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Should I Stay or Should I Go? Helping Domestic Violence Survivors with Interstate Cases

Deb Goelman and Amie Lewis, Legal Resource Center on Violence Against Women, and Darren Mitchell, Maryland Network Against Domestic Violence

January 24, 2018

>>> Hello everyone and welcome to this rural building webinar on silent violence against women, it features the core components of institutional and individual advocacy that improve outcomes for victims and accountability for offenders. The trainings are intended to provide in-depth perspective and thinking and relative issues from national and rural experts in the field. Today's topic is should I stay or should I go, helping domestic violence survivors with interstate cases, our presenters are Deborah Goelman, Esq., Amie Lewis, M.A. and Darren Mitchell, Esq..

>>> Welcome to you today. And thanks to all of you for joining us. My name is Liz Carlson, rural program specialist in Duluth Minnesota. I will facilitate the webinar but first I just have to say that I actually remember the song when I stay up so should I stay or should I go from the 80s. I remember when it came out. I have had it playing in my head all day long.

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>>> Left Mike. -- [laughter]. Before they get started on the presentation I will just touch upon a few webinar logistics. First of all, you all I sure am sure have noticed the captions are rolling at the bottom of your screen and with all real-time captions there is always the possibility of an error so we just ask for your acceptance and not paying too much attention to that. As far as logistics go, we definitely want to hear from you today. We very much want your questions and comments and so throughout the presentation we would encourage you to utilize the hand raise feature that you will see in the upper land have porch and Alyssa's portion of your screen. The toolbar. To raise your hand if you would like to have Patricia unmute your phone line, if for some reason that audio function is not working with your connection today, or if you just prefer at any time, you can enter a question or a comment in the question and answer box that you see in the middle column of your screen and our presenters will make a point of responding to your question within the presentation. I will also encourage you to utilize the options that are available to you, but display preferences within each of the boxes on your screen. There is a light gray icon on the far right of each box and when you hover over that you see the range of options available to you. Utilize that and know that this webinar is being recorded if you would like to refer to it in the future. You will find it on the rural recording webpage of the Praxis international website.

>>> So with that I just want to welcome Deb, Amy and Darren. And ask you if you are ready, why don't you go ahead and get us started. You make thank you so much, good afternoon I am Deborah Goelman, Esq. from the legal resource Center and I am here with our expert consultants Darren Mitchell, Esq. and Amie Lewis, M.A.. We want to thank Praxis for hosting this webinar and thank all of you for joining us this afternoon to talk about interstate custody and domestic

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violence. Most of all we want to thank you for all you do every day to help domestic violence survivors in rural communities. We know that many of you have had questions from survivors about whether or not they can move across state or tribal lines with their children and that is what we are here to discuss. We have two objectives here today. First to share with you how the legal resource Center can support your work with survivors and second to introduce you to the nuts and bolts of the UC CJ EA, the law that says which state has the power to enter a custody order over a particular child.

>>> We will have an opportunity for questions and if we have time we will also talk -- touch on parental kidnapping loss toward the end of the presentation. We expect that you have seen the same kinds of interstate cases come up as we see here on a day-to-day basis, cases where survivors perhaps ask you if they can leave the jurisdiction with their children to go somewhere else for safety. Questions were maybe you have encountered a survivor who has come to your jurisdiction fleeing from abuse in a different state or jurisdiction. And perhaps cases where a perpetrator has abducted the children and taking them across state lines and will not return them. You also see cases where there are conflicting protection orders entered by one state and long-term custody orders entered by another state.

>>> We will try to shed some light on these typical scenarios here today. And we are going to start off by sharing with you what the LRC does.

>>> So the legal resource Center assist with interstate custody involving domestic violence and in particular we can help you understand the federal and state lines - laws that are involved when someone is picking up crossing state lines. You will always find a list of our upcoming trainings on our website. We also have a hotline that operates during business hours and that number is going to be on your

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second to last slide. We talked by phone every day with professionals across the country who have questions on the laws involving interstate custody -- custody cases intrude on Mrs. including Chinese -- we also help strategize about cases. In terms of written resources we have a website with relevant state laws, although we would like you to know that we are currently updating the relocation laws on that site but you can definitely use what we have as a starting point. We have also produced case law summaries and checklists including essay cues and a checklist for advocates which you will see are available for download at this presentation. And we have checklists for survivors in English and Spanish. For survivors who call us when there is a jurisdictional question we can help find an attorney using our database of attorneys and programs across the country.

>>> So when is it actually appropriate to refer a case to the LRC? That really involves these kinds of magical three criteria that you see on here on your screen. First when there is a history of DV, second if it involves a child custody matter and thirdly as the case involves more than one state or travel jurisdiction. Most of the time the case is referred to LRC are because a survivor is thinking of fleeing the state to escape abuse or has already fled the state.

>>> Please note that we don't not handle international cases in less it happens to be an overlap with the UC CJ EA and we don't represent survivors directly. It is the case if the case is jurisdictional we can help connect a survivor with an attorney in the appropriate state. Additionally the LRC does not handle criminal matters but in some cases the survivor may need a criminal attorney as well as a civil one. We would direct them to talk to the public attorneys -- public defenders office and that information is on your last slide as well, the national clearinghouse of battered women.

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>>> We are going to turn now to the substantive content of our presentation, I am having a little trouble with the slides here. Our focus is going to start with the uniform child custody jurisdiction and enforcement act, the UC CJ EA that Debra mentioned a couple of minutes ago. It helps us to answer a very important question in the types of situations that Debra discussed earlier for survivors with their children when they are thinking about fleeing to another state for safety or have all ready done so, and that question is, which state would have the power to enter a custody order over that particular child? Which as we will see depends on where the child has lived, where the parents have lived over a. Of time and there are some nuances and specific considerations that we are going to go through to help you sort of understand and be able to guide survivors as they try to make decisions that are best for themselves and their children. The UC CJ EA is what is known as a uniform law, which means it was a law that was developed to enable multiple states and ideally all the states in the country and in some degree territories also enact these laws, to have the same legal standards all across the country so that no matter where a family finds itself in these kinds of cases the same or very similar legal standards will apply.

