



# OJJDP

December 2001

## JUVENILE JUSTICE BULLETIN

# The Uniform Child-Custody Jurisdiction and Enforcement Act

**Patricia M. Hoff**

This Bulletin describes the Uniform Child-Custody Jurisdiction and Enforcement Act (the UCCJEA),<sup>1</sup> the most recent in a series of laws designed to deter interstate parental kidnapping and promote uniform jurisdiction and enforcement provisions in interstate child-custody and visitation cases. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Bulletin to provide current information about the UCCJEA to legislators in States considering its adoption and to parents and practitioners in States that have already adopted the law. The Bulletin is not an official OJJDP endorsement of the Act.

The UCCJEA is a uniform State law that was approved in 1997 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to replace its 1968 Uniform Child Custody Jurisdiction Act (the UCCJA).<sup>2</sup> NCCUSL drafts and proposes laws in areas where it believes uniformity is important, but the laws become effective only upon adoption by State legislatures. As of July 2001, 26 jurisdictions had adopted the UCCJEA,<sup>3</sup> and it had been introduced in 2000–01 in the legislatures of 10 others.<sup>4</sup>

The UCCJEA governs State courts' jurisdiction to make and modify "child-custody determinations," a term that expressly includes custody and visitation orders.<sup>5</sup>

The Act requires State courts to enforce valid child-custody and visitation determinations made by sister State courts. It also establishes innovative interstate enforcement procedures.

The UCCJEA is intended as an improvement over the UCCJA. It clarifies UCCJA provisions that have received conflicting interpretations in courts across the country, codifies practices that have effectively reduced interstate conflict, conforms jurisdictional standards to those of the Federal Parental Kidnapping Prevention Act (the PKPA)<sup>6</sup> to ensure interstate enforceability of orders, and adds protections for victims of domestic violence who move out of State for safe haven.

The UCCJEA, however, is not a substantive custody statute. It does not dictate standards for making or modifying child-custody and visitation decisions; instead, it determines which States' courts have and should exercise jurisdiction to do so. A court must have jurisdiction (i.e., the power and authority to hear and decide a matter) before it can proceed to consider the merits of a case. The UCCJEA does not apply to child support cases.

## Legal Background

In a mobile society with a high rate of divorce, courts in different States (and countries) often become involved in

## A Message From OJJDP

America is a society with a substantial divorce rate. Each year, more than 1,000,000 children in the United States are affected by the divorce of their parents, and of all children who are born to married parents this year, half are likely to experience a divorce in their families before they reach their 18th birthdays.

America is also a highly mobile society. On the dissolution of family ties, it is not uncommon that a parent, perhaps even both parents, may move out of the State in which the family resided at the time of their separation. Thus, it is not surprising that courts in different States are becoming involved in child-custody and visitation disputes concerning the same children.

The Uniform Child-Custody Jurisdiction and Enforcement Act, which is described in this Bulletin, has been proposed by the National Conference of Commissioners on Uniform State Laws. The proposed uniform State law is designed to deter interstate parental kidnapping and to promote uniform jurisdiction and enforcement provisions in interstate child-custody and visitation cases. The Act has been enacted by 25 States and the District of Columbia and introduced into legislatures in several other States.

It is our hope that the information provided in this Bulletin will assist those considering the adoption of this model law in their States.

---

child-custody and visitation disputes concerning the same child. When families are intact, children generally live in one or more States with both parents. After a family breakup, one parent may move with a child to another State, often to pursue a job opportunity or a new relationship or to return to extended family. The other parent may remain in the original State or move to another State. Additional moves may occur over time, possibly to different States, back to the family's original State, or out of the country.

Interstate and international moves involving children raise challenging legal questions as to which State (or country) has and should exercise jurisdiction to make an initial child-custody determination or modify an existing custody order. Questions also arise as to whether a custody determination made in one State (or country) is enforceable in another State and, if so, what procedures are available to secure enforcement.

States and Congress have responded to these issues by enacting laws (i.e., the UCCJA and the PKPA) that regulate courts' jurisdiction to make and modify custody and visitation determinations and that dictate the interstate effect such determinations are to be given in sister States. Other laws that affect child custody and visitation have also been enacted. In fact, it was this veritable alphabet soup of laws—the UCCJA, the PKPA, the Violence Against Women Act (the VAWA),<sup>7</sup> the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention),<sup>8</sup> and the International Child Abduction Remedies Act (the ICARA)<sup>9</sup>—that prompted NCCUSL in 1997 to draft an improved child-custody jurisdiction and enforcement statute. To understand the new law, it is helpful to examine the legal backdrop against which the UCCJEA was developed.

## The Uniform Child Custody Jurisdiction Act

**Overview.** Before 1968, State courts throughout the United States could exercise jurisdiction over a child-custody case based on a child's presence in the State. Courts also freely modified sister States' orders because U.S. Supreme Court rulings had never settled the question of whether the Full Faith and Credit clause of the U.S. Constitution applied to custody decrees.<sup>10</sup> This legal climate fostered child abduction and forum shopping; Because parents with physical possession of a

child could choose the forum that would decide custody, parents had a legal incentive to abduct children. For example, a parent could take a child to a State to which the child had no previous ties and a court in that State could exercise jurisdiction and make or modify a custody determination. Abducting parents benefited under this system, but their "seize and run"<sup>11</sup> tactics exacted a heavy toll on children and the judicial system. Children's lives were disrupted, and judicial resources were squandered as courts in numerous States often heard custody cases regarding the same children.

Given the interstate nature of the problem, an interstate solution was needed. NCCUSL responded in 1968 with the UCCJA, which governed the existence and exercise of jurisdiction in initial child-custody determinations and cases involving modification of existing orders. The law also required States to enforce and not modify sister States' orders. The new requirements were intended to remove parents' legal incentive to abduct children in search of a friendly forum that would make an initial custody order or modify an existing order.

The UCCJA based jurisdiction on a child's close affiliation with a State. Specifically, it established four jurisdictional grounds:

- ◆ Home State (reserved for the State in which the child has lived for at least 6 months preceding commencement of the action).
- ◆ Significant connection (exists when a State has substantial evidence about a child as a result of the child's significant connections to that State).
- ◆ Emergency (governs situations such as abandonment or abuse that require immediate protective action).
- ◆ Vacuum (applies when no other jurisdictional basis exists).

Except in emergency cases, the UCCJA eliminated a child's physical presence in a State as grounds for exercising jurisdiction. As a result, a court could no longer base jurisdiction solely on a child's presence in the State, nor would a child's absence from the State necessarily deprive the court of jurisdiction. Under the UCCJA's extended home State rule, a left-behind parent could petition for custody in the child's home State even after an abduction. The UCCJA also required States to enforce and not modify valid custody and visitation orders made by sister States.

**Unresolved problems.** Although the UCCJA was a major improvement over pre-1968 law governing jurisdiction in child-custody cases, some problems remained. The law did not eliminate the possibility of two or more States having concurrent jurisdiction (e.g., based on home State and significant connection jurisdiction), and the statute's prohibition against simultaneous proceedings was not routinely effective in preventing courts in different States from exercising jurisdiction and issuing conflicting custody orders. In addition, contrary to the restrictive interpretation of emergency jurisdiction intended by the drafters, some judges used this basis of jurisdiction to provide permanent relief, rather than to temporarily address an urgent problem until the court with regular jurisdiction could act. Jurisdictional conflicts also continued in modification cases. For instance, when a child moved from his or her original home State and established a new home State, courts in both States frequently asserted jurisdiction to modify an existing order. This overlap often led to conflicting custody orders and uncertainty for children and parents.

Although the UCCJA obligated courts to enforce and not modify custody orders of sister States, it did not provide enforcement procedures to carry out this requirement. Litigants were left to discover local enforcement procedures on their own, and such procedures varied considerably across the country (e.g., contempt proceedings, motions to enforce, motions to grant full faith and credit, and *habeas corpus* proceedings). The variety of State enforcement procedures delayed enforcement (sometimes to the point of denying relief, as in the case of weekend visitation interference), added costs (due to multi-state variations and practices), made outcomes unpredictable, and sometimes allowed local courts to modify out-of-State orders, contrary to the UCCJA's intent.

In addition, States passed the UCCJA with variations in the language. For instance, four States omitted section 23, which extends the principles of the Act to custody orders made in other countries. The variety undermined the uniform interpretation and application of the law across the country and created loopholes that led to the issuance of conflicting custody orders. (These and other problems with the UCCJA were documented by the Obstacles to the Recovery and Return of Parentally Abducted Children Project,

which was carried out by the American Bar Association Center on Children and the Law pursuant to a cooperative agreement with OJJDP.<sup>12</sup>) Although every State eventually enacted the UCCJA, the handful of States that were slow to do so became magnets for forum-shopping parents.

## The Parental Kidnapping Prevention Act

To close existing gaps and bring greater uniformity to interstate child-custody practice, Congress in 1980 enacted the PKPA, which requires State courts to:

- ◆ Enforce and not modify (i.e., grant full faith and credit to) custody and visitation determinations made by sister States consistently with the PKPA, unless the original State no longer has, or has declined to exercise, jurisdiction.<sup>13</sup>
- ◆ Defer to the “exclusive, continuing jurisdiction” (see below) of the decree State as long as that State exercised jurisdiction consistently with the PKPA when it made its determination, has jurisdiction under its own law, and remains the residence of the child or any contestant.<sup>14</sup> (“Contestant” is defined as a person, including a parent, who claims a right to custody or visitation rights with respect to a child.)
- ◆ Refrain from exercising jurisdiction while another State is exercising jurisdiction over a matter consistently with the PKPA.<sup>15</sup>
- ◆ Ensure that the following persons are provided reasonable notice and opportunity to be heard: contestants, any parent whose parental rights have not been terminated, and any person who has physical custody of the child.<sup>16</sup>

State courts that exercise jurisdiction consistently with the criteria in the PKPA are entitled as a matter of Federal law to have their custody and visitation orders given full faith and credit in sister States. These courts also have exclusive, continuing jurisdiction to modify their own orders under circumstances stipulated in the law.

