

2022

## Judge Decision Protocols Conforming to the Uniform Child Custody Jurisdiction and Enforcement Act

Jackline Browder  
*Walden University*

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# Walden University

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Jackline Browder

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Walden University  
2022

Abstract

Judge Decision Protocols Conforming to the Uniform Child Custody Jurisdiction and

Enforcement Act

by

Jackline Browder

MA, American Military University, 2010

BS, John Jay College of Criminal Justice, 2009

Proposal Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

May 2022

## Abstract

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) assists courts in applying key factors when determining the jurisdiction of the child's home state in custody rulings. Family court judges have the task of determining the outcome of child custody rulings. Although the UCCJEA exists, application of the act varies by state. The purpose of this qualitative study was to determine (a) if the application of the UCCJEA and its factors are applied in custody court cases, (b) if judges used or attempted to conform to the UCCJEA, and (c) if any outside factors were identified or applied to judge decisions. The theory that supported this study was the policy learning theory that drew from lessons learned from past experiences or past protocols to identify the gaps in law or in policy to make improvements for the future. The nature of the study was a general qualitative design using secondary case analyses and a thematic analysis approach. The analysis was conducted on family custody cases using secondary custody court data which identified reoccurring themes to determine whether judges provided consistency in some cases or on a case-by-case basis. Findings demonstrated in the court documents that the state of Maryland does not actively enforce the UCCJEA due to the UCCJEA not being at a federal mandated level. Informing and providing insight to the public and policy makers on how judges interpret the law, implement an act, and apply their protocols in the court may promote positive social change and lead to better decision-making outcomes in custody rulings. The research allows for further opportunity to conduct similar research in other state district or district circuit county courts in the United States of America.

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## Dedication

To God first and foremost, for nothing is impossible. To my life witness who is my reciprocal love, and to my family.

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## Chapter 1: Introduction to the Study

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a uniform state law that governs decision making about jurisdiction in interstate custody cases (National Council of Juvenile and Family Court Judges, 2018). The UCCJEA provides an overview on whether a specific state judicial court has jurisdiction rights to modify or change other interstate court rulings. The UCCJEA serves as a guide to assist (a) judicial court judges, (b) the professionals that are involved in court rulings, and (c) parents with the responsibility and measures to protect the child (National Conference of Commissioners on Uniform State Laws, 1997). In this study, I explored whether judges and professional experts involved in custody cases use the key factors from the UCCJEA to make custody determinations and recommendations. The UCCJEA serves to provide a better understanding of the responsibilities that are required to implement and give orders from and to the other inter-states. (UCCJEA: Guide for Court Personnel and Judges, 2018).

Although, the UCCJEA exists, there is a problem regarding the lack of uniformity amongst state family courts in applying and conforming to the UCCJEA. The UCCJEA specifically aims to protect the best interest of the child when making custody determinations. The purpose of the UCCJEA is to resolve the emergency, protect the parties and child, and determine the duration of the emergency order. (UCCJEA: Guide for Court Personnel and Judges, 2018). However, it is unclear whether judicial court judges in Maryland conform to the UCCJA. According to the Uniform Law Commission

(ULC) (2013) the commission argued that courts aim to provide a much better concept for relief for the parents and children who suffer from interstate child-custody disputes.

In 1968, the ULC promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. In 1997, the ULC have promulgated a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It does two very important things. It reconciles UCCJA principles with the Parental Kidnapping Prevention Act (PKPA). It adds interstate civil enforcement for child custody orders. The UCCJEA replaces the UCCJA. (ULC, 2013).

Many states have replaced the older UCCJA with the UCCJEA. According to ULC (2013) the UCCJEA is currently undergoing amendments to the law, and ULC does not intend to present them publicly until the amendments are final. There are existing copies of the UCCJEA along with a chart with citations that have state versions of the UCCJEA (UCCJEA: Guide for Court Personnel and Judges, 2018). Elrod (2021) argued that the UCCJEA has been adopted in 49 states, except for Massachusetts, which still uses the UCCJA.

The UCCJEA is a state law that deals more on jurisdiction distinctions among states within the United States of America. ULC (2013) mentioned that the UCCJEA has amendments that have not yet been federally implemented and is still in draft status as of 2013. ULC (2013) identifies that the UCCJEA is an interstate problem in which finalizing the law at the federal level would be better suited for complying with state uniformity. (UCCJEA: Guide for Court Personnel and Judges, 2018). As per the ULC (2013), the UCCJEA modifies and replaces the previous UCCJA to succumb to the

obligations of the United States under the Hague Convention or Hague Conference on Private Law (HCCH) (1996) on jurisdiction, applicable law, recognition, enforcement, and cooperation in respect of parental responsibility and measures for the protection of children. The HCCH governs the jurisdiction to take measures to protect a child and his property. It also addresses questions of applicable law concerning parental responsibility for a child where there is no specific intervention by authorities (such as by a court order).

The UCL (2013) mentions that more than 30 states have enacted their own versions of the UCCJEA. The UCL (2013) organization described that the UCCJEA uses the word “which”, for the court that should decide a custody case (jurisdiction), and not “how” the court should decide the case. The UCL (2013) further explained that although the UCCJEA exists, courts vary from state to state, and judges consider a child’s preference on a case-by-case basis. In my research I explored if judges conformed to the UCCJEA in a family district circuit county court, in the state of Maryland (Md. Fam. Law Code Ann. § 9.5-101 et seq). My research provided insight what protocols are in place and how it varies from state to state.

The UCCJEA, in general, is a guide that can be used by the state court judges which provide a list of factors to determine the outcome in custody rulings (UCCJEA: Guide for Court Personnel and Judges, 2018). Of these factors’ judges can make decisions to protect the child, and to determine jurisdiction for which home state is best suited for a child (Hoff, 2001). I explored how outside factors were measured by judges in decision making expertise, which include the wishes of the child's parent; the

relationship of the child with each parent; and the ability of each parent to provide adequate food, clothing, shelter, medical care, and a safe environment. I found a gap in the literature as it relates to how judges interpret the law regarding the outside factors. There were many possible outside factors that were considered as possible social change factors contributing to the problem. Of the many outside factors that I found, one specific gap that was identified was judges do not use a child's preference or the weight of the child's voice in custody arrangements unless a parent allows for a child to be present or consent. The only way the court judge used the child's voice to assist them in their decision making was when the parent selected a request for custody, or a court appointed expert to evaluate their child on the court fillable forms. The parent's permission is always the court's requirement; therefore, judges were presented with what was written as testimony on the court forms. My research findings can be used to inform the public of the court's requirement, and show that judges do not interpret, adopt, conform, or adhere to the UCCJEA, due to the Maryland law references on the court forms.

In my research, I found that judges demonstrate and strive to make their rulings based on the preservation of the child's best interest in the court. However, Domitrovich (2019) explained that mixed opinions surfaced over the years either praising best interest as the highest reliable standard, as no better concept existed, or ridiculing this standard as being far too subjective. Judges would subjectively apply their own personal experiences with children, thereby creating inconsistent results not in the best interest of children.

Donohue (2020) argued that the human tendency toward the bias of this kind is particularly worrisome in the context of courts, and particularly family courts, where the

decisions of a few (judges) are governing the solution set for the diverse masses--and where the decisions of a single fact finder govern the nature and quality of the interaction between children and their caregivers. In my research, I explored if judges rule outside of the current list of the factors associated with the UCCJEA. I sought to determine if the application of these factors were applied when the judges were making their decision/rulings. My research can inform the public's curiosity and awareness on the uniformity of law of the UCCJEA, the current judge's decision-making protocols, and how judges are conforming or taking into consideration any outside factors in family court custody determinations. My research in many ways contribute to the body of knowledge needed to address the problem by exploring the current measures taking into consideration when making judicial custody decisions.

Furthermore, I explored the public policy approach of the policy learning theory (PLT). The PLT assists with lessons learned from past experiences. I conducted an in-depth case analysis review on how judges currently conform to laws described further in the chapters. I focused more on whether states, specifically, the state of Maryland and its district circuit county court conformed to the UCCJEA.

The research creates positive social change to inform the public on whether the act introduced or implemented provided uniformity and conformity in judge's decision-making protocols. The research serves as an extension of knowledge which opens doors for reform or societal change, and whether judges base their application of the law with the current protocols in place. The research promotes more opportunities to discover or conduct similar studies among any other states district or district circuit county courts.

This chapter will discuss the background on UCCJEA, the problem, the purpose of the research, an introduction of the research question, the theoretical framework, and its significance to public policy and positive social change. Further discussed in the chapters is the UCCJEA implementation timeline of how the act was developed over time. In addition, this chapter will go into further detail on court dynamics on whether family district circuit county court judges adhere and conform to the UCCJEA. I will inform how the judges currently interpret the law from similar cases and what was taken into consideration when a policy or an act was introduced. In addition, identifying the current key factors that are provided by the UCCJEA and any outside societal factors that were used by judges when making custody determinations, while keeping and protecting the best interest of the child. Lastly, the results and findings, the case study analysis, the interpretation, and limitations that were experienced, along with recommendations for future research and the implications of the study on the potential impact for positive social change and policy making.

### **Background**

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. In 1997, the ULC have promulgated a new UCCJEA. It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. The UCCJEA replaces the UCCJA. (ULC, 2013). Many states have replaced the older UCCJA with the UCCJEA. The UCCJEA is currently undergoing amendments to the law, and UCL does not intend to present them publicly until the

amendments are final (ULC, 2013). According to the ULC (2013), the UCCJEA has amendments that have not yet been federally implemented and is in draft status as of 2013. The UCCJEA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now the ULC) and is enacted by all states (except for Massachusetts), the District of Columbia, Guam, and the Virgin Islands (UCCJEA: Guide for Court Personnel and Judges, 2018).

The UCCJEA modified the original act to succumb to the obligations of the United States under the HCCH on jurisdiction, applicable law, recognition, enforcement, and co-operation in respect of parental responsibility and measures for the protection of children (HCCH, 1996). At present, the UCL organization mentioned that more than 30 states have enacted their own versions of the UCCJEA. UCL (2013) mentions that the UCCJEA specifies which court should decide a custody case (jurisdiction), and not how the court should decide the case. In addition, the UCL does not intend to present the amendments until they are final, which makes it more important to increase the public's awareness on identifying what are current judges decision-making protocols and if the uniformity of law or UCCJEA is being taken into consideration. In the UCCJEA guide for Court Personnel and Judges (2018), there are protocols to determine whether a court has jurisdiction over a custody case:

1. *Temporary Emergency Jurisdiction and Judicial Communication* explains that the judicial court can implement the act and have the protocols in place to exercise the court's authority on granting temporary emergency jurisdiction even when the court is not the home state (or the state with preferred jurisdiction; UCCJEA, §204).

2. *Modifying an order* explains that the court must consider keeping judicial communication by working with the responsible administrative office of the courts to modify existing forms to facilitate requests for temporary emergency jurisdiction (UCCJEA, §202).

3. *Initial Child Custody Jurisdiction* states that the UCCJEA sets forth four jurisdictional bases to help a court determine whether it has “initial child-custody jurisdiction” over a custody matter (in addition to temporary emergency jurisdiction; UCCJEA, §201):

- *Home state*, which is defined as, the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding (UCCJEA, §102(7)).
- *Significant connection*, which is defined as, a court may exercise significant connection jurisdiction only if there is no home state and two conditions are met: (a) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, must have “a significant connection with the state other than mere physical presence”; and (b) substantial evidence must be available in the state concerning the child’s “care, protection, training, and personal relationships” (UCCJEA, §201(a)(2)).
- *More appropriate forum* explains that the court having jurisdiction under one of the four jurisdictional bases described may decline to exercise

jurisdiction if the court finds that it is an inconvenient forum and a court in another state is a more appropriate forum (UCCJEA, §207).

- *No other state or vacuum* explains the last resort. Vacuum jurisdiction is available when no state satisfies any of the three jurisdictional bases described. When a family has traveled from state to state with only brief stays in any one place, it may be necessary for a court to exercise this form of jurisdiction (UCCJEA, §201).

4. *Inconvenient Forum, By Reason of Conduct (“Unclean Hands”)* explains that a court must decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct that resulted in the court’s jurisdiction over the case (UCCJEA, §208).

5. *Judicial Communication, Interstate Cooperation, Protection Orders, Information to Submit to the Court, Enforcement, International Order, Tribal Court Orders*, explains that the court must be able to recognize that international cases may involve the HCCH on the Civil Aspects of International Child Abduction as well as the UCCJEA. Further explained, the court must be able to recognize the reasons for declining to exercise jurisdiction on inconvenient forum grounds, such as, if the parties are in different states because of violence, it could be unsafe for the victim to return to the home state to litigate a custody case. In addition, due to separation violence, a victim may be at increased risk for physical violence or homicide; forcing a return to a state where the abuser resides could be deadly. The court must be able to recognize that courts should not decline to exercise jurisdiction under the UCCJEA’s “unjustifiable conduct” provision

when the parent seeking jurisdiction fled across jurisdictional lines to escape abuse (UCCJEA, §201).

Within my research review of all the protocols, I found that there are sublevel protocols that require the court to use the UCCJEA's provisions and other means to improve the safety of victims of domestic violence in the court. The UCCJEA informed the court administrative staff to develop a protocol for judicial communication, both for responding to requests from out of state and for initiating requests to courts in other states. This included considering the parties and counsel to be present during the communication as well as, allowing the parties with an opportunity to present facts and legal arguments before making a jurisdictional decision.

All court staff must maintain judicial communication by keeping a record of the communication and access to the record (UCCJEA: Guide for Court Personnel and Judges, 2018). The court must be able to train its staff to manage interstate judicial communication in UCCJEA cases. Overall, the court must consider assigning a UCCJEA judge for communication requests regarding cases in which the original judge is no longer available (UCCJEA: Guide for Court Personnel and Judges, 2018).

In my research, I used the public policy approach of the policy learning theory to explore the issue of the current protocols in place and what judges are currently doing with the application of law. There were many possible outside and social change factors contributing to the problem. The rational or general concern for this study was the protocols that are in place, how it varies from state to state, and if judges are using their own interpretation of the UCCJEA.

Of the many factors, one rational I had for conducting this research was that there was a gap in the literature as it relates to the weight of the child's voice in custody arrangements. I sought to discover a better understanding of how the weight of a child's voice is measured by judges in decision making expertise as well as the wishes of the child's parent; the relationship of the child with each parent; and the ability of each parent to provide adequate food, clothing, shelter, medical care, and a safe environment.

When conducting the case analysis, my findings indicated that judges do not consider using a child's perspective as a supporting role or supporting factor to make a custody decision, unless it was provided by the parents to use an evaluator. I determined from all the supporting court forms and cases that the outside factors in addition to the UCCJEA current factors are necessary to protect the safety of the child and provided primarily the jurisdiction on which home state is best suited for a child in custody determinations. Contributing to support the literature, my research assists with social change when considering to reform. The recommendations I suggested may change society and courts on whether an act introduced and implemented provides uniformity and conformity in judge's decision-making protocols.

The research contributes to the body of knowledge needed to address the problem by exploring the current measures taking into consideration when judges make judicial custody decisions. The research open doors as a social change that may impact future researchers to discover more opportunities to conduct similar studies in other states courts or district circuit county courts. The next section addresses the problem statement, in

which this research focused specifically on whether its court judges were conforming to the UCCJEA in the state of Maryland within a family district circuit county court.

### **Problem Statement**

The UCCJEA is a uniform state law regarding jurisdiction in child custody cases, and the act describes the parental responsibility and measures for the protection of children (National Council of Juvenile and Family Court Judges, 2018). Although the UCCJEA exists, courts vary from state to state, and judges consider a child's preference on a case-by-case basis (UCL, 2013). In this research study, I addressed whether judges conform to the UCCJEA in the state of Maryland. I addressed the lack of uniformity amongst state family courts in the aspect of considering the best interest of the child when making custody determinations. My research findings can inform the public that judges do not conform to the UCCJEA in the state of Maryland. I explored if judges rule outside of the list of the factors associated with the UCCJEA. Based on my findings, I determined that the application of these factors was not applied or implemented when the judges are making their decision/rulings. Domitrovich (2019) argued that mixed opinions surfaced over the years either praising best interest as the highest reliable standard, as no better concept existed, or ridiculing this standard as being far too subjective. Judges would subjectively apply their own personal experiences with children, thereby creating inconsistent results not in the best interest of children. According to Donohue (2020), the human tendency toward bias of this kind is particularly worrisome in the context of courts, and particularly family courts, where the decisions of a few judges are governing

the solution set for the diverse masses and where the decisions of a single fact finder govern the nature and quality of the interaction between children and their caregivers.