>>> That of course helps the analysis on the part of the courts but it also helps all of you in your roles as advocates and attorneys in assisting survivors in these kinds of cases. The UCCJEA is one of these uniform laws, developed in 1997 by the body that first through committee work develops laws and then works on spreading them throughout the country. This particular law was designed to replace an earlier uniform law which we name here the UC CJA which also was designed to create some uniformity among the states and how they address child

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custody and cases involving more than one state. Ultimately it ended up being problematic in several ways, and it resulted sometimes in multiple conflicting custody orders involving the same children and families. So this law is designed to address the problems that arose on the part of the UC CJA but in addition a federal law the parental kidnapping prevention act or the PK PA was passed by the federal Congress in this area as well and it introduced some inconsistencies between itself and the UC CJA that the UCCJEA the more recent enactment was able to address. We are not going to go into details about what all the differences were but we are going to talk about the aspects of the law that are especially relevant when you are trying to help with domestic violence survivors and you're trying to figure out which state has the power to hear the case.

>>> Jurisdiction of course really means exactly that in its context, the power to decide a custody matter. So far the UCCJEA's adoption has been quite successful which all states but Massachusetts enacting the law and the US Virgin Islands as well is a territory that has enacted the law. Massachusetts, the final holdout state is one in which it has been introduced many times over the past several years and it was introduced again last year. And still for complicated reasons it has not been enacted. For the most part the way the UCCJEA is applied in Massachusetts is quite similar to the UCCJEA but there are some important differences. If you are involved, if you're from Massachusetts or you involved in the case in which the survivor has some contact with Massachusetts and that becomes an issue, please do call the LRC and we can help you through the analysis in that situation. The UCCJEA is also important because it implement in some improvements, some protections for domestic violence survivors and that is what we are going to spend most of our time focusing on today.

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>>> We have a map to show you, everyone but Massachusetts. So again, the main purpose of the UCCJEA is to answer the question of when a court can hear a custody matter. The way it does so in the first place is by introducing a set of jurisdictional basis. What this means is these are grounds upon which a court can decide that it does have the power to hear a case. What the UCCJEA did with these four jurisdictional basis is create a hierarchy. So that the analysis will be the same throughout the country as you analyze the situation and figure out what court where there is more than one involved potentially has the true power to hear the case. I'm going to walk you through a little bit about that in just a moment. I do want to mention I'm going to talk about for jurisdictional basis and there has been an additional basis called temporary emergency jurisdiction which applies in an emergency and it actually can trump all of the other jurisdictional basis in an emergency and give the court the power to decide custody on a temporary basis to protect children and to protect abused parents.

>>> Let's look at the four jurisdictional basis, the main ones under the UCCJEA. The first one is one I'm sure you are familiar with, it is often known as the six month rule, in his home state jurisdiction. If there is a home state under the UCCJEA or there was a home state within six months of the time someone files for custody, then that state has jurisdiction over the custody matter. So that is why it is called the six month rule, as long as the child has been living with a parent or person acting as a parent in that state for at least six months prior to the filing or commencement of that action, that state has the power to decide custody over any other state. Except in an emergency as I mentioned.

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>>> There are a couple of nuances I want to mention to the six month rule. The first is there is a concept known as extended homestay jurisdiction which is critically important many times in cases involving domestic violence. Especially where a survivor has fled from one state to another to protect herself and to protect her children. Extended home state jurisdiction applies because what the statute says is a court has priority jurisdiction, the power to hear a case over any other state if a child, if it is the home state at the time of filing or it was the home state within six months of the filing. Let's see how that plays out. If we have a scenario in which the survivor is left with her children and the abuser has been left behind in the state in which the abuse took place, what this means is -- took place, what this means is she cannot file for jurisdiction for a critical six month. Because until that time the original state, the original home state was the home state within six months of filing and has priority jurisdiction. If a mom and her children flee from Washington, D.C. to California to protect the children and the father remains in Washington, D.C. there is a critical six month. And which the dad can file in Washington, D.C. even though mom and the children are in California and have no intention of going back and mom is safe in California the dad in Washington, D.C. can file for custody in DC and DC can take jurisdiction and hear the case because it is the extent excellent -- extended home state at the time. Once the dad leaves that is no longer the case but for the six month. That is a crucial consideration. We will talk about some practical implications of that in just a few minutes.

>>> A couple of other things around home state jurisdiction, one answers the concept of temporary absence. What that, the reason that exists is because the home state provision in the statute says that a. Of temporary absence of any of the parties, the parent, the children, are counted as long as that absence is

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considered to be temporary as part of the calculation of six months. What that means is if a family has lived in Washington, D.C. and mom and the children move out of the state of Washington -- out of the district, for a. Of time, which could be more than six months, it could be a couple of years in some instances, but then come back to Washington, D.C. and someone files a custody matter the question may arise and they've only been there for a couple of months since they returned, the question arises is D cell is it still the home state. -- Is DC still the home state. If the court decides that absence was temporary than DC remains the home state. You can imagine this can become very important, cases in which for instance a military family is deployed overseas. Or there is an assignment to a different military installation elsewhere in the country or people travel for work for extended periods of time. Under those circumstances temporary absence may come into play and the analysis can be complicated. Some courts treated a little differently, if you find yourself in a situation where parents have left and it was a child and they have come back to the state, give the LRC a call and we can help you again with the analysis of temporary absence. Finally if children are less than six months old there is a special part of this provision that talks about what is to home state is. Typically it is where the child was born and has lived since birth. We all know there are situations in which children leave the state in which they are born pretty quickly, they may be born out of state from where their family lives. And so again the analysis can be collocated with young children are children who have moved before they turned six months old.

