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THE UNIFORM INTERSTATE FAMILY SUPPORT ACT: THE NEW URESA

I. INTRODUCTION

Single parents and ex-spouses to whom financial support is due are often unable to collect the support.¹ Difficulties in collecting the support increase when an obligor travels across state lines and subsequently fails to fulfill his² duty of support.³ The Uniform Interstate Family Support Act (UIFSA)⁴ is a uniform law⁵ that was approved at the National Conference of Commissioners on Uniform State Laws⁶ in August 1992 and by the American Bar Association House of Delegates in February 1993.⁷ UIFSA was proposed to eliminate many of the problems faced by obligees in collecting both spousal and child support.⁸ UIFSA also addresses other related problems that exist regardless of states' attempts to remedy problems encountered in enforcing support obligations across state lines.⁹

This Note addresses the potential effectiveness of UIFSA in comparison with predecessor support collection and enforcement laws. In analyzing UIFSA, this Note provides an overview of prior support laws, including their weaknesses. Section II discusses the content and effectiveness of UIFSA and prior laws.¹⁰ Section III examines how UIFSA differs from prior legislation and analyzes whether the changes will aid in the collection of interstate support.¹¹ Section IV concludes that UIFSA provides remedies for many problems existent in other

1. See *infra* notes 16-20 and accompanying text.

2. To simplify the language of this Note, the obligor of a support order will be referred to as "he," while the obligee will be referred to as "she." While men and women may both be obligors and obligees, utilizing "he" to refer to obligors and "she" to refer to obligees is consistent with statistics, which indicate that a majority of obligors are men while a majority of obligees are women. See, e.g., Ken Foskett & Sherrell Evans, *Posters Will Identify Most-Wanted 'Deadbeats'*, ATLANTA J. AND CONST., June 23, 1994, at c1.

3. See *infra* notes 16-20 and accompanying text.

4. 9 U.L.A. pt. 1, at 121 (Supp. 1994).

5. Uniform laws are created to eliminate jurisdictional variations so that legal concerns which involve interstate transactions will be governed by similar laws.

6. The National Conference of Commissioners on Uniform State Laws consists of persons appointed by their states to draft and subsequently support uniform legislation. The group focuses on problems common to all states.

7. UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note, 9 U.L.A. pt. 1, at 122 (Supp. 1994).

8. *Id.*

9. See *infra* notes 160-73 and accompanying text.

10. See *infra* notes 12-196 and accompanying text.

11. See *infra* notes 197-296 and accompanying text.

support laws while attempting to integrate orders made under prior laws with the provisions of UIFSA.

II. BACKGROUND

This Section examines the difficulties that courts encounter in enforcing support orders. After providing a general overview of the current crisis surrounding the enforcement of support orders,¹² this Section reviews the substance and purpose of the laws that preceded UIFSA.¹³ Next, this Section examines the ineffectiveness of laws preceding UIFSA in enforcing outstanding support orders.¹⁴ Finally, this Section describes the provisions of UIFSA.¹⁵

A. *The Increasing Difficulty of Interstate Support Enforcement*

As Americans become more mobile, as divorce and separation rates rise, and as the incidence of single parenthood increases, the importance of enforcing both spousal and child support obligations across state lines also increases. Single parents often find it difficult to earn enough money to support themselves and their children after divorce or separation. Consequently, children and single parents who do not receive support money may burden a state's resources by applying for welfare benefits as a substitute for unpaid support. In the absence of statutes providing for interstate enforcement of support obligations, a spouse or parent who is unable or unwilling to pay court-ordered support can simply relocate to another state and avoid his support obligation.

Prior to the existence of interstate support statutes, if an obligor crossed state lines, his new state of residence possessed no direct means to enforce his obligation.¹⁶ Often, an obligee could not afford to follow the obligor and initiate an action in the obligor's new state of residence. In addition, the state granting the initial order possessed no legal methods of "reaching out" to the absent spouse such as pursuing proceedings for contempt or attaching wages or property.¹⁷

12. See *infra* notes 16-20 and accompanying text.

13. See *infra* notes 21-159 and accompanying text.

14. See *infra* notes 21-159 and accompanying text.

15. See *infra* notes 160-96 and accompanying text.

16. See *infra* note 17 and accompanying text.

17. The Full Faith and Credit Clause of the United States Constitution is generally applicable to alimony and child support decrees. "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." U.S. CONST. art. IV, § 1; 28 U.S.C. § 1738 (1994). Such judgments, however, are enforceable by foreign courts only to the extent that they are nonmodifiable and final. See *Sistare v. Sistare*, 218 U.S. 1, 17, 22 (1910). The *Sistare* rule also applies to the distri-

Because of these problems, legislators began to examine ways to empower all states to respect and enforce support orders of other states.¹⁸ Alternatively, legislators sought ways to convert a support order into an order of the obligor's current state of residence, thereby allowing that state to take appropriate action to enforce such orders.¹⁹ In consideration of these alternatives, the Commissioners on Uniform State Laws passed the Uniform Desertion and Non-Support Act, which was directed toward the enforcement of support orders from foreign jurisdictions.²⁰

B. Previous Laws

Many states have adopted laws that are responsive to the problem of enforcing support orders. Several states adopted the Uniform Desertion and Non-Support Act.²¹ In addition, some states adopted the Uniform Support of Dependents Law.²² Many states also incorporated the provisions of the Uniform Reciprocal Enforcement of Support Act²³ into their laws. Additionally, numerous states adopted the Revised Uniform Reciprocal Enforcement of Support Act.²⁴

1. Uniform Desertion and Non-Support Act

In 1909 and 1910, the Commissioners on Uniform State Laws studied the problem of non-support.²⁵ In response to their findings, the Commission proposed the Uniform Desertion and Non-Support Act (UDNA), which was subsequently adopted in eighteen jurisdictions.²⁶

bution of property upon separation or divorce. *Wicker v. Wicker*, 451 P.2d 715, 717 (Nev. 1969) (applying Wisconsin law).

Courts generally take one of two approaches regarding the modification of awards. Some states recognize alimony awards as final and nonmodifiable as soon as they accrue. *McGregor v. McGregor*, 122 P. 390 (Colo. 1912) (holding that under California judgment, payments are final when rendered). Accordingly, the *Sistare* rule allows full faith and credit to be given to such decrees. *Sistare*, 218 U.S. at 22. Other states, however, have ruled that accrued spousal support payments remain modifiable even after they have become due and until a particular judgment is entered. Under *Sistare*, courts need not give judgments full faith and credit until judgment is entered on the payments. *Id.* Courts also need not give full faith and credit to a judgment which was entered without due process. *Griffen v. Griffen*, 327 U.S. 220, 228 (1946).

18. See *infra* note 25 and accompanying text.

19. See, e.g., *infra* notes 119-28 and accompanying text.

20. See *infra* note 26.

21. See *infra* note 26.

22. See *infra* notes 32-36 and accompanying text.

23. See *infra* note 50 and accompanying text.

24. See *infra* note 76 and accompanying text.

25. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 553, 556 (1987).

26. *Id.*; see ALA. CODE §§ 30-4-80 to -98 (1989 & Supp. 1994); ALASKA STAT. §§ 25.25.010-.270 (1991); CONN. GEN. STAT. ANN. §§ 46b-180 to -211 (West 1986 & Supp. 1994); DEL. CODE ANN. tit. 13, §§ 601-639 (1957); D.C. CODE ANN. §§ 30-301 to -326 (Michie

UDNA "made it a punishable offense for a husband to desert or willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances or for a parent to fail in the same duty to his child under sixteen years of age."²⁷ By its terms, UDNA could only be enforced against men.

UDNA was ineffective in collecting support, since its only remedies were criminal and it provided no direct enforcement of support obligations against a parent who travelled across state lines.²⁸ A man refusing to pay support could only be tried for criminal charges in the state that issued the original order.²⁹ In addition, "[e]xtradition was both expensive and narrowly technical, and it was often impossible to prove that he had 'fled from justice' for frequently he supported his family until he left the state and only left in order to get a job."³⁰ Prosecution limited a man's ability to work, as he would either be incarcerated or branded a criminal.³¹ A husband or father who had been imprisoned or who could not find a job because he had a criminal record could not earn money to pay support. Thus, while UDNA was an important step in enforcing support obligations, it did little to transfer money from the obligor to the obligee and/or her children.

2. Uniform Support of Dependents Law

In 1944, the Commission again reviewed the problems involved in interstate support.³² The Commissioners were still concerned with the number of husbands and fathers who were not supporting their wives and children.³³ This concern led to the proposal of the Uniform Support of Dependents Law (USDL),³⁴ which New York adopted in 1944.³⁵ Later, Iowa also adopted USDL.³⁶

1993); GUAM CIV. PROC. CODE §§ 1500-1531 (1954); IND. CODE ANN. §§ 31-2-1-1 to -39 (West 1979 & Supp. 1994); MD. FAM. LAW CODE ANN. §§ 10-301 to -340 (1991); MASS. GEN. L. ANN. 273A §§ 1 - 17 (1990 & Supp. 1994); MISS. CODE ANN. §§ 93-11-1 to -73 (1994); MO. ANN. STAT. §§ 454.010-.360 (Vernon 1986 & Supp. 1994); N.Y. DOM. REL. LAW §§ 30-43 (1988 & Supp. 1994); P.R. LAWS ANN. tit. 32 §§ 3311-3313b (Supp. 1991); TENN. CODE ANN. §§ 36-5-201 to -229 (1991 & Supp. 1993); TEX. FAM. CODE ANN. §§ 21.01-.66 (West 1986 & Supp. 1994); UTAH CODE ANN. §§ 77-31-1 to -39 (1990 & Supp. 1994); VI. CODE ANN. tit. 16 §§ 391-429 (Supp. 1994); WASH. CODE ANN. §§ 26.21.005-.916 (Supp. 1994).

27. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 553, 556 (1987).

28. *Id.*

29. *Id.*

30. *Id.*

31. *See id.*

32. *Id.*

33. *See generally id.*

34. *See generally id.*

35. The current form of the New York statute is N.Y. DOM. REL. LAW §§ 30-43 (McKinney 1988).

USDL provided a civil procedure which compelled an ex-husband or father to support his wife, his children, and even his poor relatives.³⁷ USDL defined "dependent" as any wife, child, mother, father, grandparent, or grandchild who was entitled to support.³⁸ Under USDL, a person was required to support a dependent who resided in a state that had enacted laws that were substantially similar to USDL.³⁹ An obligor who moved across state lines had a legal obligation to pay support in the state he left if the laws in his new state of residency were substantially similar to those of USDL.⁴⁰

The solutions presented in USDL, however, were ineffective in solving the problem of lack of interstate support payments.⁴¹ In June 1949, a Social Security Administration report estimated that the Administration provided \$205 million a year to states to support dependents who were unable to collect support from absent fathers.⁴² Subsequently, the Commission presented four drafts of a new act to address the concerns of interstate support entitled the Uniform Reciprocal Enforcement of Support Act.⁴³

3. Uniform Reciprocal Enforcement of Support Act

After the New York legislature passed USDL, the Commission drafted a similar act which became the first draft of the Uniform Reciprocal Enforcement of Support Act (URES).⁴⁴ The Commissioners drafted URES to replace USDL because USDL purported to create duties of support that did not previously exist.⁴⁵ For example, in addition to spouses and children, USDL required people to support their parents and grandparents.⁴⁶ URES and subsequent uniform support acts were primarily directed toward obligors who left one county or state and then refused to pay support for their spouses or children.⁴⁷ URES could also be relied upon by a spouse or child who had relocated and wished to collect support from an obligor who remained in

36. The current form of the Iowa statute is IOWA CODE ANN. §§ 252A.1-.25 (West 1988).

37. *Maxim v. Maxim*, 118 N.Y.S.2d 541 (1952).

38. N.Y. DOM. REL. LAW § 32 (McKinney 1988).

39. *Id.*

40. *Id.*

41. This reality may have stemmed from the fact that only two states had adopted USDL.

42. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 553, 556 (1987).

43. *Id.* at 552. The drafts were presented in 1946, 1948, 1949, and 1950. *Id.*

44. *Id.*

45. *Davis v. Davis*, 67 N.W.2d 566, 568 (Iowa 1954) (holding that application of USDL provided that parent had obligation to support disabled child past age of majority).

46. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 553, 556 (1987).

