

COMMENT:
**YESTERDAY, TODAY, AND TOMORROW'S APPROACHES TO RESOLVING CHILD CUSTODY
JURISDICTION IN OREGON**

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It has long been recognized that issues affecting the entire nation require uniform and connected solutions. There are several reasons why child custody litigation is a national issue. First, Americans live in a mobile society where jobs often require families to relocate to another state. Moreover, a large number of children are born outside of marriage. n1 Finally, one out of every two marriages ends in divorce. n2 A large number of divorces involve children. n3 For these and other reasons, parents commonly reside in different states while sharing custody of their children.

Interstate custody arrangements raise the following policy questions:

- (1) Should more than one state have jurisdiction to decide where the children live?
- (2) Should one state be allowed to ignore the other states' custody determination?

[*302] (3) Should states have discretion in means of enforcing other states' child custody orders?

The answer to these questions should be "no." There should be only one state that has jurisdiction to issue a child custody determination; states should be forced to honor other states' properly issued child custody orders; and states should engage in uniform practices of enforcement. The National Conference of Commissioners on Uniform State Laws (NCCUSL) has attempted to address these issues through two acts: the Uniform Child Custody Jurisdiction Act (UCCJA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). While both Acts have similar objectives, the UCCJEA provides more guidance to states to ensure the achievement of the Act's objectives. The Oregon legislature adopted the UCCJA in 1973 but then replaced it with the UCCJEA in its 1999 legislative session.

This Comment will explain the major provisions of the UCCJA and how the UCCJEA modifies them. Part I will provide a detailed explanation of the UCCJA's jurisdiction and enforcement provisions and will discuss how those provisions have been interpreted by Oregon courts. Part II will then discuss how the UCCJEA builds on and changes the UCCJA and the impact these changes will have on current Oregon child custody law. This Comment concludes by recommending that other states follow Oregon's lead by replacing their version of the UCCJA with the UCCJEA.

I

UCCJA

The NCCUSL created the UCCJA in 1968 to address some of the problems existing in child custody litigation. Specifically, the UCCJA sought to decrease competition among states for jurisdiction; ensure that child custody litigation took place in the state with the best access to evidence; deter parental kidnappings; prevent child custody disputes from being re-litigated in another state; promote interstate enforcement of child custody determinations; and provide a uniform framework for determining child custody jurisdiction. n4 Every state, including Oregon, adopted [*303] some version of the UCCJA. n5

The UCCJA addresses the following four major areas: (1) what proceedings are covered by the UCCJA; (2) which state has initial jurisdiction to hear a child custody dispute; (3) when a state may modify another state's child custody determination; and (4) when a state must enforce another state's determination. n6 The remainder of Part I will take up each of these areas and fully discuss them.

A. Scope of the UCCJA

The UCCJA governs the determination of jurisdiction for custody proceedings. Thus, the threshold issue to be determined is whether the dispute is a custody proceeding. "Custody proceedings" are defined vaguely as "proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings." n7 Even though the UCCJA does not explicitly cover them, Oregon appellate courts have also characterized adoption and guardianship proceedings as custody proceedings. n8 Since the definition of "custody proceeding" is ambiguous, states do not have uniform understandings of what actions constitute custody proceedings. This lack of clarity has led to patchwork applications of the UCCJA. n9

If a dispute is considered a custody proceeding, the UCCJA's jurisdictional and enforcement provisions govern. If the proceeding [*304] is an original suit, the UCCJA's provisions on initial jurisdiction determine whether a state may adjudicate the custody proceeding.

B. Initial Jurisdiction

As stated above, the UCCJA addresses when states have initial subject matter jurisdiction over custody proceedings. To establish initial jurisdiction, a state must meet the requirements of one of the four forms of initial jurisdiction; n10 grounds must not exist for the state to decline jurisdiction; n11 and there must not be parallel proceedings occurring in another state with proper jurisdiction under the UCCJA. n12

1. Bases for Initial Jurisdiction

A state's first inquiry with original custody proceedings is whether the state can establish one of the forms of initial jurisdiction. n13 The UCCJA provides four situations where a state has initial jurisdiction: (1) home state jurisdiction; (2) significant connection jurisdiction; (3) emergency jurisdiction; and (4) default jurisdiction. n14 If a state can merely satisfy one of these four forms, it may take jurisdiction since the UCCJA does not prioritize the bases of initial jurisdiction.

a. Home State

The UCCJA defines "home state" as "the state in which the child ... lived with [at least one] parent, or a person acting as parent, for at least six consecutive months" prior to the filing of the proceeding. n15 Generally, a state has home state jurisdiction if it was the child's home state when the proceeding was commenced. n16 [*305] Additionally, even if the child no longer lives in the state, the state may still have home state jurisdiction if the following conditions are met: (1) the state was the child's home state within six months prior to the commencement of the proceeding; (2) the child was removed from the state by a person claiming custody or for other reasons; and (3) one of the child's parents, or a person acting as the child's parent, continues to reside in the state. n17

b. Significant Connection

The second form of initial jurisdiction under the UCCJA is significant connection jurisdiction. A state has significant connection jurisdiction when it is in the child's best interests because the child and at least one parent have a "significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships." n18 In Oregon, whether a state has significant connection jurisdiction has been a hotly litigated issue, particularly where another state was the child's home state. n19

In addressing situations involving a home state and a significant connection state, Oregon courts have made it clear that the UCCJA contemplates concurrent jurisdiction. n20 Thus, if a state meets the requirements of significant connection jurisdiction, it has jurisdiction even though there is a home state. Once it is determined that more than one state has jurisdiction, the UCCJA's provisions on forum non-convenience and unclean hands are intended to ensure that only one state actually exercises jurisdiction. n21

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c. Emergency

Even if a state lacks home state or significant connection jurisdiction, the UCCJA allows for courts to exercise jurisdiction in emergency situations. Emergency jurisdiction exists if "the child is physically present in [a] state and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." n22

As read, the statute seems to allow states to have jurisdiction so long as the child is within its borders. However, this interpretation is contrary to the UCCJA's general purposes as well as the NCCUSL's intent in providing for emergency jurisdiction. n23 The UCCJA was drafted to discourage jurisdictional competition and promote cooperation among courts. n24 Moreover, the comment to the emergency jurisdiction provision emphasizes that while physical presence is the only prerequisite for a state to exercise emergency jurisdiction, this provision should be construed as an "extraordinary [form of] jurisdiction [that] is reserved for extraordinary circumstances." n25

d. Default

The final form of jurisdiction, default jurisdiction, applies to very limited situations. A state has this kind of jurisdiction when no other state has jurisdiction under the other three provisions or other

states have declined to exercise their jurisdiction. n26 Because it applies to such a narrow fact pattern, this form of jurisdiction has not been an issue for Oregon courts to address.

