Interstate Child Custody Disputes: Ensuring the Legality of Florida Child Custody Orders

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Abstract

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On December 28, 1980, H.R. 8406 became law. Entitled the Parental Kidnapping Prevention Act of 1980 [PKPA], the United States Congress enacted this law to address the growing problem of "child snatching" between parents holding foreign state child custody decrees. Until then the law was in chaos, due in large measure to the judicial uncertainty of the applicability of the full faith and credit clause to interstate custody decrees. This uncertainty led, in turn, to the inconsistent treatment custody awards received in the state courts. Some states recognized the orders, and enforced them, while others ignored them altogether. Even the first legislative response to this crisis, the Uniform Child Custody Jurisdiction Act [UCCJA], failed to halt the practice of "seize and run" by a disgruntled noncustodial parent seek-

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2. The full faith and credit clause of the United States Constitution provides: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. CONST. art IV, § 1.


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II discusses the enactment of the UCCJIA and its judicial interpretations. Part III is devoted to the passage of the PKPA and its effect on state laws determining jurisdiction in child custody cases. The experience of the Florida courts with the PKPA is detailed in Part IV. Finally, in Part V, the authors suggest practical steps for attorneys and judges to use when determining the status of an interstate custody order under the PKPA.

It is the authors’ contention that knowledge of the PKPA is critical to the enforceability of any Florida custody order. Orders written for Florida residents today can become interstate decrees in a week or a month. So long as noncompliance with the PKPA threatens the validity of the Florida decree, failure to properly apply the PKPA to every child custody case endangers the enforceability of Florida orders in other states.

Part I. Interstate Custody Disputes Before the Uniform Child Custody Jurisdiction Act

A. The Problem of Interstate Child Custody Disputes

Over the years, states have become increasingly concerned with the problems of child snatching and “forum shopping” in child custody cases, particularly because of its detrimental effect on the children. The matter is so serious that it is widely recognized as a major social and legal problem. The predicament intensified in the last half of the
ing to find a more favorable forum. With the PKPA, Congress sought to remedy this patchwork of contradictory laws and interpretations by applying the full faith and credit requirement to provide for nationwide enforcement for all custody orders made in conformity with the act. Yet in the nine years since the passage of the PKPA, only a few Florida appellate courts have cited the PKPA and only one has relied upon it to resolve a child custody dispute. Instead, Florida courts continue to rely solely upon the UCCJA to solve interstate custody disputes. Most of these Florida UCCJA decisions do reach the same result intended by the PKPA. But because of the fundamental differences between the two statutes, many of these UCCJA decisions are wrongly decided under the new federal standards. And a few Florida custody orders, when tested in other states' courts, were invalidated for not meeting the PKPA standards.

This article is intended to inform the Bench and Bar of the importance of this Act and its place in the handling of foreign state child custody decrees. Part I outlines the history of the full faith and credit clause and its application to interstate child custody proceedings. Part II discusses the enactment of the UCCJA and its judicial interpretations. Part III is devoted to the passage of the PKPA and its effect on state laws determining jurisdiction in child custody cases. The experience of the Florida courts with the PKPA is detailed in Part IV. Finally, in Part V, the authors suggest practical steps for attorneys and judges to use when determining the status of an interstate custody order under the PKPA.

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Part I. Interstate Custody Disputes Before the Uniform Child Custody Jurisdiction Act

A. The Problem of Interstate Child Custody Disputes

Over the years, states have become increasingly concerned with the problems of child snatching and "shopping" in child custody cases, particularly because of its detrimental effect on the children. The matter is so serious that it is widely recognized as a major social and legal problem. The predicament intensified in the last half of the century.

5. The UCCJA proved "an imperfect remedy for the staggering national problem of parental child snatching and shopping in interstate child custody disputes." Murphy v. Woerner, 748 P.2d 749, 750 (Alaska 1988); see Interstate Custody Disputes, supra note 3, at 1-6.

6. See Thompson, 484 U.S. at 181-82; Murphy, 748 P.2d at 750; see also In re B.B.R., 566 A.2d 1032, 1038 n.16 (D.C. 1989) (the purpose of the statute is to establish clear guidelines for the determination of jurisdiction); Interstate Custody Disputes, supra note 3, at 1-6 to 1-7.

7. The first Florida case to rely upon the PKPA, Steckel v. Blafas, 549 So. 2d 1211 (Fla. 4th Dist. Ct. App. 1989), was decided October 18, 1989.


12. See infra notes 17-84 and accompanying text.
twentieth century with the rise in the divorce rate, the increasing rate of remarriage, and the mobility of American society. The pattern follows a common scenario: to avoid an adverse decree, parents seize the children and flee to another state to try to get a more favorable ruling. As parents increasingly profit by moving children from one state to another, the problem of child-snatching grew from a local to a national problem. B. Application of the Full Faith and Credit Clause

Prior to the adoption of the Articles of Confederation and the Constitution, the colonies were considered entirely autonomous of one another, as if they were separate and independent sovereign nations of the world. Consequently, the judgments recovered in their respective courts were as foreign judgments to their neighbors. Treated as foreign, these judgments were not given conclusive effect in the courts of


the other colonies, and were often ignored. Instead, the colonies tended to follow the English practice of considering a foreign judgment only as prima facie evidence of what the judgment ordered. This allowed judgments of one colony to be reexamined in another, not only to as jurisdiction but also as to the underlying merits of the controversy.

By the outset of the American Revolution it was seen that if personal and commercial relationships in the new confederacy were to thrive it would be necessary to eliminate those barriers which kept the states apart. Among the barriers to be broken was this uncertain effect of judgments obtained in the different states. Thus the drafters of the Articles of Confederation placed in the document the original full faith and credit clause which, for the first time, required states to give effect to judgments of their sister states.

Shortly thereafter, when the Constitution was drafted, the same clause, with some modification, was adopted by the Constitutional Convention with the same purpose, to weld the separate states into one nation. Pursuant to the authority vested in the Constitution, the first


Section 4, Articles of Confederation, states that full and credit shall be given in each of these states to the records, acts, and judicial proceedings of the Courts and magistrates of every other state.

M. Elmoyle, 38 U.S. (13 Pet.) at 325. 31. See Jenkins v. Putnam, 1 S.C.L. (1 Bay) 8, 10 (Comm. Plea. 1784) (the act of confederation is conclusive on this point). 32. M. Elmoyle, 38 U.S. (13 Pet.) at 325-26. The clause, as modified, states that full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art IV, § 1. The principle variation was the addition of the authority of Congress to prescribe the effect a judgment would have in another state. M. Elmoyle, 38 U.S. (13 Pet.) at 325-26.

33. Johnson v. Muellenger, 340 U.S. 581, 584 (1951); M.E. White Co., 296 U.S.
The twentieth century with the rise in the divorce rate, the increasing rate of remarriage, and the mobility of American society. The pattern follows a common scenario: to avoid an adverse decree, parents seize the children and flee to another state to try to get a more favorable ruling. As parents increasingly profited by moving children from one state to another, the problem of child-snatching grew from a local to a national problem.

B. Application of the Full Faith and Credit Clause

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onstrating that abducted children suffer from the trauma of the abduction and separation from the custodian. Id. at 429 n.4. See also Comment, Intentional Infection of Emotional Distress: Recovery of Damages for Victims of Parental Kidnapping, 1984 S. Ill. L.J. 145, 146-50; First National Conference on Interstate Child Custody and Parental Kidnapping Cases, 4 CHILDREN'S LEGAL RTS. J. (82) 23 (1982).


21. UCCJA, Prefatory Note, 9 U.L.A., Part I, 115, 116 (1988). See also Thompson, 484 U.S. at 180 (parent who lost a custody battle in one state had incentive to reinitiate the issue in another state); Munday v. Munday, 422 So. 2d 233, 236 (Fla. 1983).

22. Foster, supra note 3, at 298; Thompson, 484 U.S. at 180-81 (the parents desire to reinitiate the custody issue in another state led to a national epidemic of parental kidnapping). Cf. Middleton v. Middleton, 227 Va. 82, 91, 314 S.E.2d 362, 366 (1984) (thousands of children are shifted from state to state while their parents battle over their custody in courts of several jurisdictions).

Congress passed legislation to implement the full faith and credit clause.\textsuperscript{24} The statute is presently codified at 28 U.S.C. § 1738.\textsuperscript{25}

The enactment of the Constitution and statute, though, did not immediately settle the controversy between the states. Instead, a great diversity arose over the proper interpretation to be given to the new provisions.\textsuperscript{26} One group of states held the opinion that the new act did not change the previously adopted English practice, the judgment still being only prima facie evidence.\textsuperscript{27} Others thought the law had dramatically changed.\textsuperscript{28} This group held that Congress did intend to declare that valid foreign judgments stood on the same footing as domestic judgments, thus granting them preclusive effect.\textsuperscript{29}

at 277 (full faith and credit transforms the states into an integral part of a single nation).


35. The statute provides:

Such Acts, records, and judicial proceedings or copies thereof, not authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.


The language of the statute extended the preclusive effect of a state court's judgment beyond the "of every other State" standard of Article IV to "of every court in the United States" in section 1738. A. Vestal, Res Judicata/Preclusion 430-31 (1969).

The intent was to impose upon federal courts an obligation to recognize and enforce state court judgments equivalent to the obligation imposed on the state courts by the Constitution. American Surety Co. v. Baldwin, 287 U.S. 156, 166 (1932). Mills v. Duryee, 11 U.S. (7 Cranch) 481, 485 (1813); Shreve, Preclusion and Federal Choice of Law, 64 Tex. L. Rev. 1209, 1219 (1986).

36. H.C. Black, supra note 23, § 855 at 1025-27; 34 C.J.S. Judgments § 1062 at 1125 (1925); M. Bigelow, supra note 23, at 294; see J.K. (Hard) 422, 424 (1808) (unhappily, the decisions in all the states are not in unison).


38. M. Bigelow, supra note 23, at 294.

39. Rogers, 3 Ky. (Hard) at 424-25 (1808); Armstrong v. Carson's Exrs. 2 Dall. 302, 303 (Pa. 1794); Green v. Sarmiento, 10 F. Cas. 1117, 1118-19 (C.C.D. Pa. 1840).
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35. The statute provides:

Such Acts, records, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.


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37. E.g., Bartlet v. Knight, 1 Mass. 400 (1805); Hammon & Hattaway v. Smith 3 S.C.L. (1 Brev.) 110 (1802). See also M. Bigelow, supra note 23, at 294.

38. M. Bigelow, supra note 23, at 294.


The impasse was broken in three cases in which the United States Supreme Court established the framework for interpreting the new statute. In Mills, the Court flatly rejected the prima facie evidence position. Instead, the Court held that Congress specifically intended the act to give foreign judgments the same conclusive effect in the forum state as the judgment had in the state where it was rendered. As Justice Story stated, to do otherwise would be to render the clause in the constitution "utterly unnecessary and illusory." In Hampton, decided five years later, Justice Marshall reaffirmed the full faith and credit principal, stating:

the judgment of a state court should have the same credit, validity and effect in every other court of the United States, which it had in the state where it was pronounced.

Finally, in M'Elmoyle, the Court clarified just what "effect" the foreign judgment would have in the other states. The Court declared that a verified judgment does not carry the effect of a domestic judgment with it into the second state, to be immediately enforced there by execution. Rather, the act of Congress made such judgments a debt of record in the rendering state. The judgment is no longer examinable on its merits, but must be made a judgment in the second state by filing suit there, with the original judgment as conclusive evidence of the


41. Mills, 11 U.S. (7 Cranch) at 484; M. Bigelow, supra note 23, at 294-95; H.C. Black, supra note 23, § 856 at 1027-28.

42. Mills, 11 U.S. (7 Cranch) at 484. See M. Bigelow, supra note 23, at 295 (the Constitution and act of Congress give an authenticated judgment the highest, or record, evidence, to which only the plea of nul syl record would be permissible). A plea of nul syl record denies the existence of any such record. Black's Law Dictionary 1216 (4th ed. 1968).

43. Mills, 11 U.S. (7 Cranch) at 485. See also Corwin, The "Full Faith and Credit" Clause, 81 U. Pa. L. Rev. 371, 376 (1933) (the Constitution did not merely intend to reenact the prevailing common law).

44. Hampton, 16 U.S. (3 Wheat.) at 235. Indeed, in Hampton Justice Marshall used language which seemed to show that he regarded the state court judgment as constitutionally entitled, not merely as conclusive evidence of the judgment, "but the validity of a final judgment" in the receiving state. Corwin, supra note 43, at 376 (emphasis in the original). The status of "final judgment" would allow immediate execution without the need for further judicial proceedings in the second state.

45. M'Elmoyle, 38 U.S. (13 Pet.) at 325; H.C. Black, supra note 23, § 862 at 1036.
merits in the second suit.86

Simply stated then, the full faith and credit clause requires that a
judgment handed down in State A be given the same effect in State B
that it would have been given in State A.87 The second court has no
discretion in the matter; it is obligated to respect the decision rendered
by the first court.88 Whatever preclusive effect attaches to the judgment
in State A applies in State B.89

Like her sister states, Florida has historically concluded that the
state will accord full faith and credit to foreign judgments sought to be
enforced in Florida. This long recognized policy traces its roots from
today's modern practice back to 1864 when the Florida Supreme Court
decided Braswell v. Downe,90 holding that Florida will apply full faith
and credit to judgments from other states.91 The principles of law

enunciated in Braswell continue to the present day,88 even if the judg-
ment to be enforced would be unlawful or against public policy if en-
tered by a court of this state.89 As the Florida Supreme Court recently
stated,

The full faith and credit clause is part of an intricate constitutional
scheme to weld the states of this country into a strong union ... [It]
requires each state to recognize the judgments obtained in
courts of sister states in order to preserve one state from selectively
enforcing the laws of the other states.89

C. Application of the Full Faith and Credit Clause to Child Custody
Decrees

If the accepted practice for most judgments was interstate recogni-
tion, the situation was considerably less certain for foreign child cus-
tody decrees. Indeed, as one commentator observed, there was chaos in
custody law due, in part, to the cavalier treatment of custody awards re-
cieved in the sister states.88 Granted, most states claimed they consid-

(ed. 1878).

52. Newton v. Newton, 245 So. 2d 45, 46 (Fla. 1971); Beverly Beach Properties
v. Nelson, 68 So. 2d 604, 609 (Fla. 1953); Workingmen's Co-operative Bank v. Wal-
lace, 151 Fla. 329, 332, 9 So. 2d 731, 732 (1942); Herron v. Passalagia, 92 Fla. 818,
823, 110 So. 539, 541-42 (1926); Cohen v. American Legion, 546 So. 2d 46, 47 (Fla.
1984).

53. An action to recover on a foreign judgment is completely independent from
the original cause of action. Although the Florida legislature has the power to prohibit
certain causes of action, it violates full faith and credit to impose those prohibitions on
the laws of other states. Trauger v. A.J. Spagnol Lumber Co., Inc., 442 So. 2d 182,
183 (Fla. 1983) (confession of judgment); accord United Mercantile Agencies v. Ba-
somter, 155 Fla. 22, 19 So. 2d 466 (1944); M & K Inv. Co. v. Hacker, 311 So. 2d
1099 (Fla. 5th Dist. Ct. App. 1987) (gambling debts); GNLV Corp. v. Featherstone,
504 So. 2d 63 (Fla. 4th Dist. Ct. App.), rev. denied sub nom., Featherstone v. GNLV
Corp., 513 So. 2d 1061 (Fla. 1987).

54. Trauger, 442 So. 2d at 183. See also Courthouse v. George, 410 So. 2d 532,
child support order).

55. Foster, supra note 3, at 293 n.3. See Middleton, 227 Va. at 92, 314
S.E.2d at 366 (many states felt free to modify foreign custody decrees almost at will).
This state of affairs was aided and facilitated rather than discouraged by the law.

86. M'Elmoyle, 38 U.S. (13 Pet.) at 324-25 & 326; Corwin, supra note 43, at
377; H.C. Black, supra note 23, § 862 at 1036 (the holder of a judgment, desiring to
enforce it in another state, must sue upon it in the latter state).

87. Id. at 434-35.

88. Id. at 435. Just because State B must respect the State A judgment does not
mean that it is required to give it more than what it would have received at home. "A
judgment has no constitutional claim to a more conclusive or final effect in the State of
the forum than it has in the State where it was rendered." New York ex rel. Halvey v.
Halvey, 330 U.S. 610, 614 (1947). See also Luneburg, The Opportunity to Be Heard
and the Doctrines of Preclusion: Federal Limits on State Law, 31 VILL. L. REV. 81,
145-46 (1956) (the law of preclusion of the state of rendition becomes the body of
governing law that determines the preclusive effect of a judgment in every other state
and in the federal courts). Thus the full faith and credit does not foreclose all defenses
to the original judgment. The judgment is to be conclusive except for those causes
which would be sufficient to set aside a final judgment in the rendering state.
M'Elmoyle, 38 U.S. (13 Pet.) at 326.

89. 11 Fla. 62 (1864), Braswell was not the first case in which the Supreme
Court of Florida followed the full faith and credit principal. That was made earlier in
Porter v. Bevill, 2 Fla. 528, 530 (1849) and Carter v. Bennett, 6 Fla. 214 (1855).

