

Surviving Interstate Custody: the Economic, Safety and Legal Implications for Battered Women

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Please stand by for realtime captions.

Hello everyone and welcome to this role building blocks webinar by Praxis international on violence against women. The blocks webinars future the core -- advocacy been approved outcomes for victims and accountability for offenders. The trainings are intended to provide in depth perspective and thinking on relevant issues from national and roll experts in the field. I am delighted you could join us today. My name is this Carlson, underworld program specialist here in our Duluth, Minnesota office. I facilitate these sessions. I'm pleased to be joined today by our presenters Deb Goldman and Darren Mitchell from the legal resource center on violence against women. Our topic for today is surviving interstate custody, economics, safety and legal implications for battered women. Welcome death and Darren.

Thank you.

I would like to further flesh out the experience and expertise Deb and Darren bring to our session today. They are the co- executive Directors of the legal resource center in Maryland, a Maryland-based nonprofit working to improve legal representation of survivors in interstate custody cases and providing technical assistance. They are the co- executive Directors and prior to the LRC, Deb worked in the house of Ruth domestic violence legal clinic and at the legal aid Society. She is also the former deputy director of the policy team and violence against women office and she helped coordinate the initial efforts to implement the violence against women act in 2004. Well, Deb. Darren, prior to the LRC managed the national Center on full facing credits in Washington, DC from 2001 to 2004 and before that he was the staff attorney at -- at the national Center on full face and credit. He has been a consumer advocate and clerk to a federal district judge. I'm so pleased to have you with us today.

Thank you.

Before I turn the session over to the two of you, I'm going to briefly review some webinar suggestions to enhance your experience for today. You probably all have realized by now that this session, the audio is conducted by the telephone only. We want to do that for today so after a bit when Deb and Darren are ready to take your specific questions, I will open the phone lines and give you directions about how to mute your line if you don't intend to ask a question. Between now and then of course you are welcome to use the chat in the lower left-hand portion of your screen. If there is a question or clarification you would like to share, please do so at any time. If you wouldn't mind, just chat in a quick hello and let us know perhaps where you are participating from. If you have colleagues joining you, you can even let us know what the weather is like which we already compared the weather between Minnesota and Maryland and the sounds kind of great. Beyond that, I want to let you know there is a tab in the chat box that

says private. If you open it and double-click on one of the presenters names, you will be able to have an individual chat with that person whether it is regarding a question or technical issue. That is available to you. If you happen to lose connection either to the webinar or the telephone, you can rejoin through your original process and keep in mind this session is being recorded and will be posted to the rule recording page of the Praxis international website so you will be would to revisit and check out any of the pieces you may have missed. Thank you, I appreciate those hello baby. It is great to see you today.

This is a popular topic. We had quite a number of people register for our session today. Deb and Darren, would you go ahead and get us started?

Thank you very much lives and thank you to Praxis for hosting this training. We also want to thank you for joining us this afternoon and what you do every day to help domestic violence survivors in rule communities. We know many of you probably affect questions from survivors about whether or not they can move across state or tribal lines with there children, and that is what we are here to discuss. Today we will introduce you to the legal resource center on violence against women and spend time talking about the nuts and bolts of the UCC JE a, the uniform Law that law that says which state has the power to enter a custody order out over a particular child. We will stop briefly for questions and also touch on parental kidnapping. I notice we have at least one person participating in the webinar from the national clearing analyst for the defense of battered women, a wonderful sister organization out of Philadelphia that focuses on technical assistance when survivors are charged with crimes.

We also wanted to mention we have a short time together today so some of the slides are included for your information but we are not going to go in depth with every slide. To start out, what do we do at the LRC? Here we can help you when you have interstate custody issues involving domestic violence. We talked by phone to professionals across the country you have questions about the UCC JEA and that includes attorneys, victim advocates, court personnel, supervised program staff and others. We also talked directly with survivors and when there is a jurisdictional question, meaning a tug-of-war between two states or other jurisdictions over who can get involved in a custody case, we can help the survivors help and find an attorney. We as a database of attorneys and programs across the country. Feel free to refer survivors directly to us if they have a case involving more than one state, domestic violence and a custody issue. For attorneys we also provide sample plantings and case law. As we're doing here today we conduct in person, telephone and webinar trainings on interstate custody and domestic violence. You may be interested in our website and the contact information is on the last slide of the PowerPoint presentation. It does include for every state the version of the UCC JEA and other related laws. What we don't do is directly represent clients and we don't focus on international cases unless there is some type of overlap with the UCC JEA.

What other kinds of cases we typically see? We expect you have seen as well. We see many cases where is the parent to has been abused who takes the children out of state in order to protect herself or the children from abuse. Oftentimes survivors are going back to there families of origin trying to get away from the abuser or protect the children from physical or sexual abuse. We see some cases where it is the perpetrator who crosses state lines and disappears with the children or violates any existing court order often to punish the survivor for leaving the

situation or for certain outcomes that happened in court. Finally we see cases where there are protection orders were custody orders that need to be enforced across state lines including situations where different states may have entered conflicting orders.

