



Northwest Justice Project

Which Court Can Enter Custody Orders?

Frequently Asked Questions and Answers about Jurisdiction

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Read this Section First

Determining jurisdiction can be complicated. This publication tries to explain the basics in simple terms. It may still be confusing. Try to speak with a lawyer.

This publication describes when a Washington court:

- May decide custody if a child has lived in more than one state
- Should enforce (follow) custody/visitation orders from other states
- May modify (change) custody/visitation orders from other states

Will a Washington court be able to decide my child's custody?

Yes, if both of these are true:

- The child has always lived in Washington
- No other state, tribal court, or foreign country has entered a custody order about the child

Washington will then have jurisdiction (legal authority) to make a custody decision. (Exception: if the case involves the Indian Child Welfare Act.)

If the above are **not** true in your case, jurisdiction will be harder to determine.

❖ **Jurisdiction depends on the facts in each case.** Talk to a lawyer if you have questions about whether Washington has jurisdiction.

Talk to an experienced family law lawyer if you answer "yes" to either of the following questions:

- Has the child lived in this state fewer than six months?
- Has any other state, country, or a tribal court made any custody decision about the child?

❖ If you have a custody case that may involve more than one state, talk to experienced family law attorneys in both Washington and the other state. Laws may vary greatly from state to state.

How are these questions and answers organized?

- The **Introduction** defines some important words used in the questions and answers, gives a summary of child custody jurisdiction, and describes which types of cases the laws cover.
- **Part I** describes child custody jurisdiction rules when no court has made an earlier child custody decision. It has a few examples.

- **Part II** describes the rules when a custody decision has been made in the past. it has a few examples.
- **Part III** explains when a court might decide not to use its jurisdiction and instead allow the court in another state to make the custody decision.
- **Part IV** explains some tools to use when more than one state is involved in the case.
- **Part V** has a table showing the different kinds of jurisdiction (authority) a court has in typical family law cases. Example: A court might have jurisdiction for a divorce, but not custody in the divorce.

Introduction

The court will only have authority to decide child custody if two laws, the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) and the PKPA (Parental Kidnapping Prevention Act) give it. The PKPA is a federal law.¹ The UCCJEA is a law that more than 40 states, including Washington, have passed.² The PKPA is important if a state’s law conflicts with the federal requirements. This publication mainly covers the UCCJEA.

Some words you should know:

- If a particular court has the authority to make a child custody decision, it has “**child custody jurisdiction,**” also called “**subject matter jurisdiction.**”
- When no court has made a custody decision about the child, and a person asks for custody in a Washington court, the court will ask whether it has “**initial jurisdiction**” to make a custody decision. (See Part I.)
- When a court has made a previous custody decision, and someone asks for a different decision in a Washington court, the court will ask whether the first court has “**exclusive continuing jurisdiction.**” (See Part II.)
- A court that has child custody jurisdiction can “**decline jurisdiction.**” **The court can decide not to use its jurisdiction** but allow a court in another state to take jurisdiction. (See Part III.)

1. How does a Washington court decide whether it has child custody jurisdiction?

The court will ask:

¹ [28 USC 1738A](#). References like this refer to the law that supports the statement made in the text. Court cases have names, such as *In re Custody of Child*. “USC” is the United States Code, the law passed by the United States Congress. “RCW” is The Revised Code of Washington, the law of Washington State, available online at http://www.leg.wa.gov/rcw/index.cfm#RCW_by_Title. You can find the laws and cases at many public libraries. Many counties have law libraries, often located at or near the Superior Court. Call the clerk’s office to find out if there is a law library open to the public in your county. Use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. The references are up-to-date as of the date we wrote this publication. The law sometimes changes before we can update the publication.

² [Ch. 26.27 RCW](#).

- Has any court already made a custody decision about this child? (Part II)
 - If so, does either parent or the child still live in the state³ that made that decision?
 - Did that court have child custody jurisdiction when it made the order?
 - Did the parties in that case have proper notice and the chance to be heard?
- If there is **no** earlier custody decision,
 - Was Washington your child’s “home state” when you filed your case?
 - Has a case been filed in another state with home state jurisdiction? (Part I)
- Does Washington have emergency jurisdiction to make orders that protect the child, at least on a temporary basis? (Part I, Question 6 and Part 2, Question 8.)

