Protecting Victims of Domestic Violence Under the UCCJEA

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ABSTRACT

Domestic violence survivors often flee across state lines with their children to escape abuse and to seek the support of their friends and family. Judges hearing the subsequent interstate custody cases will need to consider several federal and state laws governing jurisdictional and related issues, including the Uniform Child Custody Jurisdiction and Enforcement Act (the “UCCJEA”). This article provides an overview of the UCCJEA and related laws and addresses such questions as when a court has jurisdiction to enter or modify a custody order, and how judges can use the laws to protect survivors and their children from further abuse.

Melissa Ward lived in Atlanta, Georgia, with her husband, Robert, during nine years of their marriage. They have two children: Kay, age 6, and Sam, age 2. Robert abused Melissa for years, beginning when she was pregnant with Kay. In 2006, when Robert grabbed Melissa by the hair and pushed her down the stairs, she called the police, but they did not arrest Robert. After that, Robert threatened to kill her if she called the police, and he told her that she will never see the children again if she leaves him.

Robert often hit the children with a belt, and they are afraid of him. On March 17, 2010, after Robert punched Melissa in front of Sam, she left home with the children. Melissa sold her wedding ring, purchased bus tickets, and traveled to her sister’s home in Oregon. Robert called Melissa at her sister’s home and threatened her, saying “you’ll be sorry if you don’t get back here...
right away.” Melissa tried to file for a protection order in Oregon, but the court clerk told her she could not do so.

On March 31, 2010, Robert filed for custody in Georgia. Although Melissa had notice of the Georgia proceeding, she was too scared to return to Georgia and could not afford the trip, let alone an attorney. On April 30, 2010, Robert obtained a temporary order granting him sole custody of the children. Melissa is worried that the children will be removed from her and that Robert will hurt them.

At the Legal Resource Center on Violence Against Women, we talk daily with domestic violence survivors like Melissa. These cases raise many complex questions for judges.1 May an Oregon judge enter a custody order over the children or modify the existing order? May an Oregon judge issue a protection order? How should the judges in the two states communicate with each other? May the Georgia judge permit Melissa to remain in Oregon with the children for her safety? This article will address these questions and present an overview of how the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)2 should be applied in domestic violence cases.

WHAT HAPPENS WHEN DOMESTIC VIOLENCE SURVIVORS RELOCATE?

Judges encounter survivors of domestic violence in situations like Melissa’s all too often in this country. To escape abuse and to provide for their children’s safety, many survivors are compelled to flee across state, tribal, or territorial lines. In many cases, victims flee to states in which they have family support or a safe place to live with their children.3 Victims also may have greater financial resources in a refuge state, such as free housing, childcare, or employment opportunities, allowing them to escape from a batterer’s economic control.4

Survivors may wish to relocate because they fear their abusers will stalk them—or kill them—if they leave the relationship. In fact, survivors are at increased risk for physical violence when they take steps to leave abusers.5 Batterers perpetrate “separation


3 See Goelman, supra note 1, at 109.

4 Id.

5 Callie Marie Rennison & Sarah Welchans, Intimate Partner Violence 1, 5 (U.S. Department of Justice, Bureau of Justice Statistics, 2000), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv.pdf (finding that “the percentage of female murder victims killed by intimate partners has remained at about 30% since 1976” and that “divorced or separated persons were subjected to the highest rates of
assault” to prevent a survivor from leaving, to retaliate for the separation, or to force the survivor to return. Studies have shown that the risk of violence, including sexual assault, is highest immediately following separation and when victims attempt permanent separation through legal or other action.

In addition to the risks of separation violence, perpetrators often pursue protracted custody or visitation litigation as a means of controlling their former partners. Batterers may manipulate custody proceedings to obtain information about their former victims, to continue monitoring them, or to create opportunities for contact in order to perpetrate additional violence. Many batterers repeatedly file for modification of custody orders to harass or punish victims for leaving.

