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Interstate Establishment, Enforcement, and Modification of Child Support Orders

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INTERSTATE ESTABLISHMENT, ENFORCEMENT, AND MODIFICATION OF CHILD SUPPORT ORDERS

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Intended to improve the collection of child support across state lines, the Uniform Interstate Family Support Act has now been in effect in all fifty states for approximately three years. This Article examines the history and operation of this statute and its companion federal statute, the Full Faith and Credit For Child Support Orders Act. Following UIFSA's structure, the Article details the provisions governing the establishment, enforcement, and modification of child support orders in the interstate context and explains which federally-promulgated forms to use in each situation. Analyzing the abundant case law already decided under these statutes, the article concludes that despite a few remaining glitches, the statutes are basically working as intended and establishing predictable rules for parents, their attorneys, child support collection agencies, and courts.

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I. INTRODUCTION

It used to be that "the easiest way to avoid paying child support [was] to leave the state in which you were ordered to pay support."[1] Historically, interstate enforcement and modification of child support orders engendered special problems, including lengthier processing time[2] and the possibility of simultaneously existing orders for the same obligor and child.[3]

Two relatively recent statutes, the Uniform Interstate Family Support Act (UIFSA)[4] and the Full Faith and Credit for Child Support Orders Act (FFCCSOA),[5] attempt to redress these concerns. In particular, UIFSA, which every state has enacted,[6] comprehensively governs a court's obligation to enforce, and ability to modify, the child support order of another state's court. In addition, new federally-promulgated forms for interstate support cases smooth procedural differences and assist practitioners and child support enforcement agencies in processing support cases.[7]

This Article will conduct an overview of the operation of UIFSA and FFCCSOA and collect judicial decisions applying and interpreting these statutes. First, the Article will briefly survey the earlier uniform laws that led to the call for reform.[8] Second, the Article will describe generally the purpose and effective dates of UIFSA and FFCCSOA.[9] Third, the Article will set forth the statutory procedures for interstate establishment,[10]

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1. U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 4 (1992) [hereinafter BLUEPRINT FOR REFORM] (quoting Wendy Epstein, Executive Director, Illinois Task Force on Child Support). *See also* Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, § 2(a)(3)(A), 108 Stat. 4064 (1994) (prior law "encourage[d] noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States").

2. *See* BLUEPRINT FOR REFORM, *supra* note 1, at 3.

3. *See infra* Part II.

4. 9 (pt. IB) U.L.A. 235 (1999).

5. 28 U.S.C. § 1738B (1994 & Supp. 1998).

6. *See infra* Part III.B.

7. Appendix A to this Article contains a list of the new federal forms.

8. *See infra* Part II.

9. *See infra* Parts III-IV.

10. *See infra* Part V.

enforcement,[11] and modification[12] of child support orders. Finally, the Article will conclude that the statutes are working relatively well despite a few trouble spots.[13]

II. EARLIER UNIFORM LAWS

UIFSA's uniform-law predecessor was the Uniform Reciprocal Enforcement of Support Act (URESA).[14] URESA established the "two-state" enforcement proceeding, through which an obligee in one state was not required to travel to the obligor's state or hire a private attorney for enforcement.[15] Instead, the obligee could initiate a proceeding in her own state for forwarding the child support order to the obligor's state for registration and enforcement there. Child support enforcement agencies[16] could assist the process in both states.[17]

Despite this innovation, URESA encouraged forum-shopping by allowing relatively easy modification in a state inconvenient to an ex-spouse.[18] Further, under URESA, because the original order still remained

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11. *See infra* Part VI.

12. *See infra* Part VII.

13. *See infra* Part VIII.

14. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 238-40 (1999). URESA was found at 9B U.L.A. 553 (1987). In 1968, URESA was revised and retitled the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). *See* 9B U.L.A. 381 (1987). The majority of states eventually enacted RURESA, but many states retained the original URESA, and a few states even enacted a slightly different statute, the Uniform Support of Dependents Law (USDL). *See* John J. Sampson & Paul M. Kurtz, *UIFSA: An Interstate Support Act for the 21st Century*, 27 FAM. L.Q. 85, 85-88 & n.4 (1993). Unless otherwise indicated, the term "URESA" used in this article includes URESA, RURESA, and USDL.

15. *See* Kulko v. Superior Court, 436 U.S. 84 (1978).

16. Title IV-D of the Social Security Act requires states to designate a "single and separate organizational unit" centrally responsible for child support enforcement activities. 42 U.S.C. § 654(3) (1994). Accordingly, these state agencies are sometimes called "IV-D agencies."

17. For a thorough description of the URESA two-state procedure, see HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 276-81 (1988).

18. *See, e.g., Interstate Modifications of Court-Ordered Child Support: Hearings on H.R. 5304 Before the Subcomm. on Admin. Law and Governmental Relations of the House Comm. on the Judiciary*, 102d Cong., 2d Sess. 9-10 (1992) (statement of Jean Rose). For a description of some of URESA's other drawbacks, see BLUEPRINT FOR REFORM, *supra* note 1, at 229-31 (listing lengthy processing time, lack of cooperation between states, incompatibility with intervening federal requirements, and lack of uniformity).

in effect even after such a modification,[19] two or more valid court orders from different states could set different support obligations for the same obligor and child, confusing the parties and complicating the calculation of arrearages.[20] Similarly, under URESA, courts held that unless an order specifically modified a prior support order, the later order was merely an "enforcement tool" and not a judgment entitled to full faith and credit.[21]

III. THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)

A. In General

The National Conference of Commissioners on Uniform State Laws first promulgated UIFSA in 1992, and last amended UIFSA in 1996.[22] While retaining URESA's model of the two-state proceeding,[23] UIFSA has entirely replaced URESA.[24]

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19. *See* R.U.R.E.S.A. §§ 31, 9B U.L.A. 531 (1987); *id.* § 40, 9B U.L.A. 546 (1987); U.R.E.S.A. § 30, 9B U.L.A. 553 (1987); *id.* § 38, 9B U.L.A. 606 (1987); BLUEPRINT FOR REFORM, *supra* note 1, at 231.

20. *See* U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999). "[B]y its terms RURESA contemplated the existence of multiple support orders, none of which was directly related to any of the others." *Id. See, e.g.*, Alaska Dep't of Revenue *ex rel.* Valdez v. Valdez, 941 P.2d 144 (Alaska 1997) (however, doctrines of waiver and estoppel may apply to uphold lower amount); Jefferson County Child Support Enforcement Unit v. Hollands, 939 S.W.2d 302 (Ark. 1997); Office of Child Support Enforcement v. Troxel, 931 S.W.2d 784 (Ark. 1996); *In re* Marriage of Shepard, 429 N.W.2d 145, 146 (Iowa 1988); Louisiana *ex rel.* Rivera v. Robles, 702 So. 2d 1107, 1109 (La. Ct. App. 1997) ("a judgment in a URESA proceeding does not modify a previously rendered civil judgment, even where the URESA judgment sets a different amount of support"); Taylor v. Vilcheck, 745 P.2d 702 (Nev. 1987); Bobbs v. Cline, 686 N.E.2d 556 (Ohio 1997); South Carolina Dep't of Soc. Servs. v. Hamlett, 498 S.E.2d 888 (S.C. Ct. App. 1998); Hubanks v. Hubanks, 555 N.W.2d 647 (Wis. Ct. App. 1996); Kranz v. Kranz, 525 N.W.2d 777 (Wis. Ct. App. 1994).

21. *See, e.g.*, Alaska Dep't of Revenue *ex rel* Valdez v. Valdez, 941 P.2d 144 (Alaska 1997).

22. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 238 (1999).

23. *See id.* § 301 cmt., 9 (pt. IB) U.L.A. 301 (1999). *See infra* Part V.C.

24. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 238-43 (1999).

Organized into nine articles,[25] UIFSA provides procedural and jurisdictional rules for essentially three types of interstate[26] child support proceedings:[27]

(1) a proceeding to *establish* a child support order,[28] including:
  (a) an expanded means of obtaining personal jurisdiction over a nonresident;[29] and
  (b) establishing paternity, if necessary;[30]
(2) a proceeding to *enforce* a child support order,[31] including:
  (a) registering another state's order;[32] and
  (b) enforcement without registration, including the use of income-withholding orders;[33] and
(3) a proceeding to *modify* a child support order.[34]

To redress the problems caused by URESA,[35] UIFSA implements the "one-order system."[36] This means that only one state's order governs, at any given time, an obligor's support obligation to any child.[37] Further, only one state has continuing jurisdiction to modify a child support order. This

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25. "General Provisions" (Article 1), "Jurisdiction" (Article 2), "Civil Provisions of General Application" (Article 3), "Establishment of Support Order" (Article 4), "Enforcement of Order of Another State Without Registration" (Article 5), "Enforcement and Modification of Support Order After Registration" (Article 6), "Determination of Parentage" (Article 7), "Interstate Rendition" (Article 8), and "Miscellaneous Provisions" (Article 9). *Id.*, 9 (pt. IB) U.L.A. 253-55 (1999).

26. The word "interstate" is used here to mean that one or both parents have left the state in which they were married or maintained a relationship.

27. *See* U.I.F.S.A. § 301, 9 (pt. IB) U.L.A. 300 (1999). UIFSA also governs interstate spousal support proceedings, which are beyond the scope of this Article. *See, e.g.*, Utah Dep't of Human Servs. v. Jacoby, 975 P.2d 939, 945-46 (Utah Ct. App. 1999).

28. *See* U.I.F.S.A. § 301(b)(1), 9 (pt. IB) U.L.A. 300 (1999). *See infra* Part V.

29. *See* U.I.F.S.A. § 301(b)(7). *See infra* Part V.B.

30. *See* U.I.F.S.A. § 301(b)(6). *See infra* Part V.E.

31. *See* U.I.F.S.A. § 301(b)(2)-(3). *See infra* Part VI.

32. *See* U.I.F.S.A. § 301(b)(3). *See infra* Part VI.B.

33. *See* U.I.F.S.A. § 301(b)(2). *See infra* Part VI.E.

34. *See* U.I.F.S.A. § 301(b)(4)-(5). *See infra* Part VII.

35. *See supra* Part II.

36. U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 241 (1999).

37. *See id.*

necessarily requires all other states to recognize that order and to refrain from modifying it unless the first state has lost jurisdiction.[38]

B. Enacting Jurisdictions

All fifty states, the District of Columbia, and the Virgin Islands have enacted UIFSA.[39] Federal Law required the states to enact UIFSA.[40]

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38. *See id.* § 205(a), 9 (pt. IB) U.L.A. 284-85 (1999); *id.* Prefatory Note, 9 (pt. IB) U.L.A. 238-243 (1999).