We did want to mention briefly one of the things we do here is help folks find civil attorneys in jurisdictional cases. Again feel free to refer those cases involving and in a state issued to us. We also expect many of you if you are advocates or attorneys trying to help folks in a different jurisdiction are also engaged in trying to find representation for survivors in complex custody cases. We know this can be especially challenging in rural communities. We have listed some of the starting points we see here in terms of finding representation for survivors. We also hope if we call all of you after this webinar, because we have got a case to place in your jurisdiction that you will talk with us at that time. On our staff we have the two part-time attorneys, the folks presenting to you today and one Project project coordinator. We are open during business hours East Coast time. We are going to turn to the highlights of the uniform code itself.

Good afternoon and thank you for joining us to talk about this topic. Please consider this an initial overview of the kinds of cases we work on at the legal resource center and we are available to help you in any of these situations where you are trying to help the client or an individual who is facing these issues whether they aborted left for contemplating meeting. The matter what kind of work you do with survivors in these cases, you will probably encounter the uniform Child custody jurisdiction and enforcement act, the UCC JEA. We are going to focus on that because it is a law enacted by just about every state in the country as well is a couple of the territories. It is a law that answers the important question which is which of two or more jurisdictions has the power to enter a custody order over a particular child given were the child and the parents of the child have lived over time.

A big focus of our presentation is to help you understand generally how a statute operates, the standards of the statute for when a court can decide custody, but also highlight aspects of the UCC JEA that include protections for domestic violence survivors which can be incredibly important in particular cases and with which attorneys, advocates and others who work with survivors should be familiar because there are some escape hatches and ways to turn the statute to a person's advantage when they are trying to escape abuse.

The UCC JEA is a uniform law which means it was a lot put together by a national organization comprised of judges and law professors and practicing attorneys and others designed to be adopted by the various states around the country, and territories. Uniform laws are developing areas where some uniformity, some it wasn't approach to particular topics is especially important. That is true in interstate custody cases where obviously people may flee from one jurisdiction to another jurisdiction and to the extent the legal standards are the same or similar, it can create some certainty as to what folks can expect in terms of how judges and others are going to handle the cases. The organization responsible for many uniform laws is developed the UCC JEA in 1997 and designed to replace a pre-existing uniform law called the UCC JA which had been developed in 1968 and which over time it turned out had not done what it was designed to do which was to ensure there were instances in which more than one state, tribal or territory would enter contradictory custody orders regarding a particular child or children. The law was redone in 1997 and there are differences between the UCC JA and that federal law in this area

called the PKPA. At this point all of us in the states are operating under the UCC JEA and in DC with the exception of Massachusetts. Also go on and the U.S. Virgin Islands have adopted the UCC JEA. We do have some uniformity. For those of you having cases involving Massachusetts, it has interpreted UCC JEA to be quite consistent with -- except for a couple of areas. Generally speaking the laws of the states are quite similar.

As we mentioned, the UCC JEA is designed to answer primarily be question of which state, tribal or territory among competing was have the power to enter a custody order. The way does that is by setting forth jurisdiction of faces under the statute. These jurisdictional faces formal hierarchy and so the analysis judges and others to in deciding whether a court can enter a custody order starts from the top and works down. We would talk about these in a bit of detail so you are familiar with the jurisdictional basis but one of the important aspects of the UCC JEA is there is a separate emergency jurisdiction call temporary emergency jurisdiction. Deborah will talk about that in a few minutes. It stands apart from the jurisdictional basis and it is applicable whenever there is an emergency and a parent or child needs to be protected. The court is going to go through an analysis of the jurisdictional basis starting with the home state jurisdictional basis for what many people know as the six-month rule. The draft -- if a child lives with the parent for six consecutive months before a custody case is brought to a court, that state is the one that should decide custody matters. That is where the evidence is concerning the best interests of the child and the court would be positioned to make these decisions. If there is a home state in a particular situation that is the end of the analysis. The home state has jurisdiction over any other state where the child may have lived for less than six months. Here at the LRC and probably some of you have seen complicated cases where people move around and the -- were going to talk about the standards and if you have questions in a particular case we would be happy to talk you through have a court may analyze jurisdictional basis and the arguments you can make to try to get jurisdiction established in the place where it would be best for the survivor to stay with there children.