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Simply stated then, the full faith and credit clause requires that a judgment handed down in State A be given the same effect in State B that it would have been given in State A.47 The second court has no discretion in the matter; it is obligated to respect the decision rendered by the first court.48 Whatever preclusive effect attaches to the judgment in State A applies in State B.49

Like her sister states, Florida has historically concluded that the state will accord full faith and credit to foreign judgments sought to be enforced in Florida. This long recognized policy traces its roots from today’s modern practice back to 1864 when the Florida Supreme Court decided Braswell v. Downs50 holding that Florida will apply full faith and credit to judgments from other states.51 The principles of law

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51. Braswell, 11 Fla. at 71. Ironically, the Florida Supreme Court’s decision in Braswell was not predicated upon article IV of the U.S. Constitution, but rather the authority of the Constitution of the Confederate States, art. IV, § 1, which is identical to the United States Constitution. Constitution of the Confederate States, art. IV, § 1, reprinted in C.R. Lee, Jr., THE CONFEDERATE CONSTITUTIONS 168 (1974). Nevertheless, Braswell became the precedent for all later full faith and credit case law. Sumner v. Wrightman, 31 Fla. 10, 24-25, 12 So. 526, 530 (1893); Winn v. Strickland, 34 Fla. 610, 630-31, 16 So. 606, 612 (1894). Sumner was the first Florida case to cite article IV, § 1 and 28 U.S.C. § 1738’s predecessor U.S. Rev. Statute § 905, May 26, 1790 (ed. 1878).


53. An action to recover on a foreign judgment is completely independent from the original cause of action. Although the Florida legislature has the power to prohibit certain causes of action, it violates full faith and credit to impose those prohibitions on the laws of other states. Traeger v. A.J. Spagnol Lumber Co., Inc, 442 So. 2d 182, 183 (Fla. 1983) (confession of judgment); United Merchants Agencies v. Bissonne, 155 Fla. 22, 19 So. 2d 466 (1944); M & R Ins. Co. v. Hacker, 511 So. 2d 1099 (Fla. 5th Dist. Ct. App. 1987) (gambling debts); GNLV Corp. v. Featherstone, 504 So. 2d 63 (Fla. 4th Dist. Ct. App.), rev. denied sub nom., Featherstone v. GNLV Corp., 513 So. 2d 1061 (Fla. 1987).


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enunciated in Braswell continue to the present day,52 even if the judgment to be enforced would be unlawful or against public policy if entered by a court of this state.53 As the Florida Supreme Court recently stated,

The full faith and credit clause is part of an intricate constitutional scheme to weld the states of this country into a strong union . . . . [It] requires each state to recognize the judgments obtained in courts of sister states in order to prevent one state from selectively enforcing the laws of the other states. 54

C. Application of the Full Faith and Credit Clause to Child Custody Decrees

If the accepted practice for most judgments was interstate recognition, the situation was considerably less certain for foreign child custody decrees. Indeed, as one commentator observed, there was chaos in custody law due, in part, to the cavalier treatment custody awards received in the sister states.55 Granted, most states claimed they consid-
ered themselves bound by prior determinations of other courts, but
close scrutiny of the case law showed that claim to be more illusion
than fact.98 Indeed, foreign custody decrees were actually refused recog-
nition in other courts in a substantial majority of the cases.99

Instead of the universal acceptance of foreign custody decrees,
case analysis revealed that state recognition practices were divided into
two principal groupings. In the first group,98 the forum state, claiming
to be bound by a prior foreign decision, conferred full faith and credit
on the judgment. But if a participant could claim “changed circum-
cstances” since the time of the previous decree, the forum state could
choose to intervene to modify the order.99 A dilemma arose, then, as to
the amount of changes necessary to invoke the jurisdiction of the sec-
ond state. Predictably, the term “changed circumstances” was suf-
ficiently broad to make it possible for a court to avoid its obligation to
the earlier decree by simply resorting to the expedient of requiring little
evidence of proof of change.99 So in some of the reported cases the
significance of the “change” justifying intervention was not perceptible
to an impartial eye.98 The practical result was that “change of circum-
to which state had jurisdiction or to whether a decree rendered in one state would
be recognized in another. Id.

56. Two reviews of the “actual” state of the law were conducted approximately
ten years apart. In the first, conducted by Professor Stansbury in 1944, approximately
sixty cases were examined, Stansbury, Custody and Maintenance Law Across State
Lines, 10 LAW & CONTEMP. PROBS. 819 (1944), while the second, completed by Pro-
essor Ehrenzweig in 1953, looked at well over 100 custody cases. Ehrenzweig, Inter-

57. Ehrenzweig, supra note 56, at 348.

58. It appears that a substantial majority of the states adhered to this position.

Note, Conflict of Laws - Nonrecognition of Foreign Custody Decrees, 16 U. Miami L.
Rev. 753, 754 (1962).


The “change of circumstances” was the only reason considered by the South Dakota
Supreme Court for refusing to enjoin a minor child’s departure to Canada. In re

60. Stumberg, supra note 59, at 57. See Comment, The Effect of the Parental
[hereinafter Comment, Child Snatching].

61. Stansbury, supra note 56, at 830. See also Stumberg, supra note 59, at 57
(cases reported in which very little indeed seems to have sufficed to justify undertak-
ing a new disposition). Note, Full Faith and Credit for Child Custody Decrees, 11 U. Fla.
L. Rev. 337, 342 (1958) [hereinafter Note, Full Faith and Credit] (courts often used
factual “change of circumstances” that seem of little significance when compared to
the prior litigation).

62. Ehrenzweig, supra note 56, at 352.

63. Note, Full Faith and Credit, supra note 61, at 342.

64. Ehrenzweig, supra note 56, at 352-53; see A.C. FREEMAN, supra note 59, §
1448 at 2982.

65. Ehrenzweig, supra note 56, at 353.

66. Thompson, 484 U.S. at 180; see A.C. FREEMAN, supra note 59, § 1448 at
2982. See also New York ex rel. Halvey, 330 U.S. at 612 n.1 (citing to a Florida statute
which allowed modification of custody orders).

67. Stumberg, supra note 59, at 56; Ehrenzweig, supra note 56, at 353 n.51;
A.C. FREEMAN, supra note 59, § 1448 at 2982. See contra Note, Effect of Custody
Decree in a State Other Than Where Rendered, 81 U. Pa. L. Rev. 570 (1933), which
challenges the contention that custody decrees are not final just because they are modi-

cifiable. Though subject to modification, the custody decree is otherwise binding in the
forum state until it is modified. Id. at 972. This makes the decree amenable to enforce-
ment outside the state. Id.

68. See New York ex rel. Halvey, 330 U.S. at 615 (second state has leeway to
disregard the judgment, to qualify it, or to depart from it as the state in which it
was rendered); see also A. Vestal, supra note 35, at 445 (if first court has the power
to reexamine the custody decree, the second state has the same power as well).

69. Compare the contrary viewpoints of four commentators who surveyed Florida
custody decisions: two, Comment, Full Faith and Credit: Extraterritorial Effect
of Custody Decrees, 13 U. Miami L. Rev. 101, 112 (1958) [hereinafter Comment, Ex-
traterritorial Effect] and Note, Conflict of Laws—Nonrecognition of Foreign Custody
Decrees, 16 U. Miami L. Rev. 753, 755 (1962) [hereinafter Note, Foreign Custody
Decrees] assert that the Florida changes the majority “full faith and credit
until change of circumstances” position, while two others, Ehrenzweig, supra note 56,
at 354 & n.61a, and Annotation, Extraterritorial Effect of Full Award of Custody of
Child of Divorced Parents, in Absence of Substantial Change of Circumstances, 35
A.L.R.3d 520, 561 (1971), believe that Florida follows the minority “not within the
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erred themselves bound by prior determinations of other courts, but close scrutiny of the case law showed that claim to be more illusion than fact. Indeed, foreign custody decrees were actually refused recognition in other courts in a substantial majority of the cases.

Instead of the universal acceptance of foreign custody decrees, case analysis revealed that state recognition practices were divided into two principal groupings. In the first group, the forum state, claiming to be bound by a prior foreign decision, conferred full faith and credit on the judgment. But if a participant could claim "changed circumstances" since the time of the previous decree, the forum state could choose to intervene to modify the order. A dilemma arose, then, as to the amount of changes necessary to invoke the jurisdiction of the second state. Predictably, the term "changed circumstances" was sufficiently broad to make it possible for a court to avoid its obligation to the earlier decree by simply resorting to the expedient of requiring little evidence of proof of change. So in some of the reported cases the significance of the "change" justifying intervention was not perceptible to an impartial eye. The practical result was that "change of circumstances" was rarely more than a manner of speech to support a perceived result, merely a tool enabling the state to refuse to give full faith and credit to the custody decrees of sister states.

The second grouping of states was even more blunt. They abandoned any pretense of recognizing foreign decrees whatsoever, claiming instead complete discretion to reexamine the merits of all custody decrees. They did so by repudiating the full faith and credit clause as inapplicable to child custody cases. Their rationale was simple: since courts entering custody orders generally retained the right to modify them, that order was not "final" and because the decree was not "final" in the first state, it need not be obeyed in any other.

The law in Florida was equally confused. Conflicting decisions issued by the Florida Supreme Court representing both groupings establish the prior litigation.

62. Ehrenzeig, supra note 56, at 352.
63. Note, Full Faith and Credit, supra note 61, at 342.
64. Ehrenzeig, supra note 56, at 352-53; see A. C. Freeman, supra note 59, § 1448 at 2982.
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Reconsidered. And none of the cases overruled the others. In two, for instance, Eddy v. Stauffer and Little v. Franklin, the Court held that custody decrees, being subject to modification elsewhere, were not "final" judgments subject to the full faith and credit clause in Florida. But in other cases, Willson v. Willson, Weldgen v. Weldgen, and Crane v. Hayes, the Court held that Florida courts were obligated to give full faith and credit to foreign custody decrees, absent changed circumstances which would then allow the Florida court to intervene to modify that custody order.

With all this confusion, it might have been expected that the United States Supreme Court would have weighed in to resolve the conflict. Though given the chance to do so, the Court expressly declined to settle the effect of the full faith and credit clause on interstate child custody decrees. Instead, in four cases, when the operation of the clause was the direct subject of the appeal, the court merely considered the issue further by declining to give the states concrete guidance.

70. 160 Fla. 944, 37 So. 2d 417 (1948).
71. 40 So. 2d 768 (Fla. 1949).
72. See Eddy, 160 Fla. at 946, 37 So. 2d at 418; Little, 40 So. 2d at 769. See also State ex rel. Rasco v. Rasco, 139 Fla. 349, 352, 190 So. 510, 511 (1939) (interstate custody decrees are not protected by the full faith and credit clause, the welfare of the child is the primary consideration); Minick v. Minick, 111 Fla. 469, 469 & 491, 149 So. 483, 491 & 492 (1933).
74. 55 So. 2d 905 (Fla. 1951).
75. 62 So. 2d 420 (Fla. 1952).
76. 253 So. 2d 435 (Fla. 1971).
77. See Weldgen, 62 So. 2d at 422; Willison, 55 So. 2d at 906; Crane, 253 So. 2d at 441. See also Lambertson v. Williams, 61 So. 2d 478, 479-80 (Fla. 1952); Frazier v. Frazier, 109 Fla. 164, 168, 147 So. 464, 465-66 (1933).
81. Rainer, Child Custody, supra note 78, at 828; see also Currie, supra note 78, at 115.
82. Taylor & Taylor.
83. The practical effect of the Court's reluctance to take any stand on the full faith and credit jurisdiction has been to withhold all federal controls from interstate custody law. Bodenheimer, supra note 17, at 1213.
84. One authority has gone so far as to remark that the Supreme Court's cases marked the beginning of an era of sanctioned child snatching. Bruch, supra note 20, at 277. Others have been equally critical of the Court's efforts. See Comment, Extraterritorial Effect, supra note 69, at 102 (Supreme Court has not been particularly helpful); Foster, supra note 3, at 297 & n.3; Rainer, Child Custody, supra note 78, at 798 (the Supreme Court's decisions have done little to quiet the dissonance about the problem).
85. Comment, The Parental Kidnapping Prevention Act: Constitutionality and Effectiveness, 33 Case W. Res. L. Rev. 89, 93 (1982) [hereinafter Comment, PKPA Constitutionality]. See Bodenheimer, supra note 17, at 1211 (the decisions nullified any practical effect the full faith and credit clause might have had on custody decrees).
86. Bodenheimer, supra note 17, at 1211.
87. See Strasbury, supra note 56, at 830-31. As was stated by Justice Felix Frankfurter, [c]hildren have a very special place in life which law should reflect . . . . That the child's welfare in a custody case has such a claim upon the State that its responsibility is obviously not to be foreclosed by a prior adjudication reflecting another State's discharge of its responsibility at another time.
88. May, 345 U.S. at 536 (Frankfurter, J., concurring).
89. Professor Leonard G. Rainer pronounced the quintessential statement supporting this position.
90. The custody decree of a court whose jurisdiction is supported by the established home principle ought to receive the protection of the full faith and credit clause . . . . Surely the constitutional policies of res judicata and interstate respect are significant in the adjustment of the parent-child relationship as well as the dissolution of the marital relationship. To discourage abdication, to limit the waste in individual and social resources involved in relitigation, to provide greater psychological stability for the child, to protect the reasonable expectations of the prevailing parent, and to promote federal cohesion, each state should accept and enforce the valid custody determination of every other state without rejudicating previously decided issues.
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lines to determine the impact of out-of-state decrees. The Court's failure to apply full faith and credit to custody decrees made such orders virtually worthless. Indeed, the Supreme Court's rulings gave encouragement to persons bent on retrieving a child lost in the first round of a custody battle.

The national trend for custody cases, then, was inconclusive. By the late 1960s, strong schools of thought held that the full faith and credit clause should not apply in custody cases while others thought it the only method to reduce the abduction of children across state lines.

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Part II. Jurisdiction Questions Under the Uniform Child
Custody Jurisdiction Act

Amid this disarray came the first calls for legislative, as opposed to
judicial, reform for interstate custody disputes. Whether focused on
a state-centered or federal-centered approach, each proposal aspired
to establish more definite parameters to determine which state was best
suited to decide the custody issue. The first legislative effort to reach
fruit was from the Commissioners on Uniform State Laws. The
Commissioners created the Uniform Child Custody Jurisdiction Act,85

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note 78, at 827 n.153 and Ratner, Legislative Resolution, supra note 83, at 189-90.
See also Currie, supra note 78, at 115-18.

87. The National Conference of Commissioners on Uniform State Laws promulgat-
gated the Uniform Child Custody Jurisdiction Act in 1968, reported in Uniform Laws
Annotated, 9 U.L.A., Part I, 115 (1988). The UCCJA was approved by the American
Bar Association on August 7, 1968. A listing of the state laws and statutory citations is
in the Note preceding 5 FLA. STAT. ANN. § 61.1302 (Supp. 1999). For an extensive
discussion of the UCCJA, see Coombs, Interstate Child Custody Jurisdiction: Recog-
nition and Enforcement, 66 MINN. L. REV. 711 (1982) and Bodenheimer, supra note 17.

88. The UCCJA applies only in interstate contests, not intrastate litigation.

89. E.g., Davis v. Davis, 285 Ark. 403, 405, 867 S.W.2d 843, 845 (1994); Bruch v. Shaw,
121 N.H. 562, 571, 432 A.2d 1, 6 (1981); Commissioner ex rel. Zanzi v. Zanzi,
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UCCJA is to "eliminate jurisdictional fishing with children as the bait."); Brown, 195
Conn. at 98, 486 A.2d 1116; Peterson v. Peterson, 464 A.2d 202 (Me. 1983);
Walker v. Luckey, 474 So. 2d 608, 611 (Miss. 1985).

93. See UCCJA § 3, Commissioner's Comment, 9 U.L.A., Part I, 115, 145
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(the Full Faith and Credit clause does, indeed, apply to custody cases); Ratner, Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Carrie and a Proposed Uniform Act, 38 S. CAL. L. REV. 183 (1965) (hereinafter Ratner, Legislative Resolution). See also Note, Effect of Custody Decree in a State Other Than Where Rendered, 81 U. Pa. L. REV. 970 (1933).

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Taking advantage of the legal climate, parents sought to avail themselves of different forums to obtain new custody decrees or modifications of existing ones. Id. at 1-3.

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were strong familial contacts. The Act accomplished this goal by limiting the grounds for subject jurisdiction to four circumstances.


(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(i) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child’s home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in this State; or

(ii) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State and (ii) there is available in this State substantial evidence concerning the child’s present or future care, protection, training and personal relationships; or

(iii) the child is physically present in this State and (ii) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(iv) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.


The first two of the listed grounds of the UCCJA constitute the two principal bases for jurisdiction under the Act. UCCJA § 3, Commissioner’s Comment, 9 U.L.A. 16.
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(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.


After the state issued the initial decree, it was also to be responsible for future modifications. The intention was to force the resolution of modification issues into the same court which granted the initial decree. So long as the jurisdiction continued in the state of the initial order, Section 14 of the UCCJA barred a second state from modifying that order.

Though one state must assume major responsibility to determine custody of a particular child, courts of the other states were to act in partnership to bring about the best possible solution for a child’s future. Working together, using uniform jurisdictional grounds, the ultimate intention was to avoid custody conflicts with the other states.

