

Should I Stay or Should I Go? Relocation Guide for Domestic Violence Survivors

Legal Resource Center on Violence Against Women

If your spouse or partner has threatened or assaulted you, you may be thinking of leaving one state to go to another. This can be a difficult decision when you have children in common. This guide is designed to help you understand some of the legal issues involved in moving from one state to another with children. It is critical to speak directly with an attorney in your state who is knowledgeable about domestic violence and interstate issues before you leave the state. If you call us at the Legal Resource Center on Violence Against Women, we can talk with you about these interstate issues, and we may be able to help you find an attorney.

Frequently Asked Questions

Can I leave the state with my children?

Maybe. It depends on your state laws and the facts of your case, which is why you should talk with an attorney before you decide to leave.

There are three things to consider:

1. The parental kidnapping law in your state says whether it is legal for you to leave the state with your children. In some states, it will be perfectly fine, while in other states, it could be a crime. In many states, even if you have a valid custody order in place, this does not mean that you simply can leave the state. An attorney can tell you what your state criminal law says.
2. If there already is a custody or visitation order in place, you may not violate the terms of the order. If the order gives the abuser certain times to be with the children, you must comply with the order. You can try to get such an order changed or dismissed if it prevents you from leaving the state.
3. There also may be a relocation law in your state that sets forth certain steps that you need to take before moving if you are the parent who has custody of the children. An attorney can tell you what your state relocation law says.

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

This document was supported by Grant No. 2009-TA-AX-K021 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this document are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women

A child protective services worker or police officer or paralegal or victim advocate told me I can leave the state with my children – may I?

Maybe. Although all of these professionals may wish to help you and your children become safe, they may not know the details of your state parental kidnapping law, relocation law, or other laws involved. Relying on their advice will not protect you in the future if you violate the law by mistake. You should talk with a knowledgeable attorney before you decide to leave.

Could I be charged with kidnapping?

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

In some states, it is illegal to remove the children from the state if a custody order has been entered, and you are violating the order. In those states, it may be legal to leave the state with your children as long as there is no custody order in place. In other states, even if a custody order has never been entered, a parent may not remove a child from the state to keep the child from the other parent.

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

Do I have to let the abuser know that I am leaving or where I am going?

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

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

In some states, your state relocation law may require you to tell the other parent or to ask permission from the court if you are leaving the state with the children.

Should I get a protection order before I go?

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

However, there also may be reasons not to file for a protection order before leaving, including safety. If you want to leave the state, this may be harder to do if you get a protection order that includes visitation for the abuser (because you must comply with the visitation schedule in the order). Getting a protection order in the state you wish to leave also may make things more complicated because it may give that state more of a reason to hold on to a long-term custody case. An attorney can help you understand the pros and cons of filing for a protection order before you leave.

Can a judge make me come back if I leave?

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

Do I have to return for hearings?

Maybe. It is important for you to be involved in the hearing so the judge can understand your side of the story. If you find out that there is a hearing in the state you left, you can call the court clerk, explain that you fled for your safety, and ask if you can participate by telephone. Some judges will permit this. If the judge insists that you return, it may be possible to request more time (sometimes called a “continuance,” an “adjournment,” or a “postponement”) to give you additional time to travel back to the state and/or to find an attorney to represent you in court.

Is there a way to get the custody case moved to my new state?

You can ask the court in the state that you left to give up jurisdiction (the right to hear the custody case). Under the Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA, see below], this is called an “inconvenient forum” argument. There are eight things that the judge must consider, including whether or not domestic violence occurred and which state can best protect everyone. Some of the other issues include which parent has more money (and would be able to travel to court), whether any court already has heard a case involving the parents or the child, and where the evidence about the children is.

An attorney can help you decide whether or not it makes sense to ask a judge to transfer the case. You may have better laws or judges in one of the states. Also, if the original judge decides to keep the case, you do not want him or her to hold it against you that you asked for the case to be moved.

What if he is not on the birth certificate?

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

After I left, I heard he filed for custody – what should I do?

It is very important to be involved in any custody case regarding your child, so call the court to find out if he really has filed for custody. It also is critical to find an attorney who understands domestic violence and family law to represent you in the custody case. You can ask the court to allow you to participate in court proceedings by telephone if you are afraid to return to the state or do not have the funds to do so, and some judges will permit this.

If the abuser has filed in the child’s “home state,” this state has the power to enter a custody order over the child. The “home state” is the state where the child has lived with a parent for six months before a custody case is started. If you leave the home state, the left behind parent has another six month window during which time he can ask for custody in that state. You can call the Legal Resource Center on Violence Against Women if you have questions about the UCCJEA, the law that explains what a “home state” is and which state can enter a custody order.