>>> Again please give the LRC a call in situations like that and we will help you work your way through what the caselaw said and figure out how this law would apply in that particular situation. That is home state. The main jurisdictional basis of the statute and the one that trumps all of the others except emergency.

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>>> The next one is significant connection. The homestay jurisdiction reflects a decision that after six months after a child has lived with a parent for six months in a particular place that place has all the information, about the child's care, the child's protection, the education of the child etc., so the court in that home state should have the power to decide custody. If there is no home state, if the child has not lived with a parent for more than six months in any one place, then we turn to the second provision which is called significant connection. This is more of a case-by-case determination. Two things have to be present. The connection between the child and the state has to be more than just a mere presence. It has to be significant. And the way the court defines that term. Which can vary. There has to be substantial evidence regarding the child's care, the child's protection, the child's education, personal relationships, family, etc. etc. So the court and that of having a bright line rule of six months is going to look and see where are the caregivers, the childcare providers. Where are the doctors. Is there family in this particular location. Under that analysis the court may decide that even though there is no home state, there is enough of a connection between the child and the people in that state that the court has the power to decide custody.

>>> This analysis can be collocated, there can sometimes be competing states in which both parents claim that both states have significant connection and there could be litigation around that. This is something else we help out with at the LRC. So if all the states have decided that they are not an appropriate place for the case to be heard, which Deborah is going to talk about in detail in a few minutes, then a court can take what is called more appropriate forum jurisdiction. If all other states have declined to hear the case, a state that they decline in favor of can take jurisdiction inside the custody case. That is where more appropriate forum jurisdiction kicks in. Finally if none of these other bases apply, and there is

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what we sometimes call vacuum jurisdiction or no other state jurisdiction. This is a state in which there -- a jurisdiction -- a situation in which there is no home states, no significant connection, and under those circumstances let's say a family has been moving around in an RV for many years and hasn't stayed anywhere for than a couple of months, a state can step in and decide a custody case because there is nowhere else that can do it.

>>> We have a note here to say that the UCCJEA applies only after a child is born which means survivors who are pregnant can actually leave without worrying about the trend 11 -- the UCCJEA coming into play until after the child has born. Certainly fathers have tried to use the UCCJEA in this way, so far the courts have said no. It only applies after birth.

>>> Let's start looking for other provisions of the UCCJEA in addition to the jurisdictional bases that may help survivors of domestic violence specifically. These were written into the law as predictive measures -- protective measures for survivors. The first and most important is an emergency jurisdiction. Even if you're not at home state or state with significant connection, on a temporary basis under temporary emergency jurisdiction you can get a custody order addressing that child for a temporary. Of time. The UCCJEA emergency jurisdiction provision states that a court can take jurisdiction and hear a case if it is necessary in an emergency to protect the child or a sibling of a child or a parent of the child has been subjected to or threatened with mistreatment or abuse. So protection of the child under this provision is appropriate when the child himself or herself as being abused, the sibling is being abused, or most importantly in the cases of domestic violence that we work with, the parent of a child is in abused or threatened with abuse.

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>>> What this means is the court can exercise emergency jurisdiction even if you don't have evidence that the child himself or herself was directly abused by the parent. This of course incorporates the notion that exposure to domestic violence can be just as harmful as direct abuse. For children. The child must be present in a state that you are asking to exercise emergency jurisdiction under the statute so it is not applicable to say the parent has chick kidnap the child away from the state and the left behind parent is now trying for an emergency order. It is not available unless the child is still present in the state.

>>> In terms of making temporary emergency jurisdiction, arguing for temporary emergency jurisdiction from the court, unfortunately there is no uniform procedure for doing so. There is no specified procedure. In most states you can file for emergency custody under the substantive custody statute, not the UCCJEA and make the case for emergency. In other states there is a mechanism that has been built into the UCCJEA, it is really important to understand how your particular jurisdiction addresses this. It is available in the statute but sometimes it takes a little work to figure out how to ask for it.

>>> It is clear under the statute that you can use the protection order code in those states, which is most of them, that allow for courts to order temporary emergency jurisdiction under protection order to use that as a vehicle under the UCCJEA to get emergency jurisdiction and to get emergency jurisdiction generally the court is going to want to hear evidence of abuse, of again either the parent or the child. Because abuse of the parent can be grounds to issue a temporary emergency order. All the arguments you are going to make around obtaining a protection order to show that there has been abuse and to provide evidence

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around that abuse would be important in making an emergency jurisdiction argument under the UCCJEA .

>>> Not going to call on Deborah to talk about another important provision inconvenient forum.

>>> Thank you so inconvenient forum is the idea that even a court that has jurisdiction has the ability to decline jurisdiction and transfer a custody case elsewhere. This is a mechanism that can be employed when a party or an attorney asks a judge to make that determination or the court can make that decision on its own. In the context of these types of domestic violence cases, what we are typically talking about is when a survivor wants the home state to give up jurisdiction in favor of the state where she has gone for refuge. If you are working, if you are either an attorney or you are helping a client who is working with an attorney, please note that we have some inconvenient forum sample pleadings that may be useful in this type of case.