While the hopes of the Commissioners were high, the system, in general, proved to be less than adequate. The UCCJA suffered from several critical problems. First, as a uniform, rather than a national law the states were not required to adopt the act. Consequently states Part I, 115, 144 (1988); Note, Parental Kidnapping in Arkansas Under the Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act, 10 U.A.K. LITTLE ROCK J. 69 74-75 (1987) [hereinafter Note, Parental Kidnapping]; Note, Thompson supra, at 413.

96. Krauskopf, supra note 18, at 432; see Bruch, supra note 20, at 278.

97. UCCJA § 14, 9 U.L.A., Part I, 115, 292 (1988); Krauskopf, supra note 18, at 432-33; Roby v. Nelson, 15 Fla. L. Weekly 1424, 1425 (4th Dist. Ct. App. 1990). But see Foster, supra note 3, at 303-04. Professor Foster argues that the concept of the “exclusive continuing jurisdiction” received substantial support in the Uniform Commissioner’s debates. Id. That position, however, was rejected in favor of a more flexible approach which might allow the second state, with “significant connections,” to be the better forum to decide the child’s interests. Id.


99. UCCJA, Prefatory Note, 9 U.L.A., Part I, 118; Rogers, 199 Cal. App. 3d at 1210, 245 Cal. Rptr. at 535; Podgett v. Perini, 443 So. 2d 633, 635 (Fla. 1st Dist. Ct. App. 1984); In re Palmer, 12 Ohio St.3d 194, 196, 465 N.E.2d 1312, 1314 (1984), cert. denied, 469 U.S. 1162 (1987). M.D., 336 Pa. Super. at 302, 485 A.2d at 815; McAtee v. McAtee, 323 S.E.2d 611, 613 (W. Va. 1984). The UCCJA was enacted into law in Florida in 1977, in substantially the same form as the uniform law. Ch. 77-433, Laws of Fla. (codified at Fla. STAT. §§ 61.1301 to 61.1348 (1989)). The sections of Chapter 61, Florida Statutes, which are the subject of this article are: (1) § 61.1308 (UCCJA § 3) covering jurisdiction; (2) § 61.1314 (UCCJA § 4) addressing simultaneous proceedings in another state; (3) § 61.1328 (UCCJA § 13) addressing modification of foreign child custody decrees; and (4) § 61.1331 (UCCJA § 14) addressing modification of foreign child custody decrees.

100. Hogue, supra note 18, at 162; Krauskopf, supra note 18, at 434; Interstate Custody Disputes, supra note 3, at 1-6; Comment, KPKA Constitutionality, supra note 80, at 94.

101. See Note, Thompson, supra note 95, at 415; Note, Parental Kidnapping.
were slow to enact it and, when passed, the act was often in a form which differed from other states and from what the Uniform Commissioners envisioned. Stated another way, the Uniform Child Custody Jurisdiction Act was far from being uniform among the states.

Second, and more importantly, even when properly used, the UCCJA was incapable of fulfilling its stated goal: limiting the situs of contentious litigation over a child. From its very inception, the UCCJA continued the practice of concurrent custody jurisdiction in multiple states. By allowing the states to use any of the four grounds as alternative bases to establish jurisdiction, the UCCJA failed to restrict the location of jurisdiction to a single state. This transpired because the

supra note 95, at 76.

102. The UCCJA was first promulgated by the Uniform Commissioners in 1968. UCCJA, Prefatory Note, 9 U.L.A., Part I, 115, 116 (1988). It took over 14 years for all states to adopt the act with North Dakota being the first state in 1969 (July 1, 1969) and Massachusetts being the last to adopt it in 1983 (December 21, 1983). Id. at 115-16. The adoption rate for the states fits the following pattern:

<table>
<thead>
<tr>
<th>Year</th>
<th>State(s)</th>
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<tbody>
<tr>
<td>1968</td>
<td>70</td>
</tr>
<tr>
<td>1971</td>
<td>75</td>
</tr>
<tr>
<td>1976</td>
<td>80</td>
</tr>
<tr>
<td>1981</td>
<td>85</td>
</tr>
</tbody>
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Id.

103. Thompson, 484 U.S. at 181; Meade v. Meade, 812 F.2d 1473, 1476 (4th Cir. 1987); Krauskopf, supra note 94, at 434; Note, Thompson, supra note 95, at 415. The significant variations have in some instances undermined the overall purpose of the UCCJA. *Intestate Custody Disputes, supra note 93, at 1-6. The extent of the variations can be seen by reading the UCCJA published in the Uniform Laws Annotated. After the official version and Commissioner's Comment the U.L.A. prints "Variations from Official Text," state statutes which differ from the Uniform Commissioner's Act. An example of this is found in the differing definitions to the state UCCJA's. UCCJA § 2, 9 U.L.A., Part I, 115, 134-36.

104. The UCCJA was intended to limit the jurisdiction options with an emphasis placed on the "home state" provision. See Ruby, supra note 84, at 783 n.36. But no one alternative could become superior to the other. Instead, each of the four grounds for jurisdiction is separated from the others by the word "or" making the "home state" test no more important than the rest. Ruby, supra note 84, at 777; see State ex rel. W.D. v. Drake, 770 P.2d 1011, 1013 (Utah Ct. App. 1989) (the significant connections analysis is an alternative test to the home state test). Thus the "significant connections" test, paragraph (2) of § 3 comes into play when the home state test cannot be met or as alternative to that test. UCCJA § 3, Commissioner's Comment, 9 U.L.A., Part I, 115, 144 (1988).

105. The UCCJA thus creates the possibility of concurrent or overlapping jurisdiction rather than exclusively lodge jurisdiction in a single state. Foster, supra note 3; at 301; Krauskopf, supra note 18, at 432; Note, Parental Kidnapping, supra note 95, at 877.
were slow to enact it, and, when passed, the act was often in a form which differed from other states and from what the Uniform Commissioners envisioned. Stated another way, the Uniform Child Custody Jurisdiction Act was far from being uniform among the states.

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103. Thompson, 484 U.S. at 181; Meade v. Meade, 812 F.2d 1473, 1476 (4th Cir. 1987); Krauskopf, supra note 18, at 434; Note, Thompson, supra note 95, at 415. The significant variations have in some instances undermined the overall purposes of the UCCJA. Interstate Custody Disputes, supra note 3, at 1-6.

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104. The UCCJA was intended to limit the jurisdiction options with an emphasis placed on the "home state" provision. See Ruby, supra note 84, at 783 n.36. But no one alternative could become superior to the other. Instead, each of the four grounds for jurisdiction is separated from the others by the word "or" making the "home state" test no more important than the rest. Ruby, supra note 84, at 777; See State ex rel. W.D. v. Drake, 770 P.2d 1011, 1013 (Utah Ct. App. 1989) (the significant connections analysis is an alternative test to the home state test). Thus the "significant connection" test paragraph (2) of § 3 comes into play when the home state test cannot be met or as alternative to that test. UCCJA § 3, Commissioner's Comment, 9 U.L.A., Part I, 115, 144 (1988).

105. The UCCJA thus creates the possibility of concurrent or overlapping jurisdiction rather than exclusively lodge jurisdiction in a single state. Foster, supra note 5, at 301; Krauskopf, supra note 18, at 432; Note, Parental Kidnapping, supra note 95, at 75; see also In re Marriage of McEvoy, 414 N.W.2d 855, 857 (Iowa Ct. App. 1987)

UCCJA gave equal weight to all the listed alternatives, particularly the "home state" and "significant connections" bases, rather than assigning priority to any one of the jurisdictional grounds.

The result of these shortcomings has been a succession of the state court interpretations which have undermined the Act's utility by expanding the opportunities for jurisdiction in more than one state. Instead of reducing the level of interstate litigation, the incentive for forum shopping still remained.

Part III. The Parental Kidnapping Prevention Act

A. Passage of the PKPA

Because of the continuing magnitude of this crisis, only a national, rather than uniform, solution would solve the child snatching problem (concurrent jurisdiction is possible and exists in this case).

In his article comparing the PKPA to the UCCJA, Judge Alvin Ruby examined the Virginia statute adopting the UCCJA, Va. Code Ann. §§ 20-125 to 146 (Cum. Supp. 1982). Ruby, supra note 84, at 773 n.1. He found that the statute permitted alternative bases for jurisdiction. Id. at 777. The relevant Virginia section, Va. Code Ann. § 20-126 (Cumm Supp. 1982), Id. at 782 n.32, is virtually identical to the Florida statute adopting UCCJA § 3, Fla. Stat. § 61.1308 (1) (1989). Florida cases interpreting § 61.1308 (1) have found it to permit concurrent jurisdiction with other states. See, e.g., Alvarez v. Alvarez, 15 Fla. L. Weekly 993, 994 (3d Dist. Ct. App. 1990); Worth, 554 So. 2d at 586 (concurrent jurisdiction in Ohio and Florida); Hickey v. Baxter, 461 So. 2d 1364, 1368-69 (Fla. 1st Dist. Ct. App. 1984) ("it is possible under the act for several states to have jurisdiction over a custody dispute").


The UCCJA's failure to expressly prioritize the jurisdictional bases led to competition or concurrent jurisdiction between states with "home state" and "significant connection" jurisdiction. Interstate Custody Disputes, supra note 3, at 3-3.


108. Note, Parental Kidnapping, supra note 95, at 75 (concurrent UCCJA jurisdiction continues to promote forum shopping by non-custodial parents); Comment, The Effect of the Parental Kidnapping Prevention Act of 1980 on Child Snatching, 17 New Eng. L. Rev. 499, 506 (1982) [hereinafter Comment, Effects of PKPA] (UCCJA has had little impact in curing deficiencies which permit child snatching to flourish); Krauskopf, supra note 18, at 432.
made by a court of another state," thus making this act the "most sweeping change in the past two hundred years in the implementation of the full faith and credit clause." This is a dramatic change which underscores the philosophical differences between the UCCJA and the PKPA. On the one hand, the UCCJA deliberately provides greater jurisdictional flexibility and accords the best interests of the child as top priority, while on the other hand, the PKPA obligates full faith and credit, with certainty and stability of the judgment given priority.


There is disagreement, however, over the PKPA's extension to proceedings not specifically mentioned in the statute. These include ADOPTIONS: In re B.B.K., 566 A.2d at 1041 n.26 (adoption proceeding is a PKPA "custody determination"); Souza v. Superior Court, 193 Cal. App. 3d 1304, 1309-10, 238 Cal. Rptr. 892, 895 (Cal. App. 1987) (same); DEPENDENCY PROCEEDINGS: compare, In re Pima County Juvenile Action, 147 Ariz. 527, 532-33, 711 P.2d 1200, 1205-06 (Ariz. 1985), adf in part and vacated in part on other grounds, 147 Ariz. 584, 712 P.2d 431 (1986) (the PKPA applies to dependency proceedings) with State ex rel. Department of Human Servs. ex rel. Avinger, 104 N.M. 255, 257, 720 P.2d 290, 292 (1986) (the PKPA does not include dependency cases); and TERMINATION OF PARENTAL RIGHTS: Williams v. Knott, 690 S.W.2d 605, 608 (Tex. Ct. App. 1985) (termination of parental rights proceeding is not a "custody determination"); State ex rel. W.D., 770 P.2d at 1013 n.1.

Unquestionably, § 1738A(b)(3) lays to rest the prior argument that a temporary custody decree, not being final, is not treated with full faith and credit. E.g., Belosky v. Belosky, 97 N.M. 365, 640 P.2d 471 (1982) (enforcing an Ohio temporary order citing § 1738A(b)(3) to support holding that temporary custody order is a "custody determination").

116. Ruby, supra note 84, at 775; Comment, Effects of PKPA, supra note 108, at 509. See Thompson, 484 U.S. at 187.

The PKPA section implementing these goals, 28 U.S.C. § 1738A(a), states: [t]he appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

117. Ruby, supra note 84, at 775 (citing Foster and Fred, Law and the Family: Child-Custody Decrees-Jurisdiction, N.Y.L.J., April 24, 1981, at 1, col. 1). 118. Foster, supra note 3, at 302-03; S. Frederick P., 115 Misc. 2d at 334, 454 N.Y.S.2d at 204.

119. Foster, supra note 3, at 301-03.

120. Id. As the court, in Ex parte Lee, 445 So. 2d 287 (Ala. Civ. App. 1983), noted, "the federal act is very rigid, permits the exercise of little or no judicial discretion and seeks to give more certainty to the assumption by courts in interstate custody conflicts." Id. at 290; accord Mitchell v. Mitchell, 437 So. 2d 122, 126 (Ala. Civ. App. 1983).
The United States Congress, therefore, enacted the Parental Kidnapping Prevention Act of 1980 [PKPA], to establish those standards for all states to use in deciding which court had jurisdiction to determine the child custody dispute. Like the UCCJA, the PKPA is intended to promote cooperation between states courts, facilitate enforcement of child custody decrees from sister states, deter parental abduction of children to obtain custody or visitation awards and avoid jurisdictional competition and conflict between state courts in matters of child custody and visitation. Only this time a federal-centered approach was adopted.

The “tour de force” of the PKPA is the premise which requires that full faith and credit be given to child custody determinations.

109. Meade, 812 F.2d at 1476; Murphy, 748 P.2d at 750. Cf. Hogue, supra note 18, at 165 (PKPA was adopted, in part, because all states had not enacted the UCCJA).


111. 94 Stat. at 3569; Thompson, 484 U.S. at 181-82; Brown, 195 Conn. at 119, 486 A.2d at 1128; In re B.B.R., 566 A.2d at 1036-37; Gasser v. Sperry, 93 N.C. App. 72, 376 S.E.2d 478, 480 (1989); Voninski v. Voninski, 661 S.W.2d 872, 875 (Tenn. Ct. App. 1982), overruled on other grounds, State ex rel. Copper v. Hamilton, 688 S.W.2d 821 (Tenn. 1985). The Act was adopted, in part, as a response to the fact that, in 1980, not all states had enacted the UCCJA. Hogue, supra note 18, at 165. See supra note 102 and accompanying text, listing the dates of enactments of the UCCJA.

112. Bruch, supra note 20, at 285 (promotes family stability and serves the needs of federalism).

113. Many courts have recognized this point as one of the primary purposes of the PKPA. Brown, 195 Conn. at 118, 486 A.2d at 1127-28; Peterson, 464 A.2d at 204; Owens, by and through, Mosley v. Huffman, 481 So. 2d 231, 239 (Miss. 1985); E.E.B. v. D.A., 89 N.J. 595, 603, 446 A.2d 871, 876 (1982), cert. denied, 459 U.S. 120 (1983); Sams, 384 S.E.2d at 156.


115. A “custody determination” is defined as:

“...custody determination” means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and included permanent and temporary orders, and initial orders and modifications: ...28 U.S.C. § 1738A(b)(3) (1982).

The PKPA’s definition of “custody determination” is identical to that of the UCCJA. For instance, the UCCJA, Florida UCCJA, Fla. Stat. § 61.1106(2) (1989), and the PKPA, 28 U.S.C. § 1738A(b)(3) (1982), each define “custody determination” to include the visitation of a child. Heartfield v. Heartfield, 749 F.2d 1138, 1142-43 made by a court of another state thus making this act the “most sweeping change in the past two hundred years in the implementation of the full faith and credit clause.” This is a dramatic change which underscores the philosophical differences between the UCCJA and the PKPA. On the one hand, the UCCJA deliberately provides greater jurisdictional flexibility and accords the best interests of the child as top priority, while on the other hand, the PKPA obligates full faith and credit, with certainty and stability of the judgment given priority.
To accomplish this, the PKPA ascribes to two interrelated rules. First, it dictates which sister-state custody decrees are entitled to protected status under the PKPA.\textsuperscript{182} By eliminating concurrent jurisdiction, the act isolates the one state which can legitimately exercise custody jurisdiction.\textsuperscript{183} The PKPA does not recognize alternative jurisdictional conditions under which any order would be equally entitled to enforcement.\textsuperscript{184} Rather, it confers a virtual jurisdictional monopoly on the state which qualifies as the child’s “home state”\textsuperscript{185} by a 1982 (federal act is more rigid, allows less judicial discretion and has attempted to provide more certainty); Comment, Effects of PKPA, supra note 108, at 513 (rigid federal rule withdraws wide discretion formerly enjoyed under the UCCJA); see also Samu, 384 S.E.2d at 156 (the PKPA provides for the mandatory nationwide enforcement of custody orders); Note, Parental Kidnapping, supra note 95, at 76 (the PKPA makes deference to out-of-state custody decrees mandatory).  

121. Bruch, supra note 20, at 284; Ruby, supra note 84, at 775-76; cf. Stanley v. Alabama, Dept. of Human Resources, So. 2d , 1990 WL 4529 (Civ. App. 1990) (PKPA dictates which state is the proper forum to determine interstate custody issues). The PKPA establishes an order of “protected status” case analysis. First, only custody orders “made consistently with the provisions” of the PKPA are eligible for protected status, § 1738A(a), which the act defines in § 1738A(a). Once state of the Act § 1738A(f) forecloses concurrent or subsequent proceedings in another state “even if the second state” would have been empowered to take jurisdiction in the first instance,” Thompson, 484 U.S. at 177, until the conditions of § 1738A(f) to modify a prior order are met. The ultimate effect is that § 1738A(g) establishes a “first-in-time” rule for determining which state’s jurisdiction is to be exclusive and continuing. In re B.B.R., 566 A.2d at 1037 n.13.  