As a result, when survivors relocate from one state to another, they may face ongoing custody litigation in the state from which they fled, or they may be charged with parental kidnapping (in some states). The complicated civil and criminal cases that result from relocation are among the most challenging for victims to navigate. It is critical for judges to be aware of the statutory provisions designed to protect victims in interstate cases so victims do not have to choose between protecting themselves and keeping their children safe.

**WHICH LAWS APPLY IN AN INTERSTATE CUSTODY CASE?**

**AN OVERVIEW**

Judges deciding relocation or interstate custody cases should consider several federal and state laws, some or all of which may govern a particular case. To determine whether the court may exercise jurisdiction over a custody case involving more than one state, or whether the court may modify an existing custody order, judges must consult either the Uniform Child Custody Jurisdiction Act (UCCJA) or its replacement, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

intimate partner victimization”). See also Mindy Abel, Denver Metro Domestic Violence Fatality Rev. 5 (2002) (finding that in 67% of the homicides, the victim had expressed a desire to leave or end the relationship).


12 Supra note 2.
These jurisdictional statutes have been enacted in all 50 states and the District of Columbia.\(^\text{13}\) This article will focus on the UCCJEA, which includes important provisions designed to protect domestic violence survivors.

In some cases, judges may have to consider other statutes in addition to the UCCJEA. One such statute is the federal Parental Kidnapping Prevention Act (PKPA), which is a full faith and credit statute that governs the interstate enforcement of custody orders.\(^\text{14}\) The PKPA contains provisions that parallel those of the UCCJEA, which was developed in part to ensure the consistency of state and federal law in this area. In cases involving custody and visitation provisions within domestic violence protection orders, judges may need to consider another federal statute, the Violence Against Women Act (VAWA), which mandates the interstate enforcement of protection orders.\(^\text{15}\) A final federal statute that may be relevant in particular cases is the Indian Child Welfare Act (ICWA), which was designed to prevent the removal of Indian children from their families and placement in non-Indian foster care. The ICWA may intersect with the UCCJEA in some situations, but the statute explicitly excludes from its purview custody cases between biological parents (whether Native American or not).\(^\text{16}\)

Some additional state laws also may be relevant in particular cases. When custodial parents intend to relocate with their children, judges may be asked to apply state relocation laws, which generally set forth criteria with which the relocating parent must comply.\(^\text{17}\) In cases involving interstate enforcement of protection orders, judges may need to consult state full faith and credit laws, which govern the enforcement of such orders, including any custody and visitation orders.\(^\text{18}\) Criminal laws, such as state parental kidnapping or custodial interference laws, also may be relevant under some circumstances; although some states’ laws may appear to impose criminal penalties on survivors who flee across state lines with their children, in many instances exemptions or defenses would apply where the flight was undertaken to escape domestic violence or to protect children.\(^\text{19}\)

\(^{13}\) As of October 2010, the District of Columbia and all of the states, with the exception of Massachusetts and Vermont, have replaced the UCCJA with the UCCJEA. (The UCCJEA goes into effect in New Hampshire on December 1, 2010.) See http://nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uccjea.asp for the most recent information regarding states’ adoption of the UCCJEA.


\(^{18}\) These laws often are referred to as full faith and credit implementing legislation, because they provide further guidance on the implementation of the federal full faith and credit mandate. For information about both federal and state full faith and credit laws, contact the National Center on Protection Orders and Full Faith and Credit at 1-800-903-0111, ext. 2.

THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The UCCJA, the first uniform state law addressing interstate custody jurisdiction, was developed in 1968 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The law was designed to prevent the entry of multiple, inconsistent child custody orders by courts in different states and to deter forum-shopping by parents seeking a more sympathetic court.20 Because shortcomings in the law prevented it from achieving these goals, in 1997 the NCCUSL developed the UCCJEA as a replacement for the UCCJA.