47. *Id.*

the original jurisdiction and failed to fulfill his duty of support.⁴⁸ While the provisions of both USDL and URESA provide for reciprocity between states, the provisions are also applicable when an obligee relocates to a different county.⁴⁹

In September 1950, the Commission and the American Bar Association approved URESA.⁵⁰ The Commission drafted URESA to provide the means to force parents who fled to another state after divorce or paternity proceedings to fulfill their legal duty of supporting their children.⁵¹ URESA, or substantially similar legislation, has been adopted in every state.⁵² The stated purpose of URESA is to "improve and extend by reciprocal legislation the enforcement of the duties of support and to make uniform the law with respect thereto."⁵³ URESA is procedural and not substantive; therefore, URESA does not create

48. *Harmon v. Harmon*, 324 P.2d 901, 905 (Cal. Ct. App.) (allowing wife who relocated to Virginia to sue husband who remained in marital state of California), *cert. denied*, 358 U.S. 881 (1958); *Commonwealth v. Mexal*, 193 A.2d 680, 681 (Pa. Super. Ct. 1963) (holding that wife could sue husband under URESA even though she wrongfully moved children from Pennsylvania to New Mexico); *Bushway v. Riendeau*, 407 A.2d 178, 181 (Vt. 1979) (allowing mother who moved to Massachusetts to collect support from father who remained in Vermont).

49. *Bushway*, 407 A.2d at 181.

50. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 553, 556 (1987).

Since its approval in 1950, URESA has been challenged on due process grounds but has withstood all of these challenges. *See, e.g., Smith v. Smith*, 270 P.2d 613, 621 (Cal. Ct. App. 1954) (holding that Fifth Amendment applies to federal government but not to states; therefore, it does not apply to URESA action); *Proctor v. Sachner*, 118 A.2d 621, 625 (Conn. 1955) (holding that Due Process Clause does not guarantee any particular method of state procedure); *Landes v. Landes*, 135 N.E.2d 562, 566 (N.Y. 1956) (holding that New York law providing for URESA enforcement of California Act does not inhibit due process). Courts have also rejected the argument that although URESA is an interstate compact, it does not comply with laws which create such compacts. *Ivey v. Ayers*, 301 S.W.2d 790, 794 (Mo. 1957) (nothing in USDL requires or contemplates agreement or compact with other states); *Fraser v. Fraser*, 415 A.2d 1304, 1306 (R.I. 1980) (stating that reciprocal provisions of URESA do not violate compact clause).

URESAs has been enacted in 15 states, Puerto Rico, and Guam. *See* ALA. CODE §§ 30-4-80 to -98 (1989); ALASKA STAT. §§ 25.25.010-.270 (1991); CONN. GEN. STAT. ANN. §§ 46b-180 to -211 (West 1986 & Supp. 1994); DEL. CODE ANN. tit. 13, §§ 601-640 (1993); D.C. CODE ANN. §§ 30-301 to -326 (1993); GUAM CIV. PROC. CODE §§ 1500-1531 (1970); IND. CODE ANN. §§ 31-2-1-1 to -39 (West 1979 & Supp. 1994); MD. CODE ANN., FAM. LAW §§ 10-301 to -340 (1991); MASS. GEN. L. ch. 273A, §§ 1-17 (1990 & Supp. 1994); MISS. CODE ANN. §§ 93-11-1 to -73 (1994); MO. ANN. STAT. §§ 454.010-.360 (Vernon 1986 & Supp. 1994); N.Y. DOM. REL. LAW §§ 30-43 (McKinney 1988 & Supp. 1994); P.R. LAWS ANN. tit. 32, §§ 3311-3313b (1990); TENN. CODE ANN. §§ 36-5-201 to -229 (1991 & Supp. 1993); UTAH CODE ANN. §§ 77-31-1 to -39 (1990 & Supp. 1994); V.I. CODE ANN., tit. 16, §§ 391-429 (1964); WASH. REV. CODE ANN. §§ 26.21.010-.910 (West 1986 & Supp. 1994).

51. *Freeman v. Freeman*, 76 So. 2d 414, 414 (La. 1954) (noting that URESA was enacted to compel parents who have absconded to another state to fulfill their duties of support).

52. *See supra* notes 47-50 and accompanying text. New York adopted and continues to use a form of USDL and a version of URESA.

53. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 1, 9B U.L.A. 553, 568 (1987).

support duties.⁵⁴ Instead, URESA provides an enforcement mechanism for the duties that are imposed upon persons by each jurisdiction.⁵⁵ Amendments to the first version of URESA make URESA procedures available to interstate as well as intercounty actions.⁵⁶ URESA is still in effect in some states, while a revised form of URESA, the Revised Uniform Reciprocal Enforcement of Support Act,⁵⁷ has been adopted in others.⁵⁸

C. The Parental Kidnapping Prevention Act and the Uniform Child Custody Jurisdiction Act

The Parental Kidnapping Prevention Act (PKPA)⁵⁹ and the Uniform Child Custody Jurisdiction Act (UCCJA)⁶⁰ are uniform laws which govern interstate custody disputes. UIFSA has adopted some of the language and purposes of these uniform laws.⁶¹ This subsection will describe both PKPA and UCCJA.

1. The Parental Kidnapping Prevention Act

Congress passed PKPA in 1980.⁶² PKPA, a federal law, prevails over conflicting state law under the Supremacy Clause of the United States Constitution.⁶³ PKPA governs choice of law and forum conflicts which arise between states in custody disputes.⁶⁴ Specifically, PKPA governs enforcement,⁶⁵ modification,⁶⁶ and jurisdiction⁶⁷ of child custody orders.

54. See generally *id.*

55. See generally *id.*

56. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 33, 9B U.L.A. 553, 602 (1987).

57. 9B U.L.A. 381 (1987).

58. See *infra* note 76 and accompanying text.

59. 28 U.S.C. § 1738A (1988).

60. 9 U.L.A. pt. 1, at 123 (1988).

61. See generally *infra* notes 206-09 and accompanying text.

62. 28 U.S.C. § 1738A.

63. U.S. CONST. art. VI, § 1, sec. 1.

64. 28 U.S.C. § 1738A.

65. *Id.* § 1738A(a).

66. PKPA limits a court's ability to modify a child custody order, providing that a state "shall not modify" a child custody order of another state except in the following instances: "(1) [the state] has jurisdiction to make such a child custody determination; and (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination." *Id.* §§ 1738A(a), (f).

67. PKPA provides that a court's child custody determination is consistent with PKPA if: (1) such court has jurisdiction under the law of such State; and (2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his

2. Uniform Child Custody Jurisdiction Act

A Committee of the National Conference of Commissioners on Uniform State Laws drafted the Uniform Child Custody Jurisdiction Act (UCCJA).⁶⁸ By 1983, all fifty states and the District of Columbia had adopted UCCJA in some form.⁶⁹ UCCJA establishes a procedure to determine which states have jurisdiction to make initial custody determinations and to modify existing child custody decrees.⁷⁰ UCCJA also governs the recognition by nonforum courts of out-of-state child custody decrees.⁷¹

UCCJA's provisions are very similar to those of PKPA. A major difference is the UCCJA provision that permits initiation or modification of an order by a state that either: (1) is the "home state" of the child⁷² or (2) has a "significant connection"⁷³ to the child.⁷⁴ PKPA, which preempts UCCJA under the Supremacy Clause, provides that if a "home state" exists, a state assessing enforcement need not consider whether another state has a "significant connection" to the child.⁷⁵

removal or retention by a contestant or for other reasons, and a contestant continues to live in such state;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; (C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse; (D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or (E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

Id. § 1738A(c).

68. UNIF. CHILD CUSTODY JURISDICTION ACT historical note, 9 U.L.A. pt. 1, at 116 (1988).

69. The last state to adopt the UCCJA was Texas. *See* TEX. FAM. CODE ANN. §§ 11.51-.75 (West 1986).

70. *See* UNIF. CHILD CUSTODY JURISDICTION ACT § 3(a), 9 U.L.A. pt. 1, at 143 (1987) for the specific wording of this provision.

71. *Id.* §§ 13, 14, at 276, 292.

72. 28 U.S.C. § 1738A(b)(4) (1988). For purposes of PKPA a "home state" is: the state in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period

Id.

73. The term "significant connection" is not defined in either PKPA or UCCJA.

74. *See* 28 U.S.C. § 1738A (1988).

75. *See supra* note 67.

Therefore, PKPA supercedes UCCJA and favors the child's home state in determining the jurisdiction of a child custody dispute.

D. Revised Uniform Reciprocal Enforcement of Support Act

The National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) in 1968.⁷⁶ In order to improve the style of URESA and clarify its meaning, RURESA added five new sections to URESA and substantially changed other portions.⁷⁷ The changes in URESA were made to "plug loop holes and cure defects in the enforcement procedure."⁷⁸ The Commissioners who drafted RURESA noted that while enforcement of URESA was efficient in some states, local officials in other states did not perform their URESA duties.⁷⁹ Thus, it was necessary to change the procedures by which support was enforced under URESA.

76. RURESA was adopted by 32 states. See FLA. STAT. ANN. §§ 88.011-.371 (West 1987); GA. CODE ANN. §§ 19-11-40 to -81 (Michie 1991 & Supp. 1994); HAW. REV. STAT. §§ 576-1 to -42 (1985 & Supp. 1992); IDAHO CODE §§ 7-1048 to -1089 (1990 & Supp. 1994); ILL. REV. STAT. ch. 750, paras. 20/1-20/42 (Smith-Hurd 1993 & Supp. 1994); IOWA CODE §§ 252A.1-.25 (1994); KAN. STAT. ANN. §§ 23-451 to -491 (1988); KY. REV. STAT. ANN. §§ 407.010-.480 (Michie/Bobbs-Merrill 1984 & Supp. 1990); LA. REV. STAT. ANN. §§ 13:1641-.1698 (West 1991) (§ 1641-44 repealed by Acts 1993, No. 442, § 3 eff. June 9, 1993); ME. REV. STAT. ANN. tit. 19, §§ 331-420 (West 1981 & Supp. 1993); MICH. COMP. LAWS ANN. §§ 780.151-.174 (West 1982 & Supp. 1994); MINN. STAT. ANN. §§ 518C.01-.36 (West 1990 & Supp. 1994); MONT. CODE ANN. §§ 40-5-101 to -142 (1993); NEB. REV. STAT. §§ 142-.762 to -7104 (1988); N.H. REV. STAT. ANN. §§ 546:1-.41 (1974 & Supp. 1993); N.J. STAT. ANN. §§ 2A:4-30.24 to -30.64 (West 1987 & Supp. 1994); N.M. STAT. ANN. §§ 40-6-1 to -41 (Michie 1994); N.C. GEN. STAT. §§ 52A-1 to -32 (1989 & Supp. 1990); N.D. CENT. CODE §§ 14-12.1-01 to -43 (1991 & Supp. 1993); OHIO REV. CODE ANN. §§ 3115.01-.34 (Anderson 1988 & Supp. 1990); OKLA. STAT. tit. 43, §§ 301-344 (1990); OR. REV. STAT. §§ 110.005-.291 (1989); 23 PA. CONS. STAT. ANN. §§ 4501-4540 (Purdon 1991); R.I. GEN. LAWS §§ 15-11-1 to -42 (1988 & Supp. 1994); S.C. CODE ANN. §§ 20-7-960 to -1170 (Law. Co-op. 1985); S.D. CODIFIED LAWS ANN. §§ 25-9A-1 to -43 (1992); TEX. FAM. CODE ANN. §§ 21.01-.66 (West 1986 & Supp. 1991); VT. STAT. ANN. tit. 15, §§ 385-428 (1989 & Supp. 1994); VA. CODE ANN. §§ 20-88.12 to -88.31 (Michie 1990); W. VA. CODE §§ 48A-7-1 to -41 (1992); WIS. STAT. ANN. § 767.65(1)-(42) (West 1993); WYO. STAT. §§ 20-4-1011 to -1138 (1994).

Although current support statutes take the form of either the original New York statute, URESA, or RURESA, all of the versions are similar enough to allow reciprocity between all states and territories for enforcement of the statutes, regardless of their form. See, e.g., *Landes v. Landes*, 135 N.E.2d 562 (N.Y. 1956); *Commonwealth ex rel. Shaffer v. Shaffer*, 103 A.2d 430 (Pa. 1954). All three statutes are procedural rather than substantive in nature. Therefore, the statutes do not establish duties of support; rather, they promulgate procedural methods to enforce such duties according to individual state law when they arise.

