



# Frequently Asked Questions on Relocation for Victim Advocates

## SELF-REPRESENTED LITIGANTS SERIES

Prepared by the Legal Resource Center on Violence Against Women for the Resource Center on Domestic Violence: Child Protection and Custody

This guide is designed to help you understand some of the legal issues involved in helping a domestic violence survivor who is considering moving from one state or tribal jurisdiction to another with children. We recommend that a survivor speak directly with an attorney in her state who is knowledgeable about domestic violence and interstate issues before leaving the state.

You can call the Legal Resource Center on Violence Against Women (LRC) at **(301) 270-1550** to talk about interstate issues, and the LRC may be able to help a survivor find an attorney if the case involves domestic violence, custody, and more than one state.

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# Frequently Asked Questions

## What is the difference between legal advice and legal information?



Legal information includes information about the law, legal system, or court rules and procedures. Legal advice

involves applying legal information to the facts of a particular case. As a victim advocate, you may provide legal information but not legal advice. For example, you may point clients to particular forms (legal information), but you should not tell them what to write on them (legal advice). You may describe legal options to survivors (e.g. obtaining a protection order through consent vs. going to trial), but you may not advise them regarding which options to pick.

## Can a survivor leave the state with her children?



Maybe. It depends on the state laws and the facts of the case, which is why the survivor should talk with an attorney before

deciding to leave the state.

Three issues for her to consider:

1. The state parental kidnapping law says whether it is legal for her to leave the state with her children. In some states,

it will be perfectly fine, while in other states, it could be a crime. In many states, even if there is a valid custody order in place, this does not mean that a survivor simply can leave the state. An attorney can tell the client what the state's criminal law says.

2. If there already is a custody or visitation order in place, the survivor may not violate the terms of the order. If the order gives the abuser certain times to be with the children, the survivor must comply with the order. She can try to get such an order changed or dismissed if it prevents her from leaving the state.
3. There also may be a relocation law in the state that sets forth certain steps a survivor needs to take before moving if she is the parent who has custody of the children. Some relocation laws also apply even before a custody order has been entered. An attorney can tell the client what the state relocation law says.

Because the legal issues are more complicated if the survivor leaves the state, it may be a good idea for the survivor first to go somewhere safe in the state (like a shelter or a safe home). Then she may have the time and privacy to talk with an attorney about moving out of state.

## Could a survivor be charged with kidnapping?



Maybe. It depends on the state parental kidnapping law (which also may be called a “parental abduction,” “child concealment,” or “custodial interference” law). Every state has a criminal law that says when it is illegal for a parent to take a child out of state, and these laws are different from state to state.

In most states, it is illegal to remove the children from the state if a custody or visitation order has been entered, and the parent is violating the order. In those states, it may be legal to leave the state with the children as long as there is no custody order in place. In other states, even if a custody order never has been entered, a parent may not remove a child from the state. In virtually all states, it is illegal for one parent to conceal a child from the other parent.

Some states do not apply their parental kidnapping laws to domestic violence survivors, and other states have a legal defense if a parent is fleeing from abuse or trying to protect a child. A few states require domestic violence survivors to make a report to law enforcement before leaving the state in order to avoid being charged with parental kidnapping. It is important that the survivor talk with an attorney who understands domestic violence and the state’s criminal law before deciding to relocate.

## Does the survivor have to let the abuser know she is leaving or where she is going?



Maybe. It depends on the state parental kidnapping and relocation laws. In some states, the language in the criminal law refers to “concealment of children,” so if the abuser knows where the parent has gone with the children, this might help her avoid criminal charges or a conviction.

The survivor’s safety is the most important thing. If the abuser is likely to guess where she has gone anyway, telling the perpetrator (in a safe way or after she has left) may give her some protection against criminal charges, depending on the state. Similarly, providing for the abuser’s continued telephone contact with the children (as long as this will not endanger the survivor or the children) may help the survivor later if the abuser claims she denied him all contact with the children. You may want to suggest that the survivor keep proof of the abuser’s contact with the children, as well as proof she notified him of the move.

In some states, the state relocation law may require a survivor to tell the other parent or to ask permission from the court if she is leaving the state with the children.

## Should a survivor get a protection order before she goes?



Maybe. The decision about whether to file for a protection order is a complex one, and an attorney can give the survivor the advice she needs to make a more informed decision. For many domestic violence survivors, a protection order may stop the abuser from using violence, or it may improve the response by police if the survivor calls. In many states, a protection order can help a survivor by giving her temporary custody and child support, by removing weapons from the home, or by making the abuser leave. Getting a protection order also can help prove to a court later that she was abused, which may be useful if she ever asks a court for custody, certain kinds of immigration relief, or to move her case to another state. Federal and state laws, called full faith and credit laws, allow a survivor to enforce a protection order even if a violation occurs in another state. Also, if the abuser has no connection with the state to which the survivor moves, it may be impossible to get a protection order there.