### **Purpose of the Study**

The purpose of this qualitative study was to explore if judges rule outside of the list of the factors associated with the UCCJEA in the state of Maryland. The purpose of this study was to assist with identifying key factors and protocols currently applied in the courts, and how factors were conducted or measured by judges in decision making expertise and/or evaluations. Throughout my research, I explored family custody cases which assisted in identifying if there are current measures along with a current list of criteria taking into consideration when making judicial custody decisions. Therefore, ultimately determining if judges were conforming to the UCCJEA while the judges were presented in court with many societal key factors contributing to custody arrangements. My research helped me to determine if the application of these factors in fact were applied when the judges are making their decision/rulings. In my research, a gap exists on how judges conform to the UCCJEA in the state of Maryland, and it was initially never made aware to the public. Although the UCCJEA exists, courts vary from state to state, and judges consider a child's preference on a case-by-case basis (ULC, 2013). Data elements used to conduct this study were based on the UCCJEA lists of factors used by court judges as a uniformity law in custody and enforcement. In the UCCJEA guide for Court Personnel and Judges (2018), the guide is meant for judges to consider the respect of parental responsibility and measures for the protection of children. The factors currently listed in the UCCJEA assist as a guide to determine how judges can conform to

the UCCJEA in Maryland. I explored if judges conform to the UCCJEA and if they use any outside factors to help shape their decision making during custody rulings. An in-depth review of the factors was conducted to contribute to custody arrangements to address the research question.

### **Research Question**

What factors are associated with judge decision-making protocols and the application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) when making child custody decisions in the state of Maryland?

### **Theoretical Framework**

The theoretical framework used in this study was the policy learning theory. Policy learning theory is grounded on the foundation that proposes three suitable questions for the research (a) what are the subjects of learning in an approach? (b) what are the objects of learning? and (c) what is learning supposed to contribute to? (Grin & Loeber et al., 2007). Policy making decisions are based on human judgment and what information is gathered to inform that problems exist. Policy gaps are then identified providing the subject a basis to provided best recommended solution. The recommendation provides future implementation of a new and improved policy into society or as reform in law. The design and implementation of policies are constantly adapted in society which are created and learned from past experiences over time. In these challenges and many others, learning from past mistakes represents a hope that better policies will develop in the future (Moyson & Scholten et al., 2017). Theories of policy learning draw from lessons learned to identify the gaps in law or in policy making

by focusing on lessons learned and improvements. Recommendations are introduced to conduct better practices and protocols that can be utilized in society to promote change. Therefore, shared experiences shape processes of future policy formation. However, biases still can appear in policy designs.

### **Nature of the Study**

The logical connections between the framework presented and the nature of my research include the policy learning theory framework. It provided the foundation on policy implementation, changes, and how the application of current laws impacts society in human driven decision making. The nature of this research study was a qualitative thematic analysis using secondary data and comparing results from 10 family court custody cases. In return, the findings and reoccurring themes either provided consistency in some cases or case-by-case changes in judge decision making protocols. I found that the review of UCCJEA was necessary to explore how judges take into consideration laws and how they implement laws within family district circuit county courts. Moyson and Scholten (2018) argued that Hecllo (1974) was the first to introduce the concept of policy learning and the idea of knowledge as an explanatory factor of policy change, in opposition to conflict-and power-based theories (Grin & Loeber et al., 2007). Policy learning is a concept that refers to this cognitive and social dynamic. It is the learning processes in which information and experiences are used to acquire new knowledge on policy objectives to substantiate and legitimize them or to change or form beliefs. They identify several cognitive and social processes to strengthen the connection between policy learning and policy change (Moyson & Scholten et al., 2017). The review of

UCCJEA identified applicable recommendations to maintain and keep up with current times and policy implementations. The protocols currently in place are solely reliant on a judge's perspective. It is recommended to reform and improve court protocols to achieve better outcomes in rulings. The recommendations are further discussed in the next chapters.

### **Definitions**

A list of definitions is provided below for the reader to understand unfamiliar terms used throughout this study,

*Case Law or Case:* This term means, a law that is based on judicial decisions rather than law based on constitutions, statutes, or regulations. Case law concerns unique disputes resolved by courts using the concrete facts of a case. By contrast, statutes and regulations are written abstractly. Case law, also used interchangeably with common law, refers to the collection of precedents and authority set by previous judicial decisions on a particular issue or topic. In that sense, case law differs from one jurisdiction to another (Legal Information Institute, 2021).

*Best Interest:* This term is a mix of definitions that is interpreted by current law decision making professionals, in research it has been defined as the standard criteria or list of factors that assist to determine what is best for the child or children. Further defined to provide stability for the child, a suitable environment in the home that will be better than the home of the custodial parent, and that there has been a substantial change in circumstances overall that will not harm the well-being of the child (Md. Code, Family Law § 9-107).

*Child:* This term means, an individual under the age of 18 years (Md. Fam. Law Code Ann. § 9.5-101 et seq. (c)).

*Child custody determination:* This term means that it is (a) a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child; (b) "Child custody determination" includes a permanent, temporary, initial, and modification order; and (c) Does not include an order relating to child support or other monetary obligation of an individual (Md. Fam. Law Code Ann. § 9.5-101 et seq. (d) (1-3)).

*Child custody proceeding:* This term means that (a) a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue; (b) it includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear; (c) it does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subtitle 3 of the law (Md. Fam. Law Code Ann. § 9.5-101 et seq. (e) (1-3)).

*Court:* An entity authorized under the law of a state to establish, enforce, or modify a child custody determination (Md. Fam. Law Code Ann. § 9.5-101 et seq. (g)).

*Enforcement or Enforcement Power:* In general, enforcement refers to the power of a government entity to enforce the law through investigations, arrests, and the ability to sue suspects on behalf of the public. In constitutional law, it is the name for a provision that expressly authorizes Congress to enforce a constitutional amendment through appropriate legislation (Legal Information Institute, 2021).

*Factor:* A cause or reason that contributes to some result (Legal Information Institute, 2021).

*Home state:* The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding, and in the case of a child less than 6 months of age, the state in which the child lived from birth with any of the persons mentioned, including any temporary absence (Md. Fam. Law Code Ann. § 9.5-101 et seq. (h) (1-2)).

*Judge:* An appointed or elected official who decides legal disputes in court (Legal Information Institute, 2021).

*Judicial discretion:* The power of officials to act according to the dictates of their own judgment and conscience. Discretion is abused when the judicial action is arbitrary, fanciful, or unreasonable. If the plaintiff or the defendant thinks that the trial court judge has abused the discretion, the party can appeal the case. The appellate judge's job is essentially to review whether the trial court judge has acted properly and correctly applied the law. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion (Legal Information Institute, 2021).

*Jurisdiction:* Jurisdiction refers to the power of a court to adjudicate cases and issue orders. The term also indicates a territory within which a court or government agency may properly exercise its power (Legal Information Institute, 2021).

*Less Restrictive Alternative:* Most guardianship statutes require findings both of incapacity and need for the guardianship to prevent harm. Least restrictive alternative is understood to apply to the need requirement. Further defined as, when an adult is unable to make personal decisions (e.g., medical decisions, meals, etc.) or handle their own property (e.g., bank accounts, bills, etc.), a court can appoint a guardian (Glen, 2019).

*Pro se litigants:* In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein. The term is further defined as parties representing themselves in court without the assistance of an attorney (28 U.S.C. § 1654).

*State:* A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States (Md. Fam. Law Code Ann. § 9.5-101 et seq. (p)).

*Ruling:* A ruling is a court's decision on a matter presented in a lawsuit. A ruling could refer to a judgment, which can be final or nonfinal (Legal Information Institute, 2021).

### **Assumptions**

For the purposes of this study, there was an assumption based on the review of literature on whether a judge follows and implements the law and the criteria set forth in the protocols to protect the child, and if the judges used other outside key factors to make their decisions during custody rulings. Hoff (2001) argued that of the factors' judges

make decisions to protect the child, and to determine jurisdiction for which home state is best suited for a child.

For this research study, the theoretical framework of policy learning was based on past experiences or real-life experiences which required the use of public case studies to document and conduct reviews. Prior to reviewing the case files, an assumption was to have an overall knowledge of the UCCJEA and to review the law in its entirety to determine any findings. This type of research required official court completed, final-closed, filed documents, and a computer to research each case in the database. The family district county court website database assisted me with finding similar trends on how each case is handled by a judge. The research required communication with the Maryland state county clerk office by making a formal request via e-mail to obtain family case documents for research purposes. The county court's database contained the full details of the case proceedings. I was able to record and document the findings from reading the UCCJEA and the case records of the custody trials and rulings in-depth. I listed all the known key factors that judges were adhering to and then I was able to align the UCCJEA and determine if it was used throughout each case.

### **Scope and Delimitations**

The scope of this study and data elements used to conduct this research was based on the UCCJEA as a uniformity law in custody and enforcement, which describes the respect of parental responsibility and measures for the protection of children. Data elements assisted to determine how judges conform to the UCCJEA in Maryland and how they determine custody rulings based on case-by-case basis. A review of the factors

was conducted of those that contribute to custody arrangements. I identified if the application of the current law factors or other outside factors were applied when the judges are making their decision/rulings. The analysis assisted me with identifying the key factors and protocols currently applied in the courts, and how it is currently conducted or measured by judges in decision making expertise and/or evaluations. Throughout the exploration of cases, I sought to identify if there are current measures along with a current list of criteria taking into consideration when making judicial custody decisions, ultimately determining if judges are conforming to the UCCJEA when there are many societal and key factors contributing to custody arrangements. My research demonstrated that judges do not conform to the UCCJEA in the state of Maryland, and it was not made aware to the public.

### **Limitations**

Several limitations, challenges, and or barriers existed during the research. The limitation that was presented in this research was conducted in one family district circuit county court state of Maryland, which is not nationally representative; therefore, data and any inferences or conclusions are relevant to those judges represented in the cases analyzed. The use of a qualitative approach does not afford the ability to determine causal relationships; however, the findings are suggestive. Data was reviewed in its entirety without any introduction of researcher bias. The technique of in-depth case review and analysis took a great deal of time to complete the necessary steps to ensure that data provided enough information to determine the findings and reoccurring themes.

Another limitation was identifying and ensuring that the county clerk provided good guidance and quality case files. I had to know how the county clerk provided the case files and data and whether it is obtained in different formats. I, as the researcher, had to request a specific way to receive the cases from the county court database or through the public court database. I had to keep my options open on how I was going to collect data and receive data. I had the option to request the file or case data to be received by way of electronic-file (e-file) format. Some of the courts do provide e-files and video recordings, however I was concerned to receive by e-file, such as video recordings. The limitation would have been difficult to identify who the main professional roles or key speakers are while reviewing the cases. However, this was not the situation. I decided to physically go to the courthouse to obtain the full files/case details to ensure that I received no missing pages or documents. I was successful in requesting and obtaining 10 custody cases, and each case was current and recently within the year of request determined as final and closed. This provided me to keep up with the current times and to be able to explore if the judges were using the UCCJEA in a more recent year of completion.

Another limitation was that I had to be mindful of public cases and that cases may be limited to criminal justice judge professionals and a possible bias could surface in court cases due to their professional position or status. For example, the UCCJEA may only be retained by the judge at close hand, and it could be difficult to properly identify if judges know the UCCJEA in their expertise when making their final decisions.

Another limitation was due to COVID- a global pandemic. Data collection was collected from final dispositions post-COVID shutdowns, and the demographics of those in the case proceeding trials are a representation of court administrators, experts, and judges available. These limitations had no bearing on the accuracy of data obtained from the cases. This is confirmed by the identification of reoccurring themes early in the process of data collection.

### **Significance**

In my research, based on a definition of a judge, when assuming their professional status, are required to have judicial discretion when to adhere to laws and must include and apply current laws in their decision-making process. Whether judges conduct and apply the law is unknown to the public since only those involved in the trial hearings are present specifically to the case to receive the outcome. However, my research assisted in identifying if such protocols were applied and the best interest of the child was taken into consideration. In my research, it was important to find out how a law is enacted and the impact of implementing these law shapes the future. Using the PLT, policies should focus on helping to create a societal change as time moves forward, which will develop positive outcomes for a continued structured development. In my research, I recommend as a societal safety net that judges could direct more attention to resources, training, and the use professional experts to extend their decision making in custody rulings. Adapting and applying laws has many strengthens and weakness specifically on human biases and fact base evidence presented in custody courts. Judges can be recommended to continue to keep abreast of learning policies and how it is applied in society as social adaptation.

Furthermore, the research identified common patterns when using current protocols in custody trial cases. The research confirmed truth to the validity of decision making and to trust that the best interest of the child is being considered.

### **Summary**

In this qualitative research study, using a thematical analysis approach, I explored the lack of uniformity amongst state family courts in the aspect of considering the best interest of the child when making custody determinations. I focused on a family district circuit county court in the state of Maryland by exploring multiple cases to determine if judges conform to the UCCJEA and take into consideration any outside factors that is in the best interest of the child.

Chapter 1 introduced the research topic, its background, and the rationale for selecting Maryland. Narrowing down the research study to a smaller family district circuit county court gave me the ability to see what is in currently being done to protect the best interest of a child in custody determinations in my own community, with regards to the UCCJEA being used or implemented.

Chapter 2 provides a restatement of the research problem and the purpose. Through a synopsis of the literature, the reader will become more familiar with the research problem and the rationale for the theoretical framework choice. A review of the literature will provide a basis for understanding.

## Chapter 2: Literature Review

In this research study I addressed whether judges conform to the UCCJEA in the state of Maryland. Currently, a problem exists regarding the lack of uniformity among state-to-state family courts when judges are left to make decisions on child custody rulings (ULC, 2013). The UCCJEA is a uniform state law regarding jurisdiction in child custody cases (National Council of Juvenile and Family Court Judges, 2018). It identifies an interstate problem in which finalizing the law at the federal level would be better suited for complying with state uniformity (National Conference of Commissioners on Uniform State Laws, 1997). Therefore, I explored how judges conform to the UCCJEA in the state of Maryland. The UCCJEA used by the state court judges contain a list of factors that determine the outcome in custody rulings. Of these factors judges make decisions to protect the child, and to determine jurisdiction for which home state is best suited for a child (Hoff, 2001). In my research, although judges base their decisions using their own standard list of factors, the weight of the child's preference or voice is not considered in custody determinations. I explored other possible outside factors that are not mentioned or listed in the current standard list of factors in the UCCJEA. I explored what other outside factors are used by state court judges to make their custodial decisions. The research demonstrated that court judges across the United States have only applied their own interpretation of the law and have not fully adopted the UCCJEA. According to the ULC (2013), the research provides much better relief for parents and children who suffer from interstate child-custody disputes. Elrod (2021) argued that the

UCCJEA has been adopted in 49 states, except for Massachusetts, which still uses the UCCJA.

In my research, I found that judges strived to make their rulings based on the preservation of the child's best interest in the court. Even though the UCCJEA exists, courts vary from state to state, and judges consider a child's preference on a case-by-case basis (ULC, 2013). When asked to decide whether such a provision violated fundamental principles of human rights, the committee, along with the advisors and observers, could not agree. Therefore, the application of that provision was left to the courts to determine on a case-by-case basis (National Conference of Commissioners on Uniform State Laws, 1998). Domitrovich (2019) argued that mixed opinions surfaced over the years either praising best interest as the highest reliable standard, as no better concept existed, or ridiculing this standard as being far too subjective. Judges would subjectively apply their own personal experiences with children, thereby creating inconsistent results not in the best interest of children. Donohue (2020) argued that the human tendency toward bias of this kind is particularly worrisome in the context of courts, and particularly family courts, where the decisions of a few (judges) are governing the solution set for the diverse masses--and where the decisions of a single fact finder govern the nature and quality of the interaction between children and their caregivers.

In the UCCJEA, the following eight factors list how courts decide jurisdiction on which home state is best suited for a child in custody determinations and how it protects the safety of the child. The eight factors in the UCCJEA are (a) whether domestic violence has occurred and is likely to continue in the future and which state

could best protect the parties and the child; (b) the length of time the child has resided outside the current state; (c) the distance between the court in the current state and the court in the state that would assume jurisdiction; (d) the relative financial circumstances of the parties; (e) any agreement of the parties as to which state should assume jurisdiction; (f) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; (g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (h) the familiarity of the court of each state with the facts and issues in the pending litigation. (National Conference of Commissioners on Uniform State Laws & Spector, 1998). Although the list of factors includes the testimony of the child, the outside factor of the weight of the child's voice was not determined in custody rulings. In my research, the findings led toward judge case-by-case decision-making arrangements for custody family court final outcomes based on the case rulings. In addition, the wishes of the child's parent and the relationship of the child with each parent are not taken into consideration unless supporting documents provide proof of a healthy and stable environment based on the court rulings. This implicates further research needed on how current factors are measured by judges in decision making expertise. In custody cases the judges are presumed to consider the ability of each parent to provide adequate food, clothing, shelter, medical care, and a safe environment. The assumptions are outside factors that revealed a gap in the literature as it relates to how judges interpret the law and how they use their own court supporting documents or forms to adhere to the state laws. I explored if the UCCJEA was used by judges in court and if it was followed through to

make their decision-making determinations, and whether the cases in court rulings have a different outcome, specifically in a family district circuit county court state of Maryland. My research study adds to the literature as a focus on whether states, specifically, the state of Maryland and one of the district circuit county courts conforms to the UCCJEA. It creates an opportunity for further research for all the other remaining states district circuit county courts in the United States of America to be explored.