122. One of the principal results of the PKPA is the elimination of concurrent jurisdiction. Two states may no longer validly exercise concurrent custody jurisdiction. Hogue, supra note 18, at 165; see Thompson, 484 U.S. at 177. If two states concurrently render custody decrees, one state has asserted jurisdiction in violation of federal law. Hogue, supra note 18, at 165 (citing Flood v. Braaten, 727 F.2d 303, 310 (3d Cir. 1984)).  

Compare this analysis of the effect of the PKPA to the continuing Florida practice of finding concurrent jurisdiction ten years after the effective date of the Act, E.g. Alvares, 15 Fla. L. Weekly at 994; Worth, 554 So. 2d at 586 (concurrent jurisdiction in Ohio and Florida); Newcomb, 507 So. 2d at 1145 (concurrent jurisdiction in California and Florida); Hickey, 461 So. 2d at 1368 (“it is readily apparent, therefore, that concurrent jurisdiction exists in Florida and in Virginia”).  

123. Krauskopf, supra note 18, at 436-37; see Ruby, supra note 84, at 777.  

124. Foster, supra note 3, at 333. The PKPA defines “home state” as: “home State” means the State in which, immediately preceding the time involved, the child lived with his parent, a parent, or a person acting as his parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any such persons are preferred ranking of the available jurisdictional bases.\textsuperscript{186} As a conse-

\textsuperscript{182} counted as part of the six-month period or other period; 28 U.S.C. § 1738A(b)(4) (1982). This definition of the child’s “home state” under the PKPA is identical to the UCCJA’s definition of “home state.” Sama, 384 S.E.2d at 155 n.10.  

Home state means the state in which the child immediately preceding the time involved, lived with his parents for at least six consecutive months. 28 U.S.C. § 1738A(b)(4). Home state jurisdiction continues for six months after the child has left the state, until the child has established a new “home state” elsewhere. § 1738A(c)(2)(A)(i); see Ex parte Lee, 445 So. 2d at 289 (action commenced 6 days after the child left Alabama); Belosky v. Belosky, 97 N.M. 365, 368, 640 P.2d 471, 474 (1982) (action commenced 20 days after the child left Ohio); Rickey D.C. v. Carol A.C., 139 Misc. 2d 826, 528 N.Y.S.2d 786 (Fam. Ct. 1988).  

125. Note, Parental Kidnapping, supra note 95, at 76; Interstate Custody Disputes, supra note 3, at 3-4. This is a crucial distinction between the PKPA and the UCCJA which did not prioritize its jurisdictional bases. Interstate Custody Disputes, supra note 3, at 3-3. The jurisdictional bases are found in 28 U.S.C. § 1738A(c)(2). They are as follows:  

(A) Such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from the State because his removal or retention by a parent or for other reasons, and a parent or other person has consented to residence in such State;  

(B)(i) It appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than the mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training and personal relationships;  

(C) the child is physically present in such State and (I) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;  

(D)(i) It appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or  

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.  


The language in § 1738A(c)(2), and in particular the limitation of (c)(2)(B)(i), gives the “home state” priority over its primary jurisdictional rival “significant connec-
To accomplish this, the PKPA ascribes to two interrelated rules. First, it dictates which state sister-state custody decrees are entitled to protected status under the PKPA. By eliminating concurrent jurisdiction, the act isolates the one state which can legitimately exercise custody jurisdiction. The PKPA does not recognize alternative jurisdictional conditions under which any order would be equally entitled to enforcement. Rather, it confers a virtual jurisdictional monopoly on the state which qualifies as the child’s “home state” by a 1982 federal act more rigid, allows less judicial discretion, and has attempted to provide more certainty. Comment, Effects of PKPA, supra note 108, at 513 (rigid federal rule withdraws wide discretion formerly enjoyed under the UCCJA); see also Samuels, 384 S.E.2d at 156 (the PKPA provides for the mandatory nationwide enforcement of custody orders); Note, Parental Kidnapping, supra note 95, at 76 (the PKPA makes deference to out-of-state custody decrees mandatory). The PKPA establishes an order of “protected status” case analysis. First, only custody orders “made consistently with the provisions” of the PKPA are eligible for protected status, § 1738A(a), which the act defines in § 1738A(c). Once established, § 1738A(d) forecloses concurrent or subsequent proceedings in another state “even if [the second state] would have been empowered to take jurisdiction in the first instance.” Thompson, 464 U.S. at 277, until the conditions of § 1738A(f) are satisfied. The ultimate effect is that § 1738A(d) establishes a “best-in-time” rule for determining whether a child’s “home state” is to be exclusive and continuing. In re B.R.B., 566 A.2d at 1037 (N.J. 1989).

122. Two of the principal results of the PKPA is the elimination of concurrent jurisdiction. Two states may no longer validly exercise concurrent custody jurisdiction. Hague, supra note 18, at 165; see Thompson, 464 U.S. at 177. If two states concurrently render custody decrees, one state has asserted jurisdiction in violation of federal law. Hague, supra note 18, at 165 (citing Flood v. Braintree, 72 F.2d 203, 310 (5th Cir. 1944)).

Compare this analysis of the effect of the PKPA to the continuing Florida practice of finding concurrent jurisdiction ten years after the effective date of the Act. Ex. A. Alvarez, 15 Fla. L. Weekly at 1994; Wyckoff, 554 So.2d at 586 (concurrent jurisdiction in Ohio and Florida); Newcomb, 507 So.2d at 1145 (concurrent jurisdiction in California and Florida); Rickett, 461 So.2d at 1368 (“it is readily apparent, therefore, that concurrent jurisdiction exists in Florida and in Virginia”).

123. Kreuselkopf, supra note 18, at 436-37; see Ruby, supra note 64, at 177. 124. Foster, supra note 3, at 313. The PKPA defines “home state” as “home state” means the State in which, immediately preceding the time involved, the child lived with his parent, a parent, or a person acting as his parent, for at least six consecutive months and, in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any such persons are counted as part of the six-month period or other period.

28 U.S.C. § 1738A(d)(4) (1982). This definition of the child’s “home state” under the PKPA is identical to the UCCJA’s definition of “home state.” Samuels, 384 S.E.2d at 152 n.20.

Home state means the state in which the child, immediately preceding the time involved, lived with his parents for at least six consecutive months. 28 U.S.C. § 1738A(a)(4). Home state jurisdiction continues for six months after the child has left the state, until the child has established a new “home state” elsewhere. § 1738A(a)(4)(B); see Ex parte Lee, 445 So.2d at 289 (action commenced 6 days after the child left Alabama); Belinsky v. Belinsky, 97 N.M. 365, 368, 640 P.2d 471, 474 (1982) (action commenced 20 days after the child left Ohio); Rickel v. Cant A.C., 139 Misc. 2d 826, 528 N.Y.S.2d 786 (Fam. Ct., 1988).

125. Note, Parental Kidnapping, supra note 95, at 36; Interstate Custody Disputes, supra note 3, at 3-4. This is a crucial distinction between the PKPA and the UCCJA which did not prioritize its jurisdictional bases. Interstate Custody Disputes, supra note 3, at 3-3. The jurisdictional bases are found in 28 U.S.C. § 1738A(d)(2).

They are as follows:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from the State because his removal or retention by a nonparent or for other reasons, and a nonparent or other person resides in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A); and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one nonparent, have a significant connection with such State other than the mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training and general development;

(C)(i) the child is physically present in such State and (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with serious injury or exploitation;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A); and (ii) it is in the best interest of the child that such Court assume jurisdiction;

(E) the court of the State in which the child is absent from the State has been notified of the suit or action;
quency, the exclusive jurisdiction of the home state ordinarily means that only its decrees will be entitled to recognition and enforcement under the PKPA.

Second, the PKPA drastically limits the subsequent intervention by other states in a child custody dispute. It prohibits the exercise of concurrent jurisdiction by a second state if a prior protected order exists by maintaining exclusive and continuing jurisdiction in the first state issuing a valid decree. So long as the custody case is still pending in the first state, every other state is forbidden to assume modification jurisdiction.

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

A court of a State shall not exercise jurisdiction in any other proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

A court of a State may modify a determination of the custody of the same child made by the court of another State, if—

1. it has jurisdiction to make such a custody determination; and

2. it no longer has jurisdiction, or it has determined to exercise such jurisdiction to modify such determination.


As one court has characterized it, the PKPA gives "little leeway to the court of the second state when the home state enters an order regarding custody." Garrett v. Garrett, 292 Ark. 584, 587, 732 S.W.2d 127, 129 (1987).


The PKPA grants the home state court’s "continuing" jurisdiction in 28 U.S.C. § 1738A(d), which states:

The primary of "home state" jurisdiction, 28 U.S.C. § 1738A(c)(2)(A), and the mandates of 28 U.S.C. § 1738A(e), creates a primary jurisdictional basis binding of all state courts when drafting custody orders. Comment, Effects of PKPA, supra note 108, at 512.
quency, the exclusive jurisdiction of the home state ordinarily means that only its decrees will be entitled to recognition and enforcement under the PKPA. Second, the PKPA drastically limits the subsequent intervention by other states in a child custody dispute. It prohibits the exercise of concurrent jurisdiction by a second state if a prior protected order exists by maintaining exclusive and continuing jurisdiction in the first state issuing a valid decree. So long as the custody case is still pending in the first state, every other state is forbidden to assume modification jurisdiction.


As one court has characterized it, the PKPA gives “little leeway to the court of the second state when the home state enters an order regarding custody.” Garrett v. Garrett, 292 Ark. 584, 587, 732 S.W.2d 127, 129 (1987).


The PKPA grants the home state’s “continuing” jurisdiction in 28 U.S.C. § 1738A(d), which states:

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.


130. Foster, supra note 3, at 332; 4 ABRAMS, supra note 127, § 73.33[5] at 73-94; see also In re Larchet, 782 F.2d 66, 68 (4th Cir. 1989) (second state to abstain from taking jurisdiction while another state’s court has jurisdiction); Sunday, 1990 WL at 4529 (Alabama can not assume jurisdiction since Florida continues its exclusive jurisdiction). Cf. Krauskopf, supra note 18, at 438 (if the initial state continues to have jurisdiction according to its own laws, the only federal basis for allowing a second state to modify is that the initial state has declined to exercise jurisdiction) (emphasis in the original); Hamill v. Bower, 487 So. 2d 345, 347 (Fla. 1st Dist. Ct. App. 1986) (under UCCJA all modification petitions must be addressed to state which rendered original decree).

The PKPA section implementing these goals, 28 U.S.C. § 1738A(a), states:

[1] the appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

B. The PKPA Is the Exclusive Rule to Follow to Determine Jurisdiction for Child Custody Modification

Until the passage of the PKPA there was no question but that the UCCJA was dispositive for the enforcement and modification of foreign child custody proceeding. With the enactment of the PKPA, however, some question arose as to which of the two determined whether a custody decree was entitled to protected status. Relying upon the Supremacy Clause of the United States Constitution, the commentators uniformly agreed that the PKPA became the exclusive tool to use to determine whether a prior decree was entitled to full faith and credit. They concluded that the PKPA overrides the UCCJA in the selection of the procedures to find which decree is superior because it imposes a federal duty, binding on all states, to enforce prior custody orders. The "plain fact is that the PKPA does supersed the UCCJA as to the enforcement and modification of prior orders and decrees, and it does impose [on the states] its home state bias." Clearly the PKPA contributes to the extent that state courts must disregard the UCCJA when its structures and provisions come into conflict with the PKPA.

Similarly, state courts in all jurisdictions addressing the issue have likewise ruled the PKPA provides the operational guidelines for the enforcement or modification of foreign child custody decrees. Whether

131. In Florida the UCCJA provisions of Chapter 61 which governed enforcement and modification of foreign judgments were FLa. STAT. §§ 61.1308, 61.1328, and 61.133 (1989).

132. U.S. CONST. art. VI provides in part: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

133. Ruby, supra note 84, at 777-78 (PKPA articulates a federal policy of preemption so that the PKPA must be accorded priority); Foster, supra note 3, at 533-34; cf. Bruch, supra note 20, at 283-84 (Texas jurisdictional rules are subject to the constraints of the supremacy clause).

134. Foster, supra note 3, at 334.

135. Hogue, supra note 18, at 165.

136. Krauskopf, supra note 18, at 435.

137. Foster, supra note 3, at 336 (emphasis in the original).

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Clearly the PKPA controls to the extent that state courts must disregard the UCCJA when its structures and provisions come into conflict with the PKPA.

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137. Foster, supra note 3, at 336 (emphasis in the original).

138. Id. at 300.
prescribes a rule of decision which state courts are to use in adjudicating interstate custody disputes. The PKPA controls the state proceeding because section 1738A is the Congressional expression of the full faith and credit clause of the United States Constitution as applied to the peculiar circumstances of interstate child custody cases. In practice, "[o]nce a state exercises jurisdiction consistent with the provisions of the [PKPA], no other state may exercise concurrent jurisdiction over the custody dispute, ... and all States must accord full faith and credit to the first State's ensuing custody decree." To accomplish this, the statutory scheme provides detailed rules for state courts to follow to determine the one state capable of rendering a valid custody order. The Act thus "imposes a duty on the States to enforce a [prior] child custody determination entered by a court of a sister State if the [first] determination is consistent with the provisions of the Act." The Thompson decision is a radical departure from the earlier cases of Ford and Kovacs. Unlike those cases, which left unsettled the status of full faith and credit, the Thompson decision clarifies that the states and their courts must follow the standards incorporated into the PKPA.

instead for a full faith and credit approach in the state courts. Thompson, 484 U.S. at 185 & 187.

143. 484 U.S. at 183.
144. Id. (PKPA is an "addendum" to the full faith and credit clause). See also Salisbury v. Salisbury, 657 S.W.2d 761, 764 (Tenn. Ct. App. 1983).
145. Thompson, 484 U.S. at 177, 28 U.S.C. § 1738A(g) (1982); see Salisbury, 657 S.W.2d at 768.
146. See Leyda, 398 N.W.2d at 819; Mitchell, 437 So. 2d at 126 (Federal act is more rigid, allows less judicial discretion and eliminates many of the instances of concurrent jurisdiction permitted by the UCCJA).
147. Thompson, 484 U.S. at 175-76.
148. Barron, The Good, the Bad and the Ugly: A Supreme Look at the PKPA, 8 PROB. & LJ 339, 346 (1988). Writing for the majority, Justice Marshall, addressing the argument that the states could not be trusted to enforce the PKPA, stated: State courts faithfully administer the Full Faith and Credit Clause every day; now that Congress has extended full faith and credit requirements to custody orders, we can think of no reason why the courts' administration of federal law in custody disputes will be any less vigilant.

484 U.S. at 187; accord In re Larch, 872 F.2d at 68.

149. See Sams, 384 S.E.2d at 164 n.5 (Miller, J., concurring) (finding that Florida has a history of ignoring out-of-state custody decrees (citing Baker, Does Florida Create Jurisdictional Deadlocks?, 62 FLA. B.J. 43 (March 1988)).
150. This article was submitted for publication on June 19, 1990.
151. The authors conducted a Westlaw search under FLA STAT §§ 61.1308, 61.1314, 61.1326, 61.1328, 61.133 and 61.1332 (1989) to discover the number of cases cited in the text. Copies of these computer runs are on file with the Nova Law Review.
152. The following Florida interstate custody cases have specifically cited the PKPA: Streekel, 549 So. 2d at 1211; Johnson v. Denton, 542 So. 2d 447, 449 n.1 (Fla. 5th Dist. Ct. App. 1989); De La Pena v. Torre, 467 So. 2d 336, 339 (Fla. 5th Dist. Ct. App. 1988); Mainster v. Mainster, 466 So. 2d 1228, 1229 (Fla. 2d Dist. Ct. App. 1985); Nussbaumer v. Nussbaumer, 442 So. 2d 1094, 1098 n.8 (Fla. 5th Dist. Ct. App. 1983). Of these, all but Streekel have relied on the UCCJA for the rule of decision.
153. The first case to rely upon the PKPA, Streekel, 549 So. 2d at 1211, was issued October 18, 1989. In this case the mother and father were married and divorced in New York, which also issued the initial custody decree. Id. at 1212. After the dissolution the father moved to New Jersey and the mother and child to Florida. Id. Thereafter, the mother moved in the Broward County Circuit Court to modify the New York order. Id. The father moved to dismiss the motion for lack of jurisdiction in the Florida courts. Id. The motion was granted but the Fourth District Court of Appeal reversed. Id. Using primarily a UCCJA analysis, the court found that the PKPA, while not preempting Florida law, was binding on New York jurisdiction questions. Id. at 1213. Since none of the contestants or child still lived in New York, § 1738A(f) precludes further New York jurisdiction thus allowing Florida to assume jurisdiction. Id.
154. The Fifth District Court of Appeal has, on three occasions, referred to the PKPA. In Johnson, 542 So. 2d at 447, the court, in dicta, implied that § 1738A(f) prohibited Florida from modifying an Arkansas custody determination because Arkansas was exercising continuing jurisdiction under § 1738A(d). Id. at 449 n.1. And in Nussbaumer, 442 So. 2d at 1094, the court referenced § 1738A(f) as alternative support to the UCCJA analysis. Id. at 1098 n.8.
155. Indeed, the only court in Florida to extensively evaluate the applicability of the PKPA to Florida custody decrees has been the United States District Court for the Northern District of Florida. McDonough v. Jensen, 596 F. Supp. 680, 685-88 (N.D. Fla. 1984), aff'd, 786 F.2d 1465 (11th Cir. 1986), cert. denied, 479 U.S. 880 (1987). The use of the federal court in this case is now an anomaly as the underlying predicate
prescribes a rule of decision which state courts are to use in adjudicating interstate custody disputes. The PKPA controls the state proceeding because section 1738A is the Congressional expression of the full faith and credit clause of the United States Constitution as applied to the peculiar circumstances of interstate child custody cases. In practice, "[a] State exercises jurisdiction consistent with the provisions of the [PKPA], no other State may exercise concurrent jurisdiction over the custody dispute, . . . and all States must accord full faith and credit to the first State's ensuing custody decree." To accomplish this, the statutory scheme provides detailed rules for state courts to follow to determine the one state capable of rendering a valid custody order. The Act thus "imposes a duty on the States to enforce a [prior] child custody determination entered by a court of a sister State if the [first] determination is consistent with the provisions of the Act."  

