

# Introduction

Prior to the 1960s, a state could assert jurisdiction over child custody if it had a “significant relationship to the child.” A noncustodial parent who was not satisfied with a custody order from one state could move to another state and petition that court for modification. Often, judges would change custody to the home state litigant without even an appearance from the other side, which did nothing to deter but instead rewarded child snatching or retention after visitation.

The Uniform Child Custody Jurisdiction Act (UCCJA) and its successor, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), were attempts to standardize the rules for jurisdictions to determine child custody.

The first attempt to standardize the rules and create uniformity in custody jurisdiction was the UCCJA proposed by the national conference of commissioners in the uniform state laws in 1968. The stated purposes of the UCCJA were to

1. discourage continued jurisdictional controversies between states;
2. deter child abductions;
3. promote uniformity in state jurisdictional laws;
4. promote interstate cooperation and communication in adjudicating child custody matters;
5. avoid relitigation of custody orders; and
6. facilitate the enforcement of custody decrees of sister states.

The UCCJA required strong ties with the forum state, litigants to provide information about possible pending jurisdiction in another state, and communication with other potential forums. If the courts could not agree, priority of filing prevailed. By 1984, all 50 states and the District of

Columbia had adopted the UCCJA, either by statute or by judicial decision making. While the UCCJA helped reduce interstate controversies, the version each state enacted was not always the same, and the UCCJA failed to eliminate the possibility of two states having concurrent jurisdiction at both the initial and modification stages and problems continued.

To alleviate these problems, Congress enacted the Parental Kidnapping Prevention Act of 1980 (PKPA), which provides a uniform approach to interpreting jurisdictional conflicts and improved the UCCJA in two ways:

1. Making home state a priority so that another state with significant connection may only take jurisdiction if there is no home state; and
2. Adopting the concept of exclusive continuing jurisdiction—if one state properly exercises jurisdiction it continues as long as the state remains the residence of any contestant or child.

The PKPA comes into play mainly with modification of sister state orders. Under the PKPA, the court of one state can modify a child custody order of another state only if (1) it has jurisdiction to make such a child custody determination, and (2) the court of the other state no longer has jurisdiction or has declined to exercise its jurisdiction. Jurisdictional preference is given to the state with continuing jurisdiction. The order of preference under the PKPA is:

1. continuing jurisdiction;
2. home state jurisdiction;
3. significant connection jurisdiction; and
4. jurisdiction when no other jurisdictional basis is available.

The PKPA of 1980 helped, but it did not fix the problems. Therefore, the UCCJEA was enacted in 1997 to replace the UCCJA and conform to the PKPA of 1980 and the Violence Against Women Act (VAWA). The UCCJEA sets out a three-step process to determine whether a state should assume jurisdiction of custody matters as follows:

1. Following the guidelines of the UCCJEA governing jurisdiction;
2. Determining which court is the more appropriate and convenient forum under the UCCJEA governing inconvenient forums; and
3. If the court accepts jurisdiction as the more convenient forum, the court must determine if the action to be taken is foreclosed by an order or judgment of the other state court.

Today, only Massachusetts uses the UCCJA. The remainder of the states and the District of Columbia have enacted some form of the UCCJEA. The UCCJEA also eliminates the determination of best interest of a child from a jurisdictional inquiry.

## **Constitutional Matters**

No uniform set of laws regarding interstate recognition of child-custody orders existed prior to the passage of the UCCJA, the PKPA, and the UCCJEA. As a result, it was difficult to have the child-custody determination of one state be recognized in another state. If a parent was unsatisfied with a court's child-custody determination, that parent could take the child with him or her to another more sympathetic state and refile for custody there in the hopes of achieving a more favorable determination. These child-custody-related parental kidnappings were called child snatchings.

After a child snatching (what is now called parental kidnapping), the ensuing child-custody determinations entered by the new state often conflicted with the previous state's child-custody determination. Thus, even though stability is one of the most important things in a child's upbringing, final child-custody determinations remained elusive, and children's childhoods were often uprooted as a result.

## **Full Faith and Credit Clause**

The U.S. Constitution's full faith and credit clause, as well as the parallel federal statute, is understood to oblige states to recognize and enforce a sister state's final judgment. However, child-custody determinations are never

final, since they are always modifiable given a change in circumstances; thus, it has never been clear whether the full faith and credit clause applies to child-custody determinations.