Evaluating whether a state meets one of the four bases of initial jurisdiction is only the first step in deciding whether a state should render a custody determination. As noted earlier, once a state establishes initial jurisdiction, it must then determine whether it should decline jurisdiction. n27

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2. Declining Jurisdiction

Since the UCCJA does not prioritize the bases for jurisdiction, it is possible for multiple states to have jurisdiction over a custody proceeding. In order to curtail states from exercising concurrent jurisdiction over a child custody dispute, the UCCJA authorizes states to decline jurisdiction when a more convenient forum exists or when the party seeking the state to take jurisdiction engaged in wrongful conduct. n28

First, a court may decline jurisdiction when it is an inconvenient forum and another state is a more appropriate forum. The UCCJA lists several factors for determining whether it is more appropriate for the other state to hear the custody dispute. These factors attempt to ascertain which state would be a better spot to litigate and include: whether the state was or is the child's home state; whether the state has substantial evidence regarding the child's well-being; whether the state has a closer connection to the child and the family or other parties to the proceeding; and other practical considerations. n29

Additionally, a state may decline initial jurisdiction if the petitioner wrongfully brought the child into the state for an initial decree. n30 The wrongful conduct provision in the UCCJA exposes the conflict between placing jurisdiction in states with the best [*308] access to the relevant evidence and discouraging parents from abducting their children. n31 The comment following this provision attempts to reconcile these competing interests by encouraging states with jurisdiction to decline to hear a dispute where "one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction." n32 Thus, while it vests authority in states to decline jurisdiction, the UCCJA affords states much discretion in deciding whether a party's conduct was so egregious to warrant declining jurisdiction.

Over the years, problems have become apparent with the UCCJA's approach for limiting initial jurisdiction to the most appropriate state. First, it is possible for states to exercise concurrent jurisdiction over a child custody dispute since the UCCJA does not prioritize its four jurisdictional bases. n33 While the UCCJA's provisions on inconvenient forum and wrongful conduct are intended to narrow jurisdiction to one state, n34 these provisions have not always succeeded in making sure that only one state assumes initial jurisdiction. n35 Additionally, the UCCJA allows a state to dismiss its proceedings if it determines that another state is a more convenient forum or that the petitioner engaged in wrongful conduct. However, this provision grants states a lot of discretion in evaluating whether a party's conduct was so egregious to warrant declining jurisdiction. Moreover, if a state declines jurisdiction and proceedings have not been commenced in the more appropriate state, a custody dispute may languish unresolved. n36

3. Parallel Proceedings

The final consideration concerning initial jurisdiction addresses parallel proceedings filed in two states that have each established one of the four bases of initial jurisdiction. Basically, the UCCJA provides that a state must stay its proceedings if there is a child [*309] custody case already pending in another state that has exercised jurisdiction consistent with the UCCJA. n37

As the foregoing sections discuss, a state has proper initial jurisdiction if it determines that it has initial subject matter jurisdiction, that grounds do not exist for declining jurisdiction, and that there are no parallel proceedings. In addition to initial petitions, jurisdictional issues also arise with pre-existing child custody orders. The next two sections will evaluate the circumstances under which a state has jurisdiction to modify another state's pre-existing custody order and those under which a state must enforce another state's order.

C. Modification Jurisdiction

The UCCJA limits the circumstances under which a state can exercise jurisdiction to modify another state's custody order. In order to have modification jurisdiction, a state must establish that they have one of the jurisdictional forms discussed under initial jurisdiction, and that the issuing state either does not continue to have jurisdiction under provisions similar to the UCCJA or has declined to exercise jurisdiction. n38 It is the obligation of the state seeking jurisdiction to determine whether the issuing state retains jurisdiction. Whether the issuing state retains jurisdiction is often difficult to determine because the UCCJA provides four alternative bases for establishing jurisdiction.

Modification jurisdiction is particularly difficult to establish where it could be argued that the issuing state still has significant connection jurisdiction. For example, a state may have issued a decree when it was the child's home state. Even if the child no longer resides in the issuing state, the issuing state may still have significant connection jurisdiction over the child. Oregon's leading case on modification jurisdiction is *Grubs v. Ross*. n39 The court in *Grubs* explained that the UCCJA should be construed in favor of the issuing state. n40 Accordingly, even where another state may have become the child's home state, the new home state should look closely to see if the issuing state still has significant [*310] connection jurisdiction. n41

However, the UCCJA, while mandating that a state should evaluate the issuing state's jurisdictional ties to the dispute, does not provide any guidance for determining whether jurisdiction has lapsed. This creates the potential for simultaneous proceedings and conflicting custody orders since "one [state could] improperly exercise jurisdiction because it erroneously believes that the other [state] has declined jurisdiction." n42

As explained above, modification jurisdiction is limited to those situations where the issuing state has relinquished its jurisdiction and the new state can establish one of the four forms of jurisdiction. In addition, the UCCJA defines both when jurisdiction to render or modify a child custody award exists, and when states are required to enforce another state's child custody order.

D. Enforcement

Under the UCCJA, a state has an obligation to enforce another state's custody order where the other state exercised jurisdiction consistent with the UCCJA. Conversely, if the state's exercise of jurisdiction does not conform with the UCCJA, other states are not required to enforce its order. n43

While it creates a duty to enforce other states' custody determinations, the UCCJA does not provide mechanisms for enforcement. n44 To fill this void, states have crafted their own enforcement remedies. The Act's goal of promoting interstate enforcement is frustrated in several respects by states having their own enforcement schemes. For example, the costs of enforcement are increased, the certainty of outcome is lessened, and procuring enforcement can become a long, drawn out process. n45

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E. The Transition from the UCCJA to the UCCJEA

The UCCJA was drafted thirty years ago to provide states with a framework for resolving jurisdictional questions that could arise in child custody disputes. Oregon adopted the UCCJA in 1973. The Act supplies guidelines for determining initial subject matter jurisdiction, for establishing modification jurisdiction, and for determining when child custody orders should be enforced. However, as discussed, the UCCJA is not perfect, and its purposes have not been fully realized due to the ambiguities within the Act.

The UCCJEA was drafted in 1997 to update the UCCJA's provisions and to address the problems with the UCCJA. Part II will explore how the UCCJEA builds on and improves the UCCJA's provisions on initial jurisdiction, modification, and enforcement.

II

UCCJEA

During its 1999 session, the Oregon legislature adopted the UCCJEA to replace the UCCJA. n46 The UCCJEA's major provisions are scope, initial jurisdiction, exclusive and continuing jurisdiction, modification jurisdiction, emergency jurisdiction, and enforcement. How these provisions build on and depart from the UCCJA will be the focus of Part II of this Comment.

A. Scope of UCCJEA

The UCCJEA, like the UCCJA, applies to and enforces child custody proceedings and child custody determinations. As noted earlier, problems exist with the UCCJA's definition of "custody proceeding". n47 With this in mind, the drafters of the UCCJEA defined "child custody proceedings" and "child custody determinations" with greater specificity to provide guidance in determining to which child custody actions the UCCJEA applies.