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143. 484 U.S. at 183.

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484 U.S. at 187; accord In re Larch, 872 F.2d at 68.
In fact, courts continue to begin interstate custody opinions with some statement to the effect that "this case is governed by the UCCJA."144 This failure to apply the PKPA is not just a matter of form, but substance, merely using the wrong method to get to the right result. Because of the vast differences between the UCCJA and the PKPA,145 continued reliance on the Florida UCCJA alone, can seriously impair the validity of Florida custody orders.146 One result of the failure to use the PKPA is vividly demonstrated by In re Marriage of Leyda.147 In this case, one month after the Iowa Supreme Court affirmed an order granting sole custody of the child to the father,148 the mother filed an action in Florida seeking to void the Iowa judgment on, in the alternative, to modify the Iowa order to grant custody to her. The father appeared in Florida to contest the change of custody. The father and mother entered into a stipulation in which it was agreed Florida was the "home state" of the child,149 and the mother would provide the primary physical residence for the child, subject to reasonable visitation by the father. The father did not stipulate, however, that Florida had jurisdiction to modify the Iowa order. When the father failed to return the child to Florida after a summer vacation in Iowa, the mother brought a habeas corpus proceeding there to enforce the Florida order. The Iowa trial court granted the writ but on appeal to the Iowa Supreme Court, the decision was reversed. In holding Florida did not have jurisdiction, the Iowa Supreme Court held, first, the PKPA governed the determination of jurisdiction in interstate custody disputes and, second, the Florida court had not followed the statute.150 As a consequence, the court quashed the writ and invalidated the Florida order.151 Leyda is an example of what can happen if Florida attorneys and judges fail to follow the PKPA.152 Unless steps are taken to evaluate such cases in light of the PKPA, Florida orders will not be worth the paper they are written on.

Part V. Procedural Steps to Enforce or Modify Interstate Custody Orders Under the PKPA

What, then, are the correct PKPA procedures for a circuit court to follow in interstate custody cases? How must it proceed in a particular case? These questions will be examined in the context of the three situations most prevalent in the circuit courts: (1) enforcement of a foreign order; (2) modification of a foreign order; and (3) modification of a Florida order after the child has left the state. To illustrate the procedural steps in a practical context each of these situations will be examined with both theoretical and factual examples.

A. Procedural Steps to Enforce a Foreign Order Under the PKPA

The first common scenario is the Florida enforcement of an out-of-state order without a request for the modification of that order. Although procedures may vary, typically this involves the domiciliation of

144. See supra note 115-30 and accompanying text.
145. E.g., Work, 554 So. 2d at 380 (using UCCJA to wrongfully had concurrent jurisdiction in Ohio and Florida); Newcomb, 507 So. 2d at 1145 (same for California and Florida); Hickey, 461 So. 2d at 1367 (for Florida and Virginia); Gorder, 528 So. 2d at 1359 (using UCCJA to wrongly determine continuing jurisdiction).
146. Leyda, 398 N.W.2d at 815 (Iowa 1987).
147. Leyda, 353 N.W.2d at 862.
148. The child had lived in Florida for one year.
149. For the McDougald decision, federal question jurisdiction under 28 U.S.C. § 1331, was found not to allow the filing of PKPA lawsuits in federal court. Without "a private right of action," an aggrieved party may no longer use the federal courts for PKPA relief. Thompson, 484 U.S. at 187; see also Burron, supra note 148, at 346.
150. E.g., Rody, 15 Fla. L. Weekly 1424 (4th Dist. Ct. App. 1990); Farrell v. Farrell, 555 So. 2d 1240 (Fla. 3d Dist. Ct. App. 1989) (no mention of PKPA is dispute with Massachusetts); Oates v. Oates, 552 So. 2d at 291 (trial court entered order "without regard" to the UCCJA); Yurgel, 546 So. 2d at 747; Assenete v. Assenete, 546 So. 2d 286, 287 ( Fla. 1st Dist. Ct. App. 1989); Sperry, 530 So. 2d at 1044.
151. See supra notes 115-30 and accompanying text.
152. Leyda is by no means the only reported case in which another state court has voided a Florida custody order. Other cases include Jones v. Jones, 458 So. 2d 1109 (Ala. Civ. App. 1984); Thoremen, 46 Wash. App. at 459, 730 P.2d at 1380; Same, 384 S.E.2d at 131. In Thoremen the Washington Court of Appeal invalidated a Florida order when the Florida father did not provide notice to the Washington mother in the manner prescribed by § 1733A(c). 46 Wash. App. at 500-01, 730 P.2d at 1383. In Same the West Virginia Supreme Court voided a Wests County, Florida order for awarding custody to a father who had abducted his children from West Virginia, after the mother had filed for custody in West Virginia. Same, 384 S.E.2d at 162.

Additionally, there are cases decided in the Florida courts, using the UCCJA, which violate the PKPA and, thus, place those judgments at jeopardy. These include:

Gorder, 528 So. 2d at 1122 (the Florida court failed to give a Nevada decree continuing jurisdiction); Newcomb, 507 So. 2d at 1145 (wrongfully permitting a Florida court, pursuant to the Florida UCCJA, to hear a modification petition within months of the issuance of a California decree).
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Additionally, there are cases decided in the Florida courts, using the UCCJA, which violate the PKPA and, thus, place those judgments at jeopardy. These include, Goffey, 528 So. 2d at 1322 (the Florida court failed to give a Nevada decree continuing jurisdiction); Newcomb, 507 So. 2d at 1145 (wrongfully permitting a Florida court, pursuant to the Florida UCCJA, to hear a modification petition within months of the issuance of a California decree).
of the foreign order and enforcement as if it were a Florida order.163
This might start as the mother coming to enforce the custody provisions in an order from State A after the father, a resident of Florida, has kept the child beyond the visitation terms of the decree.

Whenever a Florida court encounters a request to enforce an out-of-state order, the basic assumption is that it shall enforce the order if the order is consistent with the terms of the PKPA.164 If it meets this standard, the circuit court must enforce the State A order as if it were one of its own.165 For State A’s order to have been exercised “consistently” with the act, the PKPA requires that it meet the criteria of section 1738A(c).166 Determining whether it does necessitates three

163. The Florida UCCJA provides a statutory method for the filing and enforcement of foreign decrees:
(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this State. The clerk shall treat the decree in the same manner as a custody decree of a circuit court of this State. A custody decree so filed has the same effect and shall be enforced in like manner.

FLA. STAT. § 61.1332 (1989); e.g., Housel v. Ledford, 15 Fla. L. Weekly 1357 (Dist. Ct. App. 1990); Johnson, 542 So. 2d at 450; 4 ABRAMS, supra note 127, at § 73.32(3).

Additionally, the claim for enforcement of a custody decree may be filed in a suit to establish the foreign decree as a Florida order, e.g., Pedowitz v. Pedowitz, 492 So. 2d 472, 473 (Fla. 4th Dist. Ct. App. 1986); 4 ABRAMS, supra note 127, at § 73.35; or by application for an extraordinary writ. E.g., Crane, 253 So. 2d at 439-40 (writ of habeas corpus); Brett v. MacDonald, 510 So. 2d 168 (Fla. 3d Dist. Ct. App. 1987) (writ of prohibition); Hamill v. Bower, 487 So. 2d 345 (Fla. 1st Dist. Ct. App. 1986) (writ of prohibition); Guerra, 463 So. 2d at 435 (writ of prohibition); 4 ABRAMS, supra note 127, at § 73.21.

164. This is the application of the “forum court has no discretion” rule from the full faith and credit clause. A circuit court has no alternative but to enforce the State A judgment according to its terms and without modification. Such a determination is inescapable under the federal act. See Ex parte Lee, 445 So. 2d at 290; see also Mitchell, 437 So. 2d at 125.

The PKPA section which requires the circuit court to enforce an out-of-state decree is 28 U.S.C. § 1738A(a) (1982), which provides:

(1) [the appropriate authorities of every State shall enforce according to its terms, . . . any child custody determination made consistently with the provisions of this section by a court of another State.


166. 28 U.S.C. § 1738A(a) (1982); 1738A(c), provides, in relevant part:
A child custody determination made by a court of a State is consistent with the provisions of this section only if—
(1) such court has jurisdiction under the laws of that State; and
(2) one of the following conditions is met:

167. STEPP 1: DETERMINE WHETHER STATE A, USING THE LAW OF STATE A, HAD JURISDICTION TO ISSUE THE INITIAL CHILD CUSTODY DETERMINATION.

First, Florida must decide if State A had jurisdiction under the laws of State A when it made its custody determination.168 This requires that the Florida court look to the facts at the time the case was filed in State A and, using that state's version of the UCCJA, see if those facts met the jurisdictional requirements of State A's laws. For all practical purposes this means looking to see if the State A and PKPA jurisdictional predicates are the same, that is, was State A the home state of the child at the time of the filing of the proceeding?169 For while the PKPA jurisdictional standards do not dictate state jurisdiction to render an initial custody decree,170 if that decree is to be entitled, under federal law, to enforcement and non-modification in another state, State A must have exercised jurisdiction in conformity with the PKPA.171 And for PKPA enforcement, this means State A should have been the child’s “home state.”172 If the answer to step 1 is YES, proceed to STEP 2.

If State A had jurisdiction under its own laws but was not the “home state” of the child for PKPA purposes, then the court must inquire whether the child had a PKPA “home state” when State A took jurisdiction. If the child had no home state for custody purposes, then one of the other, alternative grounds could then yield a valid, enforceable PKPA order.173 But because of the preeminence of the home state, it is best if the court inquire to see if another state was the proper state to issue the initial custody order. If the court finds a valid PKPA order, it should then proceed to STEP 2. If it finds no valid PKPA order, the

167. This process is an adaptation of the PKPA application process suggested by
Professor Joan M. Krauskopf, Krauskopf, supra note 18, at 438-40.
169. See Interstate Custody Disputes, supra note 3, at 3-34.
171. Mansueto, 136 Misc. 2d at 902, 519 N.Y.S.2d at 478; Interstate Custody Disputes, supra note 3, at 3-34; Note, Parental Kidnapping, supra note 95, at 77.
172. See supra, notes 124-27 and accompanying text.
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Whenever a Florida court encounters a request to enforce an out-of-state order, the basic assumption is that it \textit{shall} enforce the order if the order is consistent with the terms of the PKPA.\textsuperscript{166} If it meets this standard, the circuit court must enforce the State A order as if it were one of its own.\textsuperscript{168} For State A's order to have been exercised "consistently" with the act, the PKPA requires that it to meet the criteria of section 1738A(c).\textsuperscript{166} Determining whether it does necessitates three

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FLA. STAT. § 61.1322 (1989); e.g., Hulsey v. Ledford, 15 Fla. L. Weekly 1357 (3d Dist. Ct. App. 1990); Johnson, 542 So. 2d at 450; 4 ABRAMS, supra note 127, at § 73.32[3].

Additionally, the claim for enforcement of a custody decree may be filed in a suit to establish the foreign decree as a Florida order, e.g., Pedowitz v. Pedowitz, 492 So. 2d 472, 473 (Fla. 4th Dist. Ct. App. 1986); 4 ABRAMS, supra note 127, at § 73.20, or by application for an extraordinary writ. E.g., Crane, 235 So. 2d at 439-40 ( writ of habeas corpus); Brett v. MacDonald, 501 So. 2d 168 (Fla. 3d Dist. Ct. App. 1987) ( writ of prohibition); Hammill v. Bower, 487 So. 2d 345 (Fla. 1st Dist. Ct. App. 1986) ( writ of prohibition); Guerra, 463 So. 2d at 435 ( writ of prohibition); 4 ABRAMS, supra note 127, at § 73.21.

164. This is the application of the "forum court has no discretion" rule from the full faith and credit clause. A circuit court has no alternative but to enforce the State A judgment according to its terms and without modification. Such a determination is inescapable under the federal act. See \textit{Ex parte Lee}, 445 So. 2d at 290; see also Mitchell, 437 So. 2d at 125.

The PKPA section which requires the circuit court to enforce an out-of-state decree is 28 U.S.C. § 1738A(a) (1982), which provides:

\[ "[the appropriate authorities of every State shall enforce according to its terms, ... any child custody determination made consistently with the provisions of this section] by a court of another State."


166. 28 U.S.C. § 1738A(c) (1982). § 1738A(c), provides, in relevant part:

A child custody determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the laws of that State; and

(2) one of the following conditions is met:

First, Florida must decide if State A had jurisdiction under the laws of State A when it made its custody determination.\textsuperscript{168} This requires that the Florida court look to the facts at the time the case was filed in State A and, using that state's version of the UCCJA, see if those facts met the jurisdictional requirements of State A's laws. For all practical purposes this means looking to see if the State A and PKPA jurisdictional predicates are the same, that is, was State A the home state of the child at the time of the filing of the proceeding?\textsuperscript{166} For while the PKPA jurisdictional standards do not dictate state jurisdiction to render an initial custody decree,\textsuperscript{166} if that decree is to be entitled, under federal law, to enforcement and non-modification in another state, State A must have exercised jurisdiction in conformity with the PKPA.\textsuperscript{167} And for PKPA enforcement, this means State A should have been the child's "home state."\textsuperscript{168} If the answer to STEP 1 is YES, proceed to STEP 2.

If State A had jurisdiction under its own laws but was not the "home state" of the child for PKPA purposes, then the court must inquire whether the child had a PKPA "home state" when State A took jurisdiction. If the child had no home state for custody purposes, then one of the other, alternative grounds could then yield a valid, enforceable PKPA order.\textsuperscript{168} But because of the preeminence of the home state, it is best if the court inquire to see if another state was the proper state to issue the initial custody order. If the court finds a valid PKPA order, it should then proceed to STEP 2. If it finds no valid PKPA order, the

\[ \text{28 U.S.C. § 1738A(c) (1982) ( emphasis added).} \]

167. This process is an adaptation of the PKPA application process suggested by Professor Joan M. Krauskopf, Krauskopf, supra note 18, at 438-60.


169. See \textit{Interstate Custody Disputes}, supra note 3, at 3-34.

170. Hanson v. Leckey, 754 S.W.2d 292, 294 (Tex. Ct. App. 1988) (the PKPA does not confer upon any court jurisdiction to litigate child custody); Note, Parental Kidnapping, supra note 95, at 77.

171. Mancusi, 136 Misc. 2d at 902, 519 N.Y.S.2d at 478; \textit{Interstate Custody Disputes}, supra note 3, at 3-34; Note, Parental Kidnapping, supra note 95, at 77.

172. See supra, notes 124-27 and accompanying text.


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court should not give it full faith and credit. 174

STEP 2: DETERMINE WHETHER THE INITIAL CUSTODY ORDER FROM STATE A MET THE JURISDICATIONAL PROVISIONS OF THE PKPA, PREFERABLY THE “HOME STATE” TEST. 175

To satisfy the PKPA, the Florida court must next determine if State A’s order meets one of the five federal provisions. The conditions are:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from the State because his removal or retention by a contestant or for other reasons, and a contestant continues to reside in such State; 176

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than the mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training and personal relationships; 177

(C) the child is physically present in such state and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse; 178

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State

whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or 179

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section. 180

It is the operation of this analysis which separates the PKPA from the UCCJA. Despite its superficial similarity, the PKPA’s alternative jurisdictional bases are dramatically different from the UCCJA. Unlike the UCCJA, the PKPA appraises the five federal provisions essentially in descending order. 181 Thus the PKPA inquiry focuses first, and almost exclusively, 182 on whether State A was the “home state” 183 of the children at the time the proceeding was started. 184

174. See Quenzer v. Quenzer, 653 P.2d 295, 300-01 (Wyo. 1982), cert. denied, 460 U.S. 1041 (1983) (Texas order not entitled to full faith and credit as none of the five federal grounds were met).

175. E.g., Mitchell, 437 So. 2d at 125; Rogers, 199 Cal. App. 3d at 1211, 245 Cal. Rptr. p. 11, 20; Biscoe, 443 N.W.2d at 225; Thomasen, 46 Wash. App. at 498, 730 P.2d at 1384. The five federal conditions are set out in 28 U.S.C. § 1738A(c)(2) (1982).


