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INTERSTATE ENFORCEMENT OF CHILD PROTECTION ORDERS

by

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A. INTRODUCTION

Child protection orders issued by local courts are sometimes violated. As long as the children and the other parties involved remain within the court's jurisdiction, enforcement problems, although they exist, are less complicated than the problems presented when the child is out of the court's jurisdiction. A child may be removed from the jurisdiction during visitation, contrary to the court's order. A child, visiting in another jurisdiction, may not be returned as ordered by the court. A child placed out of the jurisdiction by the court may now be in jeopardy because of an unauthorized removal from placement or other violation of the court order. By what legal mechanisms can the local court orders be enforced in other states?

The following will focus on the Uniform Child Custody Jurisdiction Act as it might be applied to child abuse and neglect and enforcing child protection court orders. The "Parental Kidnapping Prevention Act of 1980" offers some assistance in this regard. Interstate Compacts, discussed elsewhere in this volume, should be considered as part of the legal arsenal in making interstate arrangements for children and in enforcing child protection orders when necessary.
B. THE LIMITED UTILITY OF COMITY; AND FULL FAITH AND CREDIT

Enforcement of orders from county to county within a state is generally provided for by state statute or by judicial recognition. Interstate comity of child custody orders is more problematic however. Comity is a legal principle that permits courts of one jurisdiction to recognize and enforce rights created in another jurisdiction when there is no overriding reason for withholding such recognition. But comity may not be applied to foreign judgments for a variety of reasons. The foreign decree may be seen as inconsistent with the policy or substantive law of the enforcing jurisdiction. In the eyes of the enforcing court, the decreeing court in the foreign state may simply be without authority to render the judgment sought to be enforced. Common law comity alone is an unpredictable legal authority to rely upon in enforcing child protection orders.

The United States Supreme Court has yet to settle the question of whether the full faith and credit clause of the Constitution applies to child custody decrees. A decade or more ago the unpredictability and instability of child custody law resulted in disputes being reopened and relitigated in any state where the child was physically present. Child snatching was thus encouraged. There had been "a tendency to overemphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made." Historically, full faith and credit as a constitutional doctrine did little to bring order to the chaos of child custody
jurisdictional disputes. States are free to recognize and enforce out-of-state custody decrees but full faith and credit does not require it. Full faith and credit by itself, like comity, provides quite limited doctrinal authority for interstate enforcement of child protection orders. Federal and state legislation provide the strongest and most reliable means to that end. Frustration with the instability of child custody decisions and attendant problems of child snatching and forum shopping led to the wide spread passage among states of the Uniform Child Custody Jurisdiction Act and the federal Parental Kidnapping Prevention Act.

C. UNIFORM CHILD CUSTODY JURISDICTION ACT

The UCCJA was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1968. As of 1981, forty-four states had enacted it. Only Massachusetts, Mississippi, New Mexico, South Carolina, Texas, West Virginia, the District of Columbia, Puerto Rico and the territories of the United States are without the Uniform Act.

The UCCJA addresses three major problems with prior law: it eliminates jurisdiction based merely on the physical presence of the child; it prohibits modifications of custody decrees of other states, with very limited exceptions; and it requires summary enforcement of out-of-state custody decrees. The Act distinguishes between initial jurisdiction and modification jurisdiction. Initial jurisdiction to decide child custody matters is limited by §3 and is primarily in the home state of the child; the state where the child lived for six months prior to the proceedings. Home state jurisdiction is extended

*Editor's Note: Since the preparation of this article, two additional states--N.M. and WVA--have enacted the UCCJA.
for an additional six months if the child has been removed from the state. Jurisdiction can also be in a state which has a significant connection with the child and family.¹¹ (The authority of a court to enter emergency child protective orders if the court of another state has jurisdiction under the UCCJA is discussed below.)

