
**CHILD CUSTODY JURISDICTION ISSUES:
UCCJEA, PKPA & HAGUE CONVENTION**

By

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QUICK REFERENCE GUIDE TO THE UCCJEA

I. What It Is

In 1997, the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”) was proposed by the National Conference of Commissioners on Uniform State Laws to replace the Uniform Child-Custody Jurisdiction Act (UCCJA), a prior Act adopted by all 50 states and the District of Columbia. The UCCJEA has since been adopted by most states in lieu of the UCCJA. The UCCJEA became effective in North Carolina in 1999, and the UCCJEA comprises N.C.G.S. § 50A *et seq.*

A list of states that have adopted the UCCJEA as of August 2008 is attached to this manuscript as Attachment A.

II. When It Applies

The UCCJEA applies to your case **when:**

a “child-custody determination” is sought ...

- a temporary, permanent, initial, modification, enforcement order
- for legal custody, physical custody, or visitation

... in a “child-custody proceeding.”

- Chapter 50 action
- guardianship, paternity, domestic violence, neglect, abuse, TPR, and others

III. Why It Applies

The Official Comment to the UCCJEA provides that the UCCJEA was created to, among other things:

- eliminate jurisdictional conflicts and promote cooperation between courts of different states by establishing uniform procedures applicable nationwide
- avoid relitigation of custody decisions from state to state
- facilitate enforcement of one state’s custody decision in another state

In furtherance of these goals, the UCCJEA **sets forth the requirements for North Carolina to assume subject matter jurisdiction, which our Court must have before it can make a “child-custody determination” in a “child-custody proceeding.”**

☒ Remember that subject matter jurisdiction cannot be waived or consented to and may even be raised as an issue for the first time on appeal.

IV. What It Looks Like

The UCCJEA is divided into 3 Parts:

Part 1: General Provisions - § 50A – 101 through 112

Part 2: Jurisdiction - § 50A – 201 through 210

Part 3: Enforcement - § 50A – 301 through 317

PART 1: § 50A – 101 through 112 contains provisions governing specifics such as:

1. definitions (!!!)
2. application to Indian tribes
3. international application
4. notice to persons outside of North Carolina
5. procedures for communication between North Carolina and another state
6. procedures for taking testimony in another state
7. cooperation between North Carolina and another state in the acquisition of evidence and documents

PART 2: § 50A – 201 through 210 sets forth the requirements for subject matter jurisdiction

PART 3: § 50A – 301 through 317 sets forth the procedures for interstate enforcement of custody orders

☒ As you work your way through the UCCJEA maze, be sure to:

- **Look up the terms.** Don't assume their meanings. § 50A – 102 = Definitions
- **Read the Official Comments.** You will find several nuggets in the OCs that may save your case

V. How It Applies

PART 2: JURISDICTION - § 50A – 201 THROUGH 210

- **Starting**
- **Keeping**
- **Modifying**
- **Protecting**

North Carolina may have subject matter jurisdiction under the UCCJEA to make a

child custody determination in the following circumstances:

A. Starting § 50A – 201. Unless you have an emergency, in which case you skip to § 50A – 204, North Carolina has jurisdiction to make an initial child custody determination **only if 1 of the 4 following scenarios applies**:

1. **“Home State”** § 50A – 201(a)(1)
 - a. NC is the home state of the child on the date the proceeding commenced, OR
 - b. NC *was* the home state of the child within 6 months before the proceeding commenced and, though the child is no longer in NC, a parent or person acting as a parent remains in NC.
2. **“Significant Connection”** § 50A – 201(a)(2)
 - a. Either there is no “home state” or the “home state” court declines to exercise jurisdiction because NC is the “more appropriate forum” (§ 50A – 207 or 208), AND
 - b. the child and at least one parent (or a person acting as a parent) have a significant connection to NC other than mere physical presence, AND
 - c. substantial evidence is available in NC concerning the child’s care, protection, training, and personal relationships.
 - d. § 50A – 207: A court with jurisdiction *may* decline to exercise that jurisdiction if, under the circumstances, that state would be an inconvenient forum and another state would be the more appropriate forum.
 - i. The issue of inconvenient forum may be raised by motion of a party, the court’s own motion, or by request of another court. § 50A – 207(a)
 - ii. Before declining jurisdiction under this §, the court with jurisdiction should consider the appropriateness of another state exercising jurisdiction. There are at least 8 factors to be considered in making the determination of appropriateness. § 50A – 207(b)
 - iii. Once the court declines jurisdiction under this §, the court may stay the proceedings conditioned on a child custody proceeding being commenced immediately in the more appropriate state and may impose other just

and proper conditions. § 50A – 207(c)