181. An example of the descending order analysis can be seen in Rogers, 199 Cal. App. 3d at 1211-16, 245 Cal. Rptr. at 536-39.

182. The result is that "almost exclusive child custody jurisdiction is initially granted to the home state by the federal act." Mitchell, 437 So. 2d at 126; see Caron, 141 Misc. 2d at 836, 535 N.Y.S.2d at 313 (PKPA home state granted priority).

183. The PKPA definition of "home state" is found at § 1738A(b)(4), which states: "home State" means the State in which, immediately preceding the time involved, the child lived with his parent, a parent, or a person acting as his parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any such persons are counted as part of the six-month period or other period. . . . 28 U.S.C. § 1738A(b)(4) (1982).

184. See Mitchell, 437 So. 2d at 122. The critical date in ascertaining PKPA compliance is the date of the filing of the proceeding, not the date of the rendition of the judgment. Id. at 125; Ex parte Lee, 445 So. 2d at 290; see Sams, 384 S.E.2d at 163 (Miller, J., concurring).

If there is no home state, one of the other, alternative grounds will be used to establish initial jurisdiction. § 1738A(c)(2)(B)-(D). For these alternatives, too, the time of PKPA measuring is at the commencement of the proceeding. In re B.B.R., 566 A.2d at 1040. In B.B.R., the court was considering whether California or the District of Columbia was exercising significant connections jurisdiction, there being no "home state" under § 1738A(c)(2)(A). One of the contestants claimed the "significant connections" test should be measured at the time of the trial, rather at the time of commencement. Id. The court rejected that argument saying that to do so would make the question of jurisdiction a shifting, chameleon-like issue, which might allow one contesting party, "particularly where wrongdoing is involved, to build up connections in his or her state, thereby frustrating one of Congress' purposes in enacting the PKPA -
court should not give it full faith and credit.\textsuperscript{174}

**STEP 2: DETERMINE WHETHER THE INITIAL CUSTODY ORDER FROM STATE A MET THE JURISDICTIONAL PROVISIONS OF THE PKPA, PREFERABLY THE "HOME STATE" TEST.\textsuperscript{175}**

To satisfy the PKPA, the Florida court must next determine if State A's order meets one of the five federal provisions. The conditions are:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from the State because his removal or retention by a contestant or for other reasons, and a contestant continues to reside in such State;\textsuperscript{176}

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than the mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training and personal relationships;\textsuperscript{177}

(C) the child is physically present in such state and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;\textsuperscript{178}

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State

\textsuperscript{174} See Quenzer v. Quenzer, 653 P.2d 295, 300-01 (Wyo. 1982), cert. denied, 460 U.S. 1041 (1983) (Texas order not entitled to full faith and credit as none of the five federal grounds were met).

\textsuperscript{175} E.g., Mitchell, 437 So. 2d at 123; Rogers, 199 Cal. App. 3d at 1211-12, 245 Cal. Rptr. at 536-39.

\textsuperscript{176} Biscoe, 443 N.W.2d at 225; Thorenson, 46 Wash. App. at 498, 730 P.2d at 1384. The five federal conditions are set out in 28 U.S.C. \textsuperscript{177} § 1378A(c)(2)(A) (1982).

\textsuperscript{177} § 1378A(c)(2)(A) (1982).

\textsuperscript{178} § 1378A(c)(2)(B) (1982).

\textsuperscript{179} § 1378A(c)(2)(C) (1982).

\textsuperscript{179} 28 U.S.C. \textsuperscript{180} § 1738A(c)(2)(D) (1982).

\textsuperscript{180} 28 U.S.C. \textsuperscript{181} § 1738A(c)(2)(E) (1982).

\textsuperscript{181} An example of the descending order analysis can be seen in Rogers, 199 Cal. App. 3d at 1211-16, 245 Cal. Rptr. at 536-39.

\textsuperscript{182} Mitchell, 437 So. 2d at 126; see Caronez, 141 Misc. 2d at 836, 535 N.Y.S.2d at 313 (PKPA home state granted priority).

\textsuperscript{183} The PKPA definition of "home state" is found at § 1738A(b)(4), which states: "home State" means the State in which, immediately preceding the time involved, the child lived with his parent, a parent, or a person acting as his parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any such persons are counted as part of the six-month period or other period; . . .


It is the operation of this analysis which separates the PKPA from the UCCJA. Despite its superficial similarity, the PKPA's alternative jurisdictional bases are dramatically different from the UCCJA. Unlike the UCCJA, the PKPA appraises the five federal provisions essentially in descending order.\textsuperscript{184} Thus the PKPA inquiry focuses first, and almost exclusively,\textsuperscript{188} on whether State A was the "home state"\textsuperscript{240} of the children at the time the proceeding was started.\textsuperscript{241}
The variation in analytical emphasis results from the addition of the statutory language, not found in the UCCJA, which was inserted in section 1738A(c)(2)(B)(i): “it appears that no other State would have jurisdiction under subparagraph (A) [home state].” This single phrase, the essential difference between the UCCJA and the PKPA,186 confines jurisdiction to the home state of the child, giving it exclusive and continuing custody jurisdiction.188 In fact, for all practical purposes, this section 1738A(c)(2)(B)(i) phase precludes the use of the “significant connection” basis for initial jurisdiction at all,189 so much so, that the PKPA makes it judicially imprudent for a state court to enter a custody order when another state court has “home state” jurisdiction190 because, if conflicting, only the home state custody decree be entitled to full faith and credit under federal law.191

The “home state” of the child thus becomes the dominant factor for determining the validity of the initial jurisdiction for custody orders.190 If the Florida court finds State A meets the “home state” test under the PKPA at the commencement of its proceedings, then the answer to the STEP 2 inquiry is YES, and the participants must move to STEP 3.

STEP 3: DETERMINE IF STATE A REMAINS THE HOME STATE OF THE CHILD OR AT LEAST ONE OF THE CONTESTANTS.

The final investigation calls for ascertaining whether State A has continuing jurisdiction over the custody case under section 1738A(d).191 This calls for determining if one of the contestants or the child is still a resident of State A and whether State A retains continuing jurisdiction under the laws of State A.192 If the answer to this probe is YES, then the Florida court shall enforce the State A decree according to its terms.

B. Procedural Steps to Modify a Foreign Order Under the PKPA

The second situation is by far the most common; the request by an out-of-state resident to enforce the State A decree followed by a demand by the Florida resident parent for a Florida court to modify State A’s decree, primarily because the child has now lived in Florida for more than six months.193 The question for the Florida court to resolve

186. Id. at 126 (citations omitted).
187. Id. at 131 (citations omitted).
188. Id. at 132 (citations omitted).
189. Id. at 133 (citations omitted).
190. Id. at 134 (citations omitted).
191. Id. at 135 (citations omitted).
192. Id. at 136 (citations omitted).
193. Id. at 137 (citations omitted).
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185. Comment, Effects of PKPA, supra note 108, at 511; Note, Parental Kidnapping, supra note 95, at 76-77 & 77 n.72; see Ruby, supra note 84, at 783 n.36. § 1738A(c)(2)(B)(i) creates qualifying language which diminishes the viability of the other listed grounds.

186. See Meade, 812 F.2d at 1476-77 (PKPA extends continuing exclusive jurisdiction to first state if it remains the residence of child or one contestant; Wheeler, 452 So. 2d at 864; Garrett, 292 Ark. at 587, 732 S.W.2d at 129; Bahr, 108 Misc. 2d at 923, 442 N.Y.S.2d at 689, aff’d, 91 A.D.2d at 1010, 458 N.Y.S.2d at 247, appeal denied, 60 N.Y.2d at 640, 454 N.E.2d at 1310, 467 N.Y.S.2d at 567. PKPA, but not the UCCJA, jurisdiction continues as long as the elements of § 1738A(d) are met. S. Frederick P., 115 Misc. 2d at 337, 454 N.Y.S.2d at 205-06.

187. “[I]n the PKPA ‘best interest’ jurisdiction § 1738A(c)(2)(B)(i) applies only if no other state has ‘home state’ jurisdiction over a child.” Bisaro, 443 N.W.2d at 225. See Mitchell, 437 So. 2d at 126 (jurisdiction under “significant connections” has no application if another state is the child’s home state); Michael P., 156 A.D.2d at 553, 553 N.Y.S.2d at 692 (“significant connections” is not a substitute for home state jurisdiction); Mancusi, 136 Misc. 2d at 902-03, 519 N.Y.S.2d at 479 (court having home state jurisdiction not prohibited from exercising jurisdiction even if another state was doing so under the “significant connection” test); Krauskopf, supra note 18, at 436-37.

The effect of § 1738A(c)(2)(A) is to channel initial custody litigation into “home state” courts while restricting the exercise of initial jurisdiction by states with “significant connection” jurisdiction. See Interstate Custody Disputes, supra note 3, at 3-15. The “significant connections” test, § 1738A(c)(2)(B)(i), though permitted, is not a concurrent form of jurisdiction under the federal law. Mitchell, 437 So. 2d at 126.

188. Sams, 384 S.E.2d at 157. The PKPA prohibits a forum state from exercising jurisdiction on the basis of significant connections if another state has home state jurisdiction. See In re Custody of Cox, 536 N.E.2d 250, 252 (Ind. Ct. App. 1989) (Garrard, J., concurring in part and dissenting in part).
is, does the PKPA require Florida to enforce State A’s decree or does it permit Florida to modify the State A decree to give the Florida resident parent what he or she wants?

Like the enforcement process, when a Florida court is asked to modify an out-of-state order, the basic assumption is still that it shall enforce the order if that order is consistent with the terms of the PKPA.246 Indeed, the Florida court shall not even exercise jurisdiction to modify the State A order if State A continues to exercise jurisdiction in conformity with the PKPA.246

The test to see if State A is conforming to the PKPA mandates is found in section 1738A(f). Section 1738A(f) allows modification of a foreign order only if all elements of section 1738A(f) are satisfied.246

194. Once again 28 U.S.C. § 1738A(a) provides the foundation for all efforts to apply full faith and credit. The section provides:

(i)he appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.


The PKPA provides, generally, that a second state may not allow simultaneous proceedings if another state was exercising prior jurisdiction consistent with the PKPA. That PKPA section states:

A court of a State shall not exercise jurisdiction in any other proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

28 U.S.C. § 1738A(g) (1982) (emphasis added). Once jurisdiction is established, § 1738A(g) forecloses concurrent or subsequent proceedings in another state “even if [a second state] would have been empowered to take jurisdiction in the first instance.” Thompson, 484 U.S. at 177. The effect of § 1738A(g) is to establish a ‘first-in-time’ rule thereby restricting PKPA jurisdiction to the first state to enter a proper order. See In re B.B.R., 566 A.2d at 1037 n.13.

Thus if State A is claiming “continuous” jurisdiction under 1738A(d), then Florida is prohibited from entering an order, other than to enforce the State A decree. See Krauskopf, supra note 18, at 436. Assuming jurisdiction by State B to enforce a decree is an act consistent with the PKPA; assuming jurisdiction by State B to modify is essentially hostile to it. S. Frederick P., 115 Misc. 2d at 334, 454 N.Y.S.2d at 204.

Whether State A exercises valid continuous jurisdiction, and thus whether Florida can modify the decree, is tested by the application of the procedures of §§ 1738A(d) and (f).

196. Meade, 650 F. Supp. at 208, aff’d, 812 F.2d at 1473; Mitchell, 437 So. 2d at 126; Murphy, 748 P.2d at 751; Philip v. Sharon S., 137 Misc. 2d 385, 390, 520 N.Y.S.2d 695, 698 (Fam. Ct. 1989); Thorenson, 46 Wash. App. at 498 n.3, 730 P.2d 256.

197. This process requires a six step process.

STEP 1: DETERMINE WHETHER FLORIDA HAS JURISDICTION UNDER ANY ONE OF THE GROUNDS SET FORTH IN SECTION 61.1308, FLORIDA STATUTES (1989), AT THE TIME OF THE MODIFICATION PETITION.

If the answer to this inquiry is NO, then STOP. There is no need

at 1384 n.3; Quencer, 653 P.2d at 299, cert. denied, 460 U.S. at 1041; The requirements of § 1738A(f) are as follows:

A court of a State may modify a determination of the custody of the same child made by a court of another State, if:

(1) it has jurisdiction to make a child custody determination, and;

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.


197. The five step process is an adaptation of the process outline by Judge Alvin F. Ruby in Ruby, supra note 84, at 782-85.

198. The federal statute requires, first, that the modifying state have custody jurisdiction under its own law before proceeding further. 28 U.S.C. § 1738A(f)(1) (1982); Meade, 650 F. Supp. at 209, aff’d, 812 F.2d at 1473. See S. Frederick P., 115 Misc. 2d at 335, 454 N.Y.S.2d at 204. In Florida it means that the contestants must satisfy one of the grounds in Fla. STAT. § 61.1308 (1989). Section 61.1308 provides:

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state:

1. Is the home state of the child at the time of commencement of the proceeding;

2. Had been the child’s home state within 6 months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming custody or for other reasons, and a parent or person acting as a parent continues to live in this State;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child’s present or future care, protection, training and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise ne-
is, does the PKPA require Florida to enforce State A's decree or does it permit Florida to modify the State A decree to give the Florida resident parent what he or she wants?

Like the enforcement process, when a Florida court is asked to modify an out-of-state order, the basic assumption is still that it shall enforce the order if that order is consistent with the terms of the PKPA. Indeed, the Florida court shall not even exercise jurisdiction to modify the State A order if State A continues to exercise jurisdiction in conformity with the PKPA.

The test to see if State A is conforming to the PKPA mandates is found in section 1738A(f). Section 1738A(f) allows modification of a foreign order only if all elements of section 1738A(f) are satisfied.

194. Once again 28 U.S.C. § 1738A(a) provides the foundation for all efforts to apply full faith and credit. The section provides:

'[t]he appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.


195. The PKPA provides, generally, that a second state may not allow simultaneous proceedings if another state was exercising prior jurisdiction consistent with the PKPA. That PKPA section states:

A court of a State shall not exercise jurisdiction in any other proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

28 U.S.C. § 1738A(g) (1982) (emphasis added). Once jurisdiction is established, § 1738A(g) foreclose concurrent or subsequent proceedings in another state “even if [a second state] would have been empowered to take jurisdiction in the first instance.” Thompson, 484 U.S. at 177. The effect of § 1738A(g) is to establish a “first-in-time” rule thereby restricting PKPA jurisdiction to the first state to enter a proper order. See In re B.B.R., 566 A.2d at 1037 n.13.

Thus if State A is claiming "continuous" jurisdiction under 1738A(d), then Florida is prohibited to enter an order, other than to enforce the State A decree. See Krauskopf, supra note 18, at 436. Assuming jurisdiction by State B to enforce a decree is an act consistent with the PKPA; assuming jurisdiction by State B to modify is essentially hostile to it. S. Frederick P., 115 Misc. 2d at 334, 454 N.Y.S.2d at 204. Whether State A exercises valid continuous jurisdiction, and thus whether Florida can modify the decree, is tested by the application of the procedures of §§ 1738A(d) and (f).

196. Meade, 650 F. Supp. at 208, aff'd, 812 F.2d at 1473; Mitchell, 437 So. 2d at 126; Murphy, 748 P.2d at 751; Philip v. Sharon S., 137 Misc. 2d 385, 390, 520 N.Y.S.2d 695, 698 (Fam. Ct. 1987); Thorensen, 46 Wash. App. at 498 n.3, 730 P.2d

This process requires a six step process. A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make a child custody determination; and,

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(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state:

1. Is the home state of the child at the time of commencement of the proceeding, or

2. Had been the child’s home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continue to live in this State;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child’s present or future care, protection, training and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise ne-
to look further since Florida will not have jurisdiction to entertain a domestic custody dispute, let alone to modify an out-of-state custody decree.\textsuperscript{199}

If the answer to this question is YES, then proceed to STEP 2.\textsuperscript{200}

(1) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

\textbf{FLA. STAT.} § 61.1308 (1989).

199. See Meade, 650 F. Supp. at 209, aff'd, 812 F.2d at 1473.

200. It is imperative to highlight the importance of the need to move to Step 2 after a determination of Florida jurisdiction. This is particularly true if the former State A child has now acquired "home state" status in Florida. Prior to the PKPA, the acquisition of a "home state" status by the modifying state caused problems for interstate custody reformers. Even under the UCCJA, states found that once "home state" status existed in the forum state, the continuing jurisdiction of the initial court ended. Krauskopf, supra note 18, at 434. Cf. Florida cases applying this rationale in the reverse, that is giving up jurisdiction after six months. Osterlink, 552 So. 2d at 292 (citing cases approving of transfer of jurisdiction after child has changed home state); Goryd, 528 So. 2d at 1321-22; Hollander v. Hollander, 466 So. 2d 268, 269 (Fla. Dist. Ct. App. 1985) (on rel'n); but see Hamill v. Bower, 487 So. 2d 345, 347 (Fla. 1st Dist. Ct. App. 1986) (original state retains continuing jurisdiction even though a second state becomes the UCCJA "home state"). The effect was to allow modification in a new state after only six months, no matter how significant the connection and evidence remained with the initial state remained. Krauskopf, supra note 18, at 434; Hollander, 466 So. 2d at 271 (Baskin, J. dissenting) (this practice allows a parent to undo years of litigation merely by establishing a new home state).

