

Which Court Has the Right to Enter a Custody Order?

Frequently Asked Questions and Answers about Whether or Not a Washington Court Has Jurisdiction

Table of Contents

IMPORTANT INFORMATION: READ THIS SECTION FIRST	1
THESE QUESTIONS AND ANSWERS DESCRIBE WHEN A WASHINGTON COURT:	1
WILL A WASHINGTON COURT BE ABLE TO DECIDE MY CHILD’S CUSTODY?	1
HOW ARE THESE QUESTIONS AND ANSWERS ORGANIZED?.....	1
INTRODUCTION	2
1. HOW DOES A WASHINGTON COURT DECIDE WHETHER IT HAS CHILD CUSTODY JURISDICTION?	2
2. WHAT FAMILY LAW CASES DO THESE LAWS COVER?	3
3. WHAT DECISIONS ARE “CUSTODY DECISIONS”?	3
4. DO THESE LAWS INCLUDE NON-PARENTS?.....	3
5. CAN THE PARENTS JUST AGREE FOR A COURT TO DECIDE CUSTODY?.....	3
PART I. WHERE THERE IS NO EARLIER CUSTODY ORDER (INITIAL JURISDICTION)	4
1. WHICH STATE USUALLY DECIDES CHILD CUSTODY?.....	4
2. WHEN IS WASHINGTON THE CHILD’S “HOME STATE”?.....	4
3. DOES THE CHILD NEED TO BE PHYSICALLY PRESENT IN WASHINGTON WHEN THE CASE BEGINS?	4
4. IF ANOTHER STATE IS MY CHILD’S “HOME STATE”, WHAT HAPPENS?.....	4
5. IF WASHINGTON DOES NOT HAVE HOME STATE JURISDICTION, WHAT ACTION CAN I TAKE?.....	5
6. WASHINGTON IS NOT THE CHILD’S “HOME STATE,” BUT WE HAVE AN EMERGENCY. WHAT CAN I DO IN A WASHINGTON COURT?.....	5
7. A CASE HAS BEEN FILED IN THE CHILD’S HOME STATE (WHICH IS NOT WASHINGTON) BUT THERE IS NO COURT ORDER THERE YET, AND WE HAVE AN EMERGENCY. IS THERE ANYTHING A WASHINGTON COURT CAN DO?.....	6
8. ARE THERE ANY OTHER WAYS THAT A WASHINGTON COURT MIGHT HAVE CHILD CUSTODY JURISDICTION TO MAKE AN INITIAL DECISION?.....	6
9. JURISDICTION IS COMPLICATED. CAN YOU GIVE A FEW EXAMPLES?	6
PART II. WHERE A STATE HAS ALREADY MADE A CUSTODY DECISION	7
1. I HAVE A PARENTING PLAN/RESIDENTIAL SCHEDULE/CUSTODY DECREE FROM A WASHINGTON COURT. NOW I NEED TO ENFORCE OR CHANGE IT. MAY I DO THIS IN WASHINGTON?.....	7
2. ANOTHER STATE MADE A CUSTODY DECISION ABOUT THE CHILD, BUT THE CHILD NOW LIVES IN WASHINGTON. THE OTHER PARENT STILL LIVES IN THE ORIGINAL STATE. CAN A WASHINGTON COURT MODIFY (CHANGE) THAT ORDER IF I NEED A CHANGE?	7
3. I HAVE A CUSTODY ORDER FROM ANOTHER STATE. MY CHILD AND I MOVED TO WASHINGTON SOME TIME AGO. THE OTHER PARENT STILL LIVES IN THE ORIGINAL STATE. WILL THE WASHINGTON COURT FOLLOW MY OUT OF STATE ORDER ?.....	8
4. MY CUSTODY ORDER COMES FROM A TRIBAL COURT. HOW IS THAT HANDLED?.....	8
5. MY CUSTODY ORDER COMES FROM A COURT IN A FOREIGN COUNTRY. HOW WILL THAT BE HANDLED?	8

