TEMPORARY EMERGENCY JURISDICTION PROVISIONS OF THE UNIFORM CHILD
CUSTODY JURISDICTION & ENFORCEMENT ACT:
WHEN AND HOW TO INVOCe THEM

STATE BAR OF MICHIGAN MID-WINTER CONFERENCE 2007

by:

Jeanne M. Hannah, Esq.

2877 ½ Old Mission Road
Traverse City, Michigan 49686
231.223.7864
www.traversecityfamilylaw.com

INTRODUCTION

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was adopted in July, 1997 by the National Conference of Commissioners on Uniform States Laws (NCCUSL) and approved by the American Bar Association in February, 1998. The rationale behind the UCCJEA was “to rectify thirty years of inconsistent case law and revise child custody jurisdiction in light of overlapping federal enactments, including the Uniform Interstate Family Support Act (UIFSA).”¹ As stated by the Atchison panel, the UCCJEA was designed to: (1) rectify jurisdictional issues by prioritizing home state jurisdiction; (2) clarify emergency jurisdictional issues to address time limitations and domestic violence issues; (3) clarify the exclusive continuing jurisdiction for the state that entered the child custody decree; (4) specify the type of custody proceedings that are governed by the act; (5) eliminate the term “best interests” to the extent it invited a substantive analysis into jurisdictional considerations; and (6) provide a cost effective and swift remedy in custody determinations.² The UCCJEA became effective in Michigan on April 1, 2002. At that time, the State of Michigan was one of about thirty other states that had enacted into law the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The Act is codified at MCL 722.1101 et seq. It repealed the UCCJA, which was repealed.³ At the time of this writing, 46 States have adopted this Uniform Act, and legislation is


² Id.

³ The UCCJEA, as reflected in MCL 722.1101, et seq, defines “child custody proceeding” as a “proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from family violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this article.” The UCCJEA as adopted in Michigan can be found at http://www.legislature.mi.gov/(S(nfruj1jje0tmgf3f1spadom45))/mileg.aspx?page=print&objectNam
pending in at least one other State.

The UCCJEA achieved consistency with the Parental Kidnapping Prevention Act (PKPA) and established a new priority system regarding exercise of original jurisdiction to determine custody and to resolve interstate child custody disputes. The intent is to reduce parental kidnapping of children to gain an advantage in a child custody dispute.

The UCCJEA is a direct response to the growing number of interstate custody disputes that have arisen in America’s increasingly mobile society. Relocation of families and children from one state to another can lead to a multi state custody disputes since more than a single state can claim a legitimate interest in resolving such matters. The purposes behind the UCCJEA are to eliminate the potential for concurrent exercise of jurisdiction in more than one State, to reduce and resolve interstate conflicts in child custody determinations, and to facilitate the determination of which state is the most appropriate forum in which to litigate an interstate child custody dispute. The UCCJEA prioritizes the bases for jurisdiction, unlike the UCCJA, which weighted them equally. The UCCJEA has eliminated the “best interests of the child” as grounds for jurisdiction.

In order to be able to adequately advise a prospective client how to (and where to) initiate and/or defend an interstate child custody proceeding, it is imperative that the family law practitioner have a clear understanding of the UCCJEA.

**BRIEF OVERVIEW**

Because an exercise of emergency jurisdiction is necessarily Intertwined with an assertion by a sister State of jurisdiction to make an initial child-custody determination and because allowing unfettered exercise of emergency jurisdiction conflicts with the policy of preventing parents from forum-shopping in another State’s court when they’ve received an unfavorable result in another State, it’s advisable to briefly consider the overall intents and purposes of the UCCJEA

Several major sources of child custody jurisdictional disputes are clarified by the UCCJEA. The Act assigns priorities by which the State court’s authority to make an initial child custody determination is determined. This becomes important when the State is confronted with competing claims for jurisdiction in another State. The Act also clarifies the nature of a Michigan court’s exclusive continuing jurisdiction once it has entered an initial child custody determination. The Act also addresses modification jurisdiction—a Michigan court’s right to modify an initial child custody determination from another State and whether a Michigan court should decline to exercise its exclusive, continuing jurisdiction when faced with a modification proceeding in another State or whether Michigan should decline to exercise its exclusive, continuing jurisdiction. Because emergency jurisdiction is different from jurisdiction to make an initial child custody determination and is also different from, but intertwined with modification jurisdiction, it is given its own section. Lastly, the UCCJEA simplifies enforcement of child custody orders by providing for full faith and credit among sister States of foreign custody orders.

---

and by providing for penalties (an award of costs and fees) where enforcement across State lines results in a financial burden to the parent whose conduct leads to enforcement proceedings.

The UCCJEA establishes clear criteria for a State to assert jurisdiction over a child custody dispute for the purpose of discouraging other States from taking jurisdiction. This was a problem under the UCCJA since a State could assert any of the following four criteria to assert jurisdiction over an interstate custody dispute: (1) home state; (2) significant connection between State and parties to a child custody dispute; (3) emergency jurisdiction when the child is present and the child's welfare is threatened; and (4) presence of the child in the State when there is no other State which could assume jurisdiction (vacuum jurisdiction).

The four bases of jurisdiction to make an initial child custody determination are prioritized. The authority to exercise initial custody jurisdiction is distinguished from the authority to modify a prior custody jurisdiction issued in another State. The specific authority and the limitations on authority to assume temporary emergency jurisdiction is clarified. Underlying the specified grants and limitations on authority to exercise jurisdiction is the purpose of discouraging concurrent jurisdiction, (where multiple states exercise jurisdiction at the same time), which was a recurring problem under the UCCJA because the UCCJA failed to prioritize the aforementioned four (4) criteria.

I. Authority of Michigan Court to make an initial child custody determination:

There are some initial determinations the Michigan court must make.

**Does the court have subject matter jurisdiction?** Michigan's UCCJEA permits a court to exercise jurisdiction over all matters involving a child custody proceeding.

By definition, "child-custody proceeding" includes the following:

- a proceeding for divorce, separate maintenance, or separation
- neglect, abuse, dependency, or guardianship
- paternity
- termination of parental rights
- and protection from domestic violence, in which the issue may appear.

By definition, "child-custody proceeding" does not include the following:

- a proceeding involving juvenile delinquency
- contractual emancipation
- enforcement under article 3

**Does the petitioner have standing to commence a UCCJEA action?** Any proceeding

---

Note, that if custody is not an issue in a paternity case, then the UCCJEA will not provide a source of jurisdiction where two States have competing grounds for jurisdiction. *Sanchez v. Fernandez*, 915 So. 2d 192 (Fla. Dist. Ct. App. 2005); *Harshberger v. Harshberger*, 724 N.W.2d 148, 2006 ND 245 (N.D. 11/28/2006)
under the UCCJEA must be commenced by parent or by a “person acting as a parent.”

By definition, “person acting as a parent” means a person, other than a parent, who meets both of the following criteria:

(i) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including a temporary absence, within 1 year immediately before the commencement of a child-custody proceeding.

(ii) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

If no other sister State court has made an initial custody determination but there is a concurrent action pending in another State, does the Michigan court have priority to assume jurisdiction?

In order of priority, a Michigan Court has authority to make an initial child custody determination if it has:

(1) Home State Jurisdiction
(2) Significant Connection Jurisdiction
(3) More Appropriate Forum Jurisdiction; and
(4) No Other State Jurisdiction / Vacuum Jurisdiction.

Home State jurisdiction. MCL 722.1102(g) defines “home state” as “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the terms 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.”

Significant connection jurisdiction. “A court may exercise significant connection jurisdiction under the UCCJEA only if the home state declines jurisdiction in its favor or on inconvenience or misconduct grounds, or if there is no home state.” Hoff, Patricia M., The ABC’S of the UCCJEA: Interstate-Child-Custody Practice Under the New Act, 32 Fam. L.Q. 267, 279 (1998). A state will be deemed to have a significant connection if there is (1) a significant connection between the child and the state and (2) substantial evidence regarding the child’s past, present or future care exists in the state. MCL 722.102(b)(i), (ii)

Notwithstanding the priority given to the home state under the UCCJEA, concurrent jurisdiction is still possible in the event there is no home state. “Prioritizing home state jurisdiction over significant connection jurisdiction greatly reduces but does not eliminate the possibility of two states having jurisdiction at the same time.” Hoff, supra at 280. For example, more than one state can claim a significant connection to the child since under the UCCJEA, “significant connection” includes the past, present, and future care of the child. Thus, it is likely that the state of each parent seeking custody will be able to claim significant connection jurisdiction. When this type of conflict arises, the conflict is resolved in favor of the first filed proceeding. However, since the UCCJEA imposes a requirement that courts where proceedings are pending communicate with each other, it is possible that the court where the proceeding was filed first might defer to the other court. Id at 280-281. Concurrent jurisdiction may also
arise under the UCCJEA in those cases when there is no home state, no state with exclusive
continuing jurisdiction and more than one state with significant connections.

**More appropriate forum jurisdiction.** A jurisdiction which is not regarded as the
child’s “home state” and does not have significant connections to the child will only be able
to assert jurisdiction under the UCCJEA if courts having home state jurisdiction or significant
connection jurisdiction have declined to exercise jurisdiction. Zorza, Joan, *The UCCJEA: What It
Is and How Does it Affect Battered Women in Child-Custody Disputes*, 27 Fordham Urb. L.J.
909, 916 (2000).

