

Child custody jurisdiction: Which court can make custody orders

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If your children have lived in more than one state, learn when a Washington court can decide custody, and whether the Washington court should follow custody orders from other states. This also applies to visitation orders.

1. Fast facts

Custody decision includes legal custody, physical custody, or visitation. It includes permanent and temporary orders, the first ever custody order (an initial order), or changes to a previous one (a modification).

Orders covering only child support are **not** custody decisions.

When we say “parent” here, we’re also referring to someone acting as a child’s parent, including a minor guardian.

If your custody case involves more than one state, try to talk to experienced family law attorneys in both Washington and the other state (<https://www.lawhelp.org/find-help>). The other state’s laws could be different from Washington’s. You should also talk to a lawyer if your order is from a tribal court.

Jurisdiction is a court’s power to make legal decisions. A Washington court can only decide custody if the law gives it that power. Parents can’t choose the state

they prefer.

If your children have always lived in Washington **and** no other state or tribal court or country has made a custody order about them, Washington generally can make a custody decision (Washington has **initial jurisdiction**). If the children have lived in another state, or another state has made a custody order, jurisdiction will be harder to determine. You must decide which of these to do:

- File for custody in the state that has home state jurisdiction.
- Ask the home state to decline jurisdiction and let Washington take it.
- In an emergency, you may be able to get a Washington custody order protecting the children while long-term jurisdiction is decided.
- Wait until the children have been in Washington for 6 months so Washington becomes the child's home state, **if no one's started a custody case in another state meanwhile**.

If you file for custody in a state that doesn't have jurisdiction to decide it, you could see your case dismissed after spending time and money on the case. If you intentionally filed while knowing the state didn't have jurisdiction, the court could penalize you for it.

If the children in your case are Indian children, or you have reason to believe they are, different laws may apply. It's possible that a tribal court is the only court that can make a custody decision. It's important to Read about the Indian Child Welfare Act and try to talk to a lawyer immediately if your case involves any Indian children.

2. Initial jurisdiction

Where no court in any state has made a custody order before, Washington has jurisdiction to make a first-time custody decision (an **initial custody decision**) and the case should be filed here if one of these is true:

- ()The child has lived in Washington with a parent for at least the last 6 months. In this case, Washington is the child's **home state**.

- The child is 6 months old or younger and has lived in Washington with a parent since birth.
- Washington **was** the child's home state. The child moved away but **one parent still lives here**.

Example: The parents married in Washington in 2018. In 2025, Parent 1 and child moved to Oregon. Five months after Parent 1 and child (age 5) moved to Oregon, Parent 2 filed for custody in Washington, where he still lives. Parent 1 personally receives the Washington court papers at home in Oregon.

Washington is the child's home state and can make a permanent custody decision because Parent 1 and child only lived in Oregon for 5 months and child is over 6 months old.

If another state is your child's home state, Washington can make an initial custody decision only if all these are true:

- That state decides not to exercise (that state **declines**) jurisdiction
- Washington is an appropriate court to decide custody
- ()The children and at least one parent have a **significant connection** with Washington (more than just being here) **and** Washington has a lot of evidence on issues important to custody

In the example above, Parent 1 could ask Washington to decline jurisdiction so Oregon may decide custody.

Warning: If you file a custody case in Washington before Washington qualifies as the children's home state and you can't get emergency jurisdiction, the court may dismiss your case, or it might later cancel any court orders you got.

3. Continuing jurisdiction

Enforcing a court order means making sure that the person required to do something or stop doing something, does what the court ordered them to do or not to do.

If a court has already made a custody decision, and it hasn't ended (terminated) or been replaced or changed (modified) (it's still "in effect"), that state can usually enforce or modify its decision if a parent or the child still lives here. This is **continuing exclusive jurisdiction**. You must make permanent changes to the order in that state, unless it declines jurisdiction.

One state can modify another state's custody order only if one of these is true:

- Everyone has moved away from that state **and** there's a new home state (temporary absences don't count) **or** there's no home state but a new state has significant connection jurisdiction.
- The original state declines jurisdiction.
- There's no home state **and** a new state has significant connection jurisdiction **or** there's an emergency.

Example: Mo and Trace divorced 3 years ago in Montana. The Montana court gave Mo custody. Mo developed a drug abuse problem 2 years after the court gave Mo custody. Mo let the children live with Trace without changing the court order. Trace and the children moved to Washington.

One year later, Mo, still living in Montana, comes to Washington to visit. Trace realizes Mo is still abusing drugs. Trace files a motion to change the custody decision in Washington.

Washington does not have jurisdiction. Only Montana can change the original custody order, unless Montana declines jurisdiction or there's an emergency.

4. Decisions not from Washington

If you want a Washington court to follow your valid custody order from another state, you can register your order in Washington. This can be helpful if,

for example, the other parent visits the children here but doesn't return the children to you at the end of the visit as stated in your out-of-state order.

If you have a **tribal court custody order**, and the tribal court followed rules and procedures like the UCCJEA, the Washington court must treat its order like an order from another state.