6. DOES A COURT THAT HAS MADE A CHILD CUSTODY DECISION EVER LOSE ITS CHILD CUSTODY JURISDICTION?.....	9
7. WHAT HAPPENS IF NONE OF THE PARTIES LIVES IN THE STATE THAT MADE THE INITIAL CUSTODY DECISION?.....	9
8. WHAT CAN A WASHINGTON COURT DO IF THERE IS ALREADY A CUSTODY ORDER IN ANOTHER STATE, BUT THE CHILD IS HERE AND THERE IS AN EMERGENCY?	9
9. I HAVE A COURT ORDER FROM ANOTHER STATE THAT GIVES ME VISITATION WITH THE CHILD. THE CHILD AND A PARENT HAVE MOVED TO WASHINGTON, BUT THE PARENT WILL NOT ALLOW ME THE VISITATION. I STILL LIVE IN THE STATE THAT MADE THE ORDER. WHAT CAN I DO?.....	10
10. WHEN CAN ONE COURT REFUSE TO FOLLOW ANOTHER COURT’S ORDER BECAUSE THE FIRST COURT DID NOT HAVE JURISDICTION?.....	10
11. WHEN MIGHT A COURT NOT FOLLOW ANOTHER COURT’S CUSTODY ORDER BECAUSE PROPER NOTICE WAS NOT GIVEN?	10
12. WHAT ELSE CAN I DO TO ENFORCE MY ORDER FROM ANOTHER STATE?.....	11
13. IF I BELIEVE THAT THE COURT IN THE OTHER STATE DID NOT HAVE JURISDICTION, OR THAT I WAS NOT GIVEN PROPER NOTICE, WHEN SHOULD I BRING IT UP?	11
14. WHAT ARE SOME EXAMPLES OF HOW THESE LAWS WORK WHEN ANOTHER STATE HAS ALREADY MADE A CUSTODY ORDER?.....	11
III. DECLINING JURISDICTION.....	12
1. WHAT DOES IT MEAN TO DECLINE JURISDICTION, AND WHY MIGHT THIS HAPPEN?	12
2. WHAT DOES “INCONVENIENT FORUM” MEAN?	12
3. WHEN MUST A COURT DECLINE JURISDICTION FOR WRONG CONDUCT?.....	13
4. WHAT DO I NEED TO DO IF I WANT TO ASK A COURT TO DECLINE JURISDICTION?	13
IV. TOOLS FOR INTER-STATE CASES	13
1. IF I AM INVOLVED IN A CUSTODY CASE IN ANOTHER STATE, OR IF MY CASE IS IN WASHINGTON BUT ANOTHER PARTY LIVES OUTSIDE THE STATE, OR THERE ARE WITNESSES OR EVIDENCE OUTSIDE THE STATE, DO THESE LAWS HELP ME?	13
2. IF I WANT TO USE ANY OF THESE TOOLS, WHAT DO I NEED TO DO?	14
3. HOW DOES ONE COURT LEARN ABOUT CASES IN ANOTHER STATE?	14
V. TABLES	14

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Which Court Has the Right to Enter a Custody Order?

Frequently Asked Questions and Answers about Whether or Not a Washington Court Has Jurisdiction

Important Information: Read this Section First

Determining jurisdiction can be complicated. We try here to explain the basic principles in simple terms, but given the subject matter, it may be confusing. If you have the opportunity to speak with an attorney, we highly recommend that you do so. If you are low-income and have trouble understanding this publication, you may call the CLEAR legal aid hotline at 1-888-201-1014 to speak with an advocate.

These questions and answers describe when a Washington court:

- may decide custody if a child has lived in more than one state
- should enforce (follow) custody/visitation orders from other states
- may modify (change) custody/visitation orders from other states.

Will a Washington court be able to decide my child's custody?

If the child has always lived in Washington and no other state, tribal court, or foreign country has made a custody order about the child, then Washington, except in limited circumstances involving the Indian Child Welfare Act, has jurisdiction (legal authority) to make a custody decision. However, if this is not true, then jurisdiction becomes harder to determine. **Questions of jurisdiction depend upon the facts in a particular case. Even a small difference in facts can change the result.** If you have questions about whether Washington has jurisdiction, talk with an attorney. **It is very important for you to talk to an experienced family law lawyer if you answer "yes" to either of the following questions:**

- Has the child lived in this state fewer than six months?
- Has any other state, country, or a tribal court made any custody decision about the child?

If you have a custody case that may involve more than one state, you will need to consult with experienced family law attorneys in both Washington and the other state since laws may differ from state to state in important ways.

How are these questions and answers organized?

- The **Introduction** defines some important words used in the questions and answers, gives a summary of child custody jurisdiction, and describes which types of cases the laws cover.
- **Part I** describes child custody jurisdiction rules when no court has made an earlier child custody decision and gives a few examples.
- **Part II** describes the rules when a custody decision has been made in the past and gives a few examples.
- **Part III** explains when a court might decide not to use its jurisdiction and instead allow the court in another state to make the custody decision.
- **Part IV** explains some tools available when more than one state is involved in the case.
- **Part V** contains a table showing the different kinds of jurisdiction (authority) that a court has in typical family law cases. For example, a court might have jurisdiction for a dissolution (divorce), but not jurisdiction to decide custody in the dissolution.

Introduction

The court will only have authority to decide child custody if two laws, the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) and the PKPA (Parental Kidnapping Prevention Act) give it. The PKPA is a federal law.¹ The UCCJEA is a law that more than 40 states, including Washington, have passed.² The PKPA is important if a state's law conflicts with the federal requirements. However, because these conflicts are less frequent in states that have passed the UCCJEA than they were under earlier laws, this publication mainly covers the UCCJEA.

First, a few important words to know:

- If a particular court has the authority to make a child custody decision, it has **“child custody jurisdiction,”** also called **“subject matter jurisdiction.”**
- When no court has made a custody decision about the child, and a person asks for custody in a Washington court, the court will ask whether it has **“initial jurisdiction”** to make a custody decision. (See Part I).
- When a court has made a previous custody decision, and someone asks for a different decision in a Washington court, the court will ask whether the first court has **“exclusive continuing jurisdiction.”** (See Part II).
- A court that has child custody jurisdiction can **“decline jurisdiction,”** which means that **the court can** decide not to use its jurisdiction but allow jurisdiction to be taken by a court in another state. (See Part III).

1. How does a Washington court decide whether it has child custody jurisdiction?

The basic questions the court will ask are:

- Has any court already made a custody decision about this child? (Part II)
 - If so, does either parent or the child still live in the state³ that made that decision?
 - Did that court have child custody jurisdiction when it made the order?
 - Were proper notice and chance to be heard given to the parties in that case?
- If there is **no** earlier custody decision,
 - Was Washington your child's “home state” when you filed your case?
 - Has a case been filed in another state with home state jurisdiction? (Part I)
- Does Washington have emergency jurisdiction to make orders that protect the child, at least on a temporary basis? (Part I, Question 6 and Part 2, Question 8).

