The Uniform Child Custody Jurisdiction and Enforcement Act:
A Focused Introduction*

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I. Historical Background

A. No Constitutional Mandate To Enforce Custody Orders Across State Lines.

1. **United States Constitution, Article IV, Sec. 1** requires each state to give "Full Faith and Credit [to] the public acts, records and judicial proceedings of every other state."

2. **28 U.S.C. §1738**, which codifies the constitutional mandate of full faith and credit, has consistently been interpreted as not applicable if the first state's judgment or order was not "final."

   a. **First Obstacle: Personal Jurisdiction**. *May v. Anderson*, 345 U.S. 528 (1953), held that, under the United States Constitution, an *ex parte* custody order rendered in one state (there Wisconsin) that had not acquired *personal* jurisdiction over the other, non-resident parent was not entitled to full faith and credit in that non-resident's state (there Ohio).

   b. **Second Obstacle: Finality.** Because custody orders are never truly "final" (they are always subject to modification in light of changed circumstances by the court that originally rendered them), the Supreme Court had held that custody decrees were not res judicata or entitled to full faith and credit in other states if "changed circumstances" required a different arrangement to protect the child's health, safety or welfare. *Halvey v. Halvey,* 330 U.S. 610 (1947); *Kovacs v. Brewer*, 356 U.S. 604 (1958); *Ford v. Ford* 371 U.S. 187 (1962).

   c. **Extralegal Obstacle: Chauvinism and Parochialism**. Local judges were often reluctant to let children's futures be dictated by unknown judges in another state.[1]

B. Lack of Any Reliable Mechanism to Enforce One State's Custody or Visitation Orders in Any Other State Created A Predictable Set of Problems:

a. Parents unilaterally abducting children to another state and refusing to return them. Parental kidnaping had become epidemic by the 1980's, when it was estimated that between 25,000 and 100,000 children were kidnaped every year by their parents and taken to other states, where effective remedies to compel return were nearly absent.

b. Multiple and conflicting child custody/visitation orders – each in different states.[2]

c. Well-justified reluctance/refusal by parents *and* courts to allow out-of-state visitation.

d. Extrajudicial self-help was encouraged by the lack of effective judicial remedies.

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[1] *See, e.g., Painter v. Bannister*, 258 Iowa 1390, 140 N.W.2d 152 (1966) (Custody dispute over a 7 year old boy whose mother had died. Trial court awarded custody to child's northern California, politically liberal father, in whose home the son's life would be "unstable, unconventional, arty, Bohemian and probably intellectually stimulating." Iowa Supreme Court *reversed*, favoring the maternal grandparents – 60 year old farmers from Ames, Iowa, who were "stable, dependable, conventional, middle class [and] Midwestern...."– despite mother's nomination of the father as guardian, Iowa's parental preference law, and the grandparents' advanced age.)

[2] *See, e.g., Stout v. Pate*, 209 Ga. 786, 75 S.E.2d 748 (1953) [joint cust.] and *Stout v. Pate*, 120 Cal.App.2d 699, 261 P.2d 788 (1953) [sole custody to Mom], *cert.* denied in both cases 347 U.S. 968, 74 S.Ct. 744, 776 (1954).

II. First Attempts At a Solution

A Uniform Child Custody Jurisdiction Act (UCCJA)

1. **Promulgated in 1968** by the National Conference of Commissioners on Uniform State Laws (Chicago, IL). Adopted by all 50 states and DC by 1981. (Adopted as *Wis. Stats. Ch. 822*; 1975 c. 283, 421 [repealed by 2005 Act 130, eff. 3-25-2006])

2. **Principal Purposes & Effects**

   a. Facilitate enforcement of one state's custody orders in other states by allowing only one state to exercise jurisdiction to decide a child custody case.

   b. Protect the resulting custody order from modification in other states by allowing modification only in the original issuing state *unless* that state has lost all connections to the parents and child O*R* unless it cedes jurisdiction under *forum non convienens* principles.

   c. Deter interstate jurisdictional competition and interstate abductions by parents

   d. Promote cooperation between courts in different states to the end that custody be decided in the forum with the closest connection with the child and/or the best access to relevant evidence

   e. Avoid/prevent relitigation of custody decisions in multiple states

   f. Assure that litigation take place in state with closest connection to child and best access to evidence about the child's care, training, protection, and relationships.

   g. Requirement of personal jurisdiction replaced by criteria-based Subject-Matter jurisdiction *plus* the requirements of reasonable notice and opportunity to be heard.

3. **General Statutory Scheme**

   a. **Two Tier System – Initial Jurisdiction and Modification Jurisdiction**

      1) **For Initial Jurisdiction** (no prior custody order in any state), either

         a) ***Home State*.** The state must be child's "home state" (home for past 6 months) **or**

         b) ***Significant Connection*.** The child and at least one parent must have "a significant connection" with the state**, *and*** there must be "substantial evidence" about the child available in the state **or** ...

         c) ***Emergencies*.** Child is present in state and has either been abandoned or has been subjected to or threatened with abuse, mistreatment, neglect or is dependent**, or**

         d) ***Vacuum*.** Either no other state would have jurisdiction to decide the case or a state that does have jurisdiction had expressly declined to exercise it.

      2) **For Modification Jurisdiction**, no state may modify another state's initial determination unless it appears that the original state no longer has jurisdiction under the above rules.

   b. **Due Process.** Specific provisions for giving of reasonable notice to respondents and requiring that they have an opportunity to be heard. Though this looks like a basic due process provision (which it *is*), the requirements are more liberal than most states' typical service requirements. For example, service by mail is permitted with no requirement that personal service first have been attempted without success. Significantly, since notice is not required if the person to be served "submits to the jurisdiction of the court," the Act strongly implies that *personal* jurisdiction is *not* required so long as notice is given.

c. **Procedures established to resolve priority** when a simultaneous proceeding has been filed in another state. Stays, judges to communicate, etc.

d. **Provision for ceding jurisdiction** to another state on the basis of inconvenient forum.

e. **Bar on exercising jurisdiction** when petitioner's conduct is wrongful or inequitable.

f. **Binding in Other States.** Other state's custody orders made binding and enforceable in this state, so long as the issuing state had jurisdiction under statutory standards substantially in accordance with the Act. This remedies the absence of federal law by effectively mandating full faith and credit for sister-state custody orders, as a matter of state law.

g. **Registration.** Provides procedures to register other state's custody determinations.

h. **Rules for multi-jurisdictional litigation** – assistance to be rendered by one court to another court (obtaining testimony or documents, holding hearings, etc.)

i. **Extends policies to international area**, even if UCCJA not adopted in the other country.

4. **Problems with the UCCJA**

a. **Dual Standard.** The biggest problem was that the UCCJA provided two seemingly equal bases for exercising subject-matter jurisdiction: "home state" and "significant connections." While "home state" was an objective standard, under which only one state could qualify, "significant connections" was far more subjective. Both mom's and dad's states could usually make reasonable findings of significant connections, *and* the Act's call for interstate communication and conferencing was neither well defined nor uniformly followed.

b. **Lack of Complete Uniformity.** As each state adopted the UCCJA, key provisions were enacted with variations in language. Some of these differences could alter outcomes. The lack of consistent language tended to defeat the goal of a uniform standard and consistent, predictable enforcement in all states.

c. **Conflicting Interpretations.** Appellate decisions attempting to resolve the dual-standard dilemma were predictably mixed, both between states and within the same state. Results were largely fact-driven – yielding low predictability and high risk.

d. **Enforcement.** The UCCJA's provisions for enforcement of custody and visitation orders were sketchy at best. After providing generally for registration of out-of-state custody orders, enforcement had to be the same as for any other in-state custody order.

e. **Result:** There was still wide room for forum shopping. Interstate abductions persisted. Enforcement methods remained non-uniform and largely undefined.

B. Parental Kidnaping Prevention Act of 1980[1] (PKPA): 28 U.S.C. 1738A

1. **Principal purpose** was much the same as that of the UCCJA, but this was a federal act by which Congress attempted to put the weight of full faith and credit behind the principles of the UCCJA. (Effective date: 12-28-80)

2. **Two Major Differences Between PKPA and UCCJA:**

a. **Absolute Priority for "Home State."** Where the UCCJA did not give priority to the objective Home State jurisdictional standard over the more subjective "significant connections" standard,

[1] Picky note: the Act spells "Kidnaping" with just one "p." Click here for the full text of this Act, as amended in 1998 by the Visitation Rights Enforcement Act (PL 105-374).

the PKPA does. It mandates that where there is a "home state," only that state may exercise initial jurisdiction. The "significant connection" standard for jurisdiction can only be used if the child has no "home state."

b. **Exclusive, Continuing Jurisdiction To Modify.** Under the PKPA, once a state has exercised custody jurisdiction, it retains continuing and exclusive jurisdiction to modify its orders until every party to the dispute – including the child – has left that state. The UCCJA had attempted to accomplish that same end, but its language was weaker.

3. **Preempts Inconsistent State Law.** To the extent that the PKPA conflicts with the UCCJA or other state law, the PKPA preempts that state law.[1]

4. **Interplay with UCCJA.** Beyond mandating priority to Home State as a jurisdictional basis, most of the other differences are minor. Only occasionally will those differences confuse the adjudication or settlement of a custody dispute. Under the PKPA, there must first be a determination of whether the state has jurisdiction *under its own law–i.e.*, the UCCJA (or, now, the UCCJEA) as enacted in that state. If it can assert jurisdiction on that basis, then the court must determine if it can exercise jurisdiction under the PKPA's standards. If not, the petition must be denied for lack of subject matter jurisdiction.

5. **Misleading Title.** Despite the Act's title, its main purpose is limited neither to criminal matters relating to kidnapping nor to cases involving parental abductions. Rather, its provisions clearly reveal Congress's intent that the Act be applied in all interstate custody disputes, whether or not an abduction has occurred or is even threatened.

