

Legal Resource Center



on

Violence Against Women

Interstate Civil Legal Assistance

Legal Assistance for Victims Grantee Orientation Meeting
January 9, 2025

Deborah Goelman, Esq.

Legal Resource Center on Violence Against Women

- Have domestic violence survivors ever asked you if they can leave your state, Tribal lands, or territory with the children to escape abuse?
- Have you ever worked with a survivor who has come to your state, Tribal lands, or territory to escape from abuse?
- Have you ever asked a court to exercise jurisdiction over an emergency child custody matter?
- Have you ever asked a court to decline jurisdiction based on “inconvenient forum”?

Legal Resource Center on Violence Against Women

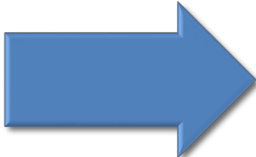
- Have you ever asked a court to permit your client to testify by video?
- Have you ever asked a judge to communicate across state or Tribal lines with another judge?
- Has your state amended its version of the Uniform Child Custody Jurisdiction and Enforcement Act within the last three years?
- Have you ever contacted the Legal Resource Center on Violence Against Women (“LRC”)?

When Is It Appropriate to Refer a Case to the LRC?

Domestic Violence



Child Custody



Legal Resource Center
on
Violence Against Women



More Than One State, Tribe, or Territory

When Is It Appropriate to Refer a Case to the LRC?

- We do not handle international cases; these involve different laws and issues.
- We do not directly represent survivors; we connect survivors to civil attorneys when a jurisdictional legal issue is involved.
- We do not handle criminal matters.

Some of these cases involve criminal charges against survivors; in such cases, they may need a criminal defense attorney as well as a civil attorney.

Who Are We and When Are We Available?

- We have 2 part-time attorneys on staff and 1 project coordinator.
- We have access to a language line and bilingual staff who can assist in Spanish or French.
- We are open during business hours EST.



301-270-1550

Legal Resource Center on Violence Against Women

- Train attorneys, victim advocates, and judges about the laws and issues in interstate custody and domestic violence cases.
- Provide support to LAV grantees and others in individual interstate cases.
- Help attorneys develop legal strategies, prepare pleadings, and conduct legal research.

Legal Resource Center on Violence Against Women

- Provide advocates with legal information and referrals.
- Assist survivors to find attorneys in interstate cases involving a jurisdictional legal issue.
- Maintain a website with jurisdictional and related laws (www.lrcvaw.org).
- Maintain a database of attorneys and programs available to assist survivors in interstate cases.

Tools for Practitioners

- Relocation checklists for attorneys and advocates
- Relocation guide for survivors (in English, Spanish, Chinese, and French)
- UCCJEA case law summaries
- UCCJEA Guide for Court Personnel and Judges
- Brief bank including sample pleadings
- Interstate cooperation guide for attorneys
- Video on interstate custody and domestic violence (<https://www.womenslaw.org/laws/videos/custody-visitation-and-child-support/interstate-custody-and-domestic-violence>)
- Recordings from previous legal trainings

Sample intake form for relocation cases

Legal Resource Center on Violence Against Women

Upcoming trainings:

- Basic Interstate Custody Institute for attorneys on April 24, 2025 and May 1, 2025
- Webinars are posted on www.lrcvaw.org and the TA2TA website

What do you already know about interstate issues?

[Consider interstate custody and relocation questions by table.]



Can survivors leave the state with their children?

Maybe. It depends on the facts of the case and the laws in the original state.

Survivors should talk with an attorney before leaving the state.

They may choose to take their children and go to a safe place within the state to have the time and privacy to connect with an attorney before relocating.

Can survivors leave the state or Tribal lands with their children?

There are complex legal issues to consider including:

- Existing court orders
- Where a child custody case may take place (the Uniform Child Custody Jurisdiction and Enforcement Act)
- State relocation law
- State parental kidnapping law
- Tribal laws

Case Scenario

Lila Smith calls you at your office in Nashville. You learn that Lila and Philip have been married for 5 years and have lived in Nashville throughout the marriage. They have one child, a 7-month-old daughter named Annie.