1. Child Custody Proceedings

First, the UCCJEA defines "child custody proceedings" to include [*312] virtually any cause of action where a determination of custody is required. n48 Under the UCCJEA, "child custody proceedings" are "proceedings in which legal custody, physical custody, or visitation with respect to a child is an issue ... including proceedings for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear." n49 However, proceedings involving juvenile delinquency, emancipation, or the UCCJEA's enforcement provisions are not child custody proceedings for the

purposes of this Act. n50 Oregon's definition of child custody proceedings follows the UCCJEA's, except Oregon includes parenting time proceedings as child custody proceedings, n51 and Oregon continues to include adoptions as child custody proceedings. n52

The UCCJEA builds on the UCCJA's definition of child custody proceedings in two respects. First, the UCCJEA's definition mandates that proceedings for divorce, separation, neglect, and dependency are child custody proceedings, while the UCCJA only provides that a child custody proceeding may include divorce or separation actions. Second, the UCCJEA expands the scope of acts that are included under child custody proceedings by classifying proceedings for abuse, guardianship, paternity, termination of parental rights, and domestic violence as child custody proceedings. n53 The net result of these changes to the UCCJA's definition is to "include[] virtually all cases that can involve custody of or visitation with a child" and to redefine what types of cases are subject to the UCCJEA. n54

2. Child Custody Determinations

The UCCJEA defines "child custody determinations" expansively as "a judgment, decree, or other order of a court providing [*313] for the legal custody, physical custody, or visitation with respect to a child ... including permanent, temporary, initial, and modification orders." n55 The Act excludes orders pertaining to monetary obligations, such as child support. n56 Oregon adopted this definition verbatim and added that orders concerning parenting time are also child custody determinations. n57 The UCCJEA's definition alters the UCCJA's by clarifying that actions for both legal and physical custody are included as well as specifying that the determination may be a temporary, initial, or modification order. n58

In composing the definitions for child custody proceedings and child custody determinations, the UCCJEA's drafters sought to provide more instruction than the UCCJA regarding what actions are governed by the Act. To this end, both definitions provide specific instances included under the UCCJEA. Oregon, by adopting the definitions with few alterations, can anticipate that more child custody actions will be within the purview of the UCCJEA. In addition to revamping the UCCJA's definitions of child custody determinations and proceedings, the UCCJEA drafters made substantial changes to the UCCJA's provisions on establishing initial jurisdiction, on continuing and modification jurisdiction, and on enforcement.

B. Bases for Initial Jurisdiction

The UCCJEA lists four ways for a state to establish initial jurisdiction: (1) home state jurisdiction; (2) significant connection jurisdiction; (3) more appropriate forum jurisdiction; and (4) necessity jurisdiction. n59 This framework departs from the UCCJA in two respects. First, emergency jurisdiction has been moved to another section of the Act and replaced by more appropriate forum jurisdiction. n60 Second, it attaches an order of priority to the [*314] different forms of jurisdiction. n61 By ranking the avenues to establish jurisdiction, the UCCJEA allows for only one state to have initial jurisdiction over a child custody dispute. n62 In other words, a state that has home state jurisdiction supercedes any state with significant connection, more appropriate forum, or necessity jurisdiction. Moreover, once a state establishes jurisdiction, any subsequent proceedings started in another state with a lower form of jurisdiction may not continue. n63

1. Home State

The UCCJEA provides that a court has original jurisdiction to hear an initial child custody determination where the state is the child's home state, or was the child's home state within six months prior to the commencement of the child custody action, and a parent, or person acting as a parent, continues to live in the state. n64 "Home state" is defined in the UCCJEA as the state in which the child lived for six consecutive months prior to the commencement of the child custody proceeding. n65

As noted above, the UCCJEA departs from the UCCJA by prioritizing "home state jurisdiction" as the strongest form of jurisdiction to hear a child custody dispute. The effect of prioritizing the home state is to make it clear that if the child's home state assumes jurisdiction, no other state, even if it meets the jurisdictional requirements of one of the remaining three provisions, has jurisdiction. The second strongest form of original jurisdiction is significant connection.

2. Significant Connection

When there is no home state or the home state has declined jurisdiction, the UCCJEA allows another state to establish jurisdiction over the matter by showing that the child has a significant [*315] connection with the state. A state has significant connection jurisdiction if the child and at least one parent (or person acting as a parent) has a significant connection to the state beyond physical presence and there is substantial evidence within the state "concerning the child's care, protection, training and personal relationships." n66

Since Oregon adopted the UCCJEA's definition verbatim, Oregon's new approach for determining significant connection jurisdiction departs from the old approach in three respects. First, courts are no longer required to determine whether it is in the child's best interests for the state to assume jurisdiction. n67 Second, significant connection jurisdiction now may only be established when there is no home state or the home state has declined jurisdiction over the matter. Third, the statutory language on evidence concerning the child's "present or future care" has been eliminated. Overall, the changes to the provisions are not significant and analyzing significant connection jurisdiction under the UCCJEA requires consideration of the same factors as under the UCCJA. n68

Because significant connection is based upon evidence concerning the child and does not require that the child reside in the state, it is possible for multiple states to have jurisdiction. This can arise when there is a state with home state jurisdiction and another with significant connection jurisdiction, or when two states have significant connection jurisdiction.

Where there is a home state and a significant connection state, the home state has priority over the significant connection state. n69 If a state wants to exercise significant connection jurisdiction, it must first determine if the child has a home state. If there is a home state, the home state must decline jurisdiction before the significant connection state can assume jurisdiction. n70 This approach supercedes Oregon judicial interpretations under [*316] the UCCJA that allow states to have concurrent jurisdiction. n71

Additionally, there may be situations where multiple states have significant connections with the child and at least one parent. In these situations, both the UCCJEA and Oregon keep the UCCJA's rule that the state where the first proceeding was filed has jurisdiction. n72 Also, the UCCJEA retains the UCCJA's requirement that the states vying for jurisdiction communicate with each other until jurisdiction is resolved. n73

While home state and significant connection jurisdiction seem to exhaust all jurisdictional possibilities, the UCCJEA allows for states with either form of jurisdiction to defer to another state as the more appropriate forum.