39. *See* ALA. CODE §§ 30-3A-101 to -906 (1989); ALASKA STAT. §§ 25.25.101 to .903 (1998); ARIZ. REV. STAT. §§ 25-621 to -661 (1993); ARK. CODE ANN. §§ 9-17-101 to -905 (1998); CAL. FAM. CODE §§ 4900-4976 (West. Supp. 1998); S.B. 3002, P.A. 97-1, Spec. Sess. (Conn. June 18, 1997); COLO. REV. STAT. ANN. §§ 14-5-101 to -1007 (1999); DEL. CODE ANN. tit. 13, §§ 601-691 (1999); D.C. CODE ANN. §§ 30-341.1 to -349.1 (1998); FLA. STAT. ANN. §§ 88.0011 to .9051 (1987); GA. CODE ANN. §§ 19-11-100 to -191 (1998); HAW. REV. STAT. ANN. §§ 576B-101 to -902 (Supp. 1999); IDAHO CODE §§ 7-1001 to -1059 (1998); 750 ILL. COMP. STAT. ANN. 22/100–22/999 (1999); IND. STAT. ANN. §§ 31-9-2-13 to -18-9-4 (1997); IOWA CODE ANN. §§ 252K.101–.904 (2000); KAN. STAT. ANN. §§ 23-9,101 to -9,903 (1995); KY. REV. STAT. ANN. §§ 407.5101–.5902 (1999); LA. REV. STAT. ANN. §§ 1301.1–1308.2 (1995); ME. REV. STAT. ANN. tit. 19-A, §§ 2801-3401 (1998); MD. CODE ANN., FAM. LAW §§ 10-301 to -359 (1999); MASS. GEN. LAWS ANN., ch. 209D, §§ 1-101 to 9-902 (1998); MICH. COMP. LAWS ANN. §§ 552.1101–.1901 (1988 & Supp. 2000); MINN. STAT. ANN. §§ 518C.101–.902 (Supp. 2000); MISS. CODE ANN. §§ 93-25-1 to -117 (Supp. 1999); MO. ANN. STAT. §§ 454.850–.997 (1997 & Supp. 2000); MONT. CODE ANN. §§ 40-5-101 to -197 (1999); NEB. REV. STAT. §§ 42-701 to -751 (1998); NEV. REV. STAT. §§ 130.0902–130.802 (1998); N.H. REV. STAT. ANN. §§ 546-B:1 to :60 (Supp. 1999); A.B. 1646, 208th Leg. (N.J. Mar. 5, 1998); N.M. STAT. ANN. §§ 40-6A-101 to -903 (Supp. 1999); N.Y. JUD. LAW §§ 580-101 to -905 (McKinney 1999); N.C. GEN. STAT. §§ 52C-1-100 to -9-902 (1999); N.D. CENT. CODE §§ 14-12.2-01 to -49 (1997); OHIO REV. CODE ANN. §§ 3115.01–.58 (1996 & Supp. 1999); OKLA. STAT. tit. 43, §§ 601-100 to -901 (Supp. 2000); ORE. REV. STAT. §§ 110.300 to .441 (Supp. 1998); PA. STAT. ANN. tit. 23,§§ 7101-7901 (Supp. 2000); R.I. GEN. LAWS §§ 15-23-1 to -53 *repealed by* P.L. 1997, ch. 170, § 14 (codified as amended at R. I. Gen. Laws §§ 15-23.1-1 to -101 (Supp. 1999)); S.C. CODE ANN. §§ 20-7-960 to -1166 (1976 & Supp. 1999); S.D. CODIFIED LAWS §§ 25-9B-101 to -902 (Michie 1999); TENN. CODE ANN. §§ 36-5-2001 to -2902 (Supp. 1999); TEX. FAM. CODE ANN. §§ 159.001–.902 (West 1996); UTAH CODE ANN. §§ 78-45f-100 to -901 (Supp. 1999); VT. STAT. ANN. tit. 15B, §§ 101-904 (Supp. 1999); V. I. CODE ANN. tit. 16, §§ 391-453 (1996 & Supp. 2000); VA. CODE ANN. §§ 20-88.32 to .82 (Michie 1995); WASH. REV. CODE §§ 26.21.005 to .916 (1997 & Supp. 2000); W. VA. CODE §§ 48B-1-101 to -9-903 (1999); WIS. STAT. ANN. §§ 769.101–.903 (West Supp. 1999); WYO. STAT. ANN. §§ 20-4-139 to -189 (1999).

40. For decades, the federal government has imposed on the states (usually as part of Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669(b)), increasingly specific requirements relating to child support enforcement as a condition of receiving federal funds

C. Effective Date and Applicability

UIFSA section 904 provides for an effective date, which differs from state to state depending on the date of adoption. UIFSA has no "express declaration of retroactivity."[41] Courts have split on whether UIFSA should be applied retroactively. The statutory language of the adopting state may control.[42] Moreover, the answer may depend on which UIFSA provision is sought to be retroactively applied.

For example, even if another state's child support order was issued before UIFSA's effective date, some courts have applied UIFSA to an action seeking to enforce that order after UIFSA's effective date.[43] Further, UIFSA section 313, which authorizes an award of attorneys' fees to a prevailing obligee, has been held applicable to a proceeding to establish paternity and support commenced before UIFSA's effective date.[44]

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for social welfare programs. *See* BLUEPRINT FOR REFORM, *supra* note 1, at 12-14. Section 654 of the Social Security Act, 42 U.S.C. § 654, specifies the requirements that a state's "plan for child and spousal support" must include to be eligible for federal payments under section 655, 42 U.S.C. § 655. One of those requirements is that a state must have enacted UIFSA, together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws. *See* 42 U.S.C. § 666(f) (1994) (enacted as part of the "welfare reform" legislation, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105) (1996).

41. Utah Dep't of Human Servs. v. Jacoby, 975 P.2d 939, 942 (Utah Ct. App. 1999).

42. *See, e.g.*, Georgia Dep't of Human Resources v. Deason, 520 S.E.2d 712 (Ga. Ct. App. 1999) (Georgia provision that URESA continues to apply to proceedings pending prior to January 1, 1998).

43. *See* Child Sup. Enforcement Div. of Alaska v. Brenckle, 675 N.E.2d 390, 393 (Mass. 1997) (relying in part on nonuniform section added to Massachusetts' UIFSA that expressly applied UIFSA retroactively; "[a]s a remedial statute, and one not affecting substantive rights, it is proper that UIFSA should be applied retroactively"); Welsher v. Rager, 491 S.E.2d 661, 664 (N.C. Ct. App. 1997); Neal v. Office of Attorney Gen., No. 05-95-01258-CV, 1997 WL 122236 (Tex. App. Mar. 19, 1997) (rejecting noncustodial parent's argument that URESA, not UIFSA, applied to proceeding seeking enforcement of 1981 Iowa order; holding that UIFSA section enacted in Texas providing that UIFSA "applies only to an order . . . entered on or after [September 1, 1993]" referred to an order entered by a *Texas* court, not an Iowa court); Cowan v. Moreno, 903 S.W.2d 119 (Tex. App. 1995); *Jacoby*, 975 P.2d at 942-43 (holding that the change from URESA's choice-of-law provision to UIFSA's choice-of-law provision was procedural in nature, and that UIFSA's choice-of-law provision does not establish a substantive right or create a duty of support; therefore, UIFSA's choice-of-law provision could be applied retroactively).

44. *See* Texas *ex rel.* A.N.C. v. Grenley, 959 P.2d 1130 (Wash. Ct. App. 1998).

However, some courts have continued to apply URESA, even after UIFSA's effective date, to actions filed before UIFSA's effective date.[45] Moreover, one court, after determining which of two competing child support orders should be the controlling order under UIFSA,[46] has held that the controlling order should have prospective, not retroactive, application.[47] At least one other court has declined to decide whether URESA or UIFSA applied, since the same result would be obtained under either statute.[48]

UIFSA imposes no reciprocity limitation: if a state has enacted UIFSA, that state must apply UIFSA to the enforcement of another state's order, even if the other state has not enacted UIFSA.[49]

D. Constitutionality

Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,[50] which among other things required the states

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45. *See, e.g., In re* Marriage of Yuro, 968 P.2d 1053 (Ariz. Ct. App. 1998) (although Arizona statute provided that URESA should be applied if a case is received from a state that has not yet enacted and implemented UIFSA, FFCCSOA should be applied); Office of Child Support Enforcement v. Eagle, 983 S.W.2d 429 (Ark. 1999); Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919 (Conn. Super. Ct. July 22, 1998); Washington *ex rel.* Lewis v. Collis, 963 S.W.2d 700 (Mo. Ct. App. 1998) (relying on Missouri statute providing that URESA should continue to apply to cases filed or received prior to UIFSA's effective date); Tomlin v. Tomlin, No. A-93-253,1994 WL 697810 (Neb. Ct. App. Dec. 13, 1994) (apparently applying URESA and the Uniform Enforcement of Foreign Judgments Act without discussion to enforcement action filed before UIFSA's effective date); Ohio *ex rel.* Scioto County Child Support Enforcement Agency v. Adams, No. 98CA261, 1999 WL 597257 (Ohio Ct. App. July 23, 1999) (unpublished); Chamberlin v. Chamberlin, No. 97CA22, 1998 WL 274823, at *1 n.1 (Ohio Ct. App. May 18, 1998) (URESA applied to enforcement action filed before UIFSA's effective date); Deltoro v. McMullen, 471 S.E.2d 742 (S.C. Ct. App. 1996); Cavallari v. Martin, 732 A.2d 739 (Vt. 1999).

46. *See infra* Part VII.F.

47. *See* Division of Child Support Enforcement v. Salsman, No. CN91-8814, 1999 WL 486592 (Del. Fam. Ct. Apr. 12, 1999).

48. *See* Alaska Dep't of Revenue *ex rel.* Wallace v. Delaney, 962 P.2d 187 (Alaska 1998).

49. *See* U.I.F.S.A. § 101(19) cmt., 9 (pt. IB) U.L.A. 259 (1999). ("A state need not enact UIFSA for support orders issued by its tribunals to be enforced by other states."); Jefferson County Child Support Enforcement Unit v. Hollands, 939 S.W.2d 302, 304-05 (Ark. 1997).

50. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

to pass UIFSA,[51] has been upheld against Spending Clause and Tenth Amendment challenges.[52]

UIFSA section 313(b)[53] has been upheld against a federal and state Equal Protection claim that it unconstitutionally creates a class of unmarried fathers required to pay attorney's fees without considering the obligee's need or the obligor's ability to pay, while under the state's marriage dissolution statute, divorcing fathers are only required to pay attorney's fees after considering such need and ability to pay.[54] The procedure for a nonregistering party to contest the validity or enforcement of a registered out-of-state order, set forth in UIFSA section 606(a), has been upheld against a procedural due process challenge.[55]

IV. THE FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

A. In General

First passed in 1994 and last amended in 1997,[56] the federal FFCCSOA, like UIFSA, also initiated a one-order system.[57] FFCCSOA requires states to give full faith and credit[58] to child support orders properly issued by other

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51. *See supra* note 40.

52. *See* Kansas v. United States, 24 F. Supp. 2d 1192 (D. Kan. 1998).

53. "If an obligee prevails, a responding tribunal may assess against an obligor . . . reasonable attorney's fees . . . incurred by the obligee and the obligee's witnesses. . . ." U.I.F.S.A. § 313(b), 9 (pt. IB) U.L.A. 323 (1999).

54. *See* Washington *ex rel.* A.N.C. v. Grenley, 959 P.2d 1130 (Wash. Ct. App. 1998). Applying the "rational relationship" test, the court concluded first that UIFSA "applies equally to all unmarried parents in Washington with children living out of state." *Id.* at 1137. Second, it is "rational that the State distinguish between married fathers getting divorced in Washington and unmarried fathers with minor children outside of Washington," because taxpayer funds are used only in the latter class of cases to enable the State, as the obligee's attorney, to establish paternity and collect child support. *Id.*

55. *See* Washington v. Thompson, 6 S.W.3d 82, 88 (Ark. 1999).

56. *See* Pub. L. No. 105-33, Title V, § 5554, 111 Stat. 636 (1997).

57. *See* S. REP. NO. 103-361, at 4-5 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3259, 3260-61; *Interstate Modifications of Court-Ordered Child Support: Hearings on H.R. 5304 Before the Subcomm. on Admin. Law and Governmental Relations of the House Comm. on the Judiciary*, 102d Cong., 2d Sess. 9-10, 28 (1992). FFCCSOA is codified at 28 U.S.C. § 1738B (1994 & Supp. 1998).