6. **No Individual Right of Action in Federal Court. .** In situations where two states had each taken jurisdiction, rendered conflicting decisions, and had declined–even on appeal–to cede jurisdiction to the other state, some parent/litigants tried to have the federal courts break the impasse, arguing that the PKPA implicitly created a right of federal action, at least to enjoin one of the states from proceeding. No luck ! The U.S. Supreme Court rejected all attempts.

   a. In *Lehman v. Lycoming County Children's Servs. Agcy.,* 458 U.S. 502 (1982), the Supreme Court held that the federal habeas corpus statutes did not confer federal jurisdiction to review state court orders terminating parental rights.

   b. In *Thompson v. Thompson*, 484 U.S. 174 (1988), the Supreme Court, facing competing custody decrees from California (original decree) and Louisiana, *affirmed* the dismissal of Mom's federal action to enjoin enforcement of the Louisiana court orders, holding that the PKPA did not provide an implied cause of action in federal court to enforce state compliance with the Act. The Supreme Court simply refused to permit federal courts to enter the domestic arena, even on a pure question of jurisdiction.

7. **1998 Amendment To Include Grandparent Visitation.** As original enacted, the PKPA described the parties to a custody proceeding within its scope as "contestants," a term borrowed directly from the original UCCJA, to mean "a person, including a parent, who claims a right of custody or visitation rights...." It also defined a "custody determination" clearly including "custody or visitation orders." However, because some courts had interpreted the PKPA as not including visitation orders *for grandparents*, Congress amended the PKPA in 1998 to specify "parent *or grandparent*" in its definition of "contestant," and to make separate provisions throughout the act for "custody determinations" *and* for "visitation determinations."

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[1] *In Interest of A.E.H.* (Wis., 1991) 161 Wis.2d 277, 322, 469 N.W.2d 190; *Sams v. Boston* (W.Va., 1989) 384 S.E.2d 151, 156; *Murphy v. Woerner* (AK, 1988) 748 P.2d 749, 750; *In re Amberley D.* (ME, 2001) 775 A.2d 1158 ["the PKPA preempts the UCCJEA"].

III. Uniform Child Custody Jurisdiction and Enforcement Act

A. Promulgated in 1997 by the National Conference of Commissioners on Uniform State Laws ["NCCUSL"] and approved by the American Bar Association.[1] Effective March 25, 2006, it was adopted in Wisconsin as *2005 Wisconsin Act 130*, which entirely supersedes prior *Chapter 822* of *Wis. Stats.*[2] It has now been adopted by 49 states plus D.C. , Guam and U. S. Virgin Islands, but not Puerto Rico.[3] Vermont became the 49th state, effective on July 1, 2011. A bill proposing its enactment is even pending in the sole remaining holdout state (Massachusetts).

B. Principal Purposes (822.01)

1. Reconcile UCCJA's principles with the PKPA's (especially "Home State" Priority).

2. Establish clear bases under which only one court can properly take jurisdiction to render an initial custody or placement order

3. Protect the resulting custody order from modification in other states by allowing modification only in the original issuing state *unless* that state has lost all connections to the parents and child OR unless it cedes jurisdiction under principles of *forum non conviens*.

4. Avoid jurisdictional competition with courts of other states in child custody matters, and foster cooperation between those courts.

5. Deter interstate abductions of children by parents.

6. Avoid relitigation in one state of another state's custody determinations; discouraging the use of the interstate system for continuing controversies over child custody.

7. Facilitate enforcement of one state's custody orders in other states.

8. **Note:** Variance from Uniform Act. When the NCCUSL promulgated the UCCJEA in 1997, it intentionally omitted from the Uniform act's actual text any explicit recitation of the act's purposes, and described those purposes *only* in its comments and explanatory literature. The Wisconsin version of the UCCJEA, as enacted in Act 130, *does,* however, include a statement of general purposes as § 822.01. That recitation is taken mainly from the commission's comments and explanatory literature.

C. General Jurisdictional Scheme – Initial Jurisdiction *vs.* Jurisdiction to Modify

1. Jurisdiction To Make an *Initial* Determination – "Home State" Priority (822.21)

a. **Early Preference Becomes Firm Priority.** The drafters of the UCCJA thought that the child's home state was the best state in which to find evidence needed to make a custody decision, but they also assumed that once a court took jurisdiction on any other acceptable basis, it should be able to proceed with the case without delaying to find out if another state might have "home state" status. By contract, the drafters of the federal PKPA regarded the child's home state as having such a superior basis for exercising jurisdiction to make an initial determination, that it should *always* have priority. Thus, the PKPA always accords the home state the first opportunity to assume jurisdiction. Deferring to the PKPA's logic *and* its preemption, the UCCJEA abandoned the UCCJA's position and adopted that of the PKPA.

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[1] For the full text of the official Uniform Act, including the Commissioners' Comments, see here.

[2] For the full text of the UCCJEA, as enacted by 2005 Wisconsin Act 130, see here.

[3] For a table of states that have adopted the UCCJEA, with statutory citations and effective dates, see here.

b. **Effect of Home State Priority.** If there is a "home state," all other states must defer to it before accepting jurisdiction of an initial custody dispute.[1] Another state may take Temporary Emergency Jurisdiction, but only long enough to secure the safety of the endangered child or parent, after which jurisdiction to continue must be deferred in favor of the child's home state (or, if none, to another state with another [better] ground for jurisdiction).[2]

c. **Alternate Bases.** If the child has no home state and the 'look-back' exception does not apply, then the UCCJEA provides three other bases for exercising jurisdiction. In order of their descending priority, they are:

(1) **Significant Connections.** The **first** alternative basis confers jurisdiction if the child *and* at least one parent have a "significant connection with [the] state other than mere physical presence" ***and*** "substantial evidence" is available in the state concerning the child's care, protection, training and personal relationships.

(2) **Deferral To This State.** The **second** (having a lower priority) alternative basis, confers jurisdiction if *all* other states with jurisdiction either as the child's home state or under the significant connections/substantial evidence standard have decided that this state is a more appropriate forum and have deferred to this state on that basis.

(3) **Default or "Vacuum" Basis.** The **last** alternative (with lowest priority), is sometimes referred to as the "default" or "vacuum" jurisdiction rule. It confers jurisdiction on this state if no other state could exercise jurisdiction based on any of the other rules. Thus, if no state has any better basis for asserting jurisdiction, then this state can fill that vacuum, so that the parents will have a forum somewhere in which their custody dispute can be decided.

d. **Simultaneous Proceedings.** (822.26) If one parent files an initial custody proceeding in one state and the other parent files a competing initial proceeding in another state, the Act has two kinds of rules to resolve that conflict. The first level of conflict resolution is inherent in the hierarchical bases for jurisdiction themselves. Thus, for example, if one case has been filed in the child's home state and the other is in a state that can assert jurisdictional only under the significant connections/substantial evidence standard (a lower priority), then the state with the lower priority claim to jurisdiction must yield to the state with the higher priority, no matter which was filed first. If there is no basis for home state jurisdiction and each state's claim to jurisdiction is based on the *same* standard [i.e., significant connections/ substantial evidence ***or*** vacuum jurisdiction], then the first case commenced prevails.[3]

2. Jurisdiction To *Modify* Custody Orders – Exclusive Continuing Jurisdiction (822.22–.23)

a. UCCJA *vs.* PKPA Conflict. Though the UCCJA allowed jurisdiction to shift to another state if the initial ground for asserting jurisdiction ceased to exist, the PKPA took a different approach: the original state would retain exclusive, continuing jurisdiction unless (1) the child ***and*** *both parents* had left the state ***or*** (2) the state lost its continuing jurisdiction *under its own law*. The UCCJEA adopts the PKPA's either/or approach, but with a little twist. The first basis on which a state will lose its continuing jurisdiction is the departure of the child ***and*** both parents

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[1] The home state rule is actually two rules. The first covers the case in which the child has lived in this state with at least one parent for the six months immediately preceding the commencement of the custody proceeding. The second, which is generally referred to as the "extended home state provision," is a limited 'look back' rule that covers cases in which this state *was* the child's home state within the six months immediately before the commencement of the custody proceeding, *but* (1) the child is absent from this state when the case is actually commenced, ***and*** (2) at least one parent "continues to live" in this state when the case is commenced.

[2] This highly restricted basis for temporary, emergency jurisdiction is discussed below in section III, D.

[3] An action's date of "commencement" is generally the date the first pleading is filed. However, the Wisconsin legislature added a proviso that the first pleading must have been actually served. Thus, an action merely filed but not properly served counts for nothing. Once served, its "commencement" date is its initial filing date.

and all persons acting as a parent from the state – a bright-line determination that can be made by any court in any state. Rather than let the states develop their own alternative grounds for ending continuing jurisdiction, however, the UCCJEA creates a *uniform* second standard: a determination *by a court in the original state* that the child and at least one of the parents no longer have "a significant connection with this state ***and*** that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships." This two-prong standard is intentionally hard to satisfy, particularly if the child returns to the state for summers or Christmas visitation. Under the UCCJEA, therefore, even if the child moves from the state that made the initial order and acquires a new "home state," the first state retains exclusive, continuing jurisdiction to modify its orders, so long as at least one of the parents still lives there, or until the connections between the child and that state have become so attenuated that a court of that state finds that the connections are no longer "significant."

b. Home State Is Irrelevant. Once an initial custody determination has been made, the identity of the child's home state becomes jurisdictionally irrelevant. Why? It's because the jurisdiction of the court that made the initial custody order continues *even if the child and one parent move to another state* and even if that new state becomes the child's home state. That new home state remains irrelevant until the child and **both** parents have left the first state. With nobody left in the original state at that point, it makes no sense to force *everyone* to return just to litigate a modification – particularly since the most important evidence is surely going to be located where the child or at least one of the parents now lives. In modification cases, therefore, the child's move to a new home state is utterly irrelevant *unless* everyone has left the original state, and practicality compels selection of a new forum. Only then will the child's "home state" again become relevant and controlling.

c. Power to Decide If Original State Retains Jurisdiction. Under 822.22 and .23, even the power to decide if the state that issued the original decree still has exclusive, continuing jurisdiction is restricted to that original state. No other state can assume jurisdiction unless the original state "determines that it no longer has exclusive, continuing jurisdiction..." or that a court in another state would be "a more convenient forum." The *only* exception to this unbending rule is that *any* court may make the bright-line "determin[ation] that the child, the child's parents, and all persons acting as parents do not presently reside in the [original] state." [822.22 & .23 (2); 822.27]

D. Temporary Emergency Jurisdiction – Highly Restricted Exception (822.24)

1. **Underlying Basis.** There are situations that will be generally recognized as emergencies. Typical examples involve children who are abandoned or subjected to physical abuse in a state other than their home state. In such cases, the need for a local court to step in quickly to protect the child with temporary orders will and should take priority over the duties of each state to recognize and enforce but not to modify another state's custody orders. From the beginning, there has been a tension between the practical need to recognize and legitimate true emergency interventions and the goal of establishing bright-line rules under which the one state will have priority over all others in making custody decisions concerning the child. The means for balancing those tensions has evolved considerably over the years.