¹ 28 USC 1738A. References like this refer to the law that supports the statement made in the text. Court cases have names, such as *In re Custody of Child*. “USC” is the United States Code, the law passed by the United States Congress. “RCW” is The Revised Code of Washington, the law of Washington State; it is available online at http://www.leg.wa.gov/rcw/index.cfm#RCW_by_Title. You can find the laws and cases at many public libraries. See the reference librarian at your library. Also, many counties have law libraries, often located at or near the Superior Court. You can call the clerk's office to find out if there is a law library open to the public in your county. You may use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. The references are up to date as of the date this publication was written. The law sometimes changes before the publication can be updated.

² Ch. 26.27 RCW.

³ If your order is from a tribal court, consult an attorney because the law is less clear about when a tribal court loses jurisdiction.

2. What family law cases do these laws cover?

They cover court decisions providing for custody or visitation.⁴ For example, if custody comes up in any of the following types of cases, the UCCJEA and the PKPA apply, and the court can only make the custody decision if it has “child custody jurisdiction”:

- dissolutions of marriage (divorces),
- legal separations,
- parentage (paternity) (including also petitions to adopt a parenting plan/residential schedule),
- protections from domestic violence (such as domestic violence protection orders),
- juvenile court actions for abused and neglected children (dependency cases),
- guardianship,⁵
- custody cases brought by non-parents
- some child support orders if they address custody or visitation.

The types of cases that are NOT covered by these laws include:

- adoption cases
- cases concerning emergency medical care for the child⁶
- parts of custody cases covered by the Indian Child Welfare Act⁷

3. What decisions are “custody decisions”?

Custody decisions are court orders covering legal custody, physical custody, or visitation with a child. They can be permanent, temporary, initial (the first one) or modifications (changes from the first one).⁸ Orders covering only child support are not custody decisions.⁹

4. Do these laws include non-parents?

The laws cover parents and a “person acting as a parent,” which is someone who:

- has physical custody of the child (or has had physical custody for 6 months in a row within one year just before the custody case is started) AND
- has legal custody or claims a right to legal custody under state law.¹⁰

The law always covers the child in the types of cases listed above, whoever the adults are.

5. Can the parents just agree for a court to decide custody?

No. The parties’ agreement is not enough.¹¹

⁴ RCW 26.27.021(2).

⁵ RCW 26.27.021(4).

⁶ RCW 26.27.031

⁷ See RCW 26.27.041(1). The Indian Child Welfare Act concerns children who are members of an Indian Tribe or who may be eligible for membership. This law applies, for example, in nonparental custody cases (Ch 26.10 RCW) and juvenile court cases about abused or neglected children (dependencies).

⁸ RCW 26.27.021(3)

⁹ Id. It is important to look at the child support order because sometimes these orders also have custody or visitation orders and, if so, would be covered by the UCCJEA and PKPA.

¹⁰ RCW 26.27.021(13).

¹¹ *Campbell v. Campbell*, 180 Ind. App. 351, 388 N.E.2d 607 (1979).

Part I. Where there is no earlier custody order (Initial Jurisdiction)

1. Which state usually decides child custody?

If there is no earlier custody order, the child's home state has the right to make an initial custody decision about the child, unless it declines jurisdiction.¹²

2. When is Washington the child's "home state"?

"Home state" is not just a question of where the child lives right now. Under the UCCJEA Washington is the "home state" only if:

a. The child has lived in Washington with a parent or a person acting as a parent for at least the last six consecutive months (six months in a row) before your court case is filed; OR

b. The child is less than six months old and has lived in Washington with a parent or a person acting as a parent since birth at the time your court case is filed; OR

c. Washington was the child's *home state* (either a. or b. were true) within six months before your court case is filed and one parent or person acting as a parent has continued to live in Washington since the child left the state.¹³

If "a" "b" or "c" is true and if no court has already made an order about custody of the child, then Washington has child custody jurisdiction to make an initial custody decision (the first custody decision about that child).¹⁴ The custody case should be filed here.

3. Does the child need to be physically present in Washington when the case begins?

No, not for home state jurisdiction.¹⁵ Yes, for emergency jurisdiction.

4. If another state is my child's "home state", what happens?

The home state has the right to make the custody decision, and it would be the state to make the decision in most cases. If another state has "home state" jurisdiction, Washington will have child custody jurisdiction to make an initial custody decision **only if**

- the home state "declines" jurisdiction (see Part III below), and
 - Washington is an appropriate court to decide custody and
 - Washington has "significant connection jurisdiction" because
 - The child and at least one parent or person acting as a parent have a significant connection with Washington (more than merely being here physically) and
 - There is substantial evidence in Washington regarding the child's care, protection, training, and personal relationships.¹⁶ OR
 - no case is started in the other state before its home state status ends and you file in Washington after Washington becomes the home state.

¹² RCW 26.27.201.

¹³ RCW 26.27.201(1) and RCW 26.27.021(7).

¹⁴ RCW 26.27.021(8) and RCW 26.27.201.

¹⁵ RCW 26.27.201(3).