2. What type cases do these laws cover?

They cover court decisions providing for custody or visitation.⁴ **Example:** If custody comes up in any of the following types of cases, the UCCJEA and the PKPA apply. The court can only make the custody decision if it has “child custody jurisdiction:”

- Divorces and domestic partnerships
- Legal separations
- Parentage (paternity) (including also petitions to adopt a parenting plan/residential schedule)
- Protections from domestic violence (**example:** domestic violence protection orders)
- Juvenile court actions for abused and neglected children (dependency cases)
- Guardianship⁵
- Custody cases brought by non-parents
- Some child support orders, if they address custody or visitation

Types of cases that these laws do NOT cover include:

- Adoption cases
- Cases concerning emergency medical care for the child⁶
- Parts of custody cases covered by the Indian Child Welfare Act⁷

³ If your order is from a tribal court, talk to a lawyer. The law is not clear about when a tribal court loses jurisdiction.

⁴ [RCW 26.27.021\(2\)](#).

⁵ [RCW 26.27.021\(4\)](#).

⁶ [RCW 26.27.031](#).

⁷ See [RCW 26.27.041\(1\)](#). The Indian Child Welfare Act covers children who are members of an Indian Tribe or may be eligible for membership. It applies, for example, in non-parent custody cases ([Ch 26.10 RCW](#)) and juvenile court cases about abused or neglected children (dependencies).

3. What decisions are “custody decisions?”

They are court orders covering legal custody, physical custody, or visitation. They can be permanent, temporary, initial (the first one) or modifications (changes from the first one).⁸
Orders covering only child support are not custody decisions.

4. Do these laws include non-parents?

Yes. The laws also cover a “person acting as a parent.” This is someone who:

- Has physical custody of the child (or has had physical custody for six months in a row within one year just before the custody case is started) AND
- Has legal custody, or claims a right to legal custody under state law.⁹

The law always covers the child in the types of cases listed above, whoever the adults are.

5. Can the parents just agree for a court to decide custody?

No. The parties’ agreement is not enough.¹⁰

Part I. Where there is no earlier custody order (Initial Jurisdiction)

1. Which state usually decides child custody?

The child’s home state has the right to make an initial custody decision about the child, unless it declines jurisdiction.¹¹

2. When is Washington the child’s “home state?”

This is not only about where the child lives right now. Under the UCCJEA, Washington is the “home state” **only** if one of these is true:

- a. The child has lived in Washington with a parent or someone acting as a parent for at least the last six consecutive months (six months in a row) before your court case is filed.
- b. The child is less than six months old, and has lived in Washington with a parent or someone acting as a parent since birth at the time your court case is filed.
- c. Washington was the child’s *home state* (either a. or b. were true) within six months before your court case is filed, AND one parent or person acting as a parent has continued to live in Washington since the child left the state.¹²

⁸ [RCW 26.27.021\(3\)](#).

⁹ [RCW 26.27.021\(13\)](#).

¹⁰ *Campbell v. Campbell*, 180 Ind. App. 351, 388 N.E.2d 607 (1979).

¹¹ [RCW 26.27.201](#).

¹² [RCW 26.27.201\(1\)](#) and [RCW 26.27.021\(7\)](#).

If “a,” “b,” or “c” is true, and no court has already issued a custody order about the child, Washington has child custody jurisdiction to make an initial custody decision (the first custody decision about that child).¹³ The custody case should be filed here.

3. Does the child need to be physically present in Washington when the case begins?

No, for home state jurisdiction.¹⁴ Yes, for emergency jurisdiction.

4. Another state is my child’s “home state.” What does this mean?

The home state has the right to make the custody decision. It would be the state to make the decision in most cases. If another state has “home state” jurisdiction, Washington will have jurisdiction to make an initial custody decision **only if**

- the home state “declines” jurisdiction (see Part III below), AND
 - Washington is an appropriate court to decide custody AND
 - Washington has “significant connection jurisdiction” BECAUSE
 - The child and at least one parent or person acting as parent have a significant connection with Washington (more than just being here physically) AND
 - There is a lot of evidence in Washington about the child’s care, protection, training, and personal relationships.¹⁵ OR
 - No one has filed a case in the other state before its home state status ends AND you file in Washington after Washington becomes the home state

Emergency jurisdiction may still be available in Washington even when the child has another home state. (Part 1, Question 6.)