The PKPA’s jurisdictional criteria resemble those of the UCCJA, but there are significant differences. PKPA jurisdictional provisions are discussed in the sections that follow.

**Home State priority.** The PKPA prioritizes home State jurisdiction in initial custody cases.<sup>17</sup> Whereas two States may have jurisdiction over a case under the UCCJA

(e.g., one may have home State and another significant connection jurisdiction), the PKPA gives priority to home State jurisdiction. This priority is intended to limit jurisdiction in initial custody cases to one State, the child’s home State. 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.”

**Exclusive, continuing jurisdiction.** Exclusive, continuing jurisdiction under the PKPA protects an original decree State’s jurisdiction to modify its own order. This protection addresses an ambiguity in the UCCJA’s modification section that some courts have interpreted as allowing a child’s new home State to exercise modification jurisdiction even when the decree State (i.e., the child’s former home State) could still exercise jurisdiction on significant connection grounds. Under the PKPA, the original home State has exclusive, continuing jurisdiction to modify its own order to the exclusion of all other States, including the child’s new home State—assuming that the original home State has jurisdiction under State law (e.g., significant connection) and that at least one parent or the child continues to live there. Moreover, every State, including a significant connection State, must grant full faith and credit to the home State’s order.

**Unresolved problems.** The PKPA did not solve all of the problems it targeted, partly because of some confusion about its relationship to the UCCJA and the inconsistencies between the two laws and partly because many lawyers and judges ignored the PKPA or were unaware of its impact on UCCJA practice. These problems and inconsistencies are documented in the *Obstacles Project Final Report*.<sup>18</sup>

## Other Relevant Federal Laws

Some laws enacted after the UCCJA added a Federal dimension to interstate and international child-custody practices that was unforeseen by the drafters of the UCCJA in 1968 (but which was considered by drafters of the UCCJEA in 1997). In addition to the PKPA, these Federal laws include the Full Faith and Credit provisions of the VAWA, enacted in 1994; the Hague Convention, ratified in 1986; and the ICARA, enacted in 1988.<sup>19</sup>

**The VAWA.** In recognition of the fact that domestic violence victims often leave the

State where they were abused and need continuing protection in their new locations, the VAWA provides, among other things, for interstate enforcement of protection orders. Custody provisions incorporated into protection orders, however, are not governed by the VAWA.<sup>20</sup> These provisions are “custody determinations,” subject to the PKPA and State law governing jurisdiction in child-custody cases.

Neither the PKPA nor the UCCJA explicitly addresses the key concerns of domestic violence victims who must litigate child custody interstate. The UCCJEA, however, addresses these concerns with a number of provisions. For instance, it protects against disclosure of a victim’s address, expands emergency jurisdiction to cases in which a parent or sibling is at risk, and requires courts to consider family abuse in their “inconvenient forum” analysis.

## The Hague Convention and the ICARA.

The Hague Convention<sup>21</sup> and the Federal statute that implements it (the ICARA)<sup>22</sup> deal with international wrongful removal and retention of children. The Hague Convention establishes administrative and judicial mechanisms to expedite the return of children (usually to their country of habitual residence) who have been abducted or wrongfully retained and to facilitate the exercise of visitation across international borders. Under the Hague Convention, children who are wrongfully removed from or retained in a contracting State (i.e., a country that is party to the Convention) are subject to prompt return. The UCCJEA specifically provides for the enforcement of Hague Convention return orders and authorizes public officials to locate and secure the return of children in Hague Convention cases. The UCCJEA contains other provisions that clarify when foreign custody determinations (from Hague and non-Hague countries) are entitled to enforcement and when courts in the United States must defer to the custody jurisdiction of a foreign court.

## Rationale Underlying the UCCJEA

Custody contestants have sometimes exploited jurisdictional ambiguities to draw out litigation, secure conflicting custody orders, and delay (or deny) enforcement of valid custody and visitation orders. In these instances, resources that could have been used to help children were instead spent on multistate litigation.

Eliminating such contentious multistate litigation of custody is one of the stated purposes<sup>23</sup> of the UCCJA, which is intended to:

- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being . . . [and] (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

Parents bent on “winning” an interstate custody case (or ensuring that the other parent “loses”) sometimes employ tactics that may hurt children in the process. Ironically, some parents lose sight of their children when fighting for the right to keep them. In a particularly egregious case,<sup>24</sup> for example, after 3 years of litigation in Indiana that should have resulted in a child’s immediate return to her mother (pursuant to an Indiana order enforcing a Hawaiian order), a juvenile court intervened at the last minute and ordered the child detained for a mental examination. The father’s attorney had orchestrated a CHINS (Child In Need of Services) proceeding in juvenile court to prevent the child’s return to her mother. The case remains a strong reminder of the need for a custody jurisdiction statute that clearly specifies the proceedings to which it applies, restricts the use of emergency jurisdiction, and establishes enforcement procedures that are expeditious, sure, and predictable. The UCCJEA accomplishes these objectives.

Protracted custody litigation and conflicting orders not only undermine a child’s sense of stability; they also raise the possibility of criminal liability for either or both of the child’s parents, who may face charges in one State when complying with the order of another. *California v. Superior Court of California, San Bernardino County (Smolin et al.)*,<sup>25</sup> exemplifies this predicament. In this case, the U.S. Supreme Court refused to block a California father’s extradition to Louisiana, where he was charged with simple kidnapping. The criminal charges stemmed from the father’s “self-help” recovery of his children from Louisiana, where they had moved with their mother. The father argued that he could

not be charged with simple kidnapping under Louisiana law (and thus should not be extradited) because he was the lawful custodian of the children pursuant to a California custody order that was entitled under the PKPA to full faith and credit in Louisiana. The Supreme Court, however, held that under the Uniform Criminal Extradition Act, 18 U.S.C. § 3182, the place for the father to assert his defenses to the criminal charge (however meritorious) was Louisiana, not California.

The UCCJEA’s enforcement mechanisms authorize public officials to assist in expedited enforcement proceedings and allow for an abbreviated, court-assisted registration process. In doing so, these mechanisms should considerably reduce self-help recoveries, which can be emotionally and physically injurious to children and legally problematic for parents.

## UCCJEA Highlights

This section provides a brief overview of the UCCJEA’s jurisdiction and enforcement provisions. The cases to which the UCCJEA applies and the law’s jurisdiction and enforcement provisions are described in detail in the next sections of this Bulletin.

### Jurisdiction: Articles 1 and 2

The UCCJEA is a complete replacement for the UCCJA. Articles 1 and 2 of the UCCJEA contain jurisdictional rules that essentially bring the UCCJA into conformity with the PKPA. Modeling the UCCJEA’s jurisdictional standards on the PKPA’s standards is intended to produce custody determinations that are entitled under Federal law to full faith and credit in sister States. The UCCJEA also addresses the practice and interpretation problems described earlier in this Bulletin and brings the law into harmony with the VAWA and the Hague Convention.

Under articles 1 and 2, the UCCJEA, among other things:

- ◆ Applies to a range of proceedings in which custody or visitation is at issue.<sup>26</sup>
- ◆ Grants priority to home State jurisdiction.<sup>27</sup>
- ◆ 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.<sup>28</sup>

- ◆ Authorizes courts to exercise emergency jurisdiction in cases involving family abuse and limits the relief available in emergency cases to temporary custody orders.<sup>29</sup>
- ◆ Revamps the rules governing inconvenient forum analysis, requiring courts to consider specified factors.<sup>30</sup>
- ◆ Directs courts to decline jurisdiction created by unjustifiable conduct.<sup>31</sup>

### Enforcement: Article 3

The UCCJEA also establishes uniform procedures for interstate enforcement of child-custody and visitation determinations.

In particular, article 3 of the UCCJEA:

- ◆ Authorizes temporary enforcement of visitation determinations.<sup>32</sup>
- ◆ Creates an interstate registration process for out-of-State custody determinations.<sup>33</sup>
- ◆ Establishes a procedure for speedy interstate enforcement of custody and visitation determinations.<sup>34</sup>
- ◆ Authorizes issuance of warrants directing law enforcement to pick up children at risk of being removed from the State.<sup>35</sup>
- ◆ Authorizes public officials to assist in the civil enforcement of custody determinations and in Hague Convention cases.<sup>36</sup>

## Applicability of the UCCJEA

### Covered Proceedings

The UCCJEA applies to a variety of proceedings.<sup>37</sup> Specifically, courts in UCCJEA States must comply with the statute when custody and visitation issues arise in proceedings for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence. The UCCJEA does not apply to child support proceedings<sup>38</sup> or adoption cases.<sup>39</sup> Identifying the specific proceedings to which the UCCJEA is applicable clarifies

---

when courts must conform to the UCCJEA, which should minimize the likelihood that more than one State will take jurisdiction over the same matter.

### **Initial and Modification Determinations**

The UCCJEA governs courts' jurisdiction to issue permanent, temporary,<sup>40</sup> initial, and modification orders. The rules that govern courts' jurisdiction to make an initial custody determination differ from those governing jurisdiction to modify an existing order. The type of custody proceeding determines which rules apply and whether a court has the authority to act.