¹⁶ RCW 26.27.201 (1)(b); RCW 26.27.021(8).

Exception: Emergency jurisdiction may still be available in Washington in some situations even when the child has another home state. (Part 1, Question 6).

Warning: If you file a custody case in Washington before Washington qualifies as the child's "home state" and you cannot establish emergency jurisdiction, your case may get dismissed or, even if not dismissed, the orders entered may be successfully challenged at a later date and declared void (no good) for lack of subject matter jurisdiction.

5. If Washington does not have home state jurisdiction, what action can I take?

If Washington does not have home state jurisdiction over the child, then you have a few options:

- (a) file for custody in the state that has home state jurisdiction, or
- (b) ask the home state to decline jurisdiction and allow Washington to take jurisdiction (Part III). In an emergency, you may be able to obtain a Washington custody order protecting the child while long-term jurisdiction is decided. (next question).
- (c) wait until the child has been in Washington six months so that Washington becomes the child's home state (**if no custody case is started in the other state in the meantime**).

6. Washington is not the child's "home state," but we have an emergency. What can I do in a Washington court?

Washington may be able to take *emergency jurisdiction* to make a custody decision to protect the child from abandonment or abuse if:¹⁷

- the child is located in Washington, and
- the child, his/her sibling, or parent has been abused, or is threatened with abuse.

However, emergency jurisdiction is limited.

- If no case has been started in another state and Washington takes emergency jurisdiction, a Washington custody order lasts only until the state with home state or significant connection jurisdiction makes a custody order. However, if no one starts a custody case in that other state, the Washington jurisdiction may become final **if** the emergency order allows for this and if Washington becomes the child's home state.
- If a case has been started in the state with initial jurisdiction but no order made yet, see the next question.

If Washington takes emergency jurisdiction and you want the state with home state jurisdiction to enter an initial custody decision, you must quickly file a custody case in the other state and have the Washington court communicate with the court in the other state. If you wait too long and Washington becomes the child's home state for making an initial custody decision, the other state can lose jurisdiction to Washington.¹⁸

¹⁷ RCW 26.27.231(1) and (2).

¹⁸ RCW 26.27.231(2).

7. A case has been filed in the child’s home state (which is not Washington) but there is no court order there yet, and we have an emergency. Is there anything a Washington court can do?

Washington may be able to take *emergency jurisdiction* to make a custody decision to protect the child from abandonment or abuse if:¹⁹

- the child is located in Washington, and
- the child, his/her sibling, or parent has been abused, or is threatened with abuse.

However, emergency jurisdiction is limited. The emergency order in Washington must contain a date on which it ends, and, unless the other state declines jurisdiction, Washington’s jurisdiction will continue only until the earlier of:

- the date the court with continuing jurisdiction enters an order or
- the date the Washington emergency order expires.²⁰

The Washington court is required to communicate with the court in the home state.

8. Are there any other ways that a Washington court might have child custody jurisdiction to make an initial decision?

If the child does not have a home state (or the home state declines jurisdiction), then Washington may be able to take “significant connection” jurisdiction. To have this jurisdiction, the child and at least one parent must have a significant connection with Washington (more than just being here) and Washington must have substantial evidence on issues important to custody.²¹ RCW 26.27.201(d) also grants jurisdiction in very rare cases where no other state has home state, significant connection, or more appropriate forum jurisdiction.

9. Jurisdiction is complicated. Can you give a few examples?

Example #1. Parents married in Washington in 1994 but later moved to Oregon where they have lived for seven years. The parents separate, and mother and child move to Yakima, Washington. Five months after the mother and child have left Oregon, father files for custody in Oregon, where he still lives. Mother receives the Oregon court papers at her home in Yakima.

Result: Oregon is still the child’s home state. Oregon is the only state that can make the permanent custody decision unless it declines jurisdiction. In appropriate cases, mother can ask Oregon to decline jurisdiction, and if it does decline, then Washington may decide custody.

Example #2. Parents married in Washington in 1994 but later moved to Oregon where they lived for seven years. Father has a history of domestic violence against mother. The parents separate, and mother and child move to Yakima, Washington. Father stays in Oregon. Mother immediately files an action in the Yakima court requesting a domestic violence protection order. Father is served with these papers in Oregon and he comes to Washington to contest the order. The Washington court finds that father has physically abused the mother and child. The Washington court issues a Domestic Violence Protection Order, which also gives mother custody. Two months later, (a total of five

¹⁹ RCW 26.27.231(1) and (2).

²⁰ RCW 26.27.231(3).

²¹ RCW 26.27.201(1)(b),(c), *In re Marriage of Hamilton*, 120 Wash. App. 147 (2004).

months after the mother and child have left Oregon), father files for custody in Oregon, where he still lives. Mother receives the Oregon court papers at her home in Yakima.

Result: When mother filed in Washington, Washington was not the home state, so it could only assume emergency jurisdiction. At the time father filed in Oregon, Oregon was still the child's home state. Oregon is the only state that can make the permanent custody decision unless it declines jurisdiction. Mother can ask Oregon to decline jurisdiction, but if Oregon does not decline, the Washington jurisdiction (and custody order) must only be temporary. The two courts are required to communicate to decide how to resolve the emergency, how to protect the safety of the parties and child, and the length of the emergency order.²²

Part II. Where a State has Already Made a Custody Decision

1. I have a parenting plan/residential schedule/custody decree from a Washington court. Now I need to enforce or change it. May I do this in Washington?