58. The Full Faith and Credit Clause, U.S. CONST. art. IV, § 1, is generally held to apply only to judgments that are nonmodifiable and final—two characteristics often absent from the typical ongoing child support order. *See, e.g.*, Sistare v. Sistare, 218 U.S. 1, 16-17 (1909); Barber v. Barber, 323 U.S. 77, 86 (1944). *See* William L. Reynolds, *The Iron Law*

states[59] and to refrain from modifying such orders in the absence of certain limited circumstances.[60]

Like UIFSA, FFCCSOA was enacted to prevent states from continuing, under URESA, to spawn multiple child support orders and to allow "excessive relitigation" of child support cases.[61] It accomplished this purpose by preempting contrary state law, such as URESA,[62] before UIFSA was universally effective.

FFCCSOA does not apply to child support orders issued by foreign countries.[63]

B. Effective Date and Applicability

FFCCSOA was enacted on October 20, 1994.[64] Neither the FFCCSOA itself nor its legislative history address the issue of retroactive application.[65] However, courts have usually held that FFCCSOA should be applied retroactively.

Thus, FFCCSOA applies to a child support proceeding that was filed before FFCCSOA was passed, but in which a final judgment was not

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of Full Faith and Credit, 53 MD. L. REV. 412, 419-21 (1994); RESTATEMENT (SECOND) OF JUDGMENTS § 73 (1982). Since 1986, Congress has required the states to recognize past-due child support installments as final judgments entitled to full faith and credit. *See* 42 U.S.C. § 666 (1994).

59. *See* 28 U.S.C. § 1738B(a)(1). *See infra* Part VI.

60. *See id.* § 1738B(a)(2), (e). *See infra* Part VII.

61. *See* Pub. L. No. 103-383, § 2(a)(3), 108 Stat. 4064 (1994).

62. *See* U.S. CONST. art. VI, § 2.

> If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.

Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248, (1984) (citations omitted). *E.g.*, Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919 (Conn. Super. Ct. July 22, 1998); Isabel M. v. Thomas M., 624 N.Y.S.2d 356 (Fam. Ct. 1995) (FFCCSOA preempts conflicting provisions of the Uniform Support of Dependents Law); Kelly v. Otte, 474 S.E.2d 131, 134 (N.C. Ct. App. 1996).

63. *See* North Carolina *ex rel.* Desselberg v. Peele, 523 S.E.2d 125 (N.C. 1999).

64. Pub. L. No. 103-383, 108 Stat. 4063.

65. *See* Jennings v. Debussy, 707 A.2d 44 (Del. Fam. Ct. 1997).

entered until after FFCCSOA was passed.[66] FFCCSOA also applies to a child support order entered before FFCCSOA was passed, but which is not sought to be enforced until after FFCCSOA was passed.[67]

FFCCSOA has been held to apply retroactively to determine whether an order entered prior to FFCCSOA's effective date effectively modified an earlier child support order.[68] Finally, FFCCSOA has been held to apply retroactively to determine which of two conflicting orders is controlling, for the purpose of computing arrearages.[69]

C. Constitutionality

Congressional authority to enact FFCCSOA appears to derive from the Full Faith and Credit Clause.[70]

Courts have upheld FFCCSOA against constitutional challenges under the Commerce Clause,[71] the Tenth Amendment,[72] the Equal Protection Clause,[73] and the Due Process Clause.[74]

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66. *See, e.g., In re* Marriage of Lurie, 39 Cal. Rptr. 2d 835 (Ct. App. 1995) (FFCCSOA applies to case pending on appeal when FFCCSOA was enacted); *Jennings*, 707 A.2d at 46-48; Day v. Montana Dep't of Soc. & Rehabilitation Servs., 900 P.2d 296, 300 (Mont. 1995); Isabel M. v. Thomas M., 624 N.Y.S.2d 356 (Fam. Ct. 1995).

67. *See, e.g.*, Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919 (Conn. Super. Ct. July 22, 1998); Georgia Dep't of Human Resources v. Deason, 520 S.E.2d 712 (Ga. Ct. App. 1999); Connell v. Woodward, 509 S.E.2d 647 (Ga. Ct. App. 1998).

68. *See In re* Marriage of Yuro, 968 P.2d 1053 (Ariz. Ct. App. 1998). *But see* Lorenzo v. Skowronski-Thompson, 738 So. 2d 967, 968-69 (Fla. Dist. Ct. App. 1999).

69. *See* Twaddell v. Anderson, 523 S.E. 2d 710 (N.C. Ct. App. 1999).

70. *See* U.S. CONST., art. IV, § 1. "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." *Id. See* Ohio *ex rel.* Scioto County Child Support Enforcement Agency v. Adams, No. 98CA261, 1999 WL 597257, at *6 n.5 (Ohio Ct. App. July 23, 1999).

71. *See* Kilroy v. Superior Ct., 63 Cal. Rptr. 2d 390, 400 (Ct. App. 1997) ("Support payments between parents in different states substantially affect[ ] interstate commerce"); Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919 (Conn. Super. Ct. July 22, 1998).

72. *See Kilroy*, Cal. Rptr. 2d at 402-07; *Peterson*, 1998 WL 457919.

73. *See* V.G. v. Bates, No. C8-96-1654, 1997 WL 177705, at *4 (Minn. Ct. App. Apr. 15, 1997) (rejecting argument by petitioning custodial parent, a resident of Minnesota, that FFCCSOA violated her equal protection rights because unlike other Minnesota residents, she was denied access to Minnesota courts).

74. *See* Stansbury v. Stansbury, No. 99CA9, 1999 WL 668742 (Ohio Ct. App. Aug. 9, 1999).

V. INITIAL ESTABLISHMENT OF A CHILD SUPPORT ORDER

A. Introduction

If no child support order has ever been issued for a particular obligor and child, UIFSA provides for its initial establishment.[75] FFCCSOA does not apply if no child support order has ever been issued.[76]

As with any of the three basic UIFSA proceedings (establishment, enforcement, and modification), UIFSA contemplates two ways to initially establish a support order in the interstate context (in other words, where petitioner and respondent reside in different states):[77]

> (1) *"One-state" proceeding.* Petitioner may file a petition to establish a child support order in her state of residence, if that state can exercise personal jurisdiction over the nonresident respondent.[78] In the alternative, petitioner may file a petition to establish a child support order directly in respondent's state of residence (or any other state that may exercise personal jurisdiction over respondent).[79]
>
> (2) *"Two-state" proceeding.* Petitioner may file in her own state a petition that is forwarded to a state that can exercise personal jurisdiction over the respondent, usually the respondent's state of residence.[80]

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75. *See* U.I.F.S.A. §§ 301(b)(1), 9 (pt. IB) U.L.A. 300 (1999); *Id.* Prefatory Note, 9 (pt. IB) U.L.A. 238-43 (1999).

76. FFCCSOA's only relevance, before a child support order has been entered, is that it prescribes necessary conditions that a tribunal establishing a child support order must fulfill before another state must render full faith and credit to that order. These conditions are that the court issuing the order must have had subject matter jurisdiction to hear the matter and personal jurisdiction over the contestants, and the contestants must have been given reasonable notice and opportunity to be heard. *See* 28 U.S.C. § 1738B(c) (1994 & Supp. 1998).

77. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 275 (1999) ("because residents of two separate states are involved . . . the case has a clear interstate aspect").

78. *See id.*

79. The option of filing a petition in respondent's state "does not implicate UIFSA." *Id.* § 201 cmt., 9 (pt. IB) U.L.A. 275 (1999). *E.g.*, Willers v. Willers, 587 N.W.2d 390 (Neb. 1998); Jones v. Jones, No. C3-98-593, 1998 WL 436866 (Minn. Ct. App. Aug. 4, 1998).

80. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 275-77 (1999).

Assuming the law of petitioner's state is favorable,[81] filing a "one-state" proceeding in petitioner's own state will likely be most advantageous to petitioner because that state will retain continuing, exclusive jurisdiction over the order.[82] Further, litigation in petitioner's state will probably enhance her ability to retain private counsel and ease the prosecution of the case for her logistically.

Whether petitioner follows a one-state or two-state proceeding, she may request the assistance of the state child support enforcement (or "IV-D") agency[83] or employ a private attorney.[84]

B. One-State Proceeding

1. Personal Jurisdiction: UIFSA's Long-Arm Statute

To order a child support obligation, a court must have personal jurisdiction over the obligor.[85] A court in the forum state may exercise personal jurisdiction over a forum state citizen.[86] A court may exercise personal jurisdiction over a nonresident respondent when a state long-arm statute authorizes the exercise and when that exercise is consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution.[87]

UIFSA section 201, a long-arm statute, allows the broadest possible assertion of jurisdiction over nonresident child support obligors consistent with the constitution.[88] Section 201 enumerates eight bases for a court's exercise of personal jurisdiction over a nonresident individual in an action

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81. *See infra* Part V.D.

82. *See* U.I.F.S.A. § 205, 9 (pt. IB) U.L.A. 284-85 (1999); Chauncey Brummer, *The Uniform Interstate Family Support Act*, 1994 ARK. L. NOTES 77, 81 (1994).

83. *See supra* note 16. UIFSA section 307 lists the services related to UIFSA that each state's IV-D agency is required to perform. A state's IV-D agency may not deny services requested by an out-of-state obligee. *See* Flores v. Flores, 979 P.2d 944 (Wyo. 1999).

84. *See* U.I.F.S.A. § 309, 9 (pt. IB) U.L.A. 316 (1999).

85. *See* Kulko v. Superior Court, 436 U.S. 84 (1978).

86. *See, e.g.*, Idaho Dep't of Health & Welfare v. Conley, 971 P.2d 332, 335 (Idaho Ct. App. 1999). *See* Milliken v. Meyer, 311 U.S. 457 (1940).

87. *See* U.S. CONST., art. XIV; Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 104-05 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 463-64 (1985); World-Wide Volkswagen v. Woodson, 444 U.S. 286, 289-91 (1980). *See, e.g.*, *In re* Paternity of Carlin L.S., 593 N.W.2d 486, 488 (Wis. Ct. App. 1999).

88. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 275-77 (1999); *id.* Prefatory Note, 9 (pt. IB) U.L.A. 238-43 (1999).

to establish, enforce, or modify a child support order. The drafters caution that subsections (3) through (6), if applied too literally, could overreach due process, and should be applied "on a case-by-case basis with an eye on procedural and substantive due process."[89]

a. Service of Process within State

A state may exercise personal jurisdiction over a nonresident individual when that individual is personally served with summons (or other authorized process) within that state.[90] This is sometimes called "transient jurisdiction."[91]

b. Submission to Jurisdiction

A state may exercise personal jurisdiction over a nonresident individual when that individual "submits to the state's jurisdiction by consent, by entering a general appearance, or by filing a responsive document [such as an answer] having the effect of waiving any contest to personal

89. *Id.* § 201 cmt., 9 (pt. IB) U.L.A. 276 (1999).

90. *See id.* § 201(1), 9 (pt. IB) U.L.A. 275 (1999). *E.g., In re* Marriage of Erickson, 991 P.2d 123, 125 (Wash. Ct. App. 2000). *See* Cairns v. Cairns, 741 A.2d 800, 801 (Pa. Super. Ct. 1999).

The United States Supreme Court upheld the constitutionality of personal jurisdiction premised upon in-state service of process in *Burnham v. Superior Court*, 495 U.S. 604 (1990) (plurality). Note, however, that Justice Brennan's concurrence, joined by three other justices, left open the possibility that a defendant could have so few contacts with a state that the latter's exercise of personal jurisdiction, even with in-state service of process on the defendant, might violate due process. *See Burnham*, 495 U.S. at 628-40 (Brennan, J., concurring). *Cf.* Clemens v. Clemens, No. FA 990170802, 1999 WL 997882 (Conn. Super. Ct. Oct. 22, 1999).