### **Foreign Custody Orders and Proceedings**

The UCCJEA requires State courts to recognize and enforce custody determinations made by foreign courts under factual circumstances that substantially conform with the UCCJEA's jurisdictional standards and to defer to foreign courts as if they were State courts.<sup>41</sup> However, State courts need not apply the Act (i.e., enforce a foreign court order or defer to a foreign court's jurisdiction) if the child-custody law of the foreign country violates fundamental principles of human rights. This language is derived from article 20 of the Hague Convention. According to the U.S. Department of State's legal analysis of the Convention, the "human rights/fundamental freedoms" defense to return may be invoked "on the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process."<sup>42</sup>

### **Tribal Court Orders and Proceedings**

The UCCJEA does not apply to custody proceedings concerning American Indian children to the extent that such proceedings are governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*<sup>43</sup> Child-custody proceedings in State courts that involve tribal-State jurisdictional disputes are subject to the UCCJEA only if the State has enacted optional sections 104(b) and (c) of the UCCJEA, which require State courts to treat tribes as if they were States and tribal court custody proceedings as if they were court proceedings of sister States and to enforce tribal court custody orders.

## **Jurisdictional Provisions of the UCCJEA**

There are two requirements under the UCCJEA for making or modifying a custody determination: (1) the court must have a basis of jurisdiction under the Act (i.e., subject-matter jurisdiction), and (2) the parties must be given notice and opportunity to be heard. Personal jurisdiction over a party or child—based on physical presence in or minimum contacts with the State—is not required. Moreover, a court that has personal jurisdiction over a party or child cannot adjudicate custody unless it has a basis for exercising jurisdiction under the Act.<sup>44</sup>

The UCCJEA's jurisdictional provisions vary, based on whether a case involves an initial custody or visitation determination or modification of an existing order. This section describes the UCCJEA's jurisdictional provisions and provides examples that illustrate the intended effect of many of these provisions. It also describes two grounds on which courts may decline to exercise jurisdiction under the UCCJEA and includes examples of each.

### **Initial Jurisdiction**

The UCCJEA establishes four bases for initial jurisdiction—home State, significant connection, more appropriate forum, and vacuum jurisdiction. It also authorizes courts to issue temporary relief on emergency grounds. These jurisdictional bases are discussed in the sections that follow.

**Home State jurisdiction.** The UCCJEA gives home State jurisdiction priority in initial child-custody proceedings. In doing so, the Act conforms to the PKPA and rejects the UCCJA's coequal treatment of home State and significant connection jurisdiction. Only in cases in which a child has no home State or the home State declines jurisdiction may another court exercise significant connection jurisdiction. This change is intended to significantly reduce the number of situations in which more than one State has jurisdiction over a child-custody matter. In turn, the incidence of conflicting custody orders being issued by courts in different States should also decrease.

Under the UCCJEA, a court has home State jurisdiction if it is located in the child's home State (as of the date proceedings are

commenced) or if it is located in the State that was the child's home State within 6 months of the proceedings' commencement and the child's parent (or a person acting as his or her parent) continues to live in the State even after the child has been removed. This extended home State rule allows a left-behind parent to commence a custody proceeding within 6 months of a child's removal from the home State.

*Example.* A 2-year-old child, born and raised in Minnesota, is abducted by his mother before either parent has filed for custody. The boy and his mother move to Idaho. The left-behind father may file for an initial custody determination in Minnesota (which has home State jurisdiction) within 6 months of the child's removal. The child's absence from Minnesota does not deprive the State of jurisdiction. If the mother commences a custody proceeding in Idaho while Minnesota is the child's home State under the UCCJEA, the father can seek dismissal of the Idaho proceeding based on lack of jurisdiction. Assuming the notice requirements of section 108 are met, any order the father obtains in Minnesota is entitled to enforcement in Idaho.

### **Significant connection jurisdiction.**<sup>45</sup>

When a child has no home State or when a home State declines jurisdiction,<sup>46</sup> another State court may exercise jurisdiction if the child has sufficient ties to the State and substantial evidence concerning the child is available in the State. A child need not be physically present in a State for the State to exercise significant connection jurisdiction. More than one State may have jurisdiction on this basis, but only one State may exercise jurisdiction.<sup>47</sup> The statute resolves the conflict in favor of the first-filed proceeding. However, the courts are required to communicate, and the court in the State of the first-filed proceeding may defer to the court in the second State following judicial communication.<sup>48</sup>

*Example.* A father and his child go to visit the child's paternal grandparents in Colorado. The father is reminded of the beauty of the mountains and decides not to return to Iowa, where his marriage had been faltering and his job prospects have dimmed. The family had been living in Iowa for 4 years. Within 2 months of his arrival in Colorado, the father files for custody there on significant connection grounds. The Colorado court lacks jurisdiction and may not proceed to the merits

of the case unless Iowa, the child's home State, declines jurisdiction in favor of Colorado. However, if the mother does not commence a custody proceeding in Iowa within 6 months of the child's removal, Colorado becomes the child's home State and the Colorado court may then exercise jurisdiction and decide custody.

*Example.* A mother and father are high-tech professionals who have moved frequently during the previous several years to work for Internet companies. After 4 months in California, the father leaves the mother and their infant and returns to North Carolina, where the family had lived for 5 months preceding their move to California. The infant has been in daycare and has pediatricians and relatives in both States. The father's cross-country move prompts the couple to assess the viability of their marriage, and they decide to divorce. However, they cannot agree on custody, and the mother and father simultaneously commence separate custody proceedings in California and North Carolina. The parents have not lived in any State long enough for their child to have established a home State. Both California and North Carolina arguably have significant connection jurisdiction, but under the UCCJEA only one of them should exercise it. If a court learns from the required pleadings<sup>49</sup> that a proceeding has been commenced in a sister State, the court is required by the UCCJEA to stay its proceeding and communicate with the other court<sup>50</sup> to decide which proceeding should continue. If they cannot agree, the court with the first-filed case may move forward and the other court should dismiss its proceeding.

**More appropriate forum jurisdiction.** Under the UCCJEA, a third basis for initial jurisdiction exists when both the home State and significant connection State(s) decline jurisdiction in favor of another, more appropriate State on grounds of inconvenient forum or unjustifiable conduct.<sup>51</sup>

*Example.* The parents of a 10-year-old girl are separated but have not filed for custody. Pursuant to her parents' informal agreement, the girl remains with the father in the District of Columbia, where she goes to school. She spends the majority of her time with a housekeeper because her father is frequently out of town on business. The child spends one weekend a month in West Virginia with her mother. Because the mother works a night shift

involving frequent overtime, many of the girl's weekend visits are spent at the homes of friends in her mother's neighborhood. Both sets of the child's grandparents live in Maryland. The father plans to move to Maryland at the end of the school year so the child can go to her grandparents after school, and he has a contract to purchase a house in Maryland when the school year ends. However, before the move, the father becomes increasingly concerned about the mother's absence during the child's visits. He files for custody in Maryland. Based on these facts, it is conceivable that courts in the District of Columbia (the child's home State) and West Virginia (a significant connection State) might decline jurisdiction in favor of Maryland, the child's soon-to-be home State. A decision to decline jurisdiction is discretionary and fact dependent.

**Vacuum jurisdiction.** Similar to the UCCJA, the UCCJEA provides that 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 proceeding.<sup>52</sup> This provision would apply to situations in which children fail to remain in any State long enough to form attachments (e.g., homeless children, children of migrant workers or military personnel, or children sent from relative to relative for temporary care).

**Temporary emergency jurisdiction.** Under the UCCJEA, courts have temporary emergency jurisdiction when a child in the State has been abandoned or when emergency protection is necessary because a child—or a sibling or parent of the child—has been subjected to or is threatened with mistreatment or abuse.<sup>53</sup> The UCCJEA narrows the UCCJA's definition of "emergency" by excluding neglect cases—thus bringing it into conformity with the PKPA—while expanding the definition to cover emergencies that put a child's parent or sibling at risk, such as those covered by the VAWA.

Under the UCCJEA, courts may exercise emergency jurisdiction and make temporary orders even if a proceeding has been commenced in another State. Immediate judicial communication is mandatory to resolve the emergency, protect the safety of the parties and the child, and determine how long a temporary order should remain in effect.

Notice and opportunity to be heard must be given<sup>54</sup> for a temporary emergency order to be enforceable in other States pursuant to the UCCJEA and PKPA. At a minimum, both laws require that notice be provided to any parent whose parental rights have not been terminated and to any person with physical custody of the child. Temporary custody or visitation provisions in a protection order that was obtained *ex parte* (i.e., without notice) are unenforceable in sister States under the UCCJEA and the PKPA. These provisions, however, may be enforceable within the issuing State if domestic violence laws or other laws so provide.

The duration of a temporary emergency custody order depends on whether custody has been or is being litigated elsewhere. If there is no prior custody order that is enforceable under the UCCJEA and no proceeding has been commenced in a court with jurisdiction, the temporary emergency custody order becomes a final determination (if it so provides) when the issuing State becomes the child's home State (i.e., in 6 months). Notice must have been given in accordance with the UCCJEA. If a previous order exists and/or a custody proceeding has been commenced in a court with jurisdiction, the temporary emergency custody order must specify an adequate period within which the person seeking emergency relief may obtain a custody order from the other court. The temporary order remains in effect until a custody order is obtained from the other State (within the specified period) or the specified period expires.

*Example.* Following a fight with her husband, a battered wife takes the couple's child from their Texas home to Utah and seeks refuge at a domestic violence shelter. In Utah, the mother files for custody of the child on emergency jurisdiction grounds. She gives her husband the requisite notice, but in the interest of safety, asks the court not to disclose her address to him.<sup>55</sup> The child's father does not respond to the suit. The court in Utah grants the mother temporary custody, stipulating that the order will become permanent after 6 months if no proceeding is commenced in Texas, the child's home State. The father, however, commences a custody proceeding in Texas soon after receiving notice of the Utah action. The mother receives notice of the proceeding via her attorney, and she petitions the Texas court to decline jurisdiction in favor of Utah on inconvenient forum grounds.

