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International Child Custody Jurisdiction and the Uniform Child Custody Jurisdiction and Enforcement Act

Robert G. Spector, *University of Oklahoma Norman Campus*

INTERNATIONAL CHILD CUSTODY JURISDICTION AND THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

ROBERT G. SPECTOR*

I. INTRODUCTION

The Hague Convention on the Civil Aspects of International Child Abduction[1] (Child Abduction Convention) has entered the mainstream of family law practice in the United States. Regardless of the practitioner's location, cases involving the return of children to their country of habitual residence following a wrongful abduction may appear in the office of any family law attorney. However, it is not clearly understood by the typical practitioner that a case involving the Child Abduction Convention raises two distinct issues. The first issue, under the Convention, is whether the child should or should not be returned to the country of the child's habitual residence. That issue most resembles an international habeas corpus and does not decide other issues. The second issue involves jurisdiction. If the child is to be returned, does the state to which the child is to be returned have jurisdiction to decide the merits of the custody determination? If the child is not to be returned because one of the defenses under the Child Abduction Convention has been established, does the state to which the child has been abducted have jurisdiction to make a custody determination?[2]

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* Glenn R. Watson Centennial Professor of Law, University of Oklahoma Law Center and Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act. This Article was adapted by the author from a presentation delivered at the NYU *Journal of International Law and Politics* Annual Symposium, *Celebrating Twenty Years: The Past and Promise of the 1980 Hague Convention on the Civil Aspects of International Child Abduction*, held in New York City on February 25, 2000.

1. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Child Abduction Convention].

2. The distinction between the issue of whether the child is to be returned and the issue of whether a court has jurisdiction to make a child custody determination is clearly set out in Article 7 of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-opera-

II. INTERNATIONAL CHILD CUSTODY JURISDICTION IN THE UNITED STATES

A. *Introduction*

In the United States the problems of domestic relations, including the subjects of marriage, divorce or dissolution of

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tion in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391, 1397 [hereinafter 1996 Protection Convention]. Article 7 provides that:

1. In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and
   a. each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
   b. the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.
2. The removal or the retention of a child is to be considered wrongful where —
   a. it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
   b. at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

   The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.
3. So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

The distinction between the issues of whether the child should be returned and whether the court has jurisdiction to make a custody determination implicates federalism concerns in the United States. The determination of whether to return the child can be made by either a state or federal court. International Child Abductions Remedies Act, 42 U.S.C. § 11603(a). However, a decision on whether a state has jurisdiction to decide the merits of a child custody determination can only be decided by a state court.

marriage, maintenance, division of marital property, custody and access to children, as well as other areas of parental responsibility, are almost exclusively within the control of the individual states.[3] Even if a federal court were to have jurisdiction over the parties on an independent federal ground, such as diversity of citizenship,[4] it will abstain from deciding issues of domestic relations which are more properly decided by courts of the individual states.[5] Since each individual state is solely competent to decide cases involving problems of domestic relations, such as custody and visitation issues, they relate to each other in the same way as independent countries. It therefore became necessary to develop some method to determine which state has jurisdiction to decide issues involving custody of and access to children.

The first major attempt to provide uniform rules of jurisdiction in cases involving custody of children occurred in 1968

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3. The federal government, through the Supreme Court, maintains a role in determining when states exceed their authority in regulating the family. Limits have been placed on state regulations concerning marriage, Loving v. Virginia, 388 U.S. 1 (1967); Zablocki v. Redhail, 434 U.S. 374 (1978); Turner v. Safley, 482 U.S. 78 (1987); the effects of illegitimacy, Gomez v. Perez, 409 U.S. 535 (1973) (holding that the state may not constitutionally allow support to legitimate children from their natural fathers and deny the right to illegitimate children); Mills v. Habluetzel, 456 U.S. 91 (1982) (the limitations period for bringing paternity suits on behalf of illegitimate children must be long enough to provide a reasonable opportunity for such claims to be brought); Pickett v. Brown, 462 U.S. 1 (1983) (striking down Tennessee statute that imposed a two-year statute of limitations on paternity proceedings brought on behalf of illegitimate children); applying presumptions to the father of the child born out of wedlock, Stanley v. Illinois, 405 U.S. 645 (1972) (holding that the state may not presume that the father of child born out of wedlock is an unfit parent); and the operation of the juvenile court system, *In re* Gault, 387 U.S. 1 (1967) (applying due process guarantees to children charged with delinquency); Santosky v. Kramer, 455 U.S. 745 (1982) (requiring an elevated standard of proof to terminate parental rights).

The role of the federal government is dramatically different with regard to child support. There, the federal government was able to use successfully its power of the purse to compel states to enact numerous laws as a condition to receiving federal welfare funds. This process of nationalization of child support laws is described and discussed in Linda Henry Elrod, *The Federalization of Child Support Guidelines*, 6 J. AM. ACAD. MATRIM. L. 103 (1990).

4. *See* 28 U.S.C. § 1332 (1988).

5. *See* Barber v. Barber, 62 U.S. 583, 584 (1858); Burrus v. Burrus, 136 U.S. 586, 593-97 (1890).

when the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the Uniform Child Custody Jurisdiction Act[6] (UCCJA). The UCCJA was ultimately adopted in all fifty states, the District of Columbia, and the Virgin Islands.[7] A number of adoptions, however, significantly departed from the original text as promulgated by the NCCUSL.[8] In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistent interpretations by state courts.[9] As a result, the goals of the UCCJA were rendered unobtainable in many cases.[10]

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6. The National Conference of Commissioners on Uniform State Laws (NCCUSL) attempts to bring about national uniformity by developing laws which they hope will be adopted by all fifty states. *See* NCCUSL website, *at* http://www.nccusl.org/aboutus.htm (last visited Oct. 23, 2000). It is somewhat different from organizations like the Hague Conference on Private International Law which attempt to bring about uniformity among different countries by promulgating treaties on rules of jurisdiction, applicable law, and recognition. However, some of the products of the NCCUSL are similar to those of the Hague Conference in that they concern the competence of individual state courts to decide certain issues. The Uniform Child Custody Jurisdiction Act, as well as its replacement, the Uniform Child Custody Jurisdiction and Enforcement Act, (UCCJEA) are such products. UNIF. CHILD CUSTODY JUR. ACT., 9 U.L.A. 261 (1999) [hereinafter UCCJA]; UNIF. CHILD JUR. AND ENFORCEMENT ACT, 9 U.L.A. 23 (1997) [hereinafter UCCJEA].

7. *See* UCCJEA, Prefatory Note, 9 U.L.A. at 650.

8. For example, Alaska omitted the significant connection jurisdiction basis of UCCJA § 3(a)(2), 9 U.L.A. at 307. ALASKA STAT. § 25-30-020 (Michie 1997) (repealed). Texas prioritized home state jurisdiction over the other jurisdictional bases. TEX. CODE ANN. § 152-003 (West 1998). Arizona equated domicile with home state. ARIZ. REV. STAT. § 25-433(A)(1) (1998).

9. For example, on the issue of whether an order entered pursuant to emergency jurisdiction must be a temporary order or whether it can be a permanent order, compare Curtis v. Curtis, 574 So. 2d 24 (Miss. 1990) (temporary) with Cullen v. Prescott, 394 S.E.2d 722 (S.C. Ct. App. 1990) (order can be permanent if no other custody case is pending).

10. One of the main reasons why the goals of the UCCJA were not accomplished is because the goals were incompatible. The UCCJA embodied two main goals: to prevent or punish parental kidnapping of children by providing clear rules of jurisdiction and enforcement and to promote well-informed decisions through choice of the best forum. These goals proved to be mutually exclusive. As a result, courts rendered decisions that were doctrinally inconsistent as they provided for the primacy of one goal or another depending on the result they wished to accomplish in an individual case. *See* Ann Goldstein, *The Tragedy of the Interstate Child: A Critical Reexamination of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act*, 1992 U.C. DAVIS L. REV. 845 (exhaustively and authoritatively documenting

In 1980, the federal government, pursuant to its powers under the Full Faith and Credit Clause, enacted the Parental Kidnapping Prevention Act[11] (PKPA), to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA.[12] There are, however, some significant differences.[13] "To further complicate the process, the PKPA partially incorporates individual state UCCJA law in its language."[14] There also existed disagreement among a number of courts as to whether the federal PKPA was inconsistent with the UCCJA and whether it preempted some of the latter's provisions.[15] The relationship be-

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how the inconsistency of the UCCJA goals produced inconsistent court decisions).