- e. § 50A – 208: If the court has jurisdiction under the UCCJEA because a person seeking to invoke that jurisdiction engaged in unjustifiable conduct, the court *shall* decline to exercise jurisdiction, unless...
- i. the parents and all persons acting as parents consent to the jurisdiction; § 50A – 208(a)(1)
 - ii. a court otherwise having jurisdiction (under 201 through 203) determines this court is the more appropriate forum under 207; OR § 50A – 208(a)(2)
 - iii. no other court would have jurisdiction under 201 through 203. § 50A – 208(a)(3)
 - iv. The declining court can nevertheless create remedies to ensure the child’s safety and prevent repetition of unjustifiable conduct (including staying the proceedings until a proceeding is commenced in the proper state). § 50A – 208(b)
 - v. The declining court *shall* assess the offending party with \$\$\$\$ unless the offending party shows it would be clearly inappropriate to do so. § 50A – 208(c)

3. **“More Appropriate Forum”** § 50A – 201(a)(3)

All states having “home state” and/or “significant connection” jurisdiction decline jurisdiction because North Carolina is the more appropriate forum under 207 or 208.

4. **“Default Jurisdiction”** § 50A – 201(a)(4)

When none of the 3 above apply.

§ 50A – 201(b) provides that the above 4 scenarios are the exclusive bases for determining that NC has subject matter jurisdiction to make a child custody determination. Except in an emergency, satisfaction of the elements of 1 of the 4 scenarios *is mandatory*.

§ 50A – 201(c) provides that neither minimum contacts nor service within NC is required for NC to have jurisdiction. Likewise, neither minimum contacts nor service within NC automatically confer jurisdiction.

B. Keeping § 50A – 202. Once North Carolina properly makes a child custody determination based on either initial jurisdiction (under 201) or modification jurisdiction (under 203), then **NC keeps jurisdiction until 1 of the 2 following determinations is made:**

1. Either NC determines that:
 - a. neither the child, the child and a parent, nor the child and any person acting as a parent continue to have a significant connection with NC, AND
 - b. substantial evidence concerning the child’s care, protection, training, and personal relationships is no longer available in NC; OR
2. NC or *another state* determines that:
 - a. the child, the child’s parents, and any person acting as a parent no longer reside in NC.

☒ This section does NOT apply when dealing with emergency jurisdiction. Special rules apply to obtaining/retaining/modifying jurisdiction in emergencies. See § 50A – 204.

☒ Read the Official Comment.

C. Modifying § 50A – 203. North Carolina **may not modify another state’s** custody order **unless:**

1. NC has jurisdiction to make an initial determination as the “home state” under 201(a)(1) or “significant connection state” under 201(a)(2), AND
2. 1 of the 2 following determinations is made:
 - a. the other state determines it no longer has exclusive, continuing jurisdiction under 202 or that NC would be the more appropriate forum under 207; OR
 - b. NC or the other state determines that the child, the child’s parents, and any person acting as a parent no longer reside in the other state.

☒ This section does NOT apply when dealing with emergency jurisdiction. Special

rules apply to obtaining/retaining/modifying jurisdiction in emergencies. See § 50A – 204.

D. Protecting (in an Emergency) § 50A – 204. North Carolina has *temporary emergency jurisdiction* if the child is present in NC and:

1. the child has been “abandoned”; OR
2. it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
3. If there is no previous child custody order entitled to enforcement and a custody proceeding has not been commenced in a state having jurisdiction under 201 through 203, then a NC temporary emergency order under 204 remains in effect until an order is obtained in a state having jurisdiction under 201 through 203. § 50A – 204(b)
4. If a custody proceeding has not been or is not commenced in a state having jurisdiction under 201 through 203, then a NC temporary emergency order under 204 becomes a final determination if it so provides, and NC becomes the child’s home state. § 50A – 204(b)
5. If there is a previous child custody order entitled to enforcement or a custody proceeding has been commenced in a state having jurisdiction under 201 through 203, then a NC temporary emergency order under 204 must specify an adequate period of time to allow the person seeking the order to obtain such an order from the state having jurisdiction under 201 through 203. The NC order remains in effect until: 1) an order is obtained from the other state within the specified period of time, or 2) the specified time period expires. § 50A – 204(c)
6. Once a NC court, that has been asked to make an emergency determination under 204, is informed that a custody proceeding has been commenced in or that a custody order has been made by a state having jurisdiction under 201 through 203, the NC court must immediately communicate with that other state. § 50A – 204(d)
7. Once a NC court that is already exercising jurisdiction under 201 through 203 becomes informed that a 204 proceeding has been commenced in another state (or that a 204 order has been entered in another state), the NC court must immediately communicate with that other state to resolve the emergency, protect the child, and determine the duration of the temporary order. § 50A – 204(d)

 Read the Official Comment.