The UCCJEA was designed to harmonize state laws and make them consistent with the governing federal law, including the PKPA and the VAWA, which were enacted in 1980 and 1994, respectively.21 To date, 48 states, the District of Columbia, and the U.S. Virgin Islands have replaced the UCCJA with the UCCJEA, and it has been introduced in Vermont and Massachusetts.22 Unlike the UCCJA, the UCCJEA specifically addresses the effects of domestic violence on inter-jurisdictional custody cases, both in statutory language and in official commentary.

DOES THE COURT HAVE JURISDICTION? THE UCCJEA’S JURISDICTIONAL BASES

A threshold question for judges presiding over cases like Melissa’s is whether the court has jurisdiction to decide the custody case. Where there is no existing custody order in place, the UCCJEA refers to this form of jurisdiction as “Initial Child Custody Jurisdiction.”23 The UCCJEA sets forth four bases under which a court may exercise initial jurisdiction over a child custody case: home state, significant connection, more appropriate forum, and last resort. Of particular importance in domestic violence cases, the statute also permits a court to exercise temporary emergency jurisdiction under certain circumstances.

The UCCJEA’s jurisdictional bases determine whether the court has subject matter jurisdiction over the custody case. To decide custody, courts generally need only subject matter jurisdiction over the case and not personal jurisdiction over all of the parties.24 As a result, a court having subject matter jurisdiction may enter a valid and enforceable custody order despite the fact that one of the parents lacks the minimum contacts with the state required to exercise personal jurisdiction over that parent.

20 UCCJA, § 1(a)(1) and Prefatory Note at 1.
21 UCCJEA, Prefatory Note; Id. at § 204 cmt.
23 UCCJEA § 201.
24 See id. at § 201(c) (“[P]ersonal jurisdiction over[] a party or a child is not necessary or sufficient to make a child-custody determination.”).
The UCCJEA establishes a hierarchy for the jurisdictional bases (other than emergency jurisdiction), with home state jurisdiction given the highest priority. Thus, if there is a state with home state jurisdiction, no other state may decide the custody case unless the home state declines to exercise jurisdiction, as explained in more detail below.

**Home State Jurisdiction.** The UCCJEA defines the home state as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding."\(^{25}\) Under the initial child custody jurisdiction provision of the UCCJEA, priority to decide a custody case is given to a state that is the home state of the child on the date of commencement of the case or, alternatively, if it was the home state of the child within six months before the commencement of the proceeding and the child is absent from the state but a parent or person acting as a parent continues to live in the state.\(^{26}\) This alternative is sometimes referred to as "extended" home state jurisdiction, and it applies in many domestic violence cases in which the survivor has fled the home state with her children to escape abuse. If the left-behind parent remains in the home state and files for custody there within six months of the date that the survivor left with her children, the original state will retain preferred jurisdiction under the UCCJEA (as the extended home state), and the survivor may be forced to return to litigate the custody case there unless the home state declines to exercise jurisdiction (see inconvenient forum discussion, below).

This is the case in our opening scenario. Because Robert filed for custody in Georgia within the six-month period after Melissa fled the state with her children, Georgia has preferred jurisdiction under the UCCJEA. The judge in Georgia may decline to exercise jurisdiction and permit Melissa to remain in her safe haven in Oregon; otherwise Melissa will be forced to litigate the long-term custody case in Georgia.

In certain circumstances, judges may need to consider two additional aspects of home state jurisdiction under the UCCJEA. First, where the case involves a child who is less than six months of age at the time of filing, the statute defines the home state as "the state in which the child lived from birth with a parent or person acting as a parent."\(^{27}\) Second, if a custody case is filed in a state after a child and/or the parent(s) have left and then returned to that state, the judge may need to determine whether the time away constituted a "temporary absence" under the UCCJEA. If the time period is deemed to be a temporary absence, it is included in the calculation of the requisite six-month period for home state jurisdiction.\(^{28}\) Courts have applied different standards in determining what constitutes a temporary absence; in some cases, courts have exercised home state jurisdiction even after an absence of several months or longer.\(^{29}\)