2. **Under Old Law**. Under the UCCJA, 'emergency jurisdiction' was on an equal footing with all other bases for taking jurisdiction. Even after the PKPA mandated home state priority, it was not clear that jurisdiction in emergencies was necessarily temporary or restricted. It was only clear that the criteria for taking "emergency" jurisdiction should be such that cases justifying a finding of "emergency" would be rare. Over time, however, "emergencies" became a tail that could wag the dog.

3. **UCCJEA Creates Highly Restricted Exception.** The UCCJEA's addition of the word "temporary" to the emergency ground for jurisdiction is far from cosmetic. It is emblematic of the significant restrictions and time limits imposed – all reinforcing "home state" priority.

a. **What Constitutes An "Emergency?"** A state may assume temporary emergency jurisdiction only if the child is (1) physically present in that state ***and*** (2) (a) has been abandoned, or (b) it is necessary in an emergency to protect the child because he/she *or* the child's sibling or parent "is subjected to or threatened with mistreatment or abuse." The addition of siblings and parents reflects the developing awareness of domestic violence, its effects on the family, and the special procedures that may apply if it is alleged. Note, however, that "neglect" has been removed from the definition of "emergency." [822.24(1)]

b. **If No Prior Custody Orders Exist.** If there is no prior custody order to be enforced *and* no proceeding has been commenced in a state with a non-temporary ground for jurisdiction, any temporary emergency order will remain in effect until an order is obtained from the child's home state or a state having another proper basis for jurisdiction. However, if no such proceeding is commenced in a state with proper jurisdiction, then the temporary order becomes a final order, *but only if* the order itself so provides *and only if* the state issuing the order becomes the child's home state. [822.24(2)]

c. **If A Prior Order Does Exist.** If a prior custody order entitled to enforcement exists *or* if a proceeding has been commenced in a state with a non-temporary basis for exercising jurisdiction, the temporary emergency order may be made, but it ***must*** specify a period that is adequate to allow the petitioner to obtain an order from that other state. Before specifying that period, the issuing court **must** confer with the other court in order to resolve the emergency and to determine an appropriate sunset date for the temporary orders. Meanwhile, the temporary emergency order will remain in effect only until another order is obtained in the other state *or* until the period stated in the temporary emergency order expires. This type of temporary order can never become permanent. [822.24(3), (4)]

E. Bases For Declining Jurisdiction

1. **Inconvenient Forum.** (822.27) Even if a court has jurisdiction to decide a custody case – be it an initial determination or a modification – it may decline the case in favor of another state's court, based on principles of *forum non conveniens*. It may, but need not consult with the other state's court before deciding if it will decline to hear the case. Section 822.27 (2) spells out a list of eight factors that ***must*** be considered, among others, before jurisdiction is ceded on this ground.[1] The section requires that the court must permit the parties to "submit information" before the court decides an inconvenient forum motion. In the states that have interpreted that requirement, there is a split of authority as to whether the court must hold an evidentiary hearing or whether it is sufficient to allow the parties to submit affidavits, exhibits and to fully brief and argue the issues before the decision is made.[2] The section also makes it clear that "a court of this state may decline to exercise its jurisdiction ... if a child custody determination is incidental to an action for divorce ... while still retaining jurisdiction over the divorce or other proceeding."

2. **Unjustifiable Conduct.** (822.28). If this state has become the child's home state or has otherwise acquired jurisdiction because the petitioner has "engaged in unjustifiable conduct" (such as abducting the child and hiding in the state for at least 6 months), this state's courts ***must*** decline to exercise jurisdiction unless **a)** all parents have acquiesced to its exercise of jurisdiction, or **b)** Wisconsin would have had jurisdiction anyway *and* it is the more appropriate forum under the inconvenient forum analysis of §822.27, ***or*** **c)** no other court would have any basis for asserting either initial or modification jurisdiction. If the court dismisses or stays a proceeding on this basis, it is required to assess fees and costs (broadly defined) against the offending parent, unless that parent "establishes that the assessment would be clearly inappropriate."

3. **Who Decides?** Only the court with jurisdiction to hear and determine the case may decide if it is appropriate to decline to exercise that jurisdiction in favor of another state's court.

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[1] The very first of these eight factors is whether domestic violence has occurred and may continue and which state can best protect the parties and the child. This factor may involve VAWA considerations (*see infra* at IV, D), particularly if the abuse victim's move to the other state was in an effort to escape from that domestic violence.

[2] *Compare, e.g.,* ***Kemp v. Kemp*** (Ohio App., 2011), 2011 Ohio 177 [statutory mandate satisfied by the parties' written briefs, attached exhibits, oral argument, and the otherwise thoroughly presented motion] *with* ***Langdeau v. Langdeau*** (S.D., 2008) 751 N.W.2d 722 [to satisfy the statutory mandate, court must conduct "evidentiary proceedings satisfactory for the entry [of findings of fact and conclusions of law]"]. Wisconsin has not decided this issue.

F. Cooperation and Consultation Between Courts (822.10 – .12; 822.24[4])

The old UCCJA strongly urged courts in potentially competing jurisdictions to consult and cooperate with each other before deciding to take jurisdiction. Experience proved that the UCCJA's urging was too often disregarded. The UCCJ**E**A employs stronger and more specific procedures to ensure that the pre-decision inter-court conversations actually occur.

1. **Authorized Cooperation.** Sections 822.11 to .12 import most of the UCCJA's provisions that permit our courts to request another state's court to hold evidentiary hearings, issue subpoenas, order custody evaluations, forward certified transcripts of hearing records and other evidence, or even to order a parent or other physical custodian to appear in person, with or without the child. Conversely, they also empower our courts to act on such requests made by courts in other states. The Act permits orders for out-of-state depositions, and for obtaining testimony or evidence from another state by phone, video-conference, fax, e-mail or other technologies, and it provides that documentary evidence transmitted from another state to a court in this state by means of such technology "may not be excluded from evidence on an objection based on the means of transmission."

2. **Inter-Court Communication.** Section 822.10 sets out the rules governing communication between courts. Those rules require that, except for non-substantive conversations about non-substantive matters like scheduling, calendars, or court records, a record *must* be made and the parties must either be allowed to participate in the conversation or be promptly informed of the communication, granted access to the record *and* be permitted to present evidence and argument ***before*** any decision is made on the subject of jurisdiction.[1]

3. **Required Consultation.** The UCCJEA *requires* consultation between courts in at least three specific situations:

   a. Temporary Emergencies. (822.24[4]) Whenever a Wisconsin court that is exercising jurisdiction because of temporary emergency learns that a proceeding either exists or has been commenced in another state that has non-emergency jurisdiction ***or*** a Wisconsin court with non-emergency jurisdiction learns of a temporary emergency proceeding in another state, the Wisconsin court "*shall immediately communicate with the [the other court]...*" in an attempt to resolve the emergency, protect the safety of the child or parties, and to jointly determine a duration for the temporary order.

   b. Simultaneous Proceedings. (822.26[2]) Before any custody hearing, the court must examine the disclosure statements filed pursuant to *§822.29* and other court documents, and if it learns that a custody proceeding has been commenced in another state that has proper jurisdiction under the UCCJEA, it "*shall stay its proceeding and communicate with the court of the other state.*" Then, unless the other (first-in time) state decides that Wisconsin is a more appropriate forum, the Wisconsin court must dismiss the proceeding that was filed here.[2]

   c. Simultaneous Proceedings for Enforcement and Modification. (822.37) If an enforcement proceeding is pending here, and our court learns that a proceeding to *modify* the underlying order or judgment is pending in another state with proper modification jurisdiction, our court is required to "*immediately communicate with the modifying court.*" Ordinarily the enforcement

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[1] Given the need for a record, an important preliminary, 'non-substantive' matter that both judges will want their respective clerks to work out in advance will be whose reporter will be responsible for making the record *and* how that record will be made available to the other court and to the parties. They may also want to work out whether (and how) to provide each other with copies of pleadings and motion papers filed in each other's court.

[2] This section does not require communication whenever a custody proceeding has been commenced in another state. Rather, it is required only when the other case has been commenced "in a court of another state *having jurisdiction substantially in conformity with this chapter.*" For example, in an "initial jurisdiction" case where Wisconsin is the child's home state and the other state's basis for exercising jurisdiction was the child's significant connections with that state and the existence there of substantial evidence about the child's care, the other state would ***not*** have jurisdiction "substantially in conformity with this chapter." Thus, communication, though allowed, would *not* be *required*.

action will continue, since the underlying orders have not yet been modified. However, the Wisconsin court is specifically empowered to decide, based on its communication, whether it will stay, dismiss, or permit the enforcement action to continue.

