

OVERVIEW OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA): PROTECTIVE PARENTS WISHING TO LEAVE THE STATE

This document, created by End Domestic Abuse Wisconsin — Wisconsin Coalition Against Domestic Violence — Legal Department, does not constitute legal advice.

Overview and Disclaimer

This document is an overview of jurisdictional issues in interstate child custody disputes and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). This document does not address other family jurisdiction laws such as the Parental Kidnapping Prevention Act (PKPA) or the Hague Convention on the Civil Aspects of International Child Abduction. This document also does not address situations in which a protective parent's move outside the state will result in no parties remaining in Wisconsin (e.g., the abusive parent already lives outside Wisconsin). If a parent is considering moving from one state to another with their children, it is best practice to consult a family law attorney to discuss the possible consequences of such a move.

What Is Jurisdiction?

Jurisdiction is a legal concept that determines whether a court has the power to hear and issue orders in a case. The UCCJEA deals with a kind of jurisdiction: subject-matter jurisdiction, which is the power of a court to hear a particular type of legal issue.

What Is UCCJEA?

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a set of laws designed to: 1) simplify the process of determining which state may make decisions in child custody cases that cross state lines; 2) ensure that orders issued in one state can be enforced in other states; and 3) offer some assistance to the special circumstances faced by domestic abuse victims involved in custody disputes that cross state lines.

The UCCJEA was first drafted by the National Conference of Commissioners on Uniform State Laws in 1997 and was recommended for adoption by all 50 states. The text of the UCCJEA is available [here](#).

As of June 2024, 49 states (all except Massachusetts) and the District of Columbia have enacted the UCCJEA provisions in substantially identical form. Wisconsin's UCCJEA statutes became law in 2006 ([2005 Act 130](#)) and comprise [Chapter 822](#) of the Wisconsin Statutes.

The purpose of the UCCJEA is described in Wisconsin Statute [822.01](#).

How Does UCCJEA Help Determine Subject-Matter Jurisdiction?

A protective parent (a parent seeking to protect him/herself and/or child(ren) from harm) considering traveling across state lines, needs to know whether the new state is going to be able to issue custody orders in their case, or if custody cases will require returning to Wisconsin. Before any court can make a custody determination, it has to determine whether it has jurisdiction to issue custody orders in the given case. UCCJEA helps determine jurisdiction for custody and placement orders.

UCCJEA uses four criteria to determine jurisdiction. UCCJEA considers requests to create a new order differently from requests to modify an existing order.

Initial jurisdiction

A court has jurisdiction to make an initial custody decision only if the claim meets one of the following criteria:

1. The state is the child's home state or was within the past 6 months and a parent still lives here. Wis. Stat. §§ [822.21\(1\)\(a\)](#), [822.02\(7\)](#).
2. Another state does not have jurisdiction or another state has declined jurisdiction as this state is the more appropriate forum and there is a significant connection to the state and substantial evidence exists in this state. Wis. Stat. § [822.21\(1\)\(b\)](#).
3. All other states have declined jurisdiction as this state is the more appropriate/inconvenient forum. Wis. Stat. § [822.21\(1\)\(c\)](#).
4. No other court would have jurisdiction under the prior criteria. Wis. Stat. § [822.21\(1\)\(d\)](#).

Modification jurisdiction

Once a judge has issued an initial order for a child, that state's courts will have exclusive, continuing jurisdiction to modify that order, regardless of whether that state is the home state. The court with jurisdiction to modify can decline to exercise further jurisdiction if the child, both parents, **and** anyone acting as a parent (this definition varies from state to state and can also vary according to the type of legal proceeding), are no longer present in the state, or if it determines that another state is a more appropriate forum. Wis. Stat. § [822.23](#).

Have orders been issued?