The two courts communicate. The Texas court grants the mother's motion on finding that domestic violence has occurred and is likely to continue and that Utah can best protect the mother and child.<sup>56</sup> Following a hearing on the merits in the Utah court, the temporary Utah order is made permanent. The mother is granted custody, and the father is granted limited, supervised visitation.

## Modification Jurisdiction

The UCCJEA addresses courts' jurisdiction to modify existing child-custody or visitation determinations in two complementary sections: section 202 establishes rules of continuing jurisdiction in the decree-granting State, and section 203 governs when another State may modify an existing decree.

**Exclusive, continuing jurisdiction.** The UCCJEA adopted a rule of exclusive, continuing jurisdiction similar to that in the PKPA.<sup>57</sup> Under the UCCJEA, an original decree court that exercised jurisdiction consistent with the Act has exclusive, continuing jurisdiction to modify its decree until one of the following occurs:

- ◆ The original decree court loses significant connection jurisdiction.
- ◆ The child, the child's parents, and any person acting as the child's parent no longer live in the State.

Only the decree State may determine whether it has significant connection jurisdiction. That is, a sister State's court may not substitute its judgment on this issue for that of the decree State's court. By contrast, either State court may determine that all parties identified in the statute have left the State.

### Jurisdiction to modify determination.

If an original decree State has exclusive, continuing jurisdiction, no other State may modify the decree State's custody order—even if the child moves and establishes a new home State. (In such a scenario, the noncustodial parent usually remains in the original decree State.) 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.<sup>58</sup> These requirements are intended to eliminate the practice under the UCCJA in which a child's original home

State and new home State both assert modification jurisdiction, which is likely to result in conflicting custody orders and confusion as to which order takes precedence.<sup>59</sup> Conflicting orders have also caused many law enforcement officers to refuse help in enforcing an order because of uncertainty as to its validity.

*Example.* Following proceedings in Kansas (the child's home State), the child's father is granted custody. The mother moves to Oklahoma, where the child spends extended visits over summers and holidays. Two years later, when the child reaches school age, the mother refuses to return the child to Kansas at the end of the summer and enrolls the child in an elementary school in Oklahoma. She also files an action in Oklahoma to modify the Kansas order, seeking full custody of the child. The father challenges the Oklahoma court's jurisdiction and moves to dismiss the suit on grounds that Kansas has exclusive, continuing jurisdiction. He also seeks return of the child pursuant to the Kansas order. The father prevails based on the UCCJEA and the PKPA. Both statutes require enforcement of valid orders, and the validity of the Kansas order was uncontested. Oklahoma could not modify the Kansas order because Kansas had exclusive modification jurisdiction.

## Declining Jurisdiction

Under the UCCJEA, a court with initial jurisdiction; exclusive, continuing jurisdiction; or modification jurisdiction may decline to exercise jurisdiction on two grounds: inconvenient forum and unjustifiable conduct.

**Inconvenient forum.** Under section 207 of the UCCJEA, a court may, after taking into account specified factors, determine that another State is better able to decide custody. These factors include whether domestic violence has occurred and, if so, which State can best protect the parties and child; how long the child has lived out of State; where the evidence is located; and which court is most familiar with the case.

*Example.* In the Kansas-Oklahoma example described above, the mother could petition the Kansas court to decline jurisdiction on grounds of inconvenient forum. However, the decision would be at the court's discretion, and the fact that the mother wrongfully withheld the child in Oklahoma might weigh heavily in the court's decision.

**Unjustifiable conduct.** Subject to specific exceptions,<sup>60</sup> section 208 of the UCCJEA requires a court to decline jurisdiction if such jurisdiction was created by the unjustifiable conduct of the party bringing the action. Furthermore, the Act requires the court to assess the wrongdoer necessary and reasonable expenses<sup>61</sup> unless that party can prove that the assessment would be clearly inappropriate. Although the statute does not define "unjustifiable conduct," examples cited in the accompanying comment to section 208 include wrongful removal, retention, or concealment of a child.

Questions may arise as to how this section of the UCCJEA operates in domestic violence situations. The comment to section 208 explains that if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, that parent's case should not automatically be dismissed. Instead, an inquiry must be made into whether the flight was justified under the circumstances. The comment goes on to distinguish the case of an abusive parent who seizes a child and flees to another State to establish jurisdiction. In this case, he or she has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction.

*Example.* Without warning, a father snatches his son from a school bus stop in Arizona. He takes the child to Oregon and keeps their location hidden from the left-behind mother for 10 months. The boy's mother mistakenly believes that she cannot file for custody in Arizona (the child's home State) because the child is no longer physically present there. (Had she consulted a knowledgeable lawyer, she would have known that the child's absence from Arizona did not deprive the home State of jurisdiction as long as a custody action was commenced within 6 months of the boy's departure.) The father waits 16 months before filing for an initial custody order in Oregon and gives the mother notice of the proceeding. She promptly files a motion to dismiss on grounds that the father's conduct was unjustifiable. The court agrees, and it declines jurisdiction, dismisses the petition, and orders the father to pay the mother's attorney's fees and investigative costs. The mother then commences a custody action in an Arizona court, which exercises jurisdiction on significant connection grounds, the home State having declined its jurisdiction. The mother can

then seek enforcement of the Oregon order in Arizona, using any of the enforcement procedures in the UCCJEA or other procedures available in that State. The UCCJEA and the PKPA require Arizona to enforce the mother's order.

## Duty To Enforce Under the UCCJEA

The UCCJEA requires State courts to recognize and enforce child-custody determinations made in substantial conformity with the jurisdictional provisions of the Act or made under factual circumstances that meet the jurisdictional standards of the Act.<sup>62</sup> This basic duty to enforce is the same as that in the UCCJA; however, a custody order is enforceable under the UCCJEA only if the issuing court exercised jurisdiction in conformity with the UCCJEA.

In addition to establishing a duty to enforce sister States' custody and visitation orders, the UCCJEA creates five new interstate enforcement mechanisms. These mechanisms, each described in this section, supplement any other enforcement procedures available under State law.

**Registration of an out-of-State custody determination.** The UCCJEA creates a process for registering out-of-State custody and visitation orders.<sup>63</sup> Parents and other parties are not required to register a custody or visitation determination but may choose to do so for the following reasons:

- ◆ Registration puts the courts of a State on notice of an existing custody determination and of the issuing court's exclusive, continuing jurisdiction.
- ◆ Registration is a pretest of enforceability; that is, it can be used to obtain assurance that the custody determination will be enforced in the future.<sup>64</sup>
- ◆ Registration limits possible defenses to enforcement at a later date, which simplifies and expedites subsequent enforcement efforts.
- ◆ Uncontested registration may obviate the need for lawyers in a case, which would be a great benefit to parents who cannot afford counsel.
- ◆ A registered order is enforceable as if it were a local order as of the date of registration.

The process for registering out-of-State custody determinations is straightforward. A party sends a request for registration to a court in another State, along with copies of the child-custody determination and other required information. The court files the order as a foreign judgment and serves notice on the parent (or person acting as a parent) who has been awarded custody or visitation in the order. Persons who receive notice have 20 days to request a hearing to contest the validity of the order. If no such request is made, the order is confirmed as a matter of law and may be enforced as if it were a local order.

If the registration is contested, only three defenses are available:

- ◆ That the court making the custody determination lacked jurisdiction.
- ◆ That the person contesting registration was entitled to but did not receive notice of the underlying custody proceeding in accordance with the UCCJEA.
- ◆ That the child-custody determination has been vacated, stayed, or modified.

The UCCJEA's registration process differs from the UCCJA provision requiring clerks of court to maintain a registry for filing out-of-State decrees. The UCCJA's registry provision was omitted from the UCCJEA.<sup>65</sup>

**Temporary visitation orders.** Under the UCCJEA, courts may issue temporary orders to enforce visitation schedules in other States' court orders or visitation provisions of out-of-State orders that do not contain a specific schedule.<sup>66</sup> For instance, courts may order compensatory visitation time or give specific meaning to another State's award of "reasonable visitation."

Although this section gives judges the authority to issue temporary orders to facilitate visitation that might not otherwise occur, it does not confer modification jurisdiction to make wholesale changes to sister States' orders. Consistent with the UCCJEA and the PKPA, permanent changes to the underlying custody order may be made only by the court with modification jurisdiction, unless that State declines to exercise jurisdiction.

**Expedited enforcement of custody determinations.** Sections 308–310 of the UCCJEA create a new enforcement remedy, the object of which is the immediate recovery of a child.<sup>67</sup> It is fast and summary in nature. If there is a risk of serious

physical harm or abduction, this remedy may be used in concert with a warrant to take physical custody of a child (UCCJEA section 311, as discussed below).

The UCCJEA's expedited enforcement sections provide for an enforcement hearing, normally within 24 hours of service (i.e., on the next judicial day after service). If that date is impossible, the hearing must be held on the first judicial day possible. In other words, this is a priority proceeding on the fastest track available.

At the hearing, the respondent has limited defenses, the availability of which depends on whether the order has been registered. If so, the only available defense is that the order has since been vacated, stayed, or modified. If the custody order has not been registered, the respondent may assert the three defenses that could have been raised in a registration proceeding: (1) lack of jurisdiction in the issuing court; (2) the underlying custody order has been vacated, stayed, or modified; and (3) lack of notice.