**No Other State Jurisdiction / “Vacuum Jurisdiction.”** Undoubtedly a rare claim for
jurisdiction, this might occur in several possible circumstances. In the event no court has
asserted jurisdiction under (1) home state jurisdiction, (2) significant connection jurisdiction, or
(3) more appropriate forum principles, a court will be able to assert this type of vacuum
jurisdiction. Consistent with the general principles of the UCCJEA, even a court asserting
vacuum jurisdiction should not consider the merits of the case when determining whether to
exercise jurisdiction. Rather, a court should first analyze whether it has jurisdiction, and only
after it has determined that it has jurisdiction, should a court determine the merits of the case.
Hoff, *supra*, at 280.

**II. Exclusive, continuing jurisdiction of Michigan Court for modification of an initial child
custody determination:**

The UCCJEA clarifies that the State making the initial custody determination has
“exclusive continuing jurisdiction.” This permits the original decree state the authority to
determine whether it will exercise jurisdiction over a modification action. This jurisdiction
continues as long as either the child, a parent, or “person acting as a parent” continues to live in
the state. The fact of lack of personal jurisdiction over the non-resident Defendant is irrelevant,
and the Act permits the non-resident party to appear without subjecting him/herself to personal
jurisdiction.

Once all parties reside outside of the State, Michigan is permitted to decline jurisdiction
in favor of another State having substantial connections to the child. Either the Michigan Court
or the sister State’s court may determine that assuming modification jurisdiction because of the
absence from the State of the child and both parties.

**III. Modification Jurisdiction: The authority to modify a sister State’s child custody
determination:**

The UCCJEA clarifies when and whether Michigan may assume jurisdiction over a
subsequent modification action of an initial custody determination was made by another State.
The options to accept or decline jurisdiction are beyond the scope of this paper.

**IV. Enforcement: The authority to enforce another State’s child custody determination:**
The UCCJEA facilitates the enforcement of child custody orders across state borders by providing for interstate civil enforcement procedures. Essentially, the procedures ask for an compel that sister States give full faith and credit to Michigan child custody orders. These procedures are beyond the scope of this paper. The author would refer the reader to a December 2001 Bulletin from U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “The Uniform Child Custody Jurisdiction and Enforcement Act. This may be accessed on the Internet, downloaded to your printer, emailed, saved, etc. http://www.ncjrs.gov/pdffiles1/ojjdp/189181.pdf  This document is not only valuable as a source of guidance to practitioners, but when sent ahead to sister State agencies and courts who will be involved in questions of enforcement, it can be invaluable.

V. How the temporary emergency jurisdiction provisions of the UCCJEA permit Michigan to exercise limited and concurrent jurisdiction with a sister State

Summary

Under the UCCJEA, clear priority for the exercise of jurisdiction belongs to the “home state.” Once that initial custody determination has been made, the home state retains its exclusive, continuing jurisdiction. Thus, any state that is not the “home state” of the child is required to defer jurisdiction to the “home state” until or unless the “home state” affirmatively refuses to exercise jurisdiction.

Notwithstanding this mandate, however, in the event of an emergency or allegations of abuse or abandonment, the UCCJEA allows a state other than the “home state” to assume temporary emergency jurisdiction solely for the purpose of securing the minor child until the “home state,” or another state claiming jurisdiction if no “home state” exists, asserts jurisdiction over the child custody dispute. Hoff, Patricia M., The ABC’S of the UCCJEA: Interstate-Child-Custody Practice Under the New Act, 32 Fam. L.Q. 267 (1998).

Under the UCCJEA, clear priority for the exercise of jurisdiction belongs to the “home state.” Once that initial custody determination has been made, the home state retains its exclusive, continuing jurisdiction. Thus, any state that is not the “home state” of the child is required to defer jurisdiction to the “home state” until or unless the “home state” affirmatively refuses to exercise jurisdiction.

Notwithstanding this mandate, however, in the event of an emergency or allegations of abuse or abandonment, the UCCJEA allows a state other than the “home state” to assume temporary emergency jurisdiction solely for the purpose of securing the minor child until the “home state,” or another state claiming jurisdiction if no “home state” exists, asserts jurisdiction over the child custody dispute. Hoff, Patricia M., The ABC’S of the UCCJEA: Interstate-Child-Custody Practice Under the New Act, 32 Fam. L.Q. 267 (1998).

Under the UCCJEA, clear priority for the exercise of jurisdiction belongs to the “home state.” Once that initial custody determination has been made, the home state retains its exclusive, continuing jurisdiction. Thus, any state that is not the “home state” of the child is required to defer jurisdiction to the “home state” until or unless the “home state” affirmatively refuses to exercise jurisdiction.

Notwithstanding this mandate, however, in the event of an emergency or allegations of abuse or abandonment, the UCCJEA allows a state other than the “home state” to assume temporary emergency jurisdiction solely for the purpose of securing the minor child until the “home state,” or another state claiming jurisdiction if no “home state” exists, asserts jurisdiction over the child custody dispute. Hoff, Patricia M., The ABC’S of the UCCJEA: Interstate-Child-Custody Practice Under the New Act, 32 Fam. L.Q. 267 (1998).

Under the UCCJEA, courts may exercise emergency jurisdiction, entering temporary orders, despite the fact that a proceeding has been filed in another State. Note that judges are required to communicate to resolve the emergency, to protect the safety of the parties and the child, and to determine how long a temporary order should remain effective.

Notice and an opportunity to be heard is mandatory to ensure that the order may be
enforced by other States. Both the UCCJEA and the PKPA require, at a minimum, that any parent whose parental rights have not been terminated and any person with physical custody of the child be provided with notice. If a protection order containing temporary custody or parenting time is obtained on an ex parte basis, the order is not enforceable in sister States under the UCCJEA and the PKPA. Michigan's personal protection laws, however, will permit enforcement within this State, even without notice.

The duration of a temporary emergency order will depend on whether custody has already been or is being litigated in another State. If no prior custody order that is enforceable under the UCCJEA exists, and no proceeding has been commenced in a court having jurisdiction, then if the temporary emergency custody order so provides, it becomes a final determination when the issuing State becomes the child's home State (i.e., within 6 months of residency). If, on the other hand, a previous order does exist and/or a custody proceeding has been commenced in a court with jurisdiction, the temporary emergency custody order must provide and specify an adequate time within which the person seeking emergency relief may obtain a custody order from the other court. The temporary order remains effective until a custody order is obtain within the time period from the other court or until the specified time period elapses.

Temporary nature of the emergency orders granted under MCL 722.1204. If a sister State has exclusive, continuing jurisdiction under the UCCJEA and declines to relinquish jurisdiction, then any orders issued by a Michigan court to resolve an emergency and to provide for the safety of the child and/or a party must be temporary and fashioned to meet the needs of the particular situation before the court. The temporary order must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 201 to 203. Thus, the expectation is that the party obtaining this temporary relief will use the breathing space in order to litigate the issues surrounding custody, parenting time, and the nature of the emergency before the court that has retained its exclusive, continuing jurisdiction.

For an example of how this is intended to work, see in your materials Noel D. v. Gladys D., 6 Misc.3d 1017(A), 800 N.Y.S.2d 351 (N.Y.Fam.Ct. 02/01/2005). This case is very instructive regarding the limits upon courts, the discretion of courts to act, and how communications between the courts may or may not work. For more on communication, see infra.

Communication with court of other State. To further decrease the possibility of “concurrent jurisdiction,” the UCCJEA requires that in the event a custody action has been initiated in another state, or an order has been entered in another state claiming jurisdiction, the court exercising temporary emergency jurisdiction “shall immediately communicate with the other court.” MCL 722.1204

Duration of temporary emergency orders. The duration of the order issued by a Michigan court asserting temporary emergency jurisdiction depends on whether custody has been previously or is presently being litigated in another state. Hoff, supra at 284. Thus, a Michigan court may issue a custody order even though it may not be the “home state” of the child nor have significant connections to the case solely for the purpose of entering a temporary order, since the purpose of allowing the court to claim emergency jurisdiction is to protect the child until a court which has jurisdiction under its UCCJEA criteria comparable to MCL 722.201—203 is able to enter an order. “The UCCJEA provides for temporary emergency jurisdiction that can ripen into continuing jurisdiction only if no other state with grounds for
continuing jurisdiction can be found, or if found, declines to take jurisdiction.” Summary: The Uniform Child Custody Jurisdiction and Enforcement Act; http://www.nccusl.org/uniform_summaries/uniformacts-s-uccjea.htm.

Of necessity, any order arising out of a petition for a Michigan court to assume temporary emergency jurisdiction where there is already an initial custody determination in place will impact upon and temporarily modify that order. The key word here is “temporary.”

**No prior order in State with jurisdiction.** The duration of the Order issued by a court asserting temporary emergency jurisdiction depends on whether custody has been previously or is presently being litigated in another state. Hoff, supra at 284. If there is no prior custody order and no other proceeding has been commenced under the different jurisdictional criteria of the Act (i.e., “initial custody determination,” “exclusive continuing jurisdiction” or “modification jurisdiction”), the temporary emergency order may ripen into a final order. As the statute makes clear, if the respondent against whom a petition for UCCJEA temporary emergency jurisdiction is filed and properly served, with a proper notice of hearing, has not yet filed an action in the State having home state jurisdiction, and fails to do so within the applicable time period, the temporary order made under MCL 722.1204 becomes a final child custody determination (if that’s what the order says) and if Michigan then becomes the child’s home state by operation of law (after 6 months residency have elapsed). See MCL 722.1204(2)

**Prior order in State with jurisdiction.** If there is a previous order or a custody proceeding has been commenced in a court asserting jurisdiction under the different jurisdictional criteria of the Act (i.e., “initial custody determination,” “exclusive continuing jurisdiction” or “modification jurisdiction”), the order issued by a Michigan court asserting temporary emergency jurisdiction must specify a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. In addition, the temporary emergency order remains in effect until a subsequent order is obtained from the other state asserting jurisdiction within the time frame specified in the order. If a party fails to proceed in the other state in a timely manner by filing a motion or defending a pending petition, and the time period set by the temporary emergency order expires, jurisdiction can be lost in a Michigan court. See MCL 722.1204(3) Note, however, that the UCCJEA does not elaborate on how long the temporary emergency order should last. Thus, “[h]ow long the order should last is one of several issues to be discussed when the emergency court communicated with the sister state court.” Hoff, supra at 284. Counsel for petitioner should be alert to the potential for complications and may need to file a motion for an extension of the time period, although the statute does not provide for such an extension. This makes effective communication with the sister state court very important.