>>> Your next slide lays out the eight factors in the statute that are available and must be considered by a judge who is making an inconvenient forum decision. As you can see the very first factor is whether or not domestic violence has occurred and which state is best situated to protect the parties and the child. Typically the argument being made to the home state when going along the lines of the domestic violence has occurred in this state, the survivor has to leave or all ready has left to escape from the violence and to be in a safer forum and the state where the perpetrator is and please transfer the case because this is going to be safer for the survivor and the child to be able to litigate a custody case in the new state. There are seven other factors involved as well. The fourth factor which talks about the relative finances of the parties also can be very helpful in a domestic

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violence case. As you all are aware because financial abuse so often accompanies domestic violence, typically the survivor is not going to be in a position to be able to travel back to the home state and pay for airfare or transportation and somewhere to stay in the home state. So those two factors quite often weigh in favor of the home state giving up jurisdiction and transferring it to the refuge state.

>>> There are a couple of states that have excellent case law on this issue of inconvenient forum, in particular Montana. I see we had a question about Montana previously. And we've got some good caselaw out of New York as well. If any of you are attorneys or you have attorneys with whom you're working and you're interested in caselaw summaries for the UCCJEA issue please feel free to contact us. We just recently had a case law update which is available now to all of you.

>>> That is essentially the inconvenient forum motion. And how judges decide to transfer a case to the new state. Now we are going to take a look at a case scenario and see how not just the UCCJEA but a range of laws apply in these types of relocation and interstate cases. In our scenario, the survivor is Lila Smith. You learn that Lila and Philip had been married for five years and have lived in a rural part of Maryland. They have a child a seven-month-old daughter named Annie. Philip has physically and emotionally abused Lila since shortly after they were married. But he has never been charged or convicted criminally and Lila has never filed for a civil protection order. Last night Philip held a gun to Lila's head in front of Annie and threatened to kill her. So Lila would like to relocate from Maryland and move to another state, Wisconsin, where her family lives in where she hopes to find a job. This type of pattern is quite similar to the cases we hear

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about every day from survivors when we receive calls at the LRC. Often there has been a long history of violence but not a whole lot of documentation either by the criminal justice system or by the civil justice system. So there is quite a few legal issues that come up in this type of case. We know that many of you on the line are advocates and we would not expect or want you to try and provide legal advice to survivors in these types of cases, rather we want to give you a flavor for the types of laws that are involved in these cases and encourage you to either call us directly when you have a case like this or to refer a survivor to us and we will be happy to try and help.

>>> Some of the legal issues, and we are not going to be able to delve in depth into every issue on our slide, but one of the first issues that comes up is whether or not a custody order has been entered previously. In our pattern with Lila there is no custody order but in many cases where a survivor wishes to relocate there may be a custody order. It is important to consider because of the survivor is going to relocate she needs to be able to do so without violating an existing court order. So even if she is the custodial parent under the court order, if there is some type of visitation schedule that gives the perpetrator access to the child and she would be violating that by moving to a different state, it is important to try and get that court order modified before the relocation takes place. Additionally, every state has a criminal law, it might be called parental kidnapping, or have a different name like custodial interference but it is a criminal law that says whether or not it is legal for one parent to remove the children out of state and under what circumstances.

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>>> We are going to talk toward the end of our presentation today a little bit about these criminal laws, the parental kidnapping laws, but for our purposes now, you may want to be aware that there are some states like California and Florida for example, that have an exemption for domestic violence survivors. Meaning that they should not be charged under the parental kidnapping laws in the first instance. There is also a greater number of states that have a domestic violence defense embedded in the kidnapping law. Typically that says that someone who is charged with parental kidnapping can raise an affirmative defense that they were fleeing from an incident or a pattern of domestic violence. Still, a greater number of states have something called a child protection defense. About 30 states have these in place. If the parent is fleeing the state with the child in order to protect the child himself or herself, then there may be an affirmative defense based on child protection. And in many of the cases that we talk with survivors here, at the LRC, they are fleeing from one state to another because of sexual abuse or physical abuse against a child.

>>> In addition to the parental kidnapping laws there is a whole another legal issue called continuing exclusive jurisdiction. That sometimes traps survivors into the state that they are trying to leave. What continuing exclusive jurisdiction means is that typically in a case where a court has entered a custody order over a child, that particular state gets to keep on handling child custody issues that arise in the future. So any modifications to a custody order or to visitation typically would have to be brought before that very same court in the same state. That is as long as the perpetrator remains in that state. Again, that is not going to apply to our case with Playa because there is no -- with Playa because there is no existing custody issue. The last issue on this slide talks about the state relocation law. In the majority of states that you all come from, the state relocation law

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covers situations where they are all ready -- there all ready as a custody order and it sets out what a custodial parent needs to do in order to relocate to a new state. Some examples of procedures that a custodial parent might need or steps a custodial parent might need to take would include notifying the other parent, potentially filing a request for relocation, with the court. And getting permission to leave. And all sorts of hurdles that can be very difficult for domestic violence survivors to comply with before they relocate to another jurisdiction. In some research that we did recently, in state relocation laws it also appears that some of these laws are becoming even more restrictive than in the past. To give an example, in 2011 in Pennsylvania the state relocation law was modified and now, at least according to some attorneys practicing in that jurisdiction, the state relocation law applies not only after a custody order has been entered, but even before there has been a court determination of custody.

>>> It also applies between moves within a county in Pennsylvania. And in Pennsylvania, this is not the only state with this type of framework, there are now 26 factors that a court has to consider before making a decision about relocation. Some of those factors are specifically related to relocation, and some of those factors are related to the child custody law itself, the best interest standard. But if you can imagine, that kind of process for a survivor to relocate can make it very difficult if not impossible to leave the state and comply with that type of state relocation law.

>>> As advocates what we want you to take away from this is that there are a range of different laws that are involved when someone wants to relocate and it is very important for a survivor to talk with a knowledgeable attorney who

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understands both the UCCJEA and the parental kidnapping laws and the state relocation loss.