In this chapter, the theoretical framework for researching this topic will be introduced which is the Political learning theory also known as the policy learning theory, wherein Heclo (1974) argued that people learn in ways of understanding their problem and what to do about them. Learning occurs at the individual, organizational and societal levels. Helco (1974) argued that policymaking is both embedded in the past and subject to continual challenge and adaptation. Heclo (1974) argued that human beings are endowed with reason and imagination, and are irreducibly developmental, as well as politics. Therefore, policies and institutions that are created by humans are developed by past experiences. Those past experiences shape what we learn in politics. (Heclo,1974). My research provided and developed a better understanding of other implementation studies that used policy learning for lessons learned. I conducted a thematic analysis, which identified similar reoccurring themes in other cases. Specifically, the analysis assisted to identify if court dynamics are present on whether family district circuit county court judges adhere and conform to laws that are implemented. My research provided insight and may assist policy makers on learning more about how judges interpret the law, and how judges implement an act and apply their protocols in the court. Informing

the public society on a unique perspective allows to see how policies are implemented, as well as how future policies are developed when applying to current times.

### **Literature Search Strategy**

To complete a comprehensive review of the literature, academic databases (The Walden University Library, Google Scholar, ProQuest, LexisNexis databases) were used to retrieve relevant peer-reviewed articles that were published between 2016 and 2021. To obtain these articles, as well as others, I searched the following keywords: *Best Interest of the Child AND Judge, Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Child Custody Jurisdiction Act AND Custody, Judge Decision Making AND Divorce, Family Court AND OR District Court AND Maryland, Full Faith Credit, Parental Kidnapping Prevention Act, and Violence Against Women Act*. Other terms related to the review of the literature included *Policy Learning Theory, Policy Learning, Policy Transfer, and Social Learning*. The list of websites from Google Scholar include Maryland State Court Records, District Family Court Cases, Maryland Thurgood Marshall State Law Library, Clerk of the Circuit Court, Uniform Law Commission, Divorce Writer, Child Preference Custody Affects, National Center for State Courts, National Council of Juvenile and Family Court Judges, Guide for Court Personnel and Judges, National Conference of Commissioners on Uniform State Laws, Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Child Custody Jurisdiction and Enforcement Act: Guide for Court Personnel and Judges.

While conducting the search, the identified search terms were used in various combinations and articles were sorted by relevance and year of publication. After several

searches and even a cursory search of the UCCJEA, there was a determination that further information was not available.

The review of the literature also includes publications that are outside of the 5-year scope. Seminal works regarding the theoretical frameworks, as well as data for evidence of the development of UCCJEA public policies was required to further solidify the foundation for why the research question is important.

### **Theoretical Foundation**

In research that involves the examination of policy problems, the public policy approach of the policy learning theory can be used to investigate the issue of the protocols in place and what judges were doing with the application of law. According to Grin and Loeber (2007), the policy learning theory describes a foundation that proposes three suitable questions for the research: (a) What are the subjects of learning in an approach? (b) What are the objects of learning? and (c) What is learning supposed to contribute to? Policy making decisions are based on human judgment and what information is gathered to inform that problems exist.

Policy making or public policy in research is defined as what the government intends to do to accomplish objectives and goals (Anyebe, 2017). Researchers argued that this may make it seem that public policy can be more of decision rather than an implementation to society to conform to a governance (Anyebe, 2017). That is to say that mere declaration of intentions, wishes, principles, or expression of desires cannot be called public policy. Public policy should mean actual resource allocation presented by projects and programs designed to respond to perceived public problems and challenges

requiring government action for their solution (Anyebe, 2017). The statement focuses on what is being done instead of what is only proposed or intended, and it differentiates a policy from mere decision, which is essentially a choice among competing alternatives. Public policy, therefore, is policy developed and implemented by a government agency and officials, though nonstate actors and factors may influence its process (Anyebe, 2017.). In government or institutions there are patterns programmed by human behavior and policy making can be left with room for interpretations, biases, and human error. Policy making is a trial and error made by humans over time that is learning from experience or historical occurrences. Anyebe (2017) argued that institutions include legislatures, executives, and judiciary; and public policy is authoritatively formulated and executed by them. An institution is, in part, a set of regularized patterns of human behavior that persist over time and perform some significant social function. It is their differing patterns of behavior that usually distinguish courts from legislatures, from administrative agencies, and so on. These regularized patterns of behavior, which are usually called rules or structures, can affect decision-making and the content of public policy. Rules and structural arrangements are usually not neutral in their effects; rather, they tend to favor some interest in society over others and some policy results over others (Anyebe, 2017). Therefore, policy gaps can occur in public policy and policy making which is subjected to biases that provide the best recommended solutions. The recommendation then provides future implementation of a new and improved policy into society or as reform in law. The design and implementation of policies are constantly adapted in society which are created and learned from past experiences over time. In

these challenges and many others, learning from past mistakes represents a hope that better policies will develop in the future. (Moyson & Scholten et al., 2017).

### **Introduction to Policy Learning Theory**

The theoretical framework that was the basis for this study was the policy learning theory. Theories of policy learning are drawn from lessons learned to identify the gaps in law or in policy making by focusing on lessons learned and improvements. Recommendations are introduced to conduct better practices and protocols that can be used in society to promote positive change. Therefore, shared experiences shape processes of future policy formation, however biases still can appear in policy designs. According to the statute and case law, state trial jurisdictions developed a guide for judges to help with deciding what is in the best interest of a child (UCCJEA: Guide for Court Personnel and Judges, 2018). Determining a list of factors help structure judges and their decision making in family law rulings. The judges that follow these key principle factors apply the specific findings in the child's life to make determinations for what is best (UCCJEA: Guide for Court Personnel and Judges, 2018).

Domitrovich (2019) argued that in family courts the definition of the child's best interest describes long-term concerns and short-term concerns which include a child's physical and emotional well-being. Other factors in the research include the health, financial, educational, moral, cultural, and religious interests. Factors are also assessed by family dynamics; family interactions; environmental variables; the child's preferences; the child's physical, emotional, and psychological needs; and other relevant factors (Domitrovich, 2019). To conduct an evaluation of each child's situation these

factors assist judges in decision making for the outcome of the custody rulings.

Domitrovich (2019) specified on how the court judge conforms and applies the law and the factors to make decisions in the best interest of the child. In addition, further research provided how policy learning, and protocols are applied in family courts and how the lessons learned from the application the law, act, or policy can better enhance or improve for the future (Domitrovich, 2019)

Seawright and Gerring (2008) argued that lessons learning in policy learning and researching similar themes within case studies such as thematic analysis are key elements in research design. The research design is predominantly most different in nature because it is calibrated to look for similarities, in terms of types of learning and learning outcomes, across four very different inquiries (Seawright & Gerring, 2008). This aspect of the design enhances the article's findings in terms of different types of learning because they emerge from shared themes generated across difference. A second reason for the case selection was that after these inquiries reported and their reform processes concluded, similar crises arrived to test those reforms. Each case allows one to identify the type of policy learning but also see what effect the learned lessons had after implantation. This dimension of the cases allows one to address the more fundamental question of whether inquiry learning can help avoid failure (Seawright & Gerring, 2008).

### **Supported Decision Making**

Judge decision making impact the rulings based on their case-by-case basis and highlights how difficult it is to control biases. Donohue (2020) argued that research

reflects biases found in people, or natural human society, who infer or make decisions based on their own prior beliefs, opinions, and attitudes. Therefore, hinders the rational thinking and impacts the evaluation of evidence or arguments presented in court determinations. Donohue (2020) argued that the perception of judges and fact-finding cases are based on judges' own notions or their own biases. Donohue (2020) argued that perspectives can divide outcomes, and that politics is the systematic organization of human empathy. Heclo (1974) argued that it is important that court judges rely on information that is presented to them to make informed decisions (Hecl, 1974). Donohue (2020) argued that research reflects what the judges observe when presented in court and describes how the psychological principles provided by counseling professionals inform and mitigate efforts of decisions from judges resulting in damaging their subconscious biases. I discovered that it is important to review the specific protocols that are in place used in the court and whether judges apply the factors in the UCCJEA and any other factors for their rulings. Based on my research findings, I recommend court judges to conform to a more structured base approach or court reform of a list of criteria for litigation strategies in ruling outcomes, instead of using their own perspective. Judges must determine key factors that fall within the list of criteria of the law.

My research findings determined that decisions were supported by facts and not by emotions. Of the many outside factors that were used in family court case documents, judges considered what was in the best in the interest of the child in custody proceedings using facts presented. In my research findings, I was able to discover examples of cases which have judges use fact-based reform protocols. In addition, my research explored

cases with all the several types of judge decision-based approaches within the courts.

Exploring how judges used other factors to base their decisions in court rulings provided a lesson learned on supported decision making for future policy implementations.

In one case study, judges were able to determine and depend on custody investigators or other professionals in their areas of expertise, when selected by the parties, or by referring to the court proceeding reports. My research findings showed that over time when involving children in family hearings that the situations encountered becomes an emotional environment, and that judges must confront reality-based approach on making impartial decisions. Greenstein (2019) argued that research demonstrates an increase in pro se litigants, the development of therapeutic courts, and an expanding caseload, and where judges preside over matters that are not merely "opposing" sides. Where there is no clear legal issues and articulated opposing views, judges must navigate the ethics around their proper role in the proceeding. Furthermore, matters involving children pose some special issues. Greenstein (2019) argued that the evaluation was based on facts presented and were not driven by their own emotions or feelings. However, Greenstein (2019) argued that judges must consider the sensitivity and must be able to provide direction or authority in his or her own style that can be fair and impartial. Greenstein (2019) further argued that findings led to observe how judges must either be disciplined on using a list of factors or rely on case-by-case basis using their own expression and biases. As well as judges have labeled parents in custody cases as immoral and expressed anger and condescension in custody rulings. Judges were in this situation driven by their emotions. Findings led to inconsistency of emotional

representation in their own self-determinations (Greenstein, 2019). I found that this research is important to societal change because it allows to see all the several types of judge personal decisions based on their approach within the courts. I specifically narrowed in and focused more on how judges used other factors to base their decisions in court rulings. Supported by the research in future societal change, I discovered that judges could provide findings on using fact-based reform protocols by unifying and conforming to the Uniform Child Custody Jurisdiction and Enforcement Act.

Most common factors identified are measured by a set of criteria. For example, the wishes of the child's parent; the relationship of the child with each parent; the ability of each parent to provide adequate food, clothing, shelter, medical care and a safe environment, and many others. The general concern for the protocols in place varies from state to state, which in this research findings, I discovered that the state of Maryland did not conform to the Uniform Child Custody Jurisdiction and Enforcement Act. My research aligns to decision making laws on the best interest of the child to explore ways to create possible new standing norms or protocols in custody rulings. For all the factors that were presented in society, I found that judges could be recommended by other professional expertise to do their best to follow key factors in their current protocol procedures in place and apply it in court.

While conducting my review of the research, I found a similar research study that explained the importance of conforming to an act. In this specific research, the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act was used. It provided a way to introduce how judges are to apply a less restrictive alternative by using

other options to assist in self-determination making decisions. In this case, other options would be the same as the use of outside factors. The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act was introduced to protect persons with a disability. The research explored newly emerging practices of supported decision-making as an alternative to guardianship (the what), compares it within existing guardianship law (the why), and describes how some judges have taken the lead in promoting supported decision-making in their jurisdictions (the how). The research provided awareness that there was proof of a credible support system when it comes to decision-making. Glen (2019) argued that courts should demonstrate a support in place for the subject of the proceeding, which are persons with disability and have guardianship. In the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act language it explained that judges should reform to apply a less restrictive alternative focusing on the limit of the use of guardianship. The need to take the act for supported decision making was made a priority in the court system and allowed the judges to conform to enhance change or better process improvements (Glen, 2019). The type of support identified included the gathering of information and the explanation of information in a more simplified language. The consideration of the consequences of the decisions were weighed by pros and cons. The communication of these decisions to third parties assisted the person with whom to implement the decisions in the courts. The results met with a need for judges, court staff, and lawyers to learn more about supported decision-making to effectively promote informational change in the way supported decision-making provided. In my research, I

found that an act implemented can make a societal impact with change and how an act introduced can provide uniformity and conformity in judge's decision-making protocols. Judges could formalize a process to conform based on supported decision-making in the courts. The next section discusses custody determinations and how it is based on judges own interpretations and application of the law.

### **Custody Determinations**

Laws and policies are developed to be implemented based on law decision makers and in keeping up with societal change. There are examples of research explored among states that can provided lessons learned to another state regarding custody determinations. Research argued that state childcare parentage laws, that is, laws designating parents for custody, visitation, parental responsibility allocation, parental decision making and/or support purposes, have evolved dramatically in the past half century (Parness, 2021). For example, the State of Illinois legislators considered the need to recognize new childcare parent over the objections of an existing legal parent or existing legal parents. This created possible new standing norms or protocols in custody rulings. This was a new policy implementation that led judges to be placed in an inconvenient situation when making decision determinations.

For all the factors that are presented in society, I found in my research, a recommendation that can be made for judges to follow key factors in their current protocol procedures in place and applied in court. Karmely (2016) explains that most common factors identified measured by a set of criteria. Karmely (2016) argued that judges in family court judges would prioritize the key factors on what they thought was

best on the welfare of the child over any other arguable compelling factor, such as the rights of either parent to have custody. The research shows the perspective of how judges make their own inferences and determinations. Indeed, many legislators throughout the country are considering new laws that would mandate a presumption for shared custody. However, recent social science research, legal scholarship, and judicial decisions suggest that shared parenting may not always be in a child's best interests (Karmely, 2016). The research provided three recommendations that states should change or consider revising and can be applied as recommendations for my research results. The first is changing the language terminology, examples provided are the words visitation and custody which assist in keeping up with current times as family dynamics and relationship changes to reduce parenting issues. Second recommendation was a structured approach on codifying factors that can be used to determine the best interest of a child, and therefore allow judges to follow more strict guidelines when making decisions in custody rulings. Third, develop a screening tool that consist of a list of criteria which includes characteristics needed to maintain a joint custody relationship between parents. Knowing the types of tools utilized in courts and the resources would assist in possible identification of factors to make a successful outcome. A joint custody criteria list would serve as assistance to parents in determining if co-parenting is achievable given the circumstances. Parents may not necessarily understand what is needed for such arrangements or a set list of criteria that could help in all custody determinations. The research would assist in identifying current practices and improvements needed to standardize protocols on key factors that align with factual based evidence. According to

the UCCJEA providing protection in the child's best interest is the focus of uniformity and conformity in judge's decision making protocols. Parents may not necessarily understand what is needed for such an arrangement, and a checklist or a better set list of criteria could help in that discussion.

With regards to court dynamics, protocols used in courts were not made publicly aware and judges relied on other professionals. In most cases, courts appoint mental-health experts like psychologists, psychiatrists, or social workers (Nathan, 2015). Judges rely on professional evaluators and often disregard or fail to include the tests conducted and end up providing their own biases. Future research can inform the public to rely on professionals in court rulings specifically in the state of Maryland.

Further research can be conducted similarly and applied among other states. For example, research in another state, such as the state of Illinois used the Illinois Marriage and Dissolution of Marriage Act (IMDMA). The IMDMA is an act that strengthens the integrity of marriage and safeguards family relationships, promotes settlement of disputes, mitigates potential harm to spouses and their children, and crucially secures the maximum possible involvement of both parents regarding their children's well-being. The language of the statute gives Illinois courts the discretion to appoint an evaluator to help determine the outcome of custody decisions. While the statute effectively grants this authority to the courts, there are virtually no guidelines that set forth who the evaluator can be, what qualifications he or she must have, how the evaluators should conduct their evaluations, and what, if any, methods should be employed in the evaluation (Nathan, 2015). Nathan (2015) argues that judges look toward expert opinions, and their decision

is influenced or skewed on determining the outcome of the custody decision. Nathan (2015) further argued that influence is directed by the results of faulty psychological and instrument testing results. In the end, the judge has the option to choose if they want an evaluator assisting in deciding custody disputes, which in turn determines what is in the child best interest. The research found that the courts must consider the best interest of a child by utilizing many distinct factors of reviewing the circumstantial evidence to ensure the children's welfare and best interests are protected (Nathan, 2015).

According Nathan (2015) the best interest standard for courts are recommended to be applied during custody decisions to consider the future of the child's well-being. The factors that were reviewed are the attitudes or demeanor of the parent; the capacities on how the parents handle their life situation; the foundation of the type of person each parent is, and how the child is like. Nathan (2015) argued that using the standard goals that courts still have, have faced many challenges applying it, however it is their priority in considering the best interest of the child (Nathan, 2015). This research helped to look further into the application of the UCCJEA and how judges apply the protocols on determining the best interest of a child. Reviewing the key factors assisted to identify what is included on the current set criteria, and if there was one that judges follow outside of the law.

My research assisted in identifying if such protocols were applied and taken into consideration the best interest of the child. I was able to identify common patterns when using current protocols in custody trial cases. A future recommendation for judges is a

possibility to work on a better way to limit the consequences that are developed from custody court rulings.

In the next section the research explains what the best interest of the child means in custody determinations and how it provides truth to the validity of decision making by judges to be able to trust that the best interest of the child is being considered.