The first step in determining which state has jurisdiction is to determine whether any custody or placement orders already exist or whether there is any sort of child custody proceeding pending. Wisconsin statutes define child custody proceedings as any proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a

proceeding for divorce, legal separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Wis. Stat. § [822.02\(4\)](#). Child support orders can also include provisions for custody or placement. If the protective parent has ever been in court in a matter regarding their children, or has ever paid or received child support, these orders should be read carefully to determine whether the judge included any provisions relating to custody or placement.

How Does UCCJEA Apply When a Protective Parent Decides to Leave the State?

If a parent is considering leaving Wisconsin, they should first assess whether there are any existing family law orders relating to custody, placement, or visitation as described above.

If there are no existing orders:

If there are no existing orders, the protective parent has several alternatives both in Wisconsin and in the refuge state. The best option for the protective parent may depend on a number of factors, including custody and placement laws in both states.

Before leaving Wisconsin, the protective parent can discuss with an attorney whether to:

- File for custody in Wisconsin. If the protective parent has lived in Wisconsin with the child for at least six months (or since the child’s birth, if under six months old) prior to filing and there are no other orders or pending proceedings, Wisconsin will be the child’s home state and the protective parent may need to return to Wisconsin for hearings.
- Petition for a domestic abuse or harassment restraining order. See further discussion below.

After leaving Wisconsin for another state, the protective parent has the following options:

- Establish residency and/or “home state” status in the new state. The protective parent can wait the amount of time required to establish residency and/or establish personal jurisdiction in the new state in order to be able to file a family law action. [For example, for a protective parent coming into Wisconsin from another state, this period is six months. Wis. Stat. § [801.05\(11\)](#).] The protective parent can also wait the amount of time required to establish “home state” status under UCCJEA in the new state, which would allow the refuge state to have initial jurisdiction over the case.¹ If the abusive

¹ In Wisconsin, home state is defined in Wis. Stat. § 822.02(7). Forty nine states and the District of Columbia have adopted the UCCJEA; of these, all but Colorado specify six months to establish home state. Colorado’s statutes list the time period as 182 days. Massachusetts has not yet adopted the UCCJEA and still uses the prior version of this Act (the UCCJA), which also has a six-month period to establish home state.

parent files a custody proceeding first, before the protective parent can establish personal jurisdiction and/or home state status in the refuge state, then the state where they filed will likely be the home state.

- Request temporary emergency jurisdiction in the refuge state under UCCJEA to obtain a temporary order while establishing residency and home state status.

Temporary emergency jurisdiction

UCCJEA provides for temporary emergency jurisdiction when a child is present in a state and it is necessary in an emergency to protect the child because the child, sibling, or parent has been subjected to or threatened with mistreatment or abuse. Wis. Stat. § [822.24\(1\)](#). Temporary emergency jurisdiction allows the refuge state to take the case long enough to issue a temporary order. Domestic abuse or harassment temporary restraining orders (TROs) or injunctions and/or documentation of the abuse, while not required, may be helpful in convincing a judge that an emergency exists.

Orders issued by a court which took temporary emergency jurisdiction under the UCCJEA must specify a time period that is adequate for the petitioner to obtain an order from Wisconsin (or other state that has exclusive, continuing jurisdiction). The judge that issues the temporary UCCJEA emergency order must confer with the Wisconsin courts to determine how to resolve the emergency and an appropriate time frame for the temporary order.

Temporary emergency orders regarding custody and placement can become final orders under Wis. Stat. § [822.24\(2\)](#) if they meet the following criteria:

1. There are no prior child custody determinations or pending child custody proceedings in another state with jurisdiction;
2. The temporary order itself provides an option to become a final order; and
3. The refuge state issuing the temporary order becomes the home state.

If there are existing orders:

If there are existing custody/placement orders or any pending proceedings (e.g., the protective parent chooses to file for custody/placement before leaving Wisconsin), and the abusive parent or a person acting as a parent still resides in Wisconsin, the protective parent has several options and obligations both before leaving the state and after arriving in the new state. The protective parent should consult with an attorney to determine the best options and review possible consequences of leaving with children.