77. RURESA added the following sections to URESA: 21, 23, 27, 34 and 38. RURESA made changes to URESA in sections 2(m), 11(b), 12, 15, 16(2), 18, 20, 30, 38, 39 and 40. URESA made minor changes that improved the style or clarified the meanings of URESA sections 2, 6, 9, 14, 24, and 33.

78. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 381, 382 (1987).

79. *Id.*

RURESA improved procedures for locating and trying the obligor,⁸⁰ changed the way in which trials would be held,⁸¹ and provided guidelines for cases in which paternity was an issue.⁸² Additionally, RURESA provided remedies for interference with visitation rights⁸³

80. *Id.* § 17, at 458-59.

(a) The [Attorney General's Office, State Attorney's Office, Welfare Department or other Information Agency] is designated as the state information agency under this act, it shall (1) compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the state information agency of every other state which has adopted this or a substantially similar Act. Upon the adjournment of each session of the [legislature] the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this Act;

(3) forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the Act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of 3 copies of the [petition] and certificate and one copy of the Act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the [Attorney General] [State Director of Public Welfare] who may undertake the representation.

Id.

81. *Id.* § 21, at 483. If, at the hearing, the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

Section 23 provides:

In any hearing for the civil enforcement of the Act the court is governed by the rules of evidence applicable in a civil court action in the _____ Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (Section 27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

Id. § 23, at 484.

82. *Id.* § 27, at 522-23. If the obligor asserts a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

Id.

83. *See infra* note 114 and accompanying text.

and an appeal if necessary.⁸⁴ RURESA also simplified the procedure for registration of support orders.⁸⁵

URESA and RURESA are civil statutes.⁸⁶ While both URESA and RURESA contain provisions that govern criminal non-support violations,⁸⁷ the only direct remedies under URESA and RURESA are

84. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 34, 9B U.L.A. 381, 538 (1987). Section 34 of RURESA provides:

If the [Attorney General or State Director of Public Welfare] is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

- (a) perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or
- (b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

Id.

85. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 36, 9B U.L.A. 553, 605 (1987). URESA provided the following procedure for registration: "The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof." *Id.*

The support order registration provisions in RURESA are much more detailed and directive, providing:

- (a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with modifications thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered
- (b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action

Id. § 39, at 543-44.

86. Civil proceedings under URESA are "a simplified and fair and convenient way to cause those who are obligated to support their minor children to do so without having to be extradited to another state." *Sinclair v. Sinclair*, 268 S.W.2d 573, 576 (Tenn. 1954) (noting that action initiated under state that has adopted URESA can be sent to another state that has jurisdiction).

87. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 5, 9B U.L.A. 381, 416 (1987). Section 5 of RURESA provides the following interstate rendition for criminal enforcement provision:

The Governor of this State may

- (1) demand of the Governor of another state the surrender of a person found in that state who is charged criminally in this State with failing to provide for the support of any person; or
- (2) surrender on demand by the Governor of another state a person found in this State who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom.

Id. Section 6(a) of RURESA provides as follows:

civil in nature.⁸⁸ RURESA provides two ways for an obligee to recover support: the initiation of a two-state proceeding⁸⁹ and the process of registration.⁹⁰

1. Two-State Proceedings

RURESA provides for a two-state proceeding that is commenced by the obligee⁹¹ in the "initiating state."⁹² Upon certification to the "responding state,"⁹³ the responding state assumes jurisdiction for all further proceedings.⁹⁴ The responding court sets a hearing for the matter and enters an appropriate order.⁹⁵

Specifically, in a two-state RURESA proceeding, an action is commenced in the "initiating state," which is the state where the spouse or child seeking support resides.⁹⁶ Since the responding court

Before making the demand upon the Governor of another state for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least [60] days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

Id. § 6, at 420-21.

88. Section 9 of RURESA provides that "[a]ll duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt" *Id.* § 9, at 432.

89. *Id.* § 18, at 461.

90. See *infra* note 119. URESA also provides for both two-state proceedings and registration.

91. URESA defines "obligee" as "a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order." UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 2(h), 9B U.L.A. 553, 569 (1987).

92. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 2(d), 9B U.L.A. 381, 402 (1987). RURESA defines the term "initiating state" as "a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced." *Id.*

93. *Id.* § 2(1), at 403. RURESA defines "responding state" as one "in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced." *Id.* The Act defines the "responding court" as "the court in which the responsive proceeding is commenced." *Id.*

94. *Id.* § 18, at 461. RURESA § 18 provides as follows:

(a) After the responding court receives copies of the [petition], certificate, and Act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court [clerk of the court] to set a time and place for hearing and give notice thereof to the obligor in accordance with law.

Id.

95. *Id.*

96. See *supra* note 92. Any spouse or child of an obligor may bring a RURESA suit. *Harmon v. Harmon*, 324 P.2d 901, 906 (Cal.) (holding that suit may be brought on behalf of minor although minor will not be made party), *cert. denied*, 358 U.S. 881 (1958). But see *Mahan v.*

does not hold an adversarial hearing at this stage, the initiating state does not serve the defendant or notify him of the proceeding.⁹⁷ The petition filed by the initiating party must state the name, address, and circumstances of both the petitioner and the defendant.⁹⁸ The initiating party must also provide the responding court with any other information that would aid the court in locating the obligor.⁹⁹ If the plaintiff so requests, she will be represented by the district or county attorney of the responding state.¹⁰⁰

The initiating court has two functions: (1) to decide whether the complaint or petition sets forth facts from which the court may find that the defendant owes a duty of support to the petitioner; and (2) to determine whether the court of the responding state has or may obtain proper jurisdiction over the defendant.¹⁰¹ If the petitioner does not

Read, 83 S.E.2d 706, 711 (N.C. 1954) (holding URESA is only applicable when obligee is present in initiating state and obligor is subject to jurisdiction of responding state). Section 13 of RURESAs allows someone who has legal custody of a minor to file a RURESAs action on her/his behalf without the appointment of a guardian *ad litem*. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 9, 9B U.L.A. 381, 448-49 (1987). For cases interpreting RURESAs section 13, see *Campbell v. Campbell*, 617 P.2d 66, 67 (Ariz. Ct. App. 1980) (holding that child's mother does not have standing to bring URESA proceeding for child's support where divorce decree granted custody to father and mother took custody of child in violation of decree); *Byrd v. O'Neill*, 244 N.W.2d 657, 659 (Minn. 1976) (holding that child's guardian is entitled to recover support on his behalf in RURESAs proceeding); *Lambrou v. Berna*, 148 A.2d 697, 701 (Me. 1959) (allowing petition to be brought on behalf of minor dependent by his mother).

A RURESAs proceeding may also be brought by a state that has provided support to an obligee through one of its agencies and is now suing the obligor to provide reimbursement for the money it has provided. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 8, 9B U.L.A. 381, 429 (1987); see also *Paredes v. Paredes*, 454 N.E.2d 1014, 1016 (Ill. App. Ct. 1983) (allowing State of Utah to bring RURESAs action against Illinois respondent for reimbursement of public assistance paid for support of minor children); *County of Stanislaus v. Ross*, 255 S.E.2d 229, 231 (N.C. Ct. App. 1979) (holding that court could order obligor to reimburse California county that provided public assistance for child). But see *Department of Mental Hygiene v. Judd*, 211 A.2d 198, 200 (N.J. 1965) (California Department of Mental Hygiene cannot recover from New Jersey father costs of supporting his mentally ill son because California statute which authorized recovery of such costs had been held unconstitutional, even when law of New Jersey would have allowed such agency to recover such costs).

97. *Allain v. Allain*, 164 N.E.2d 611, 616 (Ill. Ct. App. 1960).

98. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 11, 9B U.L.A. 381, 440 (1987).

99. *Id.* Such information includes "a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number." *Id.*

100. *Id.* § 12, at 445. Section 12 of RURESAs states, "If this state is acting as an initiating state the prosecuting attorney . . . shall represent the obligee in any proceeding under this Act." *Id.* In addition, the "prosecuting attorney shall prosecute the case diligently." *Id.* § 18, at 461.

101. *Id.* § 14, at 450.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this Act to be sent to the responding court[.]

know which court of the responding state has proper jurisdiction over the defendant, the initiating court or district attorney may send the file to a designated agency in the defendant's state of residence.¹⁰² The agency then transmits the file to the proper court.¹⁰³ The initiating state's transmission of the file in no way suggests either that support is due or that evidence of such a duty exists.¹⁰⁴ Rather, the transmission suggests that the responding state should take further action to investigate the claim.¹⁰⁵

Upon receipt of the file containing the complaint, the certification, and copies of other documents from the initiating court, the responding state must docket the case and notify the proper state agency that the complaint has been filed.¹⁰⁶ The agency must then attempt to obtain

Id.

102. *Id.*

103. *Id.*

If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

Id.

RURESA provides that the Attorney General's Office, State Attorney's Office, Welfare Department or another information agency can function as a state information agency. *Id.* § 17(a), at 458.

The designated state information agency, if unable to locate the obligee, can use "all means at its disposal to obtain this information." *Id.* § 17(b), at 459. Sources of information include the following: telephone directories, real property records, vital statistics records, police records, requests for names and addresses from employers, requests to state and federal tax agencies, and requests to the Social Security Administration as permitted by the Social Security Act. *Id.* § 17(b). "The prosecuting attorney . . . shall use all means at his disposal to locate the obligor or his property . . ." *Id.* § 19, at 462.

In general, states that have enacted RURESA or URESA have been liberal in enforcing claims of support by a parent or on behalf of a child. *See Zouck v. Zouck*, 104 A.2d 573, 579 (Md. 1954) (holding that enactment of URESA in Maryland justified granting nonresident wife ability to enforce judgment against domestic spendthrift trust); *Shaffer v. Shaffer*, 103 A.2d 430, 433 (Pa. Super. Ct. 1954) (noting that courts should construe uniform laws that are remedial in nature liberally with reference to object to be obtained).

When serving as an initiating state in RURESA proceedings, courts in the District of Columbia insist on entering an order that an obligor is liable for support before transferring the obligor's file to the responding state. *Cobbe v. Cobbe*, 163 A.2d 333, 335 (D.C. 1960) (initiating court in RURESA action passed on plaintiff's standing to sue). When a state enters such an order, and the obligor does not enter a denial in the responding court, the responding court may enter an order for support with no further proceedings. Dispensing with further proceedings is allowed only because of the potential obligor's default by not responding. *Clark v. Clark*, 139 So. 2d 195, 197 (Fla. Dist. Ct. App. 1962) (noting that respondent who fails to answer or testify after being properly served cannot question final child support order).

104. *See generally supra* note 101 and accompanying text.

105. *See generally infra* notes 110-11 and accompanying text.

106. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 18, 9B U.L.A. 381, 461 (1987).

jurisdiction over the defendant or over his property under the laws of the responding state.¹⁰⁷ A public officer must serve the defendant with a summons and a copy of the complaint.¹⁰⁸ If a defendant flees the state after he has been properly served with the RURESA complaint and summons, the responding state retains jurisdiction over him and can create and enforce an order of support against him.¹⁰⁹

After acquiring jurisdiction over the defendant, the responding court proceeds with the action according to its forum laws for civil actions for nonsupport, subject to the same rules for cases of default or admission of liability.¹¹⁰ The defendant can raise any applicable defenses, including the pleas that he is already making payments under a separation agreement or divorce decree and that his circumstances have not substantially changed to warrant a change in the amount of support owed.¹¹¹ The courts rarely recognize the removal of a child from a state by the petitioner or the petitioner's denial of a defendant's visitation

107. *Id.* Section 16 of RURESA allows jurisdiction by arrest over a defendant who is about to flee the state. *Id.* at 467. In addition, if a defendant owns property or resides in another state or county, the official must forward the RURESA documents to the proper agency in that state or county. *Id.* § 19, at 467.

108. *Pousson v. Superior Court*, 332 P.2d 766, 767 (Cal. Ct. App. 1958) (noting that in civil action, service of summons must take place in order for court to have jurisdiction over defendant).

