

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

The Decision to Leave Wisconsin

1. Who has jurisdiction - Wisconsin or the Refuge State?

If a parent is considering leaving Wisconsin, he/she must first know if there are any existing Wisconsin family law orders relating to custody, placement, or visitation. If there is an existing Wisconsin order, then Wisconsin courts retain jurisdiction, even if the protective parent and child move to the refuge state. This means all future custody hearings will likely occur in Wisconsin, NOT the refuge state.

If there is not an existing order and if the child(ren) lived in Wisconsin with a parent or a person acting as parent for at least 6 months **before** fleeing to the refuge state, then Wisconsin is the home state. If the left-behind parent remains in Wisconsin, for the 6 month period after the protective parent and child(ren) have left, Wisconsin courts retain jurisdiction over any custody case and all other states must defer to Wisconsin's jurisdiction. It is critical the protective parent contact the family court in WI (at least weekly) to determine whether the left-behind parent has filed for custody. Otherwise, a custody order may be issued in the protective parent's absence without their knowledge.

If Wisconsin is not the home state at the time the protective parent leaves the state, and there is no existing Wisconsin custody order, the refuge state may be able to exercise jurisdiction as follows:

1. Significant Connection: Jurisdiction in the refuge state if the child(ren) **AND** the protective parent or person acting as parent: A) Have a "significant connection" with the refuge state (other than mere physical presence), and B) Substantial evidence is available in the refuge state concerning the child(ren)'s care, protection, training, and personal relationships; **OR**

2. Deferral to Refuge State: Jurisdiction in refuge state if Wisconsin family law court decides the refuge state is a more appropriate forum and Wisconsin defers jurisdiction to refuge state; **OR**

3. No Other Forum Jurisdiction: Jurisdiction in the refuge state if Wisconsin cannot exercise jurisdiction or has no basis for exercising jurisdiction.

2. What state has jurisdiction if a custody order is simultaneously filed in the refuge state and Wisconsin?

The state considered the "home state" always has jurisdiction. If each state's claim to jurisdiction is based on the same standard (i.e. significant connections), then the state in which the second action was filed must stay its proceedings and allow the state in which the first action was filed to decide whether to exercise jurisdiction. The action in the second state must be dismissed if the first state exercises jurisdiction.

3. What is Temporary Emergency Jurisdiction?

The refuge state may exercise temporary emergency jurisdiction and order a temporary emergency order if a child is present in the state, and it is necessary to protect the child because the child or a sibling or a parent of the child(ren) is subjected to or threatened with mistreatment or abuse.

If no custody order exists in Wisconsin, then the temporary emergency order remains in effect until an order is obtained from Wisconsin. If no proceeding is commenced in Wisconsin, then the temporary emergency order becomes final only if: 1) The order itself provides so, and 2) The refuge state becomes the home state.

If a prior custody order exists in Wisconsin, the temporary emergency order must specify a time period allowing the

protective parent to obtain an order from Wisconsin. The court in the refuge state must communicate with Wisconsin courts to resolve the emergency and determine an appropriate termination date for the temporary order. The temporary emergency order remains effective until an order is obtained in Wisconsin **or** the time period stated in the temporary order expires. Although an emergency order cannot automatically become final, if the Wisconsin court declines to exercise jurisdiction at some point a court in the refuge state may be able to assume jurisdiction to enter a final order.

4. Can Wisconsin give up its jurisdiction to the refuge state to allow for modification of a Wisconsin order?

If Wisconsin has issued a custody order and the other parent remains in Wisconsin, the protective parent may modification in the refuge state only under limited circumstances. The most common approach is asking the WI court that issued the order to decline to exercise jurisdiction on the basis of "inconvenient forum," a provision in the UCCJEA that allows a court to relinquish jurisdiction in favor of another state. When such a request is made in Wisconsin, the judge must consider the factors outlined in Wis. Stat. §822.27(2), including whether there has been domestic violence and if another jurisdiction is better able to protect the parent and child.

If either Wisconsin or the refuge state determines the child(ren) and both parents no longer live in Wisconsin, the refuge state may be able to modify the Wisconsin custody order.