Modification of a custody decree is jealously reserved to the state which made the decree. Section 14 says that other states "shall not modify" that decree. "In other words they must respect the continuing jurisdiction of the prior state which is exclusive. Continuing jurisdiction ends only if all the parties and the child have taken up residence in other states, or if the state of the decree has declined to exercise its modification jurisdiction."¹²

The UCCJA is primarily directed at private child custody disputes, that is at disputes arising out of a divorce or dissolution of a marriage. However, the UCCJA clearly applies to child protection proceedings, as well. Section 2(3) reads:

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings; (emphasis added)

Two states, Connecticut and New Hampshire, specifically exclude neglect and dependency proceedings in their adoption of the UCCJA.¹³

D. USING THE ENFORCEMENT PROVISIONS OF UCCJA IN CHILD PROTECTION

Assume that during an unsupervised visit a parent flees the jurisdiction with a child who is under the child protective authority of a local court. The local court enters an order to pick up the child and return him to the jurisdiction. How is that order to be enforced?
One avenue of enforcement is the UCCJA. If the child is taken to a state which has adopted the UCCJA the following process is available. The refuge state must have adopted the Uniform Act but the original state may be a non-UCCJA state. The Act is not reciprocal, that is, recognition and enforcement is due to the custody decree of a non-UCCJA state if that decree "was made under factual circumstances meeting the jurisdictional standards of the Act."  

Section 13 provides:

§13. Recognition of Out-of-State Custody Decrees
The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which has assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of this Act.... (emphasis added)

A certified copy of the local decree is filed with the clerk of the appropriate court in the refuge state. Section 15 says in part: "A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state." Section 15(b) provides that person violating a custody decree of another state may be required to pay certain enforcement costs. Under §24 cases brought under this Act are to be given calendar priority.

E. ENTERING CHILD PROTECTION ORDERS WHEN ANOTHER STATE HAS INITIAL OR CONTINUING JURISDICTION

Emergency jurisdiction in cases of abandonment and emergency cases of child neglect is provided for in Section 3(a)(3). Such emergency jurisdiction may be exercised even though another state
has initial or continuing jurisdiction. The emergency jurisdiction confers authority to make temporary orders, including temporary custody for a limited period of time, pending proceedings in the state with regular jurisdiction under the Act. 15

The Commissioners' Note reinforces the emergency nature of this authority:

[Section 3(a)(3)] retains and reaffirms parens patriae jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the jurisdiction is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S.2d 763 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

The Act provides several ways of resolving occurrences of simultaneous jurisdiction. See §§ 3, 7 and 14 to resolve the question of whether the original court or the parens patriae child protection court would retain jurisdiction.

F. PARENTAL KIDNAPPING PREVENTION ACT OF 1980

Recent federal statute seems to have extended the benefits of the UCCJA to all states. After years of effort the Parental Kidnapping Prevention Act of 1980 was passed by the Congress and signed by the President as PL 96-611. 16 The new law has three major parts. First, it requires state courts to give full faith and credit to out-of-state custody orders. State courts are to enforce and refrain from modifying custody and visitation decrees made by other states consistent with the jurisdictional principles of the Uniform Child Custody Jurisdiction

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Act. Second, it authorizes the use of the Federal Parent Locator Service to locate children who have been abducted. Third, it revitalizes the federal Fugitive Felon Act in state felony parental kidnapping cases, making it possible for the F.B.I. to investigate cases which state authorities intend to prosecute.

G. ENFORCEMENT SUGGESTION

Peace officers and social workers are generally not empowered to enforce an order from outside their jurisdiction without an order from a local court directing them to do so. The legal authority for the refuge jurisdiction to enforce out-of-state custody orders is discussed above. Translating the legal authority to act into real action will require the cooperation of a lawyer, probably a lawyer connected with the court or with the child protective agency. Make a personal telephone contact with the child protection attorney, the prosecuting attorney, the attorney general or whoever is in a position to move the order through the refuge jurisdiction's court and to the appropriate law enforcement or child welfare agency. A personal contact from one lawyer with a stake in the case to another may reduce delays and confusion.

In summary, a simplified step by step procedure for enforcing child protection orders in other states is as follows:

1. Local court issues a child custody order, e.g., an order to apprehend child and return him to the local jurisdiction.
2. Personal contact is made with the court and/or the child protection attorney in the refuge jurisdiction.
3. Certified copy of the local court's order is sent
to the clerk of the appropriate [Juvenile, Family] court
or arrangements are made with the attorney contacted
personally to file the certified order.

4. An order of enforcement is issued from the court in
the refuge jurisdiction.

5. Refuge jurisdiction authorities law enforcement and/or
child welfare -- implement order.
REFERENCES


8. UCCJA § 3(b).

9. UCCJA § 10.

10. UCCJA §§ 13, 15.

11. Bodenheimer supra note 4 at 204.

12. id. at 204-205; UCCJA § 14.

13. 9 Uniform Laws Ann. § 2(3).


15. id. at 226; UCCJA § 3(a)(3) and Commissioners' Note.