109. This is true under a RURESA two-state proceeding. *Sedelmeyer v. Sedelmeyer*, 400 A.2d 571, 572 (N.J. 1979) (holding that URESA only applies when obligee is present in initiating state and responding state has jurisdiction over obligor). *But see Mahan v. Read*, 83 S.E.2d 706, 711 (N.C. 1954). The *Mahan* court determined that URESA should not be interpreted as applicable to such situations. *Id.* The court reasoned that an interpretation of URESA that would permit an obligee to pursue a remedy through the courts of two states when the obligor was not present in either would "so complicate and confuse the procedure thereunder as to impair seriously its manifest purpose and its usefulness in proper cases." *Id.*

110. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 20, 9B U.L.A. 381, 469 (1987).

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court[.]

Id. In addition, Section 7 of RURESA provides that the "[d]uties of support applicable under this Act are those imposed under the laws of any state where the obligor was present for the period during which support is sought." *Id.* § 7, at 423. A rebuttable presumption exists that the obligor was "present in the responding state during the period for which support is sought." *Id.*

111. *Huffman v. Huffman*, 403 N.Y.S.2d 850 (N.Y. Fam. Ct. 1978). As a defense, the defendant could also utilize a prior order or agreement that placed the obligation of child support upon the petitioner. *See Chance v. Lapausky*, 402 A.2d 1329 (Md. Ct. Spec. App. 1979); *Martin v. Coffey*, 268 N.W.2d 307 (Mich. Ct. App. 1978).

The "changed circumstances" rule is encompassed in the Uniform Marriage and Divorce Act: "Except as otherwise provided . . . the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable." UNIF. MARRIAGE AND DIVORCE ACT § 316, 9A U.L.A. 160, 489-90 (1987).

rights as a defense to child support.¹¹² In fact, RURESA specifically disallows this defense.¹¹³ An order by a divorce court terminating child support because the custodian interfered with the obligor's visitation rights, however, will act as *res judicata* on the issue of child support in a RURESA proceeding.¹¹⁴

If the court of the responding state finds that the defendant has an affirmative duty of support that he is not currently fulfilling, the responding court can enter an appropriate order.¹¹⁵ The order may provide that the defendant reimburse the spouse for expenses she incurred while the defendant failed to pay support.¹¹⁶ These expenses may include the payment of arrearages accrued under a support order of another state or county.¹¹⁷ The court may also order future support.¹¹⁸

2. Registration of a Support Order

RURESA also provides for the registration of an existing support order as an alternative to a two-state proceeding.¹¹⁹ A support order granted in one state can be registered in the state of the obligor's resi-

112. *Moffat v. Moffat*, 612 P.2d 967, 970 (Cal. 1980) (allowing mother who left California where father resides for purpose of depriving him of visitation to still collect support from him); see also *City of Clearwater v. Petrash*, 598 P.2d 138, 139 (Colo. 1979) (holding that court's ability to award child support is not affected by parents' misconduct); *People ex rel. Argo v. Henderson*, 422 N.E.2d 1005, 1007 (Ill. App. Ct. 1981) (noting that mother's disobedience of court order does not constitute reason not to enforce support order); *Dorsey v. Dorsey*, 408 N.E.2d 502, 504 (Ill. Ct. App. 1980) (holding that husband is still liable for support when mother failed to provide forwarding address, even though her actions violated father's ability to visit child). *But see* *Hethcox v. Hethcox*, 246 S.E.2d 444, 445 (Ga. Ct. App. 1978) (holding that father has no duty to make payments to mother who has, contrary to support order, removed children from court's jurisdiction).

113. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 23, 9B U.L.A. 381, 484 (1987) ("[T]he determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.").

114. *Moffat*, 612 P.2d at 971 (court can still order support from father when mother left California and deprived father of visitation rights); *People ex rel. Oetjen v. Oetjen*, 416 N.E.2d 278, 281 (Ill. App. Ct. 1980) (holding that support order established under URESA is not nullified by divorce action unless divorce court so specifies).

115. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 24, 9B U.L.A. 381, 487-88 (1987).

116. *State ex rel. Whatley v. Mueller*, 288 S.W.2d 405, 412 (Mo. Ct. App. 1956) (responding court may enter order forcing obligee to pay support or reimburse obligor for expenses incurred by her).

117. "All duties of support, including the duty to pay arrearage, are enforceable by a proceeding under this Act including a proceeding for civil contempt." REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 9, 9B U.L.A. 381, 432-33 (1987).

118. *Phillips v. Phillips*, 146 N.E.2d 919, 920 (Mass. 1958) (allowing Maine court to make prospective order concerning obligor who resided in Massachusetts).

119. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 35-40, 9B U.L.A. 381, 540-50 (1987).

dence.¹²⁰ The obligor's state of residence will then enforce the order by a summary procedure as if the order was the judgment of a court in that state.¹²¹ To utilize the process of registration, an obligee must have previously been granted a support order.¹²² If no order has been granted, the obligee must utilize the two-step procedure discussed above.¹²³

While the first step in the registration process is the actual registration of the support order, the ultimate goal is to enforce the original decree in the registering state. The registration proceeding requires two steps, both of which can be performed in one proceeding. First, the decree to be registered is filed in the registering state.¹²⁴ Second, the clerk in the registering state registers the order and gives notice to the obligor.¹²⁵ Under section 40(b) of RURESA, within twenty days of the order's issue the obligor can petition to vacate the order.¹²⁶ The obligor's challenges to the order are limited to defenses of lack of personal jurisdiction or a stay pending the appeal of the original order in the state that rendered it.¹²⁷ Under section 40(a) of RURESA, a registered order is treated as an order of the state in which it is registered.¹²⁸ Both RURESA and URESA are unclear on whether this language gives the

120. *Id.* § 40(a), at 546.

Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

Id.

121. Enforcement by registration is only appropriate where the judgment that is being enforced was entered under the appropriate jurisdiction of a court. *In re Marriage of McMahan*, 660 P.2d 515, 517 (Colo. Ct. App. 1983) (full faith and credit will not be given to order when state rendering order had no jurisdiction). In addition, the new state in which the judgment is registered must have personal jurisdiction over the obligor. *Stephens v. Stephens*, 331 S.E.2d 484, 489 (Va. 1985) (holding that court cannot issue support order when Virginia does not have in personam jurisdiction over obligor).

Under RURESA, a registered support order is treated as if it was originally issued by the responding tribunal. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 7, 9B U.L.A. 381, 423 (1987). Most states allow prospective modification of any registered order. *See, e.g., Pinner v. Pinner*, 234 S.E.2d 633, 635 (N.C. Ct. App. 1977) (stating that obligor or obligee may request modification of URESA order once it is registered). Under RURESA, the issuing tribunal of a support order retains jurisdiction over that order regardless of registration; however, that tribunal does not retain exclusive jurisdiction.

122. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 39, 9B U.L.A. 381, 543 (1987).

123. *See supra* notes 91-118 and accompanying text.

124. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 39(1), 9B U.L.A. 381, 543 (1987).

125. *Id.*

126. *Id.* § 40(c), at 546.

127. *Id.*

128. *Id.* § 40(a).

registering court the power to modify the award or to merely enforce the amount set forth in the original order.

The 1968 amendments to URESA slightly modified section 30. Section 30 of the original version of URESA stated:

No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.¹²⁹

This earlier URESA provision reflects a preference that the obligor be bound by the amount of the original support order, thereby discouraging a responding court from ordering a different amount of support.

In the 1968 amendments, the Commission also modified and subsequently renamed section 31 of URESA.¹³⁰ Section 31 provided:

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar Act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.¹³¹

Courts often interpreted section 31, as revised in 1968, to mean that a responding court in a URESA proceeding can enter a child support order in an amount different from that previously ordered.¹³²

Section 31 is often referred to as the "antisupersession" provision of RURESA.¹³³ While child support orders are not retroactively modifiable in any state, many states have interpreted section 31 to allow courts to modify any orders that are not yet in arrears.¹³⁴ These courts

129. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 30, 9B U.L.A. 553, 600 (1987).

130. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 381, 531 (1987).

131. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 553, 601 (1987).

132. See *supra* note 121 and accompanying text.

133. See, e.g., *Jeffrey v. Jeffrey*, 425 S.E.2d 152, 154 (W. Va. 1992); see generally Andrea G. Nadel, Annotation, *Construction and Effect of Provision of Uniform Reciprocal Enforcement of Support Act That No Support Order Shall Supersede or Nullify Any Other Order*, 31 A.L.R. 4th 347 (1984).

134. See, e.g., *Murphy v. Murphy*, 395 So. 2d 1047, 1048 (Ala. Ct. App. 1981) (noting that trial court's order of future child support is original order rather than modification of another state's order); *Elkind v. Byck*, 439 P.2d 316, 319 (Cal. 1968) (holding that California can impose

rationalize that the responding court is neither nullifying nor superseding the prior order, but rather is entering a new order.¹³⁶ Responding courts review any proceedings under the order de novo and therefore possess the power to enter appropriate child support awards.¹³⁶ In such a situation, responding courts take into consideration the circumstances at the time the award is actually granted to the obligee.¹³⁷ In addition, RURESA is sometimes interpreted by courts as allowing the responding state's court to completely nullify the original state's order if the

child support obligation which is higher than Georgia's order when California is new home state of obligor); *Sullivan v. Sullivan*, 424 N.E.2d 957 (Ill. Ct. App. 1981) (holding that responding court may always enter different amount of prospective child support); *Banton v. Mathers*, 309 N.E.2d 167, 170 (Ind. Ct. App. 1974) (holding that support orders issued by Oklahoma under URESA are not entitled to full faith and credit in modification of original Indiana divorce decree); *Moore v. Moore*, 107 N.W.2d 97, 99 (Iowa 1961) (interpreting Uniform Support of Dependents Law); *Howard v. Howard*, 191 So. 2d 528, 531 (Miss. 1966) (noting that URESA intended only as supplemental remedy for enforcement of orders); *Olson v. Olson*, 534 S.W.2d 526, 528 (Mo. Ct. App. 1976) (holding that California decree does not bar obligee from bringing suit in Montana for increase in support).

135. See *Roberts v. Roberts*, 292 S.W.2d 596, 598 (Mo. Ct. App. 1956).

136. See *id.*

137. One of the ramifications of a responding court's award of a "new" support award is that more than one order of support may be outstanding at any one time. The original support order still remains in the originating state, and the responding state has issued yet another order, perhaps in a different amount. Thus, if the obligor ever returns to the original state, he can be held liable for any arrearage which results from the difference between the original order and the responding state's new, perhaps lower, imposed obligation. See, e.g., *Oglesby v. Oglesby*, 510 P.2d 1106 (Utah 1973).

Georgia takes an opposing view in its interpretation of section 31 of the Act. Georgia courts have ruled that a responding court cannot prospectively modify a prior Georgia order because such a modification would violate the antisupersession provision of Section 3 of URESA. See, e.g., *State v. McKenna*, 315 S.E.2d 885, 887 (Ga. 1984). Section 3 of both URESA and RURESA provide that "[t]he remedies herein provided are in addition to and not in substitution for any other remedies." UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 3, 9B U.L.A. 553, 572 (1987); REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 3, 9B U.L.A. 381, 408 (1987).

Other courts allowing prospective modification of child support orders do not interpret the antisupersession provision as inhibiting such modification. Some courts interpret the antisupersession provision to mean that the initiating state cannot be bound by the responding court's modification. See, e.g., *Henry v. Knight*, 746 P.2d 1375 (Colo. Ct. App. 1987); *State Dept. of Health and Rehabilitative Services v. Franklin*, 630 So. 2d 661 (Fla. Ct. App. 1994).

The phenomenon of two support orders can be a financial detriment to the obligor in another way. One court has held that under the antisupersession provision of URESA, amounts paid by an obligor under a URESA proceeding will not, unless specifically provided in the order itself, be credited toward the original support order. *Valley v. Selfridge*, 639 P.2d 225 (Wash. Ct. App. 1982). In *Valley*, a Washington court ruled that where a subsequent order was entered by a different Washington court under URESA, the payments made by the obligor thereunder could not be credited to an arrearage which had been created under the original order. *Id.* at 230. The court rationalized that the antisupersession provision of URESA implied that each order was independent of the other; therefore, the URESA order was not subject to a prior order unless the court granting the order specifically so provided. *Id.*

responding court specifically provides for such nullification in its order.¹³⁸

RURESA was created to aid obligees in obtaining support by allowing interstate enforcement of support orders and by providing a specific process for enforcement.¹³⁹ It may often be more feasible and less risky, however, for an obligee to take other procedural avenues to receive support money due her. One alternative is to ask the court to grant full faith and credit to an already existing support order.¹⁴⁰ If an obligee utilizes URESA to obtain support money, she is risking not receiving the entire amount of support, as the responding state may reduce the amount of any future support that it orders to be paid.¹⁴¹ An obligee may ultimately receive less support than she was originally owed if she registers a support order under RURESA, although she could also potentially receive more.