PART 3: ENFORCEMENT - § 50A – 301 THROUGH 317

A. Duty to Enforce § 50A – 303 and 306. North Carolina shall recognize and enforce another state’s custody determination if:

1. that other state exercised jurisdiction in substantial conformity with the UCCJEA; OR
2. the determination was made under factual circumstances that meet the jurisdictional standards of the UCCJEA.
3. NC may grant any relief normally available in NC to enforce a *registered* custody order from another state. § 50A – 306(a)
4. NC may NOT modify a registered custody order from another state unless NC has jurisdiction to do under Part 2 of the UCCJEA. § 50A – 306(b)
5. The remedies for enforcement under the UCCJEA are cumulative and do not hinder the ability to use other remedies for enforcement. Whatever additional remedies are available to enforce a local custody order can be used to enforce another state’s custody order. § 50A – 303(b)

B. Registering a Custody Order § 50A – 305. Another state’s custody order may be registered in NC, with or without a simultaneous request for enforcement, by:

1. Filing the following with the NC court:
 - a. verified letter or other document requesting registration; See Attachments B & C
 - b. 2 copies (1 of which must be certified) of the custody order sought to be registered;
 - c. statement under oath that the order has not been modified; AND
 - d. except as otherwise provided in § 50A – 209, the names and addresses of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the custody order sought to be registered.

§ 50A – 305(a)(1-3)

2. Once the NC court receives the above documents/information, the court shall:
 - a. file the custody order as a foreign judgment, together with one copy of the accompanying documents; AND
 - b. direct the petitioner to serve notice upon the persons named pursuant to § 50A – 305(a)(3). The notice shall inform the recipient(s):
 - i. of the opportunity to contest the registration;
 - ii. that a registered order is enforceable as of the date of the registration in the same manner as a NC custody order;
 - iii. that a hearing to contest the validity of the registered determination must be requested within 20 days after service of the notice; AND
 - iv. failure to contest the registration will result in confirmation of the custody order and preclude further contest of that custody order with respect to any matter that could have been asserted. See Attachment D

§ 50A – 305(b)(2), (c)

- c. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the petitioner and all persons served must be notified of the confirmation. See Attachment E. § 50A – 305(e)
3. Contesting the Validity of a Registered Order
 - a. A hearing to contest validity must be requested within 20 days after service of the notice discussed above. See Attachment F
 - b. At the hearing, the court shall confirm the registered order unless the contester shows:
 - i. the other state did not have jurisdiction under the UCCJEA;

- ii. the custody order has been vacated, stayed, or modified by a court with proper UCCJEA jurisdiction; OR
- iii. the contestor was entitled to notice, but notice was not given in accordance with § 50A – 108 in the original custody proceeding that generated the custody order now sought to be registered.

§ 50A – 305(d)(1-3)

C. Expedited Enforcement § 50A – 308. To pursue expedited enforcement of another state's custody order:

1. A verified petition must be filed. See Attachments G & H
2. Certified copies (or a copy of the certified copy) of all orders to be enforced must be attached to the petition.
3. A certified copy (or a copy of the certified copy) of any order confirming registration must be attached to the petition.
4. The petition must state:
 - a. whether the issuing state identified its jurisdictional basis and, if so, identify what the basis was;
 - b. whether the order to be enforced has been vacated, stayed, or modified by a court whose decision must be enforced under the UCCJEA and, if so, identify the court, the case number, and the nature of the proceeding;
 - c. whether any proceeding has been commenced that could affect the current proceeding (such as a domestic violence protective order, TPR, or adoption proceeding) and, if so, identify the court, the case number, and the nature of the proceeding;
 - d. present physical address of the child and respondent, if known;
 - e. whether relief in addition to immediate physical custody of the child and attorneys' fees is sought (such as a request for assistance from law enforcement) and, if so, identify the additional relief sought; AND
 - f. whether the custody order has been registered and confirmed under 305, the date and place of registration.