❖ **Warning:** If you file a custody case in Washington before Washington qualifies as the child’s “home state” and you cannot establish emergency jurisdiction, your case may get dismissed or, even if not dismissed, the orders entered may be successfully challenged at a later date and declared void (no good) for lack of subject matter jurisdiction.

5. Washington does not have home state jurisdiction. What can I do?

You may:

- (a) File for custody in the state that has home state jurisdiction.

¹³ [RCW 26.27.021\(8\)](#) and [RCW 26.27.201](#).

¹⁴ [RCW 26.27.201\(3\)](#).

¹⁵ [RCW 26.27.201 \(1\)\(b\)](#); [RCW 26.27.021\(8\)](#).

- (b) Ask the home state to decline jurisdiction and allow Washington to take jurisdiction (Part III). In an emergency, you may be able to get a Washington custody order protecting the child while long-term jurisdiction is decided. (Go to next question.)
- (c) Wait until the child has been in Washington six months so that Washington becomes the child's home state (**if no one has started a custody case in the other state in the meantime**).

6. Washington is not the child's "home state." We have an emergency. What can I do in a Washington court?

Washington may be able to take *emergency jurisdiction* to make a custody decision to protect the child from abandonment or abuse if both of these are true:¹⁶

- The child is in Washington.
- The child, a sibling, or parent has been abused, or is threatened with abuse.

❖ Emergency jurisdiction is limited.

If no one has filed a case in another state and Washington takes emergency jurisdiction, a Washington custody order lasts only until the state with home state or significant connection jurisdiction makes a custody order. If no one files a custody case in that other state, Washington's jurisdiction may become final **if** the emergency order allows for this **and** Washington becomes the child's home state.

If someone has filed a case in the state with initial jurisdiction but no order has been issued there yet, see the next question.

If Washington takes emergency jurisdiction and you want the state with home state jurisdiction to enter an initial custody decision, you must quickly file a custody case in the other state and have the Washington court communicate with the court in the other state. If you wait too long, Washington may become the child's home state for making an initial custody decision. Then the other state can lose jurisdiction to Washington.¹⁷

7. Someone has filed a case in the child's home state (which is not Washington). There is no court order yet. We have an emergency. Can a Washington court do anything?

Washington may be able to take *emergency jurisdiction* to make a custody decision to protect the child from abandonment or abuse if both of these are true:¹⁸

- The child is in Washington.
- The child, a sibling or parent has been abused, or is threatened with abuse.

¹⁶ [RCW 26.27.231\(1\) and \(2\).](#)

¹⁷ [RCW 26.27.231\(2\).](#)

¹⁸ [RCW 26.27.231\(1\) and \(2\).](#)

Emergency jurisdiction is limited. The emergency order in Washington must have a date that it ends. Unless the other state declines jurisdiction, Washington's jurisdiction will continue only until the earlier of:

- The date the court with continuing jurisdiction enters an order or
- The date the Washington emergency order expires¹⁹

The Washington court must communicate with the court in the home state.

8. How else can a Washington court have jurisdiction to make an initial custody decision?

If the child has no home state, or the home state declines jurisdiction, Washington may be able to take “**significant connection**” jurisdiction.

- The child and at least one parent must have a significant connection with Washington (more than just being here) AND
- Washington must have substantial evidence on issues important to custody²⁰

[RCW 26.27.201\(d\)](#) also grants jurisdiction in very rare cases where no other state has home state, significant connection, or more appropriate forum jurisdiction.

9. Jurisdiction is complicated. Can you give some examples?

Example #1. Parents marry in Washington in 1994. They move to Oregon. They live there together seven years. The parents separate. Mother and child move to Yakima, Washington. Five months after the mother and child have left Oregon, father files for custody in Oregon, where he still lives. Mother receives the Oregon court papers at home in Yakima.

Result: Oregon is still the child's home state. Oregon is the only state that can make the permanent custody decision, unless it declines jurisdiction. Mother may be able to ask Oregon to decline jurisdiction. If it does, Washington may decide custody.

