

INTERSTATE CHILD CUSTODY LAWS: UNDERSTANDING THE BASICS

Dona Playton
UW College of Law
Wyoming Center for Legal Aid
Wyoming State Bar
CLE
September 26, 2014
Noon-1:00 p.m.

Goals of Webinar

- Participants will be familiar with important provisions of the UCCJEA; and
- Understand difference between permanent, temporary, initial custody determination, modification and enforcement provisions; in order to
- Apply child custody jurisdiction laws properly and avoid unnecessary litigation involving more than one jurisdiction.

Purpose of UCCJEA

- Revised child custody jurisdiction law and explains when a State can exercise original jurisdiction over a child custody determination;
- Provides enforcement mechanisms that are consistent across state lines.
 - Compare UIFSA's uniformity goals.

Types of Proceeding Applicable to UCCJEA

- "Child custody proceeding" = legal custody, physical custody or visitation of a child is an issue:
 - divorce
 - separation
 - neglect, abuse, dependency
 - guardianship
 - paternity
 - termination of parental rights or
 - protection from domestic violence in which the issue may appear.
 - Wyo. Stat. 20-5-202(a)(iv)

Important Provisions of the UCCJEA

1. Jurisdictional Bases
2. Temporary Emergency Jurisdiction
3. "Unclean Hands" Doctrine
4. Inconvenient Forum
5. Full Faith and Credit
6. Confidentiality
7. Interstate Enforcement Mechanisms

Initial and Modification Determinations

- Rules that govern courts' jurisdiction to make an initial custody determination differ from those governing jurisdiction to modify an existing order.
 - If a custody order has been entered properly by a state, then that state has continuing, exclusive jurisdiction over the custody matter as long as one parent remains in the state.
- Type of proceeding governs which rules apply and whether court has the authority to act.

UCCJEA Jurisdictional Bases

1. Home State **Priority** (trumps other bases except emergency)
2. Significant Connection
3. More Appropriate Forum Jurisdiction
4. Vacuum Jurisdiction
5. Temporary Emergency Jurisdiction

Child Custody and Domestic Violence or Child Abuse/Neglect: Common Jurisdictional Concerns

- In child custody matters where domestic violence or child abuse or neglect is an issue, there are two “types” of jurisdiction most likely to serve as the basis for a court hearing a case under the UCCJEA or the PKPA. They are
 - “Home State” Jurisdiction and
 - “Emergency Jurisdiction”

PARENTAL KIDNAPPING PREVENTION ACT (PKPA)

- Not really about kidnapping;
- Instead . . .

PKPA and Full Faith & Credit

- The purpose of Federal PKPA is to determine which custody decrees are entitled to **full faith and credit** (U.S. Const. Art. IV, Section 1);
- PKPA does not apply internationally; but
- Wyoming's UCCJEA does apply to foreign orders so long as the child custody law of a foreign country does not violate fundamental principles of human rights;
- "A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of our UCCJEA shall be recognized and enforced. Wyo. Stat. § 20-5-205.

Modification under the PKPA

- PKPA prohibits a court from modifying a custody decree unless
 - It has jurisdiction under both its own laws and the PKPA jurisdiction provisions and
 - The court of the other state no longer has continuing jurisdiction or has declined to exercise it

The PKPA requires that a state enforce the custody decree of a sister state **unless**

- (1) the issuing court did not have jurisdiction;
- (2) the decree was entered without reasonable notice and an opportunity to be heard; or
- (3) the decree was entered while a proceeding was pending before another court that had jurisdiction.