91. Burnham v. Superior Court, 495 U.S. 604, 629 n.1 (1990) (Brennan, J., concurring).

jurisdiction."[92] However, submission to jurisdiction in a UIFSA support proceeding "does not extend the tribunal's jurisdiction to other matters."[93]

c. Residence with Child in State

A state might exercise personal jurisdiction over a nonresident individual to establish a child support order when that individual resided at one time with the child in the state.[94] Note that subsection 201(3) contains

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92. U.I.F.S.A. § 201(2), 9 (pt. IB) U.L.A. 275 (1999). *See, e.g.*, Peters v. Peters, 744 So. 2d 803, 805-06 (Miss. 1999) (court could exercise personal jurisdiction over nonresident custodial parent who entered a general appearance by filing answer in divorce proceeding, but court properly declined to modify preexisting out-of-state child support order); Letellier v. Letellier, No. 01A01-9903-JV-00157D, 1999 WL 732487 (Tenn. Ct. App. Sept. 21, 1999) (nonresident obligor waived defense of personal jurisdiction by moving to dismiss for lack of subject matter jurisdiction and failing to include defense of personal jurisdiction in motion); Franklin v. Virginia Dep't of Soc. Servs. *ex rel.* Franklin, 497 S.E.2d 881 (Va. Ct. App. 1998) (nonresident husband submitted to Virginia's jurisdiction under UIFSA section 201(2) by filing a petition for a rule to show cause at a time when the issues of child custody and support were properly before the court) (alternative holding). *See* Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 720 (1878); McDonald v. Mabee, 243 U.S. 90 (1917). *Cf.* Hoehn v. Hoehn, 716 N.E.2d 479 (Ind. Ct. App. 1999) (not citing UIFSA section 201(2), but holding that noncustodial, nonresident parent who entered into two joint petitions to modify in the forum state was estopped from challenging continuing personal jurisdiction of the forum state); Phillips v. Fallen, No. WD 55199, 1999 WL 50159 (Mo. Ct. App. Jan. 26, 1999) (where noncustodial father, who resided in Missouri, "[entered] into a Washington State Parenting Plan," this might not by itself constitute consent to personal jurisdiction in a separate child support modification proceeding, but "is evidence of [father's] additional contact with the forum state"), *aff'd in relevant part and rev'd in part*, 6 S.W.3d 862 (Mo. 1999) (en banc).

93. U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 276 (1999). *See also id.* § 314, 9 (pt. IB) U.L.A. 325 (1999).

94. *See id.* § 201(3), 9 (pt. IB) U.L.A. 275 (1999). *See, e.g.*, Child Support Enforcement Div. of Alaska v. Brenckle, 675 N.E.2d 390 (Mass. 1997); Abu-Dalbouh v. Abu-Dalbouh, 547 N.W.2d 700 (Minn. Ct. App. 1996); Washington *ex rel.* Mahoney v. St. John, 964 P.2d 1242 (Wyo. 1998) (holding that Wyoming court must enforce Washington child support order, as Washington court had personal jurisdiction over obligor under UIFSA section 201(3)). *Cf.* Youssefi v. Youssefi, 744 A.2d 662, 669 (N.J. Super. Ct. App. Div. 2000); Rowley v. Cleaver, 598 N.W.2d 125 (N.D. 1999) (issuing state retains personal jurisdiction over obligor who then moves to another state); Mannor v. Mannor, 703 N.E.2d 716 (Mass. App. Ct. 1998) (upholding exercise of personal jurisdiction under pre-UIFSA long-arm statute); *In re* Cannon, 993 S.W.2d 354 (Tex. App. 1999) (finding Texas court could exercise personal jurisdiction over noncustodial parent who had been divorced in Texas in 1981, although he had moved to Florida in 1988).

no limit on the amount of time that has elapsed between the individual's residence with the child in the state and the filing of the child support proceeding. However, the commentary to section 201 gives a hypothetical example of a parent absent from the forum state for "many years" as a situation in which the forum state's assertion of personal jurisdiction over the absent parent on this ground alone might offend due process.[95]

d. Residence in State and Provision of Prenatal Expenses or Support for Child

A state might exercise personal jurisdiction over a nonresident individual to establish a child support order when that individual resided at one time in the state and "provided prenatal expenses or support for the child."[96]

e. Child Resides in State as Result of Individual's Acts or Directives

A state might exercise personal jurisdiction over a nonresident individual to establish a child support order when the child resides in the state "as a result of the acts or directives of the individual."[97] While this

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95. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 276 (1999). *But see Child Support Enforcement Div. of Alaska*, 675 N.E.2d at 390 (Alaska had personal jurisdiction over noncustodial parent in 1991 enforcement action, because noncustodial parent had lived in Alaska with the child from 1974 to 1979, even though noncustodial parent had lived in Massachusetts since 1979); *Abu-Dalbouh*, 547 N.W.2d at 704 (Minnesota had personal jurisdiction in 1994 over father to determine child support for oldest child, where father had lived in Minnesota with child for several months in 1986 and 1987, even though father had lived in Jordan since 1987).

96. U.I.F.S.A. § 201(4), 9 (pt. IB) U.L.A. 275 (1999); *Abu-Dalbouh*, 547 N.W.2d at 704.

97. U.I.F.S.A. § 201(5), 9 (pt. IB) U.L.A. 275 (1999). *See, e.g.*, Jackson v. Meeks, No. C3-97-1877, 1998 WL 268092, *2 (Minn. Ct. App. May 26, 1998) (unpublished) (Minnesota trial court asserted personal jurisdiction over Indiana father under section 201(5) when child moved with mother to Minnesota); Franklin v. Virginia Dep't of Soc. Servs. *ex rel.* Franklin, 497 S.E.2d 881 (Va. Ct. App. 1998) (where after several physical altercations, husband ordered wife and children from their home in Africa, wife received emergency assistance from husband's employer in Virginia to effectuate her return to Virginia, where she had lived before moving to Africa, children became residents of Virginia "as a result of" the husband's "acts" under UIFSA section 201(5)) (alternative holding). *Cf.* Windsor v. Windsor, 700 N.E.2d 838 (Mass. App. Ct. 1998) (record contained no facts establishing that husband's acts caused wife and children to flee from Florida to Massachusetts under UIFSA

standard is not further defined or discussed in the text of or commentary to section 201, it likely delineates Supreme Court jurisprudence that allows the constitutional exercise of personal jurisdiction where the individual's acts cause "effects" in the forum state[98] or are "purposefully directed" at forum residents.[99] Note that the United States Supreme Court has held that a father's purchase of his daughter's plane ticket to California and acquiescence in her remaining in that state with her mother is not a sufficient "purposeful act" subjecting the father to personal jurisdiction in California.[100]

f. Child Conceived by Individual's Act of Sexual Intercourse in State

A state might exercise personal jurisdiction over a nonresident individual to establish a child support order when the individual "engaged in sexual intercourse" in the state and "the child may have been conceived by that act of intercourse."[101]

It is apparent that this subsection, depending on a particular case's facts, poses a significant risk that a court's exercise of personal jurisdiction, though proper under the long-arm statute, might be unconstitutional.[102] For example, in *Phillips v. Fallen*,[103] the mother and father visited Washington state (where they allegedly engaged in sexual intercourse) in November 1982. The child was born August 23, 1983.[104] As far as appears from the

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section 201(5)).

98. *See* Calder v. Jones, 465 U.S. 783, 789 (1984).

99. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985).

100. *See* Kulko v. Superior Court, 436 U.S. 84, 93 (1978).

101. U.I.F.S.A. § 201(6), 9 (pt. IB) U.L.A. 275 (1999). *E.g.*, Letellier v. Letellier, No. 01A01-9903-JV-00157D, 1999 WL 732487, at *2 (Tenn. Ct. App. Sept. 21, 1999); *Abu-Dalbouh*, 547 N.W.2d at 705.

102. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 275 (1999).

103. No. WD 55199, 1999 WL 50159 (Mo. Ct. App. Jan. 26, 1999), *aff'd in part and rev'd in part*, 6 S.W.2d 862 (Mo. 1999) (en banc).

104. *See id.* at *2. In arguing to the Missouri court that the Washington court lacked personal jurisdiction to enter a default judgment against him on the mother's petition to modify child support, the father submitted medical records suggesting that the child was born three weeks prematurely and thus could not have been conceived during his parents' Thanksgiving 1982 visit to Washington. *See id.* at *5. The Missouri court rejected the father's contention because the medical records "were not authenticated" and the father did not present medical testimony supporting his interpretation. Citing BLAKISTON'S GOULD MEDICAL DICTIONARY 556 (4th ed. 1979), *id.* at n.7, the court stated that "[a] normal gestational period is 280 days, but a range of 250 to 310 days is not abnormal," and noted

opinion, the family then resided in Kansas until the parents' divorce in 1993, when the father moved to Missouri and the mother moved to Washington. It does not appear that the father ever visited Washington other than in November 1982. Yet a Washington tribunal exercised personal jurisdiction and entered a default judgment against the father on the mother's petition—thirteen years later, in 1995—based upon UIFSA section 201(6).[105] The Missouri court later upheld Washington's exercise of personal jurisdiction on the father's collateral attack.[106]

g. Listing in Putative Father Registry

If the state in question maintains a putative father registry,[107] personal jurisdiction in a child support proceeding may be premised upon the individual's assertion of parentage in that state's registry.[108]

h. "Catch-All" Provision

Finally, a state may exercise personal jurisdiction over a nonresident individual in a child support proceeding if there is any other basis consistent with the state and federal constitutions.[109]

To date there are few cases referencing this "catch-all"[110] provision. In *McCaffery v. Green*,[111] the Alaska Supreme Court suggested in *dictum* that UIFSA section 201(8) might allow a state to exercise personal jurisdiction over a nonresident, noncustodial parent to adjudicate a child support obligation when the noncustodial parent is already properly before the state's court on a custody or visitation issue under the Uniform Child

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that the child in question was born 271 days after Thanksgiving 1982. *See id.*

105. *See* Phillips v. Fallen, No. WD 5519, 1999 WL 50159, at *2 (Mo. Ct. App. Jan. 26, 1999).

106. *See id.* at *7-8.

107. *See, e.g.*, OKLA. STAT. tit. 10, § 7506-1.1 (1999). Not all states maintain a putative father registry. *See* U.I.F.S.A. § 201 cmt. 9 (pt. IB) U.L.A. 275 (1999).

108. *See* U.I.F.S.A. § 201(7), 9 (pt. IB) U.L.A. 275 (1999).

109. *See id.* § 201(8).

110. *See id.* § 201 cmt. 9 (pt. IB) U.L.A. 277 (1999).

111. 931 P.2d 407 (Alaska 1997). UIFSA was not in effect in Alaska at the time the trial court heard the case.

Custody Jurisdiction Act (UCCJA),[112] even in the absence of any other contacts between the state and the noncustodial parent.[113] The Wisconsin Court of Appeals, however, has held to the contrary, rejecting a mother's contention that the UCCJA provides a "basis" under UIFSA section 201(8) to confer personal jurisdiction over a nonresident in a paternity action, absent the nonresident's constitutionally sufficient contacts with the forum state.[114]

Finally, one court has held that UIFSA section 201(8) authorizes the exercise of personal jurisdiction over a nonresident obligor in a proceeding

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112. 9 (pt. IA) U.L.A. 261 (1999). The UCCJA and the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A, rather than UIFSA or other traditional concepts of personal jurisdiction, govern child custody and visitation jurisdiction. *See* LEA BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM 343, 364-69 (1986). The United States Supreme Court has never decided whether personal jurisdiction over an absent parent is necessary for a custody determination. *See* May v. Anderson, 345 U.S. 528 (1953). The National Conference of Commissioners on Uniform State Laws adopted a replacement for the UCCJA in July 1997 entitled the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *See* 9 (pt. IA) U.L.A. 649 (1999). The UCCJEA was not in effect in Alaska at the time *McCaffery* was decided.