However, there also may be reasons not to file for a protection order before leaving. If a survivor wants to leave the state, this may be harder to do if she gets a protection

order that includes visitation for the abuser (because she must comply with the visitation schedule in the order). Getting a protection order in the state she wishes to leave also may make things more complicated because it may give that state more of a reason to hold on to a long-term custody case. An attorney can help the survivor understand the pros and cons of filing for a protection order before she leaves.

## Can a judge make a survivor come back if she leaves?



Yes. A judge may require a survivor to return to the state that she has left to litigate the custody case (though she can ask to participate by telephone). A judge also may require her to return the children to the state or risk losing custody. These things are less likely to happen if the judge understands early on in the case why she left the state and that the abuser threatened, controlled, or assaulted her. But if the survivor leaves the state before a custody case is filed and the father then files for custody there, she may be forced to return.

## Does a survivor have to return for hearings?



Maybe. It is important for a survivor to be involved in the hearing, so the judge can understand her side of the story. If a survivor is planning to leave the state and no custody proceeding is currently pending, you will want to advise her to call back to the local family court once a week (for the first six months she is gone) to find out whether a custody proceeding has been filed. You might help her obtain that contact number before she leaves. If she finds out there is a hearing in the state she left, she can call the court clerk and ask if she can participate by telephone. Some judges will permit this. If the judge insists that she return, it may be possible to request more time (sometimes called a “continuance,” an “adjournment,” or a “postponement”) to give her additional time to travel back to the state and/or to find an attorney to represent her in court.

## Is there a way to get the custody case moved to the survivor’s new state?



A survivor can ask the court in the state she left to give up jurisdiction (to transfer the custody case to the new state). Under the Uniform Child Custody

Jurisdiction and Enforcement Act [UCCJEA, see below], this is called an “inconvenient forum” argument. There are eight factors the judge must consider, including whether or not domestic violence occurred and which state can best protect everyone. Some of the other factors include which parent has more money (and would be able to travel to court), whether any court already has heard a case involving the parents or the child, and where the evidence about the children is. An attorney can help the survivor decide whether or not it makes sense to ask a judge to transfer the case.

## What if the father’s name is not on the birth certificate?



If a father’s name is not listed on a birth certificate, this may mean he has to establish paternity (prove legally that he is the father) before asking for custody. In some states, it also may give the mother some immediate rights to custody. However, in the long run, a biological father will be able to establish paternity and, eventually, to ask for custody. Basing a relocation decision on the fact that a father’s name is not on a birth certificate generally is not a good idea. Other laws, such as the state parental kidnapping law and the UCCJEA, still apply even if the father’s name is not on the birth certificate.

## What is the child’s “home state,” and why is it important?

 The “home state” is the state where the child has lived with the survivor for six months before a custody case is started. In the case of a child less than 6 months, the home state is the place the child has lived since birth. If the survivor leaves the home state, the left-behind parent has another six-month window during which time he can ask for custody in that state. You can call the Legal Resource Center on Violence Against Women at **(301) 270-1550** if you have questions about the UCCJEA, the law that explains what a “home state” is and which state can enter a custody order.

## After the survivor left, she heard he filed for custody – what should she do?

 If the abuser has filed in the child’s “home state,” this state has the power to enter a custody order for the child. It is very important for a survivor to be involved in any custody case regarding her child, so she should call the court to find out if he really has filed for custody. It also is critical to find an attorney who understands domestic violence and family law to represent her in the custody case.

She can ask the court to allow her to participate in court proceedings by telephone if she is afraid to return to the state or does not have the funds to do so, and some judges will permit this.

Even if a survivor thinks she has not received proper notice of the case, it is important to be involved. If she does not participate in the custody case, the judge only will hear information from the abuser, and the judge could award custody to the abuser. This order could be enforced all over the country, including in the survivor’s refuge state.

## He has a court order giving him custody from the state the survivor left – what should she do?

 It is important to work with an attorney from that state to figure out what to do. If the order was entered properly (e.g., she was notified according to state law, and the state had the power to enter a custody order over the child), she will need to fight the case in that state. She may be able to ask the court to reconsider, file an appeal, or ask for a modification (change to the order), depending on the circumstances. Meanwhile, the new state may be able to enter an emergency order giving her custody

or suspending visitation if she or her children are in danger, but this will be only a temporary order (see [“How does a survivor get an emergency order?”](#) below). She may wish to discuss this option first with an experienced attorney, since the judge in the original state might not like it if she files a new case in another state.