Initial Jurisdiction

Wyo. Stat. 20-5-301

Home State Jurisdiction

- Priority in **initial** child-custody proceedings (UCCJEA and PKPA)
- Where the child has lived with a parent or an acting parent for at least six consecutive months immediately before the commencement of a child custody proceeding, or
- From the child's birth until the commencement of the proceeding, if the child is less than 6 months old; or
- Ct is located in State that was the child's home State w/in 6 months of commencement and child's parent or person acting as parent continues to reside there even if child has been removed ("**extended home state**").
 - Wyo. Stat. 20-5-301 (a)(i)

Example

- 2 yr old, born and raised in Wyoming, is abducted by his mother before either party has filed for custody.
- Mom takes child to Colorado.
- Father may file in Wyo (home state w/in 6 mos of child's removal). Child doesn't have to be in Wyo for dad to file.
- If notice is given to mom, dad can get Order in Wyo and have it enforced in Colo.
- If mom commences action in Colo., dad can move to have it removed for lack of jurisdiction.
- See Notice to persons outside of state. Wyo. Stat. § 20-2-509 (UCCJEA Sec. 108).

Example

- Mom takes child from home state of Wyo to Colo. After 2 months, she files for custody in Colo. Colo. Ct. doesn't have juris, unless Wyo. declines juris. in favor of Colo.
- However, if dad doesn't commence action in Wyo. w/in 6 mos. of child's removal, Colo. becomes child's home state and Colo. Ct. may decide custody.

Significant Connection Jurisdiction

- Jurisdiction under this basis may only be asserted if:
 - (1) the home state declines jurisdiction or
 - (2) there is no home state; AND
- Significant connection =
 - (1) there is a **significant connection** between the child and the state *and*
 - (2) **substantial evidence** regarding the child's past, present or future care exists in the state.
- Child's presence in state is not required.
 - Wyo. Stat. 20-5-301(a)(ii)(A) and (B).

Simultaneous Proceedings

- **Significant Connection Jurisdiction**
 - More than one state can have jurisdiction under this basis, but only one may exercise it.
- Statute resolves conflict in favor of **first-filed proceeding**.
- Wyo. Stat. 20-5-306 (UCCJEA Sec. 206)
 - Ct. shall examine court documents for information required pursuant to 20-5-309.

Example

- Child lives in State A for 5 months when parents move to State B where child lives for 4 months. Child has been in daycare and had a pediatrician in both states.
- No home state. Both A and B have significant connection.
- If ct. learns from pleadings that a sister state has commenced a proceeding, it is required to stay its proceeding and communicate with other state's ct. to decide where proceedings should continue.
- If no agreement, ct with the first-filed case moves forward and other ct must dismiss its proceeding.

NEW Confidentiality Law

- **Wyo. Stat. § 35-21-112. Confidentiality in court proceedings.**
- The address, city and state of residence or any other information identifying the residence of a victim of domestic abuse and any children residing with the victim shall remain confidential as provided in this section.
- Otherwise, the following is required:

Wyo. Stat. 20-5-309 Information to be submitted to the court.

- In a **child custody proceeding*** each party in its first pleading or in an attached affidavit shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period;

*legal custody, physical custody or visitation of a child is an issue

The pleading or affidavit shall state whether the party:

- (i) Has participated...in any other proceeding concerning the custody of or visitation with the child, and if so, ... identify the court, the case number and the date of the child custody determination, if any;
- (ii) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and if so, ... identify the court, the case number and the nature of the proceeding; and
- (iii) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child, and if so, the pleading or affidavit shall list the names and addresses of those persons.
- Wyo. Stat. 20-5-309

UCCJEA Judicial Communication

Required between courts when one court exercises emergency jurisdiction to:

1. Resolve the emergency
2. Protect the safety of the child and parties
3. Determine the duration of the temporary order

(Wyo. Stat. 20-5-210)

Ensuring proper judicial communication is always crucial:

- Provides judges with the evidence necessary to make the right decision
- Uses mechanisms to transmit evidence, etc. without survivor having to travel

More Appropriate Forum Jurisdiction

- Occurs when both the Home State and the Significant Connection State decline jurisdiction in favor of another, More Appropriate State on grounds of **inconvenient forum** or **unjustifiable conduct**.
- A decision to decline jurisdiction is **discretionary** and **fact dependent**.

Vacuum Jurisdiction

- If no court has home State, significant connection, or more appropriate forum jurisdiction, an alternate court may fill the vacuum and exercise jurisdiction over an initial custody determination.
- This happens if children fail to remain in any State long enough to form attachments (e.g. homeless children, children of migrant farm workers or military personnel, or children sent from relative to relative for temporary care.)