An underlying issue arising in the scenario when a court asserts temporary emergency jurisdiction revolves around whether the factual findings by said court will be given full faith and credit by a court which may assume subsequent jurisdiction as contemplated by the Act. Because the UCCJEA requires that notice and an opportunity to be heard be given to all participants, even when entering temporary emergency orders, the findings made by said court are entitled to full faith and credit. “Thus, a temporary emergency jurisdiction can make a final ruling as to the underlying abuse. It will also halt the practice of re-litigating the abuse finding on the theory that the allegation was only made for tactical advantage or to alienate the child from the other parent.” Zorza, supra at 918.

**Requirement to provide proper notice and opportunity to be heard.** Even though the UCCJEA allows for a court to assert emergency jurisdiction, it is important to recognize that the Act still requires that proper notice and an opportunity to be heard be given to the opposing
party before a child custody determination is made. MCL 722.1205 makes this clear by stating that “[b]efore a child custody determination is made under this article, notice and opportunity to be heard in accordance with the standards of section 108 [MCL 722.1108] must be given to all persons entitled to notice under the laws of this state as in a child custody proceeding between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.” The impact of this provision is that by requiring that proper notice be given to all participants, an Order issued by a court asserting emergency jurisdiction under the UCCJEA will comport to the notice requirements of the PKPA and be given full faith and credit by other states.

**Example of temporary emergency jurisdiction.** A battered wife, after a fight with her husband, take the parties’ child from their Florida home to Michigan and obtains refuge at a shelter for domestic violence victims. The mother files for custody in Michigan on emergency jurisdiction grounds. Notice is provided to her husband. She asks the court not to disclose her address to her husband. On authority of MCL 722.1209(1), the court agrees. The father does not respond to the custody suit. The Michigan court grants the mother temporary custody, providing in its order that the order will become a final order after 6 months if no action is filed in Florida, the child’s home State.

However, the father files a custody proceeding in Florida soon after he receives notice of the Michigan action. The mother receives notice through her Michigan attorney. She petitions the Florida court to decline jurisdiction in favor of the Michigan court on inconvenient forum grounds. The two courts communicate. The Florida court grants the mother’s motion and declines jurisdiction, finding that Michigan can best protect the mother and child from domestic violence that has occurred and will likely continue to occur. A hearing on the merits is held in Michigan. The temporary Michigan order is made permanent, with the mother awarded custody and the father granted limited, supervised parenting time.

**CONCLUSION**

The UCCJEA is a substantial improvement over the UCCJA because it facilitates the practitioner’s understanding of how to, and where to, file and defend an interstate child custody proceeding. The temporary emergency jurisdictional provisions of the UCCJEA represent one of the most important advantages of the UCCJEA over the UCCJA. The UCCJEA allows a court to undertake whatever steps are necessary to protect the child, regardless of whether another action is pending in another state, and without taking jurisdiction away from a court that has a stronger basis for asserting jurisdiction under the criteria enumerated in the Act.

The UCCJEA promotes a more efficient resolution of interstate child custody disputes since it addresses the problems arising under the UCCJA and PKPA. The Act will substantially decrease the possibility of numerous courts asserting jurisdiction over a child custody dispute by clearly prioritizing the Court that is able to exercise initial and modification jurisdiction. At the same time, the Act addresses the importance of the timely resolution of emergency custody disputes by allowing a court to exercise temporary emergency jurisdiction without the need to assert final jurisdiction over the underlying child custody proceeding.
Temporary Emergency Jurisdiction—The Michigan Statute

MCL 722.1204 Temporary emergency jurisdiction; communication with out-of-state court; duration of order.

Sec. 204. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or 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.

(2) If there is no previous child-custody determination that is entitled to be enforced under this act and if a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 201 to 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section becomes a final child-custody determination, if that is what the determination provides and this state becomes the home state of the child.

(3) If there is a previous child-custody determination that is entitled to be enforced under this act or if a child-custody proceeding has been commenced in a court of a state having jurisdiction under sections 201 to 203, an order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 201 to 203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) If a court of this state that has been asked to make a child-custody determination under this section is informed that a child-custody proceeding has been commenced in, or that a child-custody determination has been made by, a court of a state having jurisdiction under sections 201 to 203, the court of this state shall immediately communicate with the other court. If a court of this state that is exercising jurisdiction under sections 201 to 203 is informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, the court of this state shall immediately communicate with the court of the other state. The purpose of a communication under this subsection is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Temporary Emergency Jurisdiction—Procedural issues

[Note: For more details, please see Checklist for UCCJEA Temporary Emergency Jurisdiction in your materials]

**Subject matter jurisdiction.** The court must ascertain the existence of subject matter jurisdiction. Jurisdiction exists under the UCCJEA only if there is a “child custody proceeding,” specifically defined by MCL 722.1102(d) as:

- a proceeding for divorce, separate maintenance, or separation
- neglect, abuse, dependency, or guardianship
- paternity [See footnote 5 for caveat]
- termination of parental rights
- and protection from domestic violence, in which the issue may appear.

**Venue.** The UCCJEA requires that the child is present in the state. MCL 722.1204(1) As a practical matter, factually, one of the petitioners and the child should reside in the county where a petition for temporary emergency jurisdiction is filed.

**Notice and the opportunity to be heard.** Due process lies at the heart of the UCCJEA. Even if a party is not subject to personal jurisdiction in Michigan, the party must be given notice of a pending action and/or hearing and must have the opportunity to be heard. See MCL 722.1107—1111 MCL 722.1108 states “[n]otice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective” (emphasis supplied).

**Personal Jurisdiction.** The UCCJEA, as stated above, doesn’t require a court to have personal jurisdiction over both parents. A party may appear without submitting to personal jurisdiction. A party who appears to contest the proceeding has limited immunity and cannot be served to obtain personal jurisdiction. MCL 722.1109

**Communication between a Michigan court and a sister State court**

One of the primary purposes of the UCCJEA is to avoid multiple states asserting jurisdiction over a child custody proceeding. Because the UCCJEA prioritizes the criteria that can be asserted during an initial custody determination, and because it differentiates between initial and modification jurisdiction, the UCCJEA reduces the need for courts of different states to communicate with each other. “The times when communication will be required will likely occur when there is no home state, no state with exclusive continuing jurisdiction, more than one significant connection state or, in cases involving temporary emergency jurisdiction.” Zorza, supra at 921.

Nonetheless, the UCCJEA clearly promotes communication between courts by authorizing courts to communicate with each other about any proceeding under the UCCJEA. MCL 722.1110(1). In addition the courts will allow the parties to participate in any communications between them; and in the event the parties are not able to participate in such communications, the parties must be given the opportunity to present
facts and legal arguments before a decision on jurisdiction is made. MCL 722.1110(2)

MCL 722.204(4) is clear in its mandate that a Michigan court requested to make a child custody determination has an affirmative duty to communicate with the sister State court in order to resolve the emergency, to protect the safety of the parties and the child, and to determine a period for the duration of the temporary order.

To see a critique of the failure of courts to communicate, see *Steckler v. Steckler*, 921 So.2d 740 (Fla.App. 02/17/2006), in your materials. The *Steckler* case makes clear that parenting time, as well as custody can be a subject of a petition for temporary emergency jurisdiction.

**Testimony by telephone or other means.** The UCCJEA facilitates the participation of out of state litigants and witnesses in a custody determination. For example, the Act allows the taking of testimony in another state when a party, child, or witnesses are located out of state. “It is a practical alternative to ordering a party to appear with or without the child . . . a court may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in the state.” Hoff, *supra* at 287. As the Comment states, the “ability to participate in the proceedings without actually going back to the other state will be especially welcome to victims of domestic violence or child abuse who fear returning to the jurisdiction where the abuser resides.”

**Seeking or giving assistance—court of another State.** Finally, the UCCJEA authorizes courts to seek assistance, or give assistance to a court of another state. See MCL 722.1112. This is consistent with the UCCJEA’s principle of providing a prompt resolution to the custody proceeding. Specifically, a court can request a court of another state to hold an evidentiary hearing, order a person to produce or give evidence, forward a certified copy of the transcript of the record of the hearing, order a custody evaluation, or to order a party or any person having physical custody of the child to appear in the proceeding with or without the child.

---

6 In addition, courts are required to make a record of their communication and to promptly inform the parties of such communication and grant them access to same. MCL 722.1110(4) Communications about scheduling and other administrative matters are not subject to these requirements. MCL 722.1110(3)
Michigan UCCJEA Cases


The initial child-custody determination was made in Ontario (treated like a sister State per the UCCJEA), and exclusive continuing jurisdiction generally remained with the decreeing court. MCL 722.1202. The Ontario court did not determine that it had relinquished its exclusive, continuing jurisdiction or that Michigan was a more convenient forum for the child custody proceeding. MCL 722.1203(a). Furthermore, defendant (mother to whom custody had been awarded) continued to reside in Ontario, Canada, MCL 722.1203(b), and thus, the Ontario court maintained an interest in retaining its exclusive continuing jurisdiction. Thus even though a minor child had lived with the father in Michigan for two years prior to his filing of a petition to modify the Ontario decree, Michigan was without jurisdiction to modify the Ontario court’s initial child custody determination.