Before leaving Wisconsin:

The protective parent may file to modify an existing custody order. For example, if an existing order gives the protective parent and the abusive parent joint legal custody and provides the abusive parent with placement or visitation, the protective parent must file a motion in Wisconsin to modify that existing order in order for the protective parent to get sole custody and placement. If the protective parent then leaves Wisconsin, the protective parent could need to return to Wisconsin for further court proceedings. But one way to potentially change jurisdiction is to ask the Wisconsin court to decline jurisdiction under the UCCJEA's inconvenient forum provisions (discussed below).

After leaving Wisconsin:

Once the protective parent has left Wisconsin and arrived in the refuge state, he or she may be able to file for temporary emergency jurisdiction as outlined above to obtain a temporary custody or placement order to protect the parent and child(ren) for the time it takes to file for a modification of the existing order in Wisconsin and/or file an inconvenient forum motion. However, if there are prior orders or pending proceedings elsewhere, temporary orders cannot become permanent. Wis. Stat. § [822.24\(4\)](#). In addition, a motion to modify an existing Wisconsin order must still be filed in Wisconsin, as Wisconsin retains continuing exclusive jurisdiction over the case.

The protective parent may wish to consider filing a motion for inconvenient forum to have the case moved entirely to the new state. The parent should consult an attorney to determine which state's laws are better suited to achieve the desired outcome.

Inconvenient/more appropriate forum

UCCJEA allows a parent to ask the court to determine that some other state's court is a more appropriate forum to determine the outcome of the case. While temporary emergency jurisdiction allows the refuge state's court to issue a *temporary* custody order, an inconvenient forum motion asks that the court with either home state jurisdiction or exclusive, continuing jurisdiction decline further jurisdiction in favor of the refuge state so that the *entire* case be moved to the refuge state. When such a request is made in a Wisconsin court, the judge must consider the following factors outlined in Wis. Stat. § [822.27\(2\)](#):

- a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
- b) The length of time that the child has resided outside this state.
- c) The distance between the court in this state and the court in the state that would assume jurisdiction.
- d) The relative financial circumstances of the parties.
- e) Any agreement of the parties as to which state should assume jurisdiction.

- f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.
- g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- h) The familiarity of the court of each state with the facts and issues in the pending litigation.

Unjustifiable conduct

The protective parent should be aware that the abusive parent can ask that the refuge state not take the case as a result of the protective parent's unjustifiable conduct (e.g., taking a child and moving to another state without court permission). However, if the protective parent's conduct meets the requirements for temporary emergency jurisdiction, e.g., it is necessary in an emergency to protect the child because the child, a sibling, or the protective parent has been subjected to abuse, then the unjustifiable conduct provisions do not apply. Wis. Stat. § [822.28](#).

How Are Custody Orders Enforced Under UCCJEA if Either Parent Leaves the State With the Child(ren)?

Although another state may not have jurisdiction to modify another state's existing custody/placement orders, it still must enforce those orders. States are required to recognize and enforce other states' orders that are made in compliance with the UCCJEA.² Wis. Stat. § [822.33](#). A parent who wishes to have an existing order enforced can register that order with the refuge state with a petition for enforcement. Unless the refuge state has taken temporary emergency jurisdiction, once the request for enforcement has been made:

- The refuge state may issue a temporary order enforcing visitation/placement orders made by another state. Wis. Stat. § [822.34](#).
- The refuge state may order that the petitioning parent take immediate physical custody of the child. Wis. Stat. § [822.40\(1\)](#).
- The petitioning parent can request a "pick-up order" – a warrant for law enforcement to take physical custody of the child – if the petitioning parent alleges that the child is in imminent danger of serious physical harm or removal from the state. Wis. Stat. § [822.41\(2\)](#).
- The court will award the prevailing party costs incurred in the enforcement process to be paid by the opposing party, unless clearly inappropriate. Wis. Stat. § [822.42](#).