Ultimately, the Drafting Committee of the replacement for the UCCJA concluded that no coherent act could be drafted that would maintain the primacy of both goals. Under the UCCJEA, it is more important to determine which state has jurisdiction to make a determination than to find the "best" state court to make the determination. *See* Robert G. Spector, *Uniform Child-Custody Jurisdiction and Enforcement Act*, 32 FAM. L. Q. 301, 336 n.71 (1998).

11. Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (1980). However, as a Congressional implementation of the Full Faith and Credit Clause, U.S. CONST. art. IV, § 1, the PKPA is not applicable to international cases.

12. *Compare* 28 U.S.C. § 178A(c) *with* UCCJA § 3, 9 U.L.A. at 307 (Jurisdiction); *compare* 28 U.S.C. § 1735A(f) *with* UCCJA § 14, 9 U.L.A. at 580 (Modification of Custody Decree of Another State); *compare* 28 U.S.C. § 1738 (g) *with* UCCJA § 6, 9 U.L.A. at 474 (Simultaneous Proceedings in Other States); *compare* 28 U.S.C. § 1738 (e) *with* UCCJA § 4, 9 U.L.A. at 458 (Notice and Opportunity to be Heard).

13. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree state so long as one parent or the child remains there and that state has continuing jurisdiction under its own law. 28 U.S.C. § 1738A(d). The UCCJA did not directly address this issue.

14. UCCJEA, Prefatory Note, 9 U.L.A. at 650; 28 U.S.C. § 1738 (c)(1).

15. Whether there are major inconsistencies between the UCCJA and the PKPA has been the subject of some debate. One of the authors of the PKPA maintains that the two can be read together and that, therefore, it is not necessary to consider whether the PKPA preempts the UCCJA. *See* Russell

tween these two statutes became "technical enough to delight a medieval property lawyer."[16]

As documented in an extensive study by the American Bar Association's Center on Children and the Law,[17] inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA resulted in a loss of uniformity of approach to child custody adjudication among the states. This study suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.[18]

M. Combs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement,* 66 MINN. L. REV. 711, 822-47 (1982). However, a large number of courts have found that there are inconsistencies and that the PKPA does preempt the UCCJA. *See generally* Martinez v. Reed, 623 F. Supp. 1050, 1054 (D.C. La. 1985), *aff'd.* 783 F.2d 1061 (5th Cir. 1986) (without opinion); Esser v. Roach, 829 F. Supp. 171, 176 (E.D. Va. 1993); *Ex parte* Blanton, 463 So. 2d 162, 164 (Ala. 1985); Rogers v. Rogers, 907 P.2d 469, 471 (Alaska 1995); Atkins v. Atkins, 823 S.W.2d 816, 819 (Ark. 1992); *In re* Marriage of Pedowitz, 225 Cal. Rptr. 2d 186, 189 (1986); *In re* B.B.R., 566 A.2d 1032, 1036 n.10 (D.C. 1989); Yurgel v. Yurgel, 572 So. 2d 1327, 1329 (Fla. 1990); *In re* Marriage of Leyda, 398 N.W.2d 815, 819 (Iowa 1987); Wachter v. Wachter, 439 So. 2d 1260, 1265 (La. App. 1983); Guardianship of Gabriel W., 666 A.2d 505, 508 (Me. 1995); Delk v. Gonzalez, 658 N.E.2d 681, 684 (Mass. 1995); *In re* Clausen, 502 N.W.2d 649, 657 n.23 (Mich. 1993); Glanzner v. Missouri Dep't of Soc. Serv., 835 S.W.2d 386, 392 (Mo. Ct. App. 1992); Ganz v. Rust, 690 A.2d 1113, 1118 n.5 (N.J. Super. Ct. App. Div. 1997); Leslie L. F. v. Constance F., 441 N.Y.S.2d 911, 913 (N.Y. Fam. Ct. 1981); Dahlen v. Dahlen, 393 N.W.2d 765, 767 (N.D. 1986); Holm v. Smilowitz, 615 N.E.2d 1047, 1053-54 (Ohio Ct. App. 1992); Barndt v. Barndt, 580 A.2d 320, 326 (Pa. Super. Ct. 1990); Marks v. Marks, 315 S.E.2d 158, 160 (S.C. Ct. App. 1984); Brown v. Brown, 847 S.W.2d 496, 499-500 (Tenn. 1993); *In re* S.A.V., 837 S.W.2d 80, 87-88 (Tex. 1992); *In re* D.S.K., 792 P.2d 118, 128 (Utah Ct. App. 1990); State v. Carver, 781 P.2d 1308, 1316 (Wash. 1989), *modified,* 789 P.2d 306 (Wash. 1990); Arbogast v. Arbogast, 327 S.E.2d 675, 679 (W. Va. 1984); Michalik v. Michalik, 494 N.W.2d 391, 394 (Wis. 1993); Wyoming *ex rel.,* Griffin v. Dist. Court, 831 P.2d 233, 237 n.6 (Wyo. 1992).

16. HOMER CLARK, DOMESTIC RELATIONS 494 (2d ed. 1988).

17. FINAL REPORT: OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN (Linda Girdner & Patricia Hoff eds., 1993) [hereinafter OBSTACLES STUDY].

18. In addition, in 1994 the NCCUSL's Scope and Program Committee adopted a recommendation of the NCCUSL Family Law Study Committee that the UCCJA be revised to eliminate any conflict between it and the PKPA. In the same year the Governing Council of the Family Law Section of the American Bar Association unanimously passed the following resolution at its spring 1994 meeting in Charleston, South Carolina:

In 1995, the NCCUSL appointed a Drafting Committee to revise the UCCJA.[19] That revision, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was promulgated in 1997 and, as of this writing, has been adopted in eighteen states.[20]

B. *The International Case: The UCCJA*

The UCCJA authorized states to take jurisdiction of a child custody determination when one of four circumstances

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RESOLUTION

WHEREAS the Uniform Child Custody Jurisdiction Act (UCCJA) is in effect in all 50 of the United States, and the Federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. § 1738A, governs the full faith and credit due a child custody determination by a court of a U.S. state or territory, and

WHEREAS numerous scholars have noted that certain provisions of the PKPA and the UCCJA are inconsistent with each other,

THEREFORE BE IT RESOLVED the Council of the Family Law Section of the American Bar Association urges the National Conference of Commissioners on Uniform State Laws (NCCUSL) to study whether revisions to the UCCJA should be drafted and promulgated in a revised version of the uniform act.

See Spector, *supra* note 10, at 307 n.8.

19. The author of this Article was the reporter for this Drafting Committee.

20. Those states are: Alabama, Arkansas, California, Connecticut, Idaho, Iowa, Kansas, Maine, Minnesota, Montana, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, and West Virginia. An updated list of adopting states is available at http://www.nccusl.org/uniformact_factsheets/uniformact-fs-uccjea.htm (last visited Oct. 18, 2000).

The UCCJEA is a much broader act than its predecessor. In addition to jurisdiction, it also contains provisions on enforcement mechanisms and cooperation. Those provisions are not covered in detail in this Article which focuses on the jurisdictional revisions. However, one of the enforcement provisions is of special interest in international cases. UCCJEA § 305 provides a simple mechanism for the registration of custody determinations from other states and foreign countries. The process allows for a predetermination of the validity of the decree and whether it would be enforced in the registering state. UCCJEA § 305, 9 U.L.A. at 692. This provision ought to be very valuable when a custodial parent in a foreign country is planning to send their child to the United States for visitation. Article 26 of the 1996 Protection Convention, *supra* note 2, requires those states which accede to the Convention to provide such a procedure.

Unlike comparable European conventions, such as the 1996 Protection Convention, the UCCJEA does not have any article on the applicable law. This is because American states have normally applied their own law in any case in which they have jurisdiction.

existed: the state was the home state of the child or had been the home state of the child within six months of the commencement of the custody proceeding if a parent or person acting as a parent continued to reside in the state; the child or the child and one parent had substantial connections with the state and there existed in the state substantial evidence concerning the child's future care; there was an emergency; or no other state would have jurisdiction to make a custody determination.[21] States were also required to enforce custody determinations made consistently with the jurisdictional principles of the UCCJA and were not to modify custody determinations made by other states unless the other state no longer had jurisdiction under the UCCJA and the state which sought to modify the determination did have jurisdiction under that act.[22] States were required to decline jurisdiction if another state had assumed jurisdiction in accordance with the UCCJA.[23] States were also authorized to decline jurisdiction if another state would be a more convenient forum and, in certain circumstances, where the petitioner had engaged in reprehensible conduct.[24]

Section 23 of the UCCJA provided that the general policies of the Act applied to foreign custody determinations.[25] Foreign custody determinations were to be recognized and enforced if they were made consistently with the UCCJA and there was reasonable notice and opportunity to be heard. There were two types of issues that arose under this section. The first was whether a United States court would defer to a foreign tribunal when that tribunal would have jurisdiction under the UCCJA and the case was filed first in that tribunal. The second issue was whether a state of the United States

21. UCCJA § 3, 9 U.L.A. at 307-08.
22. UCCJA §§ 13, 14(a), 9 U.L.A. at 559, 580.
23. UCCJA § 6, 9 U.L.A. at 474-75.
24. UCCJA §§ 7, 8, 9 U.L.A. at 497-99, 526.
25. UCCJA § 23, 9 U.L.A. at 639. Section 23 reads:

> The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

would recognize, under this section, a custody determination made by a foreign tribunal.