Fisher v. Belcher, 713 N.W.2d 6, 269 Mich.App. 247 (2005) [Michigan without jurisdiction where father filed a complaint for paternity and custody in Missouri prior to mother’s complaint for custody was filed in Michigan, citing MCL 722.206

(1) Except as otherwise provided in section 204, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 207.

(2) Except as otherwise provided in section 204, before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209. If the court determines that, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.


Michigan without jurisdiction because Florida court had determined that it had jurisdiction and that Florida was the more convenient forum.


Public policy considerations were cited by the trial court in denying a petition to modify an Idaho child custody order because of alleged changes in circumstances. The trial court based its decision upon public policy views regarding the treatment of veterans returning from active military service in child custody cases (members of the armed forces should not have to fear a loss of custody where they give custody to the non-custodial parent during periods of deployment. This case raised a huge public uproar, and as a result prompt legislative action
occurred. See MCL 722.27(c), to which the following language was added with respect to motions for modification of orders:

If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child’s placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent’s return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent’s absence due to that military duty in a best interest of the child determination.


The plaintiff filed an appeal of a 1999 order entered by a Michigan court denying her motion to dismiss a parenting time review and holding her in contempt of court. This was a protracted case that was appealed in Michigan and also in Alabama (the Alabama court held that Alabama did not have jurisdiction despite the fact that the children had lived there for over seven years at the inception of the case). The case was decided under the UCCJA because at the time the case arose, the UCCJEA had not yet been adopted.


Case holding that where a Michigan court terminated parental rights without first obtaining a determination from the Kentucky court that had exclusive, continuing jurisdiction, the case must be remanded for the trial court to supplement the record to reflect a clear waiver of jurisdiction to Michigan by the Kentucky court in satisfaction of MCL 722.1203. The court of appeals noted that if the Kentucky court refused to waive its jurisdiction, the Michigan court must dismiss the neglect proceeding for lack of subject matter jurisdiction.


No authority requires a sister State court to enter an order declining jurisdiction before a Michigan court could assume jurisdiction. Here, Texas no longer had jurisdiction under the UCCJEA because it was not the children’s home state, the children no longer had ties with Texas, there was no information available in Texas with respect to their present or future care, and they were physically present in Michigan. Moreover, the record clearly reflected that the trial court judge discussed this case with the judge from Texas, and the Texas judge was “very eager to let [the Michigan judge] take jurisdiction.”
CHECKLIST:
UCCJEA TEMPORARY EMERGENCY JURISDICTION

ENTRY OF TEMPORARY ORDER MODIFYING/GRANTING CUSTODY AND/OR PARENTING TIME

VENUE / STANDING

A. Venue __ Proper (child is in county/State) __ Improper (child is not in county/State)

B. Petitioner has standing to seek protective custody.

__ Parent
__ Foster parent____________________________________
__ Agency _________________________________________
__ Other _________________________________________

PROCEDURAL REQUIREMENTS

Prior custody determination? ___ Yes ___ No

Is prior custody order attached to petition? ___ Yes ___ No

Registration

1) Has order been registered in Michigan ___ Yes ___ No
   If yes, date _______________ , county________________

2) Has order been registered in another state, tribal or territorial jurisdiction, or country? ___ Yes ___ No
   If yes, date _______________ , state ________________
   county________________________, tribal or territorial jurisdiction _______________ country ____________________

3) Is an application to register a foreign order pending in Michigan? ___ Yes ___ No
   If yes, date filed _______________ , county________________

4) Is an application to register a foreign order pending in another state, tribal or territorial jurisdiction, or country? ___ Yes ___ No
   If yes, date _______________ , state ________________
   county________________________, tribal or territorial jurisdiction _______________ country ____________________

5) Has an application to register the custody order been denied in Michigan?
___ Yes ___ No
If yes, date ______________ , county_________________

6) Has an application to register the custody order been denied in other state, tribal or territorial jurisdiction, or country?? ___ Yes ___ No
If yes, date ______________ , state ________________
county_______________ tribal or territorial jurisdiction _______________ country _______________

Present Effectiveness of attached order

___ The order is in effect and has not been vacated, stayed or modified.
___ The order has been vacated, stayed or modified by a subsequent order which is also attached to this Petition.

Residence of minor child(ren) during past five (5) years:

During the last five years, each child who is the subject of this proceeding resided at:
[specify address or indicate if ordered to be kept confidential pursuant to MCR 3.218(A)(3)(f), MCR 3.703(B)(6) or MCL 722.1209(5):

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Duration (from/to)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Persons with whom minor child(ren) resided during past five (5) years

During the last five years, each child who is the subject of this proceeding resided with the following persons at: the specified addresses. [Specify address or indicate if ordered to be kept confidential pursuant to MCR 3.218(A)(3)(f), MCR 3.703(B)(6) or MCL 722.1209(5):

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Duration (from/to)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Other proceedings in which orders were issued with respect to custody of the minor child(ren) who are the subject of this UCCJEA proceeding

Petitioner ___ has ____ has not participated as a ____ (party) ____ (witness) ____ (other) in other litigation concerning the custody of the same child(ren).

This other litigation took place in _____ Michigan _____ Other state (specify) ______________________ Other jurisdiction (specify) _______________________

This litigation was a ______________________________ case [Specify: custody, adoption, neglect, abuse, other]

Petitioner participated in the following capacity: ______________________

Identification of Court

Name: ____________________________________________

Type of Court ______________________________________ [e.g., Family Court, Probate court]

Address of Court: __________________________________________________________

Status of case: ____ Presently pending ____ Dismissed _____ Stayed _____ Other ______

If you checked “Other,” please specify what you mean_____________________________

Other Interested Parties

The following person(s) not party to these proceedings have claimed ___ physical custody or ____ parenting time rights to the child(ren) as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Basis of claim</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Proceedings that have been commenced that could affect this action

_____ No proceeding has been commenced that could affect this action.

_____ The following proceeding(s) have been commenced that could affect this action:

<table>
<thead>
<tr>
<th>State</th>
<th>Court</th>
<th>Docket No</th>
<th>Type Proceeding</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Jurisdictional basis or bases of Orders attached to this Petition

<table>
<thead>
<tr>
<th>Basis or bases</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The child lived in that state or jurisdiction with a parent or person acting as a parent for at least six consecutive months before the proceeding was commenced.</td>
</tr>
<tr>
<td>2.</td>
<td>The child and at least one parent or person acting as a parent had a significant connection with that state or jurisdiction and that state or jurisdiction has substantial evidence concerning the child’s care, protection, training and personal relationships.</td>
</tr>
<tr>
<td>3.</td>
<td>All other courts with jurisdiction declined to exercise jurisdiction and the court that issued the order determined that it was the more appropriate forum.</td>
</tr>
<tr>
<td>4.</td>
<td>No court of any other state or jurisdiction would have jurisdiction based upon any of the foregoing factors.</td>
</tr>
<tr>
<td>5.</td>
<td>No jurisdictional basis for the order was specified.</td>
</tr>
</tbody>
</table>

Basis or bases that support order of temporary emergency jurisdiction in the State under UCCJEA, MCL 722.1204

<table>
<thead>
<tr>
<th>Basis or bases</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>the child is present in this State <strong>and</strong> the child has been abandoned</td>
</tr>
<tr>
<td>2.</td>
<td>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.</td>
</tr>
</tbody>
</table>

Note: All must be checked for court to assume temporary emergency jurisdiction

Warrant Request

This court should issue a warrant requiring the production of the child because:

<table>
<thead>
<tr>
<th>Basis or bases</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The child is at imminent risk of serious physical harm, (specify facts)</td>
</tr>
<tr>
<td>2.</td>
<td>The child is at imminent risk of removal from the State of Michigan (specify facts)</td>
</tr>
</tbody>
</table>
Request for Order of Protection

This court should issue a Temporary Order of Protection pursuant to MCL 600.2950 because:

- the child is present in this State
- the child has been abandoned
- 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.

Status of Child with respect to Indian Welfare Act


If so, the following have been notified [check applicable box(es)]:

<table>
<thead>
<tr>
<th>Party</th>
<th>Name</th>
<th>Notification Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>parent/custodian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>tribe/nation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States Secretary of the Interior</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Previous Applications to a Judge or Court for the Relief herein**

No previous application has been made to any court or judge for the relief herein, except

<table>
<thead>
<tr>
<th>State</th>
<th>Court</th>
<th>Docket No</th>
<th>Type Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Communication with Court Asserting Jurisdiction**

The Court has communicated with the court in ____________________ as follows:

[Name of State]

<table>
<thead>
<tr>
<th>Date</th>
<th>Manner, nature, and substance of communication(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notice to Interested Parties**

Notice to Interested Parties has been given as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time, Date, and Manner of Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Relief Requested

Petitioner requests the following relief:

<table>
<thead>
<tr>
<th>Check if requested</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>an order directing Respondent to appear immediately before the Court with the above-named child(ren)</td>
</tr>
<tr>
<td></td>
<td>an order prohibiting the Respondent, his employees, agents, and relative, from removing the above-named child(ren) from the State of Michigan</td>
</tr>
<tr>
<td></td>
<td>a warrant directing law enforcement to pick up the child(ren) and give physical custody to Petitioner or [specify]:</td>
</tr>
<tr>
<td></td>
<td><strong>an order necessary to ensure the safety of the parties and the child(ren) as follows specify:</strong></td>
</tr>
<tr>
<td></td>
<td>a temporary order of protection containing the following condition(s) [specify]:</td>
</tr>
<tr>
<td></td>
<td>an order convening an immediate hearing within three court days after the filing of this petition to decide whether this court shall exercise temporary emergency jurisdiction pursuant to MCL 722.104 granting Petitioner temporary custody of the child and granting Respondent specified parenting time subject to conditions.</td>
</tr>
<tr>
<td></td>
<td>an order [specify]:</td>
</tr>
<tr>
<td></td>
<td>an order providing such other and further relief as this Court may deem just and proper.</td>
</tr>
</tbody>
</table>