If you have a custody order from another country, and the foreign court followed rules and procedures like the UCCJEA, the Washington court should enforce that custody order under the same rules as an order from another state. The Washington court won't enforce the order if the other country's laws violate basic principles of human rights.

International custody cases can be very complicated. Talk to a lawyer.

5. No continuing jurisdiction

Not everyone believes they should be made to follow a court order of custody from another state. **If you don't want a state to enforce its custody decision against you**, you must prove one of these:

- The state didn't have jurisdiction to make the order in the first place
- You didn't get proper notice and a chance to be heard or take part in the case

Usually this is the first issue you bring up in the case. If you don't, you may lose the right to object. **Act fast.** You should also try to talk with an experienced family law attorney in the state that made the order (<https://www.lawhelp.org/find-help>) about what to do there.

Example: You and your children have lived in Washington for several years. You get notice that your children's other parent is registering an Idaho custody order in Washington. You believe the Idaho court didn't have jurisdiction to make the custody decision. You must make an objection within 20 days of receiving notice.

6. Emergencies

In an emergency such as a child kidnapping, you may have other options.

If the children are in Washington but it's not their home state, Washington can still make a temporary emergency custody order to protect them if a child, sibling, or parent has been abused or threatened with abuse, or the child has been abandoned.

If another state would normally have jurisdiction, Washington's order will last until the date that other state makes an order or Washington's emergency order ends (expires), whichever happens first. The Washington court must communicate with the other state's court.

Example: Tae, Hunter, and their child lived in Oregon for 5 years. Hunter and the child recently moved to Washington to escape Tae's physical abuse. Immediately after the move, Hunter filed for a protection order (PO) in Washington. Tae personally received a copy of the PO papers in Oregon.

Tae came to Washington to fight the order. The Washington court found that Tae physically abused Hunter and the child and issued a PO giving Hunter custody within the PO. **Although Washington wasn't yet the child's home state, Washington could take emergency jurisdiction because of the physical abuse of Hunter and the child.**

Three months later, Tae filed for custody in Oregon, where Tae still lives. Hunter personally received the Oregon court papers at home in Washington. **Oregon is still the child's home state because the child has lived in Washington for less than 6 months.**

Hunter can ask Oregon to decline jurisdiction. If Oregon doesn't decline jurisdiction, the Washington jurisdiction (for the custody determination within the PO) will only be valid until Oregon makes a custody order. The Washington and Oregon courts must communicate

to decide how to solve the emergency and protect the parties and child, and how long the emergency order should be.

If Washington makes an emergency custody order and you want the other state to make a custody decision, you must quickly file a custody case in that state and have the other state's court communicate with the Washington court. If you wait too long, Washington may become the child's home state, and the other state loses jurisdiction.

There's one **exception** to this. Under the UCCJEA, one court doesn't have to follow a custody order in an emergency domestic violence protection order issued by another state without notice ("ex parte"), but it may have to do so under the federal Violence against Women Act (<https://www.govinfo.gov/content/pkg/USCODE-2022-title18/html/USCODE-2022-title18-partI-chap110A-sec2265.htm>).

If you try to enforce an order in Washington at the same time that a court in the state that made the order considers changing it, the 2 courts must communicate. The court here in Washington may decide to stop the enforcement case or dismiss it.

If there was no previous custody determination when WA enters an emergency order, and no custody proceeding is started within 6 months of WA's emergency order, WA becomes the children's home state and the emergency jurisdiction no longer ends (no longer expires).

7. Decline jurisdiction

A court with child custody jurisdiction can decide upon request or on its own to let another state take over (to decline jurisdiction) when any of these is true:

- It's more convenient for another court to decide the case (the court with jurisdiction is an **inconvenient forum**).
- A party has engaged in **wrongful conduct** that led the court to have jurisdiction. An example of this is running away with the children and hiding

the children in a state for 6 months to get home state jurisdiction, if the situation doesn't justify it.

Fleeing the state with children is very risky and can result in a negative impact in any future custody proceeding. If the court declines jurisdiction for wrongful conduct, it may order the parent who was unjustified to pay costs and expenses. It might also lead to criminal charges. If you're thinking about fleeing with the children to another state and hiding, or you've already done this, talk with a lawyer as soon as you can.

How to ask a court to decline jurisdiction varies by county. Often, you can make a motion in the court you're asking to decline. Or you can ask the court you want to have jurisdiction to ask the other court to decline. In both situations, you should give the court declarations and evidence showing why the one court should decline jurisdiction and let the other court have the case.

8. When states communicate

When courts in 2 different states communicate about where the custody case should be, especially in an emergency, you might have to do or be involved in any of these:

- Give testimony (including remotely) in or from another state
- Go to an in-person hearing in another state
- Follow a court order to appear in court with or without the children
- Take part in a custody evaluation made by another state

WashingtonLawHelp.org gives general information. It is not legal advice. Find organizations that provide free legal help on our Get legal help page.