The home state jurisdictional basis has a couple of nuances because they are important including those including domestic violence. The home state does trump other states and that jurisdictional priority or preference stays in place even after a child has left the original home state as long as one of the parents stays in that home state and within six months of a filing of a custody action. If you are a mom living with your child in the state of Maryland with the father of the child and the mom flees the state of Maryland and moves to Minnesota, as long as dad stays in Maryland, dad can still file in Maryland for custody and Maryland wide jurisdictional priority for his six month period after mom leaves with the child. It is a critical time that we spend a lot of our efforts trying to help people understand how important it would be to check back in the original home state to find out whether the father has filed for custody. Even though the child may have been gone, if that file is at that point within the six month period, mom and the child will be forced back to the original state and a custody case can take place unless something is done to try to get the state transferred. That is sometimes what we call the extended state rule. The critical six months after a. Is left behind. There is a jurisdictional priority in that home state. The second piece is if children are six months old or close to six months old, things get tricky especially if the child is under six months old. The statute addresses that by saying the home state is where the child was born and has remained with the parent. Things get quite complicated cases were children are born in one state and there is a quick move to another state and some analysis in

which more than one state has priority. Please give us a call if you encounter these cases involving young children and there is a question around home state status because of the age of the child.

The last nuance about home state jurisdiction is one we see quite frequently especially with families, military families and other situations where people move around and that is there is opportunity sometimes for the child and one or both parents to leave the home state for a period of time and come back to that home state and that state will retain its home state priority jurisdiction. If a court considering that case decides the time away from the home state was a temporary absence, that analysis involves taking a close look at the facts of the case. There are some complications because courts in different states handle the temporary absence issues in different ways so this is one of the instances where I would tell you that -- please call us. We will help you work through the analysis. We have case law we can share potentially from your jurisdiction to help figure out how a court could rule in those matters. Folks have been gone for over a year and have gone back and a court decided that time away there was a temporary absence because the parents meant for it to be temporary and the state maintains its jurisdictional priority. Those are the home state in various nuances. I'm going to briefly mention the other jurisdictional basis. If there is no home state, a look will say maybe I can take jurisdiction if there is a significant connection between the child and the parent in my state and substantial evidence, again where is the evidence to decide the best interest of the child. It is not a six-month bright line rule but the court is going to look up a child has been a rolled in school or day care. Are there healthcare providers or mental health care providers. There is enough of a connection and evidence to take jurisdiction over the case. We have seen instances where there is no home state and two potential connection states involved. Under those circumstances filing first in one state can be advantageous because the other state would have to hold off but were not going to go into details except to say when you have a situation where there does not appear to be a home state or the child does not live with the parent for six months in a particular state, you have a significant connection situation. Leaves give us a call and we can help find an attorney for the survivor and find out the best argument that can be made.

The final jurisdictional basis, more appropriate form jurisdiction I will talk about in a few minutes. Transferring cases is the ability for a state in which jurisdiction has been transferred to take over that case. No other state or vacuum jurisdiction applies when the wrist no home state, no transfer of the case but yet there is nowhere else to decide custody. -- had a home for long-term basis or other evidence about the children's well-being. Under those circumstances the state court can check-in and assume jurisdiction. We have a note on the slide about the application of the UCC JEA. It is only applicable after a child is born. If you are working with the survivor who has not given birth to a child and concerned about custody jurisdiction, she would be free to move until the child is born. At that point the six-month and other rules kicked into place. There opportunities for dad to file paternity but the jurisdictional analysis we talked about only kicks in once the child is born. I'm going to turn over to Deborah to talk about one of the important provisions of the UCC JEA.

The UCC UCC JEA for the first time codified language about domestic violence in its provisions regarding emergency jurisdiction. It said basically even if there is a home state or pre-existing custody order from a certain jurisdiction, if the judge believes there is an emergency which

includes domestic violence of a parent or abuse of a child, a judge in a different state can get involved on a temporary basis to protect that child. The language from the statute is included on your slide and says were necessary in any urgency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. The language is very broad. The part that is underlined indicates a change in this new uniform code, the UCC JEA that was not there in the previous version of the law. Basically an extended emergency jurisdiction to cover cases where one of the parents had been abused but perhaps the child is not being physically abused. Courts can exercise emergency jurisdiction in domestic violence cases where the mother but not the child has been abused. We often get questions from attorneys about how I should go about filing for emergency jurisdiction? The language in the UCC JEA is fairly brief. Emergency jurisdiction can only be considered by a judge where the child is present in that state. We don't recommend parents they go home and leave the children behind that if there was a domestic violence adult survivor who fled to a new state and did not have the children of the new state would not be able to get involved on an emergency jurisdiction basis. The ways you can help survivors file for emergency jurisdiction can vary procedurally. In many cases the vehicle for filing an emergency temporary custody order might be through a protection order statute in this state. The drafters of the UCC JEA expected that to occur. One of the things that may be helpful for attorneys to know is the uniform code includes some commentary to each statutory provision. The provision of an emergency jurisdiction as commentary. The provision about him can be inform forum as commentary and that commentary gives you the rationale for the drafters including this language. One of the pieces of commentary that has been helpful to a rest in the rule attorneys has been the commentary around the emergency jurisdiction provision that states clearly the drafters thought protection orders would be a vehicle through which courts could exercise emergency jurisdiction. Sometimes there are other legal hurdles that get involved with trying to get a protection order when someone flees to a new state, and we will talk about those briefly, like a personal jurisdiction issue in a few moments. If someone is eligible for a protection order and can file in a new state, it might be a simple way to get an emergency custody order or temporary custody order. The temporary custody order a judge in the refuge state interest is not going to last for the long-term. The new state is not going to be able to take control of the long-term custody case away from the home state. This emergency jurisdiction provision is meant to be temporary and used in exceptional circumstances. When an attorney or pro se party would need to show evidence of the emergency and that is evidence of the abuse of the parent or the child. When we train judges and talk with them about emergency jurisdiction, even those not aware of this possibility of entering emergency custody orders, they appear to be willing to do so once they no longer know long-term jurisdiction is not being taken away necessarily from the home state. The types of evidence they said they would like to see are similar to what you might present in a protection order proceeding. Evidence of the abuse could include things like the testimony of witnesses and other adults, destruction of property. Photographs, 911 calls, all of those things that can be helpful in the protection order context could help establish an emergency and permit a judge to enter an emergency custody order.