At the conclusion of the hearing, unless the respondent has established a defense, the court must issue an order authorizing the petitioner to take immediate physical custody of the child. Pursuant to section 312, the court must also order the respondent to pay the petitioner's necessary and reasonable expenses<sup>68</sup> unless the respondent shows that such award would be clearly inappropriate. (If the respondent had prevailed, the court would assess the petitioner with costs and expenses because section 312 expressly provides for an award to the "prevailing party.") The return order may also include a directive for law enforcement assistance.

**Warrants to take physical custody of a child.** The UCCJEA also includes a procedure to ensure a child's safety and presence in the jurisdiction when notice of an enforcement proceeding might cause the recipient to harm or flee with the child.<sup>69</sup> On a finding that a "child is imminently likely to suffer serious physical harm or be removed from the State," section 311 specifically authorizes a court to issue a warrant directing law enforcement officers to take immediate physical custody of the child.

Warrants to take physical custody of a child (also known as "pickup" orders) are obtained under the UCCJEA in conjunction with an enforcement action. The petitioner files a verified application to obtain a warrant to take physical custody of the

child upon filing an enforcement action. The court must take testimony from the petitioner or another witness. The testimony may be taken by phone, in person, or by any other means allowed under local law. If the court finds that the child is imminently likely to suffer serious physical harm or be removed from the State, the court may issue a warrant to take physical custody of the child. The warrant must direct law enforcement officers to pick up the child immediately, and it must provide for the child's placement pending the enforcement hearing. The respondent must be served with the petition, warrant, and order immediately after the warrant is executed (i.e., after the child is picked up), and the enforcement petition must be heard on the next judicial day unless that date is impossible.

This remedy may be especially helpful in preventing international abductions. The ICARA contemplates that courts hearing Hague Convention cases may take measures under State and Federal law to protect the well-being of a child or to prevent further removal or concealment before final disposition of the petition. Section 311 of the UCCJEA provides the authority to do so.

**Public enforcement provisions.** Sections 315–317 of the UCCJEA provide a mechanism for enforcing custody and visitation orders<sup>70</sup> that is modeled on a system that has functioned remarkably well in California for more than 20 years with wide support from the criminal justice community. (See “The Role of Prosecutors and Law Enforcement in Civil Custody Enforcement: California’s Experience,” page 10.)

State legislatures may designate any public officials they deem appropriate to implement sections 315 and 316. Although most States will select prosecutors and law enforcement, legislatures may designate other public officials, such as a “Friend of the Court.” California’s experience exemplifies the advantages of allowing district attorneys, criminal investigators, and other law enforcement officers to play an active part in civil enforcement of custody determinations. The following explanation of sections 315–317 assumes that State legislatures have designated prosecutors and law enforcement officers to exercise the new discretionary powers.

Section 315(a) of the UCCJEA gives prosecutors statutory authority to take any lawful action—including instituting a proceeding under article 3 or any other available

civil proceeding—to locate a child, facilitate a child’s return, or enforce a child-custody determination. Any actions taken by the prosecutor are done on behalf of the court. The prosecutor does not represent any party.

The prosecutor may act if one of the following exists:

- ◆ A prior custody determination.
- ◆ A request from a court in a pending child-custody proceeding.
- ◆ A reasonable belief that a criminal statute has been violated.
- ◆ A reasonable belief that a child has been wrongfully removed or retained in violation of the Hague Convention.

Under section 315, prosecutors may request the assistance of law enforcement officers, and section 316 expressly authorizes them to respond to such a request.<sup>71</sup> Under section 317, prosecutors and law enforcement agencies may recover their direct costs and expenses from a non-prevailing party.

The authority granted under these sections is discretionary, meaning that prosecutors may elect to use their new civil authority to resolve custody and visitation interference cases but are not required to do so. For example, a prosecutor may opt for civil remedies under the UCCJEA when this approach would best serve the child and family. Compared with criminal proceedings, civil proceedings tend to be less traumatic for children. In all cases, prosecutors may choose, under State criminal law, to prosecute the perpetrator-parent if prosecution is in the interest of justice. Civil and criminal remedies may be pursued simultaneously in some circumstances. In short, the UCCJEA adds civil remedies to the tools prosecutors already have under criminal statutes but allows prosecutors to choose how to proceed in parental kidnapping cases.

Sections 315–317 offer potential advantages to prosecutors, children, and parents. Specifically, the provisions may:

- ◆ Deter abductions and encourage citizens to respect the terms of court orders.
- ◆ Deter self-help recoveries (“reabductions”), which can be harmful to children and may have civil or criminal consequences for parents.
- ◆ Create an interstate network of reciprocal assistance to resolve custodial

interference cases. This network should result in faster resolution of many interstate custody and visitation disputes, thereby sparing children the trauma of protracted custody litigation, reducing litigation costs for parents, and limiting more costly prosecutions by allowing prosecutors to pursue civil remedies.

- ◆ Give prosecutors the authority to assist with civil enforcement, thereby providing custodial parents of limited financial ability lawful means by which to secure return of their children.
- ◆ Involve public authorities in handling international child-custody and visitation disputes under the Hague Convention. Their involvement should improve the United States’ standing with treaty partners—many of whom now provide free legal assistance to U.S. citizens seeking return of their children from abroad—and may foster the return of more children who have been abducted from this country.
- ◆ Give the criminal justice community the option of using civil remedies in interstate and international custody and abduction cases, while leaving the door open to prosecute the abducting parent when circumstances warrant. This leeway should facilitate resolution of these difficult cases in the best interests of children and society.

## Conclusion

This Bulletin has highlighted the many ways in which nationwide enactment of the UCCJEA would improve interstate child-custody practice. To recap a few, the UCCJEA adopts the PKPA’s priority for home State jurisdiction in initial custody cases and codifies the principle of exclusive, continuing jurisdiction. These provisions will clarify where child-custody proceedings should be brought and substantially reduce the number of competing custody proceedings in sister States. The UCCJEA also includes the following innovative enforcement mechanisms: the expedited enforcement procedure, the warrant to take physical custody of a child, and the public officials sections of the Act, all of which should result in swifter, more streamlined, and more predictable interstate enforcement of custody and visitation orders. The UCCJEA’s new interstate jurisdictional rules and procedures reflect sensitivity to the safety needs of parents and children who are the victims of domestic violence.

## The Role of Prosecutors and Law Enforcement in Civil Custody Enforcement: California's Experience

District attorneys and law enforcement officers in California have had the statutory authority to intervene in civil child custody enforcement cases for more than 20 years. The UCCJEA's "public officials" provisions are modeled on California law. Although California's enactment of the UCCJEA has changed some enforcement practices,<sup>1</sup> it is useful to examine the extensive pre-UCCJEA experience of California's prosecutors and law enforcement officers in these cases.

A California prosecutor seeking to recover a child being wrongfully kept in another State (in violation of a custody determination) may evaluate the case to determine whether to initially proceed criminally or civilly. The prosecutor will consider several factors in determining his or her approach. Factors affecting the decision include the following:

- ◆ Facts surrounding the abduction.
- ◆ Evidence that the child is in danger.
- ◆ The child's age.
- ◆ Date the child was initially taken.
- ◆ The likelihood that the child will be removed from the country.
- ◆ Concealment of the child.
- ◆ Allegations or evidence of domestic violence or child abuse.
- ◆ The criminal history of both parties.
- ◆ The probability of recovering the child without pressing criminal charges against the abductor.
- ◆ The assistance available from the other State without pressing criminal charges.

<sup>1</sup> One of the most important changes since enactment of the UCCJEA is the increase in interstate judicial communication to address jurisdictional and enforcement issues.

- ◆ The likelihood of flight.
- ◆ The health and welfare of the child.

Although the prosecutor may initially choose a civil approach, he or she retains the discretion to proceed criminally against the abductor if the facts and circumstances warrant (e.g., where facts are uncovered that indicate that the child may be endangered or abused).

Under civil enforcement, once the abducting parent and the child are located, the district attorney may contact the abducting parent by telephone, explain the law, and request a voluntary return. If the abducting parent refuses to cooperate or if such contact may trigger flight and concealment of the child, the district attorney will secure an order from the California court directing the district attorney to recover the child. This order gives the district attorney temporary custody of the child for the purpose of the child's recovery and designates temporary placement of the child. (The court may order the child placed with the left-behind parent, in foster care, or otherwise, depending on the facts and circumstances of the case.) The district attorney (or criminal investigator working with the district attorney) then contacts the law enforcement agency and the court in the jurisdiction where the child is located to arrange for pickup of the child (and to inquire about a UCCJEA enforcement proceeding, if applicable). The district attorney ascertains the procedures and requirements of the law enforcement agency and the court regarding enforcement practices and any other pertinent issues, such as arrangements for overnight shelter and care.

If the law enforcement agency is cooperative, pickup of the child generally goes smoothly. If a court hearing is required, the presence and/or testimony of the district attorney's investigator may be sufficient for the court to order the return of the child with the investigator. If the local law enforcement agency is not cooperative or if an enforcement action is required, the district attorney may retain a

lawyer (at State expense) to bring the action under local law.

In predecree abduction cases (i.e., when there is no custody determination at the time of the abduction), the district attorney usually requires the left-behind parent to initiate a custody proceeding. However, the district attorney can file the appropriate initial pleading in certain cases.

In cooperation with the California State Attorney General, California district attorneys also play an important role in international child abduction cases involving the Hague Convention. When a child is abducted to California from a Hague Convention country, the district attorney may seek the voluntary return of the child or pursue a court action under the Convention for the return of the child. When a child is abducted from California to a Hague Convention country, the district attorney is involved in locating the child and may file an application with the U.S. Department of State or directly with the foreign Central Authority under the Hague Convention seeking the child's return.