Even if you think you have not received proper notice of the case, it is important to be involved. If you do not participate in the custody case, the judge only will hear

information from the abuser, and the judge could award custody to the abuser. This order could be enforced all over the country, including in your new state.

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

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

Meanwhile, the new state may be able to enter an emergency order giving you custody or suspending visitation if you or your children are in danger, but this only will be a temporary order (see “How do I get an emergency order?” below). You may wish to discuss this option first with a good attorney, since the judge in the original state might not like it if you file a new case in another state.

I just arrived in a new place – what can I do here to get custody?

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

The new state is limited in its ability to enter a custody order. Generally, it takes six months for a state to become a child’s new home state with the power to enter a custody order. However, if you have been abused or if your child is in danger, the new state may be able to enter an emergency custody order right away, which will be temporary (see “How do I get an emergency order?” below).

I have custody and he took the children or kept them after visitation – what should I do?

If you have a copy of your court order, you can show it to the police in the state where the children are, and they may be able to help you retrieve the children. You also may be able to ask the judge that entered the original order to issue an order for the police to pick up the children and/or to hold him in contempt.

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

You also may want to file criminal charges against him for taking the children. If he has taken the children to a new state and faces felony charges, the FBI may be able to track him down, and then the children could be returned to you. To do this, you need to work with a local law enforcement or prosecutor's office.

My kids are in danger during visits but the court order requires them – what should I do?

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

You may want to contact child protective services in the state where the children are, if your state agency has a good understanding of domestic violence and child abuse. Victim advocates in your town may be able to tell you this and assist you with the process. If you have tried to make a judge or a child protective services worker understand the risks to your child, and failed, you may wish to contact Justice for Children, a national organization that may be able to help. You also may wish to talk to the children about safety planning and what to do if there are serious problems during a visit.

How do I get an emergency order?

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

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

How can I find a (free) lawyer?

There are many ways to search for a free lawyer. It is important to look for an attorney who understands your safety concerns as well as the interstate laws affecting domestic violence and child custody. The Internet and the Yellow Pages can help you find phone numbers for attorneys, but it is a good idea to get a recommendation for an attorney from a good source before contacting any attorney.

You may wish to begin your search by contacting your local legal aid or legal services program. Many such programs provide services to domestic violence survivors who do

not have the funds to pay private attorneys. If the legal aid office cannot handle your case, staff may be able to recommend a local attorney who can help.

You also can contact local organizations, such as domestic violence programs, and ask if they have staff attorneys that represent domestic violence victims in civil legal cases. These may be battered women's shelters with a legal clinic. There also might be law schools in your area with a domestic violence clinic in which law students, supervised by professors, represent victims.

Your local domestic violence program (which may be a shelter or a victim advocacy program) and your statewide domestic violence coalition can be good sources of information about private attorneys, too. They may know good-hearted and competent attorneys in your area, especially those attorneys who have worked on domestic violence cases in the past. In addition, other women who have been represented in custody cases involving domestic violence can provide first-hand feedback about local attorneys.

The local or state bar association (a membership organization of the attorneys in your state) may have information about attorneys who are willing to help clients for free or at a reduced rate. Be sure to check on the domestic violence expertise of such attorneys. If you have not been able to find an attorney in any other way, you may wish to contact local law firms and ask if they have a pro bono program (in which they represent clients for free).

If your case involves custody, domestic violence, and more than one state or tribal land, the Legal Resource Center on Violence Against Women can provide referrals to programs or attorneys across the country, or may be able to help find attorneys in some cases.

My lawyer is terrible – what should I do?

It is very difficult when you feel your attorney is not representing you well in court. It always is possible to talk with another attorney to get a second opinion, even if you decide to continue to work with your current attorney. Because the rules of evidence (what materials you can present to a judge) and other laws are complex, it is better to have an attorney working with you in a custody case, especially when a batterer is fighting for custody.

If you feel that your attorney does not understand your safety concerns for yourself or for your children, try to make the attorney understand why you are afraid. A victim advocate working with you may be able to help your attorney understand the safety issues. If your attorney still does not believe you or seem to care, or if your attorney does not respond to your calls, it may be time to look for another attorney. It is your choice to ask your attorney to withdraw from (leave) the case, but it is best to have another attorney ready to work with you when this happens.