We do have some case law on emergency jurisdiction so if you are trying to make those arguments feel free to contact us in advance. We know many courts around the country are most familiar with the home state rule and the six-month rule. Sometimes we hear from survivors that they come to a new state and they've tried to see if they can file for custody and turned away by

various gatekeepers saying you have to come back after you have been here for six months. That is not true under the UCC JEA because of this urgency jurisdiction provision.

Now are going to turn to another helpful argument under the UCC JEA and that is the inconvenient forum argument which has to do with asking a court that have to have long-term jurisdiction to transfer the case to a different jurisdiction.

You a secret Deborah said about marshaling your evidence of emergency and domestic violence and all the arguments judges are looking for a protection order cases apply to several aspects of the UCC JEA and other laws we are talking about. Even though our focus is on the jurisdictional question which is two or more states, tribes or territory as the -- not on the substantive -- the best interest part of the child thing. Evidence of domestic violence can be critical in these jurisdictional decisions thanks in part to the UCC JEA's inclusion of domestic violence as a consideration in several facets of the statute.

Let's go back to the scenario I laid out with a mom and a child who left Maryland and fled to Minnesota because of abuse. Because of the extended home state rule data at a six month period and wish you could file for custody in Maryland. After a couple of months he speaks to a lawyer, and when you talk to a family lawyer who knows anything about jurisdiction and knows the other parent is left with the child, the first thing they're going to say if you want to litigate custody in our state you need to file within six months. The dad does that and mom calls the courthouse in Maryland on a regular basis, likely recommend, to find out whether the left behind data has filed. She finds out there is been a filing in Maryland. She calls the legal resource center and we help her find her a lawyer in Maryland was in a position to get the case transferred out of Maryland to Minnesota so she can litigate custody in a refuge state. The argument you could make under the statute is this inconvenient forum argument. Essentially the statute says a court can find that it is an inconvenient forum and a court in another state is a more appropriate forum. Basically you can transfer the case based upon an analysis of eight different factors. The analysis under those factors is mandatory if a party raises this issue of inconvenient forum or transferring the case or the judge decides maybe I should transfer this case or another form that is more appropriate. The court must consider eight factors in making its decision. We have laid out the factors on the slides. The first factor is whether there has been domestic violence and whether it is likely to continue and whether the abused party are better protected in one of the states versus the other. This is the classic situation with the survivor in Minnesota who would argue to the court in Maryland there is been domestic violence that she and the children are safer in Minnesota. That is the first factor the court must consider. There is some case law for attorneys and other people to understand. There is case law indicating this factor is the most important of these inconvenient form factors. A lot of others are what is convenient for the parties and the witnesses and how far apart the states are. This factor has been found by a couple of courts to trump the domestic violence factor in the convenience of the party type factors.

The other factor is the relative finances of the parties which we mention in situations involving domestic violence survivors because often there is been financial or economic a buse. The mom who is left for Minnesota doesn't have the finances to potentially travel back. When you're helping survivors who have moved to rural area soup base transportation or other challenges to

travel, that can be an argument that can be made. The parent was in a better position to travel should be the one to travel.

The inconvenient forum issue is one litigated fairly frequently. We find ourselves helping attorneys make these arguments on a regular basis and they succeed fairly often. We have collected briefs colleagues every. We have written a brief on the issue explaining what it can be need for a means in the context of domestic violence under the UCC JEA. If you are in a position where these arguments could be helpful so is survivor could stay in a refuge state, we are more than happy to share those materials and help with case strategy.