>>> Some other legal issues that come up, come up around the issue of protection orders and where someone like Lila should think about filing for a protection order. I am going to talk in a moment about whether Lila should file for a protection order before leaving the state but for now let's consider that second bullet, will she be able to file for a protection order in the new state. The answer is it really depends on the state laws in the refuge state. There are a few different things to consider. One issue is not every state includes temporary custody as relief that is available under a protection order statute. In fact in our scenario with Wisconsin being the refuge state, temporary custody is not available as part of a protection order. So that would be one issue. Another issue that comes up is some states limit the entry of protection orders to cases where the violence has occurred in that state. So if Philip abused Lila and Maryland but she wants to move to a state that does not cover, does not issue protection orders if the violence has not occurred in the refuge state, that could be a problem as well.

>>> Finally the point that we make on the slide has to do with a narrow legal issue called personal jurisdiction. What that means is that the court in the new state when entering a protection order generally has to have the authority to make an order against the perpetrator in this case Philip. That is determined by whether or not the perpetrator has minimum contacts with the state. So in many domestic violence cases where survivors are fleeing to a state where she has family and she has support and protection, it may be that the perpetrator has never been there before. Doesn't have family there, doesn't have business dealings, has never stalked her there. If that is the case, in the vast majority of states, it is going to be

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difficult for a survivor like Lila to obtain a protection order in the refuge state. Feel free to contact us if you have cases involving personal jurisdiction or protection order issues.

>>> The next bullet talks about child custody jurisdictional laws and whether or not they would require her to return to the original state to litigate custody. This really goes back to the framework that Darren was talking about earlier in our presentation. If there is a home state and the judge in the home state wants to require the children to return, let's say the perpetrator files for custody after Lila leaves, Lila may be required to bring the children all the way back to the home state. She may also be required to come back for court proceedings in the home state even if she is allowed to remain safe in the refuge state. Again this is interpretive under the new -- under UCCJEA and depending on whether the judge in the home state wants to let the court case be transferred to the new state.

>>> We do list a couple of other legal issues and just briefly mention custody laws are different in every state and some of them are more protective of domestic violence survivors than others. There may be other state laws that tend to be more protective of a survivor, for example state confidentiality laws and programs. It might be useful in one state and unavailable in another. Of course ideally they would like for every survivor contemplating relocation to be able to be connected with an attorney both in the home state and in the refuge state before making a decision about relocation but we know that that is not always feasible.

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>>> Finally, immigration law is certainly in a state of flux right now but there may be immigration related consequences for leaving the state as well. So if the survivor has concerns about legal status and could potentially be charged with parental kidnapping leading to a conviction, that might make her in a more precarious state. Similarly, in terms of immigration, if she is going to be able to access some immigration related relief like filing for a youth visa or filing for a self petition under the violence against women act, it could be important for her to access some legal relief before leaving the state, it may be even more recommended for her to file for a protection order and have some documentation of the violence on the books so that she'll be better able to access some of this relief under the immigration law.

>>> So now we are going to talk about a question which may come up often since you are often talking about filing for protection orders. There are definitely benefits for -- to filing for a protection order before leaving the state. Many of those are similar to the benefits of filing for a protection order in general. It may decrease the likelihood of physical violence against the survivor, at least while the protection order is in place. It is going to document the violence, which could be helpful in some custody proceedings down the road and also in the jurisdictional proceedings that we mentioned like making an argument for emergency jurisdiction or an argument for an inconvenient forum. Also if it is a situation where the perpetrator has threatened to take the child away, from the survivor, having a protection order in place including custody can be a deterrent to that or at a minimum can help the survivor get the children back if the perpetrator abducts them.

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>>> Finally, the survivor may not be able to get a protection order in the new state. However, there are also some risks to filing for a protection order before leaving the home state. Risks that are not typically as urgent in cases where there is not a relocation issue. So probably the biggest risk to getting a protection order in the home state is that some type of visitation might be entered, a visitation order for the perpetrator. Then the survivor would need to comply with that and that might make it impossible for her to leave the state. Because of our time today I'm just going to mention briefly that some of the other risks of filing for a protection order in the home state have to do with triggering other laws in the home state. So for example, it might trigger the requirement that the home state exercise continuing exclusive jurisdiction under the UCCJEA and it also might trigger the states parental kidnapping relocation laws. If it is a state where a custody order is the basis for those parental kidnapping and relocation laws, going into effect.

>>> Finally, it could even make an inconvenient forum argument more difficult for a survivor in the home state because it is giving the survivor, it is giving the home state one more factor that is tying the survivor to the home state. And now we are going to talk about some practical tips for when a survivor leaves. First of all it is critical for a survivor to pay attention to what his happening in the home state. What we recommend typically is that a survivor call back the Family Court in the county that she has left, about once a week for the first six months after leaving with the child. The reason for that is you can imagine she is not going to necessarily get accurate information from the left behind perpetrator so she may hear that a custody case has been filed when it actually hasn't been filed. Or she may not know that a custody case has been filed when a case is actually going forward in the home state and that the judge has permitted the case to go

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forward without actual notice to the survivor. So it is important for her to make that call directly to the Family Court.

>>> It is also very important for a survivor to participate in court proceedings in the home state, as Darren mentioned earlier, any order that a home state enters in terms of custody is going to trump any other states custody order. So if there is a case by Philip back in the home state and the judge gives him custody and there is a protection order in the new state and Lila has gotten temporary custody, ultimately what the home state court has done is going to trump. And so for that reason although survivors may wish to leave behind them all of their memories in the home state, it really is important for them to participate in court proceedings.