The Constitution's full faith and credit clause, Article IV section 1, states:

Full Faith and Credit shall be given in each State to the public Acts, records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.<sup>1</sup>

The accompanying federal statute, 28 U.S.C. § 1738, reads as follows:

Such Acts, records and judicial proceedings or copies thereof [of any State, territory, or Possession of the United States], so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in courts of such State, Territory or Possession from which they are taken.<sup>2</sup>

While the full faith and credit clause precludes a state from relitigating a case that has already been granted a final determination by a another state court, a state is free to use its own laws to enforce the sister state's judgment.<sup>3</sup> Interestingly, while there is well-developed case law regarding the enforcement of judgments, the applicability of the full faith and credit clause to state records, such as adoption decrees, has been largely ignored.<sup>4</sup>

### *Extending Full Faith and Credit*

The UCCJA, UCCJEA, and PKPA attempt to extend the full faith and credit clause to child-custody determinations. By nature of only being a state law, the UCCJEA does not have the power to control states or territories that

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1. U.S. CONST. art. IV, § 1.

2. 28 U.S.C. § 1738.

3. *Adar v. Smith*, 639 F.3d 146, 159 (5th Cir. 2011).

4. Elizabeth Page Redpath, *Between Judgment and Law: Full Faith and Credit, Public Policy, and State Records*, 62 EMORY L.J. 639 (2013).

have not yet enacted it. However, the PKPA, a federal law, was placed as an addendum to the full faith and credit statute.<sup>5</sup> The Utah Supreme Court noted in *In re Adoption of Baby E.Z.*:

The United States Supreme Court has noted that a central purpose of the PKPA is to extend the requirements of the full faith and credit clause to custody determinations. In short, the PKPA was intended primarily as a full faith and credit statute.<sup>6</sup>

Thus, all states are now bound to recognize and enforce another state's child-custody judgment. Also, if a state chooses to issue a child-custody judgment defiant of the PKPA, then the PKPA provides that the state's child-custody judgment will not be entitled to full faith and credit in any other state.

#### *Extending Full Faith to Tribes*

There is no consensus among the states on the question of whether the PKPA applies to tribal courts. States have reached different conclusions, with some states giving full faith and credit to tribal child-custody orders and other states denying tribal orders full faith and credit.<sup>7</sup>

### **Case Law**

Although the U.S. Supreme Court did not hear any child-custody cases during the earlier half of the 20th century, during this time the state courts were busy assessing whether the full faith and credit clause applied to child-custody determinations and, if so, under what circumstances. Some state courts found that when a child moved, the new state could enter a child-custody determination as if there had never been a previous determination.<sup>8</sup> Other state courts found that a court could modify another state's child-custody judgment in the child's best interests if there was a significant

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5. 28 U.S.C. § 1738.

6. *In re Adoption of Baby E.Z.*, 266 P.3d 702, 712 (Utah 2011), quoting *Thompson v. Thompson*, 484 U.S. 174, 183, 108 S. Ct. 513, 98 L. Ed. 2d 512 (1988) (quotations omitted).

7. Kelly Stoner & Richard A. Orona, *Full Faith and Credit, Comity, or Federal Mandate? A Path That Leads to Recognition and Enforcement of Tribal Court Orders, Tribal Protection Orders, and Tribal Child Custody Orders*, N.M. L. REV. 6 (Spring 2004).

8. *State v. Dist. Court of Tenth Judicial Dist. in & for Fergus Cnty.*, 46 Mont. 425 (1912).

change in circumstances.<sup>9</sup> A third court allowed the original court to retain jurisdiction.<sup>10</sup>

From 1942 to 1958, the U.S. Supreme Court issued a number of rulings that seemed to discourage granting full faith and credit to a sister state's child-custody determination. Of particular importance is the 1953 decision in *May v. Anderson*,<sup>11</sup> which found that the full faith and credit clause did not cover interstate recognition of child-custody determinations if the court which issued the initial child-custody determination did not have jurisdiction over both parents.

The Supreme Court rulings—together with increased mobility of the general American population and the rise in nontraditional families in the latter half of the 20th century—led to the epidemic of what was called at the time child snatchings and is now known as parental kidnapping. In an attempt to resolve the problem, the federal government passed the Parental Kidnapping Prevention Act of 1980, and states passed the Uniform Child Custody Jurisdiction Act (promulgated in 1968) and its successor, the Uniform Child Custody Jurisdiction Act (promulgated in 1997).