I'm going to turn to a brief case scenario so we can talk in more detail about some of the other legal issues. Our case scenario and balls Violet Smith and you learn in the phone call she and her husband who have been married for five years live in the rule part of the state of Maryland. Philip is physically and emotionally abused and shortly they were married. They have never ever been charged with the domestic violence offense or convicted criminally. She has never filed for a civil protection order. Last night Philip held a gun to her head in front of there daughter and threatened to kill her. She is calling today and telling you she wants to move to Wisconsin worker family lives and hoping she will be up to find a job. Deborah is going to walk us through some of the legal i ssues.

We do have relocation checklist available from the L RC. We have got from attorneys and victim advocates that layout specific framework for analyzing these types of relocation i ssues. If you are working for a survivor and would like to have access, feel free to send us an e-mail or give us a call. We are introducing you to the tip of the iceberg in these cases and as you will see, there is a combination of the different laws involved as well is a factual analysis which differs case to case. One of the first questions that comes up is whether or not a custody order has been entered previously. In that situation, an attorney working with the survivor these to know not only has there been a long-term domestic relations custody order but also has there been any other contact in which custody or the care of the child has been considered by a court or agency. That would include domestic violence protection orders with custody. The involvement of child protection services. Paternity cases as well as the long-term custody orders. If there has been a custody order entered by the court, the analysis can be different. The reason for that is once a custody order has been entered, even if custody has been given to the survivor previously, it may mean it is more difficult for her to leave the state she wishes to leave and that may be because there is some type of visitation order put in place for the other parent. She could be exposing yourself to content in a civil way for violating an order put in place, and also when there is a custody order in place and somebody is violating a portion of the custody or visitation order, that may expose her to additional liability on the criminal side under parental kidnapping laws were may trigger other state laws such as relocation laws. We are thinking about a range of laws in these cases. Again, contempt can be an issue. Parental kidnapping laws which are criminal laws which say when it is legal for -- also the state relocation laws. Many of you on the line are from states that have a specific statute addressing relocation. Typically the relocation laws go into effect after there is already been a custodial order made by a court. There are handful of states whose relocation laws applied even if the court has never made a custody order regarding the child but were typically the relocation laws set forth criteria for the custodial parent when trying to move out of state.

In some states the relocation laws required you go back to court and ask the court's permission to move out of state and perhaps demonstrate there is an exceptional circumstance preventing you to move out of state. Other states require you to give notice to the other parents. In domestic violence cases that can be quite dangerous. Depending on which state you live in, you may have a more or less restrictive relocation law.

Another question that comes up if there is been a custody order entered in a particular case is whether or not the state that enter that custody order will have what is called continuing jurisdiction over the custody matter going forward. Typically the way it works is if the court has already been involved in a custody case and entered a custody order, only that state will be permitted to modify the custody order unless a couple of exceptional circumstances are met for example someone has made an inconvenient for form argument and the court with jurisdiction has agreed to give the case up to another state. I know we have folks on the line who have an interest in health protection orders intersected with long-term custody orders and sometimes this is the arena where that happens. If someone like Lila had a pre-existing custody order out of the state she is leaving from, that is going to raise the issue of continuing jurisdiction. Even if she is permitted to leave under the criminal laws if she goes to a new state she may end up having to litigate custody or modifications of custody back in the state of Maryland.

Were going to talk briefly about some of these other issues. For example we mentioned earlier there is always the question, should I file for protection order in this state before I leave or what about when I get to the new state? Will I be able to file for protection order in the new state of Wisconsin? One of the issues that comes up when filing for protection order in a new state has to do with whether or not a court in the new state has personal jurisdiction over the perpetrator. For those attorneys on the line you may recall the standard is whether or not there is enough minimum contact with the state to justify a court entering an order controlling the behavior of the respondent. In our factual scenario would look at Philip, if Philip is never been to Wisconsin, he to snap family or business dealings, is never traveled, he has not called up assuming she has left to move to Wisconsin. It would be difficult for a court in Wisconsin to assert personal jurisdiction over Philip and that would mean it would be difficult for someone like her to get a protection order in that new state. When you are working with survivors or help them with relocation decisions, it may in certain cases be possible for them to file for a protection order in a new state but that is not always going to be the case. Because of time constraints this afternoon, we are going to read you with these points to look at at your leisure and feel free to participate in longer trainings but at this point were going to move on to some of the practice tips.