² These references are to Wisconsin statutes, but similar provisions exist in every state that has adopted the UCCJEA. Parents who are considering moving to another state may wish to consult with an attorney in the new state on that state's laws.

- If the court believes a criminal statute has been violated, a criminal law prosecutor can take any lawful action to locate and return a child or enforce a custody determination. Wis. Stat. § [822.45](#). The prosecutor can involve local law enforcement in these actions and could also work with federal law enforcement to use felony locator services. Wis. Stat. § [822.46](#).

If a protective parent has started a custody proceeding in the refuge state, including a request for temporary emergency jurisdiction, the enforcing court must communicate with the other court. The enforcement proceeding continues unless the enforcing court chooses to stay or dismiss it.

What are the Possible Consequences of Leaving With the Child(ren)?

The parent who leaves may experience both criminal and civil consequences from moving across state lines with their child(ren). These consequences are not part of the UCCJEA, and should be discussed with an attorney. Criminal consequences may include, but are not limited to:

- The parent who remains in the state could bring charges of interference of custody, a felony, under Wis. Stat. § [948.31](#). The belief by the leaving parent that they or their children are in imminent danger of harm from the other parent is an affirmative defense to this charge. This means that if a criminal charge is brought, a protective parent who leaves can assert this affirmative defense. However, raising an affirmative defense does not preclude issuance of or conviction for this offense. In addition, the protective parent will need to show proof of fear of harm in order for a court to consider this defense. A protective parent should discuss with an attorney whether to notify the abusive parent by certified mail that he or she has moved with the child(ren) due to safety concerns.
- If the protective parent is convicted of criminal charges and is a non-citizen, the protective parent could also face immigration consequences that could include deportation.

Civil consequences might include:

- If a criminal action is filed against the protective parent, the court may also change existing family law or custody/placement orders.
- A contempt of court proceeding if there are pending family law cases or existing orders, and:
 - The parent takes the child more than 150 miles away;
 - The parent establishes residence in another state; or

- The parent removes the child from the state for more than 90 days. Wis. Stat. [§ 767.117\(1\)\(c\)](#).
- If either parent does not comply with existing custody/placement orders, the court can impose sanctions that include fines, jail time, and/or changes to custody/placement orders that could result in the loss of custody and placement rights. Section [767.117\(3\)\(b\)](#) provides an exemption for contempt proceedings if moving with children is necessary to protect against physical abuse and circumstances afforded no reasonable opportunity to obtain the court's permission.
- The leaving parent may be required to provide written notice to the other parent if they plan to move with the child(ren) out of the state. If he or she is required to give such a notice and does not, the judge could find the parent in contempt of court. Whether such a written notice is in the protective parent's best interests should be discussed with an attorney.

How Do Parents Initiate Court Proceedings Under UCCJEA?

Requests for temporary emergency jurisdiction or inconvenient forum are generally made by filing a motion to request temporary emergency jurisdiction or inconvenient forum. There are no standard forms or motions for either of these requests. Each motion describes the specific facts of a case. In addition, these filings typically include either a petition to start a custody/placement proceeding or a motion to modify an existing court order. Advocates can contact the local clerk of courts to determine the availability of divorce/custody packets for these petitions and learn more about any applicable local court rules.

Please note that because these issues are very complex and involve laws in more than one state, we highly recommend survivors consult with an attorney to determine which state's laws are more likely to produce the desired outcome and to navigate court procedure appropriately between the two states.

Where Can I Get More Information/Resources?

The National Center on Protection Orders and Full Faith and Credit, a project of the Battered Women's Justice Project, has additional resources on their website and occasionally offers trainings on UCCJEA for attorneys and advocates. <http://www.fullfaithandcredit.org/>

End Domestic Abuse Wisconsin, the Wisconsin Coalition Against Domestic Violence offers information on a variety of topics relating to domestic abuse at <http://www.endabusewi.org/>.