113. The reasoning in *McCaffery v. Green* advances toward the "child-state" jurisdiction that some courts and commentators have advocated: that a state in which a child resides should be able to exercise personal jurisdiction over the child's nonresident, noncustodial parent to determine that parent's child support obligation. *See* McCaffery v. Green, 931 P.2d 407 (Alaska 1997). *See, e.g.*, Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919 (Conn. Super. Ct. July 22, 1998); Carol S. Bruch, *Statutory Reform of Constitutional Doctrine: Fitting* International Shoe *to Family Law*, 28 U.C. DAVIS L. REV. 1047, 1053-57 (1995); Ann Bradford Stevens, *Is Failure To Support A Minor Child In The State Sufficient Contact With That State To Justify In Personam Jurisdiction?*, 17 S. ILL. U. L.J. 491 (1993); Monica J. Allen, *Child-State Jurisdiction: A Due Process Invitation to Reconsider Some Basic Family Law Assumptions*, 26 FAM. L.Q. 293 (1992). However, the United States Commission on Interstate Child Support, established as a part of the Family Support Act of 1988, P.L. 100-485, 102 Stat. 2343, 100th Cong., 2d Sess. § 126 (1988), ultimately determined not to recommend the adoption of "child-state" jurisdiction.

There was a pointed dissent in *McCaffery v. Green* arguing that "the purposeful availment element is the sine qua non of personal jurisdiction." *McCaffery*, 931 P.2d at 415. Because the father in *McCaffery* "did nothing directed toward Alaska," the dissent stated that *Kulko v. Superior Court*, 436 U.S. 84 (1978), was indistinguishable and controlled the case. *Id.*

114. *In re* Paternity of Carlin L.S., 593 N.W.2d 486 (Wis. Ct. App. 1999). *Cf.* McCubbin v. Seay, 749 So. 2d 1127 (Miss. Ct. App. July 27, 1999) (not citing UIFSA section 201(8), but holding that child's presence in and mailing of child support payments to forum state not enough to establish personal jurisdiction over nonresident obligor).

to foreclose a lien upon the obligor's real property located in the forum state.[115]

2. UIFSA Provisions Still Applicable in One-State Proceeding

For the most part, Articles 3 through 7 of UIFSA[116] do not apply to the "one-state" proceeding that results when a petitioner's state exercises long-arm jurisdiction over a nonresident respondent pursuant to UIFSA section 201.[117] However, UIFSA allows the forum state to use the innovative evidence and discovery rules of UIFSA sections 316 and 318 "[t]o facilitate interstate exchange of information and to enable the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum state."[118]

Under these provisions, traditional hearsay, authentication, and "best evidence" rules are greatly relaxed to ensure the admissibility of evidence.[119]

Out-of-state witnesses may testify by telephone, audiovisual, or other electronic means.[120] Any interspousal testimonial privilege and any

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115. *See* Hawley v. Murphy, 736 A.2d 268, 270 (Me. 1999).

116. "Civil Provisions of General Application" (Article 3), "Establishment of Support Order" (Article 4), "Enforcement of Order of Another State Without Registration" (Article 5), "Enforcement and Modification of Support Order After Registration" (Article 6), and "Determination of Parentage" (Article 7). U.I.F.S.A., 9 (pt. IB) U.L.A. 253-55 (1999).

117. *See id.* § 202 & cmt., 9 (pt. IB) U.L.A. 281 (1999).

118. *Id.* § 202 cmt., 9 (pt. IB) U.L.A. 281 (1999). *See id.* § 316, 9 (pt. IB) U.L.A. 327 (1999); *id.* § 318, 9 (pt. IB) U.L.A. 331 (1999).

119. *See id.* § 316(b)-(e), 9 (pt. IB) U.L.A. 327 (1999). *E.g.*, Attorney Gen. v. Litten, 999 S.W.2d 74, 78 (Tex. App. 1999). *Cf.* Ohio v. Christenson, No. 99CA04018, 1999 WL 1071564 (Ohio Ct. App. Nov. 9, 1999).

120. *See* U.I.F.S.A. § 316(f), 9 (pt. IB) U.L.A. 328 (1999). *But see* Schwier v. Bernstein, 734 So. 2d 531 (Fla. Dist. Ct. App. 1999) (upholding trial court's denial of nonresident petitioner's motion for leave to appear by telephone conference call); Child Support Enforcement Unit *ex rel* Judith S. v. John M., 701 N.Y.S. 2d 880 (Fam. Ct. 1999) (raising confrontation clause concerns about special UIFSA procedures when petitioner seeks incarceration for contempt).

The respondent's failure to require the petitioner or another witness to testify by telephone or other means under UIFSA section 316(f) has been held to preclude his later contention that he was denied the right to cross-examine a witness. *See, e.g.*, Davis v. Child Support Enforcement Unit, 933 S.W.2d 798, 799-800 (Ark. 1996); Colorado *ex rel.* Orange County v. M.A.S., 962 P.2d 339 (Colo. Ct. App. 1998); State *ex rel.* T.L.R. v. R.W.T., 737 So. 2d 688 (La. 1999).

husband-wife or parent-child immunity do not apply.[121] An adverse inference may be drawn from a refusal to testify at a civil hearing.[122] Finally, the forum tribunal may request a tribunal in the respondent's state to assist in obtaining discovery or to compel the respondent to respond to a discovery order.[123]

C. Two-State Proceeding

1. Initiating Proceeding in Petitioner's State

If a tribunal in the petitioner's state of residence cannot exercise personal jurisdiction over the respondent (or if for any other reason the petitioner wishes to proceed in the respondent's state of residence), the petitioner[124] may initiate a "two-state" proceeding for the establishment of support in her state, to be forwarded to respondent's state.[125]

To begin this process, an individual petitioner either contacts her state's IV-D agency[126] or a private attorney[127] and completes the necessary

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121. *See* U.I.F.S.A. § 316(h)-(i), 9 (pt. IB) U.L.A. 328 (1999).

122. *See id.* § 316(g).

123. *See id.* § 318, 9 (pt. IB) U.L.A. 331 (1999).

124. The petitioner may be either the individual entitled to support or a child support enforcement agency. *See id.* § 401(a), 9 (pt. IB) U.L.A. 333 (1999). At least one court has held that a grandmother who had not been named the child's legal guardian was not an "obligee" under UIFSA section 101(12), 9 (pt. IB) U.L.A. 257 (1999), so that she had no rights to assign to the state's child support enforcement agency making that agency a proper "obligee." *See* Office of Attorney Gen. v. Carter, 977 S.W.2d 159, 162 (Tex. App. 1998).

125. *See* U.I.F.S.A. § 201 cmt., 9 (pt. IB) U.L.A. 275 (1999); *id.* § 401(a), 9 (pt. IB) U.L.A. 333 (1999). *See, e.g.*, Deltoro v. McMullen, 471 S.E.2d 742 (S.C. Ct. App. 1996). For a modified example of such a two-state establishment proceeding under URESA, see *Kansas Secretary of Soc. Rehab. Servs. v. Briggs*, 925 S.W.2d 892 (Mo. Ct. App. 1996).

126. *See* U.I.F.S.A. § 307(a), 9 (pt. IB) U.L.A. 312 (1999). It should be noted that the effectiveness or promptness of the state IV-D agencies, in light of budgetary and staffing constraints, has been questioned. *See, e.g.*, Blessing v. Freestone, 520 U.S. 329 (1997) (suit against Arizona child support enforcement agency for allegedly inadequate performance of its obligations); Brinkley v. Hill, 981 F. Supp. 423 (S.D.W. Va. 1998) (similar action against Virginia child support enforcement agency); *Child Support Enforcement, 1994: Hearings Before the U.S. Senate Subcomm. on Federal Services, Post Office and Civil Service of the Senate Comm. on Governmental Affairs*, 103d Cong., 2d Sess. (1994) (testimony of Nancy Ebb; statement of Pat Addison). As one example of the delay in a two-state enforcement proceeding, in *Beyer v. Metze*, the Ohio Child Support Enforcement Agency filed a UIFSA petition requesting enforcement on August 15, 1994, which was forwarded to South Carolina. *See* Beyer v. Metze, 482 S.E.2d 789, 791 (S.C. Ct. App. 1997). The South

documentation.[128] The petitioner's state becomes the "initiating state"[129] and that state's court or other forum authorized to accept such filings is the "initiating tribunal."[130] The petitioner does not pay any filing fee.[131] The initiating tribunal then forwards three copies of the petition and supporting documents[132] to the appropriate "responding tribunal"[133] or "support enforcement agency"[134] in the "responding state,"[135] usually the state in which the respondent resides. The petition and supporting documents are then filed in the responding tribunal, which must notify the petitioner where and when the documents were filed.[136] The responding tribunal, to the extent otherwise authorized by law, may then issue a support order,[137] as

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Carolina Child Support Enforcement Agency filed its notice of registration eight months later, on April 26, 1995.

127. *See* U.I.F.S.A. § 309, 9 (pt. IB) U.L.A. 316 (1999).

128. *See infra* Part VI.B.2; U.I.F.S.A. § 311, 9 (pt. IB) U.L.A. 321 (1999).

129. *See* U.I.F.S.A. § 101(7), 9 (pt. IB) U.L.A. 256-57 (1999). The terms "initiating" and "responding" state were retained from URESA. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 239 (1999).

130. *See* U.I.F.S.A. § 101(8), 9 (pt. IB) U.L.A. 257 (1999). The word "tribunal" was used rather than "court" so as to encompass administrative proceedings. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 239 (1999).

131. *See* U.I.F.S.A. § 313(a), 9 (pt. IB) U.L.A. 323 (1999). *But see* V.G. v. Bates, No. C8-96-L654, 1997 WL 177705, at *5 (Minn. Ct. App. Apr. 15, 1997) (unpublished) (upholding district court's denial of custodial parent's motion to waive filing fees and costs in modification action improperly filed in Minnesota).

132. *See* U.I.F.S.A. § 304(a), 9 (pt. IB) U.L.A. 303 (1999). The initiating tribunal simply executes "the ministerial function of forwarding the documents." *Id.* § 304 cmt., 9 (pt. IB) U.L.A. 304 (1999). *Cf.* R.U.R.E.S.A. § 14, 9B U.L.A. 450 (1987) (initiating state to determine whether petition states facts from which it may be determined that respondent owes duty of support). However, if the responding "State" (which is defined under UIFSA section 101(19), 9 (pt. IB) U.L.A. 258 (1999) to include United States territories, Indian tribes, and some foreign jurisdictions) has not enacted a law substantially similar to UIFSA, the issuing tribunal may issue documentation or make findings required by the responding State. *See* U.I.F.S.A. § 304(b), 9 (pt. IB) U.L.A. 304 (1999).

133. *See* U.I.F.S.A. § 101(17), 9 (pt. IB) U.L.A. 257 (1999).

134. *See id.* § 101(20), 9 (pt. IB) U.L.A. 258 (1999).

135. *See id.* § 101(16), 9 (pt. IB) U.L.A. 257 (1999).

136. *See id.* § 305(a), 9 (pt. IB) U.L.A. 305-06 (1999).