If your order is still in effect (has not ended or been replaced or changed), Washington has child custody jurisdiction to enforce (require the parties to follow) or modify (change) its custody decision so long as

- either parent, a person acting as a parent, or the child still lives here²³
- the court had child custody jurisdiction to make the original order, and
- the person against whom you are asking to enforce the order was given proper notice and chance to be heard (or s/he participated in the case anyway)

This is called continuing exclusive jurisdiction. If Washington has continuing exclusive jurisdiction, any permanent changes to the order must be made here unless Washington declines jurisdiction.

2. Another state made a custody decision about the child, but the child now lives in Washington. The other parent still lives in the original state. Can a Washington court modify (change) that order if I need a change?

No. The other state has “continuing exclusive jurisdiction,” and you must ask that state for any changes to the order.

Washington will have child custody jurisdiction to **change** the previous custody order only if:

- both parents, any person acting as a parent, and the child have left the state that made the initial decision and
 - Washington is now the home state or there is no home state and Washington has significant connection jurisdiction (Part I, Questions 2 and 7) OR
- the state that made the initial decision declines its jurisdiction (Part III) and
 - Washington is now the home state or there is no home state and Washington has significant connection jurisdiction (Part I Questions # 2 and # 7) OR

²² See *In re Marriage of Stoneman v. Drollinger* 2003 MT 25, 314 Mont. 139, 64 P. 3d 997 (2003) for a discussion of declining jurisdiction when there is a history of domestic violence.

²³ RCW 26.27.211

There is a limited exception (Part II, Question # 8) for temporary orders in emergencies.

3. I have a custody order from another state. My child and I moved to Washington some time ago. The other parent still lives in the original state. Will the Washington court follow my out of state order ?

Yes, it should be followed here if

- the other state’s order is still in effect (has not run out or been replaced or changed) and
- the out of state court had child custody jurisdiction and
- notice and opportunity to be heard were given before the out of state court made its order.²⁴

You may register your order in Washington.²⁵ If you complete the registration procedure and the Washington court formally confirms your out of state order, you should be able to ask a Washington court to enforce it in the future if you need to. This might happen, for instance if the other parent visits the child here and then fails to return the child to you at the end of the visitation stated in your out of state order.

Forms for the registration process are at <http://www.courts.wa.gov/forms/?fa=forms.list> under the Section **Uniform Child Custody Jurisdiction and Enforcement**. You will need certified copies of the original custody decision and must pay the court filing fee (or get a court-approved waiver). You must also give notice and a chance to object to the registration to parents and to any person acting as a parent who has custody or visitation under the order you are registering. If one of these people files an objection, there will be a hearing to decide whether the registration may be completed or if the out of state order is incorrect for one of the reasons above. Once the order is “confirmed” (because no one objected or any objection is answered in your favor at a hearing), then the order cannot be challenged later except for issues coming up after the confirmation.²⁶

You may have options in addition to the registration process. You should talk with an experienced family law attorney for a complete explanation of alternatives.

4. My custody order comes from a tribal court. How is that handled?

If the tribal court followed rules and procedures substantially like the UCCJEA, the Washington court must treat an order from a tribal court like an order from another state.²⁷

5. My custody order comes from a court in a foreign country. How will that be handled?

If the foreign court followed rules and procedures substantially like the UCCJEA, the Washington court should enforce a custody order from a foreign country (and modify it only if allowed as stated in question 2 of this part, above) under the same rules as an order from another state, **except** if the other country’s laws violate basic principles of human rights.²⁸

The Hague Convention on the Civil Aspects of International Abduction may also apply, and orders

²⁴ RCW 26.27.421.

²⁵ RCW 26.27.441

²⁶ RCW 26.27.441(6). The court in the original state modifying or vacating the order after the date of confirmation are examples of issues coming up after confirmation.

²⁷ RCW 26.27.041

²⁸ RCW 26.27.051

issued under it may be treated like custody orders.²⁹ International custody cases can be extremely complicated so it is essential to obtain advice from an attorney.

6. Does a court that has made a child custody decision ever lose its child custody jurisdiction?

Yes:

- If both parents, a person acting as a parent, and the child have moved out of the state that made the order, the court loses its jurisdiction. The court in any state can decide if none of the above people lives in that state any more.
- If both parents, a person acting as a parent, and the child lack a significant connection with the state, and substantial evidence about the child's care is no longer available in the state, the court may lose its jurisdiction. Only the state that made the custody decision can decide that it has lost jurisdiction for this reason.³⁰
- If the court order has expired (for example a domestic violence protection order awarding custody that ran out in 2003), it is not clear under the law whether the original court still has exclusive continuing jurisdiction. It may depend on what jurisdictional base the original court had when it issued the protection order. For example, if the original court exercised emergency jurisdiction, then it likely does not have exclusive continuing jurisdiction. If it used a different type of jurisdiction (e.g., home state, significant connection), then the original court may have exclusive continuing jurisdiction.³¹ Unfortunately, such orders rarely indicate which jurisdictional basis the court relied upon.

7. What happens if none of the parties lives in the state that made the initial custody decision?

Unless a party's absence is only temporary, the original state loses its exclusive continuing jurisdiction. A new state could modify the initial custody decision if the new state has home state jurisdiction. If there is no home state, a new state could modify if it has significant connection jurisdiction.³²

8. What can a Washington court do if there is already a custody order in another state, but the child is here and there is an emergency?