3. RURESA's Inability to Enforce Interstate Support Duties

Under section 31 of URESA, an obligee can bring a new suit in the state or county in which the obligor resides.¹⁴² The obligor is entitled to all due process rights.¹⁴³ The new court may set a new amount of support and may modify the amount in the future whenever either the obligor or the obligee requests a modification.¹⁴⁴ The obligee would be inconvenienced because she would be forced to travel to the new state for each modification if she wanted the amount of support to be increased in the future. The obligee could not simply file a motion for modification in her home state or county, since there is no longer personal jurisdiction over the obligor in that particular state or county.

138. See, e.g., *In re Marriage of Popenhagen*, 99 Cal. App. 3d 514 (1979).

139. See generally *supra* notes 80-85 and accompanying text.

140. See generally *supra* note 17 and accompanying text.

141. See, e.g., *Taylor v. Vilcheck*, 745 P.2d 702 (Nev. 1987) (holding that Nevada court can reduce amount of support ordered by Kentucky court in URESA action). But see *Ray v. Ray*, 277 S.E.2d 495 (Ga. 1981) (holding that responding court in URESA action could prospectively reduce amount of support as previously ordered); *Bisno v. Biloon*, 291 S.E.2d 66 (Ga. Ct. App. 1982) (holding that antisupersession provision of URESA denied responding court any jurisdiction to raise amount of decree).

142. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 381, 531 (1987).

143. *Id.*

144. In *Banton v. Mathers*, the obligee (wife) resided in Indiana, and the obligor (former husband) had relocated to Oklahoma. 309 N.E.2d 167 (Ind. Ct. App. 1974). When the former husband failed to pay his duty of support, the wife brought a contempt action against him. *Id.* at 168. The court held that rather than seeking enforcement through URESA, the wife could have brought a local suit in Oklahoma where the obligee resided. *Id.* at 170 n.2. The Oklahoma court would have to follow principles of due process of law, thereby affording the obligor every defense he would have had in Indiana. By providing such due process, the Oklahoma court would have the same power to modify the Indiana support order that the Indiana court would have had. *Id.*

The cost and inconvenience of travel may inhibit the obligee from attempting to pursue increased support to satisfy the growing expenses of herself or her child.

An obligee who possesses an outstanding support order from one state can nevertheless bring an independent RURESA proceeding in another state, requesting that the responding state disregard the original support decree and enter a new one.¹⁴⁵ An obligor need not be concerned with this if he resides in a state that considers any past due judgments to be final. In such cases, ordering the defendant to pay anything beyond the arrears due under the original order would violate the Full Faith and Credit obligations due to that decree.¹⁴⁶ Full Faith and Credit, however, would not apply to a support order if, under the law of the state that originally ordered support, installments that have accrued but have not yet been paid are not final and are modifiable.¹⁴⁷ In such a case, an obligor can be subject to outstanding support orders of more than one state.

An obligee may also face the question of whether she can bring a RURESA support suit in one state when a proceeding in another state has terminated her right to support. This question was resolved in *Elkind v. Byck*.¹⁴⁸ In *Elkind*, a California court stated that a responding court can, in such instances, impose an order of support.¹⁴⁹ The *Elkind* court reasoned that disregarding another state's decree prohibiting support does not violate the Full Faith and Credit Clause if the obligor has established a new relationship with the responding state.¹⁵⁰

4. Availability of Plaintiff to Participate in Proceedings

Another practical problem under RURESA is that the responding court must hold a trial if the obligor files an answer.¹⁵¹ Unfortunately,

145. See *State on Behalf of McDonnell v. McCutcheon*, 337 N.W.2d 645, 648 (Minn. 1983) (holding that responding state in two-state RURESA suit must apply its own law to determine level of support to be given).

146. *Huffman v. Huffman*, 403 N.Y.S.2d 850, 852 (Fam. Ct. 1978). This rule would hold true regarding accrued installments which have not yet been paid. The Full Faith and Credit Clause provides that final judgments cannot be modified and that judgments must be given the same effect by a later court as the issuing court. U.S. CONST. art. IV, § 1.

147. The United States Supreme Court has taken the position that full faith and credit is not applicable to non-final decrees and judgments. *Sistare v. Sistare*, 218 U.S. 1 (1910).

148. 439 P.2d 316 (Cal. 1968).

149. *Id.* at 319.

150. *Id.* While it seems as though this result is contrary to the purpose of the Full Faith and Credit Clause, the Supreme Court's interpretation in *Elkind* is warranted by the fact that the original decree in *Elkind* was rendered in a state which had adopted the URESA conflicts provision. *Id.* at 316. The *Elkind* decision may be limited to child support orders, as most courts agree that a final denial of alimony cannot be modified. *Id.*

151. A problem would arise if an obligor files an answer to defend a suit.

in almost every instance, the obligee will not be available to testify. An obligee typically utilizes a RURESA proceeding because she is unable to travel to the obligor's state to file a proceeding. In such cases, the obligor will testify and will be cross-examined by the public official appointed to represent the obligee.¹⁵²

While an obligor may prevail on his own testimony,¹⁵³ the testimony of the obligee is frequently necessary to enable the court to make an informed and appropriate ruling.¹⁵⁴ Therefore, the responding court can order the obligee to participate in a deposition or to answer interrogatories.¹⁵⁵ RURESA court proceedings can ultimately be expensive and frustrating for the obligee.¹⁵⁶

Procedural problems arising under RURESA have hindered anticipated increases in the collection of support money. In 1987, forty percent of all single mothers who had children living with them never received support money.¹⁵⁷ Only one-half of the sixty percent of single mothers who did receive support received the full amount owed them.¹⁵⁸ States' adoption of URESA and RURESA has not resolved the problem of the inability to collect support money. Due to these and other problems with the provisions of URESA and RURESA, the Commissioners on Uniform State Laws found it necessary to propose a new uniform law, the Uniform Interstate Family Support Act.¹⁵⁹

152. The defendant will be available to testify because the responding court will have personal jurisdiction over him. See *supra* note 101 and accompanying text.

153. Phillips v. Phillips, 146 N.E.2d 919 (Mass. 1958); Kinney v. Kinney, 453 A.2d 1321 (N.H. 1982).

154. Carpenter v. Carpenter, 92 So. 2d 393, 396 (La. 1956) (holding that plaintiff had to prove her case through oral testimony, interrogatories, and depositions); Lambrou v. Berna, 148 A.2d 697, 702 (Me. 1959) (requiring that obligor must be able to cross-examine petitioner in URESA proceeding).

155. See *supra* note 154. The responding state must continue the case until plaintiff's testimony can be obtained.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 20, 9B U.L.A. 381, 469 (1987).

156. The judge sits as the fact finder at the trial; there is no jury. Reynolds v. Reynolds, 150 Cal. Rptr. 423 (Ct. App. 1978) (holding that jury trial is not constitutional requirement in RURESA proceeding).

157. S. Rep. No. 377, 100th Cong., 2d Sess. 5 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2776, 2785.

158. *Id.*

159. In addition to PKPA and the uniform acts that have been adopted at states' options, Title IV-D of the Social Security Act, entitled the Federal Child Support Enforcement Act, contains several child support enforcement provisions. 42 U.S.C. §§ 651-87 (1988). Title IV-D re-

5. The Uniform Interstate Family Support Act—Terminology and Organization

The Uniform Interstate Family Support Act (UIFSA)¹⁶⁰ is the newest proposed uniform law for enforcing interstate support obligations. Seventeen states have adopted UIFSA.¹⁶¹ One of the main incentives for states to enact UIFSA is to eliminate multiple support orders among the various states.¹⁶² Specifically, UIFSA governs the following proceedings:

- (1) establishment of an order for spousal support or child support . . .
- (2) enforcement of a support order and income-withholding order of another state without registration . . .

quires states, as a prerequisite to receiving federal funding, to implement specific child support enforcement programs and agencies. *Id.* § 603(h).

Section 655 provides funding for the programs that are established under the Act, and § 658 provides incentive payments for programs that are run efficiently. Each state is required to establish Title IV-D agency offices, which initiate the process of collecting support. 42 U.S.C. § 654 (1988). The agencies must be established in order to obtain Aid to Families with Dependent Children (AFDC) funding. The agencies, however, are required to provide services to everyone, not just AFDC recipients. *Id.* § 654(6). The AFDC program operates through the Social Security Act. 42 U.S.C. §§ 601-644 (1991 & Supp. 1993). Federal funds finance the AFDC program, and the states administer the AFDC program. *Id.* The AFDC program provides funds to children who are not receiving proper support from their parents. For a discussion of the AFDC program, see Carol H. Linden, Note, *Developments in Welfare Law—Aid to Families With Dependent Children*, 61 CORNELL L. REV. 777 (1976).

In addition, Title IV-D mandates the establishment of a parent locator service in each state to aid parents in locating an absent obligor. 42 U.S.C. § 653 (1988). The Parent Locator Service is used "to obtain and transmit to any authorized person . . . information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent." *Id.* § 653(a). The state works in conjunction with the Department of Health and Human Services (HHS), which can search federal agency records. *Id.* § 653(e). HHS can pass along any information which does not endanger national security. *Id.* § 653(b)-(c). HHS can obtain addresses and employment data and can search the records of the Social Security Administration, the Internal Revenue Service, the Department of Labor, the Armed Services, and the Department of Veterans' Affairs. *Id.* § 653(e). Title IV-D also authorizes automatic wage withholding, liens, bonding, state income tax refund intercepts, and tests to establish paternity. *Id.* § 666. Additionally, Title IV-D authorizes federal income tax refund intercepts and garnishment of wages, pensions, and benefits of federal employees and armed services personnel. *Id.* § 661. These methods of collecting income can greatly increase an obligee's ability to receive the support owed her.

160. 9 U.L.A. 121 (Supp. 1994).

161. ARIZ. REV. STAT. ANN. §§ 12-1721 to -1756 (1994); ARK. CODE ANN. §§ 9-17-101 to -905 (Michie 1993); COLO. REV. STAT. ANN. §§ 14-5-101 to -903 (West Supp. 1994); 1994 Del. Laws 238 (1994); IDAHO CODE §§ 7-1001 to -1052 (Supp. 1994); 1994 Kan. Sess. Laws 301; MONT. CODE ANN. §§ 40-5-101 to -713 (1993); NEB. REV. STAT. ANN. §§ 42-701 to -751 (Supp. 1993); N.M. STAT. ANN. §§ 40-6A-101 to -903 (Michie 1994); 1994 Okla. S.B. 595; OR. REV. STAT. §§ 110.092-.441 (Supp. 1994); 1994 S.C. Acts 494; S.D. CODIFIED LAWS ANN. §§ 25-9B-101 to -902 (Supp. 1994); TEX. FAM. CODE ANN. §§ 21-01 to -52 (West Supp. 1994); VA. CODE ANN. §§ 20-88.32 to -88.82 (Michie Supp. 1994); WASH. REV. CODE ANN. §§ 26.21.105-.916 (West Supp. 1994); 1993 Wis. Laws 326.

162. See *supra* notes 145-47 and accompanying text.

- (3) registration of an order for spousal support or child support of another state for enforcement . . .
- (4) modification of an order for child support or spousal support issued by a tribunal of this State . . .
- (5) registration of an order for child support of another state for modification . . .
- (6) determination of parentage . . .
- (7) assertion of jurisdiction over nonresidents[.]¹⁶³

UIFSA improves upon URESA and RURESAs methods of collecting support in interstate proceedings.