Based on California's experience, the cost of using prosecutors and law enforcement in the civil enforcement of custody matters should be modest. Using civil remedies to resolve custodial interference cases typically costs less than prosecuting wrongdoer parents. In 1989, the California Controller's Office paid counties \$3.3 million for their work in 5,890 cases statewide. The 1991-92 budget was also \$3.3 million, but prosecutors assisted in almost 8,000 cases of civil custody enforcement and recovered 3,000 abducted children. The volume of cases has grown since then, with corresponding increases in State spending, as more counties have become involved in civil custody enforcement. Other States can expect to spend less than California because California, the most populous State, probably has the highest volume of custodial interference cases in the country.

Readers interested in promoting enactment of the UCCJEA in their State should contact the Governor's office and members of the Judiciary Committees in their State legislature to request action on the legislation. Legislative packets and copies of the

law may be obtained from NCCUSL. (Contact information for NCCUSL appears in the "For Further Information" section.)

Once the UCCJEA is enacted, its success will depend on lawyers using it wisely,

courts interpreting it uniformly, and public officials using the law's new tools effectively to minimize the harmful effects children endure when they are pawns in interjurisdictional custody battles.

## A Prosecutor's Perspective

As a general proposition, California's prosecutors and law enforcement officers are very supportive of the dual civil/criminal approach to custodial interference cases. In 1992, when the State was making programmatic cuts to reduce its deficit, strong statewide support from the criminal justice community fended off an effort to cut a program that implemented this approach. A district attorney with expertise in child abduction cases sums up why the program was well received by California's criminal justice community and why the UCCJEA should be supported:<sup>1</sup>

As a prosecutor assigned to the Child Abduction Unit of the Santa Clara County D.A.'s Office for the past 6 years, I can personally attest to the incalculable value of the availability of civil, as well as criminal, enforcement tools in resolving interstate child abduction cases. This office alone has recovered approximately 1,777 children in the last 10 years. The ability to act in a civil context has been an important factor in recovery of these children. In the majority of the custody and visitation disputes I have handled, resolving the issues without criminal proceedings has clearly served the best interests of the children involved. Other states do not have the same ability to serve and recover their children. The most effective deterrent to child abduction in this country would be the nationwide network of law enforcement and prosecutors this bill [the UCCJEA] would create.

<sup>1</sup> J.M. Heim, Deputy District Attorney, Child Abduction Unit, Santa Clara County, CA, personal communication, March 1996, to Justice Marian Opala, Chair, UCCJEA Drafting Committee, in support of the prosecutor/law enforcement sections of the UCCJEA.

## For Further Information

For additional information on the UCCJEA, readers may contact the organizations listed and described below. Brief descriptions of selected publications available from each organization are also provided.

### Organizations

#### American Bar Association (ABA)

##### Center on Children and the Law

740 15th Street NW., Ninth Floor  
Washington, DC 20005-1009  
202-662-1720  
202-662-1755 (fax)  
ctrchildlaw@abanet.org  
www.abanet.org/child

The ABA Center on Children and the Law concentrates on legal issues that directly affect children. The Center's Obstacles to the Recovery and Return of Parentally Abducted Children Project, funded by OJJDP and directed by Linda Girdner, Ph.D., documented problems that parents face when children are abducted interstate and internationally. Among the many recommendations contained in the original Obstacles Project's final report was the need for streamlined, uniform procedures to expedite interstate enforcement of custody and visitation orders. In furtherance of that goal, the Obstacles Project's Legal Director, Patricia M. Hoff, J.D., served as an advisor to the UCCJEA

drafting committee. Although the Center currently has no ongoing projects related to parental kidnapping, its Web site includes an extensive collection of literature about parental kidnapping and links to other resources.

#### American Bar Association (ABA) Section of Family Law

750 North Lake Shore Drive  
Chicago, IL 60611-4497  
Attn: Jeff Atkinson, ABA advisor to the  
UCCJEA drafting committee  
312-988-5000  
www.abanet.org/family/home.html

The ABA is the largest voluntary association of lawyers in the United States, and its Section of Family Law is devoted to stabilizing and preserving the family. The spring 1998 issue of *Family Law Quarterly*, one of the section's two publications, focused on two uniform laws that affect children and families: the UCCJEA and the Uniform Interstate Family Support Act. The ABA advisor to the UCCJEA drafting committee, Jeff Atkinson, is an active member of the Section of Family Law.

#### National Center for Missing and Exploited Children (NCMEC)

Charles B. Wang International Children's  
Building  
699 Prince Street  
Alexandria, VA 22314-3175  
800-843-5678

703-274-2220 (fax)  
77431.177@Compuserve.com  
www.missingkids.com

NCMEC is a private, nonprofit clearinghouse that was established in 1984 and operates under a congressional mandate. A resource center for child protection, NCMEC collects and distributes information on missing and exploited children and operates a national toll-free hotline, 800-THE-LOST (800-843-5678), for individuals to report missing children or request information. NCMEC assists families and can be of tremendous help to law enforcement in case management, case tracking, lead and information analysis, and coordination of responses across jurisdictional lines.

#### National Center for Prosecution of Child Abuse (NCPA)

99 Canal Center Plaza, Suite 510  
Alexandria, VA 22314  
703-739-0321  
703-549-6259 (fax)  
www.ndaa-apri.org/apri/NCPA/Index.html

The National Center for Prosecution of Child Abuse recognizes child abuse as a crime for which perpetrators must be held accountable. Because no area of criminal justice has changed so rapidly in the past 15 years, the need for professional specialization is especially great. Committed to excellence in training, technical assistance, and publications, the National Center for Prosecution of Child Abuse is meeting that need. In cooperation with prosecutors and other child abuse professionals in the United States and internationally, the Center demonstrates concern for a particularly vulnerable group of crime victims based on the premise that children are entitled to equal treatment under the law.

#### National Conference of Commissioners on Uniform State Laws (NCCUSL)

211 East Ontario Street, Suite 1300  
Chicago, IL 60611  
312-915-0195  
312-915-0187 (fax)  
www.nccusl.org

For more than 100 years, NCCUSL has promoted uniformity in State law and interstate cooperation by developing uniform acts and endeavoring to secure their enactment by the voluntary action of each State government. The conference includes commissioners from each State, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Drafting committees made up of

commissioners are appointed to draft specific acts, and advisors and observers often participate in the drafting process. A draft uniform act must be read, section by section, at no fewer than two annual meetings before a decision is made, by vote of States, to promulgate the act as a Uniform Act.

NCCUSL approved the UCCJEA in 1997. Copies of the law are available from NCCUSL's Chicago address and may be downloaded from the NCCUSL Web site ([www.nccusl.org](http://www.nccusl.org)).

**Office of Juvenile Justice and  
Delinquency Prevention (OJJDP)  
Child Protection Division (CPD)**

810 Seventh Street NW.  
Washington, DC 20531  
202-616-3637  
202-353-9093 (fax)  
[www.ojjdp.ncjrs.org](http://www.ojjdp.ncjrs.org)

OJJDP's Child Protection Division administers programs related to crimes against children and provides leadership and funding in the areas of enforcement, intervention, and prevention. CPD promotes effective policies and procedures to address the problems of abused, neglected, missing, and exploited children. Activities include conducting research, providing training and technical assistance, and supporting demonstration and service programs related to child victimization. CPD also supports the National Center for Missing and Exploited Children (see above), a clearinghouse and resource center that collects and distributes data regarding missing and exploited children and operates a national toll-free hotline (800-843-5678).

## Publications

**ABA Center on Children and the Law.** The following documents are available from the Center (see Issues/Parental Kidnapping on its Web site).

*Hague Child Abduction Convention Issue Briefs.* This 1997 material consists of four issue briefs that can help attorneys handle cases that fall under the Hague Convention on the Civil Aspects of International Child Abduction.

*The Hague Convention: A Curriculum for American Judges and Lawyers.* This 1997 publication explains how the Hague Convention can be used effectively within the United States in international parental kidnapping cases.

*Parental Kidnapping: Prevention and Remedies.* This paper is designed to help attorneys better understand parental abduction cases and applicable laws. It includes practical tips on protections that can be placed in child custody orders that may help prevent an abduction, tips that lawyers can give their parent clients, a review of possible legal actions that can be taken on parents' behalf, and governmental resources that can be used to help in these cases.

*Parental Kidnapping Law Reform Package* (consists of three proposed State laws: Parental Kidnapping Crime Act, Missing Children Record Flagging Act, and Tortious Interference With Child Custody and Visitation Act). This package, produced in 1996, contains three proposed State laws related to parental abduction that can be adopted by State legislatures.

**ABA Section of Family Law.** The following document is available from the Section (see Publications on its Web site).

*International Child Abductions: A Guide to Applying the 1988 Hague Convention, With Forms, Second Edition.* This guide provides all the basic information needed to invoke and apply the Hague Convention and the forms necessary for its use.

**NCMEC.** The following documents are available from NCMEC (see Education & Resources on its Web site or call 800-843-5678).

*Family Abduction.* This handbook guides parents through the civil and criminal justice systems, explains the laws that will help them, outlines prevention methods, and provides suggestions for aftercare following the abduction. It thoroughly details search and recovery strategies and contains advice for attorneys, prosecutors, and family court judges handling these cases.

*International Forum on Parental Child Abduction: Hague Convention Action Agenda.* This report details the findings of a forum held in September 1998 to study the Hague Convention on the Civil Aspects of International Child Abduction. It offers 12 action/agenda items to help strengthen the implementation of the Hague Convention.

*"The Kid Is With a Parent, How Bad Can It Be?": The Crisis of Family Abductions.* This issue brief discusses the seriousness of the problem of family abduction, considers whether the problem is growing, and

examines the challenges and opportunities this crime poses to policymakers.