>>> In some jurisdictions judges are permitting survivors to participate in these sorts of court cases by telephone which can be very helpful and they can remain safe in the refuge state, but participate by telephone. That is something that you as advocates can learn about in advance so you can provide that information to a survivor. Now, there is also the other type of case and that is when a batterer abducts a child and brings the child across state lines. We know that you as advocates talk to survivors in these types of cases as well. So in a nutshell, in that type of situation, typically the survivor is going to have to seek enforcement of the custody order in the state where the child has been brought. So usually, law enforcement in the new state is not going to be willing to look at a custody order from another state and enforce it, rather the survivor will need to get -- go to court in the state where the perpetrator is and obtain what is called a pickup order from a judge in that state. And if you are working with a survivor and that type of situation, we can try and help connect her to an attorney in the state where the child is for possible representation.

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>>> We are now going to turn to some other ways in which advocates can help in these types of interstate cases.

>>> So of course one of the most important things is helping the survivor find and travel to a safe place within the state so they have the time and privacy to seek legal information before relocating. As you know, rural homes may be distant from shelters. And survivors may be trapped at home with no transportation. Finding or working with local advocates, to help with transportation assistance or find safe shelter for the survivor is going to be imperative. As Deborah mentioned, you can also help the survivor find out how to file for a continuance or request permission to appear by phone in the home state. Allowing survivors to participate by phone can also help keep them safer and sometimes the only economically feasible option when an abuser has exercised financial control. Additionally, one of the most paramount things is helping survivors find legal representation and navigating the legal process. In many cases they will qualify for legal civil services and even though she may still be living with the abuser, most attorneys will not count the abuser's income. Additionally if the survivor -- she may be eligible for private attorney involvement or a voluntary attorney program where a private attorney can take cases referred by a local legal aid agency. I always suggest that you inquire about those alternative programs as well. You can also contact the agency's director to see if they will provide you with a list of their volunteer attorneys and contact those attorneys to see if they will be willing to partner with your organization. If you are working with a survivor who has come to your state, your legal services organization may be able to send a referral to legal services in the home state. And even though some agencies may say they won't take cases for those that are not currently living in the state, in some instances it may be helpful to stress that the matter -- the severity of the

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abuse, and something is all ready been filed by the abuser or if there is a pending court date. It could be helpful to develop those relationships in advance and also develop relationships with public defenders as well as prosecutors in the instance that there has been some parental kidnapping charge. Certainly in those instances you want to see that she gets connected with the defense attorney whether that be a public defender or private attorney.

>>> You can also help the survivor document the previous domestic violence which will be relevant when your client is seeking a protective order or emergency custody or even if she is trying to get a case moved from the home state to the refuge state. Your slide provides a list of useful evidence that can be used to establish previous domestic violence, some of which are the same sort of records advocates would urge her to take along if she flees across state lines, such as medical records or school records. Other times you can email pictures of injuries or -- in case her phone is broken or accounts are monitored. Lastly, as Deborah mentioned prior, helping a survivor contact the court in a home state to obtain case information to see if anything has been initiated is important.

>>> Sometimes court records are available online, however even if that is typically the case, sometimes cases such as production orders or emergency custody motions may not be. So we recommend that survivors still call and double check. She can give her name, the abuser's name, and the child's name to see if something has been filed. We also tell all survivors that it is critical to find out if the parent has filed for custody within that six month. As Deborah mentioned calling back approximately once a week. Survivors may erroneously think that if they are not personally served or able to evade service the case cannot proceed but there are alternative service methods approved by the court that allow the

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case to progress without the survivor's knowledge or participation, even if she hasn't been personally served. And then in addition we know that there are several steps that you can take to help provide for the survivor's physical safety when going to and from the courthouse, perhaps asking the judge to have time in advance to leave the courthouse, having somebody accompany her and things like that.

>>> And of course brainstorming or problem-solving with the survivor if the abuser has connections with local law enforcement where the court -- or the court staff in both communities.

>>> Thank you. We are going to take just a couple of moments to break and see if we have any questions related to what we have discussed so far before we move on to the criminal piece. I know that we had a question from Kenny earlier and Amy gave some great examples of how we at the LRC look for attorneys and try to find them. Certainly, and the question was, is it more difficult to find attorneys in small rural communities and the answer is yes, we absolutely struggle with that as well. I would say that here at the LRC as we have been building our database since 2005, we do have quite a span of programs and individual attorneys throughout the country. That we have built up both from just cases where survivors have contacted us from particular jurisdictions as well as the more standard legal services organizations and organizations receiving grants such as LEB Grams -- grants and other violence against women grants. If you have a need for a referral in a particular part of the country, please feel free to call us and we will check and see what we've got. And also share with you our tips, most of which are just being persistent in terms of finding counsel.

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>>> Please feel free to raise your hand or to send us any questions, I see one from Liz about learning about the UCCJEA across tribal lines. I can't see if there was any more specificity regarding that but let me just mention that the UCCJEA does have an optional provision that states can enact regarding custody orders entered by tribal courts. All of the states have enacted that optional provision so essentially what it means is that a state court is required to treat a custody order from a tribal court in the same way as they would a custody order from another state. The same is not necessarily true in the reverse. Because tribes are sovereign nations, each tribe may have its own child custody jurisdictional law or standard within the tribal code. And they don't necessarily line up with the UCCJEA. There is some case law in different jurisdictions that discusses that. And we are happy to try and talk with you if you have a particular tribal jurisdiction in mind or are trying to assist someone who has a case in tribal court. The other thing that I would mention is that some of the other laws, like the federal parental kidnapping prevention act have been interpreted differently in different jurisdictions. So there are some jurisdictions that believe the PK PA applies to tribal jurisdictions and court orders and others that have found the opposite. So please feel free to contact us, we can also connect you with some experts on tribal law issues if you have that type of case.