On the first issue, the UCCJA was ambiguous and only required application of the "general policies" of the Act.[26] Frequently, courts in the United States would apply the same jurisdictional principles to international cases that they would apply in interstate cases. For example, in *Plas v. Superior Court*,[27] the mother filed for custody when she had only been in California with her child for four months. The child was born in France and was raised and lived there with his family until shortly before the California hearing. The court determined that California lacked jurisdiction to hear the case and, even if it had jurisdiction, it should have deferred to France as the most convenient forum.[28] However, not all states followed the same practice. For example, the Oregon Court of Appeals in *Horiba v. Horiba*, refused to defer to a pending Japanese proceeding since Japan was not a "state" under the definition of "state" in the UCCJA.[29] Most U.S. states enforced foreign custody orders if made consistently with the jurisdictional standards of the UCCJA and reasonable notice and opportunity to be heard were afforded all participants.[30] However, Missouri, New Mexico, and Ohio refused to enact § 23 of the UCCJA.[31] Indiana had a provision which seems to affirmatively require the state not to recognize and enforce a foreign custody or-

26. UCCJA § 1(b), 9 U.L.A. at 271.

27. Plas v. Superior Court, 202 Cal. Rptr. 490 (Cal. App. 3d 1984).

28. *Plas*, 202 Cal. Rptr. at 496, 497-98. *See also* Goldstein v. Fisher, 510 A.2d 184 (Conn. 1986) (court lacked jurisdiction to decide custody of child who had been born in Germany and who only resided in the state for four months); Baumgartner v. Baumgartner, 691 So. 2d 488 (Fla. Dist. Ct. App. 1997) (Florida enters domestic violence order and defers to pending proceeding in Germany); Ivaldi v. Ivaldi, 685 A.2d 1319 (N.J. 1996) (simultaneous proceedings provisions apply to New Jersey/Morocco custody dispute); Dincer v. Dincer, 701 A.2d 210 (Pa. 1997) (reinstating trial court deferral to Belgium as the "home state" of the child).

29. Horiba v. Horiba, 950 P.2d 340, 346 (Or. Ct. App. 1997). *See also* Lotte V. v. Leo V., 491 N.Y.S.2d 581 (Fam. Ct. 1985) (holding that New York may hear the custody case despite pending proceedings in Switzerland).

30. *See, e.g.*, Bliss v. Bliss, 733 A.2d 954 (D.C. 1999) (enforcing Russian custody order).

31. *See* UCCJA § 23, 9 U.L.A. at 640; Spector, *supra* note 10, at 323 n.43; OBSTACLES STUDY, *supra* note 17.

der.[32] These four states were able to undermine the UCCJA principles of recognition and enforcement of custody determinations by countries with appropriate jurisdiction under the UCCJA and created obstacles to the return of children who were illegally abducted.

C. *The International Case: The UCCJEA*

Section 105 of the UCCJEA provides that a court of the United States shall treat a court of a foreign country as if it were a state of the United States for the purposes of applying the jurisdiction and cooperation sections of the Act.[33] It further provides that a court of the United States shall enforce a foreign custody determination if it was made under factual circumstances in substantial conformity with the jurisdictional provisions of Article 2 of the UCCJEA.[34] However, a court need not apply this section if the foreign custody law would violate fundamental principles of human rights.[35]

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32. Indiana's provision was repealed. *See* IND. CODE ANN. § 31-1-11.6-25 (1979) *repealed by* Pub. L. No. 1-1997, § 157. The Drafting Committee for the Uniform Child Custody Jurisdiction and Enforcement Act discussed several situations where attorneys in the United States representing clients seeking to avoid the enforcement of foreign custody decrees counseled them to move to Indiana.

33. Section 105 reads:

SECTION 105. INTERNATIONAL APPLICATION OF [ACT].

(a) A court of this State shall treat a foreign country as if it were a State of the United States for purpose of applying [Articles] 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.

(c) A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.

UCCJEA § 105, 9 U.L.A at 662.

34. UCCJEA § 105(b), 9 U.L.A. at 662.

35. It is the respondent's burden under the Child Abduction Convention to show by clear and convincing evidence that the section on fundamental human rights is applicable. Child Abduction Convention, *supra* note 1, art. 20. *See* David S. v. Zamira S., 574 N.Y.S.2d 429 (N.Y. Fam. Ct. 1991); Roszowski v. Roszkowska, 644 A.2d 1150 (N.J. Super. Ct. Ch. Div. 1993). The same burden should be applicable to a person invoking this section of the UCCJEA. UCCJEA art. 2, 9 U.L.A. at 671. The respondent must be given

III. CHILD CUSTODY JURISDICTION UNDER THE UCCJEA

Section 105 of the UCCJEA eliminates the ambiguity of Section 23 of the UCCJA with regard to jurisdiction and communication issues involving custody determinations in foreign cases.[36] This means that the court of the United States will follow the same jurisdictional analysis with regard to whether it can make a custody determination when a foreign country is involved just as it would when a state of the United States is involved. The remaining portion of this Article describes the jurisdictional process under the UCCJEA and provides some comparison with the recently promulgated 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Minors.[37]

A. *Custody Proceeding*

The first issue in any case involving international or interstate jurisdictional issues in children's cases is to determine whether the jurisdictional rules contained in the UCCJEA are applicable. The UCCJEA provides that these rules apply any time a child custody determination will be made in a child custody proceeding.[38] Section 102(3) defines a child custody determination as a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child.[39] The term includes permanent, temporary, initial, and modification orders. The term, however, does not include an order relating to maintenance of a child, child support, or other monetary obligation of an individual.[40] It encompasses any judgment, decree, or other order which

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ample opportunity to present evidence to this effect. *See* Noordin v. Abdulla, 947 P.2d 745 (Wash. Ct. App. 1997).

36. *Compare* UCCJEA § 105, 9 U.L.A. at 662 *with* UCCJA § 23, 9 U.L.A. at 639.

37. *Compare* UCCJEA § 105, 9 U.L.A. at 662 *with* 1996 Protection Convention, *supra* note 2, arts. 26, 28.

38. UCCJEA § 201(b), 9 U.L.A at 671.

39. *See* UCCJEA § 102(3), 9 U.L.A. at 658.

40. It also specifically excludes adoption proceedings. UCCJEA § 103, 9 U.L.A. at 660. The NCCUSL promulgated the Uniform Adoption Act (UAA) in 1994. The jurisdictional provisions of that Act, § 3-101, are substantially different from those of the UCCJEA. *Compare* UNIF. ADOPTION ACT § 3-101, 9 U.L.A. 67-68 (1999) *with* UCCJEA art. 2, 9 U.L.A. at 671. Since the

provides for the custody of, or visitation with, a child,[41] regardless of local terminology, including such labels as "managing conservatorship" or "parenting plan."

A child custody proceeding is defined in § 102(4) as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue."[42] The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.[43] The term does not include a proceeding involving

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NCCUSL could not promulgate two separate acts containing contrary provisions, the decision was made to exclude adoptions from the UCCJEA.

This decision is a cause of some concern. The Uniform Adoption Act has not received widespread adoption. If a state adopts the UCCJEA and does not adopt the UAA, or, at a minimum, the jurisdictional principles of the UAA, it would have no provisions with regard to interstate jurisdiction in adoption cases. An easy way to obviate this problem is to eliminate this section and add "adoption" to the definition of "custody proceedings" in § 102(4) of the UCCJEA.

