

# Navigating the MCCJA, PKPA, ICPC and ICWA

## U.S. CHILD CUSTODY DETERMINATION FULL FAITH AND CREDIT ACT

Commonly referred to as: “The Parental Kidnapping Prevention Act” (“PKPA”)

28 U.S.C. §1738A

**Why:** One court at a time - Return of Children Unlawfully Taken or Retained  
No Dueling Jurisdiction

**Where:** All States and Territories

**What:** Jurisdiction to make custody determinations  
Pre-empt's State Law

### 10 Easy Questions to Navigate the U.S. Child Custody Determination Full Faith and Credit Act

#### I. INITIAL JURISDICTION QUESTIONS

- ☐ 1. **Does Massachusetts (or any other state) have jurisdiction?** §(c) ☐ yes ☐ no
- If not, there is no jurisdiction.
  - If seeking Massachusetts jurisdiction, check MCCJA first
- ☐ 2. **Has the child lived in the state lawfully the last six months?** §(c)(2)(A) ☐ yes ☐ no
- Last 6 months lawful residence = “home state”
  - Was lawful residence within last 6 months, but wrongfully removed or retained
- ☐ 3. **Is there a void?** §(c)(2)(B) ☐ yes ☐ no
- No other state has jurisdiction; or
  - State that has jurisdiction does not want it.
  - Is this the most convenient available forum? §(c)(2)(D)
- ☐ 4. **Is it in the child’s best interests for state to take jurisdiction?** §(c)(2)(B)(ii) ☐ yes ☐ no
- Child plus at least one contestant have significant connection to state; and
  - Substantial evidence is available in the state
- ☐ 5. **Is the child physically present in the state?** §(c)(2)(C) ☐ yes ☐ no
- ☐ 6. **Has the child been abandoned?** §(c)(2)(C)(i) ☐ yes ☐ no
- ☐ 7. **Is the child, a parent, or sibling at risk of abuse unless the state takes jurisdiction?** §(c)(2)(C)(ii) ☐ yes ☐ no

#### INITIAL JURISDICTION REQUIRES AFFIRMATIVE ANSWERS TO:

1 (state has jurisdiction under state law)  
+  
2/home state; or [3/void + 4/best interest]; or  
[5/physical presence + (6/abandoned child or 7/risk of abuse)]

#### References Box

28 U.S.C. §1738A

Care and Protection of Vivian, 420 Mass. 879 (1995)

Delk v. Gonzalez, 421 Mass. 523 (1995)

Hillier v. Hillier, 41 Mass. App. Ct. 486 (1996)

Fortier v. Rogers, 44 Mass. App. Ct. 732 (1998)

Adoption of Yvette, 71 Mass. App. Ct. 327 (2008)

#### II. MODIFICATION JURISDICTION QUESTIONS

- ☐ 8. **Did a different state enter a prior custody or visitation order?** ☐ yes ☐ no
- ☐ 9. **Does the prior state still have jurisdiction under its state law? §(c)(2)(d)** ☐ yes ☐ no
- Jurisdiction conditions continue
  - Child or contestant remains in state
  - Continuing exclusive jurisdiction (“CEJ”) §(c)(2)(h)

#### MODIFICATION JURISDICTION IS PROHIBITED IF:

Answer to Question #8 is affirmative  
+  
Answer to Question #9 is affirmative

#### III. SIMULTANEOUS PROCEEDINGS QUESTION

- ☐ 10. **Is a prior case (with good jurisdiction) still pending? §(c)(2)(g)** ☐ yes ☐ no
- Jurisdiction conditions continue
  - Child or contestant remains in state

**SIMULTANEOUS JURISDICTION IS PROHIBITED**  
Therefore, 2<sup>nd</sup> Court must dismiss  
if answer to Question #10  
is affirmative.