3. More Appropriate Forum

Another state may have jurisdiction as the more appropriate forum where a state with either home state or significant connection jurisdiction declines jurisdiction. There are two grounds for denial of jurisdiction: (1) another state is a more convenient forum, and (2) one of the parties engaged in unjustifiable conduct. n74 Should the court decide that another state is a more appropriate forum, that state should stay its proceedings and the more appropriate forum state should hear the custody dispute.

a. Inconvenient Forum

In determining whether a state is an inconvenient forum to hear a dispute, a state that has home state or significant connection jurisdiction should consider the following several factors: whether domestic violence or the potential for it exists and which state is in the best position to protect the child and the parties; the length of time the child has been outside of the state; the distance between the two courts vying for jurisdiction; the parties' relative financial situations; whether any agreement exists between the parties as to which state should assume jurisdiction; the location of relevant evidence; the two courts' relative abilities to resolve the matter expeditiously; and the two courts' relative [*317] familiarity with the facts and issues present in the custody dispute. n75 If the court determines that another state is a more convenient forum, the court should stay its proceedings, and the other state should begin to process the child custody dispute.

The UCCJEA's approach to inconvenient forum departs from the UCCJA by adding two new factors to consider and changing the method of disposing of a case when an inconvenient forum is found. The UCCJEA allows states to consider domestic violence and to determine which state is in a better position to protect against it. n76 Courts should also consider their respective dockets and laws on procedure and evidence in determining which state is better suited to hear the custody dispute. n77 Finally, the UCCJEA requires that the state stay its action. This is also a change from the UCCJA which mandates that states dismiss their action upon a finding of inconvenient forum. n78

b. Wrongful Conduct

A second reason for states to decline jurisdiction is because of the conduct of the one of the parties. Under the UCCJEA, a state must decline jurisdiction if the person requesting the state to exercise jurisdiction engaged in wrongful conduct in order to invoke jurisdiction. If the court decides to defer jurisdiction because of unjustifiable conduct, the court must stay its proceedings and may assess costs against the party who sought to invoke jurisdiction. n79

The "unclean hands" provision is included in the UCCJA and is retained by the UCCJEA to ensure that parents who abduct their children do not profit from their conduct. n80 Under this provision, when parents abduct their children prior to obtaining a child custody award, establish a new home state, and initiate custody proceedings, that state is not permitted to take jurisdiction. n81

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4. Necessity

Necessity jurisdiction provides for a state to take jurisdiction where no other state is willing or able to. n82 This approach was contained in the UCCJA and has not been substantially changed in the UCCJEA. n83 As stated earlier, this section would only apply to extreme situations, if at all. n84

As the preceding sections discuss, the UCCJEA places initial jurisdiction with the state with either home state jurisdiction or the next highest form of jurisdiction. Once it establishes initial jurisdiction, that state may adjudicate the child custody dispute. However, court supervision may still be required even after the dispute is adjudicated. For this reason, the UCCJEA also addresses when a state's initial jurisdiction continues, and when states are able to modify other states' child custody orders.

C. Exclusive, Continuing Jurisdiction and Modification Jurisdiction

Once a state establishes that it has original jurisdiction, two issues are raised: (1) when that state's initial jurisdiction lapses, and (2) under what circumstances another state may modify the original state's child custody award. The UCCJEA addresses both of these jurisdictional issues.

1. Continuing, Exclusive Jurisdiction

The UCCJA does not contain a provision dealing with states' continuing jurisdiction; this provision was included in the UCCJEA to clarify when a state's jurisdiction continued. n85 Under the UCCJEA, a decree state retains exclusive jurisdiction unless (1) the decree state determines that the child and at least one parent no longer have a significant connection with the state and the state no longer has substantial evidence concerning the child, or (2) it is determined by the decree state or another state that all of the parties to the custody dispute have moved away [*319] from the state. n86

Prior to the enactment of the UCCJEA, the Oregon Supreme Court arrived at the same conclusion in *In re Henry*. n87 In that case, California had issued the initial child custody order but Oregon subsequently became the child's home state. The court had to decide whether California had continuing jurisdiction over the child custody dispute. The court held that so long as California still had jurisdiction based on its own laws and had not declined jurisdiction, Oregon did not have jurisdiction to modify California's child custody order. n88 Thus, in adopting the UCCJEA, the Oregon legislature has embraced the approach already followed by the state's judiciary.

In addition to setting out when a state retains exclusive and continuous jurisdiction, the UCCJEA also identifies the circumstances under which a state may modify another state's child custody order.

2. Modification Jurisdiction

The UCCJEA limits a state's jurisdiction to modify to situations where either the issuing state has determined that it no longer has jurisdiction, or the court of the issuing state (or court of the modification state) determine that all the parties have moved out of the issuing state. These are the

only two situations that allow another state to modify a child custody order. Additionally, the state seeking to modify must have home state or significant connection jurisdiction. n89

In defining modification jurisdiction, the UCCJEA changes the UCCJA's provision on modification to complement the UCCJEA's provision on continuing and exclusive jurisdiction. Under the UCCJA, it is considered the responsibility of the state seeking to modify to determine whether or not the issuing state retains jurisdiction. n90 Now under the UCCJEA, the issuing state decides whether it still has jurisdiction. This approach is consistent with the UCCJEA's provision on continuing and exclusive [*320] jurisdiction which also specifies that it is the issuing state's obligation to determine whether or not it retains jurisdiction. n91 Moreover, the only way the modifying state can establish that the issuing state lost jurisdiction is by determining that all the parties moved away from the issuing state. n92

Since the UCCJEA requires the issuing state to determine whether it retains jurisdiction, *Grubs v. Ross* n93 is no longer controlling. In *Grubs*, the Oregon Supreme Court explained that in determining the existence of modification jurisdiction, courts must decide whether the original state has jurisdiction under standards that are substantially similar to the UCCJA's. n94 This approach is contrary to the UCCJEA since the UCCJEA makes it clear that the issuing state gets to decide whether it still has jurisdiction.

D. Temporary Emergency Jurisdiction

The final jurisdictional component of the UCCJEA directs when states may take temporary emergency jurisdiction and issue temporary orders. Under the UCCJEA, a state may gain temporary jurisdiction in specific emergency situations regardless of whether or not a custody order from another state exists. In order for a state to have emergency jurisdiction, the child must be present in the state, and the child must have been abandoned or "the child, or a sibling or parent of the child, [was] subjected to or threatened with mistreatment or abuse." n95

If a state determines it has emergency jurisdiction and there is no previous custody determination in another state, the state may issue a temporary order. The order shall remain in effect [*321] until a court that has initial, modification, or continuing jurisdiction issues a custody order. If there is a state that already has jurisdiction over the custody dispute, any order issued by the emergency jurisdiction state must specify the length of time that the court considers adequate for a party to get an order from the state with jurisdiction. Additionally, the emergency jurisdiction court must communicate with the court of the state having jurisdiction. The two courts must work together to resolve the emergency, protect the parties, and determine the length of time that the temporary order will be effective. n96

The emergency jurisdiction element retains most of the language from the UCCJA as well as its original intent. Emergency jurisdiction is still intended to be a last resort in "extraordinary situations." n97 However, some changes were made to emphasize the temporary nature of orders issued under emergency jurisdiction. n98 First, it was removed from the initial jurisdiction section. Second, the statute provides that any orders issued under emergency jurisdiction are temporary. n99 The final major provision of the UCCJEA addresses when and how states must enforce other states' child custody determinations.