With survivors leave one of the most important things for them to find out assuming they have been able to consult with an attorney before leaving and not charged with parental kidnapping, one of the next important steps is from the new state for them to call back regularly to the home state and see if the perpetrator has filed for custody. The reason that is so important is what Darren mentioned earlier about the home state having this extended home state status for an additional six months after the children moved to a new and safer refuge state. In our scenario, if Lila into moving to Wisconsin we would recommend she'd call back the Family Court in the county she has left in Maryland about once a week to ask whether or not Philip has filed for custody in that county. The reason it is important to call the court directly is possibly billable tell

her she has filed for custody when he hasn't to try to get her to come back to the state or perhaps he won't tell her when he is file for custody. We see all the time in these cases situations where the survivors leave to another state and aren't aware of what is happening in the home state. The perpetrator would typically not stay quiet for six months but file for custody back in the home state. Sometimes the perpetrator will be given permission by a court to proceed with the custody case even without giving actual notice to the survivor. Sometimes if the survivor is in hiding, there is no way to contact her. Other times that they the court received misinformation from the perpetrator and the mom of the kids absconded and whoever the perpetrator is does not know where the other parent has gone and for that reason the court may permit the party who has filed for custody to move forward without actual notice. It can be very damaging in these cases because if the court order ends up giving custody to the perpetrator but entered by the court in the home state, that is going to be a custody order good all over the country. Unless a judge in a refuge state gets involved temporarily and tries to make any urgency order restricting the visitation or changing the custody order, that is a long-term custody order from the home state that gives custody to the perpetrator.

Another bit of advice we give to survivors is that it is critical to participate in the court per seems back in the home state. We know sometimes folks get advice from attorneys, if someone hasn't been served to not worry about what is happening back in the home state but that generally does not work out well for survivors in domestic violence. Ultimately the judge in the home state will permit the case to go forward without actual notice and a court order may be entered once judges have heard testimony from one parent. They may proceed with the context -- that if they had heard an earlier point in the preceding from the survivor about the reason for her flight at danced -- in our mobile society, judges are permitting folks to participate over the telephone. There may be a process in your jurisdiction to ask for permission in advance. Sometimes there is a form to fill out. Sometimes it's a matter of asking the court clerk and sometimes it's more complex and you have to write a motion and get permission to participate by telephone. For many survivors of domestic violence who have fled for safety across state lines, being able to participate by telephone in a custody proceeding can be a lifeline to them in terms of getting the judge to understand the history of the domestic violence and potentially transfer the case to the new state or take domestic violence into account when the judge makes a decision about where the children should be living moving forward.

We also include a small bit about when perpetrators of duct the children across state lines. In those situations even if the survivor is the custodial parent and has a court order giving your custody, she is still probably going to need to go to court in the states to which the children have been adopted in order to get what is called a pickup order. The reason for that is typically law enforcement in a new state, they might not recognize a custody order from a different state or might not be willing to enforce it. Typically there is a process by which the survivor would hopefully get an attorney in the state and have some help with registering the court order from the original state and getting a pickup order in the enforcing state and having law enforcement during the kids back over. These are complicated situations and of course it is always best for survivors to have attorneys in those sorts of situations.

Now we're going to talk about the issue of whether or not a person in Lila's situation should think about a protection order before she leaves the state. We know we have victim advocates and

attorneys on the phone so these may be decisions in which you are involved in counseling survivors. Typically when there is not an interstate issue, as long as the survivor believes a protection order is going to be helpful, it can be valuable to get a protection order. Some of those benefits are chew in the interstate context as well. In a situation where there has been a long history of abuse with little documentation by the criminal or civil court system, getting a protection order in place can help document the violence. Domestic violence in every state is going to be relevant to a long-term custody determination. Sometimes judges with the domestic violence is raised for the first time in a long-term custody proceeding, the judges may feel that affects the credibility of the person claiming to be abused. Having a protection order from the previous proceeding is something that can be used effectively in a long-term custody proceeding to take advantage of the roof protections that are there for domestic violence survivors.

We have talked to you about two concrete jurisdictional arguments, one being emergency jurisdiction and the other inconvenient forum argument. Both of those required judges to acknowledge or believe there has been a history of domestic violence. Getting a protection order in place for survivor can help later down the road in making those types of jurisdictional arguments. The bottom line is if the survivor feels a protection order would protect her safety and would be effective, it is something that is enforceable across the country because of the violence against women act. That is helpful in interstate cases as well. If it is a situation where the perpetrator is likely to show up and take the children in the new state, a protection order might actually be helpful in terms of putting a custody order in place very quickly so someone like Lila can get some help from law enforcement if Philip comes along and tries to take the children.

As we mentioned briefly may be impossible for someone like Lila to get a protection order in the new state. That is another reason to file before leaving the original state. We don't always consider there also be risks in the interstate context to filing for protection order before leaving the original state. Some of those risks are the same risks that always exist with protection orders such as the first bullet on your on your slide. If you protection orders not issue the perpetrator may claim there is no abuse in future legal proceedings. The biggest risk we often see in these interstate cases is typically judges who enter protection orders, especially if the petitioner is asking for custody, there is going to be most of the time some sort of visitation order put into place. If Lila went in Maryland and got a protection order and a gay for custody, it might establish some type of regular visitation schedule for Philip. Alternate Wednesdays, depending on how understanding the judges are about the risk of a loaded gun having been pointed at Lila. Let's assume there is a case where visitation was put into place. That is going to make it harder for Lila to be the state of Maryland because now there is a visitation order in place and she will not comply with the visitation order if she leaves the state. We don't see much risk in asking for protection order in the home state if you know ahead of time you're going to be able to get up for client and there is not going to be any visitation put in place for the perpetrator. If you have concerns the judge is going to put it visitation order into that -- not to file for protection order.