**Significant Connection Jurisdiction.** Because of the hierarchy in jurisdictional bases established by the UCCJEA, judges should consider whether they can exercise

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25 *Id.* at § 102(7).
26 *Id.* at § 201(a)(1).
27 *Id.* at § 102(7).
28 *Id.*
significant connection jurisdiction only if there is no state with home state jurisdiction, or if the home state has declined to exercise its jurisdiction. Under those circumstances, a state may decide a custody case if the two elements of significant connection jurisdiction are satisfied: (1) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, must have "a significant connection with the state other than mere physical presence"; and (2) substantial evidence must be available in the state concerning the child’s "care, protection, training, and personal relationships."30

Unlike the UCCJEA’s bright-line rule for home state jurisdiction, judges may exercise discretion in determining whether the court has significant connection jurisdiction. Judges may consider the length of time that the child has lived in the state, as well as the nature and location of the relevant evidence, including whether the state is home to such potential sources of evidence as school teachers and counselors, therapists, and health care providers.

Although the UCCJEA’s prioritization of home state jurisdiction largely prevents a “race to the courthouse,” when there is no home state the statute does establish a “first in time” rule. Where two or more states potentially could exercise significant connection jurisdiction and a parent commences a custody case in one of the states, the UCCJEA’s simultaneous proceedings provision requires that the other potential significant connection state(s) defer to the state in which the first action was commenced, unless that state declines to exercise jurisdiction.31

**More Appropriate Forum Jurisdiction.** If all states having home state jurisdiction or significant connection jurisdiction have declined to exercise jurisdiction in favor of another state, that state may exercise more appropriate forum jurisdiction.32 The statutory grounds for declining to exercise jurisdiction in favor of a more appropriate forum, which include consideration of domestic violence, are described in further detail below.

**Last Resort Jurisdiction.** Last resort or vacuum jurisdiction is available when no state satisfies the jurisdictional criteria described above.33 Where a family has traveled from state to state over an extensive period of time with only brief stays in any one place, it may be necessary for a court to exercise this form of jurisdiction so that the parties may obtain a custody determination.

**WHEN MAY A COURT EXERCISE EMERGENCY JURISDICTION?**

Judges hearing custody cases in which victims have fled across state lines to escape abuse may be asked to exercise “temporary emergency jurisdiction” under the UCCJEA. This jurisdictional basis is set forth in a distinct provision of the statute; under certain

30 Id. at § 201(a)(2).
31 Id. at § 206 cmt.
32 Id. at § 201(a)(3).
33 Id. at § 201(a)(4).
circumstances, a court may exercise temporary emergency jurisdiction even if it does not otherwise have initial child custody jurisdiction (if, for instance, another state is the home state at the time). The grounds for exercising emergency jurisdiction were expanded significantly in the UCCJEA to provide protection to domestic violence victims and their children. Specifically, a court may exercise temporary emergency jurisdiction when a parent (or sibling) of a child has been abused or threatened with abuse, even if the child herself or himself has not been abused. Judges can use this provision to protect mothers like Melissa when there is evidence that the mother has been abused but there may not be adequate evidence of child abuse.

Many judges, court personnel, attorneys, and other professionals are not aware that temporary emergency jurisdiction is available under the UCCJEA. As a result, some domestic violence survivors seeking protection in a refuge state are turned away from courthouses or legal service providers' offices simply because they have not been in the state for six months. Judges should recognize that the UCCJEA’s emergency jurisdiction provision is meant for precisely these kinds of situations, and they should take steps to ensure that court clerks and others also become aware that survivors may seek emergency relief from the court.