Because of the PKPA's recognition of "continuous and exclusive jurisdiction," see supra notes 121-30 and accompanying text, a child's movement from the original home state does not divest that state of jurisdiction. Mere residence for more than six months in a state of a child who has been the subject of a custody proceeding in another state is not a sufficient basis for a court to exercise jurisdiction. \textit{Philips}, 137 Misc. 2d at 389, 520 N.Y.S.2d at 697; Yacoe v. Durley, 117 Misc. 2d 69, 71, 457 N.Y.S.2d 384, 386 (Fam. Ct. 1982); see also \textit{Meade}, 650 F. Supp. at 209, aff'd, 812 F.2d at 1473. See also \textit{Interstate Custody Disputes}, supra note 3, at 3-42 (even after the passage of the six-month period, it is still up to the original jurisdiction state to determine if it has continuing jurisdiction); \textit{Murphy}, 748 P.2d at 751 n.7 (the decision to halt the continuing
to look further since Florida will not have jurisdiction to entertain a domestic custody dispute, let alone to modify an out-of-state custody decree.199

If the answer to this question is YES, then proceed to STEP 2.200

glected; or
(d) 1. It appears that no other state would have jurisdiction under requi-
uires substantially in accordance with paragraph (a), paragraph (b), or
paragraph (c), or another state has declined to exercise jurisdiction on
the
2. It is in the best interest of the child that this court assume jurisdiction.
(2) Except under paragraphs (c) or (d) of subsection (1), physical pre-
se

ence in this state of the child, or of the child and one of the contestats,
is not alone sufficient to confer jurisdiction on a court of this state to make a
child custody determination.
(3) Physical presence of the child, while desirable, is not a prerequisite for

jurisdiction to determine his custody.

FLA. STAT. § 61.1308 (1989).

199. See Meade, 650 F. Supp. at 209, aff'd, 812 F.2d at 1473.

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after a determination of Florida jurisdiction. This is particularly true if the former
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state custody reformers. Even under the UCCJA, states found that once "home state"
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Gordey, 528 So. 2d at 1321-22; Hollander v. Hollander, 466 So. 2d 268, 269 (Fla. 3d
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new state after only six months, no matter how significant the connection and evidence
remained with the initial state remained. Krauskopf, supra note 18, at 434; Hollander,
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supra notes 121-30 and accompanying text, a child's movement from the original home
state does not divest that state of jurisdiction. Mere residence for more than six months
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520 N.Y.S.2d at 697; Yacco v. Durley, 117 Misc. 2d 60, 71, 457 N.Y.S.2d 384, 386
(Fam. Ct. 1982); see Meade, 650 F. Supp. at 209, aff'd, 812 F.2d at 1473. See also
Interstate Custody Disputes, supra note 3, at 3-42 (even after the passage of the six-
month period, it is still up to the original jurisdiction state to determine if it has contin-
uing jurisdiction); cf. Murphy, 748 P.2d at 751 n.7 (the decision to halt the continuing

STEP 2: DETERMINE WHETHER STATE A STILL HAS CONTINUING JURISDICTION OVER THE CUSTODY CASE201

The correct answer to Step 2 necessarily is predicated upon three subordinate steps.

STEP 3: DETERMINE WHETHER THE PRIOR CHILD CUSTODY DECREE OF STATE A WAS MADE CONSIST-
ENTLY WITH SECTION 1738A (c)(2) AND WHETHER AT THE TIME THE COURT TOOK JURISDICTION, STATE A WAS THE CHILD'S HOME
STATE.202

The answer to this step is obtained by following the sequence set out in the enforcement section of this article to inquire into the original order.203 In other words, if State A had original jurisdiction under its own laws and it was the "home state" of the child on the date of the commencement of the initial proceeding, then the answer to this ques-

and exclusive jurisdiction is left to the "sound discretion" of the judge of the court
eercising PKPA jurisdiction).

For examples of cases in which the child's new "home state" rejects jurisdiction,
pursuant to the PKPA, to the "continuing" jurisdiction of the original state, see Far-
rell, 133 A.D.2d at 530, 520 N.Y.S.2d at 292 (New York defers to Florida for contin-
A.D.2d at 975, 492 N.Y.S.2d at 787.

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or any contestant.


202. The relevant provisions of § 1738A(d) which require examination of the prior custody order are stated as follows:

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section .


203. The threshold question is whether the prior decree was made consistent with the PKPA. Murphy, 748 P.2d at 750; Quenter, 653 P.2d at 299, cert. denied, 460 U.S. at 1041. If the original order was not properly entered under the PKPA then there is no further need to proceed through § 1738A(f). Thorenens, 46 Wash. App. 498, 730
P.2d at 1383-84; Meade, 650 F. Supp. at 208, aff'd, 812 F.2d at 1473; Farrell, 133
A.D.2d at 530, 520 N.Y.S.2d at 292 (looking to original Florida order to find it valid).
tion is YES and you must next proceed to Step 4.904

If the answer to the question is NO, especially if State A was not the child’s home state at the time of the order, then the order is not automatically entitled to full faith and credit.905 There is a good chance that such a decree may not be consistent with the PKPA, so it will be necessary to re-check each of the five federal grounds to determine if the state exercised PKPA jurisdiction. If State A did not follow the PKPA, then Florida, assuming it now has jurisdiction under its own laws, may STOP and take jurisdiction of the case.

STEP 4: DETERMINE WHETHER STATE CONTINUES TO HAVE JURISDICTION UNDER THE LAWS OF STATE A TO ISSUE CUSTODY ORDERS.906

If the answer to this is YES, then go to STEP 5. To determine the answer, the federal provision requires that Florida look to the laws of State A to see if State A continues to have jurisdiction, even though the child now lives in Florida.907 The inquiry here is to whether State A still has jurisdiction under its version of the UCCJA.908 In most cases this requires determining whether State A still has “significant connections” with the children or their parents. At this point the “significant

204. See Meade, 812 F.2d at 1477 (first state must have had proper initial custody jurisdiction when it entered its first order); Murphy, 748 P.2d at 750; Belosky v. Belosky, 97 N.M. 365, 367, 640 P.2d 471, 473 (1982). If Florida is reviewing the validity of a State A modification decree, particularly one made after the child left State A, it will have to look if State A has continuing jurisdiction as well. §§ 1738A(c)(1), (c)(2)(E) and (d). See Murphy, 748 P.2d at 750-51 for an example of a court using both to test the prior decrees.

205. Enforcement under federal law is mandatory only when the decree for which enforcement is sought was made consistent with the PKPA’s prioritization of jurisdictional bases. Interstate Custody Disputes, supra note 3, at 3-4. See Quencer, 653 P.2d at 300-01, cert. denied, 460 U.S. at 1041 (Texas order not entitled to full faith and credit as none of the five federal grounds were met).

206. Jurisdiction in State A “continues as long as the requirements of § 1738A(c)(1) of this section continues to be met . . . .” 28 U.S.C. § 1738A(d) (1982).

207. E.g. Garrett, 292 Ark. at 584, 372 S.W.2d at 127; Farrell, 133 A.2d at 530, 520 N.Y.S.2d at 292 (an example of a court looking to Florida law to hold, under the PKPA, that Florida continues its jurisdiction); Tenenbaum, 133 A.2d at 372-73, 519 N.Y.S.2d at 274. See also Krausskopf, supra note 18, at 438.

208. Meade, 812 F.2d at 1477; Heartfield, 749 F.2d at 1141; Murphy, 748 P.M at 751 (Alaska looking to Kansas state law, its version of the UCCJA, to see if § 1738A(d) elements were met); Philip, 137 Misc. 2d at 390, 520 N.Y.S.2d at 698.

But see Gordon, 528 So. 2d at 1322 (court incorrectly used Florida law to decide if Nevada retained continuing jurisdiction after the child had moved to Florida).

connection” test is a valid PKPA criteria, and, in fact, may be the most common state law basis for PKPA “continuing jurisdiction” purposes.909 Thus, just because the child has left State A for Florida is no reason, in itself, to nullify State A’s jurisdiction. Rather, because the PKPA acknowledges “continuing and exclusive” jurisdiction in the original home state,910 if that state has any legitimate basis for jurisdiction the answer to this question is YES, and you must proceed to STEP 5.

If the answer is NO, then the Florida court may STOP and assume jurisdiction to modify the decree.

STEP 5: DETERMINE WHETHER STATE A REMAINS THE RESIDENCE OF EITHER THE CHILD OR ONE OF THE CONTESTANTS.911

If the answer to this question is YES, then you need to proceed to STEP 6.

If the answer to STEP 5 is NO, having found that neither the child nor one of the contestants remains a resident of State A, then that state loses its PKPA jurisdiction.912 The Florida court is now free to entertain the custody proceeding and may modify the State A decree.

209. Meade, 650 F. Supp. at 211, aff’d, 812 F.2d at 1473; Murphy, 748 P.2d at 751 (Alaska using Kansas significant connections law to satisfy PKPA test); Philip, 137 Misc. 2d at 391, 520 N.Y.S.2d at 698-99; Krausskopf, supra note 18, at 437. Cf. Hamilton, 487 So. 2d at 347-48 (reaching the correct decision, however, using the UCCJA).

210. See supra notes 121-30 and accompanying text.


212. Typical of these cases is Maxie v. Fernandez, 649 F. Supp. 627 (E.D. Va. 1986). The father and mother were divorced in the District of Columbia in 1982. First the child and then the mother left the District to live in Virginia. Id. at 629. The father next moved to New York City, although he attempted to make it seem as if he still lived in the District. Id. at 630. When the District of Columbia and Virginia issued conflicting decrees, the mother brought the federal case in Virginia to settle the issue. The court, in analyzing the effect the move of the father had on the District’s jurisdiction, declared that one of the requirements of § 1738A(d) had been lost. Id. at 631. With the District no longer having continuing jurisdiction, the prohibitions of § 1738A(g) vanish. Id. This allowed § 1738A(a) to kick-in, thereby giving Virginia the power to modify the original decree. Id. See also Ex parte Blanton, 463 So. 2d at 162; Steckel, 549 So. 2d at 1211; Long v. Long, 439 N.W.2d 523, 525 (N.D. 1989); Bodenheimer, supra note 17, at 1237.
tion is YES and you must next proceed to Step 4.204

If the answer to the question is NO, especially if State A was not the child's home state at the time of the order, then the order is not automatically entitled to full faith and credit.205 There is a good chance that such a decree may not be consistent with the PKPA, so it will be necessary to re-check each of the five federal grounds to determine if the state exercised PKPA jurisdiction. If State A did not follow the PKPA, then Florida, assuming it now has jurisdiction under its own laws, may stop and take jurisdiction of the case.

STEP 4: DETERMINE WHETHER STATE CONTINUES TO HAVE JURISDICTION UNDER THE LAWS OF STATE A TO ISSUE CUSTODY ORDERS.206

If the answer to this is YES, then go to STEP 5. To determine the answer, the federal provision requires that Florida look to the laws of State A to see if State A continues to have jurisdiction, even though the child now lives in Florida.207 The inquiry here is to whether State A still has jurisdiction under its version of the UCCJA.208 In most cases this requires determining whether State A still has "significant connections" with the children or their parents. At this point the "significant

204. See Meade, 812 F.2d at 1477 (first state must have had proper initial custody jurisdiction when it entered its first order); Murphy, 748 P.2d at 750. Belosky v. Belgosky, 97 N.M. 365, 367, 640 P.2d 471, 473 (1982). If Florida is reviewing the validity of a State A modification decree, particularly one made after the child left State A, it will have to look if State A has continuing jurisdiction as well. § 1738A(c)(1), (c)(2)(E) and (d). See Murphy, 748 P.2d at 750-51 for an example of a court using both to test the prior decrees.

205. Enforcement under federal law is mandatory only when the decree for which enforcement is sought was made consistent with the PKPA's prioritization of jurisdictional bases. Interstate Custody Disputes, supra note 3, at 34. See Quencer, 653 P.2d at 300-01, cert. denied, 460 U.S. at 1041 (Texas order not entitled to full faith and credit as none of the five federal grounds were met). Jurisdiction in State A "continues as long as the requirements of § 1738A(c)(1) of this section continues to be met . . ." 28 U.S.C. § 1738A(d) (1982).

207. E.g. Garrett, 292 Ark. at 584, 732 S.W.2d at 127; Farrell, 133 A.D.2d at 530, 520 N.Y.S.2d at 292 (an example of a court looking to Florida law to hold, under the PKPA, that Florida continues its jurisdiction); Tenenbaum, 133 A.D.2d at 372-73, 519 N.Y.S.2d at 274. See also Krauskopf, supra note 18, at 438.

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But see Gordy, 528 So. 2d at 1322 (court incorrectly used Florida law to decide if Nevada retained continuing jurisdiction after the child had moved to Florida).
STEP 6: DETERMINE WHETHER STATE A, NOW HAVING JURISDICTION UNDER THE PKPA, HAS DECLINED TO MODIFY ITS DECREES.

The determination of this issue may be apparent from the pleadings or, knowing of the simultaneous proceeding in any other state, the court is already obligated to stop its proceedings and exchange information with that other state's court. If the response to the Florida request for information from State A is YES, then Florida may proceed to exercise jurisdiction and modify State A's decree. This is true even if State A's decree was otherwise enforceable under the PKPA. The question for State A was not whether it had jurisdiction—it did have jurisdiction—but whether it chose, under the circumstances of the case, to continue to exercise that jurisdiction.

If State A has not declined jurisdiction, then the concept of the PKPA's exclusive and continuing jurisdiction in the "home state" is fully satisfied. The Florida court, having no authority to modify the prior out-of-state decree, must therefore accord full faith and credit to the State A decree and decline to entertain modification jurisdiction to hear the child custody dispute.


214. The simplest way for a court to find out the status of the State A proceeding is for the judge to contact the judge handling the State A case. Indeed, one state court has said it is "incumbent for the court to communicate with the other state to determine if it declines jurisdiction to comply with the PKPA or if its jurisdiction would continue. Tennenbaum, 133 A.2d at 373, 519 N.Y.S.2d at 274, In re Marriage of Pedowitz, 179 Cal. App.3d 992, 1002-03, 225 Cal. Rptr. 186, 191 (1986) (involving simultaneous proceedings in Florida and California).

Florida law already requires the judge to make such efforts. Fla. Stat § 61.1314(3) (1989); e.g., Antonetti, 544 So. 2d at 287; Hickey, 461 So. 2d at 1366-67 (Florida courts to adhere strictly to provisions of § 61.1314).

215. For an example of a case in which the court found it had PKPA jurisdiction but declined to exercise it, see Heitler v. Hoosin, 143 A.2d 1018, 1019-20, 533 N.Y.S.2d 600, 602 (1988).

216. Ruby, supra note 84, at 785. See the recent case of Stanley, 209 So. 2d at 4529, in which the Alabama Court of Civil Appeals reversed a trial court’s order specifically because the Florida court, which had PKPA continuing jurisdiction, when asked, refused to relinquish continuing jurisdiction.

217. Ruby, supra note 84, at 785. See also Hamill, 487 So. 2d at 347 (in which the court, relying upon the UCCJA, held that the original state's exclusive and continuing jurisdiction mandated that all modification petitions be referred to that state).

Although admittedly severe, this process is explicit in the PKPA. The PKPA presumes continuing jurisdiction in the state first meeting PKPA requirements. 218. It is this point which is so critical to ensuring that only one state may exercise jurisdiction at a time. Thus if State A's initial decree was (1) PKPA valid, (2) has continuing jurisdiction under its own laws, and (3) remains the residence of the child or any one contestant, then no other state, such as Florida, may modify that state's custody order.

C. Procedural Steps to Modify a Florida Order Under the PKPA

The final jurisdictional condition focuses upon the continuing validity of a Florida custody decree after the child and one parent have left Florida to live in State A. Typically, the case entails an effort by the Florida resident parent to modify the Florida order which constitutes the original custody decree. The State A parent resists the modification proceeding by claiming that since State A is now the "home state" of the child, the Florida court no longer has jurisdiction to enforce or modify its original decree. For the court, the question is whether Florida retains "continuing" jurisdiction to issue further orders.
Taylor and Taylor: Interstate Child Custody Disputes: Ensuring the Legality of Flori

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Step 6: Determine Whether State A Now Has Jurisdiction Under the EPA

Jurisdiction under the EPA has been determined.
which would be consistent with the PKPA. Using PKPA analytical procedures calls for a variation of the out-of-state modification process; this requires fulfilling three components, the first two of which are simple.

**STEP 1: DETERMINE WHETHER ONE CONTESTANT OR THE CHILD IS STILL A RESIDENT OF FLORIDA AT THE TIME OF THE FILING OF THE MODIFICATION PLEADING.**

The first component is easy; the court must determine whether the child or one of the contestants remains a resident of Florida. Unless at least one of these participants continues to live in Florida, the court loses jurisdiction to enter additional orders and there is no reason to proceed further. If one of the participants still lives in Florida, go to **STEP 2.**

**STEP 2: DETERMINE WHETHER FLORIDA MAKE A CUSTODY DETERMINATION CONSISTENT WITH THE PKPA AT THE TIME OF THE ORIGINAL DECREE.**

Next, the court must determine whether Florida had subject matter jurisdiction to issue the initial custody order. To answer this inquiry in the affirmative, the original order must be “consistent with the provisions” of the PKPA. As has been stated earlier, this essentially requires the Florida decree to satisfy the PKPA’s “home state” test. If Florida was the home state of the child at the time of the filing of the original proceeding, then the initial order was made “consistently” with the provisions of the PKPA.