Whether the PKPA affects adoption proceedings is a matter of some debate. Most courts have simply assumed that since adoption is a custody proceeding both the UCCJA and the PKPA are applicable. *See, e.g., In re* Custody of K.R., 897 P.2d 896 (Colo. Ct. App. 1995). It has been argued that since adoptions were final decrees and entitled to full faith and credit prior to enactment of the PKPA, the PKPA is therefore irrelevant to adoption cases. *See* Herma Hill Kay, *Adoption in the Conflict of Laws: The UAA, Not the UCCJA, is the Answer*, 84 CAL. L. REV. 703 (1996); Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations*, 30 FAM. L. Q. 345, 371-72 (1996). If the PKPA does not apply to adoption cases, courts could utilize general full faith and credit analysis to determine the enforceability of adoption decrees. However, if the term "custody determination" in the PKPA does include adoption cases, then the PKPA will supersede the UAA in determining interstate enforcement. If that occurs, it will be necessary for states to include adoptions proceedings under the UCCJEA in order to comply with the PKPA. 28 U.S.C. § 1738A (1980).

By excluding proceedings involving monetary obligations, the UCCJEA continues the idea of divided jurisdiction in matrimonial cases. 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. *See* Stevens v. Stevens, 682 N.E.2d 1309 (Ind. Ct. App. 1997).

41. As in the definition of "custody determination" in the PKPA, 28 U.S.C.S. § 1738A(b)(3), the definition in UCCJEA § 102(3) of "child custody determination" specifically includes temporary orders. The comparable definition in the UCCJA § 2(2) was ambiguous as to whether temporary orders were covered.

42. UCCJEA § 102(4), 9 U.L.A. at 658.

43. *Id.*

juvenile delinquency, contractual emancipation, an action under the Child Abduction Convention,[44] or a proceeding for the enforcement of a child custody determination. The definition has been expanded from the comparable definition in the UCCJA.[45] The listed proceedings in the UCCJEA have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur with the effect that proceedings that affect access to the child are subject to the jurisdictional provisions of the UCCJEA.[46] The inclusion of proceedings related to protection from domestic violence is necessary because some state domestic violence proceedings

44. Child Abduction Convention, *supra* note 1.

45. UCCJA § 2(3), 9 U.L.A. at 286.

46. Section 2(3) of the UCCJA did not contain an exhaustive list of proceedings that were covered by the Act. The only proceedings specifically enumerated were divorce, separation, child neglect, and dependency. UCCJA § 2(3), 9 U.L.A. at 286. While most states applied the UCCJA to all cases where access to a child could be at issue, a number of states, either legislatively or by court decision, did not extend the UCCJA to all proceedings involving custody of children. New York, for example, refused to apply the UCCJA to cases involving child protective proceedings, termination of parental rights, or proceedings involving guardianship of neglected or dependent children. N.Y. Dom. Rel. L. § 75-c[3]. This meant that a custody determination of another state decided in conformity with the UCCJA would be denied enforcement if the proceeding was in juvenile court rather than domestic relations court. *See In re* Sayeh R., 693 N.E.2d 724 (N.Y. 1997). *See also* T.B. v. M.M.J., 908 P.2d 345 (Utah Ct. App. 1995) (termination of parental rights cases are not governed by the UCCJA); State *ex rel.*, Dep't of Hum. Serv. v. Avinger, 720 P.2d 290 (N.M. 1986). To compound matters, the PKPA's definition of "custody proceeding" does not mention the words *neglect* or *dependent* which has lead some states to conclude that the PKPA specifically allows them to modify another state's custody determination in a dependent or neglected child proceeding. *See* L.G. v. People, 890 P.2d 647 (Colo. 1995); *In re* L.W., 486 N.W.2d 486 (Neb. 1992). By specifying every proceeding to which the Act is applicable, the UCCJEA disapproves of the use of juvenile or other proceedings to undermine the jurisdictional scheme of this Act. Whatever need a state has for the immediate exercise of its extraordinary *parens patriae* powers to protect a child can be accomplished though the jurisdictional process set up under the temporary emergency jurisdiction provisions of § 204. UCCJEA § 204, 9 U.L.A. at 676.

The only excluded proceeding affecting custody of a child is an adoption proceeding. *See* UCCJEA § 103, 9 U.L.A. at 660.

may affect custody of, and visitation with, a child.[47] Juvenile delinquency proceedings and proceedings to confer contractual rights are not "custody proceedings" because they do not relate to civil aspects of access to a child.[48] While a determination of paternity is covered under the Uniform Interstate Family Support Act,[49] the custody and visitation aspects of paternity cases are custody proceedings.[50] Cases involving the Child Abduction Convention are not included because custody of the child is not determined in such a proceeding.[51]

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47. *See* Zappitello v. Moses, 458 N.W.2d 784 (S.D. 1990); G.B. v. Arapahoe County Court, 890 P.2d 1153 (Colo. 1995). The tremendous difficulty that can arise when protective order proceedings are not considered custody proceedings is demonstrated by the Curtis litigation. The Utah court granted custody to the mother following the parties' divorce. The father did not return the children after visitation and fled to Mississippi. Upon arrival he instituted a domestic abuse proceeding, alleging that the children were victims of abuse. Following an ex parte hearing the Mississippi trial court entered a temporary order restraining the mother from seeing the children. The father then requested that the injunction be made permanent and that custody be modified. The mother specially appeared and contested jurisdiction. The trial court eventually determined that the PKPA prevented it from modifying custody but held that the domestic abuse injunction against removing the children from the state could stand. This, of course, had the effect of modifying the Utah decree. Three years later the appellate courts of both Utah and Mississippi held that the trial court was incorrect, without jurisdiction, and ordered the children back to Utah. *See* Curtis v. Curtis, 789 P.2d 717 (Utah App. 1990); Curtis v. Curtis, 574 So. 2d 24, 31 (Miss. 1990).

48. *See, e.g., In re* M.L.S., 458 N.W.2d 541, 542 (Wis. Ct. App. 1990) (holding that a juvenile delinquency petition is not defective for omission of UCCJA pleading).

49. UNIF. INTERSTATE FAM. SUPPORT ACT (1996), § 701, 9 U.L.A. 253, 383 (1996). The Uniform Interstate Family Support Act is another product of the NCCUSL. Its purpose is to determine jurisdiction and applicable law and to promote recognition and enforcement of maintenance determinations for children and spouses. It has been enacted in all fifty states of the United States. *See* John J. Sampson, *Uniform Interstate Family Support Act*, 32 FAM. L. Q. 385 (1998).

50. *See In re* Frost, 681 N.E.2d 1030, 1033-34 (Ill. App. Ct. 1997).

51. Article 16 of the Child Abduction Convention provides that:

> After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of notice.

B. *Original Jurisdiction*

1. *Home State Jurisdiction*

Jurisdiction to make a child custody determination as an original matter is governed by § 201 of the Uniform Child Custody Jurisdiction and Enforcement Act.[52] That section provides for one primary jurisdiction and a number of subsidiary jurisdictions. Primary jurisdiction resides in the child's home state.[53] Home state is defined in § 102(7) as the state in which a child has 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.[54] "In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period."[55]

Section 201 of the UCCJEA gives exclusive jurisdiction to the state that is the home state of the child.[56] It also provides that this "home state" jurisdiction extends to cases where the

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Child Abduction Convention, *supra* note 1, art. 16.

52. UCCJEA § 201, 9 U.L.A. at 671.

53. UCCJEA § 201(a)(1), 9 U.L.A. at 671. The UCCJEA differs from the 1996 Protection Convention in that it precisely defines "home state." UCCJEA § 102(7), 9 U.L.A. at 658 (including duration of time in the definition). *Cf.* 1996 Protection Convention, *supra* note 2, art. 5 (granting primary jurisdiction to the state of the child's "habitual residence" while leaving "habitual residence" undefined and without a set durational quality). For a comprehensive article on the concept of habitual residence as used in multilateral conventions, see Eric Clive, *The Concept of Habitual Residence*, 1997 JURID. REV. 137.

54. UCCJEA § 202(7), 9 U.L.A. at 658.

55. UCCJEA § 102(7), 9 U.L.A. at 658. The question of whether a temporary absence of a child from the state of its habitual residence was discussed during the negotiations of the 1996 Protection Convention. The discussion clearly indicated that temporary absences of a child for reasons of vacation or attending school would not change the child's habitual residence. *See* Paul Legarde, *Explanatory Report*, *in* 2 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW: ACTES ET DOCUMENTS DE LA DIX-HUITIÈME SESSION 533, 535 (1998).