4. **Communication Strongly Suggested for Inconvenient Forum Decisions. (822.27)** Though the Act does not *require* a court with proper jurisdiction to communicate with the court in another state before it decides to cede jurisdiction to that court as a "more appropriate" forum, such a consultation is surely implied. Among the various factors that must be considered in making the decision are "(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence" and "(h) The familiarity of the court of each state with the facts and issues in the pending litigation." Realistic assessment of those two factors will be difficult or impossible unless there has been some sort of discussion between the two courts.

G. Variations From The Uniform Act

The language of the UCCJEA, as adopted by the State of Wisconsin in 2005 Act 130, is *nearly* identical to that of the Uniform Act. However, there are some differences.

1. **Adoption.** Under the Uniform Act, a "Child Custody Proceeding" (*i.e.,* the type of proceeding to which the act's jurisdictional requirements apply) includes proceedings for divorce, paternity, legal separation, dependency, guardianship, termination of parental rights, neglect, abuse and protection from domestic violence in which the issues of custody, placement or visitation appear as an issue. The Uniform Act – and therefore the UCCJEA as enacted in *most* states – specifically *excludes* proceedings for juvenile delinquency, contractual emancipation, *adoption,* and enforcement, under the Act's third subdivision. Wisconsin's Legislature elected to specifically *delete* "Adoption" from the list of exclusions. In what may have been a legislative oversight, it did not *add* "adoption" to the list of *in*cluded proceedings. Still, there is a strong argument that can be made that Wisconsin's Legislature did intend to make the provisions of the UCCJEA applicable in adoption cases.

2. **Placement.** The Uniform Act provides for Legal Custody, Physical Custody, and Visitation, but makes no reference to "physical placement." Wisconsin's Act makes it clear that "physical custody" also includes "physical placement," as defined in *Wis. Stats. ch 767. [822.01(14)].*

3. **"Commencement."** The Uniform Act defines the "commencement" of a child custody proceeding as the date on which the first pleading is filed in the case. Act 130 modifies that definition by adding a condition subsequent – "provided that service is completed in accordance with the applicable provisions of ch. 801." This proviso makes Wisconsin's version of the UCCJEA slightly more restrictive than most other states' versions. And since the PKPA mandates that full faith and credit can only be accorded to the custody decrees of a state that had jurisdiction "under its own law," care must be exercised to ensure that service of the first pleading be effected in accordance with *ch. 801*'s requirements, lest the legitimacy of any temporary or initial Wisconsin orders become unraveled.

4. **Judicial Day.** The *Enforcement* section of the Uniform Act requires certain actions to be accomplished on the "next judicial day," but it only defines what a "judicial day" is in its commentary– not in the text of the act itself. Wisconsin's enactment of the UCCJEA actually defines "judicial day" in *§822.31(1)* as "each day except Saturday, Sunday, or a legal holiday under *§895.20*." The effect of this definition will generally be consistent with the intended meaning of the Uniform Act, whose comments just referred to the 'next day that a judge is at the courthouse.'

5. **Stylistic Changes.** The Uniform Act's stylistic approach to lists of requirements most often employs the formula, " ... may [do such and such] only if: ...." Wisconsin's enactment changes that stylistic convention by employing a formula that provides either "may [do such and such] only if *any of the following applies: ....*" or "....only if *one of the following applies:....*" These variances from the Uniform Act are stylistic only. It seems clear that no substantive distinction was intended by this variation in language. There are other minor stylistic variances between the Uniform Act and Wisconsin's version of that act, but none of these seem to have been made for any purpose other than to make the language more consistent with the stylistic conventions of other Wisconsin statutes.

H. Orders From Foreign Countries (822.05; 822.32)

The UCCJEA is not a *reciprocal* law. Its principles must be applied even if the other state has not adopted any version of the act. Thus, it applies even to custody decrees from foreign countries. The act expressly mandates that our courts "shall treat a foreign country as if it were a state for the purpose of applying [the jurisdictional rules and general provision of the act]." (822.05 [1]) And to dispel any ambiguity, it mandates that unless a foreign country's custody law violates fundamental principles of human rights, "a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter *shall be recognized and enforced* under [the act's enforcement provisions]." 822.05[2] It even goes beyond the standard range of custody orders by expressly authorizing our state courts to enforce an order to return a child made under the *Hague Convention on the Civil Aspects of International Child Abduction* [*see, infra* at section IV, B.] "as if it were a child custody determination." (822.32)

I. Enforcement (*822.31– 822.47*)[1]

1. **Duty To Enforce Other State's Orders.** *(822.33)* The third of the UCCJEA's three subchapters is entitled and entirely devoted to "enforcement." It provides unambiguously that Wisconsin's courts must recognize and enforce custody and placement orders issued in any other state so long as that state **(a)** was possessed of subject matter jurisdiction (as defined in the act) and **(b)** was properly exercising that jurisdiction under the standards of the UCCJEA, **and (c)** provided that the order has not been later modified by a court that had proper jurisdiction to do so. Section 822.33(2) authorizes Wisconsin's courts to employ "any remedy available under other law of this state," and it clarifies that any specific remedies provided in the UCCJEA itself are "cumulative and do not affect the availability of other [enforcement] remedies...."

2. **Specific Remedies.** The UCCJEA also creates a suite of interstate enforcement tools and procedures that go far beyond those found in the old UCCJA. These include:

   a. **Registration**. (*822.35)* The UCCJA provided generally for registration of other state's child custody determinations, but the UCCJEA spells out the procedure for accomplishing this registration in meticulous detail. The procedure is closely analogous to that of UIFSA (*Wis. Stats ch. 769*). A party who seeks to establish another state's order in Wisconsin needs only to send the Circuit Court Clerk a letter requesting registration *and* two copies (including one certified copy) of the order, together with a "statement under penalty of perjury" that the order has not, to the best of his/her knowledge and belief, been modified. The letter must provide the names and addresses of the applicant and of any parent with custody, visitation, or placement rights under the order. The clerk must then register the order as a foreign judgment (together with "any accompanying documents and information, regardless of their form") and send out notice of the registration to all parties identified in the letter requesting registration. The other parent(s) then has 20 days to request a hearing to contest the validity of the registration. Section 822.35 also spells out the procedure for the very limited hearing to be held if an objection is filed. If the hearing is not timely requested, the registration is confirmed as a matter of law and subsequent challenge is precluded. Once registered, the order is enforceable (this does ***not*** *mean "modifiable"),* just as any in-state custody or placement order would enforceable.[2]

   b. **Expedited Enforcement, Even Without Registration.** *(822.38 – 822.41*)

      1) **Procedure If No Emergency–Hearing Next Day.** The Act creates an expedited remedy that is strongly reminiscent of *habeas corpus*. Upon receiving a verified petition (from parent, prosecutor, or other), the court must order the party with the child to submit to an immediate hearing (on the "next judicial day" unless that is "impossible") for enforcement.

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[1] For detailed treatment of enforcement, *see* this author's 2-part article in *Wis. J. Fam. Law* (Apr. & Jul, 2007), which can also be found by visiting the UCCJEA Resources [Articles & Presentations] page at www.uccjea.net .

[2] For a collection of forms for use in registering and enforcing out-of-state custody orders, see the "UCCJEA Resources" section of www.uccjea.net.

The order may require the child to be produced at the hearing and may also "make any order necessary to ensure the safety of the parties and the child." If, at the hearing, the respondent is unable to show that the issuing court lacked jurisdiction, that the order has been properly modified, vacated or stayed, or that the respondent was never given proper notice before the order was issued, the court **must** grant petitioner immediate physical custody of the child **plus** payment of costs, attorneys fees and expenses, **and** may schedule a further hearing to consider further relief.

2. **Procedure In Emergency–Warrant To Pick Up Child Before Hearing.** (822.41) If the child "is imminently likely to suffer serious physical harm or be removed from this state," then the expedited enforcement petition described above may be accompanied by a "verified application" for a warrant to take immediate physical custody of the child. If such an application is filed, the court may then, "upon the testimony of the petitioner or another witness",[1] issue the warrant. The warrant must (a) recite the facts on which the conclusion of immediate serious physical harm or removal is based, (b) direct the police or sheriff to pick up the child immediately, and (c) provide for the child's placement pending the hearing. If necessary, the warrant may authorize the officers to enter private property to get the child. On a showing of exigent circumstances, the court may even authorize the officers to "make a forcible entry at any hour." The respondent is to be served with the warrant immediately *after* the child is picked up.

3. **Costs, Fees, and Expenses.** *(822.42)* The act requires an award of reasonable attorney fees, costs and expenses (broadly defined to include investigation fees, communication costs, witness fees, travel expenses, and child care during the course of the proceedings), to the prevailing party, unless the proposed payer "establishes that the award would be clearly inappropriate."

4. **No Stay Pending Appeal.** *(822.44)* Although an appeal can be taken from any final order enforcing another state's custody or placement decree, the enforcing court "may not stay an order enforcing [that decree] pending appeal."[2]

c. **Temporary Placement or Visitation**. *(822.34)* Even if a Wisconsin court lacks jurisdiction to *modify* another state's custody or placement order, it may make its own order enforcing a physical placement or visitation schedule made by the court of another state. Moreover, even if the other state's order does *not* contain a specific placement or visitation schedule, the Wisconsin court may issue its own *temporary* implementing order imposing a specific schedule. In this latter case, the temporary implementing order must specify an expiration date, determined by how long the court "considers adequate to allow the petitioner to obtain an order from a court having [proper] jurisdiction...."

d. **Expanded Role for Prosecutor.** *(822.45)* Whether the case arises under the UCCJEA or under the Hague Convention (*see, § IV, B, infra)*, the act grants the prosecutor standing and a right to initiate any enforcement proceeding authorized by the UCCJEA "or any other available civil remedy" to locate a child, obtain the return of a child, or to enforce a custody or placement order [implicitly, of this or any other state] so long as (1) a custody or placement order "exists," ***or*** (2) a court so requests in any pending custody proceeding, ***or*** (3) he/she reasonably believes that a crime has been committed, ***or*** (4) he/she reasonably believes that the child has been wrongfully removed or retained in violation of the Hague Convention. Moreover, unless the respondent prevails, the act even authorizes the assessment against the respondent of "all direct expenses and costs incurred by the prosecutor and law enforcement officers...."