E. Enforcement

In its enforcement provision, the UCCJEA creates a duty to enforce as well as remedies for enforcement of custody determinations. The duty to enforce provision was taken from the UCCJA, n100 while the enforcement remedies were newly created by the UCCJEA's drafters, recognizing that more effective enforcement of orders was required.

1. Duty to Enforce

Basically, the UCCJEA requires that a state enforce a child custody determination that another state decided pursuant to standards similar to those of the enforcing state. n101 Moreover, a [*322] state is not required to enforce a child custody determination where the issuing state's exercise of jurisdiction does not comport with the UCCJEA. n102

Since the UCCJEA's definition of child custody determination is broader than the UCCJA's, n103 more child custody orders are required to be enforced by the UCCJEA. The duty to enforce provision also authorizes the state to utilize any remedies provided under the UCCJEA as well as the state's other laws. n104

2. Remedies for Enforcement of Custody Determination

As noted above, the UCCJEA provides remedies for interstate enforcement of child custody orders. Under the UCCJA, states are left to craft their own remedies, since the UCCJA does not address enforcement remedies. The lack of uniformity among the states complicates the enforcement process in several respects. n105 To provide greater uniformity and simplify the enforcement process, the UCCJEA provides for the following remedies: (1) temporary visitation orders; (2) registration of child custody determinations; (3) expedited enforcement of the determination; (4) production of the child; and (5) authorization of public officials to assist in enforcing child custody determinations. n106

a. Temporary Emergency Order

The first remedy under the UCCJEA authorizes a court to issue a temporary order in situations where it is necessary to enforce [*323] visitation or parenting time provisions in a child custody order. If a court enters a temporary emergency order, it must specify in the order the length of time it considers sufficient for a party to get an order from the state with jurisdiction. This remedy allows for courts to enforce a child custody order even where they do not have jurisdiction to modify the order. n107

b. Registration of Child Custody Determinations

The second remedy available is to register a child custody determination. To register a determination, all that is required is a letter requesting registration, two copies (including one certified copy) of the document to be registered, a sworn statement that the determination has not been changed, and the names and addresses of the parties who have custody under the order as well as the person who is seeking registration. n108

While the UCCJA also provides a mechanism for registering a child custody order, the process has been simplified under the UCCJEA. The registration process is so simple that an attorney isn't

required, and it can be accompanied by a request for enforcement. n109 Additionally, registration ensures future enforcement because a determination may simply be registered without an accompanying request that it be enforced. n110

A state that registers a child custody order may enforce the order as if it was granted by that state. However, the registered order remains a custody determination by the issuing state and may not be modified unless the state where the order was registered has jurisdiction to modify under the UCCJEA. n111

c. Expedited Enforcement of a Child Custody Determination

The third enforcement mechanism provided in the UCCJEA involves the production of the child via a process akin to habeas corpus. To initiate this remedy, a petitioner must first file a petition for enforcement with the court and state the jurisdictional basis the issuing court relied on; second, provide whether the order has been vacated, modified, or stayed by a court with continuing [*324] jurisdiction; n112 third, identify any pending proceedings that could affect the current enforcement proceeding; fourth, provide the child and respondent's present physical address; fifth, specify whether any additional relief beyond attorney fees and physical custody of the child is being requested; and finally, state whether the child custody determination has been registered and confirmed under the UCCJEA. n113

Upon the filing of a petition, a court must issue an order directing the respondent to appear in person at a specified date and time and advising the respondent that the court may issue an order granting physical custody to the petitioner. The order must be served upon the respondent.

At the hearing, the court must award physical custody to the petitioner unless the respondent establishes one of two defects in the enforcement process. First, enforcement will be denied if the respondent establishes that the court that issued the order lacked jurisdiction under the UCCJEA; that the child custody determination that petitioner is seeking to have enforced has been vacated, stayed, or modified by a court with proper jurisdiction under the UCCJEA; or that respondent was not given proper notice of the enforcement proceeding. Additionally, if the order has been properly registered, the only way the respondent might bar enforcement is to establish that the child custody determination has been vacated, stayed, or modified by a court with proper jurisdiction under the UCCJEA. n114

Habeas corpus-type proceedings have been the traditional remedy for child custody enforcement. The UCCJEA drafters, in codifying this approach, intended to ensure that habeas corpus remains the primary enforcement remedy that states utilize. n115 The drafters also intended the proceedings to be an "extremely expeditious remedy." n116 The only change which Oregon makes to the UCCJEA's approach is to insist that the enforcement hearing take place "as soon as reasonably possible." The UCCJEA directs courts to hold the hearing "on the next judicial [*325] day" following the service of the order. n117

d. Production of Child

The UCCJEA also authorizes that where the child is in imminent danger of being harmed or removed from the state, the state may issue a warrant to take physical custody of the child. n118 In order for the state to take possession of the child, a party must file a petition with the court alleging

the child is in danger, and the court must determine, based upon petitioner's and other witnesses' testimony, that there is probable cause that the child is at risk of serious physical harm. Any warrants issued must recite the reasons the court determined the child was in danger, authorize law enforcement officials to immediately take the child into physical custody, and place the child outside the home until the matter is resolved. n119

This remedy is intended to be utilized in emergency situations where the child is at risk of harm. n120 While the UCCJEA does not define harm, this provision contemplates situations where the party holding the child has pending criminal proceedings, has kept the child in violation of a child custody determination, has abused the child, or poses a flight risk. In addition, the court should consider any other circumstances that would pose a risk of harm to the child. n121

e. Involvement of Public Officials

The final remedy provided under the UCCJEA allows district attorneys to take actions to locate a child, return the child to its appropriate custodian, and enforce a child custody order if one of the following exists: (1) a child custody determination; (2) a request for enforcement by a court hearing a pending child custody dispute; (3) a reasonable belief that the party with the child [*326] has violated a criminal law; or (4) a reasonable belief the child was taken in violation of the Hague Convention's provisions on international child abduction. n122 Additionally, prosecutors may request the assistance of law enforcement officials when acting under this provision. n123

This approach was added to ensure that parties of all income levels have access to enforcement mechanisms. By involving public officials, people of low income are able to get assistance in enforcing an order rather than having to incur the high costs of enforcement litigation. n124

Conclusion

The UCCJA was created thirty years ago out of the recognition that jurisdictional battles in interstate child custody litigation were a national issue that required uniform standards for the states to follow. The UCCJA advises states when they have jurisdiction to hear a child custody dispute, when they have jurisdiction to modify, and when they have to enforce another state's custody order. All states have adopted some form of the UCCJA.

While the UCCJA's provisions are premised on admirable objectives, the Act does not adequately address some of the issues raised in child custody litigation. Several problems have arisen with regard to the Act's provisions on scope, initial jurisdiction, modification jurisdiction, and enforcement.