### **The Best Interest of the Child**

What is the best interest of the child? It is the standard in courts as a judge or professional individual that provide an appropriate recommendation based on evidence during custody decisions to consider the future of the child's well-being. Throughout the research the term *best interest* is one of the outside gap factors. The term is not elaborately defined on what in fact is best or advocated for regarding the child in a custody ruling. The UCCJEA was reviewed on what reforms and alignments were best used in cases by judges to determine protocols in place.

The UCCJEA was required to be thoroughly explored in its entirety to ensure the law was applied and taken into consideration in current courts. I identified key factors of what was included on the set list in the act and if judges were following within or outside of the law. In my research findings, there were outside factors in the current practices similarly used in the court protocols and in the current court policy.

In support of the literature, my research explored that other states developed their own custody statues or policy protocols. For example, one state required custody evaluators, guardians, and child representative to use screening and training on how to determine if domestic violence was present in cases. The research recommends courts

and family law professionals to be concerned with making distinctions on situations regarding domestic violence and the strong abuse presented in custody child court cases. Stark and Choplin (2019) argued that there is a need for training to assist the professionals to make the best decision for the best interest of the child. The researchers declared eleven states to require a waiver to have evaluators, guardians, and child representative receive training on screening for domestic violence (Stark & Choplin et al., 2019). Results met with gaps in the law in requiring for screening and training contribute to poor custody decision-making by judges to factor the best interest of the child. Reviewing state custody laws in the United States that assess court judges and professionals in domestic violence child custody cases was important to know what best practices are being made regarding the child's best interest.

Stark and Choplin (2019) report a fifty-state review of custody related laws (laws determining which parent makes major decisions relating to the child, who is allocated primary parenting time, and whether protective restrictions shall be placed on the parenting time of a parent who has engaged in domestic violence). The review found serious gaps between what evidence based best practices suggest, and what is currently required by law in many states. These gaps in the law included the failure of the law to require domestic violence screening and training for judges and other family law professionals and contributed to poor custody decision making by them that compromises the safety and welfare of domestic violence survivors and their children (Stark & Choplin et al., 2019). Judges must direct more attention, resources, training, and become more

experts to ensure decision making in custody rulings provide a societal safety net (Stark & Choplin et al., 2019).

Adapting and applying laws have many strengths and weaknesses specifically on human biases and fact base evidence presented in custody courts. In my research, I found that providing recommendations to the court judges may assist and continue to provide insight on learning policies and how policy may be applied in society as social adaptation. The factors in my research findings revealed a clear gap in the literature as it relates to the weight of the child's voice in custody arrangements; how it is measured by judges in decision making expertise; wishes of the child's parent; the relationship of the child with each parent; the ability of each parent to provide adequate food, clothing, shelter, medical care and a safe environment, and many others.

The best interest of a child in state custody laws in the United States assess judges and professionals in domestic violence child custody cases and what best decision-making practices are being made regarding the child's well-being. My research recommends courts and family law professionals to be concerned with making distinctions on situations regarding domestic violence and the strong abuse presented in custody child court cases. I sought to explore if other states developed their own custody statutes or policy protocols. I found that it was important to ensure if in fact the law was applied, and key factors are reviewed in court rulings.

The American Bar Association Center on Children and the Law, established in 1978, published a Handbook on Questioning Children. Walker (1994) provided helpful guidance in questioning child witnesses and things to look out for in answers by child

witnesses (Walker, 1994). Walker (1994) suggests 10 ways in which judges can speak with children so that they will understand and be understood, and what to do when judges suspect a child may not understand a question that is being asked. Although the focus here is on judges, these same tips may apply, in varying degrees, to attorneys asking children questions in court (Thumma & Braddock, 2019). The research provided how to assist judges in making decisions, specifically when they are basing their decisions in custody trials. The communication language between the parents differs from the child. Thumma and Braddock (2019) argued that children learn more from observation, and they communicate more on emotions. The communication gap was found to be a judge's failure to question the child in court appropriately, and the use of simple language should have been used to provide clarity of what is being asked. It is important that judges apply this objective to ensure questions are restructured at the child level to help determine outcomes in custody rulings. The research is to ensure 10 of the tips is applied in court (a) use of simple words, (b) use of simple syntax, (c) use positive, active language, (d) limit questions to one main idea, (e) think literally, (f) be specific and avoid pronouns, (g) frame questions, (h) be direct, (i) avoid suggestive questions, and (j) ask follow-up questions. These 10 tips can assist judges to seek more validity in the truth-seeking process, and judges that have children as their witnesses will need to incorporate the equivalent way a subject matter expert would apply in their procedure or protocols. Applying the set of criteria on how to speak to children will help bridge the communication gap in court. It leaves room for questioning if there are additional protocols used and if it is provided to the public as awareness. Judges reviewing the key

factors of the best interest of a child is important to know especially on how they address their questions, evidence, and evidentiary supporting documents in custody court rulings.

As time continues to evolve, research provided awareness to those in current times of how social media plays a part in decision making for custody rulings. Further research would be needed on the application of the UCCJEA and if using social media content platforms would create a challenge for judges on making structured decisions.

Social media evidence presents issues when the statements made by a child or parent on his or her personal social networking account are used to prove the truth of the statement. Any relevant and authenticated information posted by the opposing party on social media is admissible, despite an objection, when offered against that party, as a statement by a party opponent. But this exception does not apply to a child's social media posts. Because children are not parties in family court, they are not a party opponent, and their social media posts would not be admissible as a statement by a party opponent. So how can the court properly receive this evidence? (Marquis & Rodriguez-Zaman, 2019). The evidence presented to the judges in court from social media outlets make it more challenging in cases that require the best interest of children. The falsification that many media outlets allow to create offer challenges for all courts, and therefore the standards to admit social media content vary from state to state.

The outcome of this research is mostly due to many possibilities in the evidence providing false truths. In the courts, social media platform content is admissible for judges to decide on a case-by-case basis. In addition, further allowable statements made in court for either party are used to provide proof of relevancy to the matter. However,

the exception does not apply to the child's actual social media platform, because children are not considered a party in family court. This research is important regarding the necessary reason to have protocols in place that would measure and consider how judges can apply discretion for custody court cases.

The research study explored if judges conform to the UCCJEA and if they use any outside factors to help shape their decision making during custody rulings. My research findings add to my field and contributes to positive social change to identify if biases appear in rulings or in policy designs when a law or act is introduced or implemented. In addition, my research allows for more opportunity to conduct similar research in other state or district circuit county courts in the United States of America.

In conclusion, my research findings assist with promoting societal change in processes used by state courts for future policy formation. In policy learning or lessons learned outcomes, it is important to note that in many custody cases judges must take into consideration their top priority, which is to ensure and preserve the child's best interest, however further exploration of my research will assist to provide the public with a better understanding why in the initial UCCJA, the best interest language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that best interest considerations should override jurisdictional determinations or provide an additional jurisdictional basis. The research explained that the UCCJEA eliminates the term best interest to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children (UCCJEA: Guide for

Court Personnel and Judges, 2018). Throughout the research the term best interest is an outside factor that assist in determining if the weight in the child's voice in custody court cases, and what is in fact best or advocated for the child in a judge decision making protocols. The term best interest has been updated by the factors presented in the UCCJEA. It is one of the many focus areas that was explored to address the gap in this research study, and how it is now currently being used and why was it eliminated from the UCCJEA.

The need for further research is recommended to assist judges to shape their protocols to apply a better interpretation of policy designs or law, and to provide better practices in court to obtain better outcomes. In the next section, the research will inform how the UCCJEA was implemented, and provide a timeline on how each act was transitioned into the next act.

### **Literature Review Related to UCCJEA**

#### **UCCJEA Implementation Timeline**

1942-1958- Full Faith and Credit 28 U.S.C. § 1738B

1968- Uniform Child Custody Jurisdiction Act (UCCJA) Implemented.

1980- Parental Kidnapping Prevention Act (PKPA)

1984- 50 states adopt UCCJA.

1994- Violence Against Women Act (VAWA).

1997- The Uniform Child Custody Jurisdiction & (and) Enforcement Act

(UCCJEA) adopted in July by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

1998- UCCJEA Approved in February by the American Bar Association House of Delegates. The UCCJA is replaced by the UCCJEA. States can adopt.

### **Historical Overview of the UCCJEA**

The Full Faith Credit Clause is in the United States Constitution in the current implementing statute, 28 U.S.C. § 1738B which states “*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*” (Constitution of the United States, Article IV, Sec. 1: Full Faith and Credit Clause). In plain language, the Full Faith Credit Clause requires every State to respect the other State’s laws and institutions. This is the foundation for the implementation of the need for the Uniform Child Custody Jurisdiction Act.

The UCCJA was developed and implemented in 1968 to end custody jurisdiction battles between states; however, it was not applied uniformly across state courts. States implemented their own versions of the Act and have not applied it consistently, leaving much room for different interpretations. The UCCJA contained many issues, such as what state is declared as home state during custody trials; whether another state from which the other parent lives may have more personal jurisdiction over the state they currently reside in; and if a court can override or modify another court ruling. The term defined by 28 U.S. Code § 1738B- Full faith and credit for child support orders child’s home state as the state in which a child lived with a parent or a person acting as parent for

at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period. In addition, it is unclear whether the act applies to recognition of Indian tribal court custody orders. Therefore, to assist with more clarification on the matters the UCCJEA was drafted (Stoner & Orona, 2004).

The Parental Kidnapping Prevention Act (PKPA) was implemented in 1980 due to many jurisdiction issues in custody cases that were present and continued after the UCCJA was created. The research states that the PKPA introduced interstate child custody matters in clarifying three key factors: (1) to promote cooperation among the states in the enforcement of custody and visitation orders; (2) to discourage continuing interstate controversies and conflicts, and (3) to deter interstate abductions of children (Freed & Walker, 1988). PKPA incorporates the requirement that all states are to give full faith and credit to prior custody determinations rendered by another state. It also applies a federal Parent Locator Service (PLS) to help inform the location of the parents' whereabouts when the Parent violated the home state jurisdiction. This in turn provides provisions concerning parental kidnapping from state to state and international fleeing (Freed & Walker, 1988).

The Violence Against Women Act (VAWA) was implemented in 1994 which was intended to change attitudes toward domestic violence, foster awareness of domestic violence, improve services and provisions for victims, and revise the manner in which the criminal justice system responds to domestic violence and sex crimes (Sacco, 2018). The research

states that VAWA has been modified and reauthorized several times later which addresses more penalties in violations such as, stalking, better protection for abuse, and provisions for elderly and disabled women. Later throughout VAWA original intent, research states that the legislation provided enhanced penalties reauthorized by Congress for repeat stalking offenders; added additional protections for battered and/or trafficked foreign nationals; created programs for sexual assault victims and American Indian victims of domestic violence and related crimes; and created programs designed to improve the public health response to domestic violence (Sacco, 2018).

The UCCJEA was implemented in 1997, which is a uniform state law regarding jurisdiction in child custody cases, and the act describes the measures for the protection of children, and parental responsibility. The UCCJEA highlights a few amendments to the UCCJA, and it combines two federal statutes: (1) PKPA and (2) VAWA. In harmonizing the UCCJA and PKPA, much of what the UCCJEA does regarding initial modification, and emergency jurisdiction is to codify what has emerged as good practice under these statutes (Hoff, 1998). The research states that the UCCJEA introduces new uniform methods for expedited interstate enforcement of custody and visitation orders, with goals to protect victims of domestic violence who flee interstate with their children to safety (Hoff, 1998). What the UCCJEA does not cover is regarding adoption cases and tribal-state child custody jurisdiction but refers to the Uniform Adoption Act (UAA) from the initial UCCJA from 1994, and refers to the Indian Child Welfare Act, 25 U.S.C. 1901 et seq. to the extent that it is governed by the Indian Child Welfare Act. Application to Indian Tribes is the only uniformity across all United States because States

would have to treat the child from a tribe as if it were a State of the United States (National Conference of Commissioners on Uniform State Laws & Spector, 1998). The UCCJA is replaced by the UCCJEA. The UCCJEA was approved in February 1998 by the American Bar Association House of Delegates. The UCCJA is replaced by the UCCJEA, and States therein adopt and implement the UCCJEA to their state laws and provisions.

Chapter three will discuss the research design and methodology, data collection and trustworthiness of the study. The Appendix A- Case Analysis Guide is the instrument tool used to collect data, validated by the theorist for policy learning theory. The next section discusses the technical aspects of how the study was executed.

### Chapter 3: Research Method

The purpose of this qualitative study was to explore whether a district circuit county court in the state of Maryland lacked uniformity among state-to-state family courts when conforming to the UCCJEA. The study demonstrated implications within a case analysis with providing insight on how the judges were left to make decisions on child custody rulings. Through the lens of public policy Anderson (2003) defined policy as a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or a matter of concern. This statement focuses on what is done instead of what is only proposed or intended, and it differentiates a policy from mere decision, which is essentially a choice among competing alternatives. Anyebe (2017) argues that research can influence positive social change on how an act implemented in a uniform manner can make a societal impact. Public policy, therefore, is that policy developed and implemented by government agency and officials, though non-state actors and factors may influence its process (Anyebe, 2017). The research provides public awareness on uniformity and conformity in judge's decision-making protocols and whether the act that was introduced or implemented among state-to-state family courts was being conducted. In this chapter, I will discuss the research design and rationale, the role of the researcher, the methodology, and any issues of trustworthiness for this study.

#### **Research Design and Rationale**

The following research question guided my study: What factors are associated with judge decision-making protocols and the application of the Uniform Child Custody

Jurisdiction and Enforcement Act (UCCJEA) when making child custody decisions in the state of Maryland?

The nature of the study is a general qualitative design using secondary case analyses and a thematic analysis approach. Using a secondary case analysis review provided me with detailed inside information on court judges and their current protocols, interpretation, and values about the UCCJEA. In addition, I gained understanding on how judges take into consideration the well-being of children in custody cases to make custody determinations. The current protocols in the UCCJEA revealed that judges did not adopt or conformed to the UCCJEA basing it on the current act that is in place. Hoff (2001) argued that court judges across the United States have only applied their own interpretation of the law and have not fully adopted the UCCJEA. According to the ULC (2013), the research provides a much better relief for parents and children who suffer from interstate child-custody disputes. Elrod (2021) argued that the UCCJEA has been adopted in 49 states, except for Massachusetts, which still uses the UCCJA. The identification of reoccurring themes that arose during the case analysis and process had the capacity to uncover information about influence of the lack of uniformity among state-to-state family courts when judges were left to make decisions on child custody rulings. The secondary case analysis research method was appropriate to use because it allowed a review of public cases from family court cases in the district circuit county court of the state of Maryland. I identified a thematic approach from those cases with similar reoccurring themes and contexts to answer the research question. Braun and Clarke (2006) argued that thematic analysis is a useful method for examining the

perspectives of different research participants, highlighting similarities and differences, and generating unanticipated insights. If readers are not clear about how researchers analyzed their data or what assumptions informed their analysis, evaluating the trustworthiness of the research process is difficult (Nowell et al., 2017).

The primary data collection technique was a selection of 10 custody court cases in the family district court of the state of Maryland. These cases provided an insight for me to explore the gap in the literature as it relates to determining if judges are conforming to the UCCJEA. In reviewing the cases, I identified that there are many societal and key factors contributing to custody decision and arrangements. The in-depth review of cases was conducted by obtaining completed custody rulings that are made available to the public upon request from the family district circuit county court. According to Creswell and Poth (2016) conducting a review of the data by using an interpretive lens and then the procedures assist to study social or human problems using emerging themes and identifying any linkages to the theoretical framework.

The case studies or cases record files may be obtained from the Maryland family district court website database. The clerk administrator or clerk law librarian of the court maintains records of all matters filed in the district circuit county court. Most of these records are public documents and available for public review.

### **Role of the Researcher**

For this research, the role of the researcher was that of a case study reviewer. According to Creswell and Poth (2016), to study the problem, qualitative researchers use an emerging qualitative approach to inquiry, the collection of data in a natural setting

sensitive to the people and places under study, and data analysis that is both inductive and deductive and establishes patterns or themes. To begin a qualitative study, the researcher focuses on understanding a single concept or idea. In this research, I obtained a general understanding of what it means to be in the place of the professional judge. I was then able to incorporate the comparison or relating factors. Creswell and Poth (2016) argued that once the researcher understands the role of the subject, then the research can advance to using the method of secondary research. Secondary research involves analyzing, interpreting, or reviewing data to specify how it informs the current research. Creswell and Poth (2016) argued that all too often, qualitative researchers advance to the comparison or the relationship analysis without first understanding their core concept or idea.

For this study, I contacted the county clerk office by making a formal request via electronic mail (e-mail) on the Maryland family district court website to obtain family custody cases. The selection of 10 family custody cases and full detailed documents were requested for research purposes only. There exist no personal or professional relationships with any of the family district circuit county court, and they are unknown at this point in time.

As the researcher, I received the custody cases through an accessible computer required to research own document findings in the Maryland family district court database. Full case details were provided on which were already transcribed and written from the outcomes of each ruling. I reviewed the UCCJEA law in its entirety, as well as the key factors to which judges currently adhere to identify similarities or themes in each

case. The research provided results on identifying whether a judge conforms to the law by using the list of factors in the UCCJEA. This helped me set the criteria for reviewing if the protocols from the UCCJEA were in place for the state of Maryland.