### Verification

Is Petition verified? _____ Yes _____ No  Notarized? _____ Yes _____ No

### Order Attached

_____ Petitioner attaches and requests entry of an Order for Temporary Jurisdiction and Temporary Order Modifying/Granting Temporary Custody and Parenting Time.
Relief Requested

**Petitioner requests the following relief:**

<table>
<thead>
<tr>
<th>Check if requested</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>an order directing Respondent to appear immediately before the Court with the above-named child(ren)</td>
<td></td>
</tr>
<tr>
<td>an order prohibiting the Respondent, his employees, agents, and relative, from removing the above-named child(ren) from the State of Michigan</td>
<td></td>
</tr>
<tr>
<td>a warrant directing law enforcement to pick up the child(ren) and give physical custody to Petitioner or [specify]:</td>
<td></td>
</tr>
<tr>
<td>an order necessary to ensure the safety of the parties and the child(ren) as follows specify]:</td>
<td></td>
</tr>
<tr>
<td>a temporary order of protection containing the following condition(s) [specify]:</td>
<td></td>
</tr>
<tr>
<td>an order convening an immediate hearing within three court days after the filing of this petition to decide whether this court shall exercise temporary emergency jurisdiction pursuant to MCL 722.104 granting Petitioner temporary custody of the child and granting Respondent specified parenting time subject to conditions.</td>
<td></td>
</tr>
<tr>
<td>an order [specify]:</td>
<td></td>
</tr>
<tr>
<td>an order providing such other and further relief as this Court may deem just and proper.</td>
<td></td>
</tr>
</tbody>
</table>
Temporary Emergency Jurisdiction—Representative Cases


[1] New York Family Court, Queens County

[2] No. V-01295-05/05A


[4] February 1, 2005

[5] IN THE MATTER OF A CUSTODY PETITION NOEL D.,
PETITIONER.
v.
GLADYS D., RESPONDENT.

[6] The opinion of the court was delivered by: Salvatore J. Modica, J.

[7] Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

[8] This opinion is uncorrected and will not be published in the printed Official Reports.

[9] Upon the petition in this case and such other papers on file with the Court, and the proceedings had prior hereto on January 11, 14, and 20, 2005, the decision and order of the Court on the petitioner-father's motion is as follows:

[10] On January 11, 2005, the petitioner, Noel D., appeared before this Court and requested the issuance of a Writ of Habeas Corpus, directing the respondent, Gladys D., to produce their two children in court so that they could be returned to him in accordance with a temporary order of custody issued by a judge of the State of Illinois. The petitioner's writ is granted to the extent that the respondent, Gladys D., is given a temporary order of custody and is directed to return to the State of Illinois on February 18, 2005 to litigate the divorce proceeding.
currently pending there. A temporary order of protection is also issued on behalf of Ms. D. and the children. The Court's orders of custody and protection will remain effective until July 16, 2005 or until a Court of the State of Illinois, with jurisdiction over the parties, and with authority to make decisions of custody and visitation concerning the parties and the two subject children in this case, makes a determination to the contrary.

The following constitutes the Court's findings of facts and conclusions of law:

The parties were married in Waukegan, Illinois on January 17, 1997 and have two children, X. G., who was born on May 26, 1997, and X., who was born on October 11, 2003. The petitioner is in the United States Navy and holds the rank of Chief, the highest rank for an enlisted person in that branch of the armed forces. The respondent is a nurse and currently employed as such in the State of New York. On July 16, 2003, Judge Jane Waller, of the Nineteenth Judicial Circuit in Lake County, Illinois, issued a final order of protection against Mr. D. on behalf of Ms. D. and her son, X.G. In April 2004, Ms. D. left the State of New York with her two children and moved to her parents' home in New York City. In May 2004, the petitioner filed for divorce in the State of Illinois and, upon Ms. D.'s default, the marriage was dissolved on September 28, 2004 by Judge Sarah P. Lessman of the Nineteenth Judicial Circuit in Lake County, Illinois. Judge Lessman, however, reserved decision on the issue of custody of the minor children of the parties. On December 27, 2004, after Judge Lessman denied the respondent's written request for an adjournment, Mr. D. was given a temporary order of sole custody of the children.

A copy of the Illinois order of protection was presented to this Court on January 14, 2005. It reveals that Mr. and Ms. D. were both present in court when the protective order was issued and that Mr. D. was represented by an attorney. The order of protection includes a finding by the Illinois Court that Mr. D. has abused Ms. D. in the past and that the Court's intervention was necessary to protect Ms. D. and her child from irreparable harm or continued abuse. The order further notes that Ms. D. is the primary caretaker of the children. On page one of this order, next to what is labeled a "BHV" code, it is noted that Mr. D. is suicidal. In addition, attached to the order of protection is a two-page statement by Ms. D. in support of her requests for protection and the rehabilitation of her then husband. In that statement, she detailed incidents of domestic violence committed by Mr. D. against her and presented information about him, from which it can certainly be inferred that he is mentally unstable. These allegations, upon which Judge Waller apparently relied in issuing the order of protection, are quite disturbing to this Court.
Ms. D.'s statements to Judge Waller exposed the petitioner as a very disturbed, irrational, controlling, and jealous man, who has threatened to kill her numerous times, physically abused her, and, on four occasions, attempted to kill himself. One such suicide attempt occurred on January 3, 2003 when the petitioner hanged himself in the basement of their home. A suicide note, written by Mr. D., was recovered by the Waukegan Police Department. She also described another incident that occurred in January 2003 as she and her then six year old son were passengers in a car driven by Mr. D. It appears that while listening to Ms. D.'s cell phone conversation with another person, the petitioner became enraged, grabbed the cell phone from Ms. D.'s hand, struck her repeatedly with this phone, slapped both her cheeks, and smashed her head numerous times against the car window. In response to the pleas of his wife to end his attack upon her, Mr. D. stopped the car, got out, laid down on the road, and began to sob uncontrollably.

In March 2003, as Ms. D. was preparing to go to work, the petitioner, who was aware that his wife was one month pregnant with their second child, began screaming at her, and then spit at and slapped her in the face. This incident left the respondent so distraught that she became physically ill and was unable to go to work. The following day, she reported the incident to her supervisor.

Ms. D. related other examples of Mr. D.'s bizarre behavior in the affidavit attached to the order of protection. These not only included incidents of physical and mental abuse, as noted above, but also revealed the petitioner's desire to control his wife's daily activities. For example, the petitioner removed all his wife's money from her bank account, recorded her telephone conversations, and questioned people whose telephone number happened to appear on her cell phone. And when Ms. D. became unemployed as a result of her pregnancy, Mr. D. refused to provide her and their son with any financial support. Finally, the respondent informed Judge Waller that the petitioner, who has been diagnosed to be mentally ill by both a psychologist and psychiatrist, told their neighbors that the respondent "will be found on the street lifeless, because he will see to it and will not stop [un]til it [is] done."

The order of protection issued by Judge Waller, which expires on July 16, 2005, in essence, prohibits the petitioner from harassing, assaulting, intimidating, or neglecting Ms. D. and her son, X.G. (The parties second child, X., had not yet been born.) The order also prohibits the petitioner, Mr. D., from removing the children from Illinois.*fn1

In addition to the information contained in the Illinois order of protection, this Court had the benefit of hearing from the respondent, under oath, on the record
on January 11, 2005, when she appeared before this Court. Following Mr. D.’s initial appearance before this Court on the morning of January 11, 2005, Ms. D. arrived at the courthouse prior to the luncheon recess. Given the Court's understanding that the petitioner was still in the courthouse, the case was recalled so that both sides could be heard on the record. When the Court's law clerk attempted to conference the case with the parties, she learned that Mr. D. had left the courthouse. Nevertheless, the Court decided to hear from Ms. D., in open court, on the record. At that time, the Court advised the respondent of Mr. D.’s petition and that she was entitled to an attorney. In response to the Court's inquiry, Ms. D. agreed to submit herself to the jurisdiction of this Court. The respondent then informed the Court that she had an order of protection from the State of Illinois, that she left Illinois in April 2004 to escape the mental and physical abuse inflicted upon her by the petitioner, a member of the United States Navy, and that the petitioner was mentally ill and suicidal. She further informed the Court that Mr. D. had been hospitalized by the Navy as a result of his suicide attempts and mental illness. Given the information presented to the Court, the Court issued a temporary order of visitation to Ms. D. and prohibited the petitioner from interfering with her care and custody of their two children. Finally, given Ms. D.’s insolvency -- caused mainly by the fact that she had been the victim of domestic violence -- and that she had only recently begun a new job, the Court assigned an attorney to represent her. The matter was adjourned to January 14, 2005 for both sides to appear.