*Missing and Abducted Children: A Law-Enforcement Guide to Case Investigation and Program Management.* This guide, authored by a team of 38 professionals from local, State, and Federal agencies, outlines a standard of practice for law enforcement officers handling several types of missing child cases, including runaways, throwaways, family/nonfamily abductions, and disappearances in which the circumstances are unknown.

*When Your Child Is Missing: A Family Survival Guide.* Also available from OJJDP; see page 13 for description.

**NCPCA.** The following documents are available from NCPCA (see Publications on its Web site).

*Charging the Parental Kidnapping Case.* This monograph assists prosecutors in determining appropriate charges and sentencing recommendations. It notes that an aggressive investigative and prosecutorial approach sends the message that parental kidnapping is a serious crime with serious consequences for both victims and abductors and recommends that prosecution be seriously considered in every parental kidnapping case.

*Investigation and Prosecution of Parental Abduction, 2000* (Training Conference Notebook). This notebook contains training materials compiled for the 2000 NCPCA Conference, Investigation and Prosecution of Parental Abduction.

*Parental Kidnapping, Domestic Violence and Child Abuse: Changing Legal Responses to Related Violence.* This monograph assists investigators and prosecutors in developing appropriate responses to the inter-related crimes of parental kidnapping, domestic violence, and child abuse.

**NCCUSL.** Copies of acts, drafts, and legislation are available from NCCUSL (see NCCUSL Acts, Drafts & Legislation on its Web site).

**OJJDP.** The following documents are available from OJJDP (see Publications on its Web site or call the Juvenile Justice Clearinghouse at 800-638-8736) or from the National Criminal Justice Reference Service (visit [www.ncjrs.org](http://www.ncjrs.org) or call 800-851-3420).

*Addressing Confidentiality of Records in Searches for Missing Children* (NCJ 155183). This Report makes recommendations

concerning law enforcement agencies' access to records maintained by schools, hospitals, child welfare agencies, domestic violence shelters, and runaway shelters. The Report also covers information release procedures and includes a checklist for maximizing record access from service providers. The Report's appendixes contain additional information and other relevant statistical data on the confidentiality of records in searches for missing children, jurisdictions that allow record access or impose reporting requirements in missing children cases, and State laws affecting record access.

*The Criminal Justice System's Response to Parental Abduction* (NCJ 186160). This Bulletin summarizes primary findings from a study of the criminal justice system's response to parental abduction. Funded by OJJDP and conducted jointly by the American Bar Association Center on Children and the Law and Westat, the study examined all aspects of the system's response, including the reporting of the incident, investigation of the case, location and recovery of the child, and criminal prosecution of the abductor. The Bulletin reports results from the study's national survey of law enforcement agencies and prosecutors, site visits, and case file reviews and presents implications for legal, programmatic, and policy reforms.

*Early Identification of Risk Factors for Parental Abduction* (NCJ 185026). This Bulletin presents the design and findings of four OJJDP-funded projects on preventing family abductions: a documentary study, a criminal sanctions study, an interview study, and an intervention study. The findings provide information regarding the risk factors associated with parental kidnapping and strategies that can be used to intervene with at-risk families.

*Family Abductors: Descriptive Profiles and Preventive Interventions* (NCJ 182788). This Bulletin describes preventive interventions, such as counseling, conflict resolution, and legal strategies, that seek to settle custody and access disputes for families identified as at risk for parental abduction.

*A Family Resource Guide on International Parental Kidnapping* (NCJ 190448). This guide presents practical and detailed advice about preventing international kidnapping and increasing the chance that children who are kidnapped or wrongfully retained will be returned. It provides descriptions and realistic assessments of

the civil and criminal remedies available in international parental kidnapping cases, explains applicable laws and identifies both the public and private resources that may be called upon when an international abduction occurs or is threatened, and prepares parents for the legal and emotional difficulties they may experience.

*International Parental Kidnapping: A Law Enforcement Guide* (forthcoming). This guide provides practical information on the public and private resources and services that are available to assist law enforcement in international parental abduction cases. It explains applicable laws, defines agency roles and responsibilities, describes criminal and civil remedies, examines methods for prevention and interception, and discusses important issues and procedures to be addressed during an international parental abduction case.

*Issues in Resolving Cases of International Child Abduction* (NCJ 182790). This Report documents a lack of uniformity in the application of the Hague Convention across countries. It includes case histories, survey findings on left-behind parents, selected practices in international family abduction cases, and recommendations for the judicial and legal systems.

*Issues in Resolving Cases of International Child Abduction by Parents* (NCJ 190105). This Bulletin provides an overview of the major survey findings, selected good practices, and recommendations from the Report *Issues in Resolving Cases of International Child Abduction* (see previous entry).

*Obstacles to the Recovery and Return of Parentally Abducted Children* (Report: NCJ 144535; Research Summary: NCJ 143458). These publications present the results of a 2-year study of the legal, policy, procedural, and practical obstacles to the location, recovery, and return of parentally abducted children. They include recommendations to overcome each obstacle and extensive appendixes that describe the pros and cons of existing legal procedures for enforcing a custody order, sample forms to be used with existing legal procedures, and summaries of both civil and criminal appellate decisions.

*Parental Abduction: A Review of the Literature* (Available online only: [ojjdp.ncjrs.org/pubs/missing.html#186160](http://ojjdp.ncjrs.org/pubs/missing.html#186160)). This online resource summarizes current research and literature relating to the

primary issues involved in parental abduction.

*Prevention of Parent or Family Abduction Through Early Identification of Risk Factors* (NCJ 182791). Based on analyses of data from several California studies related to child abductions by a noncustodial parent, this Report outlines a set of characteristics of parents who abduct their children and presents indepth socio-demographic and legal information about the families of abducted children.

*Using Agency Records To Find Missing Children: A Guide for Law Enforcement* (NCJ 154633). This Summary focuses on procedures for obtaining and using the records of certain types of human service providers to find missing children. It examines the use of, access to, barriers to securing, and limitations of records from schools, medical care providers, runaway shelters, and domestic violence shelters.

*When Your Child Is Missing: A Family Survival Guide* (NCJ 170022; Spanish version: NCJ 178902). This guide, written by parents and family members who have experienced the disappearance of a child, explains how parents can best participate in the search for a missing child. It discusses the parents' relationship with law enforcement, examines issues related to the media, and presents practical information about distributing fliers and photos, organizing volunteers, and managing monetary donations.

## Bibliography

- Gonzalez, R.M., Tumonis, E.F., and Dunham, R. 1998. *Attorney General Child Abduction Reference Manual*. Sacramento, CA: State of California Department of Justice, Office of the Attorney General.
- Hoff, P.M. 1998. The ABC's of the UCCJEA: Interstate child-custody practice under the new act. *Family Law Quarterly* 32(2): 267-299.
- Spector, R.G. 1998. Uniform Child-Custody Jurisdiction and Enforcement Act (with Prefatory Note and Comments). *Family Law Quarterly* 32(2):301-384.

## Endnotes

1. Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999). The text is accessible online at [www.nccusl.org](http://www.nccusl.org).
2. Uniform Child Custody Jurisdiction Act, 9(1A) U.L.A. 271 (1999).

3. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Georgia, Idaho, Iowa, Kansas, Maine, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia.

4. Florida, Hawaii, Illinois, Indiana, Maryland, Mississippi, Missouri, New Jersey, New York, and Rhode Island.

5. The terms “child-custody determination,” “custody determination,” and “order,” as used in this Bulletin, refer to custody determinations and visitation determinations.

6. Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A.

7. Violence Against Women Act of 1994; Violence Against Women Act of 2000, 18 U.S.C. §§ 2265, 2266.

8. The complete text of the Hague Convention can be found at 51 Fed. Reg. 10,494 *et seq.* (1986) or online via the U.S. Department of State’s Web site at [www.travel.state.gov](http://www.travel.state.gov), under “International Parental Child Abduction.”

9. International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*

10. Uniform Child Custody Jurisdiction Act, Prefatory Note. The Full Faith and Credit clause requires that full faith and credit “be given in each state to the public acts, records, and judicial proceedings of every other state” (U.S. Constitution, article IV, § 1).

11. *Id.*

12. Girdner, L.K., and Hoff, P.M., eds. 1993. *Final Report: Obstacles to the Recovery and Return of Parentally Abducted Children*. Washington, DC: American Bar Association Center on Children and the Law (hereinafter *Obstacles Project Final Report*). The *Obstacles Project Final Report* was considered by the UCCJEA drafting committee, and numerous recommendations from the report are reflected in the uniform act. In addition to suggesting amendments to the UCCJA and the PKPA, the *Obstacles Project Final Report* proposed an original “Act To Expedite Enforcement of Child Custody Determinations.” The purpose of the statute was to alleviate the shortcomings and lack of uniformity in then-existing procedures for enforcing child-custody and visitation orders that had frustrated many parents trying to exercise their lawful court-ordered rights. Article 3 of the UCCJEA incorporates many ideas from the proposed statute.

13. 28 U.S.C. § 1738A, “Full Faith and Credit Given to Child Custody Determinations.”

14. 28 U.S.C. § 1738A(d). This section establishes the principle of “exclusive, continuing jurisdiction.”

15. 28 U.S.C. § 1738A(g). This section prohibits simultaneous proceedings.

16. 28 U.S.C. § 1738A(e).

17. Like the UCCJA, the PKPA defines “home State” as the State in which a child has lived with a parent or person acting as a parent for at least 6 months preceding the commencement of a child-custody proceeding.

18. See endnote 12, *supra*.

19. See endnotes 6–9, *supra*.

20. 18 U.S.C. § 2266. The VAWA’s definition of “protection order” expressly excludes child-custody orders issued pursuant to State child-custody laws (except to the extent that they are entitled to Full Faith and Credit under Federal law).