5. Once the petition is filed, the court shall order the respondent to appear in person with or without the child at a hearing. The court may enter any necessary order to ensure the child's safety. § 50A – 308(c) See Attachment I
 - a. The hearing must occur on the next judicial day after service of the order, unless that date is impossible. If it is impossible, then the hearing shall occur on the first possible date. The court can extend the hearing date at the petitioner's request. § 50A – 308(c)
 - b. The order for appearance/hearing must state:
 - i. time and place of the hearing;
 - ii. advise the respondent that at the hearing, the court will order the petitioner to have immediate physical custody of the child and will also order the payment of fees, costs, and expenses per 312;
 - iii. advise the respondent that at the hearing, the court may schedule another hearing to determine whether additional relief is appropriate; AND
 - iv. advise the respondent that the above will occur unless the respondent appears and shows...see § 50A – 308(d)(1-2).
6. Except as provided in 311, the petition and order must be served upon the respondent and any person having physical custody of the child by any method authorized by NC. § 50A – 309
7. § 50A – 310 provides what the court shall order at the expedited hearing unless the respondent can establish one of the statutory defenses in 310(a)(1-2). The order shall include immediate physical custody of the child to the petitioner and payment of fees/costs/expenses per 312 and may include additional relief (such as law enforcement assistance) and further hearings. See Attachment J

☒ The privilege against disclosure of communications between spouses and the defense of immunity based on the husband/wife relationship or the parent/child relationship may NOT be invoked in this proceeding. § 50A – 310(d)

8. § 50A – 311 provides that a warrant to take physical custody of the child may be issued if the child is immediately likely to suffer serious physical harm or be removed from NC. This section further provides the details for:

- What the petitioner must allege
- What the court must find
- The timeframe for a hearing
- What the warrant itself must provide
- Service requirements
- Guidelines for enforcement of the warrant

See Attachment K

9. § 50A – 312 sets forth the costs, fees, and expenses that may be ordered to be paid by the respondent.

D. Simultaneous Proceedings § 50A – 307. If an enforcement proceeding is commenced in North Carolina while a modification proceeding is pending in the other state having jurisdiction under Part 2 of the UCCJEA, then NC shall immediately communicate with that other state. The NC enforcement proceeding shall continue on unless, after conferring with the other state, NC decides to stay or dismiss the enforcement proceeding.

☐ The other state (which has modification jurisdiction under the UCCJEA) makes the ultimate decision as to whether or not the NC enforcement proceeding should continue or be stayed. See the Official Comment

E. Temporary Visitation § 50A – 304. This provisions allows a North Carolina court to enter a *temporary* order enforcing the visitation provisions of another state’s custody order, whether or not that order includes a specific visitation schedule. In other words, NC can create and implement a visitation schedule which may even include make-up or substitute visitation. NC can also arguably substitute a specific visitation schedule with another reasonable visitation schedule.

☐ A temporary order establishing a visitation schedule for the purpose of enforcing visitation rights does not violate the non-modification rules. See the Official Comment

☐ A NC order providing a temporary visitation schedule must specify an adequate period of time within which the petitioner may obtain a “permanent” order from the state with proper jurisdiction under Part 2 of the UCCJEA. The NC temporary visitation order remains in effect until the order is obtained in the other state or the period expires. § 50A – 304(b)

QUICK REFERENCE GUIDE TO THE PKPA

I. What It Is

When the Uniform Child-Custody Jurisdiction Act (UCCJA) was created in 1968, the intent was for the UCCJA to eliminate interstate custody jurisdiction and enforcement confusion. Despite the efforts of the drafters, the UCCJA did not accomplish that goal. In 1980, the federal government stepped in and enacted the Parental Kidnapping Prevention Act (PKPA) (28 U.S.C.A. § 1738A). The PKPA is another attempt to create uniform rulings among state courts who are determining which state has jurisdictional authority to address child custody disputes.

Though the substantive terms of the PKPA and UCCJEA are similar, they are not identical. Moreover, the UCCJEA addresses possible scenarios that are not covered in the PKPA. The Official Comments to the UCCJEA highlight both the similarities and the differences between the UCCJEA and PKPA and are useful in gaining a better understanding of both Acts.

II. When It Applies

The PKPA is intended to federalize child custody jurisdiction law, and it controls when there are inconsistent state laws.

The PKPA applies the full-faith-and-credit clause to custody orders and mandates the circumstances in which one state must uphold and enforce a custody order from another state. More specifically, the PKPA requires one state to enforce the custody order of another state provided that custody order was entered in compliance with the provisions of the PKPA. The PKPA also mandates when one state may modify the custody order of another state.