In 1997 the UCCJEA was enacted to eliminate the problems in interstate child custody litigation that still existed. Specifically, the UCCJEA prioritizes the forms of initial jurisdiction, clarifies when continuing jurisdiction ceases and when a state may assume modification jurisdiction, and provides enforcement remedies. Oregon, in adopting the UCCJEA, can anticipate that these changes will enhance the state's existing framework for determining jurisdiction in interstate child custody litigation. Other states should follow the lead of Oregon and also adopt the UCCJEA to replace their version of the UCCJA.

FOOTNOTES:

* J.D., 2001, University of Oregon School of Law; Executive Editor, Oregon Law Review, 2000-2001. I would like to thank Emily Lawson and Leslie Harris for their guidance on earlier drafts as well as my family for their encouragement throughout this entire project. And last but not least, I would like to thank all of the people at Glenn, Sites & Reeder for inspiring me to go to law school, and for their constant support and enthusiasm over the past three years.

n1. In 1997, almost one-third of the 1,260,000 children born in the United States were born to unmarried women. In Oregon, there were 43,809 total births in 1997 with approximately 29% being born to unmarried women. U.S. Census Bureau, Statistical Abstract of the United States: 1999, at 77 tbl.95, 81 tbl.102 (119th ed. 1999).

n2. In 1997, there were 2,384,000 marriages and 1,163,000 marriages ended in divorce in the United States. In Oregon alone there were 258,000 marriages and 14,800 divorces. *Id.* at 110 tbl.155, 113 tbl.162.

n3. For instance, in 1990 almost every divorce involved a child. There were 1,182,000 divorces that year and a total of 1,075,000 children involved in a divorce, with an average of one child being involved in each divorce. *Id.* at 110 tbl.155, 111 tbl.159.

n4. See Unif. Child Custody Jurisdiction Act, Prefatory Note, 9 U.L.A. 262-65 (1999) [hereinafter UCCJA] (discussing the UCCJA's purposes); Or. Rev. Stat. 109.720 (repealed 1999), UCCJA 1 (1968). In 1999, the Oregon legislature replaced their version of the UCCJA, ORS 109.700-.930, with the Uniform Child Custody Jurisdiction and Enforcement Act. In this Comment, I will be citing to both Oregon's repealed version of the UCCJA and Oregon's current version of the UCCJEA. Where appropriate, I will also provide the corresponding provisions from the Acts.

n5. Oregon adopted the UCCJA in 1973. UCCJA, 9 U.L.A. 261 (1999).

n6. See generally Or. Rev. Stat. 109.700-.930 (repealed 1999), UCCJA 1-24 (1968).

n7. Or. Rev. Stat. 109.710(3) (repealed 1999).

n8. See, e.g., *State ex rel. Torres v. Mason*, 315 Or. 386, 392, 848 P.2d 592, 595 (1993); *Gribkoff v. Bedford*, 76 Or. App. 695, 711 P.2d 176 (1985).

n9. See Unif. Child Custody Jurisdiction & Enforcement Act, Prefatory Note, 9 U.L.A. 651 (1999) [hereinafter UCCJEA] (explaining that the UCCJA's definition of "custody proceeding" is ambiguous and does not provide a "general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings"); Kelly Gaines Stoner, *The Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA)--A Metamorphosis of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 75 N.D. L. Rev. 301, 317 (1999) (explaining that the UCCJA's definition of "custody proceeding" is unclear and does not allow states to apply the Act uniformly).

n10. Or. Rev. Stat. 109.730(1) (repealed 1999), UCCJA 3(a).

n11. Or. Rev. Stat. 109.770-.780 (repealed 1999), UCCJA 7-8.

n12. Or. Rev. Stat. 109.760 (repealed 1999), UCCJA 6 (1968).

n13. Oregon's appellate courts have consistently held that trial courts must establish that they have jurisdiction under ORS 109.730(1) prior to issuing any child custody orders. See *In re Marriage of Mackie*, 113 Or. App. 273, 832 P.2d 1240 (1992) (holding that where multiple states may have jurisdiction, Oregon trial courts must establish that they have initial jurisdiction under the UCCJA before making any child custody awards); *State ex rel. Pennsylvania v. Stork*, 56 Or. App. 335, 641 P.2d 660 (1982) (holding that the UCCJA's provisions on jurisdiction prevail over ORS chapter 107 on divorce).

n14. Or. Rev. Stat. 109.730(1)(a)-(d) (repealed 1999), UCCJA 3(a)(1)-(4).

n15. Or. Rev. Stat. 109.710(5) (repealed 1999), UCCJA 2(5) (1968).

n16. Oregon appellate courts have consistently recognized that a state has home state jurisdiction if the children lived in that state at the time the proceeding was filed. For instance, in *In re Marriage of Mannix*, the Oregon Court of Appeals determined that Oregon had home state jurisdiction because the children lived with their father in Oregon when he filed the original petition for separation even though the children moved to Maryland with their mother shortly thereafter. 97 Or. App. 395, 399, 776 P.2d 873, 875 (1989).

n17. Or. Rev. Stat. 109.730(1)(a) (repealed 1999), UCCJA 3(a)(1).

n18. Or. Rev. Stat. 109.730(1)(b) (repealed 1999), UCCJA 3(a)(2).

n19. See, e.g., *Stubbs v. Weathersby*, 126 Or. App. 596, 869 P.2d 893 (1994), *aff'd*, 320 Or. 620, 892 P.2d 991 (1995); *In re Marriage of Henricks*, 115 Or. App. 718, 839 P.2d 766 (1992); *Stewart v. Stewart*, 83 Or. App. 675, 732 P.2d 951 (1987).

n20. See *Stubbs*, 126 Or. App. at 601, 869 P.2d at 896; *Henricks*, 115 Or. App. at 722, 839 P.2d at 768; *Stewart*, 83 Or. App. at 680, 732 P.2d at 954.

n21. See *Stewart*, 83 Or. App. at 681, 732 P.2d at 954 (explaining that whether a state has jurisdiction and whether it should assume jurisdiction are two separate inquiries). For a discussion of the UCCJA's treatment of forum non-convenience and unclean hands, see discussion *infra* Part I.B.2.

n22. Or. Rev. Stat. 109.730(1)(c) (repealed 1999), UCCJA (3)(a)(3).

n23. See UCCJA 3 cmt., 9 U.L.A. 308-09 (1999).

n24. Or. Rev. Stat. 109.720 (repealed 1999), UCCJA 1 (1968).

n25. UCCJA 3 cmt., 9 U.L.A. 309 (1999).

n26. Or. Rev. Stat. 109.730(1)(d) (repealed 1999), UCCJA (3)(a)(4).

n27. See, e.g., *In re Marriage of Horiba*, 151 Or. App. 489, 494-495, 950 P.2d 340, 343 (1997) (explaining that "under the UCCJA, the trial court must first determine whether the forum has [initial] jurisdiction under ... ORS 109.730(1) ... [and if so,] the court must then decide whether to ... decline jurisdiction" based on the unclean hands or forum non-convenience provisions).

n28. Or. Rev. Stat. 109.770-.780 (repealed 1999), UCCJA 7-8 (1968).

n29. The UCCJA provides:

In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

- (a) If another state is or recently was the child's home state;
- (b) If another state has a closer connection with the child and the family of the child or with the child and one or more of the contestants;
- (c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (d) If the parties have agreed on another forum which is no less appropriate; and
- (e) If the exercise of jurisdiction ... would contravene any of the purposes stated in [the Act].