As a result of this study, I identified if the application of the current law factors or other outside factors were applied when the judges are making their decision/rulings. There were many societal and key factors contributing to custody arrangements or court final outcomes. To avoid any bias or ethical issues due to professional expertise all research cases and findings are secured, and password protected in a file. Regardless of preconceived notions, there was no manipulation of data and the reporting of findings. The selection of the custody cases was as is when received. As some sensitive topics arose during data collection, I as the researcher ensured data was protected and that the study contains the highest level of integrity.

## **Methodology**

### **Case Analysis and Data Collection**

The IRB approval number is 02-14-22-0246945. In this qualitative study I reviewed 10 custody cases from a family district circuit county court in the state of Maryland. To obtain the cases, I first had to contact the district circuit county court clerk by way of e-mail. Once I had contacted the clerk law librarian, they were able to assist me with the request to obtain family custody court cases from the database. Anyone can access court records that are publicly available in the database for family law cases. At first search, I didn't have the case number or the defendant's name for the 10 custody cases that have been completed under a family district circuit county court custody ruling.

However, to obtain specific data for family custody court cases that were publicly available for my research study, I had to contact the Government Relations and Public Affairs office for more specific detailed information. As the researcher, I wanted to ensure the Government Relations and Public Affairs office provided me with data sets that I would need. This was to ensure I obtained the best selection of family custody cases. I specifically asked for recent/current time frame ranging from beginning of calendar year to end of calendar year for the current year. I narrowed the cases from local district circuit county court specifying the county of choice. The office provided me with a response as a customer service request from the outside public. In this situation, I relied on the employee to provide me with the 10 custody case numbers and the data sets based on what I requested. Once I obtained the 10 cases, I realized I wanted more in-depth full details. I was directed to go to the courthouse to retrieve the case files. I was successful in obtaining all the case files and paid a small fee for each printed page. I then reviewed each case individually and familiarize myself with each case.

The case study is based on real life experiences in a court hearing and ruling as described from (Yin, 2009). Yin (2009) argued that research involves the study of a case within a real-life, contemporary context or setting. Further defined by Creswell and Poth (2016), case study research is a qualitative approach in which the investigator explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information (e.g., observations, interviews, audiovisual material, and documents and reports), and reports a case description and case themes. Creswell and Poth (2016) argued

that in public policy a case study approach is familiar to social scientists as each area identifies the study in its own centralized focus.

### **Instrumentation**

Case studies may use different research tools to increase validity. I developed a case study document review instrumentation to capture data needed to answer the research question and follow the theoretical framework. The instrumentation example is enclosed in the Appendix A- Case Analysis Guide. For each case, I was provided with numerical number. Using the developed tool helped me list areas such as the case title, date, time, place, subject/s, summary, UCCJEA factors identified, supported decision, ruling results/determination, and the conclusion/thematic analysis was documented to achieve the findings. Each area was thoroughly reviewed and based on each specific case. At the end of each case, I was able to determine if the specific district circuit county court of the state of Maryland had judges conforming to the UCCJEA. In addition, I was able to know whether the judge used the current list of factors or took into consideration outside factors to make their custody rulings.

### **Data Analysis Plan**

When conducting the case analysis, I used the lens of exploration of thematic analysis in all the cases. I provided the identification of reoccurring of similar themes that arose during each case study. The full details of each case were thoroughly reviewed in its entirety. The cases were retrieved and selected from the Maryland district circuit county court database in February 2022. I, as the researcher, first contacted the Maryland district circuit county court law librarian using the website contact information. I,

requested assistance via email and was able to obtain 10 family custody court cases that have been completed, shown in Table 1.

I, as the researcher, was provided specific direction from the Maryland Family County Court Clerk and was guided to contact the family district court division office of Government Relations and Public Affairs for detailed information about how to obtain better data of family custody court cases. Relying on the direction of office of Government Relations and Public Affairs gave me a more detailed response, even though I was able to search using the public database on my own. In this situation, I wanted to be sure I was selecting the best field of search for my case selection. I provided the Government Relations and Public Affairs office with data sets that I needed to conduct my research. Typically for data requests, the office would need the time frame, fiscal/calendar year, jurisdiction (local or statewide) data, and if data fields are known, such as name, case number, disposition, charges, etc. Also, the request for some data depended on what was or is being asked. I specifically asked for recent/current time frame ranging from beginning of calendar year to end of calendar year for the current year. I narrowed the cases from local district circuit county court specifying the county of choice. I was able to use the public database to retrieve the case number and data fields to do specific search options. I was not able to look up the defendant's name in the database because I did not know or have any relation with the subjects. Once I obtained 10 cases with the case number, as shown in Table 1, I was able to go to physically go to the district circuit county courthouse to obtain the case documents. I found that going in person to pick up the documents as opposed to receiving the files via email as an option

may have provided a better security of receiving all the case files I needed. Given the COVID-19 pandemic environment, this was a transactional pick up of court files and it was quick, rather than sitting in a court setting using an observational study. This secondary data was more of a peace of mind knowing that I was able to obtain all the cases printed directly from the court with full details. I did have to pay a small charge for each page printed. I then reviewed each case individually along with all the supporting documents/forms and familiarized myself with each case.

### **Trustworthiness**

Qualitative research provides more focus on trustworthiness on whether the findings of the study itself is credible, transferrable, dependable, and reliable (Korstjens & Moser, 2018). This research provided the role of the researcher to collect data that is intended to build integrity into the research process. The overall UCCJEA is the current law in place, contained with a set list of criteria or key factors that judges must adhere to. The UCCJEA is a policy implementation that in general is currently used by the state court judges to assist in determining the outcome in custody rulings. Of these factors' judges make decisions to protect the child, and to determine jurisdiction for which home state is best suited for a child (Hoff, 2001).

### **Credibility**

Credibility (or internal validity) of a study is the notion that the results are realistic and are accurate depictions of the participants (Korstjens & Moser, 2018). The use of a thorough review of a recently filed cases provided from the law county clerk's database is the validation for researcher that ensured that this qualitative research is

indeed credible. A confirmation of credibility was realized once saturation was reached through the selection of 10 custody cases and the identification of reoccurring similar themes were consistently being presented while analyzing the cases.

### **Transferability**

Transferability (or external validity) refers to whether the study may be duplicated. To ensure that this qualitative study is transferrable, the description of the study does open doors of opportunity to conduct the same research at other district circuit county courts in other states. The United States has 50 states, and this research explored one district circuit county court in state of Maryland. There is an unlimited amount of further research to be continued with this study. This entire study can be duplicated and applied to another state. This study informs the reader can be replicated in their state or any other state of their choosing.

### **Dependability**

Dependability refers to whether results are derived using accepted and standard methods for data collection to produce results that can be trusted. For this qualitative case study, each requested case was based on the use of secondary data information already filed and attained. This information was provided from a district circuit county court database, with an extension of help from the county clerk professional that works for the court.

### **Confirmability**

Confirmability is the concept of the accurate interpretation of data. For this qualitative study, after data was provided in the format transcribed, I as the researcher

had the opportunity to review the full details of each case file for accuracy. The review assisted to answer any clarifying questions using the case instrument tool as a guide, Appendix A - Case Analysis Guide. I, as the researcher, reviewed and addressed the explanations in a professionally written response which is the appropriate method for ensuring confirmability in a qualitative study.

### **Summary**

The purpose of this qualitative study was to gain insight to whether the lack of uniformity among state-to-state family courts when judges are left to make decisions on child custody rulings and whether the state of Maryland and its district circuit county court, conform to the UCCJEA. Whether the court judge includes the UCCJEA and applies that current law in their decision-making process. Whether the judge conducted and applied the law was unknown to the public, and it is was only made aware to those involved in the trial hearings receiving the outcome. However, the research assisted in identifying if such protocols are applied and taken into consideration the best interest of the child. It also informs the public on what is currently being done in courts. A recommendation is suggested that judges can work on a better way to limit the consequences that are developed from custody court rulings. Policies should focus on helping to create a societal change as time moves forward, which will develop positive outcomes for a continued structured development. It is important on how law is enacted and the impact of implementing these law shapes the future.

Another recommendation that judges may direct more attention, resources, training, and become more experts to ensure decision making in custody rulings provide a

societal safety net. Adapting and applying laws has many strengths and weaknesses specifically on human biases and fact base evidence presented in custody courts. Judges could continue to learn policies and how to apply it in society as social adaptation. My research assists in identifying common patterns when using current protocols in custody trial cases, in which helps to provide truth to the validity of decision making, and to be able to trust that the best interest of the child is being considered.

My research could assist to promote societal change in processes used by state courts for future policy formation. By providing a qualitative approach of a case study, judges are now able to gain more information on the impact their protocols have on their society. The study has the potential to contribute to the gap in the literature regarding the influence that the lack of uniformity and implementation of policymaking activities in courts in the state of Maryland.

Further research may assist judges to shape their protocols to apply a better interpretation of policy designs or law, and to provide better practices in court to obtain better outcomes. In the policy learning theory or lessons learned outcomes, it is important to note that in many custody cases judges take into consideration their top priority, which is to ensure and preserve the child's best interest. However, further exploration of the research assists to provide the public with a better understanding why in the initial UCCJA, the best interest language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody disputes. The research explains that the UCCJEA eliminates the term best interest to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and

visitation of children. Throughout the research the term *best interest* is one of the outside gap factors. The term is not elaborately defined on what in fact is best or advocated for regarding the child in a custody ruling. The term best interest has been updated in its definition using the UCCJEA. It is one of the many focus areas explored referring to the gap in this research study how it is now currently being used and why was it eliminated from the UCCJEA.

Chapters four and five of the study will discuss the actual results of the case study analysis from the family district circuit county court of the state of Maryland. The findings and/or results determine if and how the UCCJEA is being implemented, adopted, or adhered to by the court judges. To conclude, there will be a discussion on the interpretation of the findings of the study, the limitations that were experienced, along with recommendations for future research and the implications of the study on the potential impact for positive social change and policy making. Using the policy learning theoretical framework in this study has implications for policymaking in areas wherein the choices of judges have the capacity to affect an entire community.

## Chapter 4: Results

Data collection for this research provided results of family custody cases from one district circuit county courts in the state of Maryland. I conducted a structured in-depth review of each case through the lens of exploration using a thematic analysis approach. Results identified reoccurring themes that arose during each case and across cases. Research results contribute to the body of knowledge needed to address the problem of a lack of uniformity amongst state family courts when judges consider the best interest of the child when making custody determinations. Although the UCCJEA exists, courts vary from state to state, and judges consider a child's preference on a case-by-case basis (UCL, 2013). I found no existing research on how judges conform to the UCCJEA in the state of Maryland, and it is not made aware to the public. By exploring the current factors from the UCCJEA and any outside factors it was identified in this research that judges continue to make judicial custody decisions on a case-by-case basis. The selection of 10 custody cases provided the response to the research question and addressed the gap found in the literature and in practice.

The purpose of this study was to provide insight on how court judges currently interpret the UCCJEA, and the current measures taken into consideration when making judicial custody decisions. I explored whether judges conform to the UCCJEA, if they applied their own interpretation of the law, and whether they have or have not fully adopted the UCCJEA. I also explored if judges used any outside factors to help shape their decision making during custody rulings. By revealing deeper understanding of outside factors, the research results identified: (a) how the weight of a child's voice is

measured by judges in decision making expertise and if in fact it was present, (b) the wishes of the child's parent, (c) the relationship of the child with each parent, (d) the ability of each parent to provide adequate food, clothing, shelter, medical care, and a safe environment.

The following research question guided my study: What factors are associated with judge decision-making protocols and the application of the UCCJEA when making child custody decisions in the state of Maryland? In this chapter, I will discuss the setting of the study, the demographics, the selected cases, the reoccurring themes found within each case, how data was collected, data analysis, trustworthiness, and the results of the study.

### **Setting of the Study**

This research was conducted exclusively using secondary data retrieved from current cases within the Maryland family district circuit county court database and with assistance from the clerk law librarian. The clerk law librarian provides guidance and direction on where to obtain the cases when contacting them via telephone or emailing them on the Maryland district circuit county court website. The Maryland courts website provide information about court records and is available to anyone in the public to access court records in the database for review.

In this research study, my initial data collection desire was to have in-person observation at the district circuit county court; however, the risks associated with COVID-19 made data collection more difficult to do in person. The possibility of being in a public setting or the court environment would have led to a higher risk of

contamination and spread of the virus on any individual. However, an in-depth review of cases was a useful endeavor.

Since March 2020, COVID-19 has impacted and changed the daily lives of everyone. The COVID-19 pandemic has impacted the way students learn and researchers collect data. There was a pressing need to innovate and implement alternative educational and assessment strategies. The COVID-19 pandemic has provided an opportunity to pave the way for introducing digital learning (Dhawan, 2020). Therefore, I decided to conduct secondary case analysis with cases that had already occurred and reached a final disposition in the Maryland district circuit county court database.

The new virtual way of learning provided me, the researcher, with the ability to physically search and obtain court documents that provided detailed information necessary to use to determine my findings. I was able to use the search criteria to specifically narrow my selection in the Maryland district circuit county court database. I used the fields of family custody law cases. I was able to obtain full details of the cases in writing and was able to identify what court forms were being used, as well as judges final court orders. The outcome of this study gave a more in-depth review of identifying key factors and identifying any outside societal factors that judges currently used as their protocols when making custody determinations. As the researcher, I conducted a thorough analysis of any outside factors being used in addition to the current list of UCCJEA factors. Outside factors, may have enhanced and further the need for judges to make better decisions in custody rulings to protect the safety of the child. This research provided me with more flexibility to reach the results on shared decision making

outcomes for judges on jurisdiction determinations on which home state is best suited for a child in custody rulings. The results of the research contribute to societal change for other researchers to conduct similar research or studies amongst any other states district circuit county courts.

### **Demographics**

This study included a selection of 10 family custody cases using a thematic analysis approach in reviewing secondary data from a family district circuit county court database in the state of Maryland. The subjects that were identified throughout the cases are commonly listed as the judge, the family magistrate, the parties such as the plaintiff and the defendant, custody investigators such as the sheriff, civil and legal counsel or law attorneys, and other professionals in their areas of expertise when selected referring to the court proceeding reports.

Typically for family custody court cases data requests required identifying the fields of search using the public case database such as

- The time frame, ranging from beginning of calendar year to end of calendar year for the current year (fiscal/calendar year)
- Jurisdiction (local or statewide) data
- Known data fields such as name, case number, disposition, charges
- District court county of choice.

The literature supports the case study by basing it on real life experiences in a court hearing and ruling as described from (Yin, 2009). Yin (2009) argued that research involves the study of a case within a real-life, contemporary context or setting. Further

defined by Creswell and Poth (2016), case study research is a qualitative approach in which the investigator explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information (e.g., observations, interviews, audiovisual material, and documents and reports), and reports a case description and case themes.

I focused on whether the district circuit county court state of Maryland is currently conforming to the UCCJEA. The research provided results on if judges rule outside of the list of the factors associated with the UCCJEA. The research determined if the application of the UCCJEA factors were in fact applied or implemented when the judges were making their decision/rulings. The term best interest was the one of the many focus areas to explore the gap in the research study, how it was being used, and why was best interest was eliminated from the UCCJEA.

**Table 1**

*Custody Cases from the Maryland District Circuit County Court Database*

Custody Cases				
Case Number	Case Type	File Date	Disposition	Disp. Date
CAD21-01226	Custody	1/22/2021	Final Order	11/17/2021
CAD21-01244	Custody	1/25/2021	Case Closed	9/18/2021
CAD21-01454	Custody	1/27/2021	Petition Dismissed	7/14/2021
CAD21-01458	Custody	1/28/2021	Case Closed	8/4/2021
CAD21-01572	Custody	2/3/2021	Case Closed	4/22/2021
CAD21-01588	Custody	2/4/2021	Final Order	4/19/2021
CAD21-01590	Custody	2/4/2021	Case Closed	3/1/2021
CAD21-04059	Custody	4/7/2021	Petition Dismissed	9/21/2021
CAD21-04539	Custody	4/16/2021	Final Order	10/14/2021
CAD21-05396	Custody	5/7/2021	Case Closed	7/22/2021

*Note:* The cases were retrieved and selected from the Maryland district circuit county

court database in February 2022

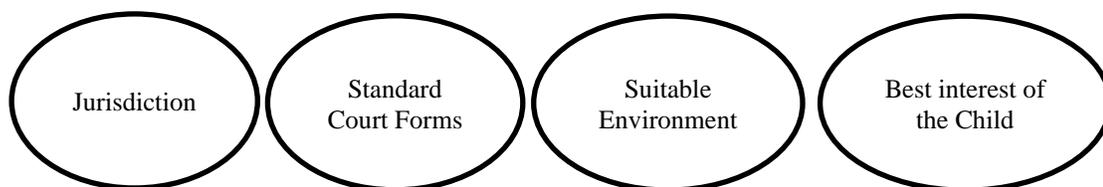
**Figure 1**

*Outside Factors*

<b>Supported Decision Making</b>	<b>Custody Determinations</b>	<b>The Best Interest of the Child</b>
Explains judges must be able to determine and depend on custody investigators or other professionals in their areas of expertise, or by referring to the court proceeding reports.	Explains court dynamics and how judges rely on professional evaluators and often disregard or fail to include the tests conducted and end up providing their own biases.	It is the standard in courts as a judge or professional individual that provides an appropriate recommendation based on evidence during custody decisions to consider the future of the child's well-being.