To exercise emergency jurisdiction, a court must determine that there is an emergency, as defined by the UCCJEA, and the child must be present in the state at the time. The UCCJEA, unlike its predecessor the UCCJA, specifies that emergency jurisdiction is temporary only. The authority to issue an emergency order is granted to courts to protect the parties until a court in the state with preferred jurisdiction is aware of the emergency and in a position to issue an order or to decline jurisdiction in favor of the refuge state. To facilitate this process, the statute requires that the two courts communicate for purposes of resolving the emergency, protecting the parties and child, and determining the duration of the emergency order. Although, as explained below, there are circumstances in which the court issuing the emergency order could assume jurisdiction over the long-term custody case (generally if the court with preferred jurisdiction declines to exercise it in favor of the refuge state), the statute does not permit the refuge state to wrest jurisdiction away from the state with preferred jurisdiction. Rather, the required judicial communication provides an opportunity for a conversation between the two judges to resolve the question of which state should hear the long-term custody case. The temporary nature of emergency jurisdiction under the UCCJEA should alleviate judges’ fears that they might subvert another court’s ability to decide the matter.

In Melissa’s case, for example, an Oregon court may exercise temporary emergency jurisdiction to protect her and the children, even though Georgia is the children’s home state. The required judicial communication would enable the Georgia court to get

34 Id. at § 204.
35 Id. at § 204 cmt.
36 Emergency jurisdiction may be exercised where “necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” Id. at § 204(a) (emphasis added).
37 Id. at § 204(a).
38 Id. at § 204(d).
information about the abuse and avoid relying solely on the misleading information provided by Robert. As a result, the Georgia court may take the domestic violence into account and decide to decline to exercise jurisdiction over the long-term case.

In many cases, survivors may seek emergency custody through a domestic violence protection order proceeding. The UCCJEA’s drafters recognized the appropriateness of this approach. In commentary regarding the emergency jurisdiction provision, they noted that “a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction when the child’s parent or sibling has been subjected to or threatened with mistreatment or abuse.”

Under certain circumstances, the court may lack personal jurisdiction over the respondent and be unable to enter a protection order. If the abuser has threatened the victim in the new state (in person, over the telephone, or by electronic mail), or if he has business dealings, family ties, or other connections to the new state, the requisite “minimum contacts” most likely will be established. If the abuser, however, has no contacts with the new state and does not meet the standard under the state long-arm statute, it may be difficult for a court to exercise personal jurisdiction.

Courts in an increasing number of states have determined that personal jurisdiction is not necessary to issue a protection order providing injunctive relief only (e.g., no contact, stay away, do not abuse provisions). Judges should consider adopting such an approach in light of the grave and immediate risk of harm present in interstate domestic violence cases. Even if the court finds that it does not have jurisdiction to enter a protection order, it nonetheless could issue an emergency custody order under the UCCJEA if the survivor files an action under the state’s domestic relations laws.

WHEN AND HOW SHOULD JUDGES IN TWO STATES COMMUNICATE ABOUT A CUSTODY CASE?

The UCCJEA sets forth a framework for judicial communication to prevent the issuance of conflicting custody orders. In cases where there is a history of domestic violence, judicial communication can be particularly important. Without it, one judge (often in the home state) may receive information only from the domestic violence perpetrator. In a case like Melissa’s, the batterer may tell the judge that the victim has disappeared and kidnapped the children, without any mention of the abuse. Judicial communication ensures that the judges in both states have a full picture of the case, including risks to the victim’s or the children’s safety, so that judges may apply the jurisdictional standards and keep the family safe.

39 Id. at § 204 cmt.
41 See Bartsch v. Bartsch, 636 N.W.2d 3, 13 (Iowa 2001).
The UCCJEA permits judges to communicate about any custody proceeding arising under the UCCJEA\(^\text{42}\) and requires judges to communicate in specific situations.\(^\text{43}\) As noted previously, a court in a state with preferred jurisdiction (often the home state) must communicate with the court that has exercised emergency jurisdiction.\(^\text{44}\) Similarly, if a court determines that a custody pleading already has been filed in another state, it must communicate with that court before moving forward with the case.\(^\text{45}\) Finally, when one court is involved in an enforcement proceeding, and a court in another state has been asked to modify the original order, the enforcing court must immediately communicate with the modifying court.\(^\text{46}\) These provisions are designed to save judicial resources and avoid the issuance of conflicting custody orders, and they also serve to protect families where there has been a history of violence.