Example #2. Parents marry in Washington in 1994. They move to Oregon where they live together for seven years. Father has a history of domestic violence against mother. The parents separate. Mother and child move to Yakima, Washington. Father stays in Oregon. Mother immediately files an action in the Yakima court asking for a domestic violence protection order. Father is served with these papers in Oregon. He comes to Washington to fight the order. The Washington court finds that father has physically abused mother and child. The Washington court issues a Domestic Violence Protection Order. The order also gives mother custody. Two months later (five months after the mother and child have left Oregon), father files for custody in Oregon, where he still lives. Mother receives the Oregon court papers at her home in Yakima.

Result: When mother filed in Washington, it was not the home state. Washington could only assume emergency jurisdiction. At the time father filed in Oregon, it was still the child's home state. Oregon is the only state that can make the permanent custody decision,

¹⁹ [RCW 26.27.231\(3\)](#).

²⁰ [RCW 26.27.201\(1\)\(b\),\(c\)](#), *In re Marriage of Hamilton*, 120 Wash. App. 147 (2004).

unless it declines jurisdiction. Mother can ask Oregon to decline jurisdiction. If it does not, the Washington jurisdiction (and custody order) must only be temporary. The two courts must communicate to decide how to solve the emergency, how to protect the parties and child, and how long the emergency order should be.²¹

Part II. Where a State has Already Made a Custody Decision

1. I have a parenting plan from a Washington court. May I enforce or change it in Washington?

If your order is still in effect (has not ended or been replaced or changed), Washington has child custody jurisdiction to enforce (require the parties to follow) or change (modify) its custody decision so long as all of these are true:

- Either parent, a person acting as a parent, or the child still lives here ²²
- The court had child custody jurisdiction to make the original order
- The person you want to enforce the order against was given proper notice and chance to be heard (or s/he took part in the case anyway)

This is “continuing exclusive jurisdiction.” If Washington has continuing exclusive jurisdiction, you must have any permanent changes to the order made here **unless** Washington declines jurisdiction.

2. Another state made a custody decision about the child. The child now lives in Washington. The other parent still lives in the original state. I need a change to the order. Can a Washington court change that order?

No. The other state has “continuing exclusive jurisdiction.” You must ask that state for any changes to the order.

Washington will have child custody jurisdiction to **change** the custody order only if:

- Both parents, any person acting as a parent, and the child have left the state that made the initial decision and
 - Washington is now the home state, or there is no home state and Washington has significant connection jurisdiction (Part I, Questions 2 and 7) OR
- The state that made the initial decision declines its jurisdiction (Part III) and
 - Washington is now the home state OR there is no home state and Washington has significant connection jurisdiction (Part I Questions # 2 and # 7) OR

There is a limited exception (Part II, Question # 8) for temporary orders in emergencies.

²¹ See *In re Marriage of Stoneman v. Drollinger* 2003 MT 25, 314 Mont. 139, 64 P. 3d 997 (2003) for a discussion of declining jurisdiction when there is a history of domestic violence.

²² [RCW 26.27.211](#).

3. I have a custody order from another state. My child and I moved to Washington a while ago. The other parent still lives in the original state. Will the Washington court follow my out-of-state order?

Yes, if all these are true:

- The other state's order is still in effect
- The out-of-state court had child custody jurisdiction
- Notice and a chance to be heard were given before the out-of-state court made its order²³

You may register your order in Washington.²⁴ Our packet called [How Do I Register an Out-of-State Custody Order in Washington](#) has forms and instructions. If you fill out the registration procedure and the Washington court formally confirms your out-of-state order, you should be able to ask a Washington court to enforce it in the future if you need to. This might happen, for example, if the other parent visits the child here and then does not return the child to you at the end of the visitation stated in your out-of-state order.

4. What if my custody order comes from a tribal court?

If the tribal court followed rules and procedures like the UCCJEA, the Washington court must treat its order like an order from another state.²⁵

5. What if my custody order comes from a court in a foreign country?

If the foreign court followed rules and procedures like the UCCJEA, the Washington court should enforce that custody order (and change it only if allowed as stated in question 2 of this part, above) under the same rules as an order from another state. **The Washington court will not enforce the order** if the other country's laws violate basic principles of human rights.²⁶

The Hague Convention on the Civil Aspects of International Abduction may also apply. The Washington court may also treat orders issued under the Hague Convention like custody orders.²⁷

International custody cases can be very complicated. Get advice from a lawyer.