**STEP 3: DETERMINE WHETHER FLORIDA HAS CONTINUING JURISDICTION AT THE BEGINNING OF THE MODIFICATION PROCEEDING.**

STEP 3 may prove to be considerably more difficult to resolve. Under the PKPA, one of the principle assumptions is that the original home state will continue to exercise exclusive custody jurisdiction.

223. A custody decree is consistent with the PKPA if the state exercises jurisdiction within the terms of § 1738A(c). This includes “continuing” jurisdiction. 28 U.S.C. § 1738A(c)(2)(E) (1982). The Act defines “continuing” jurisdiction as:

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.


224. See Dahlén, 393 N.W.2d at 765. The court said that § 1738A(d) basically sets forth three criteria, all of which must be met, for a court to retain its jurisdiction.

Id. at 768. These criteria are:

1. That the original custody determination was entered consistently with the provisions of the PKPA.
2. That the requirement of subsection (c)(1) continues to be met.
3. That the state remains the residence of the children or of any contestant.

Id.

225. “...and such State remains the residence of the child or of any contestant.” 28 U.S.C. § 1738A(d) (1982). This requires a review of the case to see if Florida met the PKPA jurisdiction predicates at the time the original decree was issued. See Dahlén, 393 N.W.2d at 768; Jones, 456 So. 2d at 1111-13 (court analyzes PKPA to hold Alabama has continuing jurisdiction, rejecting conflicting Florida order).

228. Dahlén, 393 N.W.2d at 768.

230. See supra notes 169-90 and accompanying text.

231. “One of the basic principles of the PKPA is that it confers exclusive and continuing jurisdiction on the home state once it has been established.” Walsh, 117 Misc. 2d at 822, 458 N.Y.S.2d at 839-40. It is apparent that the federal act establishes a strong preference for the determination of a custody dispute in the state that issued the initial decree...” 179 Cal. App.3d at 922, 252 Cal. Rptr. at 186, in which the court remanded the case to the trial court to hear evidence on whether the father's intermittent, non-consistent residence was sufficient to qualify for the § 1738A(d) test requiring that at least one contestant “remains” a resident of the state. The court ordered this hearing because “it appears that the federal act establishes a strong preference for the determination of a custody dispute in the state that issued the initial decree...” 179 Cal. App.3d at 922, 252 Cal. Rptr. at 186, in which the court remanded the case to the trial court to hear evidence on whether the father's intermittent, non-consistent residence was sufficient to qualify for the § 1738A(d) test requiring that at least one contestant “remains” a resident of the state. The court ordered this hearing because “it appears that the federal act establishes a strong preference for the determination of a custody dispute in the state that issued the initial decree...” 179 Cal. App.3d at 922, 252 Cal. Rptr. at 186, in which the court remanded the case to the trial court to hear evidence on whether the father's intermittent, non-consistent residence was sufficient to qualify for the § 1738A(d) test requiring that at least one contestant “remains” a resident of the state. The court ordered this hearing because “it appears that the federal act establishes a strong preference for the determination of a custody dispute in the state that issued the initial decree...”
which would be consistent with the PKPA.223 Using PKPA analytical procedures calls for a variation of the out-of-state modification process; this requires fulfilling three components,224 the first two of which are simple.

STEP 1: DETERMINE WHETHER ONE CONTESTANT OR THE CHILD IS STILL A RESIDENT OF FLORIDA AT THE TIME OF THE FILING OF THE MODIFICATION PLEADING.

The first component is easy; the court must determine whether the child or one of the contestants remains a resident of Florida.225 Unless at least one of these participants continues to live in Florida, the court loses jurisdiction to enter additional orders226 and there is no reason to proceed further. If one of the participants still lives in Florida, go to STEP 2.

STEP 2: DETERMINE WHETHER FLORIDA MAKE A CUSTODY DETERMINATION CONSISTENT WITH THE PKPA AT THE TIME OF THE ORIGINAL DECREE.

Next, the court must determine whether Florida had subject matter jurisdiction to issue the initial custody order.227 To answer this inquiry in the affirmative, the original order must be “consistent with the provisions” of the PKPA.228 As has been stated earlier,229 this essentially requires the Florida decree to satisfy the PKPA’s “home state” test. If Florida was the home state of the child at the time of the filing of the original proceeding, then the initial order was made “consistently” with the provisions of the PKPA.230

STEP 3: DETERMINE WHETHER FLORIDA HAS CONTINUING JURISDICTION AT THE BEGINNING OF THE MODIFICATION PROCEEDING.

STEP 3 may prove to be considerably more difficult to resolve. Under the PKPA, one of the principle assumptions is that the original home state will continue to exercise exclusive custody jurisdiction,231 moved to Florida).

227. “The jurisdiction of a court of a State which has made a child custody determination . . . continues . . .” 28 U.S.C. § 1738A(d) (1982). This requires a review of the case to see if Florida met the PKPA jurisdiction predicates at the time the original decree was issued. See Dahlén, 393 N.W.2d at 768; Jones, 456 So. 2d at 1111-13 (court analyzes PKPA to hold Alabama has continuing jurisdiction, rejecting conflicting Florida order).

229. Dahlén, 393 N.W.2d at 768.

227. See supra notes 169-90 and accompanying text.

229. See supra notes 121-30 and accompanying text.

230. See supra notes 121-30 and accompanying text.

231. One of the basic principles of the PKPA is that it confers exclusive and continuing jurisdiction on the home state once it has been established.” Walsh, 117 Misc. 2d at 822, 458 N.Y.S.2d at 839-40.

If, however, Florida was not the home state, but instead relied upon the “significant connection,” then the order is of more doubtful validity under the PKPA. See supra notes 121-30 and accompanying text.

228. Supra note 169-90 and accompanying text.

229. See supra note 121-30 and accompanying text.

230. See supra note 121-30 and accompanying text.

232. See supra note 121-30 and accompanying text.

233. “One of the basic principles of the PKPA is that it confers exclusive and continuing jurisdiction on the home state once it has been established.” Walsh, 117 Misc. 2d at 822, 458 N.Y.S.2d at 840 (emphasis in the original). See Pedowitz, 179 Cal. App. 3d at 992, 225 Cal. Rptr. at 186, in which the court remanded the case to the trial court to hear evidence on whether the father’s intermittent, non-consecutive residence was sufficient to qualify for the § 1738A(d) test requiring that at least one contestant “remains” a resident of the state. The court ordered this hearing because “it is clear that the federal court establishes a strong preference for the determination of a custody dispute in the state that issued the initial decree . . . .” 179 Cal. App. 3d at 992.
even if the child has been gone from the state for a number of years.\textsuperscript{232} Stated plainly: the creation of “home state” jurisdiction in the new state does not end the continuing jurisdiction in the initial state.\textsuperscript{233} “Mere residence for more than six months in a state of a child who has been the subject of a custody proceeding in another state is not a sufficient basis for [a] Court to exercise jurisdiction over the proceeding.”\textsuperscript{234} So long as the initial state court\textsuperscript{235} decides that it has “continuing” jurisdiction under its own laws at the time of the modification request,\textsuperscript{236} its jurisdiction will continue. In this context, the “significant connections” test is the most likely of the PKPA bases of jurisdiction to be chosen.\textsuperscript{237}

Just what facts constitute “significant connections” varies from state to state and to each in particular case. Most states seem to broadly define what encompasses “significant connections.” Although some cases have specified very minimal continuation grounds,\textsuperscript{238} most have identified several factors which seem to regularly satisfy state law tests for “significant connections”: the use by the parties of the original state’s courts for modification or enforcement procedures,\textsuperscript{239} the presence of grandparents or other relatives,\textsuperscript{240} and the regular and frequent exercising of the visitation rights spelled out in the custody decree.\textsuperscript{241}

232. E.g., Hearfield, 749 F.2d at 1138 (Texas retained jurisdiction to rule on visitation after the parent had moved child to Louisiana four years previously).
233. Krauskopf, supra note 18, at 438.
234. Philip, 137 Misc. 2d at 385, 520 N.Y.S.2d at 697.
235. The issue of continuing or declining jurisdiction is left to the sound discretion of the court initially exercising PKPA authority. Murphy, 748 P.2d at 751 n.7.
236. The court issuing the initial PKPA decree looks to its own laws to verify that it still has jurisdiction over the case. E.g., O’Daniel, 14 Ark. App. at 212-13, 686 S.W.2d at 806; Biscoe, 443 N.W.2d at 225; Noguera v. Noguera, 129 A.D.2d 906, 514 N.Y.S.2d 542 (1987); Walsh, 117 Misc. 2d at 822-23, 458 N.Y.S.2d at 840.
238. Hearfield, 749 F.2d at 1138 (§ 1738A(d) jurisdiction because father continues to reside in Texas); Robertson, 532 So. 2d at 1016 (§ 1738A(d) jurisdiction because mother continues to reside in Alabama); Stanley, 206 So. 2d at 4529 (jurisdiction retained in Florida because father still lives there).
239. E.g., O’Daniel, 14 Ark. App. at 210, 686 S.W.2d at 805.
240. E.g., Meade, 812 F.2d at 1478; Murphy, 748 P.2d at 751 n.6; Philip, 137 Misc. 2d at 385, 520 N.Y.S.2d at 699.
241. E.g., Meade, 812 F.2d at 1478; Murphy, 748 P.2d at 751 n.6; O’Daniel, 14 Ark. App. at 210, 686 S.W.2d at 805; Philip, 137 Misc. 2d at 385, 520 N.Y.S.2d at 699.
even if the child has been gone from the state for a number of years. Stated plainly: the creation of “home state” jurisdiction in the new state does not end the continuing jurisdiction in the initial state. Mere residence for more than six months in a state of a child who has been the subject of a custody proceeding in another state is not a sufficient basis for a Court to exercise jurisdiction over the proceeding. So long as the initial state court decides that it has “continuing” jurisdiction under its own laws at the time of the modification request, its jurisdiction will continue. In this context, the “significant connections” test is the most likely of the PKPA bases of jurisdiction to be chosen.

Just what facts constitute “significant connections” varies from state to state and in each particular case. Most states seem to broadly define what encompasses “significant connections.” Although some cases have specified very minimal continuation grounds, most have identified several factors which seem to regularly satisfy state law tests for “significant connections”: the use by the parties of the original state’s courts for modification or enforcement procedures, the presence of grandparents or other relatives, and the regular and frequent exercising of the visitation rights spelled out in the custody decree.

1000, 225 Cal. Rptr. at 189.

223. *E.g.* *Heartfield*, 749 F.2d at 1138 (Texas retained jurisdiction to rule on visitation after the parent had moved child to Louisiana four years previously).


225. *Philip*, 137 Misc. 2d at 385, 520 N.Y.S.2d at 697.

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229. *E.g.* *O’Daniel*, 14 Ark. App. at 210, 686 S.W.2d at 805.

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232. 28 U.S.C. §§ 1738A(d), (f), (g). See supra note 121 and accompanying text.


234. *Lyon*, 137 Misc. 2d at 385, 520 N.Y.S.2d at 697.

235. *Philip*, 137 Misc. 2d at 385, 520 N.Y.S.2d at 697.

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242. *Osterink v. Mathey*, 469 So. 2d at 222 (Florida’s Supreme Court has no jurisdiction over a child who moved from Florida to her mother’s home in Alabama because the mother did not move to the child’s home state).

243. *Florida v. Florida*, 469 So. 2d at 222 (Florida’s Supreme Court has no jurisdiction over a child who moved from Florida to her mother’s home in Alabama because the mother did not move to the child’s home state).

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248. *Osterink v. Mathey*, 469 So. 2d at 222 (Florida’s Supreme Court has no jurisdiction over a child who moved from Florida to her mother’s home in Alabama because the mother did not move to the child’s home state).

249. *Sperry*, 530 So. 2d at 1045 (subsequent judicial modifications and visitation not sufficient connection).

250. *Sperry*, 530 So. 2d at 1045; *Goldman*, 523 So. 2d at 782; *Genoe*, 515 So. 2d at 782.

On the other hand, several decisions reflect a very narrow, and potentially conflicting, concept of “continuing jurisdiction.” As stated most dramatically in *Osterink v. Mathey*, “the mere fact that the original custody decree was obtained in Florida does not commit the custody question to the exclusive jurisdiction of Florida,” even if Florida was the child’s home state. Consequently, decisions are rendered which reject the above “significant contacts” factors, and hold that Florida “continuing jurisdiction” jurisdiction is lost a mere six months after the child has left the state.
The authors argue that this line of cases unnecessarily deprives Florida residents of “continuing jurisdiction” of their case. Rather, as the PKPA recognizes, the analysis employed by the Barnett and Hamill courts is the proper federal method to determine jurisdiction. If one participant remains a resident of Florida and exercises visitation rights, then jurisdiction should continue in Florida. If the courts continue the trend to narrowly apply “significant contacts” for continuing jurisdiction purposes, the PKPA will place Florida courts in the unconventional position of enforcing out-of-state decrees long after the children have come to Florida while quickly relinquishing jurisdiction over Florida orders if the child moves away from the state.

The authors do argue for longer periods for “continuing jurisdiction,” but just because the court has “continuing jurisdiction” does not mean that it is required to exercise it. There is a difference between a state losing jurisdiction and, though having it, choosing not to exercise it. The former strips Florida courts of their power to modify a Florida decree while the later permits a transfer to another court because the new “home state” is the better forum to decide the current controversy. Even if a Florida court finds it has jurisdiction, it is, of course, not mandated by the PKPA to perpetually continue jurisdiction. Rather the PKPA leaves it to each state’s discretion whether to continue or suspend jurisdiction in every case. Either Florida will choose to continue jurisdiction or it will decide to decline jurisdiction and defer it to State A. Viewing each case separately, the court may

at 238-39; Prickett, 498 So. 2d at 1060; Hollander, 466 So. 2d at 268.

This Florida practice of the original decree state losing its continuing jurisdiction soon after the child acquires a new “home state” is considered an “extreme” view and is generally not followed. Interstate Custody Disputes, supra note 3, at 3-31 (specifically citing Hegal v. Hegler, 383 So. 2d 1134 (Fla. 3d Dist Ct. App. 1980) as an example of this “extreme” view).

251. Barnett, 528 So. 2d at 1231.
252. Hamill, 487 So. 2d at 345.
253. A discussion of the difference between the two is found in the UCCJA context in an opinion by Justice Warner in Yurgel, 546 So. 2d at 746, saying the case does not raise a question of jurisdiction but of proper forum. Id. at 748 (Warner, J., dissenting in part and concurring in part).
254. Meade, 812 F.2d at 1477 (court may voluntarily relinquish jurisdiction); Neifman, 472 So. 2d at 136.
255. See 28 U.S.C. § 1738A(c)(2)(D) (1982), which states, in pertinent part: [the State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child]


Some courts have done just that, given up jurisdiction, even after holding that it possessed PKPA “continuing” jurisdiction. See e.g., Heitzer, 143 A.D.2d at 1019, 533 N.Y.S.2d at 600.

choose to decline that jurisdiction which it could otherwise assert.

Conclusion

Each of the Florida district courts of appeal have faced the issue of modification of out-of-state child custody orders, but only one reported decision has been based upon the PKPA. Yet every year, thousands of custody decrees are issued which affect Florida parents and children. It is crucial for the Bench and Bar to correct this deficiency. The importance of the PKPA cannot be overstated. It is the process which must be used by Florida and the other states to verify that their orders are enforceable beyond their state borders. Altering the present way of doing things will not be accomplished without difficulty. Using PKPA analysis is not simple. As demonstrated above, it requires exacting statements of facts and meticulous procedures to reach the correct decision. Nevertheless, commonplace use of the analytical patterns of the PKPA is essential. If Florida initial and modification decrees are to be given effect in other states, they must conform to that standard by which all interstate custody decrees will be judged in the future.
The authors argue that this line of cases unnecessarily deprives Florida residents of "continuing jurisdiction" of their case. Rather, as the PKPA recognizes, the analysis employed by the Barnett and Hamill courts is the proper federal method to determine jurisdiction. If one participant remains a resident of Florida and exercises visitation rights, then jurisdiction should continue in Florida. If the courts continue the trend to narrowly apply "significant contacts" for continuing jurisdiction purposes, the PKPA will place Florida courts in the unconventional position of enforcing out-of-state decrees long after the children have come to Florida while quickly relinquishing jurisdiction over Florida orders if the child moves away from the state.

The authors do argue for longer periods for "continuing jurisdiction," but just because the court has "continuing jurisdiction" does not mean that it is required to exercise it. There is a difference between a state losing jurisdiction and, though having it, choosing not to exercise it. The former strips Florida courts of their power to modify a Florida decree while the latter permits a transfer to another court because the new "home state" is the better forum to decide the current controversy. Even if a Florida court finds it has jurisdiction, it is, of course, not mandated by the PKPA to perpetually continue jurisdiction. Rather the PKPA leaves it to each state's discretion whether to continue or surrender jurisdiction in every case. Either Florida will choose to continue jurisdiction or it will decide to decline jurisdiction and defer it to State A. Viewing each case separately, the court may choose to decline that jurisdiction which it could otherwise assert.

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