On January 14th, the petitioner appeared in court with a retained attorney. A Law Guardian was appointed by the Court to represent both children. The respondent's attorney, however, had a family emergency and could not be present. Since the petitioner's attorney was adamant in his position that this Court had absolutely no authority to act in light of the temporary order of custody from the State of Illinois, this Court decided to hear from the petitioner, the respondent, and the attorneys actually present so that a clear record could be made as to the Court's jurisdiction or authority under the Uniform Child Custody Jurisdiction and Enforcement Act [hereinafter UCCJEA] as set forth in Article 5-A of the Domestic Relations Law. On that date, in the presence of the petitioner and his attorney, Ms. D. again informed the Court about the order of protection that had been issued on her behalf by a judge of the State of Illinois. She then explained that she had left the State of Illinois in April 2004 because of Mr. D.’s mental instability, which included several attempts to end his own life, and to escape his continuing physical and emotional abuse, a pattern of behavior that was endangering both her and the children. Ms. D. then revealed that she had been a civilian nurse in the United States Navy and that it was the Navy which had helped her relocate to New York. Specifically, Janice Brown and Catherine Loisel of the Navy Abuse Team aided her in both planning and executing the move to New York. Finally, she indicated that Dr. Kevin Brown, a psychologist, had provided counseling services for her and the petitioner.
Petitioner's attorney confirmed Ms. D.'s allegations of domestic abuse by presenting a letter from Dr. Brown, dated January 4, 2005. Dr. Brown, who is a staff psychologist at the Naval Hospital in Great Lakes, Illinois, revealed that the petitioner was referred to his clinic for domestic counseling by the Family Advocacy Program at Great Lakes. On May 27, 2004, the petitioner commenced treatment with Dr. Brown's clinic and completed such treatment on October 25, 2004. It is interesting to note that Mr. D.'s decision to seek such help occurred a month after his wife's exodus from the household that they shared in Illinois and almost contemporaneously with his filing for divorce in that state.

The Law Guardian next informed the Court that he had spoken to 7 year old X.G., who told him that he likes living in New York with his grandparents and mother, that he is afraid of his father, and that he does not wish to have visitation with his father. As an example of why he fears his father, X.G. described an incident in which he was awoken from sleep by the sounds of loud yelling between his mother and father, followed by crashing sounds. The next morning, this child saw broken dishes strewn all over the floor. When he inquired of his mother what had happened, he was told that his father had thrown the dishes against the wall. Although the child told the Law Guardian that he has never witnessed his father physically abuse his mother, he did reveal to his attorney that he has often witnessed heated verbal exchanges between his parents and that his father is the primary aggressor. The child is currently enrolled in school in New York. According to the Law Guardian, it would be emotionally devastating for this child to leave New York and return to Illinois.

The Court, invoking its temporary emergency jurisdiction under Domestic Relations Law § 76-c, then informed both sides that it would continue the temporary order of visitation in this case on behalf of the mother, as well as the temporary order that the father not interfere with the mother's care and custody of the children. The parties were further informed that the Court would arrange to speak that afternoon to Judge Sarah Lessman, who granted the Illinois divorce judgment and custody order on default, in order to discuss the jurisdictional issue. The Court adjourned the matter to January 20, 2005 for Ms. D.'s attorney to appear.

On January 14, 2005, at about 3:00 p.m., this Court spoke to Judge Sarah Lessman. At some point in the conversation, Judge Lessman revealed that this Court was on a speaker phone, that the petitioner's Illinois attorney was present in the room, and that a contemporaneous record was being of the conversation.*fn4 This Court informed Judge Lessman what had transpired in New York on the dates of January 11th and 14th. Judge Lessman confirmed that a custody proceeding, filed by Mr. D., was pending before her, stated that she
intended to exercise continuing jurisdiction, and expected the respondent to return back to Illinois to litigate that action. When this Court indicated that it was considering issuing a temporary order of custody to Ms. D., Judge Lessman expressly disagreed with that position. In her view, the order of custody she issued to Mr. D. in December 2004 should not be modified. Judge Lessman did, however, acknowledge that when she issued the temporary order of custody to Mr. D., she was unaware of her colleague's final order of protection, unaware of Mr. D.'s suicide attempts, unaware of the Navy's alleged role in relocating Ms. D. to New York, and unaware that Mr. D. had been in counseling for domestic violence.

This Court informed Judge Lessman that, based on the communication with her, it appeared that the State of Illinois had the right to exercise continuing exclusive jurisdiction over the custody proceeding filed there. See Domestic Relations Law § 76-a. This Court also indicated that it was prepared to give Ms. D. a temporary order of visitation. It was agreed that the respondent would be required to return to Illinois by February 18, 2005.

Of course, this Court was not bound by its statement to Judge Lessman. Nor, could that statement represent the Court's final decision as to this matter. Specifically, neither the respondent nor her attorney was present during the communication between the two courts. Accordingly, this Court's decision on jurisdiction on January 14th was necessarily subject to hearing from the respondent and her attorney and giving them "an opportunity to present facts and legal arguments before [making] such a decision on jurisdiction..." See Domestic Relations Law § 75-i(2).

Upon further reflection, the Court realizes that the communication with Judge Lessman was statutorily required, but not for the purpose of trying to resolve the jurisdictional issue or exploring whether New York was the more appropriate forum for this family pursuant to Domestic Relations Law § 76-e. See also Domestic Relations Law § 76-f. First, Ms. D. has not filed any type of petition before this Court. But more important, Mr. D.'s petition essentially seeks registration and enforcement of the Illinois temporary order of custody; it is not a petition for custody. See Domestic Relations Law §§ 77-b & 77-d. Specifically, a petition to enforce a child custody determination made by another state is not a child custody proceeding within the meaning of title three of the UCCJEA. See Domestic Relations Law § 75-a(4). Accordingly, since neither party has filed a petition for custody before this Court, it was not necessary for the two courts to communicate with one another as is otherwise required under Domestic Relations Law § 76-e(2).
Nevertheless, for this Court to exercise emergency and temporary jurisdiction under Domestic Relations Law § 76-c, the Court was required to reach out to Judge Lessman, attempt to resolve the emergency, and then give both sides an opportunity to be heard. See Domestic Relations Law § 76-c(4); see also Domestic Relations Law § 75-i. Therefore, the two issues before the Court are (1) whether Judge Lessman’s order was made in substantial conformity to the requirements of the UCCJEA and is, thus, entitled to full faith and credit [see Domestic Relations Law §§ 77-b & 75-g & 76-d; see eg Cynthia Marie S. v. Allen Wayne L., 228 AD2d 249 (1st Dept. 1996); Harrison v. Harrison, 116 AD2d 553 (2nd Dept. 1986)] and, if so, (2) whether this Court should exercise temporary and emergency jurisdiction under Domestic Relations Law § 76-c(4) in order to provide protection to the respondent and her children.

On January 20th, both sides appeared before the Court for oral argument. The Court informed the parties that, at the respondent's request, she was entitled to a hearing under Domestic Relations Law § 77-d(4) to contest the validity of the Illinois child custody determination. During this proceeding, the respondent's attorney maintained that Ms. D. had not been personally served in the Illinois action. It was subsequently revealed by Mr. D.'s attorney that service was made by publication. In response, Ms. D.’s attorney stated that he intended to establish at the hearing that the petitioner knew that the respondent was living with her parents in New York City and that service by publication was, thus, not authorized. At some point during this proceeding, the Court indicated to both sides that it intended to invoke the emergency powers available under Domestic Relations Law § 76-c. The Court then proposed that if the respondent waived her right to a hearing under Domestic Relations Law § 77-d, it would issue her a temporary order of custody and a temporary order of protection, conditioned on her returning to the State of Illinois to litigate the custody proceeding pending there. At this time, the respondent expressly agreed to waive her right to a hearing and return to Illinois. The respondent further stated that she intended to return to Illinois in order to move to vacate both the default judgment of divorce and the order of custody on the ground that she was not properly served.*fn7

Given the respondent's waiver of her right to a hearing, the Illinois order of temporary custody to the petitioner, which has been registered before this Court, is accordingly confirmed. See Domestic Relations Law § 77-d(6). The Court further recognizes the Illinois custody determination and enforces it solely to the extent that the respondent is given a temporary order of custody of the two children and is directed to return to Illinois.

Contrary to the petitioner's contention, the Court's ruling, enforcing the Illinois order to the extent of requiring Ms. D. to return to Illinois, but granting her temporary custody of the two children, is, in no way, an unauthorized
modification of the Illinois order granting Mr. D. temporary custody of the children. This Court's authority to, essentially, modify the Illinois temporary order of custody is contained in the UCCJEA, as set forth under Domestic Relations Law § 77-e(2), which, in pertinent part, provides:

[A] court of this state shall recognize and enforce, but may not modify, except in accordance with title two of this article (emphasis added), a registered child custody determination of another state.

Title two of the UCCJEA expressly authorizes a court to exercise "temporary emergency jurisdiction if the child is present in [the court's] state and it is necessary to protect the child, a sibling or parent of the child." See Domestic Relations Law § 76-c(1). So clearly, as long as a child is present in a state and that child or a sibling, or that child's parent requires protection from a court, then the UCCJEA expressly permits a court to exercise jurisdiction and provide such protection, even if it involves modifying a custody determination by another state.

In this case, the respondent's children were actually present in New York State when the decision to exercise jurisdiction was considered by this Court. The first requirement of the statute, therefore, has certainly been satisfied. See Domestic Relations Law § 76-c(1); see eg Blend v. Jones, 248 AD2d 808 (3rd Dept. 1998). Second, given all the information that this Court knows about this family, it is quite obvious that an emergency exists, and that Ms. D. and her children require protection from the petitioner, thus satisfying the second requirement of Domestic Relations Law § 76-c(1).