To protect a child located in Washington from abandonment or abuse, Washington may take *emergency jurisdiction* over the child.³³ However, if another state has exclusive continuing jurisdiction (Part II, question 2), the emergency order in Washington must contain a date on which it ends, and, unless the other state declines jurisdiction, Washington's jurisdiction will continue only until the earlier of:

- the date the court with continuing jurisdiction enters an order or
- the date the Washington emergency order expires.³⁴

The Washington court is required to communicate with the court in the issuing state.

²⁹ RCW 26.27.

³⁰ RCW 26.27.211.

³¹ RCW 26.27.211.

³² RCW 26.27.221

³³ RCW 26.27.231(1).

³⁴ RCW 26.27.231(3).

NOTE: These timelines also apply in initial order cases if a case has been started but no order entered in the other state at the time a person asks the Washington court to take emergency jurisdiction (Part I, Question 6).

9. I have a court order from another state that gives me visitation with the child. The child and a parent have moved to Washington, but the parent will not allow me the visitation. I still live in the state that made the order. What can I do?

You can take action in the original state; you will need to consult with a family law attorney in that state to find out what options might be available there.

In addition, even though the other state still has exclusive continuing jurisdiction, the Washington court may make a temporary order to enforce your visitation schedule.³⁵ The court can order make-up visitation if necessary.³⁶

If the original state's order does not have a specific visitation schedule, the Washington court may order one, but the Washington schedule lasts only until you obtain an order from the original state or the period of time the Washington court has given you to do so expires.³⁷

Washington's orders cannot set up any permanent change unless Washington has jurisdiction to modify the order (see question 2 in this part, above).

10. When can one court refuse to follow another court's order because the first court did not have jurisdiction?

A court might lack jurisdiction, for example, if

- it issued the initial custody decision but was not the child's home state (and the home state had not declined jurisdiction) or
- it changed another state's custody decision, but that state had not lost or declined jurisdiction.

11. When might a court not follow another court's custody order because proper notice was not given?

Notice of the first case must have been given to:

- the parents (unless their rights have been terminated)
- any person having physical custody of the child
- any additional people entitled to notice under the laws of that state

Notice must have been given to people inside the state in a way that was proper under that state's laws. Notice must have been given to a person outside the state:

- in a way that is proper under the law of the state that made the custody decision or
- by personal delivery or

³⁵ RCW 26.27.431.

³⁶ National Conference of Commissioners on Uniform State Laws comment to Section 304 of the UCCJEA, available at <http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm>.

³⁷ RCW 26.27.431(1)(b) and (2)

- by mail that requires a return receipt or
- by publication, with advance court permission, in cases where other methods are not likely to work.

If a person voluntarily participated in a case, these notice requirements can be excused.

*Example: Under the UCCJEA, one court is **not required to follow** a custody order contained in an emergency domestic violence protection order, issued by another state ex parte, (without notice). However, it may be required to do so under the Violence Against Women Act.³⁸*

12. What else can I do to enforce my order from another state?

The UCCJEA and PKPA procedures to enforce an order you have registered (Part II, Question 3) add to procedures already available under other state laws.³⁹ In addition, in an emergency such as a child kidnapping, you may be able to combine the procedures of the UCCJEA with the state law on habeas corpus without waiting for the 20-day objection period for registering an order.⁴⁰

If any party tries to enforce an order in Washington at the same time that a court in the state that made the order is considering changing it, the two courts must communicate, and the court here may decide to stop the enforcement case or dismiss it.⁴¹

13. If I believe that the court in the other state did not have jurisdiction, or that I was not given proper notice, when should I bring it up?

Usually this should be the first issue you bring up in the registering state, and you should raise it quickly. Otherwise, you risk losing the right to object in the registering state. For example, if you receive a notice that an Idaho custody order is being registered in Washington and you believe the Idaho court lacked jurisdiction, you must raise the objection within the 20-day notice period or you may lose the chance to raise it in Washington.⁴² You should also act quickly to talk with an experienced family law attorney in the state that entered the order about procedures to follow there, such as asking the court in that state to vacate (cancel) its order.

14. What are some examples of how these laws work when another state has already made a custody order?

Example#1: *Mother and father were divorced four years ago in Montana and mother was awarded custody there. Mother developed drug abuse problem and asked father to take care of the child temporarily. The court order was not changed. With the mother's consent, father and child moved to Spokane. One year after their move, mother wants child back. Mother still lives in Montana, but she has come to Washington for visits. Father believes child would be abused by mother, based upon an incident that happened during a recent visitation and upon mother's failure to obtain treatment. Father files a motion to modify the custody decision in Washington, asking that he receive custody.*

Result: *If the Montana order was originally valid, Montana retains exclusive continuing jurisdiction to modify its order, unless it declines jurisdiction. Father can ask for an*

³⁸ 18 USC 2265, 2266.

³⁹ RCW 26.27.451

⁴⁰ RCW 26.27.471-491, RCW 26.27.501 and chapter 7.36 RCW.

⁴¹ RCW 26.27.461.

⁴² RCW 26.27.441(6).

emergency order in Washington, and, if Washington finds that there is an emergency, it can take emergency jurisdiction to protect the child. However, Washington's jurisdiction will last only until the the Montana court enters an order or the end date stated in the Washington order, whichever comes first.