Temporary Emergency Jurisdiction

- “Emergency jurisdiction” is the temporary power of a court to make decisions in a case to protect a child from harm.
- This type of jurisdiction is temporary and is invoked solely for the purpose of protecting the child **until the state that has jurisdiction enters an order.**
- Therefore an order issued by a court exercising “emergency jurisdiction” is not a permanent order regarding custody or visitation.

“An extraordinary jurisdiction reserved for extraordinary circumstances.”

Temporary Emergency Jurisdiction

- “A court...has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the **child, the child’s sibling or a parent of the child** is subjected to or threatened with mistreatment or abuse.”
 - **Child must be present in the state**
 - **This means that a court can exercise emergency jurisdiction in domestic violence cases where the mother (but not the child) has been abused**

Wyo. Stat. § 20-5-304 (a)

Temporary Emergency Jurisdiction (Cont)

Temporary emergency order can become a permanent order if

- (1) the order so indicates;
- (2) no other order has been entered or proceeding commenced in another court; and
- (3) the issuing state becomes the home state

==> Always ensure order states that it will become final if (2) and (3) occur.

UCCJEA § 204

Confidentiality

- Protects against disclosure of address and other info when it would jeopardize a child's or a party's health, safety, or liberty.
- UCCJEA Sec. 209(a) and (e); Wyo. Stat. 20-5-309(a) and (e).
- Combine with Wyo. Stat. 35-21-112 (LexisNexis 2014) for process and effect.

Modification Jurisdiction

Exclusive, Continuing Jurisdiction

- A court making an initial custody determination will retain exclusive continuing jurisdiction *until* one of two events has occurred:
 - (1) Original decree state loses significant connection jurisdiction. 20-5-302(a)(i) or
 - (2) The child, child's parents or any person acting as a parent presently no longer resides in this state. 20-5-302(a)(ii)

Need an affirmative action declining jurisdiction by the court **unless no one remains living in the state.**

Jurisdiction to Modify (Continued)

- *Only decree state* can decide if it has significant connection jurisdiction. (Wyo. Stat. 20-5-303(a)(i))
- *Either state* may determine that all parties identified in statute have left the state. (Wyo. Stat. 20-5-303(a)(ii))

Jurisdiction to modify determination

- If an original decree State has exclusive, continuing jurisdiction, a court in the child's new home State (or any other State) cannot modify the initial decree unless the original decree State loses exclusive, continuing jurisdiction or declines to exercise it on inconvenient forum grounds, and then only if the child's new home State has jurisdiction under the UCCJEA. (Sec. 203, Wyo. Stat. 20-5-303)

Declining Jurisdiction

Declining Jurisdiction Example

- Facts: Mother and Father divorced in Nebraska in 1995 and have three children, the subject of the child custody order.
- Father moved to Wyoming in 1996 and Mother and children moved to Wyoming in 2003. In 2010, DFS in Wyoming receives an intake on the family and the county attorney files an abuse/neglect case in Juvenile Court.
- Does the Wyoming Court need to have the Nebraska Court decline jurisdiction since there was a custody order from Nebraska?

Declining Jurisdiction Example #2

- Facts: Mother and Father divorced in Nebraska in 1995 and have three children, the subject of the child custody order.
- Mother and children moved to Wyoming in 2003. Father remained in Nebraska.
- In 2010, DFS in Wyoming receives an intake on the family and the county attorney files an abuse/neglect case in Juvenile Court.
- Does the Wyoming Court need to have the Nebraska Court decline jurisdiction since there is a custody order from Nebraska?

UCCJEA Inconvenient Forum

- Whether domestic violence has occurred and is likely to continue;
- The length of time the child has resided outside this state;
- The distance between the courts;
- The relative financial circumstances of the parties;
- Any agreements as to which state should assume jurisdiction;
- Which state could best protect the parties and the child.

