

## Custody and Domestic Violence

### Relationship between Custody Cases and Domestic Violence

When a judge makes a decision about custody, they must decide what custody arrangement is in the child's best interest.

Evidence of domestic violence may be one of the "best interest factors" that a judge considers when making a decision. A victim may be able to prove domestic violence through:

- the judge's determination or "finding" in a restraining order case;
- a conviction in a criminal case;
- presenting evidence of domestic violence in a custody case.

In some states, a finding of domestic violence may also create a rebuttable presumption that the abuser should not have sole or shared custody in a custody case. This means that the judge assumes that the abuser should not have custody, but the abuser can present evidence to change or "rebut" this assumption.

If the judge decides the abuser and victim should share custody, the judge may put limits in place to make this safer. The judge may specify:

- when, where, and how the child is exchanged between the parents;
- the dates and holidays each parent has with the child;
- whether a third party needs to supervise visits or exchanges;
- how the parents communicate about the child; and
- which parent makes decisions regarding the child.

### Relationship between Restraining Order Cases and Custody Cases

If a restraining order is issued to protect a parent from abuse, a judge generally can include:

- provisions related to custody and visitation; and
- exceptions that allow the victim and abuser to communicate specifically about the children.

The custody provisions included in a restraining order generally apply as long as the restraining order is in place. Once it expires, the custody terms usually also expire. The terms of a restraining order may be temporarily controlling even if a prior custody order was issued.

You can also find state-specific legal information on restraining orders, domestic violence, sexual assault, and stalking, as well as resources for getting help on [WomensLaw.org](https://www.womenslaw.org). You can send us your specific questions by writing to our Email Hotline at [Hotline.WomensLaw.org](mailto:Hotline@WomensLaw.org).

## Interstate Custody and Domestic Violence

When thinking about leaving the state with your children, there are at least four legal issues to think about:

- Is there an existing court order regarding your children?
- What does your state relocation law say?
- What does your state parental kidnapping law say?
- And where will a custody case take place?

### Before You Move, Consult an Attorney

If you leave the state with your children, you could be held in contempt of court, punished in a subsequent custody case, and even charged with parental kidnapping in some states. It is important to talk with an attorney who understands domestic violence and the state's parental kidnapping and relocation laws before moving.

Before leaving, check if the abuser already filed for custody in the original state. Usually you cannot leave the state ("the jurisdiction") with the children after one parent has filed for custody. Continue to check the family court in the original state after you leave to find out if the other parent filed for custody.

### Filing for Custody

If your child has a "home state," which means the child has lived there for at least six months, that is the proper place for a custody case to be filed. If you just arrived in a new state, you can only file for custody if you ask for "emergency jurisdiction" under a uniform law called the UCCJEA. The judge can grant you temporary emergency custody if you, your child, or the child's sibling is subjected to or threatened with mistreatment or abuse.<sup>1</sup> However, for a long-term custody order, a custody case may have to be filed in the child's home state.

### If the Abuser Took the Children and Won't Return Them

If the abuser takes the children in violation of an existing custody order or fails to return them after a visit in another state, ask law enforcement in the abuser's state to enforce the court order. If they refuse, you might be required to go to court in the new state to get a "pick up order" from the judge there before the police will get involved.

Although interstate cases can be complex, help is available. For legal advice, go to WomensLaw.org's [Finding a Lawyer](#) page. For information, but not legal advice, [The Legal Resource Center on Violence Against Women](#) focuses on interstate custody and domestic violence issues and can provide technical assistance to an attorney who may be representing you in an interstate case or can give you referrals.

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<sup>1</sup> The standard is slightly different in Massachusetts, which follows the UCCJA, not the UCCJEA.

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