The other issue that comes up in the interstate context is it there is a custody provision entered as part of the protection order, that is like any other custody order in terms of giving the state that enter entered the protection order continuing jurisdiction over that custody provision. That means at least for the duration of the protection order anything to do it custody that is going to be

modifying that protection order provision would have to be done back in the state of Maryland. As you can see there are a number of legal consequences to filing for a protection order in a situation where the survivor wants to leave the state. We mentioned a couple others. If the custody order is part of the protection order it can trigger sometimes the parental kidnapping laws in that state if the parental kidnapping laws turn on the existence of a custody order -- may trigger the parental kidnapping laws when they otherwise would not have been involved. The state relocation laws may come into play only after a custody order has been entered. This is something to think about when you are representing survivors in terms of it not always being the best idea to file for protection order before leaving the state particularly if it is going to include custody and visitation. The final point, it actually could give you survivor a harder inconvenient forum argument in that sort of situation.

We are now going to open the lines up for questions.

Thanks for all of that information. All of you participants, just a reminder when the phone lines are open, if there is background conversation or noise, it will be heard by everyone so the best way if you don't happen to have a quiet location right now is to mute your phone line, either with the button on your phone or * 6. If you intend to ask a question of Darren and Deb, feel free to leave your phone line open and ask your question from a quiet location of possible and mute your line perhaps for there answers. With that, the phone lines are open. We will pause for a moment or two well you get yourselves situated with your phone lines. If there is anyone with the question, just chime in by saying your name and where you're calling from. This is a perfect opportunity, if you would like to ask your question with all of the various nuances perhaps of your situation, please go ahead and share that now. Also if you prefer not to do it over the phone, you are welcome to chat in your circumstances. Darren and Deb at the end of the session will have there contact information available as part of there PowerPoint. Is there anyone who would like to ask a specific question? Deb or Darren, do you have a question you would like to pose?

I think we would just move on with the presentation.

Okay. The phone lines have been muted.

We wanted to spend a little time talking about the issue of parental kidnapping which is one for many years that we have worked with advocates were civil legal attorneys, they would be less concerned than they probably should be about parental kidnapping. Obviously these are criminal laws and oftentimes they're used to thinking about the family law and jurisdiction and the UCC JEA, but it is critical to have an understanding of your own jurisdictions parental kidnapping laws to ensure when survivors sleep with there children they are not violating a criminal law because such a violation can have some profound consequences unfortunately. We have known of cases and tried to help out in cases where parents who have fled for there safety have been charged with some form of parental kidnapping. They have been jailed in the refuge state and extradited back to the original state to face criminal charges. In all of those instances even if the survivor is exonerated, losing at least temporarily custody of her children as a consequence of what happens. You will see when we share some of our checklists with you that we always ask questions around criminal law and the potential for kidnapping.

One thing tricky about this is your state may call it something different than what other states call it. The statutes have different names. Sometimes parental kidnapping, custodial interference, concealment of children, there are different formulations around the country. It varies a lot and you need to be aware of what your law says and does in these cases. And importantly some of the exemptions or defenses.

One of the big questions we ask when looking at parental kidnapping type laws is does there need to be a custody order, some kind of court order in place for the parental kidnapping law to kick in? That varies around the country. In some states there does need to be a Court order that the parent leaving with the -- in others even absent a court order you can be charged with parental kidnapping or custodial interference. In some instances, even though the law seems to read one way or the other, it can be interpreted in a different way than what practitioners think it is. Having conversations with the prosecutors making decisions in these cases about how the law is interpreted and looking at case law and how the language is interpreted. We know in the state of Maryland the statute is not as clear as it can be and it was only after talking to practitioners who have been in contact with prosecutors offices we had some clarity about whether there would be a charge of kidnapping absent a custody order.

In some instances, the laws -- but more severe penalties if you are acting in violation of the criminal law. Another piece we don't mention is some parental kidnapping laws kick in any time you are intending to conceal your children whether or not you have left the state whereas other states require travel across state lines for the parental kidnapping law to come into play. The statute requires some form and intent that again varies by state. Usually there needs to be something more than just leading with your child. There has to be an intent to either conceal or hide the child or prevent contact or deprive the other parent of visitation. There is a specific intent that needs to be present in order to be charged with kidnapping. Again, you need to know your own state law. If it is a lot applicable in -- took the child that will be applicable in a particular case and that is the one you were going to want to understand.

Darren, could I interject a question? There was a question in the chat about your recommendations when a survivor is fleeing to Canada.