6. Does a court that has made a child custody decision ever lose its child custody jurisdiction?

Yes, if:

²³ [RCW 26.27.421.](#)

²⁴ [RCW 26.27.441.](#)

²⁵ [RCW 26.27.041.](#)

²⁶ [RCW 26.27.051.](#)

²⁷ [RCW 26.27.](#)

- both parents, a person acting as a parent, and the child have moved out of the state that made the order. A court in any state can decide if none of the above people lives in that state any more.
- both parents, a person acting as a parent, and the child lack a significant connection with the state, and substantial evidence about the child’s care is no longer available in the state. Only the state that made the custody decision can decide that it has lost jurisdiction for this reason.²⁸
- the court order has expired (**example**: a domestic violence protection order awarding custody that ran out in 2003). It is not clear in this case if the original court still has exclusive continuing jurisdiction. If you have an expired order, talk to a lawyer.

7. What if none of the parties lives in the state that made the initial custody decision?

The original state loses its exclusive continuing jurisdiction, unless a party’s absence is just temporary. A new state could change the initial custody decision if the new state has home state jurisdiction. If there is no home state, a new state could change it if it has significant connection jurisdiction.²⁹

8. There is already a custody order in another state, but the child is here. There is an emergency. What can a Washington court do?

To protect a child located in Washington from abandonment or abuse, Washington may take *emergency jurisdiction* over the child.³⁰ If another state has exclusive continuing jurisdiction (Part II, question 2), the Washington emergency order must have a date it ends. Unless the other state declines jurisdiction, Washington’s jurisdiction will continue only until the **earlier** of:

- The date the court with continuing jurisdiction enters an order
- The date the Washington emergency order expires³¹

The Washington court must communicate with the court in the issuing state.

These timelines also apply in initial order cases if someone has filed a case but there is no order yet in the other state at the time someone asks the Washington court to take emergency jurisdiction. (Part I, Question 6.)

²⁸ [RCW 26.27.211.](#)

²⁹ [RCW 26.27.221.](#)

³⁰ [RCW 26.27.231\(1\).](#)

³¹ [RCW 26.27.231\(3\).](#)

9. I have a court order from another state giving me visitation with the child. The child and a parent have moved to Washington. The parent will not allow my visits. I still live in the state that made the order. What can I do?

You can take action in the original state. Talk with a family law attorney in that state. Find out your options there.

The other state still has exclusive continuing jurisdiction, but the Washington court may

- enter a temporary order to enforce your visitation schedule.³²
- order make-up visitation if needed.³³

If the original state's order has no specific visitation schedule, the Washington court may order one. The Washington schedule lasts only until you get an order from the original state or the deadline by which the Washington court has given you to do so expires.³⁴

Washington's orders cannot set up any permanent change unless Washington has jurisdiction to change the order. (See question 2 in this part, above.)

10. Can one court refuse to follow another's order because the first court did not have jurisdiction?

A court might lack jurisdiction, for example, if it

- issued the initial custody decision but was not the child's home state (and the home state had not declined jurisdiction).
- changed another state's custody decision, but that state had not lost or declined jurisdiction.

11. When might a court not follow another court's custody order because proper notice was not given?

Notice of the first case must have been given to:

- the parents (unless their rights have been terminated)
- anyone having physical custody of the child
- anyone entitled to notice under the laws of that state

People inside the state who were entitled to notice should have gotten it in a way that was proper under that state's laws. A person outside the state should have gotten notice in one of these ways:

- In a way proper under the law of the state that made the custody decision
- By personal delivery

³² [RCW 26.27.431](#).

³³ National Conference of Commissioners on Uniform State Laws comment to Section 304 of the UCCJEA, available at <http://www.law.upenn.edu/bl/ulc/uccjea/final1997act.htm>.

³⁴ [RCW 26.27.431\(1\)\(b\) and \(2\)](#).

- By certified, return-receipt mail
- By publication, with advance court permission, if other methods are not likely to work

If a person voluntarily took part in a case, these notice requirements can be excused.