The following are the most important child-custody Supreme Court decisions between 1942 and 1958.

In *Williams v. State of North Carolina*,<sup>12</sup> the Supreme Court found that the full faith and credit clause forced states to recognize each other's divorce judgments. This was the case even if the issuing state did not have personal jurisdiction over the nonpetitioning spouse. Presumably, the results of more than one state having jurisdiction over a divorce proceeding resulted in more parallel divorce proceedings and the accompanying child-custody matters.

Five years after *Williams*, in 1947 in *New York ex rel Halvey v. Halvey*, the Supreme Court opined that, even if states gave full faith and credit to a child-custody determination, a succeeding state “has at least as much leeway to disregard the [original] judgment, to qualify it, or to depart from it as does the State where it was rendered.”<sup>13</sup> Thus, a state could claim to

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9. *Id.*

10. *Id.*

11. 345 U.S. 528 (1953).

12. 317 U.S. 287, 303–04 (U.S.N.C. 1942).

13. 330 U.S. 610, 615 (1947).

recognize the prior child-custody determination and yet find a change in circumstances that allowed it to modify the previous state's determination.

A decade later, the Supreme Court expanded on *Halvey* in the controversial *May* case:

The question presented is whether, in a habeas corpus proceeding attacking the right of a mother to retain possession of her minor children, an Ohio court must give full faith and credit to a Wisconsin decree awarding custody of the children to their father when that decree is obtained by the father in an ex parte divorce action in a Wisconsin court which had no personal jurisdiction over the mother. For the reasons hereafter stated, our answer is no.<sup>14</sup>

Justice Frankfurter limited the majority *May* opinion by noting in his concurrence that the Supreme Court's ruling did not make a finding that it was unconstitutional to issue a child-custody determination when a state did not have personal jurisdiction over both parents. He concluded that states could choose to enact laws to give full faith and credit to another state's child-custody determination.

### **Due Process Clause**

It is generally understood that to comply with the Due Process Clause of the 14th Amendment of the U.S. Constitution, a court needs to comply with "traditional notions of fair play and substantial justice."<sup>15</sup> The relevant part of Section 1 of the 14th Amendment states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>16</sup>

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14. 345 U.S. 528, 528–529 (1953).

15. *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945).

16. U.S. CONST. amend. XIV, § 1.

Personal jurisdiction over an individual is often considered essential to meeting requirements for due process. However, personal jurisdiction over a parent is not required under the PKPA and UCCJEA as long as the statute's requirements of notice are met. This is somewhat surprising since the *May* majority seemed clear in the need for personal jurisdiction over a parent when child custody was at issue:

We have before us the elemental question whether a court of a state, where a mother is neither domiciled, resident nor present, may cut off her immediate right to the care, custody, management and companionship of her minor children without having jurisdiction over her in personam. Rights far more precious to appellant than property rights will be cut off if she is to be bound by the Wisconsin award of custody.<sup>17</sup>

The UCCJEA and the PKPA have discarded this statement as mere dictum. Acknowledging otherwise would make the UCCJEA as well as the PKPA unconstitutional. The drafters of the UCCJA, the PKPA, and UCCJEA “felt that a workable interstate custody law could not be built with or around the plurality opinion in *May v. Anderson*.”<sup>18</sup> Ultimately the drafters interpreted *May* to mean what Justice Frankfurter’s concurring opinion said it meant, that other states are authorized to pass laws recognizing as binding on their resident a custody decision of another state in which personal jurisdiction over this resident was not obtained.

All states that have addressed the constitutionality of the UCCJEA and the PKPA have found them to be constitutional, reasoning that child-custody matters qualify under the status exemption.

However, New York, recognizing the due process problem, has taken the precautionary step of amending UCCJEA Section 108, Notice to Persons Outside State (Section 75-g of New York’s UCCJEA) to be more clearly compliant with the Constitution’s due process clause. The relevant part of

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17. 345 U.S. at 533 (1953).

18. Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207, 1233 (1969). (Also see UCCJEA comments to Section 201 page 26, “As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no ‘workable interstate custody law could be built around [Justice] Burton’s plurality opinion . . .’”).



the comment to the “Notice” section of New York’s statute is reproduced as follows:

The original version of Section 75-g [L.2001, c. 386], which had been based on the national UCCJEA, authorized the Court to order almost any form of service to out-of-state persons. Given the risk of contravening procedural due process standards by sanctioning an ad hoc arrangement, in 2006 the Legislature wisely decided to amend subdivision 1 [L.2006, c. 184]. The revisions restore, virtually word by word, the prior UCCJA provisions that had been repealed in 2001. In effect, the legislature decided that, in this respect, the prior uniform act is preferable to the current version. Indeed, the amended (or restored) statute incorporates several elements which enhance accountability, not to mention the likelihood of effective notice. First, service outside New York cannot be utilized unless the person cannot be served within this state. Second, CPLR 313 is incorporated, thereby assuring that service is effected by an appropriate official. Last, the alternative of receipted mail notice is authorized, thereby permitting the most economical service method. Last, when attempts to effect personal service fail the section permits service by publication. In fact, the Trial Court’s refusal to order service by publication may constitute reversible error; *Hofelich v. Garrow*, 69 A.D.3d 1254, 894 N.Y.S.2d 553 (3d Dept. 2010).<sup>19</sup>

#### *Foreign Nationals and Due Process*

Foreign nationals are entitled to additional due process protections under Article 37(b) (“Information in cases of death, guardianship or trusteeship, wrecks and air accidents”) of the Vienna Convention on Consular Relations, which states:

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty: . . . (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests

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19. N.Y. DOM. REL. LAW § 75-g (McKinney).

of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.

The purpose of this section is to protect foreign nationals, who might be conspicuously ignorant of the American judicial system, by notifying their nation's consul of the proceeding and thereby giving the consul the opportunity to assist the foreign national.

The Vermont Supreme Court noted that compliance with the Vienna Convention was not optional when it quoted the Supremacy Clause:

Pursuant to the Supremacy Clause, this treaty [the Vienna Convention] is “the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the constitution or Laws of any State to the Contrary notwithstanding.”<sup>20</sup>

However, while compliance is not optional, the treaty does not provide for any specific remedy to a violation. Therefore, it is unclear whether parents have an individual right of action when the treaty is not complied with.<sup>21</sup>

### **Status Exemption and Minimum Contacts**

Dating back to *Pennoyer v. Neff* in 1877, the U.S. Supreme Court recognized that a state may determine the civil status of its own citizens toward a nonresident even when there is “no service of process or personal notice to the non-resident.”<sup>22</sup> By way of example, the Court noted that a state “has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved.”<sup>23</sup> However, the Supreme Court has yet to rule on what cases, apart from divorce, fall under the personal status exception.

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20. *In re R.W.*, 191 Vt. 108, 133 (2011) (quoting the Supremacy Clause, U.S. CONST. art. VI, cl. 2.).

21. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006); this case addressed the parallel statute Article 36 for criminal cases; however, Article 36 and Article 37 are so similar that the Supreme Court's reasoning for Article 37 likely applies to Article 36.

22. 95 U.S. 714, 734–35 (1877).

23. *Id.*

The Vermont Supreme Court, in finding that child custody was covered under the status exemption, opined:

Much like the marriage relationship, severance of a parent's legal relationship to his or her child requires state intervention and is a matter of state concern. Thus, a child's home state has jurisdiction to adjudicate the status of a child present there even if the parents lack minimum contacts with the forum.<sup>24</sup>

This reasoning closely parallels the reasoning of the other states that have considered the issue.<sup>25</sup>

## **UCCJA, UCCJEA, and PKPA**

While the UCCJA still holds importance when interpreting the current unaddressed issues in the UCCJEA, for clarity and brevity's sake, this book deals briefly with the UCCJA and focuses mainly on the UCCJEA and the PKPA, since all states (except Massachusetts, which has pending legislation as of 2014) have now substituted the UCCJA with the UCCJEA.

The UCCJEA and the PKPA are similar in that for both, except in emergency matters, a court may only decide a child-custody matter if the court qualifies for jurisdiction under one of four scenarios (which are discussed more thoroughly in Article 2, Jurisdiction):

1. Home state jurisdiction
2. Significant connection jurisdiction
3. More convenient forum jurisdiction
4. Default jurisdiction (or jurisdiction when no other jurisdictional basis is available)<sup>26</sup>

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24. *In re R.W.*, 191 Vt. 108, 125 (2011).