Example #2. *California court made a Paternity order in 2000 and ordered that mother have custody and father have reasonable visitation. However, the court did not make any visitation schedule. Mother and child moved to Washington 4 months ago. Father and mother have not been able to agree on a visitation schedule since then.*

Result if father still lives in California: *he can ask the California court to set a visitation schedule because California still has continuing exclusive jurisdiction unless it declines. Father could also ask for a temporary visitation schedule in Washington by registering his order here and requesting a temporary schedule.*

Result if father has moved to Oregon: *California has lost its continuing exclusive jurisdiction. If father registers his order here, Washington has jurisdiction to make a temporary visitation schedule, and could also have jurisdiction to permanently set a visitation schedule (or otherwise modify the California order) if it has a significant connection jurisdiction, or if Washington becomes the child's home state*

III. Declining Jurisdiction

1. What does it mean to decline jurisdiction, and why might this happen?

A court with child custody jurisdiction (to make an initial custody decision, or a court with exclusive continuing child custody jurisdiction) is the only court that can decide to give up (decline) its jurisdiction and allow another state to take over child custody jurisdiction. The court can decide to decline jurisdiction if either party requests it, another court requests it, or on its own.⁴³

A state

- may decline jurisdiction because it is an inconvenient forum⁴⁴, and
- shall decline jurisdiction because a party has engaged in wrong conduct that led the court to have jurisdiction unless
 - the parents and a person acting as a parent have allowed the court to proceed
 - a state with proper jurisdiction decides the case should be decided here
 - no other state has jurisdiction.⁴⁵

2. What does “inconvenient forum” mean?

Inconvenient forum means that it is more convenient for another court to decide the case. The kinds of things a court will consider in deciding if it is an inconvenient forum include:

- whether domestic violence has occurred and is likely to continue, and which state can best protect the parties and child
- how long the child has lived outside the state

⁴³ RCW 26.27.261(1).

⁴⁴ RCW 26.27.261.

⁴⁵ RCW 26.27.271.

- the financial circumstances of each party compared to the other
- any agreement the parties have made about which court should have jurisdiction
- the kind and location of evidence about the custody issue
- the ability of the court of each state to decide the issues quickly and the procedures necessary to present the evidence, and
- how familiar each court is with the facts and issues in the case.⁴⁶

3. When must a court decline jurisdiction for wrong conduct?

The law does not state exact factors, but the conduct must be unjustified by the circumstances, must be wrongful, and must have been the reason the court obtained child custody jurisdiction.⁴⁷ Running away with the child and hiding him/her in a state for six months to acquire home state jurisdiction might be an example, if it is not justified by the facts of the case. The UCCJEA commentary states, for example, that domestic violence victims should not be charged for unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal.⁴⁸ **WARNING:** A court would not necessarily be required to follow this commentary or to find that it applies in a particular case. Fleeing the state with a child is extremely risky. A court might find that fleeing a state and hiding with a child was not justified and that is was “wrong conduct.” Flight might also lead to criminal prosecution. **If you are considering fleeing with the child and hiding, or if you have done this, it is essential to talk with an attorney for individual legal advice.** If the court declines jurisdiction for wrong conduct it will order the party who was unjustified to pay costs and expenses, unless s/he can show that doing so is not appropriate.⁴⁹

4. What do I need to do if I want to ask a court to decline jurisdiction?

The procedure varies from place to place. Often, you would make a motion in the court you are asking to decline. You may also want to ask the court where you want the case to be heard to ask the other court to decline when the courts communicate about the case. In both situations, you will want to have declarations and evidence showing how you meet the elements in the law (Questions 2 and 3 in this part, above) to persuade the court to decline.

IV. Tools for Inter-state Cases

1. If I am involved in a custody case in another state, or if my case is in Washington but another party lives outside the state, or there are witnesses or evidence outside the state, do these laws help me?

The law contains several tools to make custody decisions involving more than one state easier:

- communication between the courts to decide which court should have jurisdiction
 - the court must allow the parties the chance to give evidence and argument before this decision is made and may allow the parties to participate in the

⁴⁶ RCW 26.27.261.

⁴⁷ RCW 26.27.271(1)

⁴⁸ National Conference of Commissioners on Uniform State Statutes, UCCJEA Section 208, Comment available at <http://www.law.upenn.edu/bll/ulc/fnact99/1990s/uccjea97.htm>

⁴⁹ RCW 26.27.271(3).

communication (It is usually important to have your evidence available to courts in both states).

- the court must make a record of the communication between the courts (for all contact except scheduling issues) and must allow the parties access to this record
- communication between courts to assure that the child is protected in an emergency
- testimony in another state when a party, the child, or witnesses are located there (including perhaps by telephone or electronic methods)
- hearings in another state
- orders requiring a party to appear in court with or without the child
- orders requiring any person in the state who has control or custody of the child to bring the child to court
- custody evaluation made in another state
- orders necessary to protect the safety of any child and party the court orders to appear⁵⁰

2. If I want to use any of these tools, what do I need to do?

The court is required to use a few of the tools, such as communicating with another court if cases are pending in both. Occasionally you may be able to use a tool without advance request to the court. However, in many situations you would be required to bring a motion in court, asking permission to use a certain procedure. Sometimes it might be necessary to involve the courts in both states in your motions. There are likely to be costs for some procedures, for example videotaped testimony, a custody evaluation, or ordering travel to another state to appear in court.