21. As of July 2001, the Hague Convention was in force between the United States and 49 countries. For a complete list of countries that are party to the Convention, see the U.S. Department of State’s Web site ([www.travel.state.gov](http://www.travel.state.gov)) or the Hague Conference on Private International Law’s Web site ([www.hcch.net](http://www.hcch.net)).

22. The Hague Convention, ratified in 1986, took effect in the United States in 1988 following enactment of the International Child Abduction Remedies Act.

23. UCCJA, section 1 (Purposes of Act; Construction of Provisions). The UCCJEA omitted a “purposes” clause for stylistic reasons: NCCUSL no longer includes clauses of this type in its uniform acts. The official comments note, however, that many of the original purposes of the UCCJA remain valid.

24. *In re Michelle Lemond*, 413 N.E.2d 228 (Ind. 1980). An extraordinary judicial panel—consisting of the Supreme Court of Indiana; the Court of Appeals of Indiana, First District; and the Chief Judge of the Court of Appeals—held two judges, a private attorney, and a county prosecutor in indirect criminal contempt for willfully and intentionally disobeying orders of the State Supreme Court and the mandate of the Court of Appeals in an interstate custody enforcement case brought pursuant to the UCCJA. Each judge and lawyer was fined \$500 and charged with costs. The contempt proceeding stemmed from a custody dispute between a mother in

Hawaii and her ex-husband, who retained custody of their daughter in Indiana. Proceeding in accordance with the UCCJA, the mother sought to enforce the Hawaiian court order in Indiana. The father resisted at every level of the State’s courts.

After 3 years of litigation, the mother finally prevailed; the father had exhausted his remedies in the State courts, and it was expected that the orders of the State Supreme Court and the Court of Appeals would be honored and the child returned to her mother. However, the father’s counsel staged an 11th hour attempt to shield his client from the orders of Indiana’s highest courts by initiating the filing of a CHINS (Child In Need of Services) petition by the county prosecutor in juvenile court. The juvenile court issued the CHINS petition minutes before the Circuit Court’s issuance of a writ of *habeas corpus* ordering the return of the child to her mother. However, the Circuit Judge assisted the father’s efforts by ordering that the writ not be executed for 4 hours and then disqualifying himself from hearing the CHINS petition. A new judge was named to hear the CHINS petition, and it was this judge who found the daughter in need of services and ordered that she be detained for a mental examination.

Characterizing the sole legal issue in the contempt proceeding as whether the juvenile court’s jurisdiction was properly invoked, the courts in this case held that they would “not tolerate the attempted use of emergency jurisdiction to reopen a fully litigated and decided custody battle” (413 N.E.2d at 245). The courts “became convinced that [the CHINS hearing] was not a good faith effort to help a child in need of services. Rather, it was a well-orchestrated effort to thwart the orders of these Courts by prostituting the emergency authority of a juvenile court” (*id.* at 238). The juvenile court judge should have recognized the CHINS petition for what it was: “nothing more than a pretense for the judge assuming jurisdiction,” a sham designed to avoid the force and effect of the writ (*id.* at 242).

25. 716 P.2d 991 (Cal. 1986), *rev’d*, 484 U.S. 400, 107 S. Ct. 2433 (1987).

26. UCCJEA, section 102(4) (definition of “child-custody proceeding”).

27. UCCJEA, section 201 (Initial Child-Custody Jurisdiction).

28. UCCJEA, section 202 (Exclusive, Continuing Jurisdiction). See also UCCJEA,

section 102(13), which defines a “person acting as a parent” as “a person, other than a parent, who: (A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and (B) has been awarded legal custody by a court or claims a right to legal custody under the law of this State.”

29. UCCJEA, section 204 (Temporary Emergency Jurisdiction).

30. UCCJEA, section 207 (Inconvenient Forum).

31. UCCJEA, section 208 (Jurisdiction Declined by Reason of Conduct).

32. UCCJEA, section 304 (Temporary Visitation).

33. UCCJEA, section 305 (Registration of Child-Custody Determination).

34. UCCJEA, sections 308–310 (Expedited Enforcement of Child-Custody Determination; Service of Petition and Order; Hearing and Order).

35. UCCJEA, section 311 (Warrant To Take Physical Custody of Child).

36. UCCJEA, sections 315–317 (Role of [Prosecutor or Public Official]; Role of [Law Enforcement]; Costs and Expenses). In States that enact these sections, prosecutors (or other designated public officials) and law enforcement officers are able to use the procedures to locate children, return them to the jurisdiction of the court, and enforce custody determinations.

37. UCCJEA, section 102(4) (definition of “child-custody proceeding”).

38. UCCJEA, section 102(3)(d). See comment to UCCJEA, section 102: “By excluding proceedings involving monetary obligations, this Act continues the notion of divided jurisdiction. A court may well have jurisdiction to dissolve the marriage or to make an order for child support without having jurisdiction to make a custody determination. For a recent case, see *Stevens v. Stevens*, 682 N.E.2d 1309 (Ind. Ct. App. 1997).”

39. UCCJEA, section 103 (Proceedings Governed by Other Law).

40. UCCJEA, section 102(3). Temporary orders are expressly included in the UCCJEA’s definition of “child-custody determination.” This definition is consistent with the PKPA definition and clarifies an ambiguity in section 2(2) of the UCCJA.

41. UCCJEA, section 105 (International Application of [Act]).

42. 51 Fed. Reg. 10,510.

43. UCCJEA, section 104 (Application to Indian Tribes).

44. UCCJEA, section 201(c). Personal jurisdiction over a party or a child is neither necessary nor sufficient to make a custody determination.

45. See UCCJEA, section 201(a)(2)(A) and (B), which provide that significant connection jurisdiction exists when “(A) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and (B) substantial evidence is available in this State concerning the child’s care, protection, training, and personal relationships; . . . .”

46. Under the UCCJEA, a court with jurisdiction may decline to exercise it if another State is a more convenient forum (section 207) or the petitioner has engaged in unjustifiable conduct (section 208).

47. UCCJEA, section 206 (Simultaneous Proceedings), part (a).

48. UCCJEA, section 206 (Simultaneous Proceedings), part (b); section 110 (Communication Between Courts).

49. UCCJEA, section 209 (Information To Be Submitted to Court).

50. UCCJEA, section 206 (Simultaneous Proceedings), part (b).

51. UCCJEA, section 201(a)(3).

52. UCCJEA, section 201(a)(4).

53. UCCJEA, section 204.

54. UCCJEA, section 205(a), and PKPA, 28 U.S.C. § 1738A(e).

55. UCCJEA, sections 209(a) and (e) protect against disclosure of addresses and other identifying information in the pleadings when disclosure would jeopardize a

child’s or a party’s health, safety, or liberty. If a State has adequate protections in existing law, it may reference them in section (a) and delete section (e).

56. UCCJEA, section 207(b)(1).

57. UCCJEA, section 202 (Exclusive, Continuing Jurisdiction).

58. UCCJEA, section 203 (Jurisdiction To Modify Determination).

59. The UCCJA prohibition against simultaneous proceedings was designed to prevent this situation, but courts in two or more States often proceed with their custody actions and issue conflicting orders notwithstanding the statutory prohibition.

60. UCCJEA, section 208(a)(1), (2), (3).

61. UCCJEA, section 208(c). Necessary and reasonable expenses include costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and childcare expenses during the course of the proceedings.

62. UCCJEA, section 303 (Duty To Enforce).

63. See endnote 33, *supra*.

64. See comment to UCCJEA, section 305, which gives as an example a foreign parent seeking an advance determination of whether a foreign custody order will be recognized and enforced before sending a child to the United States for visitation.

65. This author favors retaining a child-custody registry provision in State enactments of the UCCJEA. For a detailed discussion of this issue, see Hoff, 1998.

66. See endnote 32, *supra*.

67. See endnote 34, *supra*.

68. Recoverable costs include communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and childcare expenses during the course of the proceedings.

69. UCCJEA, section 311 (Warrant To Take Physical Custody of Child).

70. UCCJEA, section 315 (Role of [Prosecutor or Public Official]).

71. This statutory authority should remove the threat of civil liability that influences many law enforcement decisions in child recovery situations.

**U.S. Department of Justice**

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention*

*Washington, DC 20531*

Official Business

Penalty for Private Use \$300

PRESORTED STANDARD  
POSTAGE & FEES PAID  
DOJ/OJJDP  
PERMIT NO. G-91



Bulletin

NCJ 189181

This Bulletin was prepared under grant number 92-MC-CX-0007 from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

Points of view or opinions expressed in this document are those of the author and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

*The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.*

### **Acknowledgments**

This Bulletin was written by Patricia M. Hoff, J.D., a legal consultant on interstate and international child-custody, visitation, and parental kidnapping law. She was an advisor to the drafting committee of the UCCJEA on behalf of the ABA Center on Children and the Law while serving as Legal Director of the Center's Obstacles to the Recovery and Return of Parentally Abducted Children Project. The author gratefully acknowledges the contribution of Janet Heim, J.D., Deputy District Attorney, Santa Clara County District Attorney's Office, who wrote the Bulletin's sidebars on California prosecutors' long-time involvement in civil child-custody enforcement. The author also thanks Linda Girdner, Ph.D., former Director of Research at the ABA Center on Children and the Law and Project Director of the Obstacles Project, for her thoughtful comments on the Bulletin as it was being developed.

Points of view or opinions expressed in this document are those of the author and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. The views, accordingly, should not be construed as representing the official position or policies of the ABA.

This Bulletin is intended for educational and informational purposes and does not constitute legal advice. Readers with specific cases should consult their legal counsel.