5. What should a parent do when considering whether to leave or does leave Wisconsin with child(ren)?

For at least 6 months after leaving, check Wisconsin's CCAP on at least a weekly basis to determine if a family law case

The Decision to Leave Wisconsin (cont.)

has been started in Wisconsin. If so, the protective parent needs to respond or risk loss of custody and/or criminal charges. However please note that certain types of cases such as paternity actions might not appear on CCAP.

6. How are Wisconsin custody orders enforced in the refuge state?

Either parent can ask the court to enforce – but not modify (see section 4) - existing custody/placement orders if the other parent takes the child(ren) out of Wisconsin. The refuge state is required to recognize and enforce Wisconsin orders made in compliance with the UCCJEA.

A parent who wishes to have an existing Wisconsin order enforced in the refuge state can register that order in the refuge state with a petition for enforcement. Unless the refuge state has temporary emergency jurisdiction, the refuge state can: 1) Issue an order enforcing the Wisconsin order; 2) Order the petitioning parent take immediate physical custody of the child(ren); or 3) Order a warrant for law enforcement to take physical custody of the child(ren).

7. What are the possible consequences of leaving Wisconsin for a refuge state with the Child(ren)?

The protective parent leaving Wisconsin may face both civil and criminal consequences, including but not limited to:

The parent remaining in Wisconsin can request law enforcement to file criminal charges of interference of custody, a felony. An affirmative defense for the protective parent is that they or the child(ren) are in imminent danger of harm.

The protective parent may be held in contempt of court if there are pending family law cases or orders in Wisconsin and: the protective parent takes the child(ren) more than 150 miles away; establishes residency in the refuge state; or removes the child from Wisconsin for more than 90 days.

Possible sanctions for not complying with existing Wisconsin orders include fines, jail time, and/or changes to custody/placement orders.

How the UCCJEA Applies When a Protective Parent Leaves Wisconsin for Refuge State

	Before Leaving Wisconsin for Refuge State	After Leaving Wisconsin for Refuge State
No Existing Wisconsin Custody Order	<p>Discuss filing for custody in Wisconsin with attorney. If the child has lived in Wisconsin with a parent or a person acting as parent 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.</p> <p>The protective parent may also wish to petition for a restraining order in Wisconsin as the refuge state will not likely have the jurisdiction to issue such an order.</p>	<p>To establish jurisdiction in the refuge state, the child must live in the refuge state for the amount of time required (six months) with a parent or a person acting as parent to establish "home state" status.</p> <p>If the abusive parent files a custody proceeding before the child establishes home state status in the refuge state, then Wisconsin will likely be the home state. The protective parent can also file a request for temporary emergency jurisdiction in the refuge state to gain a temporary order while establishing residency and home state status.</p>

<p>Existing Wisconsin Custody Order</p>	<p>If an existing Wisconsin order gives the parents joint legal custody and gives the abusive parent placement/visitation, the protective parent must file a motion in Wisconsin to modify the existing order to get sole custody and placement. If the protective parent then leaves Wisconsin, the protective parent may need to return to Wisconsin for further court proceedings. A protective parent can still be found in violation of a court order until the order is modified. The protective parent could also explore the possibility of requesting the Wisconsin court to decline jurisdiction under the UCCJEA's inconvenient forum provisions.</p>	<p>Once the protective parent leaves Wisconsin and arrives in the refuge state, they can file for temporary emergency jurisdiction to obtain a temporary custody or placement order to protect the parent and child(ren). However, the prior orders or pending proceedings in Wisconsin means the temporary orders cannot become permanent. Additionally, a motion to modify an existing 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 in Wisconsin to have the case moved entirely to the refuge state.</p> <p>The abusive parent can proceed in a Wisconsin custody case, even if the protective parent in the refuge state does not receive notice or appear in court, so it is important for protective parents to know about all future court dates.</p>
---	--	---

These issues are very complex, involving laws in multiple states. Clients must consult an attorney for help determining which state's laws will more likely reach the desired outcome and navigating court procedures/laws among different states.