56. UCCJEA § 201(b), 9 U.L.A. at 671. *Cf.* 1996 Protection Convention, *supra* note 2, art. 10 (granting concurrent jurisdiction to a state where there is a divorce hearing in progress). In the United States, the divorce court only has jurisdiction to decide custody and access issues if it meets the jurisdictional requirements of § 201 of the UCCJEA. UCCJEA § 201, 9 U.L.A. at 671.

state 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.[57] Therefore, if a parent leaves the home state of the child, the remaining parent, or person acting as a parent, has six months to file a custody proceeding in that state. If the remaining parent does so, then that state can exercise home state jurisdiction. If such a proceeding is not filed by the left-behind parent and the child subsequently acquires a new home state, then the new home state is the only state that can exercise jurisdiction over the custody determination.

In the United States, jurisdiction attaches at the commencement of a proceeding.[58] If a state has jurisdiction at the time the proceeding was commenced, it does not lose jurisdiction if the child acquires a new home state prior to the conclusion of proceedings.[59]

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57. UCCJEA § 201(a)(1), 9 U.L.A. at 671. The UCCJEA 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.

UCCJEA § 102(13), 9 U.L.A. at 658.

58. *See In re* A.E.H., 468 N.W.2d 190, 200 (Wis. 1991); Simpkins v. Disney, 610 A.2d 1062, 1064 (Pa. Super. Ct.1992); *In re* D.S.K., 792 P.2d 118, 125 n.6 (Utah Ct. App. 1990) (citing the UTAH CODE ANN. § 78-45c-2(5) (1987) and State *ex. rel.* W.D. v. Drake, 770 P.2d 1011, 1013 n. 2 (Utah Ct. App. 1989)); Wanamaker v. Scott, 788 P.2d 712, 714 n.3 (Alaska 1990) (citing State *ex. rel.* Laws v. Higgins, 734 S.W.2d 274, 278 (Mo. App. 1987)); Barnae v. Barnae, 943 P.2d 1036, 1039 (N.M. Ct. App. 1997) (citing *In re* A.E.H., 468 N.W.2d 190, 200 (Wis. 1991) (holding that jurisdictional requirements of UCCJA must be met only at commencement of custody proceedings in state), Simpkins v. Disney, 610 A.2d 1062, 1064 (Pa. Super. Ct. 1992) (holding that determination of jurisdiction must be made at the time of commencement of the instant proceeding), *In re* D.S.K., 792 P.2d 118, 125 n.6 (Utah Ct. App. 1990) (stating that where mother removed herself and children from Utah before trial to modify custody decree, circumstances determining jurisdiction under child's "home state" were those at the time petition to modify decree was filed)).

59. *But see* 1996 Protection Convention, *supra* note 2, art. 5 (providing that if the habitual residence of the child changes, even in the middle of a proceeding, jurisdiction transfers to the child's new habitual residence). A

2. *Significant Connection Jurisdiction*

If there is no home state[60] then a state where 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 other than mere physical presence and there is available in that state substantial evidence concerning the child's care, protection, training, and personal relationships, may assume jurisdiction.[61]

The Drafting Committee for the UCCJEA debated whether to further define the terms "significant connections" and "substantial evidence."[62] Ultimately, it agreed that the terms should remain somewhat flexible. However, the Committee agreed with the Reporter for the UCCJA, Professor Bodenheimer, in her comment to the UCCJA § 3(a)(2)[63] that "there must be maximum rather than minimum contacts with the state."[64] For example, in *Nistico v. District Court*,[65] a two-year-old child lived in California with her mother since birth. The father filed a paternity proceeding in Colorado seeking custody of the child. The court rejected his contention that Colorado had jurisdiction because he and his relatives lived there. The presence of the father and his relatives was insuffi-

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proposal by the United States, Irish, British, and Australian delegations, which would have provided that jurisdiction not change during the course of a proceeding, was rejected by a vote of 19-7 with 4 abstentions. Paul Legarde, *Explanatory Report*, *in* 2 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW: ACTES ET DOCUMENTS DE LA DIX-HUITIÈME SESSION 535 (1998) (noting the convention's rejection of the concept of perpetuation fori). However, if the proceedings requesting measures are still pending in front of the original forum, the 1996 Protection Convention would require the state of the new habitual residence to abstain from exercising its jurisdiction while those matters are still pending. 1996 Protection Convention, *supra* note 2, art. 13. Whether this article will prove satisfactory in eliminating conflicts of jurisdiction remains to be seen.

60. A "substantial connection" state may also exercise jurisdiction if the state that would have home state jurisdiction decides that the substantial connection state would be a more appropriate forum to exercise jurisdiction. 1996 Protection Convention, *supra* note 2, art. 8(1), 8(2)(d).

61. UCCJEA § 201(a)(2), 9 U.L.A. at 671.

62. Spector, *supra* note 10, at 336 n.70.

63. UCCJA § 3(a)(2), 9 U.L.A. at 307 (stating that it is in the best interest of the child that a court of this state assume jurisdiction because of significant connections and substantial evidence).

64. Spector, *supra* note 10, at 336 n.70.

65. Nistico v. District Court, 791 P.2d 1128 (Colo. 1990).

cient absent evidence that there was a strong relationship between Colorado and the child,[66] or between the child and his Colorado relatives.

The focus on "maximum connections" should result in the disappearance of those cases that seem to require little in the way of connections before jurisdiction will be assumed.[67] It should also be noted that the significant connection jurisdiction provisions of the UCCJEA, like those of the UCCJA, do not require the court to weigh the connections of one state against those of another to find the state of the "most significant connection." A state either has significant connection jurisdiction or it does not. If more than one state could exercise significant connection jurisdiction the courts should utilize the provisions of § 110 on judicial communication to determine which state should proceed.[68] Upon a failure of communication the provisions of § 206 on simultaneous proceedings will determine the appropriate forum.[69]

In the determination of significant connection jurisdiction the focus is not whether there is evidence of the future care for the child in the jurisdiction. Instead, the jurisdictional determination should be made by ascertaining whether there is sufficient evidence in the state for the court to make an informed custody determination. That evidence might relate to the past as well as to the present or future.

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66. The fact that the child formerly lived in the state with one parent does not mean that the original state is always a significant connection state so long as one parent lives there. When the child's relationship with the parent and the state deteriorates, jurisdiction is no longer permissible. The Washington father of a child born out of wedlock relinquished the child to his Illinois mother when the child was four months old. Four years later the father filed a paternity action seeking custody of the child in Washington. The Washington court's award of custody to the father was not recognized in Illinois on the ground that the Washington court no longer had significant connection jurisdiction. *See In re* Custody of Bozarth, 538 N.E.2d 785 (Ill. App. 2d 1989).

67. *See, e.g.,* Houtchens v. Houtchens, 488 A.2d 726 (R.I. 1985); Steadman v. Steadman, 671 P.2d 808 (Wash. Ct. App. 1983) (finding that presence of supportive family members established significant connection jurisdiction).

68. UCCJEA § 110, 9 U.L.A. at 666-67.

69. UCCJEA § 206, 9 U.L.A. at 680.

3. *Other Subsidiary Jurisdictional Bases*

The UCCJEA also provides for jurisdiction in a state if all states having home state or significant connection jurisdiction determine it would be a more appropriate forum.[70] This determination would have to be made by all states with home state or significant connection jurisdiction. Jurisdiction would not exist under this provision simply because the home state determined that another state is a more appropriate place to hear the case if there is a state that could exercise significant connection jurisdiction.

Finally, the UCCJEA retains the concept of jurisdiction by necessity as found in the UCCJA.[71] This default jurisdiction only occurs if no other state would have jurisdiction under any other provision of the UCCJEA.[72]

C. *Exclusive Continuing Jurisdiction*

One of the most significant sections of the UCCJEA provides that the state which made the original custody determination continues to retain jurisdiction over all aspects of that determination until the occurrence of one of two events. First,

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70. UCCJEA § 201(a)(3), 9 U.L.A. at 671.

71. *Compare* UCCJEA § 201(a)(4), 9 U.L.A. at 671 *with* UCCJA § 3(a)(4), 9 U.L.A. at 307.