*Example: Under the UCCJEA, one court **does not have to follow** a custody order in an emergency domestic violence protection order, issued by another state ex parte (without notice). It may have to do so under the Violence against Women Act.³⁵*

12. What else can I do to enforce my order from another state?

The UCCJEA and PKPA procedures to enforce an order you have registered (Part II, Question 3) add to procedures already available under other state laws.³⁶ In an emergency such as a child kidnapping, you may be able to combine the UCCJEA's procedures with the state law on habeas corpus without waiting for the twenty-day objection period for registering an order.³⁷

If any party tries to enforce an order in Washington at the same time a court in the state that made the order is considering changing it, the two courts must communicate. The court here may decide to stop the enforcement case or dismiss it.³⁸

13. I believe the court in the other state did not have jurisdiction, or I did not get proper notice. When should I bring it up?

Usually this is the first issue you bring up in the registering state. If you do not, you may lose the right to object in the registering state. **Example:** You get notice that someone is registering an Idaho custody order in Washington. You believe the Idaho court lacked jurisdiction. You must raise the objection within the twenty-day notice period. Otherwise, you may lose the chance to raise it in Washington.³⁹ Act quickly. Talk with an experienced family law attorney in the state that entered the order about what to do there, such as asking the court in that state to vacate (cancel) its order.

14. Are there examples of how these laws work when another state has already made a custody order?

Example#1: Parents divorced four years ago in Montana. The Montana court awarded Mother custody. Mother developed drug abuse problem. She asked father to take care of the child temporarily. The parties did not change the court order. With the mother's consent, father and child moved to Spokane, Washington. One year after their move, Mother wants child back. Mother still lives in Montana. Mother has come to Washington for visits. Father believes mother would abuse child based on something that happened during a recent visit and mother's failure

³⁵ [18 USC 2265, 2266.](#)

³⁶ [RCW 26.27.451.](#)

³⁷ [RCW 26.27.471-491](#), [RCW 26.27.501](#) and [chapter 7.36 RCW.](#)

³⁸ [RCW 26.27.461.](#)

³⁹ [RCW 26.27.441\(6\).](#)

to get treatment. Father files a motion to change the custody decision in Washington, asking for custody.

Result: If the Montana order was originally valid, Montana still has exclusive continuing jurisdiction to change its order, unless it declines jurisdiction. Father can ask for an emergency order in Washington. If Washington finds there is an emergency, it can take emergency jurisdiction to protect the child. Washington's jurisdiction will last only until the Montana court enters an order or the end date stated in the Washington order, whichever comes first.

Example #2. California court made a Paternity order in 2000. It ordered that mother have custody and father have reasonable visitation. The California court made no visitation schedule. Mother and child moved to Washington four months ago. Father and mother have not been able to agree on a visitation schedule since then.

If father still lives in California: He can ask the California court to set a visitation schedule. California still has continuing exclusive jurisdiction, unless it declines. Father could also ask for a temporary visitation schedule in Washington by registering his order here and requesting a temporary schedule.

If father has moved to Oregon: California has lost its continuing exclusive jurisdiction. If father registers his order here, Washington has jurisdiction to make a temporary visitation schedule. Washington could also have jurisdiction to permanently set a visitation schedule (or otherwise change the California order) if it has a significant connection jurisdiction, or if Washington becomes the child's home state.

Part III. Declining Jurisdiction

1. What does it mean to decline jurisdiction? Why would this happen?

A court with child custody jurisdiction (to make an initial custody decision, or with exclusive continuing child custody jurisdiction) is the only court that can decide to give up (decline) its jurisdiction and allow another state to take over child custody jurisdiction. The court can decide to decline jurisdiction if:

- Either party requests it
- Another court requests it
- On its own⁴⁰

Reasons a state may decline jurisdiction:

- because it is an inconvenient forum,⁴¹
- when a party has engaged in wrongful conduct that led the court to have jurisdiction, **unless**

⁴⁰ [RCW 26.27.261\(1\).](#)

⁴¹ [RCW 26.27.261.](#)

- The parents and a person acting as a parent have allowed the court to proceed
- A state with proper jurisdiction decides the case should be decided here
- No other state has jurisdiction⁴²

2. What is an “inconvenient forum”?

It means it is more convenient for another court to decide the case. In deciding if it is an inconvenient forum, the court looks at such things as:

- Whether domestic violence has taken place and is likely to continue, and which state can best protect the parties and child
- How long the child has lived outside the state
- The financial circumstances of each party compared to the other
- Any agreement the parties have made about which court should have jurisdiction
- The kind and location of evidence about the custody issue
- The ability of the court of each state to decide the issues quickly and the procedures needed to present the evidence
- How familiar each court is with the facts and issues in the case⁴³

3. When must a court decline jurisdiction for wrong conduct?

The law does not state exact factors. Generally, the conduct must be all these:

- unjustified by the circumstances
- wrongful The reason the court got child custody jurisdiction⁴⁴

Example: Running away with the child and hiding him/her in a state for six months to get home state jurisdiction, if the facts of the case do not justify it. **Fleeing the state with a child is very risky.** A court might find that fleeing a state and hiding with a child was unjustified and “wrong conduct.” Flight might also lead to criminal prosecution.

❖ If you are thinking about fleeing with the child and hiding, or you have already done this, talk with a lawyer for advice.

If the court declines jurisdiction for wrongful conduct, it will order the party who was unjustified to pay costs and expenses, unless s/he can show that doing so is not appropriate.⁴⁵

⁴² [RCW 26.27.271.](#)

⁴³ [RCW 26.27.261.](#)

⁴⁴ [RCW 26.27.271\(1\).](#)

⁴⁵ [RCW 26.27.271\(3\).](#)

4. How do I ask a court to decline jurisdiction?

It varies by county. Often, you can make a motion in the court you are asking to decline. You may also want to ask the court you want to hear the case to ask the other court to decline when the courts communicate about the case. In both situations, you should submit declarations and evidence showing how you meet the elements in the law (Questions 2 and 3 in this part, above) to persuade the court to decline.

Part IV. Tools for Inter-state Cases

1. I am involved in a custody case in another state, OR my case is in Washington but another party lives outside the state, OR there are witnesses or evidence outside the state. Do these laws help me?

The law has tools to make custody decisions involving more than one state easier:

- Communication between the courts to decide which court should have jurisdiction
 - The court must allow the parties the chance to give evidence and argument before they make this decision. It may allow the parties to take part in the communication. (You usually should have your evidence available to courts in both states.)
 - The court must make a record of the communication between the courts (for all contact except scheduling issues) and must allow the parties access to this record.
- Communication between courts to make sure the child is protected in an emergency
- Testimony in another state when a party, the child, or witnesses are there (including maybe by phone or electronic methods)
- Hearings in another state
- Orders requiring a party to appear in court with/without the child
- Orders requiring any person in the state who has control or custody of the child to bring the child to court
- Custody evaluation made in another state
- Orders necessary to protect the safety of any child and party the court orders to appear⁴⁶

2. How do I use these tools?

The court must use some of the tools, such as communicating with another court if cases are pending in both. You may be able to use a tool without advance request to the court. You probably will have to bring a motion in court, asking permission to use a certain procedure. You might have to involve the courts in both states in your motions. There are

⁴⁶ [RCW 26.27.101](#), [26.27.111](#), [26.27.121](#).

likely to be costs for some procedures. **Examples:** videotaped testimony, a custody evaluation, or ordering travel to another state to appear in court.

3. How does one court learn about cases in another state?

When the parties file a case that includes a custody request (such as a divorce), they must report all of the following:

- States where the child has lived for five years
- Other custody cases concerning the child
- People the child has lived with or who claim a right to custody or visitation⁴⁷

The parties must update this information as needed during the case.⁴⁸ If you state under oath in a declaration to the court that a child or party might be unsafe by reporting this information, the court can seal the information. This means the information may not be available to the public or other parties unless the court decides it is in the interests of justice to do so.⁴⁹ **Not all other states will seal records to protect the parties.**

Part V. Tables

The tables in this part use common situations to indicate whether Washington is likely to have jurisdiction based on the family law jurisdiction rules discussed here and in other family law publications available at www.washingtonlawhelp.org. **Interstate jurisdiction issues are complicated. A small difference in the facts can change the result.**

⁴⁷ [RCW 26.27.281\(1\)](#)

⁴⁸ [RCW 26.27.281\(4\)](#)