>>> Since there are no other questions at this point and time we are going to turn now to the issue of parental kidnapping laws, but please feel free to continue to submit questions either by raising your hand or by typing it into the Q & A box.

>>> As Deborah mentioned before, there are several states in which leaving with your child could violate state parental kidnapping laws and these laws do have different names. Advocates and attorneys, particular need to be familiar with

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these laws because of the consequences of leaving a child in violation of such laws can be dire. The survivor could be subject to criminal charges and could jeopardize both her short-term and long-term custody. In the short term even if the charge is ultimately defeated a survivor may lose her kids during the process and may be incarcerated in the home state.

>>> The first question is must be a court order for kidnapping to occur? In some states a parent can leave the state if there is no custody order in place. In others flight is criminal even in the absence of such an order. In some states the statute is unclear. It is always useful to have an understanding of how particular localities are enforcing their state laws. It is also important to keep in mind that even if a survivor has both physical custody, she should still speak with an attorney prior to leaving the state with her children to be sure she is not violating any parental kidnapping laws by removing the child from the state.

>>> What type of intent is required by these laws? And of course they do vary by state. Most parents, there must usually be some level of intent required but that can vary by statute. Usually something more than intending to cross state lines is required. In almost all states there are pedestals associated with intentionally concealing the child from the other parent and they may require an attempt to conceal the child or attempt to deprive the child or parent visitation or even malicious intent. That said it doesn't mean that your clients are without recourse if they need to protect their current address for safety reasons. There may be other pieces of the state law that can help. A number of states have enacted laws relating to the protection of victims in DV and child abuse cases which provide for confidentiality of victims names, addresses and other information. Some states have confidentiality provisions as part of their custody and protection order

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statute. The UCCJEA model code itself contains confidentiality provisions that states can adapt if they don't all ready have one in their state codes. Advocates can assist the survivor with safety planning and establishing a plan that potentially allows for telephone calls, or face time or video calls even with infants or small children.

>>> And of course are there any protections for survivors? Of course again these vary by state. Parental kidnapping laws pose real risks to survivors but many do provide express protection to survivors. I have mentioned before a handful of states to have exemptions and some have established defenses. Ultimately we always recommend that a survivor speak with an attorney specifically about the home states parental kidnapping laws before she leaves with the children. She has all ready flat we still recommend that she speak with an attorney in the home state about that states parental kidnapping laws to know if she is in violation and at risk so she can decide how to proceed or if she ultimately needs to return.

>>> I'm going to say a couple of words a little more specific around some of the exemptions and defenses to give you a sense of what is available in states around the country. The most important thing of course is to understand your own so you can advise folks and understand when people leaving with their children to flee abuse may be subjecting themselves to criminal, potential -- potential criminal prosecution. Exemptions exist in a handful of states and what an exemption means is that a person falls within a category of individuals exempted from the parental kidnapping law by the statute, they are not subject at all to prosecution under that statute. So this is really the best possible scenario for a survivor who is fleeing from abuse with her children. However unfortunately there are some in most places that have exemptions, fairly stringent standards that are required,

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requirements that folks must satisfy in order to fall within the protection of that exemption. For instance in the state of Florida and California which have exemptions there is a requirement to report to either law enforcement or California a report to the prosecutor that you are contemplating leaving the state or you have already left the state and an explanation for the rationale of why. Then there is a requirement that you file for custody within a reasonable amount of time and in some instances that amount of time is specified.

>>> In some states including Florida, Illinois, you must flee to a shelter in order to avail yourself of the exemption. In other states like Minnesota that have these types of exemptions there is a requirement that the person voluntarily return with the child within 48 hours. With a couple of exceptions, that as well. And in Nevada like California you need to report your action to law enforcement or a child welfare agency within 24 hours or as soon as you can to fall within the exemption. There are a couple of states that do have a general exemption, Pennsylvania and Rhode Island do. But generally speaking these can be very difficult to satisfy for survivors. The vast majority of states however do not have these kinds of exemptions and instead have what lawyers like to call affirmative defenses. These are defenses to a prosecution that you can generally bring up during trial as a defense against the charge. So typically the survivors -- survivor who is going to avail herself of the defense will have all ready been arrested, jailed and tried or in trial at which point they are able to raise the defense. That is not to say however that in negotiation over what the prosecution's office is going to do, you can't raise the obvious defense that is applicable in a particular case and potentially lead the prosecutor not to bring charges in the first place. Defense attorneys certainly should be familiar with trying to make these kinds of arguments. Another reason it is really critical to understand these laws in your

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jurisdiction and also to make referrals and even better have established relationships with the defense bar in advance, so referrals can be made and assistance can be provided quickly. These affirmative defenses come in various flavors. And in various states. The typical ones are as laid out in the statutes, fleeing from domestic violence or abuse or from harm to the person who is fleeing or harm to the child. There is also a general criminal law defense of necessity which is essentially making the argument that there was no more reasonable action that could be taken that could have been taken. To protect the person or the person's child. Again, these defenses need to be raised if at all during trial typically speaking. But it is important to understand that they are available for folks and in addition to the protections that Amy laid out, especially all-around confidentiality in certain cases and things like that, these protections do exist in the law.