25. *See State ex rel. W.A.*, 63 P.3d 607, 2002 UT 127, for a listing of jurisdictions that have considered the status exception as it relates to child-custody jurisdiction.

26. *Thomas v. Avant*, 370 Ark. 377, 382 (2007).

One of the main differences between the UCCJEA and the PKPA is that the PKPA is an addendum to the full faith and credit statute. Thus, by nature of being the one law that applies to all states, the PKPA brings national uniformity to interstate recognition of child-custody determinations. However, the PKPA is limited to extending full faith and credit to child-custody determinations. It does not address how a state may enforce a judgment or when a state has jurisdiction to issue an initial child-custody determination under its own laws.

The UCCJEA, on the other hand, is significantly broader than the PKPA. It covers state jurisdiction to enter an order, recognition of foreign child-custody orders, and enforcement of foreign child-custody orders. However, it lacks the PKPA's uniformity because the UCCJEA is enacted by each individual state, and some states have chosen to significantly alter it from its original draft. Case law has also affected the way each state interprets the statute. Thus, while the UCCJEA covers more ground than the PKPA, it is not uniformly adopted across the 50 states.

### **UCCJA (Promulgated in 1968)**

The UCCJA was the first attempt to create a uniform set of laws among the states to contain the rising number of parental kidnappings throughout the United States. Before the UCCJEA replaced it, the UCCJA had been adopted by all 50 states. The UCCJA had some shortcomings that were later addressed through the PKPA and, ultimately, through the UCCJEA.

The UCCJA's main shortcoming was that states were still exercising concurrent jurisdiction due to

1. language in the UCCJA that allowed for concurrent jurisdiction between the states;
2. lack of uniformity due to divergent case law among states and significant modifications made to the proposed UCCJA draft by the states who adopted the statute; and
3. the UCCJA provided no "uniform method of enforcing custody and visitation orders validly entered in another [s]tate."<sup>27</sup>

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27. UCCJEA prefatory note at 4 (quotation and citations omitted).

An additional problem was that the UCCJA drafters could not have foreseen the enactment of the PKPA in 1980. Once the PKPA was enacted, the slight but significant differences between the two acts were “technical enough to delight a medieval property lawyer.”<sup>28</sup>

### **Parental Kidnapping Prevention Act (1980)**

The PKPA was the federal government’s response to the UCCJA’s limitations. The most crucial section of the PKPA is the extension of the federal government’s full faith and credit statute to child-custody determinations.

Although the PKPA has many sections, it is not uncommon for law review articles, court rulings, and experts to refer to 28 U.S.C.A. § 1738A (which extends the Full Faith and Credit Act to child-custody determinations) as the Parental Kidnapping and Prevention Act.

The full PKPA consists of five sections: (1) title; (2) findings and purposes; (3) full faith and credit given to child custody determination; (4) use of federal parental locator service in connection with the enforcement or determination of child-custody and in cases of parental kidnapping of a child; and (5) parental kidnapping.

#### *Section 2: Findings and Purposes*

Section 2 explains that the PKPA was drafted because it was difficult for child-custody determinations to receive full faith and credit, resulting in conflicting and inconsistent rulings across states on the same child-custody case. The purpose of the PKPA was to promote cooperation between the states in child-custody proceedings by

1. giving full faith and credit to child-custody determinations that were entered in the state that was best equipped to make decisions in the best interests of the child;
2. promoting the exchange of information and the enforcement of determinations between the states;

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28. *Id.* at 2.

3. creating stability for children by avoiding the conflicting and inconsistent rulings that were limiting the ability of children to have stable childhoods; and
4. stopping parental kidnappings by removing the possibility of relitigating unfavorable child-custody determination in another state.

*Section 3: Full Faith and Credit Given to Child-Custody Determinations*

Section 3, 28 U.S.C.A. § 1738A, is an addendum to the full faith and credit statute, § 1738. It outlines the situations in which a state must recognize and enforce a foreign child-custody determination.

The UCCJEA and § 1738A of the PKPA closely parallel each other in that both acts give full faith and credit to child-custody determinations entered in a sister state. There are some important differences between the two acts: (1) the PKPA leaves enforcing state courts to their own laws in enforcing the foreign child-custody determinations; and (2) the PKPA does not have a mechanism for determining whether a state has jurisdiction to issue an initial child-custody determination.