A couple of things, and thank you for the question. As I mentioned earlier we don't focus primarily on international cases but that said, if you would like to contact us we can give you information about who it is best to talk to. There are other national technical assistance providers that work with attorneys representing folks in these types of international cases. I would mention a couple of things. When somebody takes children out of the United States into another country, there is a similar analysis and a couple of different laws are also involved. For example, there still may be an issue of parental kidnapping and in fact there may be an international parental kidnapping charge that sometimes goes along with these international situations. There is also the -- which has been put into place to help secure the return of children who are taken improperly two different jurisdictions. If there is a country like Canada which is signatory to the -- convention, ultimately the children are going to end up having to be returned to the United States. Again it sounds like a specific case involved and we are happy to have you call us and we can connect you with some attorneys to provide technical assistance. If it is a -- case we may have other suggestions as well. One of the things we recommend to survivors and we know in an

ideal world that can always happen but we always recommend survivors preferably go into a shelter or a safe place within the state they are considering relocating from and get information from an attorney before making the decision to cross state lines or across cross international lines because it can be complex both in terms of civil laws and criminal laws.

It has come up a couple times now where I have had calls from folks on the other side where they are concerned about the dad taking the children across international lines. There may be some protections available to parents in that situation and take steps to prevent an abduction of a child across international lines. There is a uniform law much like the UCC JEA I handful of states now that are adopting to get specific relief around passports and other things to try to prevent international kidnapping. If you are in a situation where you have got someone who has got those concerns, give us a call and we can point them in the right direction and figure out what some of the arguments would be.

Were going to continue on kidnapping and turn it to Deborah to talk about the fact many of these laws that have defenses that can be raised or other means so moms playing to protect themselves and there children aren't charged or convicted of parental kidnapping.

We want to make sure to refer to our sister organization, the national clearinghouse for the defense of battered women. Their contact information is on the second-to-last slide and they do excellent work with attorneys around these cases in helping survivors who have been charged with crimes including parental kidnapping. To give you a general sense of the framework, there are protections for domestic violence survivors and their children in many state parental kidnapping laws. Sometimes they're difficult to access but many states have some form of an exemption or a defense when the reason for the crossing state lines with the child has to do with fleeing from abuse or child abuse. They function in two ways. There may be an exemption in place. There is basically language in place where if someone is fleeing from a pattern or incidents of domestic violence, that person should not be charged in the first instance with parental kidnapping. Generally states that have that type of exemption there are number of conditions the survivor has to meet to avail herself of that exemption. It might be something like making a report to a child abduction unit within a state within a certain number of days of leaving. Filing for custody within a certain number of days of leaving. These conditions can be problematic for survivors in many cases because survivors have not gotten legal advice. Typically if we talked of folks being at risk in -- in a new state already may have never had an opportunity to consult with an attorney or the attorney did not know about the state criminal laws and failed to mention them. They may be helpful on the books but not always helpful in real life. Even a greater number of states have some type of defense related to domestic violence. Sometimes the defense is something that can be raised at a later date. For example we've seen a number of survivors who are being extradited from the state in which they fled and the children get removed from them and returned to the father and later at trial or a negotiation phase they raise the defense saying they were fleeing from a pattern of domestic violence. Some of the defenses may talk instead about child protection. I think the greatest number of states actually have that type of defense so you may see language about either fleeing domestic violence, fleeing harm to oneself or to a child. Finally there is the possibility, although it has not typically been too successful in domestic violence cases of raising a general criminal law defense of necessity. Again, we want to make the point that if you are an advocate or an attorney working

with the survivor thinking about leaving the states that it is more preferable for her to go into a shelter or safe place within the state to have the time and privacy to find out the details of the parental kidnapping law and consult with a knowledgeable attorney rather than leaving the state and having some of these issues, later.

We are going to break now and we can either take additional questions if there are any, or I believe you had a final comment to make as well.

That's right. We are within a moment to the end of the session today. I'm going to actually not open the phone lines out of respect to everyone's time today and just remind you dad and Darren are available through the LRC, and you will see the contact information on your screen right now. If you have a specific scenario rather than discussing the session right now, I recommend you contact them. There is also contact information on the national center for protection orders and the national clearinghouse.

That was a lot of helpful information you condensed into exactly our timeframe and to have all of this information available after the fact on this PowerPoint is really helpful. Thank you both so much for that. You made it right to the minute. Very impressive. Thanks to all of you for participating. I have no doubt this information will be useful in the work you are doing with women and children. I will remind you there will be a rural webinar Wednesday May 18. Watch for registration and information about the topic before hand. Also we disconnect from this webinar you will be routed to an evaluation of this session. It is helpful and important we get your feedback in designing future sessions so please spare a moment or two to give us your thinking and thoughts about this session and again Deb and Darren thank you, very much.

Thank you so much and thank you everyone for listening.

Thank you everyone. Take care and we will talk to you again in May.

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