Article 1 of UIFSA provides definitions of terms used throughout UIFSA. UIFSA allows states to define some terms in accordance with individual state law.¹⁶⁴ Other terms have been copied directly from URESA and RURESAs.¹⁶⁵ Still other terms have been changed and expanded to improve the enforcement of interstate support orders and to reflect the current structure of enforcement agencies.¹⁶⁶

UIFSA provides jurisdictional rules in Article 2.¹⁶⁷ Section 201 establishes UIFSA's bases for jurisdiction over a nonresident.¹⁶⁸ UIFSA provides that a state may exercise jurisdiction over an individual if: (1) the individual is properly served;¹⁶⁹ (2) the individual submits to the jurisdiction of the court by entering a general appearance or by filing a responsive document; (3) the individual resided with the child for whom support is sought within the state; (4) the individual provided prenatal expenses or child support while residing in the state; (5) the child resides in the state because of some activities of the individual; (6) the individual engaged in sexual intercourse in the state; (7) the individual asserted parentage in the state's registry or another appropriate agency; or (8) there is "any other basis consistent with the constitutions of this State and the United States for the exercise of

163. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301, 9 U.L.A. pt. 1, at 139 (Supp. 1994).

164. "Child" is defined as: "an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent." UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(1), 9 U.L.A. pt. 1, at 127-30 (Supp. 1994). "Child support order" is defined as "a support order for a child, including a child who has attained the age of majority under the law of the issuing state." *Id.* § 101(2) at 127-30. In both definitions, the "age of majority" is governed by state law. *Id.*

165. See *infra* note 199 and accompanying text.

166. See, e.g., *infra* notes 202-05 and accompanying text.

167. UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 201-209, 9 U.L.A. pt. 1, at 131-38 (Supp. 1994).

168. *Id.* at 131-33.

169. This section codifies the Supreme Court's holding in *Burnham v. Superior Court*, 495 U.S. 604 (1990). *Burnham* reaffirms that personal service within a state is sufficient for a court to obtain personal jurisdiction. *Id.*

personal jurisdiction.”¹⁷⁰ This portion of UIFSA is broad enough to allow jurisdiction over obligors who have had any relevant contact with the state.

Part B of Article 2 of UIFSA deals with procedures previously entitled “two-state URESA actions.”¹⁷¹ An important change is the ability of an obligee to initiate an action similar to a two-state proceeding, while involving only one state.¹⁷² Under this section, a tribunal can serve as a responding state even if there is no initiating tribunal, thereby accommodating the direct filing of an action in a tribunal by a nonresident.¹⁷³

Article 3 of UIFSA provides guidelines which are common to all types of actions.¹⁷⁴ Section 304 defines the duties of an initiating tribunal to forward support documents to the responding state.¹⁷⁵ Section 305 lists the duties of the responding tribunal.¹⁷⁶ These duties include filing the petition and notifying the petitioner that the petition was filed.¹⁷⁷ Section 305 also provides a list of actions a responding tribunal is authorized to take.¹⁷⁸ A tribunal that does not command jurisdiction

170. UNIF INTERSTATE FAMILY SUPPORT ACT § 201, 9 U.L.A. pt. 1, at 131-33 (Supp. 1994). UIFSA subsection 8 is similar to the numerous state statutes that contain broad, catch-all provisions. *See, e.g.*, CAL. CIV. PROC. CODE § 410.10 (West 1973). The requirements in section 201 are derived “from a variety of sources, including the Uniform Parentage Act § 8, TEXAS FAM. CODE § 11.051 (West 1992), and New York Family Court Act § 154.” UNIF. INTERSTATE FAMILY SUPPORT ACT § 201, 9 U.L.A. pt. 1, at 131-33 (Supp. 1994).

171. UNIF. INTERSTATE FAMILY SUPPORT ACT § 2B, 9 U.L.A. pt. 1, at 133-37 (Supp. 1994).

172. *Id.*

173. *Id.* at 133.

174. *Id.* at 139.

175. RURESAs section 144 requires that the initiating tribunal determine if a duty of support may be owed. *See supra* note 101 and accompanying text. Section 304 of UIFSA eliminates this requirement:

Upon the filing of a [petition] authorized by this [Act] [sic], an initiating tribunal of this State shall forward three copies of the [petition] and its accompanying documents;

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 304, 9 U.L.A. pt. 1, at 141 (Supp. 1994).

176. *Id.* at 142-43.

177. UNIF. INTERSTATE FAMILY SUPPORT ACT § 305(a), 9B U.L.A. pt. 1, at 142 (Supp. 1994). Section 305(a) provides that:

When a responding tribunal of this State receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(c) (Proceedings Under this [Act]), it shall cause the [petition] or pleading to be filed and notify the [petitioner] by first class mail where and when it was filed.

Id.

178. UNIF. INTERSTATE FAMILY SUPPORT ACT § 305(b), 9B U.L.A. pt. 1, at 142 (Supp. 1994). UIFSA section 305(b) provides that:

over the obligor must forward any pleading it receives to the appropriate tribunal.¹⁷⁹

Article 4 of UIFSA provides for the establishment of a support obligation.¹⁸⁰ The tribunal of a responding state is authorized to issue both temporary and permanent support orders.¹⁸¹ Such orders are binding so long as the tribunal retains personal jurisdiction over the obligor.¹⁸²

A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

- (1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (3) order income withholding;
- (4) determine the amount of any arrearages, and specify a method of payment;
- (5) enforce orders by civil or criminal contempt, or both;
- (6) set aside property for satisfaction of the support order;
- (7) place liens and order execution on the obligor's property;
- (8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) issue a [bench warrant; capias] for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local and state computer systems for criminal warrants;
- (10) order the obligor to seek appropriate employment by specified methods;
- (11) award reasonable attorney's fees and other fees and costs; and
- (12) grant any other available remedy.

Id.

179. UNIF. INTERSTATE FAMILY SUPPORT ACT § 306, 9B U.L.A. pt. 1, at 143 (Supp. 1994). Section 306 provides: "If a [petition] or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the [petitioner] by first class mail where and when the pleading was sent." *Id.*

180. *Id.* at 153.

181. *Id.*

182. UNIF. INTERSTATE FAMILY SUPPORT ACT § 401, 9 U.L.A. pt. 1, at 153 (Supp. 1994). UIFSA section 401 provides that:

(a) If a support order entitled to recognition under this [Act] has not been issued, a responding tribunal of this State may issue a support order if:

- (1) the individual seeking the order resides in another state; or
- (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

- (1) the [respondent] has signed a verified statement acknowledging parentage;
- (2) the [respondent] has been determined by or pursuant to law to be the parent; or
- (3) there is other clear and convincing evidence that the [respondent] is the child's parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 305[.]

Id.

Article 5 of UIFSA provides for the enforcement of a foreign support order without utilizing the registration process.¹⁸³ An income-withholding order from another state may be recognized by a responding tribunal.¹⁸⁴ The party seeking to enforce the support order sends the support documents issued by one tribunal to a support enforcement agency of another tribunal where enforcement is sought.¹⁸⁵ If the obligor does not contest enforcement of the order, it may be enforced by the responding tribunal without being registered.¹⁸⁶

Article 6 of UIFSA provides for the enforcement and modification of support orders after they have been registered.¹⁸⁷ Any support order of one state may be registered in another state; section 602 of UIFSA establishes the exact procedure for registration.¹⁸⁸ An obligor may con-

183. *Id.* at 154-55.

184. UNIF. INTERSTATE FAMILY SUPPORT ACT § 501, 9B U.L.A. pt. 1, at 154 (Supp. 1994). UIFSA section 501(a) provides:

(a) An income-withholding order issued in another state may be sent by first class mail to the person or entity defined as the obligor's employer under [the income-withholding law of this State] without first filing a [petition] or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

(1) treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) immediately provide a copy of the order to the obligor; and

(3) distribute the funds as directed in the withholding order.

Id.

185. *Id.* at 155.

186. UNIF. INTERSTATE FAMILY SUPPORT ACT § 502(b), 9B U.L.A. pt. 1, at 155 (Supp. 1994). UIFSA section 502(b) provides:

Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity of administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

Id.

187. *Id.* at 156-66.

188. UNIF. INTERSTATE FAMILY SUPPORT ACT § 602, 9B U.L.A. pt. 1, at 156-57 (Supp. 1994). UIFSA section 602 provides that:

(a) A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the [appropriate tribunal] in this State:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

test the validity or the enforcement of an order that has been registered.¹⁸⁹ To prevail in a validity challenge the obligor must show that:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this State to the remedy sought;
- (6) full or partial payment has been made; or
- (7) the statute of limitation under Section 604 (Choice of Law) precludes enforcement of some or all of the arrearage.¹⁹⁰

Under UIFSA, an order that is registered will be enforced unless the obligor provides a valid reason as to why it should not be enforced.¹⁹¹

Article 7 of UIFSA provides for the determination of parentage through the use of a specified proceeding.¹⁹² Article 8 of UIFSA pro-

(iii) a description and the location of property of the obligor in this State not exempt from execution; and

(5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

Id.

189. UNIF. INTERSTATE FAMILY SUPPORT ACT § 606(a), 9B U.L.A. pt. 1, at 160 (Supp. 1994). UIFSA section 606(a) provides:

A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within [20] days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearage

Id.

190. *Id.* at 161.

191. *Id.*

192. UNIF. INTERSTATE FAMILY SUPPORT ACT § 701, 9B U.L.A. pt. 1, at 166 (Supp. 1994). UIFSA section 701 provides that:

(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this [Act] or a law substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the [petitioner] is a parent of a particular child or to determine that a [respondent] is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply the [Uniform Parentage Act; procedural and substantive law of this State,] and the rules of this State on choice of law.

Id.

vides grounds for interstate rendition.¹⁹³ Article 9 provides for the uniformity of application and construction of UIFSA.¹⁹⁴ Article 9 also establishes that UIFSA may be called the "Uniform Interstate Family Support Act."¹⁹⁵ Finally, UIFSA contains a severability clause.¹⁹⁶

III. ANALYSIS

UIFSA substantially improves upon the support collection and enforcement concepts embodied in URESA and RURESA. A transition must be made between URESA, RURESA, and the newly implemented UIFSA. UIFSA provides guidance for this transition. UIFSA is similar to URESA and RURESA in its terms and provisions, so it can be easily understood by practitioners.¹⁹⁷ In addition, UIFSA provides for the registration of support orders in the obligor's state of residence.¹⁹⁸

A. UIFSA is Similar to URESA and RURESA

UIFSA largely retains the terminology used in URESA and RURESA. For example, URESA, RURESA, and UIFSA utilize the terms "responding state" and "initiating state."¹⁹⁹ Terms that UIFSA

193. UNIF. INTERSTATE FAMILY SUPPORT ACT § 801(b), 9B U.L.A. pt. 1, at 167 (Supp. 1994). UIFSA section 801(b) provides that:

The governor of [the] State may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this State with having failed to provide for the support of an obligee; or

(2) on the demand by the governor of another state, surrender an individual found in this State who is charged criminally in the other state with having failed to provide for the support of an obligee.

Id.

194. UNIF. INTERSTATE FAMILY SUPPORT ACT § 901, 9B U.L.A. pt. 1, at 169 (Supp. 1994). UIFSA section 901 provides: "This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it." *Id.*

195. *Id.* § 902, at 169.

196. UNIF. INTERSTATE FAMILY SUPPORT ACT § 903, 9B U.L.A. pt. 1, at 169 (Supp. 1994). UIFSA section 903 provides:

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Id.

197. See *infra* note 199.

198. See *supra* note 188.

199. UIFSA provides that an initiating state is one "in which a proceeding under this [Act] or a law substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state." UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(7), 9 U.L.A. pt. 1, at 127 (Supp. 1994). A responding state under UIFSA is "a state to which a proceeding is forwarded under this [Act] or a law substantially similar to this [Act], the Uniform Reciprocal Enforcement

does not define are construed under state law.²⁰⁰ For example, the terms “child” and “child support order” depend upon the age of majority, which is determined by each state’s law.²⁰¹

One important change of terminology in UIFSA is the substitution of the term “tribunal” for the term “court.”²⁰² A tribunal is defined by UIFSA to mean “a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.”²⁰³ Many states have created administrative agencies that establish, enforce, and modify child support awards.²⁰⁴ These agencies are referred to as “tribunals” in recognition of the usefulness of these agencies in the child support process.²⁰⁵

The use and definition of the term “home state”²⁰⁶ has been borrowed from the Uniform Child Custody Jurisdiction Act.²⁰⁷ For purposes of UCCJA and UIFSA, the term “home state” refers to

the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them.²⁰⁸

UIFSA focuses on the state in which the child resides to determine his “home state.”²⁰⁹ Therefore, only one home state exists for purposes of UIFSA.