Regardless, despite not explicitly controlling a state's jurisdiction to issue an initial child-custody determination, the PKPA does exert some control over whether a state claims jurisdiction over a child-custody determination by denying full faith and credit to those child-custody determinations that do not fulfill its requirements.

*Section 4: Use of Federal Parental Locator Service in Connection with the Enforcement or Determination of Child-Custody and in Cases of Parental Kidnapping of a Child*<sup>29</sup>

Section 4, 42 U.S.C.A. § 663, expands the Parent Locator Service of the Department of Health and Human Services<sup>30</sup> by extending its coverage to “receive and transmit information concerning the whereabouts of any absent parent or child for purposes of (1) enforcing any State or Federal law with respect to the unlawful taking or restraining of a child; or (2) making or enforcing a child custody or visitation determination.”<sup>31</sup>

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29. 42 U.S.C.A. § 663.

30. *Id.* § 1073.

31. *Id.* § 663(a)(1)–(2) (West).

### *Section 5: Parental Kidnapping*

In Section 5, Congress expresses its intent that the attorney general apply 18 U.S.C.A. § 1073 (its official title is “Flight to avoid prosecution or giving testimony,” but it is also called the Fugitive Felon Act) to situations where a parent with a kidnapped child crosses interstate or international lines.

Under § 1073, a kidnapper may be “fined under this title and imprisoned not more than five years, or both” and will be prosecuted in the “Federal judicial district in which the original crime was alleged to have been committed.”<sup>32</sup>

Congressional sponsors of the PKPA intended for the Justice Department to prosecute parental kidnappers under the Fugitive Felon Act with the same vigor that it prosecutes fugitive felons who cross state lines while committing felonies.<sup>33</sup> Despite congressional intent, the PKPA did not significantly alter how the attorney general and the Federal Bureau of Investigation (FBI) enforce the Fugitive Felon Act. As a result, the enforcement of this Act against parental kidnappers is still limited to extreme situations where the U.S. attorney has authorized the filing of a complaint, the federal arrest process is outstanding, and

1. there is probable cause to believe that the kidnapping parent has fled interstate or internationally to avoid prosecution or confinement;
2. there is an outstanding state warrant for the kidnapping parent, and this warrant charges the parent with a felony; and
3. state authorities are willing to extradite and prosecute the fugitive parent if the FBI finds that parent within the United States.<sup>34</sup>

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32. 18 U.S.C.A. § 1073.

33. *Implementation of the Parental Kidnapping Prevention Act of 1980: Oversight Hearing Before the Subcomm. on Crime of the Comm. on the Judiciary House of Representatives*, 97th Cong., first session on implementation of the Parental Kidnapping Prevention Act of 1980, September 24, 1981, Serial No. 99.

34. *Family Child Abductions*, FBI, [http://www.fbi.gov/about-us/investigate/vc\\_majorthefts/cac/family-abductions](http://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/family-abductions) (last visited Aug. 3, 2014).

*Conflicts with the UCCJEA*

It is very unusual for a court to find that there is a conflict between the PKPA and the UCCJEA. However, if the two statutes were to conflict, the PKPA is preemptive.<sup>35</sup>

*Conflicts with the Defense of Marriage Act*

Like the PKPA, Section 2 of the Defense of Marriage Act (DOMA), Powers Reserved to the States, is an addendum to the full faith and credit clause. The PKPA's goal of interstate recognition of all child-custody judgments is seemingly at odds with DOMA's Section 2, which states:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such a relationship.<sup>36</sup>

In 2013 in *United States v. Windsor*, the U.S. Supreme Court found unconstitutional Section 3, Definition of Marriage, of DOMA.<sup>37</sup> This section forbids the recognition of same-sex marriages by the federal government. In its ruling, the Supreme Court noted that DOMA interfered with the due process protections allowed to citizens under the 5th and 14th Amendments because DOMA's "avowed purpose and practical effect . . . are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States"<sup>38</sup> and infringing upon a state's right to determine which of its citizens are to be treated as married persons.

While it remains to be determined if, or how, the *Windsor* ruling affects the seemingly mutually exclusive goals of DOMA's Section 3 and the PKPA,

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35. Arkansas Dep't of Human Servs. v. Cox, 349 Ark. 205, 211 (2002).

36. 28 U.S.C.A. § 1738C.