3. How does one court learn about cases in another state?

When the parties file a case that includes a custody request (such as a divorce) they must report states where the child has lived for five years, other custody cases concerning the child, and people the child has lived with or who claim a right to custody or visitation.⁵¹ The parties must update this information during the case.⁵² If a child or party might be unsafe by reporting this information and states this under oath in a declaration to the court, the information can be sealed and may not be given to the public or the other parties unless the court decides that giving out the information is in the interests of justice.⁵³ Note, however, that not all other states allow these records to be sealed to protect the parties.

V. Tables

The tables in this part use common fact situations to indicate whether or not Washington is likely to have jurisdiction based on the family law jurisdiction rules discussed in this publication and in other family law publications available at www.washingtonlawhelp.org. Please remember that interstate jurisdiction issues are complicated so that a small difference in the facts can change the result.

⁵⁰ RCW 26.27.101, 26.27.111, 26.27.121.

⁵¹ RCW 26.27.281(1)

⁵² RCW 26.27.281(4)

⁵³ RCW 26.27.281(5)

No Earlier Custody Order:

<u>Facts</u>	<u>Jurisdiction to file for divorce</u>	<u>Initial Child Custody Jurisdiction</u>	<u>Jurisdiction to Order Child Support and/or divide property</u>	<u>Jurisdiction to decide paternity (unmarried parents)</u>
Both parents and child have always lived in Washington	Yes	Yes	Yes	Yes
One parent and child moved to Washington two months ago from State 2 and plan to stay here. Other parent still lives in State 2 and has never been to Washington.	Yes, parent who lives here can file	No. Exceptions: 1) temporary emergency jurisdiction if child is in danger 2) if Washington becomes home state before any case is filed in State 2.	No But interstate child support procedures might be available from DCS (Division of Child Support, part of DSHS)	No, if it is the mother and child who now live in Washington. Yes, if it is the father and child who moved to Washington. Interstate child support procedures might be available from DCS (Division of Child Support, part of DSHS)
Family originally lived in Washington. One parent and child moved to State 2 two months ago. Other parent still lives in Washington.	Yes, parent who lives here can file.	Yes, until child has been gone for six months. If case is filed here within 6 months, Washington keeps jurisdiction unless it declines it or last person moves away. Note, other state may exercise emergency jurisdiction.	Yes.	Yes
Parents and child originally lived in Washington. Two months ago, one parent and child moved to state 2. Other parent moved to state 3.	No	No	No	Yes

Continuing Child Custody Jurisdiction, where a custody decision has already been made

<u>Facts</u>	<u>Washington's Continuing Child Custody Jurisdiction</u>	<u>Another State's Jurisdiction</u>
Both parents and child have always lived in Washington	Yes	No
Valid custody order entered four years ago in State 2. One parent and child moved to Washington two years ago and plan to stay here. Other parent still lives in State 2.	No jurisdiction to modify the order unless State 2 declines jurisdiction. Washington does have <ul style="list-style-type: none"> • jurisdiction to enforce the order and, if needed, • emergency jurisdiction to enter temporary orders to protect the child from abuse/abandonment. 	State 2, yes, unless it declines jurisdiction
Valid custody order entered in Washington one year ago. One parent and child moved to State 2 seven months ago. Other parent still lives in Washington.	Yes, it has jurisdiction to enforce or modify original order, unless it declines jurisdiction. Note, other state may exercise emergency jurisdiction.	No jurisdiction in state 2 to modify the original order unless Washington declines its jurisdiction. State 2 does have jurisdiction to enforce the order and, if needed, emergency jurisdiction to make temporary orders to protect the child from abuse/abandonment.
Parents and child originally lived in Washington. Custody order is from Washington. Seven months ago one parent and child moved to state 2. Other parent moved to state 3. Now a parent wants to modify.	No.	State 2 now has jurisdiction to modify because: <ol style="list-style-type: none"> 1) Washington lost its exclusive continuing jurisdiction and 2) State 2 has now become the home state.

Emergency Child Custody Jurisdiction even if a court does not have permanent child custody jurisdiction:

Facts	No earlier custody order from another state and no case filed in the other state	Custody order or case already filed in another state with initial jurisdiction
<p>1) Child is in Washington and 2) needs protection from abuse or abandonment and</p>	<p>If child has been in Washington less than six months, if Washington finds an emergency, it may take temporary emergency jurisdiction. The Washington order lasts only until the date the court with proper initial jurisdiction enters an order. However, if no custody case is started in the other state and if the Washington order says so, jurisdiction may become final if Washington becomes the home state.</p>	<p>If a case has already been started in another state⁵⁴ or if there is already a custody order issued by a court in a state where a party or the child still lives⁵⁵ if Washington finds there is an emergency, it may take emergency jurisdiction and enter an order which lasts only until the earlier of:</p> <ol style="list-style-type: none"> 1) the date Washington has decided gives enough time to allow the person asking for an order to request one from the proper state, or 2) the proper state makes an order. <p>EXCEPT, if the other state declines jurisdiction, Washington may take it if Washington is the home state or has significant connection jurisdiction.</p>

⁵⁴ With proper child custody jurisdiction

⁵⁵ That Washington is required to recognize and enforce under Ch. RCW 26.27.