*Note:* Gathered information from multiple resources to determine outside factors:

Supported Decision Making (Glen, 2019); Custody Determinations (Nathan, 2015); The Best Interest of the Child (Domitrovich, 2019).

**Figure 2***Reoccurring Themes*

*Note:* Gathered information from multiple resources to determine reoccurring themes:

(UCCJEA: Guide for Court Personnel and Judges, 2018); (Maryland Code, Family Law

Article § 9-107); (Maryland Code, Family Law Article., § 5-203).

**Table 2***UCCJEA Factors Versus Maryland District Circuit County Court*

UCCJEA factors	Maryland District Circuit County Court
Temporary Emergency Jurisdiction and Judicial Communication	The <i>Complaint for Custody</i> form mentions if the minor child(ren) lived in the state of Maryland for at least six months. Therefore, the court can determine their right to exercise and hold a court custody trial in the state of Maryland or motion an order to dismiss.
Modifying an order	The <i>Order for Default</i> mentions that the Maryland court has jurisdiction to determine custody rulings under Maryland Rule 2-613 which is the precursor to a default judgment. While often viewed as a type of sanction, it is better understood merely as a procedural means of moving a case along where a party fails to respond to a pleading. Therefore, the court can determine their right to exercise and hold a court custody trial in the state of Maryland or motion an order to dismiss.
Initial Child Custody Jurisdiction	The <i>Complaint for Custody</i> form mentions if the minor child(ren) lived in the state of Maryland for at least six months. Therefore, the court can determine their right to exercise and hold a court custody trial in the state of Maryland or motion an order to dismiss.
Inconvenient Forum, By Reason of Conduct (“Unclean Hands”)	The court provided a " <i>Notification to parties of contemplated dismissal</i> " which states pursuant to Rule 2-507(b) any defendant who has not been served, or over whom the court has not otherwise acquired jurisdiction with 120 days from the issuance of original process directed to that defendant, may be dismissed without prejudice as a party, for lack of jurisdiction, 30 days after service of the notice, unless prior to that time a written motion showing good cause to defer the entry of the order of dismissal is filed.
Judicial Communication, Interstate Cooperation, Protection Orders, Information to Submit to the Court, Enforcement, International Order, Tribal Court Order	The court recognizes that courts should not decline or dismiss to exercise jurisdiction under the state of Maryland due to the parent seeking safety across jurisdictional lines to escape abuse or violence.

## **Data Collection**

### **Number of Cases**

This research included a selection of 10 family custody court cases for review from a family district circuit county court of Maryland, as shown in Table 1. I self-collected the data using the public family court database on the internet via the Maryland district county court website. However, I did request assistance from the Maryland district circuit county court clerk law librarian to ensure I was using the database the correct way. I wanted to ensure I was using the best data field options on the public database. The selected family custody cases all had a final disposition as either closed or dismissed. The cases ranged from initial filing dates from January 2021 through May 2021.

### **Location, Frequency, and Duration of Data Collection**

The UCCJEA is a state law that deals more on jurisdiction distinctions among states within the United States of America (National Council of Juvenile and Family Court Judges, 2018). The UCCJEA is currently based on a state level and is a policy that is implemented in state family courts (ULC, 2013). There are general concerns for what protocols are in place and how it varies from state to state. Going into the research study, I kept the focus on exploring the impact and the lack of uniformity among state-to-state family courts, and what were judges using to make decisions on child custody rulings. When conducting data collection, I reviewed the purpose of the UCCJEA and focus on the act itself when thoroughly reviewing each case. Revisiting the UCCJEA current factors helped me with the thematic analysis approach.

During the case analysis I addressed the following within each case:

- Summary
- If the UCCJEA current factors were clearly identified
- If supported decision was present
- The ruling results/conclusions
- The reoccurring themes identified, shown in Figure 2

The summary provided a synopsis of the entire case with the known issue/s and facts of the case presented. Using the current UCCJEA factors from the act itself assisted with addressing the research question within each case. During the research review of each case, I was able to identify outside factors as shown in Figure 1. I was able to identify if supported decisions were used, and if the court judge used the current protocols from the UCCJEA or any outside factors not mentioned in the UCCJEA to influence their decision making. For example, I examined if there were any professional expertise being solicited or appointed to further support the custody determination or if the judge used their own interpretations or biases in this case.

The ruling results/determinations were used to identify if the judges were taking into consideration the well-being of child/children best interests to make their custody determinations. I addressed whether the current protocols in the UCCJEA revealed that the judge adopted, adhered, or conformed to the UCCJEA. Lastly, the conclusion/thematic analysis, as shown in Figure 2, provided the identification of reoccurring themes that arose during the case study. For example, I addressed if the current judge protocol process had the capacity to uncover information about the

influence in the lack of uniformity among state-to-state family courts when judges were left to make decisions on child custody rulings.

### **How the Data was Recorded**

To conduct a thematic case analysis, I thoroughly reviewed each case and all its documents or court forms that were included in the court case file. Each case file ranged from 20-50 pages. Each case was recorded by providing a synopsis of the facts and details presented in the court proceedings. The findings were placed on an excel spreadsheet using the Appendix A- Case Analysis Guide tool guide for data collection. All the key points were addressed using the technique and methodology during data collection as mentioned in chapter 3. Each case was reviewed to determine if the UCCJEA was in fact being referred to or used, and if the current UCCJEA factors were identified. Each case was reviewed to determine if any supported decision was present. In addition, each case final order or disposition was recorded to capture the decision made by the court judge. Within each case, the final orders were reviewed based on the best interest of the child(ren) and any reoccurring themes presented, shown in Figure 2. Lastly, the final orders provided if an appropriate recommendation was made by the judge based on evidence given or presented during custody trial to consider the future of the child's well-being. The best interest of a child determined if the standard practice or protocol was upheld in the courts or if the judge was using a case-by-case basis approach.

### **Variations in Data Collection and Unusual Circumstances**

This study had no variations in data collection methodology and was performed as planned in Chapter 3. The same procedure of data collection was used for each case.

There were no unusual circumstances encountered during the process of data collection.

### **Data Analysis**

#### **Process for Identification of Themes**

After data was collected, I discovered the reoccurring themes in Figure 2, such as: the court implemented their own forms as their own protocols. The judges used the court forms to determine their rulings as supporting documents. In the court forms, I was able to identify similarities of the UCCJEA factors, however the actual UCCJEA was never referred to or referenced, and it was not clearly stated that the court was using the UCCJEA or adopting or conforming to the UCCJEA. In Table 2, the court may have adopted some terminology used from the UCCJEA and only mentioned similarities in their court forms. Table 2 lists the UCCJEA factors verses what was similarly mentioned in the Maryland district circuit county court forms. Further explanation of the UCCJEA factors listed and mentioned in the background section of Chapter 1.

(1) *Temporary Emergency Jurisdiction and Judicial Communication*, which explains that the judicial court can implement the act and have the protocols in place to exercise the court's authority on granting temporary emergency jurisdiction even when the court is not the home state (or the state with preferred jurisdiction) (UCCJEA, §204).

- (2) *Modifying an order* which explains that the court must consider keeping judicial communication by working with the responsible administrative office of the courts to modify existing forms to facilitate requests for temporary emergency jurisdiction (UCCJEA, §202).
- (3) *Initial Child Custody Jurisdiction* which explains that the UCCJEA sets forth four jurisdictional bases to help a court determine whether it has “initial child-custody jurisdiction” over a custody matter (in addition to temporary emergency jurisdiction) (UCCJEA, §201). *The four bases for initial child custody jurisdiction are:*
- a. (a) Home state, which is defined as, the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding (UCCJEA, §102(7)).
  - b. (b) *Significant connection*, which is defined as, a court may exercise significant connection jurisdiction only if there is no home state and two conditions are met: (1) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, must have “a significant connection with the state other than mere physical presence”; and (2) substantial evidence must be available in the state concerning the child’s “care, protection, training, and personal relationships.” (UCCJEA, §201(a)(2)).

- c. *(c) More appropriate forum*, explains that the court having jurisdiction under one of the four jurisdictional bases described may decline to exercise jurisdiction if the court finds that it is an inconvenient forum and a court in another state is a more appropriate forum (UCCJEA, §207).
- d. *(d) No other state or vacuum*, explains as the last resort. Vacuum jurisdiction is available when no state satisfies any of the three jurisdictional bases described. When a family has traveled from state to state with only brief stays in any one place, it may be necessary for a court to exercise this form of jurisdiction (UCCJEA, §201)

(4) *Inconvenient Forum, By Reason of Conduct (“Unclean Hands”)* which explains that a court must decline to exercise jurisdiction if a party has engaged in unjustifiable misconduct that resulted in the court’s jurisdiction over the case (UCCJEA, §208).

(5) *Judicial Communication, Interstate Cooperation, Protection Orders, Information to Submit to the Court, Enforcement, International Order, Tribal Court Order* which explains that the court must be able to recognize that international cases may involve the HCCH on the Civil Aspects of International Child Abduction as well as the UCCJEA. Further explained, the court must be able to recognize the reasons for declining to exercise jurisdiction on inconvenient forum grounds, such as, if the parties are in different states because of violence, it could be unsafe for the victim to return to the home state to litigate a custody case. In addition, due to separation violence, a victim may be at increased risk for physical violence or

homicide; forcing a return to a state where the abuser resides could be deadly. The court must be able to recognize that courts should not decline to exercise jurisdiction under the UCCJEA's "unjustifiable conduct" provision when the parent seeking jurisdiction fled across jurisdictional lines to escape abuse (UCCJEA, §201).

### **Emergent Themes**

The themes in Figure 2, reoccurred in each case confirm that judges make decisions on child custody rulings using jurisdiction, standard court forms, suitable environment, and the best interest of the child. Within the case analysis, it appears that judges only follow what is presented via the court documents, there is no determination on human emotions tied to their decisions. The judges are using their own interpretation on a case-by-case basis using the four reoccurring themes mentioned in Figure 2. The judges refer and use only the Maryland family law codes in all the court forms. There is no evidence of reference of using the UCCJEA. The court uses family law, which is defined as a branch of the legal field that deals with issues relating to familial relationships. These examples consist of divorce, child custody, and child support, etc. The main reoccurring theme identified before proceeding in any custody court trial is jurisdiction. Jurisdiction is the first factor to ensure the judges have the right to make any court orders prior to making determinations in their county circuit court. The court in this research adheres to jurisdiction on which home state is best suited for the best interest of the child.

When reviewing the cases, it was important to identify if judges rely on professional evaluators and determining if they often disregard or fail to include the tests or reporting from the professional experts conducted and end up providing their own biases (Nathan, 2015). The research revealed that court judges rely on what is being stated or written in the court forms and rely on outside factors such as professional input if the court forms request for professional input. When reviewing the custody cases, commonly, the plaintiff makes a formal request using the *Complaint for Custody* form. In this form there are options to request for a court-appointed expert; an initial conference with the court; a mediation by a court-sponsored settlement program; and others. In addition, there must be a selection made by the plaintiff to request for custody/visitation, mediation by a private mediator, for evaluation by a mental health professional, for an appointment of counsel to represent child; and a conference with the Court; and others.

The themes identified in data are based upon the frequency of their appearance in the case analysis, shown in Figure 2. Below is a list of reoccurring themes and their associated meanings as implied in this research.

- *UCCJEA Factors:*
  - *Jurisdiction:* mentioned in the UCCJEA is used or adopted but not referred to in the district circuit county court of Maryland, when the minor child(ren) has lived in the state of Maryland for at least six months.

- *Outside Factors:*
  - *Standard Court Forms:* Court forms that are approved by the court and are most used with each case (1) Motion and Affidavit for an emergency hearing; (2) Complaint for Custody which refers to the (Maryland Code, Family Law Art., § 5-203). (3) Civil Domestic Case Information Report.
  - *Suitable Environments:* When the parent that requests for custody of the child(ren) provides an adequate environment for the child(ren) such as financial stability, a home on which the parent/s pays for rent/mortgage and utilities, food, and household items, provides education, and any necessary requirements for the child in which the child needs.
  - *Best Interest of the Child:* When judges make the custody determinations, while keeping and protecting the best interest of the child. Rulings are determined based on the prior three outside factors mentioned; Jurisdiction; using and relying on the standard court forms (courts own protocol) and a suitable environment.

One major theme was identified on whether the current judge protocol process had the capacity to uncover information about the influence in the lack of uniformity among state-to-state family courts. I analyzed if judges were following the UCCJEA exactly how the factors were listed in the act. For example, a reoccurring theme identified in each case were that judges based their decision making on what was written on court

forms. Judges were left to make decisions on child custody rulings that were solely using their own interpretation. Another theme identified was, if the court judges relied on other professional input, such as custody investigators or courts appoint mental-health experts like psychologists, psychiatrists, or social workers. Identifying if judges rely on professional evaluators and determining if they often disregard or fail to include the tests or reporting from the professional experts conducted and end up providing their own biases (Nathan, 2015). The findings in the research informed the public to better understand if judges were relying on supported decisions with professionals in court rulings, specifically in the state of Maryland. Other similar themes were identified regarding court dynamics or the child's best interest and whether current judge's decision-making protocols were factoring in or taking the child's best interest into consideration. It was realized in the findings, that judges based their decisions on a case-by-case basis, whether they used the same or different protocols each time.

I, as the researcher, was able to identify if judges conformed to the UCCJEA to help shape processes of future policy formation or their protocols during custody rulings. My research adds to the field and contributes to positive social change to identify if biases still can appear in policy designs when a law or act is introduced/implemented. Data elements used to conduct this study was based on the UCCJEA as a uniformity law in custody and enforcement, which describes the respect of parental responsibility and measures for the protection of children. Data elements assisted to determine how judges conform to the UCCJEA in Maryland and how they determine custody rulings based on case-by-case basis. A review of the factors was conducted that contribute to custody

arrangements. My research identified if the application of the current law factors or other outside factors were applied when the judges are making their decision/rulings. My research assisted in identifying the key factors and protocols currently applied in the courts, and how it was conducted or measured by judges in decision making expertise and/or evaluations. Throughout the exploration of cases, the study assisted in identifying whether there are current measures along with a current list of criteria taking into consideration when making judicial custody decisions. Therefore, ultimately determining if judges were conforming to the UCCJEA and whether the protocols assist judges in their decision making when they use any outside factors. I, as the researcher, also determined if judges could benefit from a policy learning theory or lesson learned outcome that may be used for better practices in court. By adhering and conforming to UCCJEA, the implementation of better policy is a public policy learned improvement that can be made aware to court judges to assist them in better outcomes or rulings in court, and in return promote society awareness to implement change.

### **Case Final Disposition Examples**

In this research, to determine judge's decision-making protocols, I have provided a few examples of their final dispositions from the court proceedings. One final order of the court determined that the "court case was not an emergency, and that the complaint for custody should proceed the normal course." The judge reviewed the supporting standard court documents "that after three days from the date of court filing the plaintiff withdrew their complaint for custody request." Then the court judge "ordered that the

plaintiff motion was denied.” There was no mention of why and there was no follow up from the court on why the plaintiff withdrew.

On another final order of the court, the plaintiff filed and used the standard court form to request for "waiver of prepaid costs" due to being unemployed and under unemployment insurance benefits. This form assisted the court judge in knowing financial background and current information. The plaintiff provided a written statement on the court form that they provide rent and utilities, food, household items, and adequate or necessary requirements for the child in which the child needs. “The court order determined that the court case was not an emergency, and that the complaint for custody should proceed the normal course. The court grants the order regarding the request for waiver of prepaid costs due to the financial situation presented.” Within the standard court documents, on a Sheriff's return form, after a summons was issued, returned with multiple attempts to contact the defendant. The Sheriff returned written statement that multiple attempts were made by knocking on the door, called the number listed, and was unable to contact the defendant. The court judge provided a "notification to parties of contemplated dismissal" which states pursuant to Maryland rule 2-507(b), which defines any defendant who has not been served, or over whom the court has not otherwise acquired jurisdiction with 120 days from the issuance of original process directed to that defendant, may be dismissed without prejudice as a party, for lack of jurisdiction, 30 days after service of the notice, unless prior to that time a written motion showing good cause to defer the entry of the order of dismissal is filed. “The court's final disposition state that

the plaintiff's motion to reconsider is denied, and the motion to transfer the case to a different county was denied, and further decided that the case be closed."