There are a few requirements that courts must follow with regard to judicial communication under the UCCJEA. First, a court may allow the parties to participate in the communication.\(^\text{47}\) If the parties are not able to participate, they must have an opportunity to present facts and legal arguments before a decision on jurisdiction is made.\(^\text{48}\) In addition, a record of a communication must be made, and the parties must be informed promptly of the communication and given access to the record.\(^\text{49}\) This is not required where the contact is purely logistical, such as communication between courts on schedules, calendars, court records, and similar matters.\(^\text{50}\)

If Melissa filed for emergency custody in Oregon, for example, the Georgia judge (when notified of the Oregon proceeding) would be required to communicate with the Oregon judge. The judges would discuss the emergency order and how to protect the safety of the parties and the child.\(^\text{51}\) In addition, if Melissa filed an inconvenient forum motion in Georgia (or if the judges believed this was necessary), they also might discuss long-term jurisdiction over the case. Prior to the judicial communication, the parties would be entitled to present the facts and legal arguments regarding jurisdiction.

**WHEN DOES A COURT HAVE JURISDICTION TO MODIFY AN EXISTING CUSTODY ORDER?**

Once a custody order has been issued consistent with the UCCJEA, judges in other states may not issue new custody orders involving the same child or modify the original

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\(^{42}\) UCCJEA § 110(a).

\(^{43}\) Id. at §§ 204, 206, 307, see also 207.

\(^{44}\) Id. at § 204.

\(^{45}\) Id. at § 206.

\(^{46}\) Id. at § 307.

\(^{47}\) Id. at § 110(b).

\(^{48}\) Id.

\(^{49}\) Id. at § 110(d).

\(^{50}\) Id. at § 110(c).

\(^{51}\) See, e.g., Noel D. v. Gladys D., 800 N.Y.S.2d 351, 2005 NY Slip Op 50092U (N.Y. Fam. Ct. 2005) (finding that although the two courts disagreed over the extent of protection necessary, the New York court entered properly the temporary custody order until the long-term case was resolved in Illinois).
order except under very limited circumstances (such as emergency jurisdiction). To promote the goal of preventing inconsistent custody decisions by courts in different states, the drafters of the UCCJEA granted courts that issue custody orders “exclusive, continuing jurisdiction” over modifications of those orders, meaning that they retain sole authority to modify their own orders and litigants are precluded from seeking modifications elsewhere. Consequently, parents who have moved from the original issuing state often are required to return to that state if they wish to modify the custody or visitation terms of the order.

Judges should become familiar with the exceptions to the exclusive, continuing jurisdiction rule, which sometimes apply in cases involving domestic violence. First, upon a finding that all of the parties have left the issuing state, the court of another state may modify the original order provided one of the jurisdictional bases discussed above is satisfied. Second, the issuing court may find that the parties no longer have a significant connection with the state and substantial evidence is no longer available there, which would enable another court having jurisdiction under the UCCJEA to modify the order. Third, the issuing court may decline to exercise modification jurisdiction in favor of another state, as described in more detail below. Finally, another court may exercise temporary emergency jurisdiction to modify a custody order from another state; it then would be required to communicate with the issuing court as described above.

WHEN SHOULD COURTS DECLINE TO EXERCISE JURISDICTION UNDER THE UCCJEA?

A judge who has jurisdiction over a child custody matter under the UCCJEA retains the discretion to decline to exercise it under appropriate circumstances. Specifically, pursuant to the UCCJEA’s inconvenient forum provision, a court may decline to exercise preferred jurisdiction over a custody case if it finds that it is an inconvenient forum and that there is another more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, by the court’s own motion, or upon request of another court.