In finding that an emergency exists within the meaning of Domestic Relations Law § 76-c(1), this Court bases its finding on the facts demonstrating that Mr. D. is a very disturbed man, with serious emotional problems. This assessment of the petitioner has been recognized even by the State of Illinois, as reflected in Judge Waller's final order of protection issued against Mr. D. on behalf of his family. It is noteworthy that despite her then husband's violent behavior, his suicide attempts, and his tendency to exert control over her, Ms. D.'s first inclination was not to flee the State of Illinois, but rather to get the respondent the help he so desperately needed. She did this by going to court in Illinois and requesting that Judge Waller intervene to protect her and her children and to try and rehabilitate her then husband. Her attempts to have his behavior modified for the benefit of the family were obviously unsuccessful. For this reason, she fled to the only resource available to her, namely, her parents, who were living in New York. Given the prior violence in the household, this Court has serious concerns for the safety of Ms. D. and her children. In the Court's view an order
of custody and protection is necessary to assure that Ms. D., not the petitioner, continues as the primary caretaker, and that she and the children are not exposed to any further domestic violence. See Sobie, Practice Commentaries, McKinney's Consolidated Laws of NY, Book 14 Domestic Relations Law Act § 76-c, at 123 (2004). More important, in light of the substantial and credible allegations that Mr. D. has severe emotional problems, the Court cannot seriously consider entrusting him with the care and custody of two very young boys, one of whom is afraid of him and wants no contact with him. See eg Maureen S. v. Margaret S., 184 AD2d 159 (2nd Dept. 1992).

[35] It is also important, though certainly not dispositive [see eg Mitchell v. Mitchell, 117 Misc 2d 426 (Sup. Ct. West. Co. 1982)], that X.G., who has been living in New York for almost 10 months, remain in the school he is currently attending and finish out the school year there, not in Illinois. As the Law Guardian represented, X.G. is quite happy in New York, is well-adjusted, and enjoys living in his grandparents' home. This child is also quite aware of the violence that took place in his household, which explains why he is afraid of and does not wish to see his father. Given the dynamics of this family, it is simply not in the best interest of this child to be removed from the State of New York at this time.

[36] This Court recognizes that the decision to exercise temporary emergency jurisdiction and modify custody is substantially different from the temporary order of visitation that the Illinois Court was told would be given when the two courts spoke by telephone. Nevertheless, this Court has fulfilled the mandate of the UCCJEA by communicating with Judge Lessman and attempting "to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order." Domestic Relations Law § 76-c(4). Although the two Courts may disagree over the extent of protection that needs to be afforded to Ms. D. and the children, it must be remembered that the parties are before this Court, which, presently, has the ultimate responsibility of determining what protection will be adequate under the circumstances. In the Court's view, handing the two children over to Mr. D., given all that this Court knows about him, would be a reckless abdication of its responsibilities and would place the children "in imminent risk of harm." See eg Domestic Relations Law § 76-c(3); cf. Martin v. Martin, 45 NY2d 739 (1978); Matter of Lawyers for Children Inc. v. Vanessa E., 190 AD2d 134 (1st Dept. 1993). This Court is duty bound to take the necessary steps to ensure the safety and security of Ms. D. and her children. Giving Ms. D. a temporary order of custody and temporarily allowing the children to remain in New York provides the respondent and her children with that necessary protection, and, indeed, is consistent with Judge Waller's determination in granting the original order of protection.
Indeed, this Court had more information about this family than Judge Lessman had when she issued her order in December 2004. Since only the petitioner appeared before her in Illinois, Judge Lessman quite understandably did not know about the Illinois order of protection, the history of violence in the household, that Mr. D. tried to end his life several times, and the allegation that the Navy helped relocate the respondent and the children to New York. Judge Lessman also did not have the benefit afforded this Court of having both sides appear before her under oath and the opportunity to assess their demeanor and credibility. It should be noted that the Court found Ms. D. to be forthright and candid. Finally, given the new information, there now exist compelling reasons for the Illinois Court to reconsider and discontinue the order of temporary custody issued to Mr. D. in December 2004. The orders issued by this Court give Ms. D. adequate time to go to Illinois, get legal representation, and make the necessary applications before the Court there, while, simultaneously, preserving the safety and security of the respondent and her children. Stated another way, this Court's decision advances the underlying purpose of the UCCJEA in that it provides Ms. D. with necessary emergency relief and sufficient time to return to Illinois and obtain a similar order from the State of Illinois, without compromising the safety and security of Ms. D. or her children, or divesting Illinois of jurisdiction. See Domestic Relations Law § 75(2); see also Domestic Relations Law § 76-c(3); see eg Matter of W.R.N., NYLJ February 17, 2004 p. 22 c. 3 (Fam. Ct. Nassau Co.)

Accordingly, subject to the respondent returning to the State of Illinois on February 18, 2005 and appearing in the custody proceeding pending there, it is ordered that the respondent is given a temporary order of custody of the two children. The Court also permits the respondent's children to remain in New York so that X.G. can complete the current school year. The respondent is further granted an order of protection to the extent that the petitioner is not to interfere with her care and custody of the two children or remove them from her control. The Court's orders of custody and protection will remain effective until July 16, 2005 or until a Judge of the State of Illinois, with jurisdiction over the parties, and with authority to make decisions of custody and visitation concerning the parties and the two subject children in this case, makes a determination to the contrary.

This constitutes the decision and order of this Court.
On page 10 of the order of protection, Judge Waller provided a brief explanation as to why she did not issue any remedies involving property. Because her explanation is handwritten, some of the words are illegible. What this Court could decipher reads as follows: The petitioner appeared in court and informed the court that she wishes to resume a marital relation and that she do [words illegible] upon counseling through the Navy. Respondent will return home upon Navy [word illegible] services deems it safe for the respondent and for the parties to cohabit.

On January 14, 2005, the petitioner's attorney stated on the record that this Court engaged in an ex parte conversation with the respondent. Such a conversation never occurred between this Court and the respondent. A conversation, however, did take place between the Court's law clerk and the respondent prior to the case being re-called on January 11th. The substance of that conversation, a portion of which has been included in this opinion, was placed on the record in open court by this Court.

It must be noted that when Mr. D. appeared before this Court on January 11th, it appeared that he had difficulty understanding questions. For example, when the Court questioned the petitioner, he stared blankly at the Court for a long period of time and was slow to respond. The Court at first thought that the petitioner was a man of limited intelligence. When informed, however, that the petitioner held the rank of chief in the Navy, the Court realized that this initial impression of him was obviously wrong. Given Mr. D.'s demeanor on January 11th, it is not difficult to accept Ms. D.'s allegation that he has serious psychological problems.

Given that the State of Illinois adopted the UCCJEA in 2004, it is obvious that Judge Lessman sought to comply with the requirements of this Act. See eg Domestic Relations Law § 75-i(4). It should be noted that, by this opinion, the Court is in compliance with those same requirements. See Domestic Relations Law § 75-i(5).

Even if the respondent filed a petition for custody in New York, this Court would not have had jurisdiction over the parties. Specifically, for this Court to modify the custody determination of Illinois, it must first have jurisdiction to make an initial custody determination. See Domestic Relations Law § 76(1). Given that Mr. D. filed the divorce proceeding in Illinois a month after the respondent moved to New York, this Court certainly does not have home state jurisdiction under the UCCJEA. See Domestic Relations Law § 75-a(7); see
also Domestic Relations Law § 76-(1)(a). Of course, even in the absence of home state jurisdiction, this Court potentially could have obtained jurisdiction given that the respondent and her children have been living in New York with her parents for almost 9 months, and, thus, arguably, have a significant connection to this state, making New York the more appropriate forum for a custody determination. See Domestic Relations Law § 76(1)(b)(i). Nevertheless, for this Court to obtain jurisdiction under this provision, Illinois, the home state, would first have to decline jurisdiction. Id. It was abundantly clear by the Court's telephone conversation with the Illinois Court that it was unwilling to do so. As noted in this opinion, however, these provisions, do not prevent the Court from modifying custody under the temporary emergency jurisdiction provision of the UCCJEA as set forth in Domestic Relations Law § 76-c. In any event, given that Ms. D. owns a house with the petitioner in Illinois, it is obviously necessary for her to return to that forum and litigate the divorce proceeding pending there.

*fn6 That Ms. D. apparently has filed a petition for child support in the Queens County Family Court does not implicate Domestic Relations Law § 76-e. Specifically, pursuant to Domestic Relations Law § 75-a(4), a "'[c]hild custody proceeding means a proceeding' in which legal custody, physical custody, or visitation with respect to a child is an issue." These issues, however, are not the subject of a child support petition. See also Domestic Relations Law § 75-a(3).

*fn7 The respondent wanted the record to be clear that by expressly waiving her right to the hearing under Domestic Relations Law § 77-d, she was not waiving her right to establish before the Court in Illinois that service was improper under the laws of that jurisdiction.
The opinion of the court was delivered by: Orfinger, J.

The former wife, Rebecca S. Steckler, appeals the trial court's denial of her motion to stay enforcement proceedings and determine jurisdiction, and granting the former husband's motion for contempt and enforcement of final judgment. The former wife and the former husband had three children together. The parties separated in July 2003, at which time the former wife and the children moved to North Dakota. The parties' marriage was dissolved by final judgment in the circuit court of Volusia County, Florida in April 2004. The final judgment provided, in pertinent part, that the parties were to have shared parental responsibility, but that the former wife was to be the primary residential parent for the children, who reside with her in North Dakota. The final judgment also provided that the children spend four consecutive weeks during the summer and Christmas in even-numbered years with the former
husband in Florida.

[11] In August 2004, the former husband filed a motion for contempt and for enforcement of the final judgment. The former husband alleged that he had tried to contact the former wife about visitation during the summer of 2004, but she refused to accept his letters or return his phone calls. After due consideration, the trial court modified the custody order, allowing the former husband to have visitation with the children for their entire Christmas break in 2004 as compensation for his inability to have visitation during the summer, as required by the final judgment.

[12] The former husband visited the children in North Dakota during Thanksgiving of 2004. Following the former husband's Thanksgiving visit, the former wife filed a petition for protection against the former husband in North Dakota on behalf of herself and the children. In the petition, the former wife alleged that the former husband posed an immediate and present danger to her and her children. Specifically, the former wife claimed that the former husband abused her while he was in North Dakota for Thanksgiving. The North Dakota trial court granted a temporary domestic violence protection order and set a date for a hearing on the former wife's petition. The former husband appeared at the hearing via telephone without counsel. On December 27, 2004, the North Dakota trial court issued a two-year domestic violence protective order against the former husband. The order provided, in pertinent part:

[13] [Former husband] may call the children once each week on Wednesday between the hours of 7:00 p.m. and 8:00 p.m. central standard time. The children may choose not to talk to their father if that is their wish.