Or. Rev. Stat. 109.770(3)(a)-(e) (repealed 1999), UCCJA 7(c)(1)-(5).

In *Stubbs v. Weathersby*, the court applied the factors contained in ORS 109.770(3) and determined that Oregon was the most appropriate forum to hear the child custody proceeding. 126 Or. App. 596, 869 P.2d 893 (1994), *aff'd*, 320 Or. 620, 892 P.2d 991 (1995).

n30. Or. Rev. Stat. 109.780 (repealed 1999), UCCJA 8.

n31. Or. Rev. Stat. 109.720 (repealed 1999), UCCJA 1 (1968); see also UCCJA, Prefatory Note, 9 U.L.A. 262-65 (1999).

n32. UCCJA 8 cmt., 9 U.L.A. 527 (1999).

n33. See Or. Rev. Stat. 109.730 (repealed 1999), UCCJA 3 (1968) (creating four equal bases for jurisdiction). Oregon courts have interpreted the UCCJA as allowing for concurrent jurisdiction. See *supra* notes 19-20 and accompanying text.

n34. UCCJA 3 cmt., 9 U.L.A. 308 (1999).

n35. Patricia M. Hoff, *The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act*, 32 *Fam. L.Q.* 267, 278 (1998).

n36. UCCJEA 207 cmt., 9 U.L.A. 683 (1999).

n37. Or. Rev. Stat. 109.760 (repealed 1999), UCCJA 6 (1968).

n38. Or. Rev. Stat. 109.840 (repealed 1999), UCCJA 14 (1968); see also *In re Marriage of Neville*, 136 Or. App. 403, 901 P.2d 957 (1995), review dismissed, 323 Or. 648, 919 P.2d 488 (1996); *In re Marriage of Rowland*, 131 Or. App. 204, 884 P.2d 561 (1994).

n39. 291 Or. 263, 630 P.2d 353 (1981).

n40. *Id.* at 276, 630 P.2d at 361.

n41. For further discussion of the factors that courts consider in determining significant connection, see discussion *supra* Part I.B.1.

n42. UCCJEA, Prefatory Note, 9 U.L.A. 651 (1999).

n43. Or. Rev. Stat. 109.830 (repealed 1999), UCCJA 13 (1968); see also *In re Marriage of Mackie*, 113 Or. App. 273, 832 P.2d 1240 (1992) (explaining that before enforcing another state's

custody decree, a trial court must determine whether the other state's exercise of jurisdiction comported with the UCCJA).

n44. See Or. Rev. Stat. 109.830 (repealed 1999), UCCJA 13 (creating a duty to enforce but no enforcement mechanisms).

n45. UCCJEA, Prefatory Note, 9 U.L.A. 652 (1999).

n46. See S.B. 789, 70th Or. Legis. Ass'y, 55 (1999). The UCCJEA has now been codified at ORS chapter 109. See Or. Rev. Stat. 109.701-.834 (1999).

n47. See discussion supra Part I.A (defining "custody proceedings" and identifying problems with the UCCJA's definition); UCCJEA, Prefatory Note, 9 U.L.A. 651-52 (1999).

n48. UCCJEA 102 cmt., 9 U.L.A. 659 (1999); see also Hoff, supra note 35, at 276.

n49. UCCJEA 102(4), 9 U.L.A. 658 (1999).

n50. Id.

n51. Or. Rev. Stat. 109.704(4).

n52. Under the UCCJEA, adoptions are expressly excluded. See UCCJEA 103, 9 U.L.A. 660 (1999). However, Oregon chose to not adopt that provision.

n53. Or. Rev. Stat. 109.704(4), UCCJEA 102(4) (1997). In contrast, the UCCJA narrowly defines custody proceedings as "proceedings in which a custody determination is one of several issues," such as divorce or separation actions, or child neglect or dependency proceedings. Or. Rev. Stat. 109.710(3) (repealed 1999), UCCJA 2(3) (1997).

n54. Stoner, supra note 9, at 317.

n55. UCCJEA 102(3), 9 U.L.A. 658 (1999).

n56. Id.

n57. Or. Rev. Stat. 109.704(3), UCCJEA 102(3) (1997).

n58. Or. Rev. Stat. 109.710(2) (repealed 1999), UCCJA 2(3) (The statute defines custody determinations as "court decisions and court orders and instructions providing for the custody of a child, including parenting time and visitation rights. 'Custody determination' does not include a decision relating to child support or any other monetary obligation of any person.").

n59. Or. Rev. Stat. 109.741, UCCJEA 201(a) (1997).

n60. Id. The UCCJEA moves emergency jurisdiction to a new section of the Act and permits courts to take possession of a child in extraordinary situations and to issue temporary orders. Under the UCCJEA, a emergency custody order becomes final only if there is no existing custody determination and no custody proceeding is filed. Stoner, supra note 9, at 314-15.

n61. The UCCJA recognizes home state, significant connection, emergency, and default as equal sources of original jurisdiction. Or. Rev. Stat. 109.730 (repealed 1999), UCCJA 3 (1968).

n62. Prioritizing the sources of original jurisdiction prevents multiple states from hearing the same child-custody dispute. Meanwhile, the UCCJA allows for multiple states to have jurisdiction over the same child-custody dispute because it confers equal footing for its four jurisdictional bases. Stoner, supra note 9, at 312.

n63. Or. Rev. Stat. 109.741, UCCJEA 201.

n64. Id.

n65. Or. Rev. Stat. 109.704, UCCJEA 102(7) (1997).

n66. Or. Rev. Stat. 109.741(1)(b)(B), UCCJEA 201(a)(2)(B).

n67. Under the UCCJA, Oregon courts were required to consider whether it was in the child's "best interests" for the court to assume jurisdiction. Or. Rev. Stat. 109.730(1)(b) (repealed 1999), UCCJA 3 (1968).

n68. For further explanation on how to undertake a significant connections analysis, see discussion *supra* Part I.B.1. See also *In re Marriage of Horiba*, 151 Or. App. 489, 950 P.2d 340 (1997), review denied, 326 Or. 627, 964 P.2d 1029 (1998); *Fenimore v. Smith*, 145 Or. App. 501, 930 P.2d 892 (1996), review denied, 326 Or. 627, 964 P.2d 1029 (1998).

