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Interstate Custody Arrangements

Interstate child custody issues to consider when your child's other parent lives in a different state than you.

Can my ex-spouse that lives in another state go to court to get the custody agreement changed if I have sole custody of our children?

Almost every state and the District of Columbia have enacted a statute known as the Uniform Child Custody Jurisdiction and Enforcement Act, which sets out standards for courts to make custody determinations and standards for when a court must defer to an existing determination that originated in another state. Of the fifty states, only Massachusetts and Vermont currently do not follow the Uniform Child Custody Jurisdiction and Enforcement Act.

In general, under the Uniform Child Custody Jurisdiction and Enforcement Act, a state court can make a decision about a child custody arrangement if (these are in order of preference):

- **The state making the decision is the child's home state.** For a state to be a child's home state, the child must have resided with a parent in the state for at least six months prior to the legal action being brought, or the child must have been residing in that state but is absent because a parent removed the child from the state.
- **The child has significant connections with people in the state.** These connections can include connections with teachers, doctors and grandparents, to name a few. In addition, there should also be substantial evidence inside the state that concerns the child's care, protection, training and personal relationships, like friends.
- **The child is in the state for safety reasons.** Generally, this means that the child is in the state after being removed from another state for fear of abuse, neglect or abandonment if sent back to the other state.
- **No state can meet one of the three above tests.** In general, this means that no state can meet any one of the above three tests, or a state can meet at least one of the three tests but has declined to assert jurisdiction over the matter.

Under the Uniform Child Custody Jurisdiction and Enforcement Act, if a state court cannot meet any of the above requirements, the court cannot issue a child custody judgment even if the child is currently present in the state. In addition, if a parent has wrongfully removed and/or retained a child in a state in order to make that state the child's home state, the parent will be denied custody. If more than one state can meet any of the above tests at the same time, the Uniform Child Custody Jurisdiction and Enforcement Act dictates that only one state can issue a child custody judgment. In practical terms, this means that if a state court in one state makes a decision before another court in a different state, the judgment of the first court will be binding.

The Uniform Child Custody Jurisdiction and Enforcement Act benefits the laws in all states that follow it by creating consistency in interstate child custody decrees. In addition, it also helps with problems associated with one parent kidnapping a child and then seeking a custody award without informing the court of the situation.

To help illustrate this point, consider the following example: Suppose that Wilma and Harold were married in California. Harold got a better job in Oregon a few years later so the married couple moved north into Oregon. There, Wilma gave birth to their first and only child Ben. The family lived together in Oregon for 8 years until Harold became upset with Wilma and left her, moving to Texas and taking Ben with him and planning to divorce Wilma. Immediately on getting an apartment in Texas, Harold went to Texas court to ask for a custody award for Ben. However, the Texas court is not able to issue an award of custody, as Oregon is Ben's home state and Ben has no significant connections with the state of Texas. Wilma is free to go to Delaware state court to request a custody award. However, keep in mind that if Harold had removed Ben from Oregon because Wilma had been drinking and physically abusing Ben, then the Texas court may have been able to assert jurisdiction over the case.

The Full Faith and Credit Clause

The Constitution of the United States sets up the "Full Faith and Credit Clause" that requires judges to enforce valid judgments and degrees that issue from courts in different states.

Even with this clause, in the past, judges would routinely disregard interstate child custody arrangements and orders that were validly issued from courts in different states. Instead, judges preferred to issue new orders and judgments based on the evidence that was before them at the time. This led to much confusion as there could exist several different custody awards all directed towards the same child. If one parent went to take a child based on a custody award from state X, it could be that she could be arrested for kidnapping in state Y. However, thanks to the Uniform Child Custody Jurisdiction and Enforcement Act, many of these problems no longer exist.

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