72. While this necessity or default basis of jurisdiction was retained, it probably will not be used. It is difficult to find a case where it was actually necessary to resort to it. In most cases significant connection jurisdiction would have been proper. A typical case is *McFaull v. McFaull*, 560 So. 2d 1013 (La. Ct. App. 1990). The parties were married in Leningrad in the Soviet Union in October, 1985. Thereafter the father resided in New Orleans, and the mother in Leningrad. They lived together in New Orleans from June 26 to August 17, 1987. The mother gave birth to the child in Leningrad on February 6, 1988. The father visited his wife and child in Leningrad for about nine months. The family then lived together in New Orleans from February to May 1989. They again lived together in New Orleans from December 21, 1989 until April 1990. The mother moved out on April 1, 1990, and the father filed for custody on April 5. The trial court granted temporary custody to the father, and he utilized the writ to have the child removed from a Soviet airliner in New York. The court of appeals affirmed the trial court on the ground that no other state would have jurisdiction under the UCCJA. The court did not make a detailed inquiry; it merely assumed that the Soviet Union would not exercise jurisdiction substantially in accordance with the UCCJA. *See id.* at 1014. The concurring opinion pointed out that significant connection jurisdiction would be proper. It also noted that the UCCJA has international applications. *See id.* at 1014-16.

this continuing jurisdiction is lost when a court of the state that made the original custody determination finds that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with it and that substantial evidence is no longer available in that state concerning the child's care, protection, training, and personal relationships.[73] In other words, even if the child has acquired a new home state, the original decree state retains exclusive, continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of § 201 are met.[74] If the relationship between the child and the person remaining in the state with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist. As long as one parent, or person acting as a parent, remains in the original decree state, that state is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree state stating that it no longer has jurisdiction.[75]

Second, jurisdiction is lost when a court of any state determines that the child, the child's parents, and any person act-

73. UCCJEA § 202(a)(1), 9 U.L.A. at 673.

74. There are numerous cases that make this point. *See* Lewis v. District Court, 930 P.2d 770 (Nev. 1997); McDow v. McDow, 908 P.2d 1049 (Alaska 1996) (holding that Alaska cannot modify a Washington decree even though the child has lived in Alaska for two years; whether Washington still has continuing jurisdiction is a matter for Washington law); Garrett v. Garrett, 477 S.E.2d 804 (Ga. 1996); Wilson v. Wilson, 465 S.E.2d 44 (N.C. Ct. App. 1996); *In re* Henry and Keppel, 922 P.2d 712 (Or. Ct. App. 1996), *rev'd*, 951 P.2d 135 (Or. 1997).

75. This approach should eliminate cases in which there are conflicting decisions with regard to whether the original determination state has lost its continuing jurisdiction. Among recent cases with conflicting decrees is *In re A.B.*, 569 N.W.2d 103 (Iowa 1997). This approach also alleviates a problem found in several cases: whether the state that made the original custody determination is bound by a second state's decision that it has lost jurisdiction, or whether the second state is without jurisdiction because it failed to find that the first state still had continuing jurisdiction. *See, e.g.*, Ladurini v. Hazzard, 938 P.2d 1230 (Idaho 1997). Under the UCCJEA, when a party continues to reside in the original determination state, an order must be obtained from that state that it no longer has or wishes to exercise jurisdiction. UCCJEA § 203, 9 U.L.A. at 676.

ing as a parent do not presently reside in the original state.[76] If the child, the parents, and all persons acting as parents have all left the state which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in another state, as well as a court in the original decree state, can decide that the original state has lost exclusive, continuing jurisdiction. Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the state, the non-custodial parent returns.[77] The UCCJEA provides that a state can modify its own determination only if it has jurisdiction to make an initial determination under the standards of § 201.[78] If another state acquires exclusive, continuing jurisdiction under this section, then its orders cannot be modified, even if the first state has once again become the home state of the child.[79]

Section 203 of the UCCJEA on modification jurisdiction is the mirror image of the continuing jurisdiction provisions of § 202.[80] It provides that a state does not have jurisdiction to modify a custody determination of another state, unless that

76. UCCJEA § 202(a)(2), 9 U.L.A. at 673.

77. Exclusive, continuing jurisdiction is not revived when, after the court that made the original determination surrenders jurisdiction to a new home state, the parent and the child leave for a third state. In *Mulle v. Yount*, No. 01A01-9704-CV-00161, 1997 WL 764535, at *6 (Tenn. Ct. App. Dec. 12, 1997), the Tennessee appellate court ruled that when the trial court relinquished jurisdiction to the new home state of Georgia, it was doing so only for the length of time that the mother and child resided there. When the mother and child moved to North Carolina, it ruled that Tennessee's continuing jurisdiction reasserted itself. That ruling is inconsistent with the UCCJEA. Once a court relinquishes exclusive, continuing jurisdiction, it does not reassert itself. Of course, North Carolina could defer to Tennessee as a more appropriate forum under § 207.

78. UCCJEA § 203, 9 U.L.A. at 676. Even though a state may not have jurisdiction to modify its own custody determination, it may still enforce the determination until it is modified by some other state. *See* Dyer v. Surratt, 466 S.E.2d 584 (Ga. 1996) (Georgia court may hold custodial parent in contempt of court for violating the visitation provisions of the custody determination even though it does not have jurisdiction to modify the determination).

79. UCCJEA § 203(1), 9 U.L.A. at 676.

80. *Compare* UCCJEA § 202, 9 U.L.A. at 673 *with* UCCJEA § 203, 9 U.L.A. at 676. The commentary on § 203 indicates the complementary relationship between § 202 and § 203. *Id.* at 673, 676.

state no longer has continuing jurisdiction and the modification state would have jurisdiction under § 201.[81]

D. *Temporary Emergency Jurisdiction*

The UCCJEA provides for one temporary concurrent basis of jurisdiction: in the case of an emergency.[82] An emergency occurs when a child is abandoned in the state or when the child, a sibling of the child, or a parent of the child is threatened with mistreatment or abuse.[83] The concurrent nature of the jurisdiction means that a court may take cognizance of the case to protect the child even though it can claim neither home state nor significant connection jurisdiction. The duties of states to recognize, enforce, and not modify a custody determination of another state do not take prece-

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81. The provisions on continuing jurisdiction in the UCCJEA represent the most serious discrepancy between it and the 1996 Protection Convention. *Compare* UCCJEA art. 2, 9 U.L.A. at 671 *with* 1996 Protection Convention, *supra* note 2, art. 5. The Convention does not authorize any continuing jurisdiction in the original decree-granting state. Instead, it provides that jurisdiction shifts when the child acquires a new habitual residence. Although, under Article 14 of the 1996 Protection Convention, the measure taken by the state of the child's original habitual residence remains in force until modified, there is nothing in the Convention to prevent the state of the child's new habitual residence from immediately modifying the original state's order. 1996 Protection Convention, *supra* note 2, art. 14. Both the Special Commission and the Diplomatic Commission soundly rejected all attempts by the United States to include a form of continuing jurisdiction in the 1996 Protection Convention. The United States proposed as a compromise that the country of the child's habitual residence that had taken measures concerning custody or access, should retain exclusive jurisdiction for a period of five years if one of the parents continued to reside in that country. *See Comments of the Governments and International Organizations on Preliminary Document No. 8 of September 1996*, 2 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW: ACTES ET DOCUMENTS DE LA DIX-HUITIÈME SESSION 195-96 (1998); Linda Silberman, *The 1996 Hague Convention on the Protection of Children: Should the United States Join?*, 34 FAM. L.Q. 239, 250 (2000). This too was rejected. All of this is of great concern to lawyers in the United States. Over 30 years of experience with interstate custody decisions in the United States has indicated that a failure to provide for clear rules on continuing jurisdiction results in inconsistent custody determinations and leads to increased parental kidnapping of children. *See* Spector, *supra* note 10, at 305.

82. UCCJEA, § 204(a), 9 U.L.A. at 676. The comparable provision of the 1996 Protection Convention, *supra* note 2, art. 11, gives a state jurisdiction to take any necessary measures of protection in cases of "urgency."

83. UCCJEA, § 204(a), 9 U.L.A. at 676.

dence over the need to enter a temporary emergency order to protect the child.[84]

However, a custody determination made under the emergency jurisdiction provisions must be a temporary order.[85] The purpose of the emergency temporary order is to protect the child until the state that appropriately has jurisdiction under the original jurisdiction provisions or the continuing jurisdiction provisions is able to enter an order to resolve the emergency.

Under certain circumstances, however, an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a state with appropriate jurisdiction, an emergency custody determination made under these provisions becomes a final determination, if it so provides, when the state that issues the order becomes the home state of the child.[86]

Normally, however, there will either be a prior custody order in existence that is entitled to enforcement or there will be a proceeding which is pending in a state with appropriate jurisdiction. When this occurs the provisions of the UCCJEA allow the temporary order to remain in effect only so long as is necessary for the person who obtained the emergency determination to present a case and obtain an order from the state

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84. *See, e.g.,* Curtis v. Curtis, 574 So. 2d 24, 28 (Miss. 1990); *In re* D.S.K., 792 P.2d 118, 126 (Utah Ct. App. 1990).