Judges frequently are asked to decline to exercise jurisdiction on inconvenient forum grounds in cases in which domestic violence victims have fled from the home state with their children to escape abuse. Having found refuge in a state that offers them greater safety and increased access to employment opportunities, child care, and the like, survivors often will request that the home state court allow them to remain in the new state and to litigate the custody case there.

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52 Either the original issuing court or a court in another state may make this finding. See UCCJEA § 202(a)(2).
53 Id. at § 202(a)(1). This could occur if, for instance, a parent in the original state has not exercised his visitation rights for an extended period of time, and therefore the child has not returned to the state.
54 Id. at § 207. The UCCJEA provides a second basis for a court to decline to exercise jurisdiction, sometimes called “unclean hands,” which is beyond the scope of this article. See id. at § 208.
55 Id. at § 207(a).
The drafters of the UCCJEA endorsed this use of the inconvenient forum provision by explicitly directing courts to consider domestic violence as the first of eight mandatory factors used to determine whether a court should decline jurisdiction. Specifically, the statute requires courts to consider "whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child." In addition, the UCCJEA’s official commentary reinforces the point that "courts should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse."57

At least one court has interpreted the UCCJEA to require courts to prioritize the safety of domestic violence victims and their children over other inconvenient forum factors. In Stoneman v. Drollinger, the Montana Supreme Court reversed a trial court’s refusal to decline to exercise jurisdiction under the UCCJEA in favor of Washington State, where the mother had fled to protect herself and her four children and had obtained a permanent protection order.58 In its decision ordering the trial court to communicate with the Washington court and to decline jurisdiction based on inconvenient forum, the court held that "the UCCJEA places domestic violence at the top of the list of factors that courts are required to evaluate when determining whether to decline jurisdiction as an inconvenient forum for child custody proceedings." Accordingly, the Montana Supreme Court urged trial courts "to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA."60

The other statutory factors which courts must consider in deciding inconvenient forum motions are the following:

- the length of time the child has resided outside of the state;
- the distance between the two courts;
- the relative finances of the parties;
- the agreement of the parties;
- the nature and location of the evidence including the child’s testimony;
- the ability of each court to decide the issue expeditiously and the procedures necessary to present the evidence; and
- the familiarity of each court with the facts and issues in the pending litigation.61

The UCCJEA requires courts to consider each of these factors and to permit the parties to present information and legal arguments before the jurisdictional decision is made; failure to do so may result in successful challenge on appeal.62

In Melissa’s case, a judge considering a request to decline jurisdiction on inconvenient forum grounds may expect to hear evidence of the domestic violence and the child

56 Id. at § 207(b).
57 Id. at § 207 cmt.
58 In re Stoneman v. Drollinger, 64 P.3d 997 (Mont. 2003).
59 Id. at 1004.
60 Id. at 1002; see also Jeanne E.M. v. Lindey M.M., 734 N.Y.S.2d 837 (2001).
61 Id. at § 207(b).
62 See id. at §§ 110(b), 207(b); see also In re Stoneman, supra.
abuse (primarily Melissa’s testimony, perhaps a police report from 2006, perhaps testimony of neighbors who have heard the abuse or teachers who have observed the children’s behavior), as well as evidence that Melissa has family and financial resources in Oregon, which could help prevent future violence. Melissa’s attorney also may argue that the distance between Georgia and Oregon and Melissa’s lack of present income weigh in favor of Georgia transferring jurisdiction to Oregon. Robert’s attorney might counter that the children only have lived outside of Georgia for a short time, and that much of the evidence about the children’s lives would be found in Georgia.

The UCCJEA’s official commentary states that courts considering the inconvenient forum issue may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court.63 Such judicial communication may be the best way for judges to obtain all relevant information regarding the situation. This also could help prevent abusers from misleading the court in the home state by providing an inaccurate account of the case.