Philip has physically and emotionally abused Lila since shortly after they were married. Philip has never been charged or convicted criminally for the abuse, and Lila has never sought a civil protection order against him.

Case Scenario

Lila thinks a neighbor may have heard the abuse, including the most recent incident, which took place last week. During that incident, Philip held a gun to her head in front of Annie and threatened to kill her.

Lila tells you that she wants to leave Nashville and move to California, where her family lives and where she hopes to find a job.

What legal issues do you want to discuss with Lila?

Legal Issues in Relocation

Legal Issues in Relocation

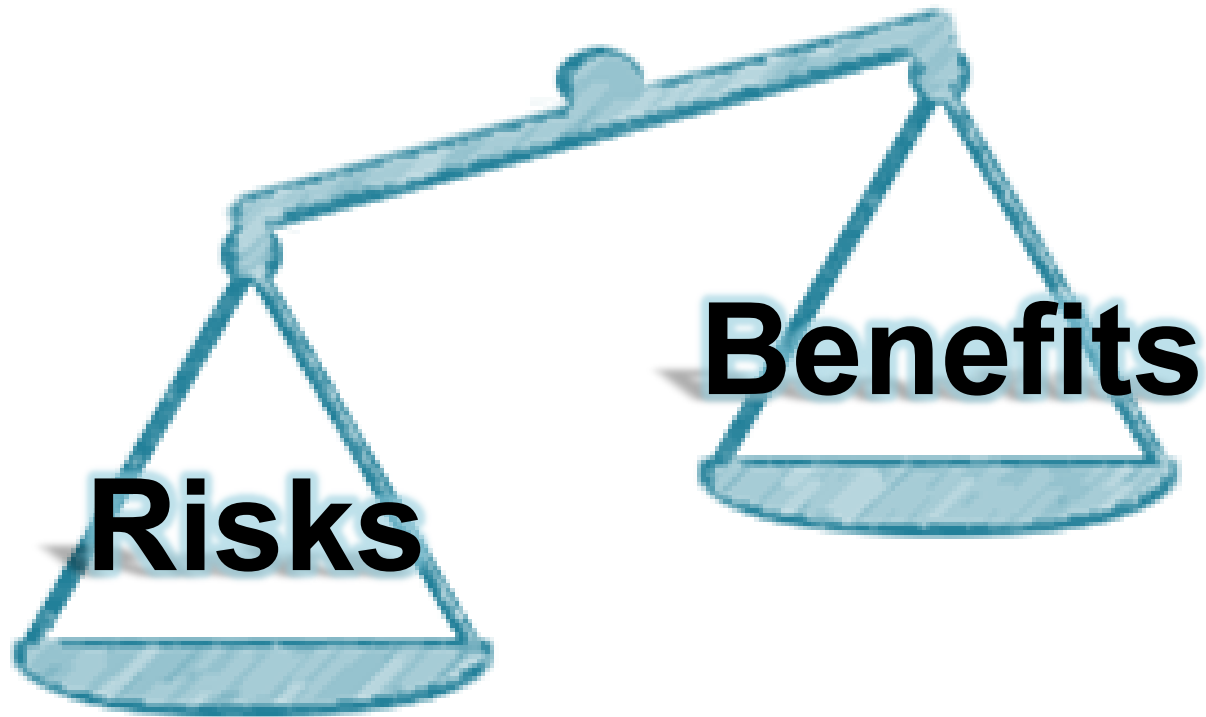
- Has a custody order been entered previously, including as part of a protection order?
- Can the survivor leave without violating the order?
- Will the survivor be charged with contempt or parental kidnapping (criminal)?
 - Domestic violence exemption?
 - Domestic violence defense?
 - Child protection defense?
- Can the survivor leave without violating the state relocation law?
- Are there other legal issues to consider?