85. *See, e.g., In re* Van Kooten, 487 S.E.2d 160, 164 (N.C. Ct. App. 1997) (in a child abuse and neglect proceeding begun pursuant to emergency jurisdiction, trial court may enter a temporary order and then must contact the court in the child's home state; only if that state declines to exercise jurisdiction may the trial court enter permanent dispositional orders); Sheila L. *ex. rel.* Ronald M.M. v. Ronald P.M., 465 S.E.2d 210, 222 (W. Va. 1995).

86. Basically, the principle is one of acquiescence. The left-behind parent could have filed a custody proceeding within the six month extended home state provision. The failure to do so results in the temporary order becoming permanent. Considerations of waste of resources suggest that the parent who obtained the original custody order need not always return to court after establishing home state jurisdiction to obtain a permanent order. UCCJEA §§ 201, 204, 9 U.L.A. at 671, 676. The same principle is found in Article 7 of the 1996 Protection Convention which provides that the state of the child's habitual residence retains its jurisdiction after a wrongful removal unless there has been acquiescence to the removal by all persons who had rights of custody in the original state. 1996 Protection Convention, *supra* note 2, art. 7.

that would otherwise have jurisdiction.[87] That time period must be specified in the emergency order.[88] If there is an existing order by a state with jurisdiction that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with appropriate jurisdiction. The court with appropriate jurisdiction may decide that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order or the child, and decline jurisdiction under § 207.[89] It should be noted that any hearing in the state with appropriate jurisdiction is subject to the provisions of §§ 111 and 112.[90] These sections facilitate the presentation of testimony and evidence taken out of state. If there is a concern that the person obtaining the temporary emergency determination would be in danger upon returning to the state with appropriate jurisdiction, these provisions should be used.[91]

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87. UCCJEA § 204(c), 9 U.L.A. at 677.

88. The Drafting Committee discussed at great length whether the Act should specify the length of time that a temporary emergency order could be in effect. Several intermediate drafts limited the time to 90 days. Some members thought the time period was too lengthy in that it could supersede a determination of a court that had jurisdiction under §§ 201-203 for three months. Other members were concerned that in some states crowded dockets would prevent a court that had appropriate jurisdiction under §§ 201-203 from being able to enter an order within the 90 day period. The Drafting Committee ultimately decided not to specify a particular time. Instead, it was left to the court that issued the temporary emergency custody determination, upon consultation with the court that would otherwise have jurisdiction under §§ 201-203, to determine the appropriate length of time. This will often be less than 90 days. *See* Spector, *supra* note 10, at 347 n.100. *See, e.g.*, Magers v. Magers, 645 P.2d 1039 (Okla. Ct. Civ. App. 1982) (granting father 10 days to file a statement of intent to file a petition and then 20 days to file the petition in the appropriate Texas court); *In re* Joseph D., 23 Cal. Rptr. 2d 574 (Ct. App. 1993) (emergency order that extended for eleven months disapproved).

89. *See, e.g.*, Marlow v. Marlow, 471 N.Y.S.2d 201 (Sup. Ct. 1983) (holding that California is the more appropriate forum based on custodial mother's residence there for over six months and non-custodial father's abuse and instability); Coleman v. Coleman, 493 N.W.2d 133 (Minn. Ct. App. 1992).

90. UCCJEA §§ 111, 112, 9 U.L.A. at 668-69.

91. Further protections are possible through "safe-harbor" orders by the state with appropriate jurisdiction or combined orders from the state with emergency jurisdiction and the state with appropriate jurisdiction. *See, e.g.*,

The section on emergency jurisdiction requires communication between the court of the state that is exercising emergency jurisdiction and the court of another state that has appropriate jurisdiction.[92] The pleading rules of the UCCJEA require a person seeking a temporary emergency order to inform the court of any proceeding concerning the child that has been commenced elsewhere.[93] The person commencing the custody proceeding in a state with appropriate jurisdiction is required to inform the court about the temporary emergency proceeding.[94] These pleading requirements need to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

E. *Abstention From Jurisdiction*

Three sections of the UCCJEA speak to the question of when a state which has jurisdiction should refrain from exercising it.

1. *Simultaneous Proceedings or* Lis Pendis

The problem of two or more states having concurrent jurisdiction in child custody cases has always been a difficult one. Under the UCCJA, the home state and the significant connection state had concurrent jurisdiction.[95] The same was true, under some interpretations, of the state which had originally entered the child custody determination and the new home state of the child. The concurrent jurisdiction problem has been significantly decreased under the UCCJEA. This occurs

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Orchard v. Orchard, 686 N.E.2d 1066 (Mass. App. Ct. 1997). The home state of Michigan sought to obtain the presence of the mother to determine the merits of the custody dispute, entered orders which offered to pay her costs of transportation, provide for the safety of the parties through mutual restraining orders, arranged for Legal Aid to represent her, and recognized her temporary custody which had been ordered by the Massachusetts court that issued the emergency order. *See also In re* A.L.H., 630 A.2d 1288 (Vt. 1993) (Vermont sent child back to South Carolina based on entry of order in that state placing her in protective custody).

92. UCCJEA § 204(d), 9 U.L.A. at 677. *See, e.g., In re* Joseph D., 23 Cal. Rptr. 2d 574 (Ct. App. 1993); *In re* Maureen S., 592 N.Y.S.2d 55 (App. Div. 1992).

93. UCCJEA § 209(a)(1), 9 U.L.A. at 686.

94. *Id.*

95. UCCJA § 3, 9 U.L.A. at 307.

through the prioritization of home state jurisdiction over that of significant connection jurisdiction and by giving the original decree state exclusive continuing jurisdiction, so long as the requirements of § 202 are met.[96]

Nonetheless, there is still one situation where concurrent jurisdiction is possible. It occurs when there is no state that can exercise home state jurisdiction, or a state with exclusive continuing jurisdiction, and more than one state that can exercise significant connection jurisdiction. For those cases, the UCCJEA, in § 206, retains the "first in time" rule of the UCCJA.[97] This section requires that before a court may proceed with a custody determination, it must find out from the pleadings and other documents that have been submitted whether a custody proceeding has already begun. If one has been commenced in a state that would otherwise have jurisdiction under the UCCJEA, it must communicate with that court.[98] If the court that would otherwise have jurisdiction under the UCCJEA refuses to decline in favor of the forum, then the forum shall dismiss the case.

2. *Forum Non Conveniens*

The doctrine of forum non conveniens is firmly established in American jurisprudence, although not well known in Europe.[99] Simply put, if a state that would otherwise have ju-

96. UCCJEA § 202, 9 U.L.A. at 673.

97. *See* UCCJEA § 206(b), 9 U.L.A. at 680; UCCJA § 6(c), 9 U.L.A. at 475.

98. The procedure of the UCCJEA parallels that of the UCCJA in that it requires the court to stay the proceeding and communicate with the court that has jurisdiction under the UCCJEA. *Compare* UCCJEA § 206(b), 9 U.L.A. at 680 *with* UCCJA § 6(c), 9 U.L.A. at 475. The requirements of stay and communication should be strictly adhered to in order to prevent conflicting custody determinations. *See* Hickey v. Baxter, 461 So. 2d 1364 (Fla. Dist. Ct. App. 1984) (holding that trial court erred in not staying the proceedings and communicating with the Virginia court); Karahalios v. Karahalios, 848 S.W.2d 457 (Ky. Ct. App. 1993) (holding that custody decision be vacated because trial court failed to communicate with Tennessee court); *In re* L.C., 857 P.2d 1375 (Kan. Ct. App. 1993).

99. A unique concept, quite similar to forum non conveniens, appears in Articles 8 and 9 of the 1996 Protection Convention, *supra* note 2. Article 8 authorizes the state of the child's habitual residence, if it's courts think that another state would be in a better position to assess the best interests of the child, to request the other state to assume jurisdiction. Article 9 authorizes a state that is not the child's habitual residence, if it's courts think it is in a

risdiction determines that some other state would be a more appropriate forum in which to decide the case, it may decline jurisdiction in favor of that forum. This principle is a significant part of the UCCJEA jurisdictional provisions. Both the sections on home state jurisdiction[100] and exclusive, continuing jurisdiction[101] authorize the courts of those states to decide if another state would be a more appropriate forum, and if so, to decline jurisdiction in favor of that state.[102]

The principles governing the process of making the forum non conveniens decision are found in § 207.[103] The suggestion that a court is an inconvenient forum may be made by any party to the proceeding or by the court on its own motion. When a suggestion of inconvenient forum is made, the parties will submit information on the following factors:

(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
(2) the length of time the child has resided outside this State;
(3) the distance between the court in this State and the court in the State that would assume jurisdiction;
(4) the relative financial circumstances of the parties;
(5) any agreement of the parties as to which State should assume jurisdiction;
(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

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better position to assess the best interests of the child, to request that the state of the child's habitual residence transfer the case to it.