III. Why It Applies

The Annotations to the PKPA set forth the congressional declaration of the purposes of the PKPA. These purposes include, among other things:

1. To establish national standards under which courts of different states will determine their jurisdiction to decide custody disputes which cross state lines
2. To promote cooperation between states to ensure that custody determinations are made in the state that can best decide the case
3. To promote the exchange of information and assistance between states which are concerned with the same child

4. To facilitate enforcement of custody orders from different states
5. To deter interstate abductions undertaken to obtain custody awards

IV. What It Looks Like

The PKPA has 8 main paragraphs, though some of those paragraphs have subparagraphs. The general framework looks like this:

PKPA: 28 U.S.C.A. § 1738A

1738A(a) – requires enforcement in the 2nd state, provided PKPA requirements were satisfied by the 1st state

1738A(b) – definitions

1738A(c) – PKPA requirements

1738A(d) – continuing jurisdiction in the 1st state

1738A(e) – notice requirements

1738A(f) – when the 2nd state can modify

1738A(g) – simultaneous proceedings in 1st and 2nd states

1738A(h) – modification of visitation determination by 2nd state

QUICK REFERENCE GUIDE TO THE HAGUE CONVENTION/ICARA

I. What It Is

In 1980, the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention, T.I.A.S. No. 11,670, 19 I.L.M. 1501)(Hague Convention) was created as an international law intended to address enforcement issues in an international child abduction. The Hague Convention was implemented in the United States in 1988 through the enactment of the International Child Abduction Remedies Act (42 U.S.C. §§ 11601 through 11610)(ICARA).

II. When It Applies

The Hague Convention is intended to expedite the return of a child to the proper custodial parent when that child has been abducted to or is being improperly held in another country that is also a party to the Hague Convention. A complete list of countries that are parties to the Hague Convention, as reflected on the U.S. Department of State website as of August 2008, is attached as Attachment L.

III. Why It Applies

Section 11601 of ICARA notes that the international abduction or wrongful retention

of a child is harmful to that child's well-being, and a parent should not be able to obtain custody in a more favorable country by virtue of that parent's wrongful removal or retention of the child. Section 11601 further notes that international abductions and retentions are on the rise, and international cooperation is essential to deterring and correcting this wrongful conduct.

Section 11601 of ICARA provides that the Hague Convention establishes specific legal rights and procedures intended to ensure the prompt return of the wrongfully removed or retained child. The Hague Convention is also intended to facilitate the exercise of visitation rights across international borders.

IV. How It Applies

An excellent overview of the application of the Hague Convention is provided by Suzanne Reynolds in LEE'S NORTH CAROLINA FAMILY LAW § 13.131 (5th ed. 2002). Professor Reynolds writes that the "main premise" is that a child under the age of sixteen should be returned to their place of "habitual residence". The petitioner must establish that:

1. the child was habitually residing in the other country prior to the child's removal,
2. the removal violates the petitioner's custodial rights under the law of that other country, AND
3. the petitioner was exercising those custodial rights when the child was improperly removed.

See Suzanne Reynolds, LEE'S NORTH CAROLINA FAMILY LAW § 13.131(b)(ii)(5th ed. 2002).

There are four defenses which the respondent may assert in attempting to halt the return of the child to the country of "habitual residence." These defenses include:

1. there is grave risk that returning the child would expose the child to harm or place the child in an intolerable situation;
2. returning the child would violate fundamental principles of the United States relating to human rights and freedoms;
3. the action was not timely commenced and the child is now settled in the new country; OR
4. the petitioner was not exercising custody rights at the time of the removal or consented to the removal.

See Suzanne Reynolds, LEE'S NORTH CAROLINA FAMILY LAW § 13.131(b)(iv)(5th ed. 2002).

In addition to the reference cited above, the U.S. Department of State has a helpful

website that provides information about international parental child abduction. There is a link for country-by-country information that provides country-specific information for both “Hague” and “Non-Hague” countries. When you select the country with which you are dealing, a general overview of that country’s laws, procedures, and contact information is provided. Examples of these general overviews are attached to this manuscript as Attachments M (Australia – Hague) and N (Egypt – Non-Hague). Please note that the listing of countries is not complete. There are some “Hague” and “Non-Hague” countries for which these general legal overviews are not yet available on the website. Of course, there is the usual legal disclaimer that the overview is for informational purposes only and that foreign legal counsel should be consulted, and this author shares that disclaimer. The website path is: <http://travel.state.gov>. Look for the link to “Children and Family: International Parental Child Abduction.”

Also consider reviewing the following materials concerning the Hague Convention/ ICARA and application of the UCCJEA in international custody disputes:

D. Marianne Blair, *International Application of the UCCJEA: Scrutinizing the Escape Clause*, Family Law Quarterly, Fall 2004

Merle H. Weiner, *Using Article 20*, Family Law Quarterly, Fall 2004