On another court final order, "the court follows a Maryland Rule 2-504, in which proof of financial situation must be presented at the court, such as past three years of tax returns with all supporting documents including W2s, K-1s, and 1099s. (Schedule K-1 is an Internal Revenue Service (IRS) tax form issued annually for an investment in a partnership. The purpose of the Schedule K-1 is to report each partner's share of the partnership's earnings, losses, deductions, and credits. Schedule K-1 serves a similar purpose as Form 1099). The court requests on a standard court form, that the plaintiff requesting for custody must provide current year to date pay stubs, documents supporting all claimed work-related child-care expenses; documentation of costs of health insurance for the parties minor child(ren); financial statement per MD Rule 9-203; and all pension information. Court requests for the discovery/motion deadlines which the parties must provide identification of any expert witnesses, and any computer-generated evidence. A parenting plan is also requested, which must be submitted 10 days before the settlement conference. The court ordered that the parties shall attend both sessions of the parent education program sponsored by the National Family Resiliency Center, Inc. (NFRC) which they must pay a fee of \$70 per person. The court ordered a mediation to be further screened by the Mediation department. If found suitable, the court ordered that both parties must attend at least two sessions with the Parenting Mediator assigned by the court." The judge requested "further support from the Family Support Services which provided a screening recommendation, that the parents or both parties should attend a

parenting education seminar sponsored by the NFRC and recommended only child access mediation (which means both parties shall attend (2) two sessions with a Parenting Mediator assigned by the court). Final order made by the court granting joint legal custody and shared physical custody of the (1) minor child. When the minor becomes eligible to attend Pre-Kindergarten, both parties should select a school in the District of Columbia that offers a bilingual program, and that both parties should consult one another on all major decision involving the child. The order is closed.”

Lastly, on another final order, the jurisdiction under Maryland law is the first order of the court to make judicial determinations about the custody. “The court judge saw in the standard court documents that the plaintiff was in endangerment and/or violence was present in the case. The standard court documents that the plaintiff and the child live together for at least six months prior to filing the complaint. The plaintiff hasn't participated in any other litigation concerning the custody of the child in Maryland or in any other state. The court awards sole legal and physical custody of the minor child for the safety of the plaintiff and the child.”

### **Discrepant Cases**

This study revealed that there were indeed discrepancies, and truly were based on case-by-case basis. In some of the cases, the judges were quick to dismiss a case based on the first order of the court, which determined that the court case was not an emergency, and whether the complaint for custody should proceed the normal course. For example, one case resulted that after three days from the date of court filing the plaintiff withdrew their complaint for custody request. Then the court judge ordered that the plaintiff motion

was denied. There was no mention of why and there was no follow up from the court on why the plaintiff withdrew. As the researcher, one possibility of why the plaintiff withdrew is based on my assumption that the form wasn't filled out correctly or completely. It may have been due to the form's language being intimidating and overwhelming to the person filling out the forms. A recommendation for the future, using the policy learning theory for best practices and improvements would be revising the forms to make it clear and easier to understand. It would be good to appoint a court form advisor that the court provides to assist the public with filling out the forms. The language and interpretation of court forms can be intimidating. There seemed to be a normal judge protocol and no human tendency to have general concerns, it was impartial, and no follow up on the why the withdrawal was made. It was dismissed with no further action.

Another discrepancy discovered in some of the cases did not rely or use any supportive decision-making experts and the judges did not rely on these experts to base their decisions. There were inconsistencies and lack of uniformity on supportive decisions. In some of the cases the child's presence or weight of opinion or say in court was not present. There were no evidence or confirmation on truly determining a safe environment from a professional expertise (example; social worker). All written responses on the court orders were based on what the plaintiff stated and what the defendant stated on the court forms. All provided written responses were the only proof that judges referred to and what was written on the court documents. The Judges only adhered to the Maryland family law.

In some cases, there were supportive decisions, and judges issued court final orders based on the recommendations of court appointed a family mediator, or a family magistrate, or an interpreter, or on a sheriff's return of response from a writ of summons, etc.

### **Evidence of Trustworthiness**

#### **Trustworthiness**

Qualitative research provides more focus on trustworthiness on whether the findings of the study itself is credible, transferrable, dependable, and reliable (Korstjens & Moser, 2018). This research provides the role of the researcher to collect data that is intended to build integrity into the research process. The overall UCCJEA is the current law in place, contained with a set list of criteria or key factors that judges must adhere to. The UCCJEA is a policy implementation that in general is currently used by the state court judges to assist in determining the outcome in custody rulings. Of these factors' judges make decisions to protect the child, and to determine jurisdiction for which "home state" is best suited for a child (Hoff, 2001). The use of final disposition of custody cases validated and ensured that this qualitative research is indeed credible. Data collection and the analysis has been precise, consistent, and exhaustive throughout the review of the selection of 10 custody case files.

The use of secondary case data was used to explore a better understanding of how the weight of a child's voice is measured by judges in decision making expertise; as well as the wishes of the child's parent; the relationship of the child with each parent; the ability of each parent to provide adequate food, clothing, shelter, medical care and a safe

environment, and many others. There was no deviation from the strategies discussed in Chapter 3. For this study, saturation was reached rather quickly which gave a great variety of different real-life scenarios to further demonstrate the reoccurrence of themes, shown in Figure 2, thus increasing credibility of the results. The trustworthiness accepts the research findings to build future research upon them, and to utilize them to inform public policy. Public policy guides and provides insight to the public to become aware and to better understand current judge decision protocols in their own community.

### **Credibility**

Credibility of a study is the notion that the results are realistic and are accurate depictions of the participants (Korstjens & Moser, 2018). For this study, the Appendix A-Case Analysis Guide was used in addition to the customary procedures associated with ethical research practices. The case analysis guide assisted to address the contents within the case details, such as, providing a synopsis of the entire case of the known issue/s and facts presented; the subjects or persons involved in the case; the relevant factors used; any supported decision present, the court judge current protocols; court appointed expertise, or external professional experts to influence the judge's decision making; clarifying any underlying values; financial and social environmental factors, and the final ruling results. Lastly, the case analysis guide assisted with determining the outcomes or consequences of the parties within the case court documents, such as, the written testimonies, court orders, summons, and the parties/parent's relationship between themselves and the child. This analysis ensured that this qualitative research is indeed credible because standard court forms were used. There was no deviation from the

strategies discussed in Chapter 3. The use of a thorough review of a recently filed and final case disposition provided from the Maryland district circuit county court database is the validation for the researcher that ensures that this qualitative research is indeed credible. For this study, a confirmation of credibility was realized when the 10 cases reached saturation. Saturation was reached when the reoccurring themes appeared more frequently within each case, therefore increased the credibility of the results. This study is intended to be an educational resource for researchers, mentors, and students.

### **Transferability**

Transferability refers to whether the study may be duplicated. To ensure that this qualitative study is transferrable, the description of the study will open doors of opportunity to conduct the same research at other district circuit county courts in other states. This entire study can be duplicated and applied to another state, or county to inform the reader of whether the study could be replicated in their state or any other state or county of their choosing.

The United States has 50 states, and this research is exploring one district circuit county court within the state of Maryland. To ensure that this qualitative study is transferrable, the description of the case analysis is clear, and the methodology was executed as planned in Chapter 3. In-depth reviews of the cases were conducted, recorded, and analyzed. According to Korstjens and Moser (2018), the reader of the study determines transferability, as they know whether the study could be replicated in their environment. There is an unlimited amount of further research to be continued with this study in other states or counties. If a researcher has access to their public court county

databases in another county or state, then conducting the study in other county court or state within the United States can have a vast opportunity to conduct the same research study.

### **Dependability**

Dependability refers to whether results are derived using accepted and standard methods for data collection to produce results that can be trusted. For this qualitative case study each requested custody case was based on the use of secondary data information already filed and attained. Dependability is important in this study because it establishes the research findings as consistent and repeatable in another county or state. The findings are consistent with the case analysis data collected. The evaluation of the findings, interpretation, and recommendations of the study are all supported by data as received from a district circuit county court database.

### **Confirmability**

Confirmability is the concept of the accurate interpretation of data. I, as the researcher, ensured that the degree to which the findings of the research study can be confirmed by other researchers. Researchers can use the case information details listed in Table 1, which are the list of 10 custody cases from the Maryland district circuit county court database to validate data. Confirmability establishes the facts of data and the interpretations of the findings. Confirmability is not figments of the researcher's imagination; it is clearly derived from data.

For this qualitative study, the review assisted to answer and clarify questions using the case instrument tool, Appendix A- Case Analysis Guide. After data was

obtained in the format transcribed from the database, I, as the researcher had the opportunity to review each case file in thorough with all the supportive court document forms. The court orders and full details of the cases reviewed assisted with providing the explanations of the research findings in a professionally written response, which is the appropriate method for ensuring confirmability in a qualitative study.

## **Results**

### **Answering the Research Question**

This research study was conducted to answer the following Research Question: What factors are associated with judge decision-making protocols and the application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) when making child custody decisions in the state of Maryland? Based on the themes identified through analysis of data through the lens of the theoretical framework, shown in Figure 2, the findings suggest that there is a lack of consistency in the district circuit county courts.

Judges are currently handling each case on a case-by-case basis, in which I, as the researcher can agree that different scenarios do provide different results. To address the gap in the research, there was no mention of child's presence in court to voice their preference on custody determinations. A child's presence in court was only approved if the parent declaring custody allowed the child to be at the court, and majority of the time the child was a minor.

The only time a child was evaluated in my case analysis was when an interpreter was used. The interpreter declared that the child was in a happy environment with the current parent. The interpreter was provided by a law firm which represented their client

in court and was able to provide more details to the judge. The recommendations from the expert provided a stronger defense on whether the parent was a proper fit for the child and therefore convincing the judge for granting sole legal and physical custody of the child. The interpreter was able to determine if there was a significant connection with the child and if the child has a close bond with the parent. This case provided an affidavit which gave more detail the child's preference. An affidavit is a written statement confirmed by oath or affirmation, for use as evidence in court. The interpreter served as a supportive decision as an outside factor, shown in Figure 1, and was able to provide supporting documentation that contributed to validation from the parent that the child was provided a suitable and healthy environment. This included education as the child is currently in school in the state of Maryland and, enjoys school and has many friends. In addition, the affidavit mentions that the child adjusted well to life in United States and considers it home. The affidavit mentions that the plaintiff and the child maintain a strong relationship or bond. The interpreter mentions the plaintiff has been present in the child's life since birth providing continuous emotional and financial support and stability (suitable environment). The child's necessities are being provided to include food, shelter, clothing, medicine, school supplies, etc. These outside factors, as shown in Figure 1, were helpful as support to assist judges with their decision making.

The research results identified that judges use supportive decision only when selected on the court forms to be used, and then they use the court forms to assist them with making better decisions for custody rulings. However, in the cases analysis there were inconsistencies, and sometime no supportive decision was present.

The gap continues to exist and court judges do not conform to the UCCJEA or refer to the act itself based on the 10 cases analyzed. The court may use the first UCCJEA factor on jurisdiction and can easily dismiss the case if the first factor of jurisdiction is not clearly addressed in the court forms. The outside factors are used inconsistently, and the lack of a child presence, or weight of the child's opinion or say in court is not present unless the parent selects a court appointed expert to evaluate the child. Majority of the time the child is a minor, and the custody trials are between the two parties or the two parents. In addition, the lack of evidence of providing proof that the parents provide a safe environment unless stated by a professional expertise (example; social worker). All written responses on the court orders were based on what the plaintiff stated and what the defendant stated. All provided written responses served as the only proof of what was written on the court documents, and that is what judges use to make their best judgment for their outcomes/ruling results.

### **Supporting Data**

Data collected from this study provides evidence that judges rely on the courts forms to base their decision making. The "Motion and Affidavit for an Emergency hearing" form lists the protocols of evaluation by asking the individual filling out the form a set of six questions, and this form is for self-representation, and states in one of the protocols that there is no adequate remedy at law that can safeguard the child/children at issue, other than an immediate issuance of a Court Order.

Another form used is the "Civil Domestic Case Information Report," within this form the plaintiff is required select and check any boxes identifying the intent to request

for the need for non-custody/visitation. These check boxes are to request a court-appointed expert; initial conference with the court; mediation by a court-sponsored settlement program; and others. To request for custody/visitation there are check boxes for; mediation by a private mediator; evaluation by mental health professional; appointment of counsel to represent child (not just to waive psychiatric privilege); a conference with the Court; and others. Within the form of "Complaint for Custody," it states the use of Family Law Art (Md. Code, Family Law Art., § 5-203) and those protocols are used as identifiers such as who is the mother/father; where the children currently live; and if the minor (child/children) have lived in Maryland for at least six months. The form ensures to list past locations the minor/s child/children lived. The form asks for a list of any past cases that the mother/father have been involved. The form asks to attach recent supporting documentation of the past cases. The form asks to identify if there's anyone who are not parties to the case, who have physical custody of or claim rights of legal custody (decision-making authority), physical custody (parenting time), or visitation (child access) with the minor child(ren).

As the researcher, my conclusion of why the state of Maryland's internal district circuit county court policy protocols and implementation efforts haven't been driven into compliance, is possibly due to only adhering to the Maryland Family Law. The state of Maryland does not refer or reference the UCCJEA. The court is likely to adopt any policies or implement them in their court, however each court may do their protocols differently. The enforcement of the UCCJEA is not guaranteed because it is not yet at a federal level.

### **Discrepant Cases**

Discrepant cases are those elements of a study that are unusual or outliers. For this study, there was one outlier as it relates to the research question. One custody case had an order regarding minor's eligibility for special immigrant juvenile status. The minor is under 21 years of age, the courts had jurisdiction in the state of Maryland to make judicial determinations about the custody and care of juveniles using the Maryland Family Law codes. The court decided to keep jurisdiction remaining under that specific court until the age of 21 or until the conclusion of his immigration case, whichever occurs earlier. The court placed the minor in sole legal and physical custody of the plaintiff because the father, the defendant, abandoned the minor shortly after he was born. The defendant has failed to play a meaningful role in the minor's life and has failed to provide him with regular financial support. The court considers abandonment of the child by the defendant. The court states that it was not in the best interest to be returned to his parents because of his previous country of nationality or country of last habitual residence. The court based this case on the Immigration and Nationality Act. Although my research is conforming to the UCCJEA, this one dealt with court jurisdiction in Maryland even when there were immigration matters involved.

The details of the case were interesting, the minor has adjusted well to his life in the United States which the minor considers his home. The minor feels safe and care form in the United States and is doing well in school and is nearly fluent in English. In the other country, the mother and the minor were subject to threats and violence at the hands of the father. If the minor were to ever return to his country (internationally) the

minor will be at risk. This case touched on majority of the UCCJEA factors listed in background section of chapter 1 as well as this chapter 4, and the UCCJEA was never mentioned or referenced.

The primary child caretaker in the other country is currently the mother, who currently resides in the state of Maryland due to fleeing to escape threats from the defendant, the father, from violence and harm to both the mother and the child. Therefore, it is in the best interest to have the minor to remain with the mother in the U.S under the county she resides in.

This case was treated as an international immigration matter. The plaintiff filed a "Complaint for Custody" form using the Maryland courts same protocols. The defendant was served at his home in the other international country. The defendant has not filed any pleadings despite being served. Defendant is not a member of the military service of the U.S. (another outside factor) and has not been ordered to report for induction under the Selective Training and Service Act; is not a member of the Enlisted Reserve Corps who has been ordered to report for military service. The plaintiff, the mother, orders a request for default which was sent via first class in the mail to the defendant in the other country.

An affidavit of plaintiff was filled stating the child has been living in Maryland for approximately one year. The minor is 11 years old. The defendant was physically abusive to the mother, the plaintiff, physical violence and jealous, and when she was pregnant, she didn't think it was a safe environment to live with the defendant. She then moved in with her grandmother. The defendant was not present when the child was born, claiming that wasn't his child, and therefore didn't want any financial responsibility. The

plaintiff did not receive any financial responsibility from the defendant. There were many threats of violence made to the plaintiff, and threats to take the child away. The mother, the plaintiff, fled from the situation to the United States, she was afraid for her life and son's life being in danger. The mother, states that the father still resides in the other country and does not have legal status in the U.S. and therefore cannot enlist in the U.S. military.

### **Summary**

This chapter discussed the results of this qualitative study to answer the research question regarding the lack of uniformity amongst state family courts when judges consider the best interest of the child when making custody determinations. Although the UCCJEA exists, courts vary from state to state, and judges consider a child's preference on a case-by-case basis. The gap continues to exist that court judges do not conform to the UCCJEA or refer to the act itself based on the 10 custody cases analyzed.

Data has demonstrated that although the court may have good intentions through the implementation of policies and using their own protocols that they do not refer, reference, adhere or conform to the UCCJEA. The state of Maryland refers to Maryland Family Law in all their court supporting documents.

The court may use the first UCCJEA factor on jurisdiction and can easily dismiss the case if the first factor of jurisdiction is not clearly addressed in the court forms. The outside factors, as shown in Figure 1, are used inconsistently through the cases. The lack of a child presence, or weight of the child's opinion or say in court is not present unless the parent selects a court appointed expert to evaluate the child. All provided written

responses served as the only proof of what was written on the court documents, and that is what judges use to make their best judgment for their outcomes/ruling results.

The state of Maryland does not actively enforce the UCCJEA due to the UCCJEA not being at a federal mandated level. One can assert that the absence of uniformity may have future societal impact on how courts create protocols. Adhering and conforming to laws and subsequently cannot be enforced because states follow rules/laws within the context of their own states law.

In Chapter 5, I will provide an interpretation of the findings within the context of the theoretical framework, identify limitations to this study and provide recommendations for future study as well as discuss implications for positive social change.