⁴⁹ [RCW 26.27.281\(5\)](#)

No Earlier Custody Order:

<u>Facts</u>	<u>Jurisdiction to file for divorce</u>	<u>Initial Child Custody Jurisdiction</u>	<u>Jurisdiction to Order Child Support and/or divide property</u>	<u>Jurisdiction to decide paternity (unmarried parents)</u>
Both parents and child have always lived in Washington	Yes	Yes	Yes	Yes
One parent and child moved to Washington two months ago from State 2 and plan to stay here. Other parent still lives in State 2 and has never been to Washington.	Yes: parent who lives here can file	No. Exceptions: 1) temporary emergency jurisdiction if child is in danger 2) if Washington becomes home state before any case is filed in State 2.	No But interstate child support procedures might be available from DCS (Division of Child Support, part of DSHS)	No, if it is the mother and child who now live in Washington. Yes, if it is the father and child who moved to Washington. Interstate child support procedures might be available from DCS (Division of Child Support, part of DSHS)
Family originally lived in Washington. One parent and child moved to State 2 two months ago. Other parent still lives in Washington.	Yes: Parent who lives here can file.	Yes, until child has been gone for six months. If case is filed here within six months, Washington keeps jurisdiction unless it declines it or last person moves away. Other state may exercise emergency jurisdiction.	Yes	Yes
Parents and child originally lived in Washington. Two months ago, one parent and child moved to state 2. Other parent moved to state 3.	No	No	No	Yes

Continuing Child Custody Jurisdiction, where a custody decision has already been made

<u>Facts</u>	<u>Washington's Continuing Child Custody Jurisdiction</u>	<u>Another State's Jurisdiction</u>
Both parents and child have always lived in Washington	Yes	No
Valid custody order entered four years ago in State 2. One parent and child moved to Washington two years ago and plan to stay here. Other parent still lives in State 2.	No jurisdiction to change the order unless State 2 declines jurisdiction. Washington does have <ul style="list-style-type: none"> • jurisdiction to enforce the order and, if needed, • emergency jurisdiction to enter temporary orders to protect the child from abuse/abandonment. 	State 2, yes, unless it declines jurisdiction
Valid custody order entered in Washington one year ago. One parent and child moved to State 2 seven months ago. Other parent still lives in Washington.	Yes, it has jurisdiction to enforce or modify original order, unless it declines jurisdiction. Other state may exercise emergency jurisdiction.	No jurisdiction in state 2 to modify the original order unless Washington declines its jurisdiction. State 2 does have jurisdiction to enforce the order and, if needed, emergency jurisdiction to make temporary orders to protect the child from abuse/abandonment.
Parents and child originally lived in Washington. Custody order is from Washington. Seven months ago, one parent and child moved to state 2. Other parent moved to state 3. Now a parent wants to modify.	No.	State 2 now has jurisdiction to modify because: 1) Washington lost its exclusive continuing jurisdiction AND 2) State 2 has now become the home state

Emergency Child Custody Jurisdiction even if a court does not have permanent child custody jurisdiction:

Facts	No earlier custody order from another state and no case filed in the other state	Custody order or case already filed in another state with initial jurisdiction
<p>1) Child is in Washington and 2) needs protection from abuse or abandonment and</p>	<p>If child has been in Washington less than six months, and if Washington finds an emergency, it may take temporary emergency jurisdiction. The Washington order lasts only until the date the court with proper initial jurisdiction enters an order. However, no one files a custody case in the other state and the Washington order says so, jurisdiction may become final if Washington becomes the home state.</p>	<p>If a case has already been started in another state⁵⁰ or if there is already a custody order issued by a court in a state where a party or the child still lives⁵¹ AND if Washington finds there is an emergency, it may take emergency jurisdiction and enter an order which lasts only until the earlier of:</p> <p>1) the date Washington has decided gives enough time to allow the person asking for an order to request one from the proper state OR</p> <p>2) the proper state makes an order</p> <p>EXCEPT if the other state declines jurisdiction, Washington may take it if Washington is the home state or has significant connection jurisdiction.</p>

⁵⁰ With proper child custody jurisdiction

⁵¹ That Washington is required to recognize and enforce under [Ch. RCW 26.27.](#)