Legal Issues in Relocation

- Should the survivor file for a protection order before leaving the state?
- Will the survivor be able to file for a protection order in the new state (personal jurisdiction)?
- Will the child custody jurisdictional laws require the survivor to return to the state to litigate a custody case?
- Will the state from which the survivor is fleeing have continuing exclusive jurisdiction?

Should Lila Get a Protection Order Before She Moves?

The decision is very complex and legal advice should be sought.



Should Lila Get a Protection Order Before She Moves?



- A protection order will document the violence, which could be helpful for jurisdictional and custody cases.
- It may help protect the survivor and would be enforceable nationally.
- If the survivor is awarded custody, the abuser would not be able to take the children away.
- The survivor may not be able to get a protection order from a court in another state later.

Risks of Obtaining a Protection Order

- If the abuser is awarded visitation, this may make it impossible to leave the state.
- A custody provision within the protection order may give the issuing state continuing, exclusive jurisdiction while the protection order is in effect.
- A custody order may trigger the state's parental kidnapping or relocation laws (if the survivor leaves).



Risks

Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA]

- Developed in 1997
- Designed to replace the UCCJA
- Intended to reconcile differences between the UCCJA and PKPA
- So far 49 states, D.C., Guam, and the U.S. Virgin Islands have enacted it (Puerto Rico has not); currently being considered by the last state, Massachusetts.
- Significant improvement for domestic violence survivors



**1. Can Lila Get a Custody Order
in Tennessee?**

Can Lila Get a Custody Order in Tennessee?

This raises the question of “jurisdiction”:

Does Tennessee have jurisdiction over the custody case?

Can Lila Get a Custody Order in Tennessee?

The jurisdictional laws set forth several situations under which a court can hear a custody case:

Home State (“6-month rule”)

Significant Connection

“More Appropriate Forum”

“No Other State”



Can Lila Get a Custody Order in Tennessee?

Home State (“6-month rule”)

- Means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding.
- In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned.
- A period of temporary absence of any of the mentioned persons is part of the period.

Can Lila Get a Custody Order in Tennessee?

Is Tennessee the home state in Lila's case?

Yes

Significant Connection

- Only applies if there is no home state
- Requires significant connection plus substantial evidence about the child's care and protection



**2. Can Lila Get a Custody Order
if She Flees to CA?**

Can Lila Get a Custody Order if She Flees to CA?

Temporary Emergency Jurisdiction under the UCCJEA

A court may enter a custody order:

- Where “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.”
- Child must be present in the state.
- ***This means that a court can exercise emergency jurisdiction in domestic violence cases where the parent (but not the child) has been abused.***

Can Lila Get a Custody Order if She Flees to CA?

Temporary Emergency Jurisdiction under the UCCJEA

- What is “temporary?”
- How long can the order last?

Determined by judicial communication

What if Lila Would Like to Obtain a Protection Order in California?

The protection order court would need to have “personal jurisdiction” over Philip.

Note that some states (IA, KY, MA, NH, and NJ) have determined that personal jurisdiction is not required in protection order cases for certain types of provisions.

Personal Jurisdiction

- Understand your jurisdiction's personal jurisdiction standards.
- Ask your client about all contacts between an abuser and the forum state to help argue that the court has personal jurisdiction over the abuser.
- Call the LRC for assistance.

Can Lila Get a Custody Order if She Flees to CA? (Long-Term)

Inconvenient Forum (declining jurisdiction):

A request for the home state to decline jurisdiction on the basis of inconvenient forum must be made in the home state (not the refuge state).

UCCJEA: Inconvenient Forum

Factors explicitly include:

1. Whether domestic violence has occurred and is likely to continue and which state could best protect the parties and the child,
2. The length of time the child has resided outside of the state,
3. The distance between the two courts,
4. The relative finances of the parties,
5. The agreement of the parties,
6. The nature and location of the evidence including the child's testimony,
7. The ability of each court to decide the issue expeditiously and the procedures necessary to present the evidence, and
8. The familiarity of each court with the facts and issues in the pending litigation.