100. UCCJEA § 201, 9 U.L.A. at 671.

101. UCCJEA § 202, 9 U.L.A. at 673.

102. There are numerous cases where the court that made the original custody determination decides that the child's new home state is in a better position to determine whether the original determination should be modified. *See, e.g.*, Bosse v. Superior Court, 152 Cal. Rptr. 665 (Ct. App. 1979) (California court should decline to modify a California custody decree on the basis of inconvenient forum when child has lived with mother in Montana for two and one-half years); Payne v. Weker, 917 S.W.2d 201 (Mo. Ct. App. 1996) (mother and child have lived in Maryland for six years).

103. UCCJEA § 207, 9 U.L.A. at 682.

(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and
(8) the familiarity of the court of each State with the facts and issues in the pending litigation.[104]

Other factors not specifically mentioned may also be the basis of an inconvenient forum motion.

Although most of the factors are self-explanatory, several provisions require comment. Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties.[105] For this purpose, the court should determine whether the parties are located in different states because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which state can best protect the victim from further violence or abuse.[106]

In applying subparagraph (3),[107] courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of §§ 111 and 112.[108]

In applying subparagraph (7) on expeditious resolution of the controversy,[109] the court could consider the different procedural and evidentiary laws of the two states, as well as the flexibility of the court dockets. It should also consider the ability of a court to arrive at a solution to all the legal issues

104. *Id.*

105. UCCJEA § 207(1) cmt., 9 U.L.A. at 683.

106. Swain v. Vogt, 614 N.Y.S.2d 780 (App. Div. 1994) (New York, the state of continuing jurisdiction, defers to Maine, even though the mother removed the child from New York in violation of a court order, due to father's continuing abuse of her and the child); Coleman v. Coleman, 493 N.W.2d 133 (Minn. Ct. App. 1992).

107. UCCJEA § 207(3), 9 U.L.A. at 683.

108. UCCJEA §§ 111,112, 9 U.L.A. at 668. On the question of whether the parties have agreed on which court should assume jurisdiction, the court must determine that the forum selected is one which could assume jurisdiction under this Act. *See* Steckel v. Blafas, 549 So. 2d 1211 (Fla. Dist. Ct. App. 1989) (clause should not be honored when the forum selected has lost jurisdiction); *In re* Marriage of Hilliard, 533 N.E.2d 543 (Ill. App. Ct. 1989) (parties may contract concerning forum as well as other subjects); *but see In re* Marriage of Bueche, 550 N.E.2d 48 (Ill. App. Ct. 1990) (suggesting, without rationale, that there is a difference between a valid forum selection clause and an invalid retention of jurisdiction clause).

109. UCCJEA § 207(7), 9 U.L.A. at 682.

surrounding the family. If one state has jurisdiction to decide both the custody and support issues, it would be desirable to find that state to be the most convenient forum. The same is true when children of the same family live in different states. It would be inappropriate to require parents to have custody proceedings in several states when one state could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court may communicate, in accordance with § 110,[110] with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court.

If a court determines it is an inconvenient forum, it may not simply dismiss the action. To do so would leave the case in limbo. Rather, the court shall stay the case and direct the parties to file in the state that has been found to be the more convenient forum.[111] The court is also authorized to impose any other conditions it considers appropriate. This might include 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.

3. *Declining Jurisdiction Because of Unreasonable Conduct*

Section 208 of the UCCJEA applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it.[112] The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger its applicability. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case

110. UCCJEA § 110, 9 U.L.A. at 666.

111. Some states already require that when a court determines it is an inconvenient forum, it must specify what forum is more convenient. *See* Waller v. Richardson, 757 P.2d 1036, 1039-40 (Alaska 1988).

112. UCCJEA § 208, 9 U.L.A. at 683.

should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline to exercise jurisdiction under this section.[113]

This section also authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another state that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child. Unless it would be clearly inappropriate, attorney fees shall also be awarded to the left-behind parent.

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113. The focus on unjustifiable conduct represents a continuation of the balancing process as developed in the case law under UCCJA § 8, 9 U.L.A. at 526. The court should balance the wrongfulness of the parent's conduct that establishes jurisdiction against the reasons for the parent's conduct. *See In re* Thorensen, 730 P.2d 1380, 1387 (Wash. Ct. App. 1987) (showing that a mother's flight to protect herself from a father's physical and mental abuse counterbalanced any wrongfulness in her conduct); Cole v. Superior Court, 218 Cal. Rptr. 905, 908 (Ct. App. 1985) (stating that husband's abuse of wife and step-daughter justify wife's removal of other children of the marriage and "certainly negate any findings that she has unclean hands because she took them away"); Marlow v. Marlow, 471 N.Y.S.2d 201, 207 (Sup. Ct. 1983) (detailing how mother's wrongful removal of children to California in violation of the parties' settlement agreement is counterbalanced by father's instability and spousal abuse); Laskosky v. Laskosky, 504 So. 2d 726, 731 (Miss. 1987) (indicating that Mississippi properly declined jurisdiction because mother continued to violate Canadian temporary custody order to return with the child to Canada, and there was no showing that there was any harm to the child).

F. *Communication and Cooperation Between Tribunals*

The UCCJEA contains specific provisions providing for communication and cooperation between tribunals of different states. These provisions also apply in international child custody cases[114] which should make the resolution of these cases much easier.

The communication provisions are contained in § 110.[115] It authorizes a court of one state to communicate with a court in another state concerning any proceeding arising under the UCCJEA. A court may allow the parties to participate in the communication. However, participation of the parties is not required. The busy schedules of judges often require that the communication be held at odd hours when the parties are not available. This will be especially true in international cases given the major time differences. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. A record must be made of the communication, unless the communication concerns such minor matters as schedules, calendars, court records, and similar matters. The parties must be informed promptly of the communication and granted access to the record.

The cooperation provisions of the UCCJEA are §§ 111 and 112.[116] Section 111 is concerned with taking testimony in another state.[117] It provides that a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child. The evidence may be by deposition or by any other means that are allowable in the state where the testimony is received. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the man-

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114. UCCJEA, § 105(a), 9 U.L.A. at 662. Domestic tribunals have been required to communicate with foreign tribunals under the UCCJA in some states. *See* Stock v. Stock, 677 So. 2d 1341 (Fla. Dist. Ct. App. 1996) (Florida court required to communicate with Switzerland); Plas v. Superior Court, 202 Cal. Rptr. 490 (Ct. App. 1984) (California court required to communicate with French court); Mc v. Mc, 521 A.2d 381 (N.J. Super. Ct. Ch. Div. 1986) (communications with Irish court).

115. UCCJEA § 110, 9 U.L.A. at 666.

116. UCCJEA §§ 111,112, 9 U.L.A. at 668-69.

117. UCCJEA § 111, 9 U.L.A. at 668.

ner in which, and the terms upon which, the testimony is taken.

A court may also permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court is required to cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

Documentary evidence may be transmitted from courts in other states by technological means that do not produce an original writing and may not be excluded from evidence on an objection based on the means of transmission.

Section 112 lists other features of cooperation.[118] It authorizes a court of one state to request the appropriate court of another state to:

(1) hold an evidentiary hearing;
(2) order a person to produce or give evidence pursuant to procedures of that state;
(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.[119]

The commentary attached to this section authorizes a court to comply with any of the above requests when made by a court of another state.[120]

Travel and other necessary and reasonable expenses incurred because of the cooperation provisions may be assessed against the parties according to the law of the state where the proceeding is to occur.[121]

118. UCCJEA § 112, 9 U.L.A. at 667.
119. UCCJEA § 112(a), 9 U.L.A. at 669.
120. UCCJEA § 112 cmt., 9 U.L.A. at 669.
121. UCCJEA § 112(c), 9 U.L.A. at 669.

Another provision of § 112 requires a court to preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age.[122] Upon an appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

V. CONCLUSION

The Uniform Child Custody Jurisdiction and Enforcement Act is a major step forward in allocating jurisdictional competency in child custody cases. When enacted by all states, it will clearly indicate which state has jurisdictional competency. This should further the policy that has been pursued by American law over the last forty years: one state and only one state should have jurisdiction at any one time. The elimination of concurrent jurisdiction, except for temporary emergency jurisdiction, will substantially reduce the number of instances where one parent abducts the child to another state in the hopes of receiving a more favorable custody determination. The result should be greater stability for children in an increasingly unstable world.

122. UCCJEA § 112(d), 9 U.L.A. at 669.