### **She just arrived in a new place – what can she do there to get custody?**

 First, it is important to call the court in the previous state regularly (about once a week) to be sure that the abuser has not filed for custody there. She may be able to look online if the previous state keeps court filings online. You can tell her not to rely on the abuser’s statements that he has (or has not) filed for custody, as these may be false. If she learns that he has filed for custody in the state she has left, she will need to work with an attorney in that state to figure out what to do.

The new state is limited in its ability to enter a custody order. Generally, it takes six months for a state to become a child’s new home state with the power to enter a custody order. However, if a survivor has been abused or if her child is in danger, the new state may be able to enter an emergency custody order right away, which

will be temporary (see [“How does a survivor get an emergency order?”](#) below).

### **She has custody and he took the children or kept them after visitation – what should she do?**

 If she has a copy of her court order, she can show it to the police in the state where the children are, and they may be able to help her retrieve the children. She also may be able to ask the judge who entered the original order to issue an order for the police to pick up the children and/or to hold the abuser in contempt.

If he has taken the children to another state, she may need to ask a judge there to issue a pick-up order. Then the police in the new state can help her get the children back. In most states, she would need to file a copy of her valid order in the state to which he fled in order to get a court order that the police will enforce. If she is concerned that he might flee with the children, she may be able to convince the court to issue an *ex parte* pick-up order (“*ex parte*” means without prior notice to him and without his participation), prior to when the court hearing is held.

She also may want to file criminal charges against him for taking the children. If he

has taken the children to a new state and faces felony charges, the FBI may be able to track him down, and then the children could be returned to the survivor. To do this, she would need to work with a local law enforcement or prosecutor's office.

## Her kids are in danger during visits but the court order requires them – what should she do?

 Because she must obey court orders, it is important to follow the order (unless there is an emergency) until she can get the order changed. She should try to work with a good attorney to do so. She can ask for an emergency hearing to tell the judge about the risks to her children and bring any witnesses or evidence possible. In some cases, she may be able to ask for a protection order that includes the children.

She may want to contact child protective services in the state where the children are, if the state agency has a good understanding of domestic violence and child abuse. You may be able to tell survivors about this option and assist them with the process. If the survivor has tried to make a judge or a child protective services worker understand the risks to her child and failed, she may wish to contact Justice for Children (<http://justiceforchildren.org/contact>), a national

organization that may be able to help. You also may wish to talk to her about safety planning for the children and what to do if there are serious problems during a visit.

## How does a survivor get an emergency order?

 If a survivor's child is in the state and there is an emergency, a judge can enter a temporary custody or visitation order, and it can trump any other custody order temporarily. The judge has to find that a child (or parent or sibling) has been abused or threatened. To get an order, a survivor would need to prove that there has been abuse, and that there is an emergency. An attorney can make this argument, and you can help your client collect the evidence needed.

If the judge enters an emergency order, he or she then has to talk to the judge in the other state (if there is another state involved). Generally, the fact that a court has entered an emergency order will not take jurisdiction away from the state that has the power to hear the long-term custody case (usually the child's "home state").

## What should I tell a survivor to bring with her if she leaves?



It is important for a survivor to bring certain things with her if she chooses to relocate, as the batterer may destroy or hide them. She should assume that she never will see any personal items or papers again that she leaves behind and plan accordingly. She may be able to make copies of important documents over time and keep them in a safe place. You should ask your client to consider bringing with her all documents related to her identity and health, her children's identity and health, her immigration status, any legal proceedings, and her finances. For example, the following items could be important to bring with her:

- Money, credit cards, ATM cards, checkbooks, salable items (e.g., jewelry);
- Clothing, medicine, and toiletries for her and the children;
- Court orders and pleadings (for protection order, divorce, custody, paternity, immigration, criminal, and other cases);
- Identification (social security, driver's license, birth certificates, public assistance, or state ID);
- Children's school records, medical records (including vaccinations), and

passports;

- Work permits, green cards, and other immigration papers;
- Health insurance cards;
- Insurance papers;
- Telephone/address books;
- Ownership documents for car/house (title, registration, deed);
- Copy of lease or rental agreement, mortgage payment book;
- Car/house/office keys;
- Family photographs, toys, or other sentimental items the batterer may destroy;
- Address book and contact information for anyone who may have evidence of the abuse (e.g., police officers, neighbors, doctors, social services providers, shelters, county registry of protection orders, clerk of court, schools); and
- Proof of the abuse (e.g., destroyed clothing, property, photographs, medical records, police reports).

You can help your client prepare for her move and develop a safety plan.