137. *See id.* § 305(b)(1), 9 (pt. IB) U.L.A. 306 (1999). "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 . . . ." *Id.* § 401(c), 9 (pt. IB) U.L.A. 333 (1999).

well as order other relief, such as to "determine the amount of any arrearages."[138]

2. Initiating Proceeding in Respondent's State

The petitioner may also commence a UIFSA proceeding to establish a support order by filing a petition directly in a tribunal of a state that can obtain personal jurisdiction over the respondent.[139] The respondent's state's IV-D agency should handle the case if the petitioner so requests.[140]

The use of a UIFSA proceeding should be contrasted with the non-UIFSA alternative of filing (through a private attorney) an action directly in the respondent's state. The petitioner will thereby submit to the personal jurisdiction of that state.[141]

3. Forms to Use

UIFSA section 311 spells out the information that must be included in a petition to establish a support order.[142] Because the petition "and

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138. *Id.* § 305(b)(4), 9 (pt. IB) U.L.A. 306 (1999). *E.g.*, Department of Human Servs. *ex rel.* Young v. Leifester, 721 A.2d 189, 191 (Me. 1998).

139. *See* U.I.F.S.A. §§ 301(c), 9 (pt. IB) U.L.A. 300 (1999); *Id.* § 305(a), 9 (pt. IB) U.L.A. 305-06 (1999); *Id.* § 101 cmt., 9 (pt. IB) U.L.A. 258 (1999). Presumably the respondent's state of residence may exercise personal jurisdiction over him; either he is domiciled there, *Milliken v. Meyer*, 311 U.S. 457 (1940), or he will be served with process there, *Burnham v. Superior Court*, 495 U.S. 604 (1990).

140. *See* U.I.F.S.A. § 307(a), 9 (pt. IB) U.L.A. 312 (1999); *id.* § 101 cmt., 9 (pt. IB) U.L.A. 258-60 (1999).

141. *See id.* § 103 cmt., 9 (pt. IB) U.L.A. 272 (1999). "[A] petitioner may decide to file an original action . . . directly in the state of residence of the respondent under that forum's generally applicable support law, . . . thereby submit[ting] to the personal jurisdiction of th[at] forum, and forego[ ] reliance on UIFSA." *Id.*

142. The requirements for documents seeking to establish a support order are:

> (1) The petitioner must verify the petition. *See* U.I.F.S.A. § 311(a), 9 (pt. IB) U.L.A. 321 (1999). It has been held that while UIFSA requires the Uniform Support Petition to be verified, the court has discretion not to require verification of any amendment thereto. *See* Department of Human Servs. *ex rel.* Young v. Leifester, 721 A.2d 189 (Me. 1998).
>
> (2) Unless a tribunal finds that "the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information," and orders nondisclosure, or "if an existing order so provides," UIFSA section 312, the petition "or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor

accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency,"[143] the practitioner should use the relevant federal forms promulgated for establishing a support order.

Pursuant to federal law,[144] the federal Office of Child Support Enforcement (OCSE) has promulgated several forms for use in interstate child support cases. Appendix A to this Article lists these forms and explains how to retrieve the forms on the internet. Also available online is an OCSE document entitled "UIFSA Forms Matrix," which explains which forms to use in different types of proceedings.[145]

The federal forms to use in a proceeding seeking to establish a child support order[146] are:

(1) Child Support Enforcement Transmittal #1—Initial Request;
(2) Uniform Support Petition; and
(3) General Testimony.

D. Choice of Law

The interstate nature of a UIFSA proceeding engenders potential choice-of-law issues. For example, the petitioner seeking to establish a support order may have the option of proceeding either in her state or in respondent's state.[147] Which state's law—including, perhaps most importantly, child support guidelines—will apply to the establishment proceeding?

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and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought." U.I.F.S.A. § 311(a), 9 (pt. IB) U.L.A. 321 (1999).

(3) "The [petition] must specify the relief sought." *Id.* § 311(b).

(4) The petition "and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency." *Id.*

143. *Id.* § 311(b).

144. *See infra* Appendix A to this Article.

145. *See infra* Appendix A, n.2

146. If a finding of parentage is also necessary, see *infra* Part V.E.

147. *See supra* Part V.A.

UIFSA's general choice-of-law rules require the forum state to apply its own law.[148] Thus, if the case is filed in the petitioner's state, the petitioner's state's law applies.[149] If the case is filed in or forwarded to the respondent's state, the respondent's state's law applies.[150]

This suggests that if the petitioner may choose to proceed in either of two states, her attorney should ascertain the law of both states to determine which is more favorable to her client before filing the establishment petition. For example, the application of the petitioner's state's child support guidelines could result in a significantly higher or lower child support obligation than the application of the respondent's state's guidelines.[151]

Even in an establishment case, there are some exceptions to UIFSA's general rule that the law of the forum state applies. These exceptions

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148. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 240-41 (1999); *id.* § 202, 9 (pt. IB), U.L.A. 281 (1999); *id.* § 303, 9 (pt. IB) U.L.A. 303 (1999).

149. *See id.* § 202, 9 (pt. IB) U.L.A. 281 (1999). A state's "tribunal shall apply the procedural and substantive law" of its own state when exercising jurisdiction over a nonresident pursuant to UIFSA's long-arm section, except for the special evidence and discovery rules contained in U.I.F.S.A. §§ 316 and 318. *Id.*

150. *See id.* § 303, 9 (pt. IB) U.L.A. 303 (1999). A responding tribunal of this State:

> (1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and
> (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

Id. See, e.g., Idaho Dep't of Health & Welfare *ex rel.* Oregon v. Conley, 971 P.2d 332 (Idaho Ct. App. 1999) (applying Idaho guidelines to establishment action filed against Idaho resident by Oregon resident); Ratti v. Rogers, No. 99CA3, 2000 WL 1459 (Ohio Ct. App. Dec. 27, 1999) (unpublished); Tennessee *ex rel.* Avery v. Lewis, Nos. O2A01-9805-CV-00123, O2A01-9805-CV-00125, 1998 WL 886733 (Tenn. Ct. App. Dec. 18, 1998) (unpublished) (applying Tennessee guidelines to actions forwarded to Tennessee under URESA); Louisiana v. Frisard, 694 So. 2d 1032 (La. Ct. App. 1997) (in establishment proceeding forwarded to Louisiana from Florida, Louisiana court assumed without discussion that UIFSA section 303 applied and requiring use of Louisiana child support guidelines to determine the appropriate amount of child support).

151. *See, e.g.*, Murphy v. Murphy, No. FA 97 01564335, 1998 WL 262805 (Conn. Super. Ct. May 11, 1998) (applying Connecticut child support guidelines instead of New York guidelines, resulting in a lower support award); Department of Human Servs. *ex rel.* Young v. Leifester, 721 A.2d 189 (Me. 1998) (applying Maine guidelines without discussion).

require the forum to apply certain UIFSA provisions even if inconsistent with the forum state's law.[152] For example, UIFSA's special evidence and discovery rules apply even if inconsistent with forum state law.[153]

E. Unmarried Parents/Paternity

1. In general

UIFSA provides for the interstate establishment of a support order when the parents have never been married.[154] The preceding sections regarding initial establishment of a support order[155] continue to apply to such a case. Thus, petitioner may file a "one-state" proceeding in her own state (if that state may exercise personal jurisdiction over the respondent),[156]

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152. The drafters' Prefatory Note to UIFSA, 9 (pt. IB) U.L.A. 340-41, pt. II.B.2, explains that in establishment cases, exceptions to the application of forum state law include special UIFSA rules:

> (1) prescribing the contents of interstate petitions (*See* U.I.F.S.A. § 311, 9 (pt. IB) U.L.A. 321 (1999));
> (2) preventing the disclosure of certain sensitive information (*See id.* § 312, 9 (pt. IB) U.L.A. 322-23 (1999));
> (3) assessing and awarding fees and costs (*See id.* § 313, 9 (pt. IB) U.L.A. 323 (1999));
> (4) providing the petitioner limited immunity (*See id.* § 314, 9 (pt. IB) U.L.A. 325 (1999));
> (5) prohibiting a party whose parentage has been previously determined by or pursuant to law from pleading nonparentage as a defense in a UIFSA proceeding (*See id.* § 315, 9 (pt. IB) U.L.A. 326 (1999));
> (6) facilitating the interstate transmission of evidence and discovery (*See id.* § 316, 9 (pt. IB) U.L.A. 327-28 (1999); *id.* § 318, 9 (pt. IB) U.L.A. 331 (1999));
> (7) prohibiting the responding state from conditioning "the payment of a support order issued" under UIFSA upon a party's compliance with visitation provisions (*Id.* § 305(d), 9 (pt. IB) U.L.A. 306 (1999)).

153. *See supra* Part V.B.2.

154. *See* U.I.F.S.A. §§ 301(b)(6), 9 (pt. IB) U.L.A. 300 (1999); *id.* § 401, 9 (pt. IB) U.L.A. 333 (1999); *id.* § 701(a), 9 (pt. IB) U.L.A. 383 (1999). *See, e.g.*, Idaho Dep't of Health & Welfare *ex rel.* Oregon v. Conley, 971 P.2d 332, 335 (Idaho Ct. App. 1999). It should also be noted in this context that "[a] minor parent, or a guardian or other legal representative of a minor parent, may maintain a [UIFSA] proceeding on behalf of or for the benefit of the minor's child." U.I.F.S.A. § 302, 9 (pt. IB) U.L.A. 302 (1999).

155. *See supra* Parts V.A-D.

156. *See* U.I.F.S.A. § 201(3), (4), 9 (pt. IB) U.L.A. 275 (1999).

or may initiate a "two-state" proceeding in her state that will be forwarded to the respondent's state.[157]

One additional prerequisite to the establishment of a support order when the child's parents are unmarried is a judicial finding of the respondent's parentage.[158] UIFSA authorizes the responding state to determine parentage.[159] However, the responding tribunal's authority under UIFSA to determine parentage and establish a child support obligation does not also carry with it jurisdiction to consider parenting issues such as custody and visitation.[160]

Finally, either parent may use UIFSA simply to determine parentage without seeking a support order.[161]

2. Forms to Use

The federal forms[162] to use in seeking to establish an initial support obligation when the parents are unmarried and there has been no prior judicial determination of parentage are:

(1) Child Support Enforcement Transmittal #1—Initial Request;
(2) Uniform Support Petition;
(3) General Testimony; and

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157. *See id.* § 701(a), 9 (pt. IB) U.L.A. 383 (1999). *See e.g.*, Davis v. Child Support Enforcement Unit, 933 S.W.2d 798 (Ark. 1996) (Minnesota mother filed paternity and support petition forwarded to Arkansas for hearing); Neville v. Perry, 648 N.Y.S.2d 508, 509 (Fam. Ct. 1996) (Texas Attorney General initiated paternity action forwarded to New York for hearing); Ratti v. Rogers, No. 99 CA 3, 2000 WL 1459 (Ohio Ct. App. Dec. 27, 1999). *See also supra* Part V.C.

158. No such finding is necessary in connection with a divorce proceeding because the husband is presumed to be the father of any children of the marriage. *See, e.g.*, UNIF. PARENTAGE ACT § 4, 9B U.L.A. 287 (1987); Nebraska *ex rel.* Clanton v. Clanton, No. A-95-361, 1996 WL 456037, at *6 (Neb. Ct. App. Aug. 13, 1996).

159. *See* U.I.F.S.A. § 701(a), 9 (pt. IB) U.L.A. 383 (1999).

160. *See In re* R.L.H., 942 P.2d 1386 (Colo. Ct. App. 1997). Jurisdiction to determine custody issues must be obtained pursuant to the Uniform Child Custody Jurisdiction Act, 9 (pt. IA) U.L.A. 261 (1999), the Uniform Child Custody Jurisdiction and Enforcement Act, 9 (pt. IA) U.L.A. 649 (1999), and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A. *But see* Ostermiller v. Spurr, 968 P.2d 940 (Wyo. 1998) (holding that Wyoming court had jurisdiction to entertain father's counterclaim for visitation in response to mother's UIFSA petition for determination of paternity and child support).