Applying the UCCJEA

Which state has jurisdiction and why?

Question 1:

Teresa and Toni have lived in New Jersey with their three children since the children were born. After Toni assaulted Teresa, Teresa brought the children to her mother's home in North Carolina for safety. Toni filed two weeks later for custody in New Jersey.

Which state has jurisdiction and why?

Question 2:

Rosa lived in Texas with Jonathan and their toddler, Jessica, for five months. She fled due to abuse and moved to Michigan with the child three months ago. Which state has jurisdiction?

Which forum has jurisdiction and why?

Question 3:

To punish Anna for calling the Tribal police after he assaulted her, Brian took their five-year old son from the Pine Ridge Indian Reservation to Tulsa, Oklahoma in November. Before that, the family had lived on Tribal lands together since the child's birth. Brian has not permitted Anna to visit or talk with the child. There is no custody order in place.

Which state has jurisdiction and why?

Question 4:

Sarah obtained a one-year protection order against Sandy in January of 2022 in Ohio, and it included temporary custody of their twin sons. The protection order expired in January of 2023. The couple separated in August of 2023, and Sarah moved with the children to Georgia, where her parents live. Sandy filed for custody in Ohio on November 10, 2024.

Which state has jurisdiction and why?

Question 5:

Fiona was 8 months pregnant when she left South Dakota last month. She fled to her parents' home in Missouri to get away from her husband, Adam. The baby was born in Missouri on December 15, 2024. Adam filed for custody in South Dakota yesterday.

A large, blue, 3D-style speech bubble with a drop shadow is centered on a white background. The bubble has a tail pointing towards the bottom-left. Inside the bubble, the text "4. Is it legal for Lila to leave the state with her children?" is written in a bold, white, sans-serif font.

4. Is it legal for Lila to leave the state with her children?

Parental Kidnapping Laws

Parental Kidnapping

In some states, leaving the state with your children could violate state parental kidnapping laws.

These criminal laws may have different names:

- Parental kidnapping
- Custodial interference
- Child abduction
- Child concealment

Advocates and attorneys need to be familiar with these criminal laws because advising survivors that they can leave the state with the children could subject them to criminal charges and jeopardize custody.

Parental Kidnapping: State Laws

Must there be a court order for kidnapping to occur?

This varies by state.

- Some states require flight with children in violation of a court order
- Some criminalize flight even in the absence of a court order
- Some state laws are unclear
- Some expressly criminalize fleeing in both contexts, but create more serious penalties for violating a court order

Parental Kidnapping: State Laws

What type of intent is required by these laws?

This varies by state.

- Usually, the parent must intend to do something more than just leave the state with the child
- Often require things such as “intent to conceal the child from the other parent” or “intent to deprive the other parent of visitation”

Parental Kidnapping: State Laws

Are there protections for survivors?

This varies by state.

- Some states have exemptions; others have defenses
- Some protections are statutory, while others are found in case law

Parental Kidnapping: State Laws

Types of Defenses:

Statutory:

- Fleeing domestic violence
- Fleeing harm to self
- Fleeing harm to child

General criminal law defense:

- Necessity

Parental Kidnapping: State Laws

- Know your state's criminal law(s)
- Provide basic information regarding the criminal laws
- Assist survivors in finding defense attorneys
- Develop relationships, in advance, with public defenders/defense bar and prosecutors
- Provide advocacy and support throughout the criminal process
- For technical assistance in cases in which survivors are charged with parental kidnapping, call the Defense Center for Criminalized Survivors(1-800-903-0111, ext. 3)

National Organizations

- Legal Resource Center on Violence Against Women
(301) 270-1550, Irc@Ircvaw.org, www.Ircvaw.org
- National Center on Protection Orders and Full Faith & Credit
(800) 903-0111, ext. 2
- National Defense Center for Criminalized Survivors
(800) 903-0111, ext. 3

This presentation was supported by Grant No. 15JOVW-22-GK-03988-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.