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[1] This requirement of "testimony" would seem to indicate that a quick *ex parte* hearing and not just affidavits must precede the order. It should be noted that the "testimony" is to be **either** from the petitioner **or** from another witness. Either way, the testimony at the *ex parte* hearing contemplated by the statute is to come from only *one* witness.

[2] The no-stay prohibition applies specifically to the "enforcing court" (*i.e.*, usually the Circuit Court). It does not preclude the Court of Appeals from issuing a stay of enforcement or other extraordinary relief pending appeal.

J. Required Disclosures

GF-150.[1] *(822.29)* In all child custody proceedings (but not in enforcement proceedings), each party, in his or her first pleading (or attached to it), must disclose, under oath, the child's present address *and* every place known where the child has lived for past 5 years, *and* the names and present address of every person with whom that child has lived during those 5 years. The affidavit must also disclose if he/she *(a)* has ever participated (as a party or even as a witness) in any other custody proceeding concerning the child in any court, *(b)* knows of any proceeding (past or current) that could affect the current case, or *(c)* knows of anyone who either has physical custody of the child or claims a right to custody. If any other such proceedings or persons are known, full particulars must be provided. It is important to note that the UCCJEA has expanded the definition of "proceedings that could affect the current case" to include domestic violence, TPR, and adoption cases.

K. Non-Disclosure of Contact Information in Sensitive Cases. *(822.29[5])*

Whenever the act requires the disclosure of a party's or child's present location or contact information, *section 822.29(5)* expressly permits sealing and non-disclosure of that information for a victim or alleged victim of domestic abuse, or if abduction is a serious possibility. To obtain this protection against disclosure, the party seeking that protection must file either an affidavit or a verified pleading setting forth the threat and seeking that relief. [2]

L. Language Defined

1. **"Home State"** *(822.02[7])* This keystone of jurisdiction for initial determinations is defined as the state in which the child has lived with at least one parent for "at least 6 consecutive months immediately before the commencement of a child custody proceeding." If the child is under the age of 6 months, then the "home state" is where the child has lived since birth with at least one parent.[3] Periods of "temporary absence" from the state are included in counting the time. Although not separately defined, such absences would certainly include out-of-state vacations and the like. If the child had, however, been sent to live with grandparents in another state for 4 months, that absence might not be considered "temporary" enough to avoid restarting the 6-month clock upon the child's return. The same definition was used in the PKPA and the old UCCJA. Thus, cases deciding home state issues under those acts should still be viable authority.

2. **"Child Custody Determination"** *(822.02[3])* This is the term of art which the UCCJEA uses to refer to any judgment, decree, or other order of a court providing for legal custody, physical custody, placement, or visitation of a child. It includes permanent, temporary, initial, and modification orders, but it does not include orders relating to child support or other monetary obligations. Essentially the same definition was used in the PKPA and the UCCJA.

3. **"Child Custody Proceeding"** *(822.02[4])* This term refers broadly to any proceeding in which child custody, placement or visitation are at issue. It includes proceedings for divorce, separation, neglect, abuse, dependency, guardianship, adoption, paternity, termination of parental rights and protection from domestic violence. It does *not* include proceedings involving juvenile delinquency, contractual emancipation or enforcement of child custody determinations.[4] Essentially the same definition was used in the PKPA and the UCCJA.

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[1] Wisconsin has promulgated official form GF-150 for use in complying with this disclosure requirement. This form is available in most Family Court Clerk's offices, and in the "UCCJEA Resources" section of www.uccjea.net.

[2] Wisconsin has promulgated a pair of official forms (GF-177 and GF-178) for use in this regard. These forms are available in most Family Court Clerk's offices, and in the "UCCJEA Resources" section of www.uccjea.net.

[3] See *In re Kalbes [Hatch v. Hatch]* (Wis.App., 2007) 302 Wis.2d. 215, 733 N.W.2d 648 [two-week-old baby born in Wisconsin has a "home state" in Wisconsin]. *But see, In re E.T.* (Kan.App., 2006) 137 P.3d 1035 [Premature child of Kansas parents, who was born in Missouri and spent first 3 months in a Missouri hospital, after which it was placed in a MO foster home, and then – after another hospitalization – with a relative in Kansas, was held to have no "home state," because the child had never lived "with a parent or person acting as a parent" in either state before the termination petition was filed.]

[4] See Section G, above, for discussion of adoption proceedings under the UCCJEA as adopted by Wisconsin.

4. **"Person Acting As A Parent"** *(822.02[12])* Throughout this summary of the law, the term "parent" is used loosely, since most interstate custody and placement disputes will involve a child's parents. The UCCJEA, however, applies to more than parents. In most of its provisions, it will specify, in the interests of full coverage, "parent or a person acting as a parent." This latter term is defined as any person (living or legal–such as a corporation, trust, agency, public corporation, or association) other than a parent who (*a)* has had physical custody of the child for at least 6 consecutive months out of the one year preceding the commencement of the custody proceeding ***and*** *(b)* either has been awarded legal custody by any court or claims a right to legal custody under this state's law.[1]

5. **"Petitioner" and "Respondent"** *(822.31[2] and [3])* Confusion often results when the "respondent" or "defendant" in another state's case seeks to enforce a provision of that case's custody order in this state. To avoid linguistic contortions in constructing statutory language to fit all enforcement cases, the UCCJEA provides that any party who seeks either the enforcement of a child custody determination or of an order for the return of a child under the Hague Convention will be called a "*petitioner*." Likewise, anyone against whom such an enforcement proceeding is brought will be called a "*respondent*." This approach is the same as that of *old Wis. Stat. §767.242 [*recodified and reworded in 2006 as *§767.471]*.

M. Important Conceptual Points

1. Jurisdiction To Decide Custody/Placement Is Subject Matter – Not Personal – Jurisdiction

a. Personal Jurisdiction Is Irrelevant. The existence of personal (*in personam)* jurisdiction over the parties has no effect. A court may have personal jurisdiction over the parties without having child custody subject matter jurisdiction. Conversely, a court may have child custody subject matter jurisdiction without having personal jurisdiction over one of the parties. If the court has child custody subject matter jurisdiction, it may properly entertain and decide the case even if it has not acquired personal jurisdiction over one of the parties–so long as it that party has been given notice and an opportunity to be heard.[2] However, even if the court has personal jurisdiction over both parties, it may *not* decide the case if it does not have subject matter jurisdiction.

b. Custody Jurisdiction Problem Cannot Be Waived or Stipulated Away. The lack of subject matter jurisdiction cannot be cured by stipulation. Unlike personal jurisdiction, the lack of which *can* be cured either by consent or by stipulation, the lack of subject matter jurisdiction cannot be cured by consent, waiver, stipulation, or agreement.[3] Under the UCCJEA and the PKPA, if the child and at least one parent have not lived in the forum state for at least 6 months before the initial case was commenced, it cannot be the child's "home state." If another state rendered a prior custody/placement decree and one of the parents still lives in that state, no Wisconsin court can modify that decree, even if the child moved to Wisconsin years ago and both parties affirmatively ask this state's court to modify the decree.

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[1] In *Matter of Alexis* C. (Wis. App., 12-8-2010) 2011 WI App 13, 794 N.W.2d 533, the court held that a non-parent custodian with *de facto* decision making power will not qualify as a "person acting as a parent" unless his or her "claim" to custody has been affirmatively asserted "in the context of a custody proceeding." Among state courts that have considered the issue, this holding is a minority view.

[2] Even in the context of an action to terminate a non-resident parent's parental rights to a child whose home state was Wisconsin, the Wisconsin Supreme Court has held that the UCCJA and the UCCJEA are both valid bases for Wisconsin to exercise jurisdiction, notwithstanding the lack of personal jurisdiction over the non-resident parent. *In re the Termination of Parental Rights to Thomas*, 262 Wis.2d 217, 663 N.W.2d 734 (2003).

[3] See *United States v. Hazlewood,* 526 F.3d 862 (5th Cir., 2008). The only situation in which a stipulation or consent can permit a court to proceed with a case is found in the Act's "misconduct" provisions at *section 822.28(1)(a)*. As explained above (*see* III, E, 2), *§822.28* addresses cases in which a court would have jurisdiction to determine a case but must decline to exercise that jurisdiction because the party seeking relief has engaged in some "misconduct." However, if all parties, including the innocent party, "acquiesce" in the court's exercise of jurisdiction, the court may determine the case, despite the misconduct.

2. **Best Interests of the Child Are Irrelevant To Custody Jurisdiction.** Best Interests have to do with the merits of a case – not with subject matter jurisdiction. If a court does not have child custody subject matter jurisdiction, it may not consider a child's best interests or any other substantive issue in the case. Thus, counsel should never be allowed to argue that it would be against the child's best interests not to find that the court has subject matter jurisdiction. A jurisdictional finding must always *precede* consideration of the merits of a custody case.[1]

3. **Do Not Confuse "Jurisdiction" with "Jurisdiction."** One of the problems facing any lawyer or judge involved in custody jurisdiction matters is that "jurisdiction" has multiple meanings. It is important to distinguish between these very different meanings. A circuit court in Wisconsin has "jurisdiction" to handle certain kinds of cases– felony trials but not traffic tickets; professional malpractice but not small claims cases. The Family Law branch has "jurisdiction" to handle divorces and paternity cases but not juvenile delinquency or CHIPS cases. Likewise a court generally *acquires* personal "jurisdiction" over a party when that party is personally served with process in this state. *NONE* of these is the same as "jurisdiction" over the subject matter of a child custody or placement dispute. And none of these other "jurisdiction" questions can be reached, considered or even addressed if the court does not have child custody subject matter "jurisdiction." Under the UCCJEA, the criteria for determining if this state has "custody jurisdiction" are spelled out in *Wis. Stats. §822.21* for initial decrees and in *§§822.22 and 822 .23* for modification cases.

