

# INTERSTATE CHILD CUSTODY DISPUTES



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## INTRODUCTION

*Military Member and Spouse have one child. Spouse wants a divorce and wants custody. Spouse leaves Military Member and goes to Connecticut with the child. Military Member wants custody, and would like to sue Spouse for custody in Idaho. Can Member do so?*

The question is whether Idaho or Connecticut has jurisdiction over the child custody case. The answer can be complicated and depends on a number of factors. Military members often face problems associated with child custody actions because of frequent moves. If you have children and are confronted with this issue, it is important that you know your rights.

It is always a good idea to seek legal assistance or consult a private attorney when you are faced with a custody dispute.

## DOES IDAHO HAVE JURISDICTION?

In interstate child custody disputes, courts are generally bound to give “full faith and credit” to, and avoid modifying, custody decrees from other states. Once a court of a state with jurisdiction over a custody matter has issued an order, courts of other states must defer to that order until certain requirements are met.

There are two “uniform acts,” the Uniform Child Custody Jurisdiction Act (UCCJA)

and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (one or the other of which is in force in all 50 states and the District of Columbia)<sup>1</sup>, that along with a federal law called the Parental Kidnapping Prevention Act (PKPA) require states to treat custody orders this way.

Jurisdictional preference is given to the child’s home state, which is the state in which the child lived with a parent or person acting as a parent for six consecutive months prior to the commencement of a custody action. If your child’s other parent has moved from Idaho with your child and you want to petition for custody you should do so as soon as possible so another state does not become the child’s legal “home.”

If there is no valid custody order from another state already in place, an Idaho court can exercise jurisdiction if: (1) Idaho is the home state of the child at the time the action is filed or has been within the last six months and a parent, or a person acting as a parent, continues to live in Idaho; or (2) A court in another state does not have jurisdiction as the child’s home state or a court of the child’s home state has declined to exercise jurisdiction and the child or at least one of the child’s parents, or a person acting as a parent, have a substantial connection to Idaho

If a valid custody order from another state is already in place, an Idaho court may only exercise jurisdiction to modify that order if a court of the state that issued the order has

<sup>1</sup> Idaho’s UCCJEA is located at Idaho Code, Title 32.

determined that it no longer has jurisdiction or that a court of Idaho would be a more appropriate forum.

Generally a court of another state will not relinquish jurisdiction unless it finds that neither the child nor one of its parents nor a person acting as a parent continues to have a significant connection with the issuing state and that substantial evidence concerning the child's care and welfare is no longer available in the issuing state.

An Idaho court may assume jurisdiction over a custody order on its own, without the "permission" of the issuing state if it finds that neither the child nor the child's parents nor a person acting as a parent currently reside in the issuing state.

The only exception to these jurisdictional rules is in cases where a child is physically present in Idaho and either is in danger from abuse or has been abandoned.

### **PARENTAL MISCONDUCT**

If the parent bringing the custody action has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction. Additionally, an Idaho court may not exercise jurisdiction to modify a custody decree of another state if the requesting parent has wrongfully taken the child from the parent with legal custody.

### **DETERMINING WHICH STATE HAS JURISDICTION**

When an Idaho court is unsure of its jurisdiction, it can ask the appropriate court of another state to hold a hearing to consider evidence, to order a party to produce evidence, or to direct social workers to evaluate matters.

In some cases, it will be difficult to determine which state has proper jurisdiction. When that happens, the court must determine which of the two states is the most appropriate forum.

### **MODIFYING A CUSTODY DECREE**

In order to modify a decree it is not only necessary to show that the state in which modification is being sought has jurisdiction under the requirements outlined above. It is also generally necessary to show a substantial and material change in circumstances, from the time the original decree was issued.

Some circumstances will almost automatically qualify as "material." These include:

- Cruelty, neglect, or abuse;
- Unfit mental health of the parent with custody; and/or
- Remarriage of either parent.

### **ENFORCING A CUSTODY DECREE OF ANOTHER STATE**

If you have a custody decree from another state, you can file a copy of it in the office of the clerk of any district court in Idaho.

Other persons named in the decree must then be given notice and a chance to contest the decree's validity.

After these requirements are satisfied, the decree will be given the same effect as those entered by Idaho courts.

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

**For additional information on this and other legal topics, see the Air Force Legal Assistance Website:**  
<https://aflegalassistance.law.af.mil>