This assures that a single court has jurisdiction over the custody proceeding, even if the child has been abducted by a parent or guardian.

★ **The UCCJEA decreases the time and expense of protracted litigation.**

Current jurisdictional complexities allow some custody litigants to prolong custody proceedings, obtain conflicting custody orders, and delay enforcement of valid custody and visitation orders. In these instances, resources that should be used to help children are instead spent on extended interstate litigation. The UCCJEA authorizes public officials to expedite enforcement proceedings, communicate with fellow state courts, and utilize an abbreviated, court-assisted registration process. These procedures enable accelerated decisions and enforcement of child-custody orders, thus reducing the associated costs of interstate child-custody litigation.<sup>5</sup>

### PCADV's Position

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<sup>3</sup> Hoff, Patricia. (2001). “The Uniform Child-Custody Jurisdiction and Enforcement Act”. OJJDP Juvenile Justice Bulletin. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

<sup>4</sup> Under the UCCJEA, emergency jurisdiction may be asserted in cases of child abuse and/or domestic violence..

<sup>5</sup> Hoff, Patricia. (2001). “The Uniform Child-Custody Jurisdiction and Enforcement Act”. OJJDP Juvenile Justice Bulletin. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.



★ **The UCCJEA offers additional safeguards for families experiencing domestic violence.**

As previously mentioned, the UCCJEA prioritizes home state jurisdiction in child-custody cases; however, if the petitioning parent/guardian or child is a victim of domestic violence, a court outside of the child's home state may take emergency jurisdiction and issue a temporary custody determination. In order for a court to claim temporary emergency jurisdiction, the child must be present in the state.

As a fail-safe against false claims and child abduction in emergency jurisdiction cases, the UCCJEA requires judicial communication between the child's state of origin and the state exercising temporary emergency jurisdiction. This communication is intended to resolve the emergency, protect the safety of the child and parties involved, and determine the duration of the temporary order. Thus, the UCCJEA offers protections for families experiencing domestic violence and continues to guard against flaws in the UCCJA and other interstate agreements governing emergency jurisdiction cases.

★ **The UCCJEA provides children with more stability.**

By clarifying jurisdictional priorities, the UCCJEA reduces the probability that state courts will produce conflicting child-custody orders, thus limiting the movement of children from state to state with harmful effects on their welfare. The UCCJEA also assists in providing expeditious child-custody determinations, helping to insure that children will have greater constancy in their family relationships and home environment.

## **Pennsylvania Coalition Against Domestic Violence**

Pennsylvania Coalition Against Domestic Violence (PCADV) – the nation's first state domestic violence coalition – is a private, nonprofit, membership organization comprised of 62 community-based programs serving all 67 counties in the Commonwealth of Pennsylvania. PCADV and its member organizations provide integral services to domestic violence victims and their children including 24-hour emergency hotlines, shelter, counseling, legal advocacy and representation, medical advocacy, children's advocacy, transitional housing, and many other emergency and support services. Now in its 27th year of operation, PCADV has a long and successful history of promoting the development and implementation of public policies and legislation that strengthen legal protections for domestic violence victims and their children.

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