37. 133 S. Ct. 2675 (2013).

38. *Id.* at 2681.



there is one state supreme court case that deals with whether DOMA forces a state to recognize a sister state's child-custody determination when that sister state's determination is in violation of the PKPA.

In *Miller-Jenkins v. Miller-Jenkins*,<sup>39</sup> two Vermont same-sex spouses filed for divorce in Vermont. After the initial child-custody ruling, the biological mother moved with the child to Virginia and filed for custody there. The Virginia court entered a child-custody determination finding that Vermont's civil union laws were "null and void"<sup>40</sup> under Virginia law and that the biological mother was the "sole biological and natural parent"<sup>41</sup> of the child. The biological mother then sought to have Vermont give full faith and credit to the Virginia judgment under DOMA.

The Vermont Supreme Court rejected the biological mother's argument, finding that

unlike the PKPA, in no instance does DOMA require a court in one state to give full faith and credit to the decision of a court in another state. Its sole purpose is to provide an authorization *not* to give full faith and credit in the circumstances covered by the statute.<sup>42</sup>

It remains undetermined by any state supreme court whether a court may, under DOMA, fail to acknowledge a sister state's child-custody determination even if recognition is required under the PKPA.

### **UCCJEA (Promulgated in 1997)**

Currently, 49 states<sup>43</sup>—as well as Guam, the District of Columbia, and the U.S. Virgin Islands, but not Puerto Rico<sup>44</sup>—have passed the UCCJEA. The

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39. 180 Vt. 441 (2006).

40. *Id.* at 454.

41. *Id.* at 446.

42. *Id.* at 453.

43. Massachusetts is the only state that has not yet enacted the act because of concerns over how the UCCJEA may protect domestic violence victims. Fern L. Frolin, *Uniform Child Custody Jurisdiction Enforcement Act: A Better Child Custody Jurisdiction Law for Massachusetts*, 6 SEC. REV. 17 (2004), available at <http://www.massbar.org/publications/section-review/2004/v6-n3/uniform-child-custody-jurisdiction-enforcement>.

44. Puerto Rico is still subject to the PKPA.

UCCJEA was drafted and adopted in order to address the UCCJA's shortcomings. It did so as follows:

1. **Parallel jurisdiction.** The UCCJEA minimizes the chances of states exercising parallel jurisdiction by giving priority to the ways a state may acquire jurisdiction and omitting the “child’s best interests” among the reasons a court may consider in determining jurisdiction (thereby avoiding the possibility that two states may consider that keeping jurisdiction over a case is in the “child’s best interests”).

For example, a state may only claim UCCJEA jurisdiction in a child-custody matter where another state made a child-custody determination when (1) the parent, child, and any person acting as a parent has moved out of the original decree state; and (2) the state with exclusive, continuing jurisdiction declines to exercise jurisdiction under the grounds that another state is a more convenient forum.

2. **Temporary emergency jurisdiction.** The UCCJEA clarifies that, generally, emergency jurisdiction may only be exercised on a temporary basis. In addition, unlike its predecessor, the UCCJEA segregates temporary emergency jurisdiction away from the exclusive and continuing jurisdiction that is granted to a state exercising initial jurisdiction.
3. **Enforcement.** The UCCJEA adds an enforcement provision that was lacking in the UCCJA. The UCCJEA provides for (1) “a simple procedure for registering a custody determination in another State”;<sup>45</sup> (2) swift remedies in the enforcement of the custody determination; and (3) the enforcing court to issue a warrant for the physical possession of the child if the court fears that the parent who has the child may flee or harm the child.
4. **Harmonization.** The UCCJEA harmonizes linguistically with the Uniform Interstate Family Support Act and the PKPA, thereby “simplifying the life of the family law practitioner” by making the law of interstate family proceedings as uniform as possible.<sup>46</sup>

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45. UCCJEA prefatory note cmt. at 7.

46. *Id.* cmt. at 4.

Despite its achievements, there are limitations to the UCCJEA. For example, case law might lead to different outcomes on a UCCJEA case depending on the state that is litigating the matter. However, the greatest problem with the UCCJEA is that it is a state law that is designed to deal with a type of interstate problem (the recognition of foreign child-custody determinations) for which a federal law is better equipped.<sup>47</sup>

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47. *In re Marriage of Fontenot*, 335 Mont. 79, 84–85 (2006).