The creators of UIFSA organized UIFSA’s provisions into a format that is easier to comprehend and more useful to practitioners than were the provisions of either RURESA or URESA. For example, an explanation of civil proceedings precedes the provisions dealing with criminal proceedings.²¹⁰ This layout is appropriate because civil proceedings are used more often than criminal proceedings in attempts to

of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.” *Id.* § 101(16), at 128. UIFSA allows a party to file an interstate action in the responding state without first filing and obtaining a certification in the initiating state. *See generally id.* at 156-66.

200. 9 U.L.A. pt. 1, at 122.

201. *Id.* § 101(1)-(2), at 127.

202. *Id.* § 101(22), at 128.

203. *Id.*

204. *Id.* at 130.

205. *Id.*

206. *Id.* § 101(4), at 127.

207. *Id.* § 2(5). Section 2(5) of the UCCJA provides its definition of “home state.” For an explanation of the UCCJA, see *supra* notes 68-75 and accompanying text.

208. *Id.* § 101(4), at 127.

209. *Id.*

210. *See generally* UNIF. INTERSTATE FAMILY SUPPORT ACT, 9 U.L.A. pt. 1, at 121 (Supp. 1994).

enforce support orders.²¹¹ Article 2 of UIFSA provides new jurisdictional provisions that establish uniform long-arm jurisdiction over non-resident obligors.²¹² This long-arm jurisdiction facilitates the use of one-state proceedings when possible, rather than resorting to the use of two-state proceedings.²¹³ The long-arm provision is broad and gives agencies which exist in the home state of the obligee the maximum ability to obtain personal jurisdiction over an absent obligor.²¹⁴ Therefore, a suit that requires the use of a two-state lawsuit under URESA or RURESAs can now be pursued through a proceeding in only one state, the home state of the obligee.²¹⁵

B. UIFSA Favors the Reciprocity of Laws Between States

UIFSA eliminates the requirement that URESA or RURESAs be enacted in a state before another state can enforce its order.²¹⁶ The Official Comments accompanying UIFSA indicate that public policy favors reciprocity between the states even when such reciprocity is not included in a state's statute.²¹⁷ UIFSA's reciprocity provision enhances the ability to collect non-domestic judgments. The reciprocity language in the Official Comments also allows for comity of enforcement of judgments made in a Canadian province or a Mexican state, provided that the order substantially conforms to the principles of UIFSA.²¹⁸ Generally, the enforcement of alimony decrees of foreign nations depends upon the existence of a reciprocity agreement between the two countries involved.²¹⁹

211. See *supra* notes 28-31 and accompanying text.

212. UNIF. INTERSTATE FAMILY SUPPORT ACT art. II, 9 U.L.A. pt. 1, at 131-39 (Supp. 1994).

213. *Id.*

214. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201, 9 U.L.A. pt. 1, at 131-32 (Supp. 1994).

215. Thus, a responding state or tribunal might exist when there is no "initiating" state.

216. UNIF. INTERSTATE FAMILY SUPPORT ACT § 101, 9 U.L.A. pt. 1, at 128 (Supp. 1994). Subsection 19 provides that:

"State" means a state in the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act].

Id.

217. *Id.* at 128-29. No such provision existed in URESA or RURESAs.

218. UNIF. INTERSTATE FAMILY SUPPORT ACT official cmts., 9 U.L.A. pt. 1, at 128-29 (Supp. 1994). For a general discussion of conventions and uniform laws dealing with international enforcement of support orders, see David F. Cavers, *International Enforcement of Family Support*, 81 COLUM. L. REV. 994 (1981).

219. *Gull v. Constam*, 105 F. Supp. 107 (D. Colo. 1952).

UIFSA also provides for increased jurisdiction over domestic obligors. Section 101(19) of UIFSA equips states with broad long-arm statutory power to enforce support orders.²²⁰ Upon enactment of a long-arm statute, a potential obligee can either (1) utilize that statute to "reach out" to the obligor and obtain personal jurisdiction over him or (2) initiate a two-state UIFSA action to initiate a support order in the foreign jurisdiction. UIFSA advocates the existence of only one support order at any time.²²¹ A broad long-arm statute furthers UIFSA's goal of encouraging only one support order for any two parties.

C. *UIFSA Encourages Registration of Support Orders*

1. Registration of Orders

Like URESA and RURESA, UIFSA permits the registration of support orders in the state in which the obligor currently resides.²²² Section 601 of UIFSA provides: "A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement."²²³ UIFSA provides for registration as the "primary method for interstate enforcement by a tribunal."²²⁴ UIFSA was drafted to phase out multiple support orders, and it encourages registration.²²⁵ Registration provides an appropriate and simple method for eliminating multiple support orders, since the only support order in existence will be registered in the obligor's current state of residence and no new support order will be created.

Under RURESA, obligees may be reluctant to utilize registration because RURESA allows multiple support orders.²²⁶ RURESA encourages an obligee to begin a second suit in the responding state rather than utilizing the process of registration.²²⁷ In contrast, UIFSA makes registration the primary means by which support is enforced in a nonissuing state.²²⁸

220. UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(19), 9 U.L.A. pt. 1, at 128-29 (Supp. 1994).

221. See *supra* note 162 and accompanying text.

222. UNIF. INTERSTATE FAMILY SUPPORT ACT § 601, 9 U.L.A. pt. 1, at 156 (Supp. 1994).

223. *Id.*

224. *Id.*

225. UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note, 9 U.L.A. pt. 1, at 123 (Supp. 1994). "Under UIFSA, the principle of continuing, exclusive jurisdiction is introduced into the Act for the first time; this aims, so far as possible, to allow only one support order to be effective at any one time." *Id.*

226. See *supra* note 145 and accompanying text.

227. See *supra* notes 145-47 and accompanying text.

228. A few, narrow exceptions exist with regard to UIFSA's encouragement to register an order. See UNIF. INTERSTATE ENFORCEMENT OF SUPPORT ACT § 611, 9 U.L.A. pt. 1, at 163 (Supp. 1994). One exception is contained in the section 609 provision that allows for modification

2. Elimination of Multiple Support Orders

a. Limitations on the Granting of Support Orders

Section 204 of UIFSA provides guidelines that will “eliminate the multiple orders so common under RURESA and URESA.”²²⁹ The drafters of UIFSA note that multiple support orders can only be eliminated if every state co-operates and defers to other states’ tribunals.²³⁰ Therefore, regardless of the UIFSA guidelines, states need to work together to eliminate dual support orders. A concerted effort must be made to effectuate the one-order system until UIFSA takes effect in every state. Dual support orders that exist before a state adopts UIFSA may be effective even after UIFSA is adopted, because UIFSA does not provide a system for eliminating one of the orders.²³¹ Country-wide enforcement of UIFSA, however, will lead to the eventual elimination of dual support orders.

UIFSA section 204 provides guidelines for a tribunal to follow prior to entering a support order.²³² Section 204 also limits the granting of support orders.²³³ Each case is considered on its facts, and one state

of the order, which can be filed at the same time or later as the request for registration. *Id.* § 609. An order can be modified only if the responding tribunal finds that:

- (1) (i) the child, the individual obligee, and the obligor do not reside in the issuing state;
- (ii) a [petitioner] who is a nonresident of this State seeks modification; and
- (iii) the [respondent] is subject to the personal jurisdiction of the tribunal of this State; or
- (2) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

Id.

229. *Id.* § 204 cmt., at 134-35.

230. *Id.*

231. See generally UNIF. INTERSTATE ENFORCEMENT OF SUPPORT ACT, 9 U.L.A. 121 (Supp. 1994).

232. *Id.* at 134.

233. UNIF. INTERSTATE ENFORCEMENT OF SUPPORT ACT § 204, 9 U.L.A. pt. 1, at 134 (Supp. 1994). Section 204 provides:

(a) A tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed after a [petition] or comparable pleading is filed in another state only if:

- (1) the [petition] or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and
- (3) if relevant, this State is the home state of the child.

(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another state if:

- (1) the [petition] or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;

must defer to the support order of another state.²³⁴ This procedure protects the obligor by never considering him delinquent in his payments in one state if he has complied with a support order which was entered in another state.²³⁵ While states may prefer to create and enforce their own orders, adoption of UIFSA's rule will eliminate the incidence of dual support orders.²³⁶ Most states will probably adopt the rule, since it is similar to federal and state legislation currently in existence.²³⁷

b. Continuing Jurisdiction of One Tribunal

Section 204 of UIFSA contains provisions similar to those in the UCCJA.²³⁸ UCCJA provides a "first filing" method for resolving problems of competing jurisdictions.²³⁹ PKPA also provides for continuing jurisdiction,²⁴⁰ however, PKPA gives the child's home state priority in all situations, regardless of which parent filed first.²⁴¹ UIFSA adopts

- (2) the contesting party timely challenges the exercise of jurisdiction in this State; and
- (3) if relevant, the other state is the home state of the child.

Id.

Jurisdictional disputes that might arise in a UCCJA proceeding are resolved by the "first filing" rule. Similarly, the federal Parental Kidnapping Prevention Act establishes the home state as having priority when two states have ruled on the same issue.

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or any contestant.

28 U.S.C. § 1748A(d) (1988). UIFSA adopts the federal method of determining jurisdiction by establishing a priority for the tribunal in the child's home state, and then using the "first filing" rule if no home state exists. UNIF. INTERSTATE FAMILY SUPPORT ACT § 204, 9 U.L.A. 121, 134 (Supp. 1994). This jurisdictional approach is most likely linked to the "best interests of the child" rule which is frequently utilized in the areas of child custody and child support. *Id.*

234. UNIF. CHILD CUSTODY JURISDICTION ACT § 6, 9 U.L.A. 115, 219-20 (1988).

235. See *supra* note 117 and accompanying text.

236. See *supra* notes 222-25 and accompanying text.

237. See *supra* notes 68-85 and accompanying text.

238. See *supra* note 233.

239. UNIF. CHILD CUSTODY JURISDICTION ACT § 6, 9 U.L.A. 115, 219-20 (1988). Section 6 of UCCJA provides in part:

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

* * * *

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged[.]

Id.

240. See *supra* note 67 and accompanying text.

241. PKPA states:

selective provisions of PKPA because an obligor is often the subject of both custody and support orders in a single state and because PKPA pre-empts state law.²⁴² A court can comply with both PKPA and UIFSA in determining whether it has jurisdiction. Thus, one court can adjudicate both the support and custody claims.

Perhaps the most important and influential portion of UIFSA is section 205.²⁴³ Section 205 provides for continuing, exclusive jurisdiction in the state in which the order is entered.²⁴⁴ Section 205 forces the obligee who attempts to enforce or raise the amount of the support order, or the obligor who attempts to lower the amount of the support order, to return to the original state in which the decree was issued.²⁴⁵ This policy furthers the goal of single orders, provides a clear rule mandating which state has continuing jurisdiction, and resolves the issue of where a suit should be brought.

UIFSA's continuing, exclusive jurisdiction provision eliminates the problem of conflicting laws and conflicting theories of support among various states. Continuing exclusive jurisdiction also eliminates an obligor's "forum shopping" efforts to find a state whose support theory would tend to reduce his support order.²⁴⁶ Section 205 of UIFSA provides that a state tribunal which issues a support order retains jurisdiction over that order while that state is the residence of the obligor, obligee, or child who will benefit from the support order.²⁴⁷ This jurisdiction continues until each party has filed written consent with the tribunal of that state allowing a tribunal of another state to issue the support order.²⁴⁸ This portion of UIFSA could work to the advantage

A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

28 U.S.C. § 1738A(g) (1988). Congress passed PKPA primarily to assure the application of the Full Faith and Credit Clause to custody decrees. The applicable provision states: "The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State." *Id.* § 1738A(a). Since PKPA is a federal statute, the Supremacy Clause of the United States Constitution dictates that PKPA prevails over UCCJA if any provisions of the two conflict. *See* U.S. CONST. art. VI.

242. *See supra* note 64 and accompanying text.

243. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. pt. 1, at 135 (Supp. 1994).