N. Court's Independent Duty To Make A Jurisdictional Inquiry.

Wis. Stats. §822.26(b) and *(c)* require the court, *before* hearing a custody proceeding, to examine the court documents and the information supplied pursuant to *§822.29,* to determine at least whether any other custody proceeding was pending in any other state when the case was filed in Wisconsin. Thus, a failure by either party to object to the court's exercise of jurisdiction will not excuse the court from examining the pleadings to learn if they disclose a sufficient factual basis for asserting custody jurisdiction or whether there is an obligation to communicate with another court in which a previously filed custody proceeding may be pending with respect to the same child or children.

O. Practical Considerations

1. **Read *Both* Laws.** Always read the other state's version of the UCCJA or UCCJEA, and note similarities and differences from ours *and* from the Uniform Act. Be sure you understand the effect of those differences/ similarities.

2. **Read The Commission's Comments.** Then read the commissioners' Comments to the Uniform Act's provisions,[2] recognizing that those comments have the same status as legislative history. That is, they are persuasive authority and controlling (on questions of interpretation and intent) until a contrary decision is rendered by a court in this or the other state.

3. **Pleading Forms.** The "UCCJEA Resources" section of www.uccjea.net has ten forms (created by this author) for use in enforcement cases *and* model jurisdictional findings that should be included in any order or judgment that might ever need to be enforced outside of Wisconsin. If a Wisconsin form is not readily available for other situations, consider finding one on another state's judicial web site and modifying it to match our state's format and our statute numbers. The most likely sources for this legally permissible plagiarism are California, Michigan, Washington, Alaska, and Oregon, in that order. Many of those forms are also accessible via www.uccjea.net .

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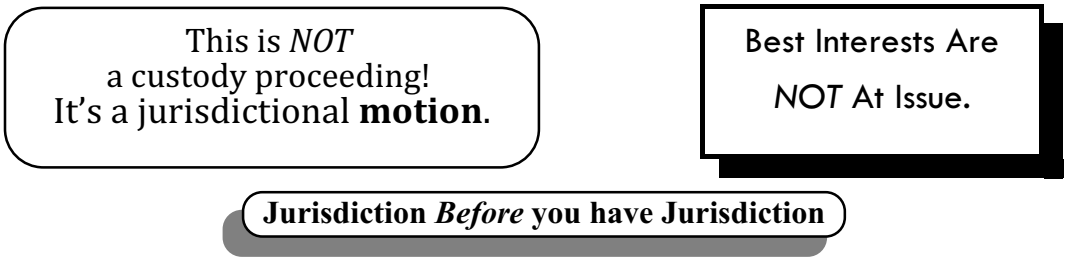
[1] Guardian ad litem appointments raise this issue. Because a GAL is appointed to "advocate for the best interests of a ... child..." [*Wis. Stats. 767.407(4)*], and a child's best interests cannot be considered if subject matter jurisdiction is lacking, the court probably lacks the power to appoint a GAL unless it first finds that it has custody jurisdiction. *See, Porter v. Johnson,* 712 SW2d 598 (Tex App., 1986) [*Aff'g.* non-appointment of GAL where ct. lacked UCCJA jurisd.]. *Compare, Mayer v. Mayer,* 91 Wis. 2d 342, 283 N.W.2d 591 [Ct. App.,1979], [held that a GAL should have been appointed before deciding a jurisdiction/inconvenient forum motion], which relied heavily on the UCCJA's language that a determination must be in the "interest of the child" – language that was *removed* from the new UCCJ**E**A for that reason.

[2] See, http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.pdf

4. **Sub-Specialists–Especially for Abductions and Emergency Cases.** There is a very small group of family law practitioners who sub-specialize in interstate and international custody cases and an even smaller number who limit their practices to interstate and/or international custody jurisdiction cases. These lawyers can be an invaluable source of help in any interstate or international case. However, whenever a case involves an international or interstate abduction, or has a potential for temporary emergency jurisdiction, one should seriously consider calling on such a sub-specialist – either as a consultant, as co-counsel, or to take full charge of the jurisdictional motions. These cases especially require a sense of urgency, speed and sophisticated handling. Their likelihood of success decreases dramatically for every day that passes without an effective prosecution being commenced and aggressively pursued. These sub-specialists have the expertise, sophistication and experience to obtain optimal results with a minimum of research and "learning time." Some sub-specialists, like this author, will happily restrict their engagement to handling just the jurisdictional motions and agree either to take no part in the litigation of any substantive issues or to act just as consultants on those issues.

5. **Parents in U.S. Armed Forces.** The U.S. Defense Department issued DoD Directive 5525.9 on December 27, 1988. Although it expressly provides no independent remedy for individuals, it does provide a procedure for enforcing custody decrees in US military stations overseas (and possibly in the US), both for civilian and military personnel who are wrongfully withholding a child from the other parent. Most service branches have since adopted their own implementing regulations. (See, e.g., Army Reg. 608-99 [2003].)

6. **Argument Aids: Banners, Headlines, or Argument Themes** [1]



IV. Other Related Laws and Treaties

A. Indian Child Welfare Act (ICWA – 25 U.S.C. 1901-1963 and WICWA – 2009 Wis. Act 94)

1. **Adoption; Purpose; Application.** Adopted by Congress in 1978, ICWA applies to child custody proceedings in state courts involving "Indian" children–children of Native American ancestry who are either members of an Indian Tribe or Native Alaskan Village or eligible for such membership by reason of their parent's membership. The act was passed to counter the tendency of state courts to remove large numbers of Indian children from their homes and to place them in non-Indian homes (some states were removing as many as 25-35% of all Indian children from their homes, and over 85% of these removed children were being placed in non-Indian homes). In passing the act, Congress intended to protect the integrity of Indian tribes and ensure their future, recognizing (in effect) that no nation or culture can flourish if its youngest members are removed. Because the act was specifically designed to address the real threat posed by these removals, it applies in four specific contexts: 1) foster care placements, 2) Terminations of Parental Rights (including even "voluntary" TPRs), 3) Preadoption placements, and 4) Adoption Placements. The Wisconsin Act – found principally at *Wis. Stats. 48.028* – mostly parallels the federal act, but it also extensively amends the language of Chapters 48 [CHIPS and TPR proceedings] and 938

[1] These three posters or banners and their wording are not original to this author. They were suggested by the late William Hilton, who was a long-time sub-specialist in international and interstate custody jurisdiction cases, and one of the foremost American authorities on the Hague Convention. Before it was taken down following his death, Hilton's website (www.hiltonhouse.com) was a treasure trove of forms, sample pleadings, briefs, memoranda and other information about the Hague Convention and both the UCCJA and the UCCJEA.

[JIPS proceedings] to expressly spell out the special protections that must be implemented for cases involving Indian Children – protections that previously would be afforded only if the courts, agencies and counsel actually had a detailed knowledge of the federal ICWA's requirements.

2. **Jurisdictional *and* Placement Mandates.** If the acts apply, they accord exclusive jurisdiction to tribal courts for children who live on a reservation. For off-reservation children, state courts may exercise jurisdiction, but the tribe must be given notice of the proceedings and it is accorded an absolute right to intervene in the cases. Even the UCCJEA (822.04) clearly provides that it does not apply in any case where ICWA applies. Moreover, substantial legal hurdles make it very difficult to order placement of the child with anyone other than the child's extended family or another member of the child's tribe.

3. **Not Applicable in Typical Divorce Cases.** ICWA is aimed at situations in which children of Indian parents are threatened with removal from their parents *by a state or public agency*. As such, it does not apply in typical Family Court custody disputes between a child's parents.[1] However, if a custody/placement dispute involves one Native-American and one non-Native-American parent, some of ICWA's *policies* may arguably apply as "factors" to consider in determining custody. This is particularly so if the non-Indian parent wants to raise the child as an "American," in derogation of the child's Indian heritage, or is attempting to minimize the child's contact with the child's tribal community or extended family.

B. The Hague Convention on the Civil Aspects of International Child Abduction[2]

1. **Status as Treaty; Effective Date in U.S.** The Hague Convention[3] was adopted by the Hague Conference on Private International Law on October 25, 1980. It has the legal status of a "treaty" which became effective in the United States July 1, 1988, concurrent with the enactment of International Child Abduction Remedies Act (Section C, *infra*.) It has been ratified by just over 50 countries, including Canada, the U.S., Mexico, most of Europe and the British Commonwealth, much of South America, Israel, and Turkey, but no other Moslem countries, and just a few countries in Asia or Africa. As a treaty, it is effective only between member countries – that is, it is not available unless *both* countries have ratified it.

2. **Purpose and Overview.** The Hague Convention was designed to secure the prompt return to their place of "habitual residence" of children who are wrongfully removed to or retained in another contracting country. Just as with the UCCJA and PKPA, the contracting nations also hoped that if a truly effective and speedy remedy for international child abduction could become widely available, that remedy would both reduce child abductions and insure respect for the custody and visitation rights among the participating countries. To that end, *Article 2* of the Convention requires the signatory states to implement the Convention's objectives by "the most expeditious procedures possible." Perhaps even more importantly, the Convention was designed to keep the courts in the abductor's country focused on getting the child back to his or her "habitual residence" as quickly as possible, and then letting the courts in that home country become the forum for deciding any substantive custody or placement issues. (Arts. 12, 13, 19)

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[1] For the unusual family court case in which a court makes a finding under *Wis. Stats. 767.41(3)* that neither parent is able to care adequately for a child, it can be reasonably argued that the resulting placement with an agency or a relative may well trigger the operation of ICWA or WICWA for an Indian child.