161. *See* U.I.F.S.A. § 701(a), 9 (pt. IB) U.L.A. 383 (1999); *id.* § 701 cmt.; *id.* Prefatory Note, Part II.B.6, 9 (pt. IB) U.L.A. 242 (1999); *id.*, Part II.E, 9 (pt. IB) U.L.A. 243 (1999).

162. *See supra* Part V.C.3 and *infra* Appendix A.

(4) Affidavit in Support of Establishing Paternity.

F. Support Establishment Petitions Simultaneously Pending in Two States

Two parents (or other parties entitled to child support) could possibly file, in different states, competing petitions against each other to establish a child support obligation for the same child. UIFSA section 204 prioritizes such competing proceedings.

The proceedings' priority depends upon whether the child has a "home state," which means:

> [T]he 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. A period of temporary absence of any of them is counted as part of the six-month or other period.[163]

In general, if the child has a "home state," the competing support establishment petition filed in the child's home state receives priority, and the court in the other state may not proceed (assuming its jurisdiction has been timely challenged).[164] If the child does not have a "home state," then

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163. U.I.F.S.A. § 101(4), 9 (pt. IB) U.L.A. 256 (1999). This is essentially the definition of the child's "home state" contained in the child custody jurisdiction statutes, U.C.C.J.A. § 2(5), 9 (pt. IA) U.L.A. 286 (1999), U.C.C.J.E.A. § 102(7), 9 (pt. IA) U.L.A. 658 (1999), and the P.K.P.A., 28 U.S.C. § 1738A(b)(4) (1994).

164. *See* U.I.F.S.A. § 204 cmt., 9 (pt. IB) U.L.A. 283 (1999). UIFSA 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 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

the proceeding that was filed first in time receives priority, and the tribunal in the other state may not proceed.[165]

G. Temporary Orders

In a two-state UIFSA proceeding to establish a child support obligation, the responding state is authorized to issue a temporary child support order upon "clear and convincing evidence" that the respondent is the child's parent.[166]

H. Child Custody and Visitation Issues

UIFSA and FFCCSOA only govern jurisdiction to hear interstate child support proceedings. Jurisdiction to hear child custody and visitation proceedings is governed by the Uniform Child Custody Jurisdiction Act

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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;
(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. § 204, 9 (pt. IB) U.L.A. 282-83 (1999) (brackets in original). *Cf.* Kasdan v. Berney, 587 N.W.2d 319 (Minn. Ct. App. 1999) (applying UIFSA section 204 to competing motions to modify, not to establish, child support).

165. *See* U.I.F.S.A. § 204 & cmt. "If the child has no home state, 'first filing' controls." *Id.*, 9 (pt. IB) U.L.A. 283 (1999).

166. UIFSA section 401(b) provides:

(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.

Id. § 401(b), 9 (pt. IB) U.L.A. 333 (1999) (brackets in original).

(UCCJA)[167] (or the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA))[168] and the Parental Kidnaping Prevention Act (PKPA).[169]

Thus, the forwarding of a UIFSA proceeding to a state that would not normally have jurisdiction over custody issues[170] does not subject the petitioner to custody claims the respondent might make.[171] Further, a court properly hearing a UIFSA proceeding "may not condition the payment of a support order issued under [UIFSA] upon compliance by a party with provisions for visitation."[172] The commentary justifies this limitation, which may differ from "state law governing intrastate cases," by explaining that "under a UIFSA action the petitioner generally is not present before the tribunal."[173]

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167. 9 (pt IB) U.L.A. 261 (1999). Before the adoption of the UCCJEA in 1997, all fifty states and the District of Columbia had adopted the UCCJA. *See id.* at 261-62. *See also* Abu-Dalbouh v. Abu-Dalbouh, 547 N.W.2d 700 (Minn. Ct. App. 1996).

168. The National Conference of Commissioners on Uniform State Laws adopted the UCCJEA in 1997 as a replacement for the UCCJA. As of this writing, Alabama, Alaska, Arkansas, California, Connecticut, Iowa, Maine, Minnesota, Montana, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, and Texas have adopted the UCCJEA. *See* U.C.C.J.E.A., Table of Jurisdictions Wherein Act Has Been Adopted, 9 (pt. IA) U.L.A. 23 (Supp. 2000).

169. 28 U.S.C. § 1738A (1994).

170. Under the PKPA, the UCCJEA, and, to a lesser extent, the UCCJA, the child's home state is favored for jurisdiction over custody issues. *See id.* § 1738A(c)(2)(A) (PKPA); U.C.C.J.E.A. § 201(a)(1), 9 (pt. IA) U.L.A. 671 (1999); U.C.C.J.A. § 3(a)(1), 9 (pt. IA) U.L.A. 307 (1999).

171. *See, e.g.*, Chaisson v. Ragsdale, 914 S.W.2d 739 (Ark. 1996) (holding UIFSA does not authorize jurisdiction over custody and setoff); Department of Human Servs. v. Pavlovich, 932 P.2d 1080 (Okla. 1996) (decided under URESA; forum state needs UCCJA jurisdiction); Texas *ex rel.* A.N.C. v. Grenley, 959 P.2d 1130 (Wash. Ct. App. 1998). *See also* U.I.F.S.A. § 314 cmt. ("A petition for affirmative relief under UIFSA limits the jurisdiction of the tribunal to the boundaries of the support proceeding"). *But see* Ostermiller v. Spurr, 968 P.2d 940 (Wyo. 1998) (holding that Wyoming court had jurisdiction to entertain father's counterclaim for visitation in response to mother's UIFSA petition for determination of paternity and child support).

172. U.I.F.S.A. § 305(d), 9 (pt. IB) U.L.A. 306 (1999). *See also id.* Prefatory Note, 9 (pt. IB) U.L.A. 241, Part II.B.2.b (1999) ("Visitation issues cannot be raised in child support proceedings."). *See, e.g.*, Office of Child Support Enforcement v. Clemmons, 984 S.W.2d 837 (Ark. Ct. App. 1999).

173. U.I.F.S.A. § 305 cmt., 9 (pt. IB) U.L.A. 306-07 (1999).

VI. INTERSTATE ENFORCEMENT OF AN EXISTING CHILD SUPPORT ORDER

A. Introduction

After an initial child support order has been established, the obligee may need to enforce that order across state lines. Interstate enforcement of a child support order is governed by UIFSA and FFCCSOA. Both statutes define "child support order" broadly.[174]

The general enforcement rule of both FFCCSOA and UIFSA is that a state must enforce another state's validly-issued child support order

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174. *See* 28 U.S.C. § 1738B(b) (1994).

> "[C]hild support order"
> (A) means a judgment, decree, or order of a court [separately defined] requiring the payment of child support [separately defined] in periodic amounts or in a lump sum; and
> (B) includes (i) a permanent or temporary order; and (ii) an initial order or a modification of an order.

Id. "'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, . . . which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief." U.I.F.S.A. § 101(21), 9 (pt. IB) U.L.A. 258 (1999). *See, e.g.*, Day v. Montana Dep't of Soc. & Rehabilitation Servs., 900 P.2d 296, 301 (Mont. 1995) (order" includes an order of an Indian tribal court for past-due child support; Indian tribes are deemed "states" under FFCCSOA); Kilroy v. Superior Ct., 63 Cal. Rptr. 2d 390 (Ct. App. 1997) (a decree that incorporates the parties' written settlement agreement is a "child support order" under FFCCSOA). *But see* Cross v. Mastowski, 650 N.Y.S.2d 511 (Fam. Ct. 1996).

according to its terms.[175] In addition, UIFSA provides several alternative enforcement procedures.

As in the case of an establishment proceeding, the obligee may file a one-state enforcement proceeding in her own state if that state can exercise personal jurisdiction over the nonresident obligor pursuant to UIFSA section 201.[176] Again, in that case the obligee's state follows its own procedural and substantive law in the enforcement proceeding, except that it may use the special evidentiary and discovery rules of UIFSA sections 316 and 318.[177]

If the obligee's state cannot exercise personal jurisdiction over the nonresident obligor, or if for any other reason the obligee prefers not to initiate an enforcement proceeding in her state of residence, UIFSA makes available several options for interstate enforcement:

(1) following the two-state enforcement procedure;[178]
(2) filing a UIFSA enforcement action directly in the obligor's state;[179]

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175. *See* U.I.F.S.A. § 603(c), 9 (pt. IB) U.L.A. 356 (1999) ("Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction."). FFCCSOA's "[g]eneral rule" is that "[t]he appropriate authorities of each State . . . shall enforce according to its terms a child support order made consistently with this section by a court of another State." 28 U.S.C. § 1738B(a). A child support order "is made consistently with this section" if the issuing court, under its laws, has subject matter jurisdiction to hear the matter and personal jurisdiction over the contestants, and the contestants have been given reasonable notice and opportunity to be heard. 28 U.S.C. § 1738B(c). *See, e.g.*, V.G. v. Bates, No. C8-96-1654, 1997 WL 177705 (Minn. Ct. App. Apr. 15, 1997) (Texas order modifying earlier California order was consistent with FFCCSOA because Texas had subject matter jurisdiction and personal jurisdiction under its UIFSA to modify; all parties had left California, mother, petitioner in Texas, was resident of New York; and Texas had personal jurisdiction over all parties, father because he was a Texas resident and mother because she submitted herself to jurisdiction by filing motion).

176. *See* U.I.F.S.A. § 201, 9 (pt. IB) U.L.A. 275 (1999) (appling to "a proceeding to . . . enforce . . . a support order").

177. *See id.* § 202, 9 (pt. IB) U.L.A. 281 (1999); *id.* § 316, 9 (pt. IB) U.L.A. 327-28 (1999); *id.* § 318, 9 (pt. IB) U.L.A. 331 (1999). *See supra* Part V.B.2.

178. *See* U.I.F.S.A. § 301(b)(3), (c), 9 (pt. IB) U.L.A. 300 (1999); *id.* § 304(a), 9 (pt. IB) U.L.A. 303-04 (1999); *id.* § 305(a)-(b), 9 (pt. IB) U.L.A. 305-06 (1999); *id.* § 601, 9 (pt. IB) U.L.A. 352 (1999); *id.* § 602, 9 (pt. IB) U.L.A. 353 (1999). *See infra* Part VI.B.

179. *See* U.I.F.S.A. § 301(b)(3), (c), 9 (pt. IB) U.L.A. 300 (1999); *id.* § 305(a)-(b), 9 (pt. IB) U.L.A. 305-06 (1999); *id.* § 601, 9 (pt. IB) U.L.A. 352 (1999); *id.* § 602, 9 (pt. IB) U.L.A. 353 (1999). *See infra* Part VI.C.

(3) sending an income-withholding order directly to the obligor's employer across state lines;[180] or
(4) requesting administrative enforcement of the order by the obligor's state's child support enforcement agency.[181]

The first two options likely involve registering the child support order in another state.[182] Once a valid child support order is registered in another state, that state's tribunals are required to recognize and enforce it according to its terms.[183] If the registered order is then "confirmed" pursuant to UIFSA's procedures,[184] no further contest of the order is permitted with respect to any matter that could have been asserted at the time of registration.[185]

B. Two-State Proceeding

1. Registration of Child Support Order of Another State

The obligee initiates a two-state registration and enforcement proceeding in the same manner as described above for initiating a proceeding to establish a child support order.[186] The primary difference is in the required documentation, which includes a certified copy of the child support order when the obligee seeks enforcement.[187]

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180. *See* U.I.F.S.A. § 501, 9 (pt. IB) U.L.A. 336 (1999). *See infra* Part VI.E.