244. *Id.*

245. *Id.*

246. *See id.*

247. *Id.*

248. *Id.* Specifically, UIFSA provides as follows:

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

of all parties involved. The obligor who moves to another state cannot avoid his duty of support by forcing the obligee to incur the expense of litigating in another state.²⁴⁹ In addition, the jurisdictional provision forecloses "forum shopping," because the initial granting state will continuously utilize its own law.²⁵⁰

This section of UIFSA, however, may inconvenience the obligee if she chooses to move out of the state. UIFSA provides that if both parties agree to allow a different state to exercise jurisdiction over the order, leave of the first state to transfer jurisdiction will be granted.²⁵¹ It is unlikely, however, that the obligor would agree to give the obligee's new state of residence jurisdiction over the order. The rule's probable consequence is that an obligee or obligor who moves from the original state will be forced to return to the state of the original decree to litigate any modifications. Despite possible inconvenience to one of the parties, the result will be consistent use of the laws of the state in which the original order was granted. When agreeing to consent to a new state's jurisdiction, an attorney may wish to consider whether that new state's laws are favorable to his client's position and needs.

Section 205 of UIFSA penalizes any party who wishes to move from the state of the original decree.²⁵² Presumably, the logic underlying this section of UIFSA is premised upon a belief that an obligor who moves from one state to another should not have the luxury of utilizing his new state's laws if the new state has a more liberal policy on the modification of an order which is advantageous to him. The obligee can remain in her home state and litigate the claim, using the same laws under which the decree was originally entered to determine if modification is proper. Assuming there is no "substantial change in circumstances,"²⁵³ the obligee will not be in danger of having the award reduced.

In addition, under the continuing jurisdiction provision, the obligee does not need to have modifiable orders reduced to final judgments before the obligor's state can enforce the order under the provisions of the Full Faith and Credit Clause.²⁵⁴ The state that originally granted the support order can always enforce the support obligation as long as

(2) until each individual party has filed written consent with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

Id.

249. *See id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *See supra* note 111 and accompanying text.

254. *See supra* note 17 and accompanying text.

one of the parties to the order resides in the state.²⁵⁵ The provisions of section 205 are effective when an obligee moves from one state to another and then wishes to have her support order enforced in the original state if the obligor remains in that state.²⁵⁶ Without question, an obligor remaining in the state that issues the order is subject to enforcement of the order by that state.²⁵⁷

UIFSA narrowly defines its exceptions to the initiating state rule.²⁵⁸ As long as one of the parties remains in the initiating state, that state has jurisdiction over the support order²⁵⁹ and can modify the order if it so desires.²⁶⁰ Once all of the parties involved leave the state, that state no longer has jurisdiction.²⁶¹ Jurisdiction ceases because "[t]he issuing state no longer has a nexus with the parties or child and, furthermore, the issuing tribunal has no current information about the circumstances of anyone involved."²⁶²

UIFSA recognizes that litigating a support order in the initiating state is inappropriate when neither the obligor, the obligee, or the child has any connection with that state. It is unfair to require both parties to travel to the original state. If one party remains in the state, however, only one party is being inconvenienced.²⁶³ An obligee who has moved from a state that granted a support order may be reluctant to return to the original state because of the expense and difficulty involved. An obligee may therefore pursue the order in the obligor's current state of residence once both she and the obligor have moved out of the state of the original order.²⁶⁴

c. Modification of a Registered Order Under UIFSA

UIFSA continues the practice of registration of support orders.²⁶⁵ Registration is an effective way to enforce a support order constitutionally, with proper jurisdiction over the person from whom the courts seek the support.²⁶⁶ Under UIFSA, a state may modify an order that is registered in another state as if the foreign order had been issued by

255. See *supra* note 17.

256. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. pt. 1, at 135 (Supp. 1994).

257. See *id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. See *id.*

264. *Id.*

265. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. pt. 1, at 135 (Supp. 1994).

266. *Storey v. Storey*, No. 1990 Ohio App. LEXIS 3498 (Ohio Ct. App. Aug. 17, 1990) (holding that registration of foreign support order under URESA is constitutional).

the recipient state.²⁶⁷ UIFSA provides limited instances in which such orders can be modified. To modify an order, the state in which the order has been registered is responsible for determining that: "(i) the child, the individual obligee, and the obligor do not reside in the issuing state; (ii) a [petitioner] who is a nonresident of th[e] State seeks modification; and (iii) the [respondent] is subject to the personal jurisdiction of the tribunal of th[e] state."²⁶⁸ Section 611 guards against "forum shopping."²⁶⁹

A determination under section 611 can only be made after notice is given to both parties and a hearing to examine the issue is held.²⁷⁰ Additionally, the registering state may modify an order if: (1) one of the parties or the child is subject to the personal jurisdiction of the court; and (2) all parties have filed a written consent in the issuing state indicating that the registering state may modify the support order and assume continuing jurisdiction over the order thereafter.²⁷¹

In the interest of discouraging forum shopping, UIFSA specifically prohibits a registering state from making any modifications to a support order which would not have been permitted under the law of the state which originally issued the order.²⁷² A support order registered under the provisions of RURESA is always treated as if it was originally granted in the state in which it is registered.²⁷³ RURESA allows the original issuing tribunal to modify its own order but gives the registering state the same power.²⁷⁴ UIFSA provides for such modification only under the limited conditions discussed above.²⁷⁵

267. UNIF. INTERSTATE FAMILY SUPPORT ACT § 610, 9 U.L.A. pt. 1, at 163 (Supp. 1994). Section 610 of UIFSA provides as follows:

A tribunal of this State may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of Section 611 (Modification of Child Support Order of Another State) have been met.

Id.

268. *Id.* § 611(a)(1), at 163.

269. *See id.*

270. U.S. CONST. amend. XIV.

271. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(2), 9 U.L.A. pt. 1, at 163 (Supp. 1994).

272. "A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state." *Id.* § 611(c), at 163.

273. *See supra* note 121 and accompanying text.

274. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 40, 9B U.L.A. 381, 546 (1987).

275. Note that even the UCCJA provides only general principles for determining whether a custody order can be modified while UIFSA provides a specific list of items for a tribunal to consider when evaluating a request for modification. The Act provides:

(a) If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites sub-

UIFSA, UCCJA, and PKPA differ as to the treatment of the ability of the forum in which an order is registered to decline jurisdiction. Both UCCJA²⁷⁶ and PKPA²⁷⁷ allow a tribunal to decline jurisdiction if the tribunal determines itself to be an inappropriate forum.²⁷⁸ A tribunal may also decline jurisdiction if it determines that another tribunal is a better forum to litigate the issue at hand.²⁷⁹ Declining jurisdiction may lead to litigation that culminates in a factually based determination of which tribunal is the "best."²⁸⁰ In contrast, UIFSA does not allow a court to decline jurisdiction.²⁸¹ Once an initial child support order is established in a certain state under UIFSA, that order will be effective in the issuing court until a court possessing modification jurisdiction under UIFSA issues a new order in accordance with UIFSA.²⁸²

3. Reconciling the One-Order System and the Multiple Order System

Although UIFSA is rapidly being adopted by the legislatures of many states, it probably will not be adopted in every state for many years. In fact, there is a possibility that not every state will adopt UIFSA. Even assuming nationwide adoption of UIFSA, dual spousal and child support orders will exist long into the future due to the large number of dual support orders generated under the URESA and RURESAs systems.²⁸³ Therefore, the drafters of UIFSA developed a system by which to reconcile the orders of two states when two orders exist.²⁸⁴

stantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it.

UNIF. CHILD CUSTODY JURISDICTION ACT § 14, 9 U.L.A. 115, 292 (1988).

276. *Id.* § 8, at 251.

277. For example, PKPA provides that a state may take jurisdiction of a case if:

(i) it appears that no other State would have jurisdiction under [the provisions of this Act] . . . or another state has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction.

28 U.S.C. § 1738A(c)(2)(D) (1988).

278. See generally notes 65-75 and accompanying text.

279. See generally notes 65-75 and accompanying text.

280. See, e.g., *Sams v. Boston*, 384 S.E.2d 151 (W. Va. 1989).

281. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. pt. 1, at 135 (Supp. 1994).

282. *Id.*

283. "[M]ultiple orders issued under RURESAs number in the tens of thousands; it can reasonably be anticipated that those orders, covering the same parties and child, will continue in effect far into the future." *Id.* § 207 cmt., at 137-38.

284. *Id.*

Section 207 of UIFSA establishes a system by which dual child support orders should be prioritized.²⁸⁵ Section 207 provides that a state should recognize the child support order of the state that retains continuing jurisdiction over the child.²⁸⁶ If two states have issued child support orders and both would have continuing jurisdiction under the guidelines of UIFSA, the order issued in the current home state of the child must be recognized.²⁸⁷ If no order has been issued in the current home state of the child, the most recent order must be recognized.²⁸⁸ If no issuing tribunal has continuing, exclusive jurisdiction under UIFSA, the tribunal of the state in which the action was initiated can issue its own child support order.²⁸⁹ Despite guidelines created to eliminate dual support orders, multiple support orders issued by different states are still entitled to full faith and credit.²⁹⁰ Therefore, under UIFSA, an obligor may still be subject to the payment of arrearage support in two different states.²⁹¹

UIFSA, like RURESA, provides that payments made to one state can be credited against the amounts “accruing or accrued for the same period under a support order issued by the tribunal of [another] State.”²⁹² Under UIFSA, the obligor will pay only one amount to the issuing tribunal; that tribunal will account for the funds and determine the amount to be collected from the other state(s).²⁹³ Until UIFSA is

285. These guidelines apply to two or more child support orders that have been issued for the same obligor and child. *Id.*

286. Section 207(a)(2) provides the following:

If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal must be recognized.

Id. at 137.

287. *Id.* § 207(a)(3).

288. *Id.*

289. *Id.* § 207(a)(4).

290. *Id.* cmt., at 137-38.

291. For example, suppose an obligor is subject to child support orders in both Pennsylvania and Ohio. The obligor then moves to California and has not paid the amount owed on either order for one year. Unlike spousal support, accrued child support is considered to be final and nonmodifiable on the day it is due. Thus, the California court can give full faith and credit to both the Ohio and Pennsylvania orders concerning any unpaid arrearage. The obligor may then be forced to pay his accrued arrearage in both Pennsylvania and Ohio. UIFSA only protects against multiple support orders with respect to *future* payments, not payments which were previously due. *Id.*

292. *Id.* § 209, at 138. Section 209 of UIFSA is derived from section 311 of URESA, entitled “[a]pplication of [p]ayments.” *Id.* § 209 cmt., at 139. For example, a full payment of three hundred dollars on an order made by state C will discharge that amount on a two hundred dollar order made by state A and a four hundred dollar order made by state B. *Id.* at 139.

293. *Id.* § 209, at 139.

adopted throughout the nation, actual payments made against existing orders will be given *pro tanto*²⁹⁴ credit.

UIFSA's goal of eliminating multiple support orders is admirable and may prove to be an asset in the collection of support money. UIFSA, however, does not provide for the elimination of multiple orders as long as they still exist under URESA and RURES. ²⁹⁵ UIFSA's proposal to prioritize support orders will reduce some of these problems; however, obligors may still be subject to arrearage for both orders. The best way to eliminate these orders is to promote the adoption of UIFSA in every state and, in the alternative, to encourage registration rather than the use of a two-state proceeding.²⁹⁶

IV. CONCLUSION

UIFSA provides a clear and specific statute for enforcement and modification of support orders. UIFSA attempts to eliminate multiple support orders. UIFSA also cautiously addresses modification by a second state that did not issue the original order. Unfortunately, multiple support orders will continue to exist because numerous states retain URESA and RURES. Orders granted under URESA and RURES will remain valid even if UIFSA is adopted in every state. UIFSA, however, encourages a one-support order system and attempts to prioritize the orders in accordance with PKPA. UIFSA allows courts to modify orders if circumstances so warrant, thus enabling each party to receive fair treatment.

It will be difficult to determine UIFSA's shortcomings until UIFSA is actually implemented nationwide. UIFSA provides more specific guidance for the enforcement and modification of orders than any previous uniform support collection act. This uniformity suggests that the ability to modify or enforce support orders will not be left to the whim of the courts. Rather, UIFSA promotes the uniformity of the modification and enforcement of support orders among the states that adopt UIFSA.

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294. *Pro tanto* is defined as: "For so much; for as much as may be; as far as it goes." BLACK'S LAW DICTIONARY 1222 (6th ed. 1990).

295. See UNIF. INTERSTATE FAMILY SUPPORT ACT, 9 U.L.A. pt. 1, at 122 (Supp. 1994).

296. See *supra* notes 222-25 and accompanying text.