[2] T. I. A. S. No. 11670. For the text of the treaty, see http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=24.

[3] The Hague Conference on Private International Law has adopted dozens of "conventions" spanning a vast spectrum of international civil law areas, from "service abroad of judicial and extrajudicial documents" and "recognition and enforcement of foreign maintenance decrees" to "taking of evidence abroad in civil cases" and "law applicable to trusts and their administration." Some of these have been ratified by the United States, and others have not been. Moreover, a similar "European Convention…" to return abducted children has been ratified by 28 European countries, but not by the United States. Throughout these materials, the term *"Hague Convention,"* should be read as referring only to the 1980 Hague Convention on The Civil Aspects of International Child Abduction.

* **3. Threshold Issues; Eligibility for Relief.** The Convention applies only if ***all*** the following criteria are satisfied:

a. Under Age 16. The child must be under the age of 16 at the time of the *hearing;* and

b. Wrongful Removal. The child must have been *wrongfully* removed from or *wrongfully* retained in a member country; and

c. Habitual Residence. The member country seeking the child's return must have been the child's child's "*habitual residence*" just before the abduction (or wrongful retention). Although "habitual residence" is a somewhat different and less stringent standard than the UCCJEA's concept of "home state," both are designed to advance similar purposes–getting the child quickly back to a state or nation with the best and most recent connections to the child and that is best suited to try and decide any custody issues concerning the child; and

d. Right of Custody. The child must have been removed from a person (or agency) that had *and* was exercising a *lawful right of custody* or that would have done so but for the removal. This right of custody includes the right to determine the child's place of residence and other rights regarding care of the child's person, and it can be by court order, an enforceable agreement, or by operation of law (e.g., in Wisconsin, absent any order, both parents of a marital child, or the mother of a non-marital child, have inherent rights of custody).

4. Visitation. The convention does not provide for return of a child for visitation or temporary placement. It does, however, have special procedures to facilitate and implement existing rights of visitation or placement, which it refers to as "rights of access" for limited periods of time in places other than the child's habitual residence. (*Art 21*);

5. Central Authorities. The Convention requires each contracting state to designate a "Central Authority" ("C.A.") to carry out the duties imposed by the Convention. States with a federal system or territorial units are free to designate more than one but must designate one of them to which applications may be sent for further transmission. In Canada, for instance, each province has its own designated Central Authority. The sole Central Authority in the United States is the U.S. State Department's Office of Children's Issues. Applications for a child's return (obtainable from OCI's website) may be made either to the C.A. where the child is being held or to the C.A. of the child's habitual residence.[1] *Article 8* spells out the information that must be included in an application. Each C.A. is charged with receiving and processing applications, overseeing their progress through administrative and judicial channels, coordinating the case with the other country's C.A., assisting applicants, and making administrative arrangements for the child's safe and secure return.

6. Summary Rejection by Central Authority. If it is clear that an application is not well-founded or that the Convention's requirements are not satisfied, a C.A. may summarily reject an application. In such a case, it must promptly notify either the applicant or the other country's C.A. through which the application was submitted of the rejection *and* of the reasons for that rejection. The applicant may then correct any errors and, if necessary, reapply. If the C.A. has a reason to believe that the child is in another participating state, it must transfer the application to that nation's C.A.

7. Procedure Once Application Is Accepted. Once a C.A. accepts an application, it must take all appropriate steps to locate the child, to protect the child once found, and, if possible, to arrange for the child's *voluntary* return. In the United States, ICARA authorizes te C.A. to access information available through the federal Parent Locator Service (established under the Social Security Act–42 U.S.C. 653). It also authorizes federal and state departments, agencies and instrumentalities to search their records for any information that the C.A. might request.

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[1] For children whose habitual residence is in the United States, the Office of Children's Issues strongly advises that applications be filed with its office, rather than with the C.A. in the country where the child is being held. In that way, OCI says it can better shepherd and oversee the process, and improve the likelihood of quick success. OCI's web site (*http://www.travel.state.gov/abduction/abduction_580.html*) has links to current downloadable application forms, advice packets for attorneys, and current toll-free phone numbers to reach their very competent staff.

8. **Court Action If No Voluntary Return.** If a voluntary return is not feasible, the C.A. in the country where the child is held will either initiate judicial proceeding to obtain the child's immediate return or authorize such an action (*i.e.*, let the applicant's attorney file suit). The court may require production or authentication of supporting documents and may request an order from a court of the child's habitual residence that the removal was "wrongful." It may also take judicial notice of the law of that residence country and consider information provided by the C.A. about the child's "social background." In the United States, ICARA grants both state and federal courts concurrent jurisdiction to hear these cases and requires U.S. and state courts to accord full faith and credit to judgments or orders of other courts made under the Convention.

9. **Limited Exceptions To Mandatory Return.** The Convention forbids a member country's court to refuse to return a child on public policy or analogous grounds. However, the court *may* refuse to return a child if one of four very narrowly defined conditions exists. They are:

   a. The applicant was not actually exercising custody rights at the time the child was removed, or had consented to or subsequently acquiesced in the removal (*Art13[a]*);

   b. The child objects to the return *and* is of sufficient age and maturity to have his/her views taken into account (*Art 13[b]*);

   c. There is a *grave risk* that return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation. (*Art 13[b]*); or

   d. The return would be shocking to the conscience of the court and would violate "the fundamental principles" of the country where the child has been taken "relating to the protection of human rights and fundamental freedoms." (*Art 20*).

10. **Time Limits.** If the court proceeding for a child's return is commenced less than one year after the child was removed or wrongfully retained, *and* none of the limited exceptions applies, the court must order the child returned "forthwith." If that time is one year or more, the return is less than automatic, since the court must then also consider whether the child has become settled in the new environment. (*Art 12*)

11. **Standards of Proof.** Under ICARA, the petitioner must establish by a preponderance of evidence that the child was wrongfully removed or retained, within the meaning of the Convention. The respondent has the burden of establishing the exceptions of *Article 13(b)* [grave risk of harm or child objects) and of *Article 20* [violate fundamental human rights principles] by "clear and convincing evidence." If the respondent tries to prove that any other exception applies, he/she must do so by a "preponderance" standard. If the suit is for "rights of access" (visitation or temporary placement), the petitioner must prove his/her right to such access by the same preponderance standard. (42 U.S.C. 11603[e])

12. **Best Interests Not At Issue.** The Convention is solely remedial. A decision as to a child's return "shall not be taken [as] a determination on the merits of any custody issue." (*Art 19*)

13. **Non-Exclusive Remedy**. The Convention is a nonexclusive remedy. It does nothing to limit the power of a judicial authority to order return of a child at any time, under other laws and procedures and regardless of the child's age. *(Arts 2, 18, 29, 34, 36 and ICARA*)

14. **No Provision for Criminal Penalties.** The Convention deals only with the return of the child and makes no provision for criminal penalties or international extradition on criminal charges. Once the child's return has been secured, it makes no provision for the abductor's return to the child's habitual residence. While it does not criminalize any particular conduct, it does not preclude any country from doing so. Indeed, since operates only if a child is taken "wrongfully,"a party's conduct may easily give rise to both civil and criminal consequences in one or more countries.

C. International Child Abduction Remedies Act (ICARA) **– 42 USC 11601 et seq. (P.L. 100-300)**[1]

This act is the federal implementing statute for the Hague Convention. Many of its provisions are discussed above in the treatment of how the Convention itself works. Only three of its provisions will be singled out here for special mention. First, the Act confers concurrent original jurisdiction on federal and state courts to handle cases arising under the Convention. (*§11603[a]* Resolving the question of which court to use will depend greatly on the makeup of those individual courts. Second, the Act mandates that both federal and state courts must accord full faith and credit to any judgment or order either denying or directing the return of a child pursuant to the Convention. (*§11603[g]*) Third, the Act makes it clear that the procedures and remedies spelled out in the Convention and the Act are non-exclusive. That is, the court may also employ any other appropriate remedy or procedure that is otherwise available under any other federal or state law. (*§11603[h]; §11603[a]*) Finally, the *federal regulations* that implement ICARA are found at *22 C.F.R. Part 94*.

D. Federal Violence Against Women Act (VAWA) **– 18 U.S.C. 2261 – 2265**

1. **Originally enacted in 1994**, and most recently reauthorized on March 7, 2013 as P. L. 113–4.

2. **Overview**. VAWA is a massive federal attempt to deal with the problem of domestic violence. Most of the huge legislative package provides for ongoing grants to law enforcement and to social service agencies throughout the country. Another part addresses the special needs of foreign women whose immigrant visas were granted because they had married U.S. husbands, and who endure abuse for fear that divorce would result in deportation. For them, special exceptions were created in the immigration and citizenship laws. Two small but important parts criminalize interstate violation of state domestic violence protective orders and mandate interstate registration and enforcement of one state's domestic violence orders in other states. Those two parts can have a bearing on interstate custody matters.[2]

3. **Criminal Provisions**. Sections 2261 to 2264 make interstate violation of protective orders or travel in interstate commerce for the purpose of violating a state protective order a federal felony, with provision for restitution orders and penalties of up to life in prison if the victim dies, or up to 20 years for life-threatening injury or permanent disfigurement. For lesser injuries, sentences scale down to a maximum of 5 years.

4. **Civil – Interstate Registration & Enforcement of DV Orders.** 18 U.S.C. 2265 requires that one state's domestic violence protective orders be granted full faith and credit in all other states and that they be enforced in all other states. It provides for registration of one state's protective orders in another state. It also provides a procedure under which, even without registration, one state's protective orders can be enforced by the courts and law enforcement officials of another state. The similarity of these provisions to those of the UCCJEA is no coincidence. The UCCJEA's procedures for registration [822.35] and its procedures for enforcement without registration [822.38 – 822.40] were designed to be roughly parallel to the analogous provisions of VAWA [18 USC 2265].