n69. Or. Rev. Stat. 109.741, UCCJEA 201.

n70. Id.

n71. See *supra* notes 19-20 and accompanying text.

n72. Or. Rev. Stat. 109.757, UCCJEA 206 (1997); see also UCCJEA 206 cmt., 9 U.L.A. 681 (1999); Or. Rev. Stat. 109.760 (repealed 1999), UCCJA 6 (1968) (noting the UCCJA's first in time rule).

n73. Or. Rev. Stat. 109.757, UCCJEA 206.

n74. Or. Rev. Stat. 109.761-.764, UCCJEA 207-208 (1997).

n75. Or. Rev. Stat. 109.761, UCCJEA 207. However, it should be noted that this list of factors is not exclusive, and courts are permitted to consider other circumstances which may make one state more appropriate to hear the dispute. See *id.* (authorizing courts to "consider all relevant factors").

n76. UCCJEA 207 cmt., 9 U.L.A. 683 (1999).

n77. Id.

n78. Id.

n79. Or. Rev. Stat. 109.764, UCCJEA 208.

n80. UCCJEA 208 cmt., 9 U.L.A. 684-85 (1999); see also *Stoner*, *supra* note 9, at 310.

n81. UCCJEA 208 cmt., 9 U.L.A. 684-85 (1999).

n82. Id.; Or. Rev. Stat. 109.741(1)(d), UCCJEA 201(a)(4) (1997).

n83. See discussion *supra* Part I.B.1.

n84. Robert G. Spector, *Uniform Child-Custody Jurisdiction and Enforcement Act*, 32 *Fam. L.Q.* 303, 338 n.76 (1998) (explaining that even in cases where necessity jurisdiction has been applied, significant connection would have been the proper grounds for the state to take jurisdiction and citing *McFaull v. McFaull*, 560 So. 2d 1013 (La. Ct. App. 1990)).

n85. UCCJEA 202 cmt., 9 U.L.A. 674 (1999).

n86. Or. Rev. Stat. 109.844, UCCJEA 202 (1997); see also UCCJEA 202 cmt., 9 U.L.A. 674-75 (1999).

n87. 326 Or. 166, 951 P.2d 135 (1997).

n88. Id. at 178, 951 P.2d at 141.

n89. Or. Rev. Stat. 109.747, UCCJEA 203 (1997).

n90. UCCJEA 203 cmt., 9 U.L.A. 676 (1999); see also Or. Rev. Stat. 109.840 (repealed 1999), UCCJA 14 (1968) (allowing the modification state to determine whether the issuing state retains jurisdiction).

n91. Or. Rev. Stat. 109.744, UCCJEA 202 (providing that a "state that has made a child custody determination ... has exclusive, continuing jurisdiction ... until ... a court of [the] state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with [the] state and that substantial evidence is no longer available in [the] state concerning the child's care, protection, training and personal relationships").

n92. UCCJEA 203 cmt., 9 U.L.A. 676 (1999).

n93. 291 Or. 263, 630 P.2d 353 (1981).

n94. Id. at 274-80, 630 P.2d at 360-63. As noted in Part I, the Oregon Court of Appeals has followed ORS 109.840 and Grubs in determining whether an issuing state still retained jurisdiction. See discussion supra Part I. Like Grubs, these cases are no longer controlling with respect to their approaches for analyzing modification jurisdiction. See, e.g., *In re Marriage of Neville*, 136 Or. App. 403, 901 P.2d 957 (1995), review dismissed, 323 Or. 648, 919 P.2d 488 (1996); *In re Marriage of Rowland*, 131 Or. App. 204, 884 P.2d 561 (1994).

n95. Or. Rev. Stat. 109.751(1), UCCJEA 204(a) (1997).

n96. Id.

n97. UCCJEA 204 cmt., 9 U.L.A. 677 (1999).

n98. UCCJEA, Prefatory Note, 9 U.L.A. 651 (1999).

n99. Or. Rev. Stat. 109.751, UCCJEA 204 (emphasizing that any orders issued under this section are only effective until a state with jurisdiction intercedes).

n100. For a discussion of the UCCJA's enforcement provisions, see discussion supra Part I.D.

n101. ORS 109.781 provides:

A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with ORS 109.701 to 109.834 or the determination was made under factual circumstances meeting the jurisdictional standards of ORS 109.701 to 109.834 and the determination has not been modified in accordance with ORS 109.701 to 109.834.

Or. Rev. Stat. 109.781(1).

n102. UCCJEA 303 cmt., 9 U.L.A. 690-91 (1999).

n103. See discussion *supra* Part I.A (discussing the UCCJA's definition of "custody proceeding").

n104. Or. Rev. Stat. 109.781(2), UCCJEA 303(b) (1997) ("A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in ORS 109.774 to ORS 109.827 are cumulative and do not affect the availability of other remedies to enforce a child custody determination.").

n105. For a discussion of the problems with the UCCJA's enforcement scheme, see discussion *supra* Part I.D.

n106. Spector, *supra* note 84, at 368 n.136; see also Or. Rev. Stat. 109.787-.824, UCCJEA 303-317 (1997).

n107. Or. Rev. Stat. 109.784, UCCJEA 304.

n108. Or. Rev. Stat. 109.787, UCCJEA 305.

n109. Stoner, *supra* note 9, at 320.

n110. UCCJEA 305 cmt., 9 U.L.A. 693 (1999).

n111. Or. Rev. Stat. 109.791, UCCJEA 306.

n112. If the determination has been vacated, stayed, or modified, the petitioner must also identify the court, case number, and nature of the proceeding. Or. Rev. Stat. 109.797, UCCJEA 308 (1997).

n113. *Id.*

n114. *Id.*

n115. Spector, *supra* note 84, at 372 n.141.

n116. *Id.*

n117. Or. Rev. Stat. 109.797, UCCJEA 308. Oregon's departure from expressly requiring the hearing to take place on the next judicial day is consistent with the rural delegates to the NCCUSL's 1997 Annual Meeting. The rural delegates were concerned that requiring judges to hold a hearing one day after the order is served on respondent would tremendously burden judges who preside over very large areas. See Spector, *supra* note 84, at 372 n.142 (explaining the debate surrounding the "next judicial day" requirement at the NCCUSL's 1997 Annual Meeting).

n118. Or. Rev. Stat. 109.807, UCCJEA 311 (1997).

n119. *Id.*

n120. UCCJEA 311 cmt., 9 U.L.A. 698-99 (1999).

n121. *Id.*

n122. Or. Rev. Stat. 109.821, UCCJEA 315 (1997).

n123. Or. Rev. Stat. 109.824, UCCJEA 316 (1997).

n124. UCCJEA, Prefatory Note, 9 U.L.A. 653 (1999).