Wyo. Stat. 20-5-307

UCCJEA Unjustifiable Conduct

- ⦿ Unjustifiable Conduct is not specifically defined, but can include wrongful removal, retention or concealment of a child;
- ⦿ Does not apply to cases brought under temporary emergency jurisdiction;
- ⦿ If the court declines jurisdiction due to unjustifiable conduct it may provide an appropriate remedy to ensure the safety of the child and avoid further unjustifiable conduct.
- ⦿ Example: Staying of a proceeding until a child custody proceeding is commenced in a court which has jurisdiction.
(Wyo. Stat. 20-5-308)

Jurisdiction declined by reason of conduct

- ⦿ If court declines jurisdiction under "Unclean Hands," court shall assess reasonable expenses against the party that sought jurisdiction
 - "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."
 - UCCJEA § 208; Wyo. Stat. Ann 20-5-308.

UCCJEA's Enforcement Provisions

Enforcement of out of state order:

- Duty to enforce a custody determination of another state so long as issuing court exercised jurisdiction in conformity with UCCJEA.
- However, can't necessarily modify.
(Wyo. Stat. 20-5-403)

5 UCCJEA Interstate Enforcement Mechanisms

1. Temporary visitation orders
2. Registration of an out-of-state custody determination
3. Warrants to take physical custody of a child
4. Public enforcement provisions
5. Expedited enforcement of custody determinations

Temporary Visitation Orders

- Courts may issue temporary orders to:
 - Enforce visitation schedules in other States' court orders.
 - Enforce visitation provisions that do not contain a specific schedule.
- If the court does not have modification jurisdiction, the UCCJEA does not allow for permanent changes to a sister State's orders.

Wyo. Stat. 20-5-404

Registration of child custody determination

- Order from another state **may** be registered in this state, with or without simultaneous request for enforcement;
 - See requirements at Wyo. Stat. 20-5-405
- Why register an order?
 - Puts the court on notice of an existing custody determination, and of the issuing court's exclusive, continuing jurisdiction
 - Pre-test of enforceability
 - A registered order is enforceable as if it were a local order
 - Limits possible defenses to enforcement in the future
 - May lower costs to parents who cannot afford an attorney

Warrants to take physical custody of a child

- If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.
- Wyo. Stat. 20-5-410(b)-(e)

Public Enforcement Provisions:

- Under the UCCJEA, a **prosecutor** (or other appropriate public official) is authorized to locate a child and enforce the custody determination.
- The prosecutor is authorized to utilize any civil proceeding to secure the enforcement of the custody determination.
- **Law enforcement officials** may assist in locating a child and enforcing a custody determination.

Wyo. Stat. 20-5-415 to 416

Expedited Enforcement Hearings:

Purpose: immediate recovery of child.

- “Normally” occur within 24 hours of service or first judicial day possible.
- Unless a defense has been established, the court must issue an order authorizing the petitioner to take immediate physical custody of the child, and order the respondent to pay the petitioner’s necessary and reasonable expenses.
- Wyo. Stat. 20-5-408

Practice Points

- Review file and interview client and family carefully to see if child has lived in another state.
- The first question is whether any other state has grounds to hear a case.
 - If so, the court may not make a custody decision.

Practice Pointers (Cont.)

- If they moved from another state – look for court orders regarding custody.
 - Is there continuing, exclusive jurisdiction to modify in another state?
 - Look at significant connection jurisdiction.
 - Is another order entitled to enforcement?
 - Should you ask another state to decline jurisdiction?
- If no other state has jurisdiction, then a court must determine if it has the power to make the custody decision.
- If another state has jurisdiction, file Motion to Dismiss for Lack of Subject Matter Jurisdiction Under UCCJEA.

Conclusion: Five Positive Outcomes of UCCJEA

1. Clarifies where custody cases should be brought and substantially reduces number of competing custody proceedings in sister states
2. Introduces innovative enforcement mechanisms
3. Results in more streamlined, more predictable interstate enforcement of custody and visitation orders
4. Reflects sensitivity to safety needs of parents and children who are victims of domestic violence
5. Minimizes the harmful effects children endure when they are pawns in inter-jurisdictional custody battles

Thank you!

- Dona Playton
- UW College of Law
- dplayton@uwyo.edu
- (307) 766-3664