[14] [Former husband] has waived his right to Christmas visitation for the year 2004. After Christmas 2004, visitation with the two younger children shall continue as previously ordered. The oldest child may choose not to visit if that is her desire.

[15] In the interim, in compliance with the Florida modified visitation order, the former husband purchased airplane tickets for the children to visit him in Florida over the Christmas holidays. The former husband gave the former wife a copy of the children's itinerary, but she did not send them to visit the former husband, contending that the North Dakota court had determined that the former husband had "waived" his Christmas visit.
The former husband then filed a motion to enforce the visitation order and sought sanctions against the former wife. Because of the North Dakota protection order, the former wife filed a motion to stay the enforcement proceeding to consider the former husband's motion for contempt and enforcement of the final judgment, and to determine jurisdiction. In her motion, the former wife argued that two proceedings were pending in different states concerning the custodial rights of the parties; therefore, the trial court should communicate with the North Dakota court to determine jurisdiction under Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), and the trial court should afford the North Dakota protective order full faith and credit. After a hearing on the motions, the Florida court denied the former wife's motion to determine jurisdiction, reasoning that since the North Dakota judge did not contact him as required under the UCCJEA, the courts of Florida had not relinquished jurisdiction, and jurisdiction over child custody still remained in Florida. The trial judge determined that the former husband was entitled to make up visitation to compensate for the missed Christmas visit. This appeal followed.

The former wife contends that the trial court erred in failing to afford North Dakota's domestic violence protective order against the former husband full faith and credit under 18 U.S.C.A. § 2265 (2005). The former wife argues that the federal full faith and credit statute preempts any conflicting Florida statutes, including section 61.515, Florida Statutes (2005), which grants Florida courts exclusive, continuing jurisdiction over its child custody decisions.

The United States Code Annotated provides, in pertinent part:

(a) Full faith and credit.--Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) Protection order.--A protection order issued by a State or tribal court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against
whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

[23] 18 U.S.C.A. § 2265 (2005). According to the former wife's petition for protection, the most recent incident of abuse occurred in North Dakota. We find that since the alleged abuse occurred in North Dakota, the courts of that state had jurisdiction over the parties to issue an order for protection relating to the incident. The former husband appeared by telephone at the hearing on the former wife's motion for protective relief and was given a reasonable opportunity to be heard in compliance with 18 U.S.C.A. § 2265. Consequently, we conclude that the provisions of 18 U.S.C.A. § 2265 have been satisfied, and North Dakota's domestic violence protective order was entitled to full faith and credit.

[24] However, since the protective order affected Florida's initial custody determination, the protective order is also governed, in part, by the UCCJEA. See § 61.503(4), Fla. Stat. (2005) (defining a "child custody proceeding" to include any proceeding involving protection from domestic violence, in which child custody is an issue). The former wife argues that the federal full faith and credit provisions should preempt section 61.515, Florida Statutes, which, as part of the UCCJEA, grants Florida courts exclusive, continuing jurisdiction over its child custody decisions. We see no conflict between the two statutes. While the UCCJEA generally gives the state that made the initial custody determination exclusive, continuing jurisdiction over those decisions, in emergency situations, the UCCJEA permits other states to obtain temporary emergency jurisdiction to protect a child. § 61.517, Fla. Stat. (2005); N.D. Cent. Code § 14-14.1-15. Since North Dakota modified Florida's initial custody determination in the form of a domestic violence protective order designed to protect both the former wife and the children, we conclude that the North Dakota court acted within the temporary emergency jurisdiction of the UCCJEA.

[25] Next, the former wife claims that the trial court failed to comply with the UCCJEA. Specifically, the former wife argues that the trial court erred by (1) failing to conduct a hearing to determine jurisdiction under the terms of the UCCJEA and (2) failing to contact the North Dakota judge who issued the protective order to determine jurisdiction as required by the UCCJEA.*fn2 The former wife contends that the trial court erred in refusing to conduct a hearing to determine jurisdiction under the inconvenient forum factors enumerated in section 61.520, Florida Statutes (2005). Under section 61.520, any party may
raise the issue of inconvenient forum. Section 61.520(2) provides that "[b]efore determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, . . . ." Included among the factors a court should consider is whether domestic violence has occurred and is likely to continue in the future, which state could better protect the parties and the child, and the length of time the child has resided outside of the state. Id. In her motion, the former wife requested that the Florida trial court conduct a hearing with the North Dakota trial court to determine which court should exercise jurisdiction. She argued that since North Dakota is better situated to deal with domestic abuse that has occurred in the past and the children have lived in North Dakota since June 2003, North Dakota is the most convenient forum. The Florida trial court disagreed, stating it "shall retain exclusive jurisdiction of the parties, subject matter and parties' minor children, pursuant to [the UCCJEA]."

[26] A trial court's ruling on whether a forum is inconvenient is discretionary. McDaniel v. Burton, 748 So. 2d 1072, 1075 (Fla. 4th DCA 1999). "Discretion . . . is abused when the judicial action is arbitrary, fanciful, or unreasonable" or "where no reasonable man would take the view adopted by the trial court." Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980). While it is unclear whether the trial court considered the relevant factors enumerated in section 61.520(2) since it did not issue any findings of fact on the issue, we nonetheless conclude that the trial judge acted within his discretion in retaining jurisdiction and declining to determine that Florida is no longer a convenient forum for child custody proceedings. Under section 61.515, Florida Statutes (2005), Florida retains exclusive, continuing jurisdiction over child custody issues. The Florida Supreme Court has held that "[a] custody proceeding properly begun in Florida remains under Florida's jurisdiction until Florida determines otherwise, unless virtually all contacts with the state clearly have been lost." Yurgel v. Yurgel, 572 So. 2d 1327, 1332 (Fla. 1990); see also Miles v. Hyman, 836 So. 2d 1097, 1098-99 (Fla. 5th DCA 2003). Neither scenario has occurred here as Florida declined to relinquish jurisdiction, and so long as the former husband is still a resident of Florida, sufficient contacts still remain in the state such that Florida may retain jurisdiction. See Pettinato v. Johnson, 674 So. 2d 148 (Fla. 2d DCA 1996); Lamon v. Rewis, 592 So. 2d 1223, 1225 (Fla. 1st DCA 1992) (holding that contact with the original state exists when the father continued to reside in that state). Thus, the trial court's decision was reasonable and did not constitute abuse of discretion.

[27] Finally, the former wife argues that the trial court erred in failing to contact the North Dakota trial judge upon learning of North Dakota's
protective order. We agree that the trial judge should have communicated with the judge in North Dakota under the terms of section 61.517, Florida Statutes (2005). As previously discussed, the UCCJEA provides the courts of each signatory state with temporary emergency jurisdiction over child custody when 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." § 61.517(1), Fla. Stat. (2005); N.D. Cent. Code § 14-14.1-15. Section 61.517(4) further provides, in pertinent part:

[28] A court of this state which is exercising jurisdiction under §§ 61.514-61.516, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

[29] § 61.517(4), Fla. Stat. (2005). Here, the Florida trial court had exclusive, continuing jurisdiction over issues of custody under section 61.515, as it issued the initial custody determination and had not otherwise relinquished jurisdiction. Therefore, in accordance with section 61.517(4), once the trial judge learned of North Dakota's domestic violence protective order, he should have contacted the issuing North Dakota judge to resolve any jurisdictional conflicts. At the hearing, the trial judge asserted that it was the North Dakota judge's responsibility to contact him, stating, "I wasn't under [any] compulsion to act. The judge in North Dakota was." While it is true that the North Dakota judge erred in failing to communicate with the Florida judge before issuing the protective order, this does not negate the requirement imposed on the Florida judge under section 61.517(4) to make contact with his North Dakota counterpart.

[30] We affirm the order of the trial court as to its determination of jurisdiction. We remand with instructions that the trial judge contact the judge in North Dakota to resolve any conflicts that exist between the North Dakota protective order and the Florida child custody order under section 61.517, Florida Statutes (2005). After that, and depending on the current situation, the trial court may order make up visitation, if appropriate.

[31] AFFIRMED IN PART; REMANDED.
GRiffin and THOMPSON, JJ., concur.

Opinion Footnotes


[fn2] In her brief, the former wife also argues that North Dakota had jurisdiction to modify Florida's initial custody determination under the UCCJEA. See § 61.516, Fla. Stat. (2005); N.D. Cent. Code § 14-14.1-14. Although the North Dakota court did not have jurisdiction to modify the existing visitation arrangement outside of a temporary emergency situation, this was an error on the part of the North Dakota court and need not be considered here. See § 61.516, Fla. Stat. (2005); N.D. Cent. Code § 14-14.1-14 (stating that in order to modify an initial custody order, a court must have had jurisdiction to make an initial custody determination and: (1) the court where the initial custody determination was made determines that it no longer has exclusive, continuing jurisdiction, or that a court of another state would be a more convenient forum; or (2) a court determines that the child, the child's parents, and any person acting as a parent no longer reside in the state that issued the initial custody determination); § 61.514, Fla. Stat. (2005); N.D. Cent. Code § 14-14.1-12 (2005) (stating that in order to have initial jurisdiction, the child must live in the state or have lived in the state six months prior to the commencement of the proceeding; in this case, the proceeding commenced on February 27, 2002, when the divorce petition was filed, yet, the children did not move to North Dakota until June 2003).