5. **Relationship to Interstate Child Custody Cases**. State domestic violence orders can create a remedy for domestic violence, and, under state law, they can and often do include carefully tailored custody and visitation provisions. However, domestic violence often takes place across state lines. The federal VAWA addresses the need for interstate enforcement of those D.V. orders by providing an independent basis for the granting of full faith and credit to protective orders issued by other states, territories, and Indian Tribes.[3] Though the original enactment

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[1] For the full text of this act, see http://www.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_121.html.

[2] The web sites of WomensLaw.org and the Legal Resource Center on Violence Against Women can be productive starting points for greater insight and detail about VAWA, as well as related laws and issues.

[3] The express inclusion of Indian Tribes in VAWA's mandate that all states, territories *and Indian Tribes* accord full faith and credit to each other's DV orders differs from the PKPA's, which includes territories and possessions within its definition of a "state," but which makes no mention of Indian tribes. This omission has prompted some state courts to conclude that the PKPA neither requires the states to accord full faith and credit to custody orders issued by

expressly carved "child custody" orders out of its definition of "protective order[s]," the 2006 amendments removed that exclusion. Thus, under 18 U.S.C. 2266(5), as amended, a "protective order" that must be accorded full faith and credit by all states now includes any child custody or visitation order that may be contained within a otherwise proper D.V. protective order issued by any state, tribal, or territorial court. This inclusion would seem to eliminate the earlier need for separate UCCJEA registration to make custody provisions in another state's D.V. protective order enforceable across state lines.

6. **Relationship to Temporary Emergency Cases.** VAWA also plays an important role in determining whether an emergency exists for purposes of the UCCJEA. VAWA requires a court to give full faith and credit to a protective order issued in another state if the order is made in accordance with VAWA. Logically, this full faith and credit treatment will extend to the findings of fact set forth in the order, making them *res judicata*. Thus, when a court is deciding whether a temporary emergency exists under 822.24, it may not relitigate the existence or the validity of those factual findings, so long as the standards of proof for the two proceedings are comparable.

7. **Interplay with UCCJEA "Inconvenient Forum" Determinations.** As noted at III E 1, above, when a court decides whether another court may be a more appropriate forum for determining a custody case, the first of the eight factors it must consider is "whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child." In evaluating this factor, the Commission's comments offer that "the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse." In recognition that the inconvenient forum issue may first come to light in non-family law courts, the UCCJEA specifically permits the issue to be raised not just on the motion of a party or the family court's own motion, but also "upon … the request of another court."

E. Federal Fugitive Felon Act (18 U.S.C. 1073)

This act punishes interstate or foreign travel to avoid a felony prosecution with a fine and/or imprisonment for up to 5 years. Thus, if a parent takes a child in violation of a *felony* child-snatching statute and crosses a state line in an effort to avoid prosecution, the parent may be subject to this act. To trigger the act, the state must have issued a felony warrant for the parent or kidnapper. Moreover, the act permits prosecution only upon the written approval of a federal prosecutor. The likelihood of such approval varies considerably from A.G. office to A.G. office and also among individual prosecutors.

F. Missing Children's Act of 1982 (28 U.S.C.534 [a])

This act requires the FBI (technically the U.S. Attorney General) to keep computer files on unidentified dead bodies in addition to its preexisting missing persons files. It also provides for storing reports of missing children in its computer system *and* for making the information available to local law enforcement agencies. It specifically authorizes the FBI to "provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person." It also makes the computer files of the National Crime Information Center (NCIC) available to state courts for use in domestic violence and stalking cases. Though the act originally excluded custody orders, it now expressly includes child custody and visitation orders within its definition of "protection orders," so long as those custody or visitation orders are "issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking." [28 USC 534(f)(3)(ii)]

G. National Child Search Assistance Act of 1990 (42 U.S.C. 5779–80)

This act (part of the Crime Control Act of 1990) works in tandem with the Missing Children's Act by forbidding federal, state and local law enforcement agencies from establishing any waiting period

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tribal courts, nor requires tribal courts to accord full faith and credit to custody orders issued by state courts. See, *e.g., Garcia v. Gutierrez* (NM, 2009) 147 N.M. 105, 217 P.3d 591, which concludes that the PKPA does *not* apply to Indian tribes, but only after surveying the split of cases and other authorities on both sides of the issue.

before accepting a missing child report. It also requires that every missing child report immediately be entered into the state's law enforcement computer system *and* into the NCIC system, *and* that it be made available to the state's Missing Children Information Clearinghouse.[1] The act's provisions in this regard were strengthened in 2003 by P. L. 108-21 [The **P**rosecutorial **R**emedies and **O**ther **T**ools to **E**nd the Exploitation of **C**hildren **T**oday Act], which – among many other provisions – extended the scope of the 1990 act to include abducted children between 18 and 21 and extended the statute of limitations on criminal child abduction to the lifetime of the child.

H. Extradition Treaties Interpretation Act of 1998 (P.L. 105-323) [Eff. 10/30/1998]

Before the mid-1970s, parental abduction was generally not considered to be a criminal offense in most of the United States. Likewise, extradition treaties that became effective through the mid-1970s and which listed "kidnapping" as an extraditable offense were never intended to include parental kidnapping within their scope. For that reason, the US government continued to interpret those treaties as not including parental kidnapping, even after every one of the 50 states had criminalized parental kidnapping. Most of the more recent extradition treaties contain 'dual criminality' provisions, under which extradition is authorized if both countries make a listed offense a felony. For those treaties, the US government's practice had been to interpret them as including parental kidnapping, so long as the other country also considered parental abduction to be a criminal offense. This act rectifies that disparity by expressly authorizing the United States to interpret the term "kidnapping" in any extradition treaty to include parental kidnapping.

I. Child-Snatching Laws

1. Federal: International Parental Kidnapping Crime Act of 1993 (18 U.S.C. 1204)

This act makes it a federal felony to remove a child (under the age of 16) from the United States or to retain a child (who has been in the United States) outside of the United States, with the intention to obstruct the lawful exercise of parental rights. The penalty for violation is a fine and/or up to 3 years in prison. It provides affirmative defenses for flight from an incident or pattern of domestic violence and for retention by a parent with visitation or custody rights who was unable to return the child because of circumstances beyond his/her control so long as the defendant tried to notify the other parent within a day and actually returned the child as soon as possible. It was designed to operate when the Hague Convention and ICARA could not effectively secure the child's return. The act includes a declaration that it shall not detract from the Hague Convention, and the legislative history includes a "Sense of Congress" declaration that the civil remedies of the Hague Convention and of ICARA should be the preferred form of recourse in cases of international child abduction.

2. State: *Wis. Stats. § 948.31*– Interference with Custody by Parent or Others

This act makes it a felony to interfere with a parent's custody or placement rights. Violation can occur in three ways:

a) **Class F Felony:** Parent or other person causes a child to leave, takes away or withholds a child from a custodial (or joint custodial) parent for more than 12 hours beyond a court-approved period of placement or visitation with intent to deprive that custodial parent of his/her custody rights;

b) **Class I Felony:** Parent (or a person acting on a parent's direction) either intentionally conceals child from the other parent ***or*** causes a child to leave or takes the child with intent to deprive the other parent of physical placement *after* service of process in a family law proceeding but *before* any order determining custody or placement rights has been issued ***or***

c) **Class F Felony:** A person who has not been granted legal custody of the child causes a child to leave, takes away, or withholds a child from his/her parents (or, for non-marital child, from the mother, unless the father has been granted legal custody) for more than 12 hours, without the parents' consent.

[1] Wisconsin's "clearinghouse" is in Madison and can be reached at (608) 266-1671 or (800) THE-HOPE.

Withholding or abduction can be in or out of Wisconsin. Affirmative defenses include a) removal to protect from threat of physical harm or sexual assault to the child or to the withholding parent, b) complaining parent's consent, and c) "otherwise authorized by law." In addition to fines and imprisonment, the act also provides for orders of restitution for reasonable expenses incurred in finding and returning the child.

3. State: *Wis. Stats. §948.04* – Causing Mental Harm to a Child.

This seldom used act may apply in many abduction and withholding cases, particularly if the child has suffered significant emotional damage. Violations can occur in two ways:

a) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class F felony. *or*

b) A person responsible for the child's welfare is guilty of a Class F felony if he/ she has knowledge that another person has caused, is causing or will cause mental harm to that child **and** he/she is physically and emotionally capable of taking action that will prevent the harm **but** fails to take that action ***and*** the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

J. Analogous Jurisdiction Law For Adult Guardianships and Conservatorships.

Just as the Full Faith and Credit Clause of the U.S. Constitution has been held not to apply to child custody orders issued by state courts,[1] it has also been held not to require adult guardianship orders issued by one state's courts to be recognized or enforced in other states. The difficulty in enforcing such orders across state lines has resulted in the refusal by many financial institutions, care facilities and courts to recognize adult guardianship or adult protective orders issued in other states. To remedy that problem, the Uniform Law Commission promulgated the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in 2007.[2] Article 2 of the act is its heart, in that it sets out which state will have jurisdiction to appoint a guardian or conservator for any "incapacitated adult." The Act's overall objective is to vest jurisdiction in one and only one state (except in cases of emergency or situations where the protected adult owns property in multiple states). Most of Article 2 and many provisions of Article 1 [definitions and provisions to foster cooperation between courts of different states] are directly modeled on the analogous provisions of the UCCJEA. Article 3 creates procedures for transferring guardianship or conservatorship proceedings from one state to another. Article 4 deals with enforcement of adult guardianship and protective orders in other states, albeit with considerably less detail than the enforcement provisions of the UCCJEA. Though not yet enacted in Wisconsin, 37 states, D.C. and Puerto Rico have already enacted the UAGPPJA.

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[1] See discussion at p. 1 of this outline.

[2] For the text of the act, with comments and other resource material, go to http://tiny.cc/1wierw