Sometimes family law attorneys who do not understand domestic violence or safety issues put a lot of pressure on clients to agree to a settlement that is not safe or fair. You do not have to dismiss a protection order, settle for joint custody, or give up financial support if you think it is unsafe or unfair. You always have a right to be heard by a judge on these matters. If your attorney is advising you to accept a settlement, you may wish to consult another attorney for a second opinion if you are unsure whether it is fair.

What if I have to do this pro se (on my own)?

If you have been unable to find an attorney, there may be a pro se or “self-help” program at your local courthouse, legal aid office, or bar association to help you prepare for the case. If you learn what your state law says about custody, you can try to gather proof and get ready to talk about the things that the judge will consider. It always will be important to let the judge know about the batterer’s violence against you and the children, your safety concerns, and how you and the batterer each have treated the children in the past. It also is important to be truthful and respectful to the court.

If the batterer has an attorney, be aware that his attorney is looking out only for him. You do not have to sign or agree to anything.

The judge does not like me or believe me – what can I do?

It can be very difficult if a judge appears not to like you, or if a judge does not believe that the violence has taken place or matters. It is important to bring as much evidence to court as possible, including other witnesses to back up your story, since the batterer may lie about what has happened or ask his family members to lie for him. If you do not have an attorney, you may wish to find a good attorney to help you gather and present the evidence in a way that the judge will find more compelling. It is important to appear at all court proceedings (in person or by telephone, where permitted), to show respect for the judge, and to try to remain calm, even if you are frustrated with the way the judge has treated you.

In all states, the laws take domestic violence into account in custody cases. If a judge makes a mistake in applying the state law, you may be able to appeal the case (ask another judge to take a second look). The Domestic Violence Legal Empowerment and Advocacy Project (DV LEAP) helps domestic violence survivors and their attorneys in appeals cases.

What should I bring with me if I leave?

It is important to bring certain things with you if you choose to relocate, as the batterer may destroy or hide them. Assume that you never will see any personal items or papers again that you leave behind, and plan accordingly. You may be able to make copies of important documents over time and keep them in a safe place. Consider bringing with you all documents related to your identity and health, your children’s identity and health,

your immigration status, any legal proceedings, and your finances. For example, the following items could be important to bring with you:

- ☐ Money, credit cards, ATM cards, checkbooks, saleable items (e.g., jewelry)
- ☐ Clothing, medicine, and toiletries for you and the children
- ☐ Court orders and pleadings (for protection order, divorce, custody, paternity, immigration, criminal and other cases)
- ☐ Identification (social security, driver's license, birth certificates, public assistance or state ID)
- ☐ Children's school records, medical records (including vaccinations), and passports
- ☐ Work permits, green cards, and other immigration papers
- ☐ Health insurance cards
- ☐ Insurance papers
- ☐ Telephone/address books
- ☐ Ownership documents for car/house (title, registration, deed)
- ☐ Copy of lease or rental agreement, mortgage payment book
- ☐ Car/house/office keys
- ☐ Family photographs, toys, or other sentimental items the batterer may destroy
- ☐ Address book and contact information for anyone who may have evidence of the abuse (e.g., police officers, neighbors, doctors, social services' providers, shelters, county registry of protection orders, clerk of court, schools)
- ☐ Proof of the abuse (e.g., destroyed clothing, property, photographs, police reports)

If possible, work with an advocate at a local domestic violence program to help you prepare for your move and to develop a safety plan. You can call the National Domestic Violence Hotline (1-800-799-7233 or TTY 1-800-787-3224) for information about programs in your area.

How can I prove the abuse?

It is important to be able to prove the history of abuse in a custody case, or if you are asking a judge to transfer a custody case to another state because of domestic violence. You can work with your attorney to gather and present proof of the abuse. Your testimony about what has happened will be very important. Writing a journal (that you keep in a safe place) may help you remember exactly what the batterer did and when. Most state domestic violence laws focus on physical abuse (unwanted touching) and threats. You may wish to include the batterer's treatment of the children and other controlling behavior as well (e.g., removing car keys or phone so you could not call for help, isolating you from your friends and family, keeping a tight hold on money so you could not get away).

The testimony of other witnesses can be important as well, even if they have seen the effects of the abuse, rather than the actual violence. For example, a neighbor who has

heard screaming, or a co-worker who has seen bruises on you, could support what you say. Someone you told about the violence right after it happened also may be able to testify for you. Other possible witnesses might include family members, teachers, police officers, shelter workers, doctors, children's counselors, child protective services workers, and the children (if they are old enough). Every state has its own rules about how evidence can be presented to a judge, but you usually need the witnesses to come to court (not just write letters, even if notarized). Some judges will allow witnesses to testify by telephone if they are not available in person.