## How can I help a survivor prove the abuse?



It is important to be able to prove the history of abuse in a custody case or if the survivor is asking a judge to transfer a custody case to another state because of domestic violence. The client's testimony about what has happened will be very important. Writing a journal (kept in a safe place) may help a client remember exactly what the batterer did and when. Most state domestic violence laws focus on physical abuse and threats. A survivor may wish to include the batterer's treatment of the children and other controlling behavior as well (e.g., removing car keys or phone so she could not call for help, isolating her from friends and family, keeping a tight hold on money so she could not get away).

The testimony of other witnesses can be important as well, even if they have seen the effects of the abuse rather than the actual violence. For example, a neighbor who has heard screaming or a co-worker who has seen bruises could support what the survivor says. Someone the survivor told about the violence right after it happened also may be able to testify for her. Other possible witnesses might include family members, teachers, police officers, shelter workers, doctors, children's counselors, child protective services workers, and the

children (if they are old enough). Every state has its own rules about how evidence can be presented to a judge, but generally witnesses need to come to court (not just write letters, even if notarized). Some judges will allow witnesses to testify by telephone if they are not available in person.

Some other types of evidence that could be helpful include the following: prior court orders (including protection orders and criminal history printouts); protection order transcripts; police reports; medical records; 911 tapes; voicemail, email and text messages; Facebook/Myspace/Instagram or other social media pages; school records for the children; and photographs of injuries or property that the batterer destroyed. (see *10 Steps for Presenting Evidence in Court* for more information about presenting evidence).

# The Laws

There are many different laws that apply in custody cases involving abuse and more than one state. Federal laws cover the whole country. State laws cover one state, and, as a sovereign nation, each tribe enacts its own laws.

## **Federal laws:**

### **Violence Against Women Act (VAWA)** -

This is a broad law. It includes a full faith and credit provision requiring states, tribes, and territories to enforce protection orders entered by other states, tribes, and territories, including child custody orders that are part of protection orders.

### **Parental Kidnapping Prevention Act (PKPA)** -

This law requires states to honor custody orders that were entered by other states.

**Indian Child Welfare Act (ICWA)** - This law was designed to prevent Indian children from being removed improperly from their families by child protective services, and it involves the child's tribe in the custody case. It does not apply in custody cases between two biological parents.

**International Parental Kidnapping Crime Act** - This law makes it a crime to remove a child from the United States under certain circumstances and includes a defense if the person was fleeing domestic violence.

## **State and tribal laws (which may be different in every state and tribal land):**

**Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** - This is a law that says whether a state has the power to make a custody order about a child. It contains certain protections for domestic violence victims and has been enacted by every state except Massachusetts.

**Custody law** - This is the law that tells a judge how to decide which parent gets custody, based on the best interests of the child. In every state, domestic violence is part of what a judge must consider under the custody law.

Some states use the term "legal custody" to say which parent can make big decisions for the child, such as health, education, and religious choices. "Physical custody" usually means which parent the child lives with more of the time.

**Full faith and credit law** - This is the state or tribal law that tells a state or tribe how to enforce a protection order from another jurisdiction.

**Protection order law** - This is the law that says who can get a protection order and what it can say. A protection order is a civil order that tells an abuser to stay away from a victim. In most states, a protection order can include temporary custody, child

support, and use of the home or vehicle.

**Relocation law** - This is the law that says what steps a survivor needs to take before moving if she is the parent who has custody of the children. In some states, it also applies if there is no custody order and a parent wants to move out of state.

**Parental kidnapping law** - This is the law that says whether it is legal—or whether it is a crime—for a survivor to leave the state with her children. It also may be called a parental abduction, child concealment, custodial interference, or violation of a custody order law.

## Resources

**Domestic Violence Legal Empowerment and Advocacy Project** [for appeals]  
<http://www.dvleap.org/Contact.aspx>

**Justice for Children** [for child abuse]  
<http://justiceforchildren.org/contact>

**Legal Resource Center on Violence Against Women** [for interstate custody issues]  
**(301) 270-1550**  
[Irc@lrcvaw.org](mailto:Irc@lrcvaw.org), [www.lrcvaw.org](http://www.lrcvaw.org)

**National Center on Protection Orders and Full Faith and Credit** [for protection order issues]  
**(800) 903-0111, ext. 2**  
[www.bwjp.org/our-work/projects/protection-orders.html](http://www.bwjp.org/our-work/projects/protection-orders.html)

**National Clearinghouse for the Defense of Battered Women** [for criminal defense issues, like parental kidnapping charges]  
**(800) 903-0111, ext. 3**  
[www.ncdbw.org](http://www.ncdbw.org)

**National Domestic Violence Hotline** [for referrals to local shelters and programs]  
**1-800-799-7233, TTY: 1-800-787-3224**  
[www.thehotline.org](http://www.thehotline.org)

**Resource Center on Domestic Violence: Child Protection and Child Custody**  
**1-800-527-3223**  
<https://rcdvcpc.org>