## Chapter 5: Discussion, Conclusions, and Recommendations

The UCCJEA is a uniform state law that governs decision-making about jurisdiction in interstate custody cases (National Council of Juvenile and Family Court Judges, 2018). The UCCJEA provides an overview on whether a specific state judicial court has jurisdiction rights to modify or change other interstate court rulings. The UCCJEA serves as a guide to assist judicial court judges, the professionals that are involved in court rulings, and parents with the responsibility and measures to protect the child (National Conference of Commissioners on Uniform State Laws, 1997). I explored whether judges and professional experts involved in custody cases use the key factors from the UCCJEA to make custody determinations and recommendations. The UCCJEA serves to provide a better understanding of the responsibilities that are required to implement and give orders from and to the other inter-states (UCCJEA: Guide for Court Personnel and Judges, 2018).

Although, the UCCJEA exists, there is a problem regarding the lack of uniformity amongst state family courts in applying and conforming to the UCCJEA. The UCCJEA specifically aims to protect the best interest of the child when making custody determinations. However, when conducting my research study, I found that judicial court judges do not conform to the UCCJEA in the state of Maryland and is not explicitly mentioned or made aware. I determined that family court judges in Maryland have applied their own interpretation of the law and have not fully adopted the UCCJEA.

Based on my data analysis, I determined that although the Maryland district circuit county court may have good intentions on implementing policies, they prefer to

use their own protocols based on the state level law. During the case analysis, the court did not refer, reference, or adhere to conform to the UCCJEA. The UCCJEA was never mentioned in any of the court documents. Judges based their court final orders, decision making, or rulings only on Maryland Family Law within all the court supporting documents.

The reoccurring themes identified through the analysis of data resulted that there continues to be a lack of uniformity amongst state family courts when conforming to the UCCJEA. In my research, judges only consider the best interest of the child when making custody determinations by identifying jurisdiction first before proceeding to continue with the court trials. Based on my findings, court judges can easily dismiss the case if that first factor is not clearly addressed in the standardized court forms. The court forms served as written supporting testimonies of the parties requesting custody. In the forms and custody ruling judges used their best judgment based on evidentiary support, such the parties in the cases current financial situation, proof of providing a suitable home environment, the concerns of the child's health, education/school, providing child-care, religion, and travel. In my findings, it is not known if judges already know the UCCJEA within their job skills and their law knowledge. My findings found that the public was unaware if the judges had knowledge of the UCCJEA, due to no reference being made in the outcome of the rulings or the court documents. The case analysis demonstrated that judges often base their decision making on a case-by-case basis and only refer to their final orders on what was written in testimony.

The results and findings of my research demonstrated in the court documents that the state of Maryland does not actively enforce the UCCJEA due to the UCCJEA not being at a federal mandated level. One can assert that the absence of uniformity may have future societal impact on how courts create protocols. Adhering and conforming to laws subsequently cannot be enforced because states follow rules/laws within the context of their own states law. My study contributes to the body of knowledge to share the insight of current judge protocols and for future researchers to explore UCCJEA conformity in courts. As a positive societal change, the research results provide the public with awareness and insight of how judges base their decisions on family custody disputes. This research may assist for further explorations to discover and conduct similar studies amongst any other states district or district circuit county courts.

### **Interpretation of the Findings**

The findings of this study confirmed that more research is needed in the areas of the court conforming or adhering to the UCCJEA and the state's policymaking process. This confirms that one of the many gaps in the literature, specifically the lack of a child presence, or weight of the child's voice, opinion, or say in court may be a cause for concern when making custody decisions. My research indicated a gap in relation to uniformity and conformity to the UCCJEA. Using one of the district circuit county courts allowed awareness to the public that courts may vary from state to state when judges consider a child's preference or the child's best interest. In my research, I found that in the Maryland court documents, the only way the court judge can use the child's voice to assist them in their decision making is if the parent selects a request for custody or a court

appointed expert to evaluate the child. I also found that parental permission is always the requirement; therefore, judges are only presented with what is written as testimony on the court forms. My research findings can inform and allow the public to be made aware of this specific court's requirement.

The findings further identified that courts have the capacity to reform. The court policies or protocols follow the Maryland State Family Law, and not the UCCJEA; however, the research provided a glimpse into the relationship between state laws and their applicability to reform and conform to the UCCJEA. As an example, courts reference Maryland Family Law on their court forms, to reform it first starts with court forms being revised to include and refer to the UCCJEA.

The UCCJEA serves as a guide to assist judicial court judges, professionals that are involved in court rulings (UCCJEA: Guide for Court Personnel and Judges, 2018). The UCCJEA also provides parents with the responsibility and measures to protect the child (National Conference of Commissioners on Uniform State Laws, 1997). Judges and professionals involved in custody cases may use the key factors mentioned in the UCCJEA to make custody determinations and for effective implementation of the UCCJEA in a family court. The UCCJEA serves to provide a better understanding of the responsibilities that are required to implement and give orders from and to the other inter-states (UCCJEA: Guide for Court Personnel and Judges, 2018).

For future policy implementations, the state level policymakers may provide regulation over certain courts to be able to revise standardized court forms. Once the courts revise their forms, they can provide training to the public, in which they may use

on the Maryland website and become more innovative with the current times. For example, a recommendation is developing virtual video information training for public to know what to expect in court step by step. Another recommendation is to give a series of facts and questions or a set of expectations going into court and on how to use the court forms to obtain better decision outcomes from the judge's rulings. During the research findings the court did not give instructions on how to fill out the court forms. The court forms just listed a series of questions in which the individual was required to fill out. Courts reforming court forms will hopefully minimize the quick dismissal of cases during custody court rulings, in which many occurred during the case analysis.

The court administrators may not know that implementing revised court forms and educating the public on how to use the forms will assist the judges to make better decision outcomes regarding family custody rulings. Adhering and conforming to laws subsequently cannot be enforced, only recommended, because states follow rules/laws within the context of their own states law. Without federally mandating the UCCJEA, guidance on enforcement is left up to the state level and the courts to decide which enforcement strategy or protocols are most appropriate and effective (ULC, 2013). One can assert that the absence of uniformity may have future societal impact on how courts create protocols. Courts in this research, may adopt, but not necessarily conform to the UCCJEA.

Current scholarly literature revealed that judges strive to make their rulings based on the preservation of the child's best interest in the court (UCCJEA: Guide for Court Personnel and Judges, 2018). Judges did not reflect any biases known. During the results

of the case analysis, the best interest is one of the main factors judges ensured to protect. In accordance with the literature review in Chapter 2, the findings validated the research, such as judges considering a child's preference on a case-by-case basis. Based on my results, judges used their judgement based on what was written on the court forms and what was written as testimony of the plaintiff and the defendant statements.

Recommendations for revising these forms can provide the court with higher learning, and clearer guidance on how those forms can help steer the judge's decision-making outcomes for better rulings.

Within the cases analyzed, the judges are governing the solution for the masses, of all who proceeded with filing a Maryland county court form, *Complaint for Custody*. Most of the individuals requesting custody decisions were families undergoing situations of divorce, separation, attempts and threats of violence, internally fleeing to escape abuse, and general domestic disputes. Judges did not appear to show any signs of impartial judgement in their final orders. Donohue (2020) mentioned that the human tendency toward bias of this kind is particularly worrisome in the context of courts, and particularly family courts, where the decisions of a few (judges) are governing the solution set for the diverse masses--and where the decisions of a single fact finder govern the nature and quality of the interaction between children and their caregivers (Donohue, 2020). In my research findings, it appeared that judges' determinations separated their own emotional perspective of a particular situation from a decision, or in other words provided a moral judgement.

My findings supported literature because judges took precedence on matters of jurisdiction under the Maryland Family law. According to the ULC (2013), the research aims to provide a much better concept for relief for the parents and children who suffer from interstate child-custody disputes. Throughout the cases I analyzed the court judges were quick to award sole legal and physical custody when the individual was in a situation of endangerment and/or violence, in state and internationally. This assertion may only be made based upon data collected regarding the cases analyzed in this research and cannot be interpreted to mean that judges determinations are the same regarding all courts, since it varies from state to state.

### **Limitations of the Study**

A clear limitation is that this research was conducted in one district circuit county court state of Maryland, which is not nationally representative; therefore, data and any inferences or conclusions are relevant to those judges represented in the cases analyzed. The use of a qualitative approach does not afford the ability to determine causal relationships; however, the findings are suggestive. The technique of in-depth case review and analysis took a great deal of time to complete the necessary steps to ensure data provided enough information to determine the findings and reoccurring themes. Data was reviewed in its entirety without any introduction of bias by the researcher.

Due to COVID- a global pandemic, data collection was collected from final dispositions post-COVID, and the demographics of those in the case proceeding trials are a representation of court administrators, experts, and judges available. These limitations

have no bearing on the accuracy of data obtained from the cases. This is confirmed by the identification of reoccurring themes early in the process of data collection.

### **Recommendations**

The theory that supports this study is the Policy Learning Theory which draws from lessons learned from past experiences or past protocols to identify the gaps in law or in policy to make improvements for the future. Recommendations for future research are based on what was discovered in the literature review, in tandem with data collected in this study. Policy making decisions are based on human judgment and on gathering information to assess alternative resolutions for current problems that exist. Policy gaps are then identified providing the subject a basis to provided best recommended solution.

The recommendation provides future implementation of a new and improved policy into society or as reform in law. The design and implementation of policies are constantly adapted in society which are created and learned from past experiences over time. In these challenges and many others, learning from past mistakes represents a hope that better policies will develop in the future (Moyson & Scholten et al., 2017). Theories of policy learning draw from lessons learned to identify the gaps in law or in policy making by focusing on lessons learned and improvements. Recommendations are introduced to conduct better practices and protocols that can be utilized in society to promote change. Therefore, shared experiences shape processes of future policy formation, however biases still can appear in policy designs.

The research provided three recommendations that states should change or consider revising. First, changing the language terminology of the law, examples

provided are visitation and custody which assist in keeping up with current times as family dynamics and relationship changes to reduce parenting issues. Second, provide a more structured approach for codifying factors that can be used to determine the best interest of a child, and therefore allow judges to follow more narrow guidelines for making decisions in child custody rulings. Third, develop a screening tool that consist of a list of criteria which includes characteristics needed to maintain a joint custody relationship between parents. Knowing the types of tools utilized in courts and the resources would assist in possible identification of factors to make a successful outcome.

A joint custody criteria list would serve as assistance to parents in determining if co-parenting is achievable given the circumstances. Parents may not necessarily understand what is needed for such arrangements. A set list of criteria could help in all custody determinations. According to the UCCJEA providing protection in the child's best interest is the focus of uniformity and conformity in judge's decision making protocols. A checklist or a better set list of criteria could help in that discussion, in which the research would assist in identifying current practices and improvements needed to standardize protocols on key factors that align with factual based evidence.

With regards to court dynamics or identifying what are current judge's decision-making protocols used in courts are not made to the public's awareness and judges rely on other professionals. In most cases, courts appoint mental-health experts like psychologists, psychiatrists, or social workers (Nathan, 2015). Judges rely on professional evaluators and often disregard or fail to include the tests conducted and end up providing their own biases. The research now informs the public to better identify that

relying on professionals in court rulings specifically in the state of Maryland is important for better judge decision outcomes. For example, research findings identify that strengthening the integrity and safeguarding family relationships promote settlement of disputes, mitigate potential harm to spouses and their children, and secure the maximum possible involvement of both parents regarding their children's well-being. While the statute effectively grants this authority to the courts, there are virtually no guidelines that set forth who the evaluator can be, what qualifications he or she must have, how the evaluators should conduct their evaluations, and what, if any, methods should be employed in the evaluation (Nathan, 2015). The research demonstrates that judges look toward expert opinions when presented in court proceedings and their decision is influenced or skewed on determining the outcome of the custody decision.

Future recommendations should have courts consider the best interest of a child by utilizing many distinct factors of reviewing the circumstantial evidence to ensure the children's welfare and best interest are protected. According to the best interest standard courts are recommended to apply it during custody decision to consider the future of the child's well-being.

The research identifies that court judges must work on a better way to limit the consequences that are developed from custody court rulings. The research identifies common patterns when using current protocols in custody trial cases. Replication of this study in another Maryland county or another state may also provide different results.

## **Implications**

### **Implications for Positive Social Change, Theory, and Practice**

Within the theoretical framework of Policy Learning or political learning, wherein Heclo (1974) argued that people learn in ways of understanding their problem and what to do about them. Learning occurs at the individual, organizational and societal levels. Helco (1974) argued that policymaking is both embedded in the past and subject to continual challenge and adaptation. Heclo (1974) argued that human beings are endowed with reason and imagination, and are irreducibly developmental, as well as politics. Therefore, policies and institutions that are created by humans are developed by past experiences.

The research revealed some of the deficiencies in the policymaking and the implementation process adhering to the UCCJEA. Current research provides the public with an insight perspective on how states adhere to policy or law, as well as how the impact of custodial disputes were being handled in court proceedings. Court documents demonstrate how the state court judges determine custodial case outcomes. Future researchers may use this research to assist with how the policy making process is used in county courts and to investigate how cases are analyzed in Maryland. Applying the policy learning theory on current court protocols would help to consider how states can reform under the UCCJEA.

The research identified similar themes in other cases in court dynamics on whether family district circuit county court judges adhere and conform to laws that are implemented. It assists policy makers on how judges interpret the law, and how judges

implement an act and apply the protocol in the court, all the while keeping the best interest and protection of child(ren) by having the supporting testimony justify a healthy, sustainable environment.

Currently, judges are only following the state law and relying on court administrators to develop court forms. Learning from past experiences and or real-life cases assist court judges to make better decisions/outcomes in custody rulings. Recommendation for further research would be to interview court judges directly. The interview questions will ask judges if they rely on court administrators to provide them with the reference to the laws on the court forms, and if they knowingly adhere to the UCCJEA when making their final determinations.

Study results contribute to positive social change by providing context from a judge's perspective and an explanation for why it is important for courts to reform and develop their own policies by adhering or conforming to the UCCJEA. It provides an opportunity for collaboration to develop standard enforcement mechanisms across the court system. In addition, this study has provided information about the policymaking process and a unique opportunity to examine how policy making is implemented in court and its impact through the lens of policy learning. My research serves as a model for larger studies involving court protocols and dynamics in which judges base their decisions on.

The social change implication of this study for the practice of public policy is the benefit of having a model that can be translated to different areas, such as other state courts or state county courts, thus, creating a paradigm for policymaking that is

translatable and includes the consideration and sustainability of justice as the core principle in society.

### **Conclusion**

According to the ULC (2013) the UCCJEA has amendments that have not yet been federally implemented and is still in draft status as of 2013. The UCCJEA is a state law that deals more on jurisdiction distinctions among states within the United States of America. It identifies an interstate problem in which finalizing the law at the federal level would be better suited for complying with state uniformity.

Although another county court or state may have different results, this study provided that the enforcement of the UCCJEA is not guaranteed because it is not yet at a federal level. The research demonstrated results that the state of Maryland and court judges do not refer or reference the UCCJEA. The state of Maryland's internal district circuit county court policy protocols and implementation efforts have not been complied with because it only adheres to the state of Maryland Family Law. The research indicates that family court judges are not currently adhering to the UCCJEA in a family district circuit county court in the state of Maryland.

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## Appendix A – Case Analysis Guide

**Case Analysis:** Judge Decision Protocols Conforming to the Uniform Child Custody Jurisdiction and Enforcement Act

**Description of Project:** This case review is to collect data on a family district circuit county court of Maryland within the context of Judge Decision Protocols Conforming to the Uniform Child Custody Jurisdiction and Enforcement Act. The UCCJEA is a state law that deals more on jurisdiction distinctions among states within the United States of America. The UCCJEA is currently based on a state level. There are general concerns for what protocols are in place and how it varies from state to state. The purpose of this qualitative study is to explore the lack of uniformity among state-to-state family courts when judges are required to make decisions on child custody rulings.

**Case Title #1:** *Provide Case Title*

**Date, Time, Location:** *Provide Day and Time the case took place*

**Subjects:** *Provide the subjects or persons involved in the case*

**Summary:** *Provide a synopsis of the entire case, what are the known issue/s, and facts of the case presented.*

**UCCJEA Factors Identified:** *What factors are associated with judge decision-making protocols and the application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) when making child custody decisions in the state of Maryland?*

**Supported Decision:** *Is the court judge using the current protocols from the UCCJEA or any outside factors not mentioned in the UCCJEA to influence their decision making? Is any professional expertise being solicited to further support the custody determination? Is the judge's own interpretations or biases identified in this case? If so explain.*

**Ruling Results/Determination:** *Is the judge taking into consideration the well-being of child/children best interest in this custody case to make their custody determinations? If so, explain. Are the current protocols in the UCCJEA revealing if the judge is adopting, adhering, or conforming to the UCCJEA? If so, explain.*

**Conclusion/Thematic Analysis:** *Provide the identification of reoccurring themes that arise during the case study. Does the current judge protocol process have the capacity to uncover information about the influence in the lack of uniformity among state-to-state family courts when judges are required to make decisions on child custody rulings?*