A final consideration for judges is the appropriate action to take upon deciding to decline jurisdiction in favor of a more appropriate forum. The UCCJEA does not permit the court simply to dismiss the action and “leave the case in limbo.”64 Instead, the court must stay the case upon condition that the parties promptly file in the state that has been found to be the more convenient forum. In addition, the court may impose other conditions upon the parties, including “the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.”65

HOW CAN COURTS FACILITATE SAFE INTERSTATE CUSTODY LITIGATION?

In many cases, domestic violence victims will find themselves having to litigate a child custody case, including post-decree issues, in the original home state despite having relocated to a refuge state. How can judges facilitate such interstate litigation and enable victims to remain safe during the pendency of the case? The UCCJEA provides various mechanisms to allow parties to safely and effectively litigate cases from another state, including provisions permitting interstate discovery in cases where it would be unsafe or too difficult for a party to travel.

A party may offer testimony of witnesses located in another state, or a court may order testimony to be taken elsewhere.66 This could permit a survivor like Melissa to remain in a refuge state even if the home state retains jurisdiction. The statute authorizes courts to take advantage of technologies such as telephones, audiovisual equipment, or

63 UCCJEA at § 207 cmt.
64 UCCJEA at §§ 207(c) and 207 cmt.
65 Id. at § 207 cmt.
66 Id. at § 111.
other electronic means to facilitate the taking of depositions or testimony by people who live outside of the forum state; in a case in which a victim lives in a refuge state, the use of such technologies can enable the court to get the evidence it needs without endangering the victim.\textsuperscript{67} The statute also includes provisions encouraging judicial cooperation in interstate cases, authorizing courts to request that a court in another state take any of the following steps: hold an evidentiary hearing, order a person to give evidence, order a custody evaluation to be made, forward copies of transcripts, or order parties to appear.\textsuperscript{68}

HOW CAN JUDGES TAKE JUDICIAL LEADERSHIP TO SAFEGUARD SURVIVORS AND THEIR CHILDREN IN INTERSTATE CUSTODY CASES?

The UCCJEA includes several provisions designed to protect the safety of domestic violence survivors and their children in interstate custody cases, including where an abused mother has sought refuge in a new state with her children. Unfortunately, in our work we have seen many instances in which these legal protections remained out of reach for survivors. In some cases, survivors have received incorrect information regarding the availability of protection orders or emergency custody orders in a refuge state. In others, survivors have been unable to navigate the court system to obtain emergency relief. In still others, survivors did not know that they could seek permission to leave a jurisdiction with their children or to transfer a custody case to a safer jurisdiction.

Judges, as leaders in both their courthouses and the wider community, have many opportunities to help address these barriers to safety in domestic violence cases. For instance, judges can work with court administrators and others to simplify the process for obtaining emergency custody orders. Typically, the forms used to file for child custody and/or divorce do not include checkboxes or other straightforward mechanisms to ask a court to assume emergency jurisdiction if it does not have home state jurisdiction. Judges should work with relevant personnel to amend the forms to address this shortcoming, as well as to provide a simple way to ask the court to decline to exercise jurisdiction on inconvenient forum grounds.

In addition, judges should ensure that all relevant court personnel obtain training on interstate custody cases and the forms, procedures, and available relief for survivors. This would help to prevent survivors from being wrongly barred or dissuaded from filing for appropriate court relief. Finally, judges are in a unique position to address another significant barrier for survivors: the dearth of free or very low cost legal service providers available to represent them in interstate custody cases. As the American Bar Association has noted, “[c]ourt involvement is essential to the delivery of pro bono legal services. Judicial support of pro bono can increase lawyers’ acceptance of pro bono responsibility and increase the acceptance of pro bono as a necessary component of the delivery of access

\textsuperscript{67} Id. at § 111(b).
\textsuperscript{68} Id. at 112.
to justice." Judges should consider making interstate custody cases a priority area in their efforts to promote pro bono representation, given the difficulties self-represented litigants face in making jurisdictional arguments, the safety risks for survivors and their children in these kinds of cases, and the fact that they often present finite legal questions that can be resolved quickly.