>>> The consequences unfortunately of parental kidnapping charges, even if a survivor is ultimately acquitted of the criminal charge, is often the children are returned in the process and of course the prosecution elicits prosecution or law enforcement responding, to the batterer while the survivor is incarcerated or awaiting trial. It can be very difficult to recover the child even if ultimately the survivor prevails in the criminal case. In addition a flight that is perceived by a civil court judge, outside of the criminal context but a Family Court judge deciding ultimately custody in a particular case, they perceive that flight to be an attempt to stop the abuse or having any contact with the child or to forum shop to go to another state and get a more favorable response from the court there. Family Court judges often can penalize survivors if that is the perception. Generally speaking both the negotiations with prosecutors around criminal charges and within the civil court context making arguments and explaining the reasons for

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flights, can be critical to avoid penalizing civilly or criminally survivors in these kinds of cases.

>>> Thank you. So we've got a few extra minutes at the end of our webinar, I am going to mention two additional issues and also please feel free to submit your questions at this time.

>>> One of the takeaways that we hope that you as advocates will have after our short webinar this afternoon is that unfortunately it can be very complex for survivors to make a decision about leaving estate and crossing state lines with children. One of the things that we can recommend, we certainly don't want folks to stay in homes where there elicits they are entering violence day today, is almost always it is possible to go into shelter within the state without triggering many of the legal consequences that can occur if a survivor is going to cross state lines. It might be better in the vast majority of cases for survivors to go into shelter if there is a shelter with space within that state and to have the time and privacy to then make a connection with an attorney in that state and to find out about all of these other legal issues. Particularly related to the parental kidnapping laws of the state elicits or the state relocation laws. As well as to get a little bit of a predictive sense of what a judge in that county might do if she leaves and goes to another state. We have really seen judges handle these cases in three different ways.

>>> The most lenient are understanding of domestic violence might be the's case in -- the judge in the home state that transfers the case after an inconvenient form of motion is made. The middle ground which happens quite frequently is that the judge in the home state keeps the custody case in the home state but permits the survivor and the children to live in the refuge state for safety in the

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meantime. And potentially to come back to the home state for trials or to participate by telephone. And then the most restrictive, which we also do see from time to time, is the judge in the home state that after the perpetrator files for custody there the judge enters an order requiring the children to be brought back to the home state. So it is really helpful for survivors to have a sense of which of those three possibilities are most realistic in the county that they are leaving before they make a decision about relocating.

>>> The second issue that I wanted to mention since we've got a bit of time is how the home state court and the refuge state court are required to communicate when the court custody issues are going on in both places. So the UCCJEA does require judicial determination any time a court in more than one state is getting involved in the custody of a child. So if there is an emergency in the refuge state is issuing an emergency order, the judge in the refuge state is required to communicate with the court back in the home state and the reverse is true as well. The purpose of the communication in those cases is to resolve the emergency, figure out how long that temporary order should last and then decide which state should exercise long-term jurisdiction.

>>> One thing that might be interesting to know is that there are some minimum requirements in the UC CGA E -- UCCJEA is that there elicits the judges have to give the parties an opportunity to be heard both on the law and on the facts. That means that the parties have to be able to talk about those eight different factors related to inconvenient forum before the judge makes a decision about whether or not he or she are going to keep or transfer the custody case.

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>>> In practice these types of judicial communications work differently from place to place. So in some states they will set up an evidentiary hearing that has the parties and their attorneys on the line in both states present. Communicating by telephone or by videoconference. And they will have a full-blown evidentiary hearing about the jurisdictional issues. In other states the judges will just permit the parties to write a motion and the judges will make a decision based on the written motion as to whether or not they are going to keep the case in their state or transfer it to a different state.

>>> When two judges communicate, there also is a requirement that the parties have access to the record. So they have to be granted pretty much immediate access to the judicial communication record and that is so if there is an a basis for appeal the parties can do that as well.

>>> Those are standards for judicial communication under the UCCJEA. And we are going to open up the lines now and see if you have any additional questions about interstate issues. And any cases or issues that have come up when you have worked with survivors who have either relocated to your jurisdiction or from your jurisdiction or had conflicting court orders from several jurisdictions.

>>> I have not received any further questions or comments from our participants today. And I do just want to remind you, if you find yourself wondering about some of the information that was presented today after this webinar, has been completed, feel free to follow-up and use the contact information that you see on the slide in the PowerPoint presentation right now, that will be your best bet. Those programs are more than happy to have individual contact with you about cases that you are dealing with. To think through and talk through the circumstances and possible resolutions.

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>>> So, I think we are close to the end of our time. Deb? Darren? Amy? Do you have final comments that you would like to close us out with?

>> Just a final comment and letting folks know that we have some materials that are available for download, so in addition to the PowerPoint presentation, we've got relocation checklists and particularly a new brand-new resource for victim advocates that has some frequently asked questions about relocation. You may find it helpful to review some of the material that we talked about today and also there are some issues in that document that we didn't get to today and might come up in your day to day practice.

>>> Very good. First of all, I'd like to say thank you to O VW for supporting this presentation and of course thank you so much Deb Amy and Darren. For all of your detailed information about assisting survivors with interstate custody cases. It was really helpful. To be able to hear about what, how LRC can be used as a resource, it was really help to understand at least get a taste of the UCCJEA as it pertains to the survivors provisions. Also it was really helpful to have you walk us through that case study. That was all appreciated and so valuable. So thanks to the three of you.

>>> Our webinar to our webinar participants I just echo what Deb said about be certain to download in that materials box the PDF of the presentation and then the additional three documents that will be useful resources for you after our session today. And I want to let you know that when you disconnect from the webinar you will be routed to an evaluation of today's session just to thank you in advance, it should only take a few moments of your time. But your feedback is so

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valuable to us and helps us shape future programs so thank you for that. Finally I would just like to say that Praxis's rule project has several more webinars this year covering a range of topics so we encourage you to watch for the sessions and thanks to all of you for joining us today.

>>> We will look forward to connecting with you again in the future, so thanks everyone. Take good care and so long.

>>> Thank you everyone, goodbye.

>>> Goodbye.