Some other types of evidence that could be helpful include the following: prior court orders (including protection orders and criminal history printouts); protection order transcripts; police reports; medical records; 911 tapes; voicemail, e-mail and text messages; Facebook/My Space pages; school records for the children; and photographs of injuries or property that the batterer destroyed.

The Laws

There are many different laws that apply in custody cases involving abuse and more than one state. Federal laws are laws that cover the whole country. State laws cover one state, and tribal laws cover one tribal nation.

Federal laws:

Violence Against Women Act – This is a broad law. It includes one section requiring states, tribes, and territories to enforce protection orders that were entered by other states, tribes, and territories, including child custody orders that are part of protection orders.

Parental Kidnapping Prevention Act – This law requires states to honor custody orders that were entered by other states.

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

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

State and tribal laws (which may be different in every state and tribal lands):

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

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

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

Full faith and credit law – This is the law that tells one state how to enforce a protection order from another state.

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

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

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

Scenario

The following scenario may help illustrate a typical interstate case. Please remember that the facts and the laws differ from case to case, and ask for an attorney’s help in your own case.

Lila has been married to Philip for five years, and they live in Des Moines, Iowa. They have one child, a seven-month old daughter named Annie. Philip has physically and emotionally abused Lila since shortly after they were married. Philip has never been charged or convicted criminally for the abuse, and Lila has never filed for a civil protection order. Lila thinks a neighbor may have heard the abuse, including the most recent incident, which took place last week. During that incident, Philip held a gun to her head in front of Annie and threatened to kill her. Lila wants to move to New Jersey, where her sister lives and where she hopes to find a job.

Can Lila go to New Jersey?

Maybe. Lila may wish to go somewhere safe in Iowa first (like a shelter or a friend’s home) and talk with an attorney before making this decision. She needs to find out if Iowa’s parental kidnapping law allows her to leave the state with Annie.

If Lila can leave Iowa with Annie legally, she still may need to come back to fight for custody, if Philip files within six months of the date she leaves Iowa. If Lila decides to move to New Jersey, it will be important for her to call the court in Iowa regularly to check whether Philip has filed for custody so she can be involved in the case.

Which state can decide who gets custody of Annie?

Here, no state has entered a custody order before about Annie. Because Annie has lived in Iowa for more than six months, at this point in time, Iowa is Annie's home state. Iowa has the power to hear the long-term custody case.

What can a judge in Iowa do?

Because Iowa is the home state, a judge in Iowa can decide who gets custody of Annie. However, if Lila asks a judge in Iowa to transfer the case to another state, the judge in Iowa must decide if Iowa is an "inconvenient forum." This decision must take into account the safety of the family, as well as other things.

Lila also may be able to get a protection order in Iowa because of the abuse. She also may be able to get a judge in Iowa to enter an order that gives her custody and permission to move to New Jersey with Annie. Her attorney could tell her whether a judge would be likely to do so.

What can a judge in New Jersey do?

If Lila goes to New Jersey, a court there can enter a temporary custody order giving Lila custody of Annie if a judge thinks there is an emergency. Then the New Jersey judge will need to talk with a judge in Iowa if Philip files for custody in Iowa. They will decide which state should keep the custody case, after Lila and Philip (or their attorneys) have a chance to make arguments about where the case should take place.

Conclusion

The decision to move out of state or tribal lands because of abuse is a complicated one when children are involved. There are people who can help you understand your options. Please talk with a good attorney before you move. You also may call the Legal Resource Center on Violence at 1-800-556-4053 to discuss interstate issues.

Resources

Domestic Violence Legal Empowerment and Advocacy Project [for appeals]
info@dvleap.org

Justice for Children [for child abuse]
(800) 733-0059

Legal Resource Center on Violence Against Women [for interstate issues]
(800) 556-4053, (301) 270-1550, lrc@lrcvaw.org, www.lrcvaw.org

National Center on Protection Orders and Full Faith and Credit [for protection order issues]
(800) 903-0111, ext. 2

National Clearinghouse for the Defense of Battered Women [for criminal defense issues, like parental kidnapping charges]
(800) 903-0111, ext. 3

National Coalition Against Domestic Violence [for a list of state domestic violence coalitions], <https://ncadv.org/state-coalitions>

National Domestic Violence Hotline [for referrals to local shelters and programs]
1-800-799-7233, TTY: 1-800-787-3224