181. *See* U.I.F.S.A. § 507, 9 (pt. IB) U.L.A. 349 (1999). *See infra* Part VI.F.

182. *See* U.I.F.S.A. §§ 601-603, 9 (pt. IB) U.L.A. 352-57 (1999). *See infra* Part VI.B. If the obligee is the party who has moved out of the issuing state while the obligor remains in the issuing state, the order would not need to be registered in the issuing state in an enforcement proceeding initiated by the out-of-state obligee. The obligee would simply send the federal form entitled "Child Support Enforcement Transmittal #1—Initial Request" from her state to the issuing state, which would be the same as the responding state. *See infra* Appendix A, UIFSA Forms Matrix.

183. *See* 28 U.S.C. § 1738B(a)(1) (1994); U.I.F.S.A. § 603(c), 9 (pt. IB) U.L.A. 356 (1999).

184. *See* U.I.F.S.A. § 606(b), 9 (pt. IB) U.L.A. 362 (1999). *See id.* §§ 605-608, 9 (pt. IB) U.L.A. 359-67 (1999). *See infra* Part VI.B.7.

185. *See* U.I.F.S.A. § 608, 9 (pt. IB) U.L.A. 367 (1999).

186. *See supra* Part V.C. Again, the child support enforcement agency in the obligee's state may initiate the interstate enforcement proceeding. *See, e.g.*, California v. West, 964 S.W.2d 221 (Ark. Ct. App. 1998).

187. *See infra* Part VI.B.2.

The issuing state's[188] child support order is "registered"[189] upon filing in the "registering tribunal"[190] in the responding state.[191] The registering tribunal must cause the order to be filed as a foreign judgment.[192] The responding state's child support enforcement agency will provide services on the obligee's behalf if requested.[193]

The nonregistering party has no defense to the registration *per se* of the out-of-state child support order.[194] The registered order is now "enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of" the responding state.[195] The responding state must enforce the registered order (unless the obligor prevails on a permitted defense, as

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188. *See* U.I.F.S.A. § 101(9), 9 (pt. IB) U.L.A. 257 (1999). "'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage." *Id.*

189. *See id.* § 101(14).

190. *See id.* § 101(15).

191. *See id.* § 603(a), 9 (pt. IB) U.L.A. 356 (1999).

192. *See id.* § 602(b), 9 (pt. IB) U.L.A. 353 (1999). *See, e.g.*, Mannor v. Mannor, 703 N.E.2d 716, 720 (Mass. App. Ct. 1998).

193. *See* U.I.F.S.A. § 307(a), 9 (pt. IB) U.L.A. 312 (1999). However, UIFSA leaves open the question whether a government attorney represents the obligee in an attorney-client relationship. *See id.* § 307(c). "This [Act] does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency." *Id.* (brackets in original) Other state law may answer that question. *See, e.g.*, Office of Child Support Enforcement v. Terry, 985 S.W.2d 711 (Ark. 1999) (under Arkansas statute, attorneys for the Arkansas Office of Child Support Enforcement do not represent, as an individual client, the assignee of child-support rights); Vanzant v. Purvis, 927 S.W.2d 339, 342 (Ark. Ct. App. 1996) (same; therefore, service on attorney for the Arkansas Child Support Enforcement Unit was not valid service on the obligee). *See generally* Paula Roberts, *Attorney-Client Relationship and the IV-D System: Protection Against Inadvertent Disclosure of Damaging Information*, 19 CLEARINGHOUSE REV. 158 (1985).

Again, the obligee may also hire a private attorney. *See* U.I.F.S.A. § 309, 9 (pt. IB) U.L.A. 316 (1999).

194. *See* U.I.F.S.A. § 606 cmt., 9 (pt. IB) U.L.A. 363 (1999); Cowan v. Moreno, 903 S.W.2d 119, 123 (Tex. App. 1995) (dismissing the case for want of jurisdiction because trial court order was not a final judgment). However, the nonregistering party may contest the validity or enforcement of the registered order. *See infra* Parts VI.B.4-5.

Further, in the uncommon situation in which the obligee seeks to register the order in a state that cannot exercise personal jurisdiction over the obligor, it appears that registration itself does not require personal jurisdiction over the obligor. *See* Compton v. Compton, No. 99-CA-17, 1999 WL 375578 (Ohio Ct. App. June 11, 1999).

195. U.I.F.S.A. § 603(b), 9 (pt. IB) U.L.A. 356 (1999).

outlined below).[196] Unlike the result under URESA, where the registered order of the issuing state became an order of the responding state,[197] under UIFSA the issuing state's order remains an order of the issuing state, enforced by the responding state.[198]

2. Documentation Required for Registration

If, as was assumed in the foregoing discussion, the obligee must register for enforcement of a child support order in a state other than the issuing state, UIFSA section 602(a) lists the documents that must be sent to the appropriate tribunal in the responding state.[199] The petitioner should strictly comply with these requirements or risk reversal of the

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196. *See id.* § 603(c). *See, e.g., Mannor*, 703 N.E.2d at 720. *See* Child Support Enforcement Div. of Alaska v. Brenckle, 675 N.E.2d 390, 394 (Mass. 1997) (holding that the responding state is not required to make an independent finding that noncustodial parent owed a duty of support to his child).

197. *See* R.U.R.E.S.A. § 40(a), 9B U.L.A. 546 (1987) "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 . . . as a support order of this State . . . ." *Id.*

198. *See* U.I.F.S.A. § 603 cmt., 9 (pt. IB) U.L.A. 356-57 (1999).

199. *See* U.I.F.S.A. § 602(a), 9 (pt. IB) U.L.A. 353 (1999). Section 602(a) requires:

> (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 oligor's employer and any other source of income of the obligor; and
> (iii) a description and the location of property of the obligor in [the responding 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.

Id.

registration.[200] The federally-promulgated forms[201] to use to satisfy these requirements are:

(1) Child Support Enforcement Transmittal #1—Initial Request; and
(2) Registration Statement.

3. Notice to Nonregistering Party of Registration

After registration of an out-of-state child support order, the registering tribunal must notify the "nonregistering party," which in the case of an enforcement proceeding will usually be the obligor.[202] The notice must also include a copy of the registered order and accompanying documents.[203] The notice must include several important items of information, including the effect of registration,[204] the procedure for contesting (and the result of not contesting) the registered order's validity or enforcement,[205] and the amount of any alleged arrearages.[206]

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200. *See, e.g.*, Allen v. Allen, No. A-95-1047, 1996 WL 547919 (Neb. Ct. App. Sept. 17, 1996) (reversing order confirming registration of another state's child support order due to petitioner's failure to provide "a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage," which UIFSA section 602(a)(3) required); *In re* Chapman, 973 S.W.2d 346 (Tex. App. 1998). *See also* Cook v. Kentucky, No. 1998-CA-002347-MR, 2000 WL 191792 (Ky. Ct. App. Feb. 18, 2000). *But see* Twaddell v. Anderson, 523 S.E.2d 710 (N.C. Ct. App. 1999) ("substantial compliance with the requirements of [UIFSA section 602(a)] will suffice to accomplish registration of the foreign order").

201. *See supra* Part V.C.3; *infra* Appendix A.

202. *See* U.I.F.S.A. § 605(a), 9 (pt. IB) U.L.A. 359 (1999).

203. *See id. See, e.g.*, Washington v. Thompson, 6 S.W.3d 82, 84-85 (Ark. 1999).

204. *See* U.I.F.S.A. § 605(b)(1), 9 (pt. IB) U.L.A. 359 (1999). "The notice must inform the nonregistering party: (1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of [the registering state]." *Id.*

205. The notice must state that the nonregistering party must request, within twenty days of notice, a hearing to contest the registered order's validity or enforcement, and that failure to make such a timely contest "will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted." *Id.* § 605(b)(3), 9 (pt. IB) U.L.A. 359 (1999). *See id.* § 605(b)(2).

206. *See id.* § 605(b)(4).

4. Procedure to Contest Validity or Enforcement of Registered Order

If the nonregistering party seeks to contest the validity or enforcement of a child support order registered in another state,[207] he or she must request a hearing within twenty days after notice of the registration.[208] This procedure has been upheld against a procedural due process challenge.[209]

After such a request is made, the registering tribunal must schedule a hearing and give notice to the parties of the hearing's date, time, and place.[210] The registering party (in this example, the obligee) need not appear personally at the hearing in the registering state to testify in support of any of the requested relief.[211]

5. Permitted Defenses

At the hearing, the nonregistering party has the burden of proving one or more of these statutorily-enumerated defenses:

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207. The nonregistering party may seek to:

- "vacate the registration" (based on, for example, a constitutional attack on the order such as lack of personal jurisdiction);
- "assert any defense" (such as "payment" or "the obligation has terminated") to an allegation of noncompliance with the registered order;
- "contest the remedies" being sought; or
- contest the "amount of any alleged arrearages."

U.I.F.S.A. § 606(a) & cmt., 9 (pt. IB) U.L.A. 362 (1999) Note that "[a] contest of the fundamental provisions of the registered order is not permitted in the responding state." *Id.* § 606 cmt., 9 (pt. IB) U.L.A. 363 (1999). Such a contest must be made, if at all, in the issuing state. *See id.* The defenses allowable in this contest are set forth in UIFSA section 607(a), 9 (pt. IB) U.L.A. 365 (1999). *See infra* Part VI.B.5.

208. *See* U.I.F.S.A. § 606(a), 9 (pt. IB) U.L.A. 362 (1999). *But see* Washington v. Thompson, 6 S.W.3d 82 (Ark. 1999) (holding that a nonregistering party was entitled to a hearing even though he did not request the hearing within twenty days, because he was served with several documents bearing conflicting information, including: the notice of registration, stating that a hearing must be requested; a summons, stating that a responsive pleading must be filed; and notice of motion for contempt, stating that a hearing had already been requested).

209. *See Thompson*, 6 S.W.3d at 88.

210. *See* U.I.F.S.A. § 606(c), 9 (pt. IB) U.L.A. 362 (1999).

211. *See id.* § 316(a), 9 (pt. IB) U.L.A. 327 (1999). The tribunal may use the special evidence and discovery provisions for out-of-state participants. *See supra* Part V.B.2.

(1) "the issuing tribunal lacked personal jurisdiction over the contesting party";[212]
(2) "the order was obtained by fraud";[213]
(3) "the order has been vacated, suspended, or modified by a later order";[214]
(4) "the issuing tribunal has stayed the order pending appeal";[215]
(5) "there is a defense under the law of [the registering state] to the remedy sought";[216]

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212. U.I.F.S.A. § 607(a)(1), 9 (pt. IB) U.L.A. 365 (1999). *See, e.g.*, South Carolina Dep't of Soc. Servs. v. Bess, 489 S.E.2d 671 (S.C. Ct. App. 1997) (holding that where Florida judgment was registered in South Carolina, South Carolina had jurisdiction to hear noncustodial parent's defense that Florida order was invalid for lack of personal jurisdiction).

However, if the nonregistering party has already raised lack of personal jurisdiction in the issuing court and lost on that issue, he will be precluded from raising the same issue again in another state's court. *See, e.g.*, Wall v. Stinson, 983 P.2d 736 (Alaska 1999); Peterson v. Israel, No. FA 97 0716665, 1998 WL 457919, at *4 (Conn. Super. Ct. July 22, 1998) (holding that a defendant may not collaterally attack a judgment on the ground that the rendering court lacked personal jurisdiction when "the jurisdictional issue was fully litigated before the rendering court"). *See* Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522 (1931). This is also true if the obligor had the opportunity to raise the personal jurisdiction defense in the original court, but did not. *See* Cairns v. Cairns, 741 A.2d 800 (Pa. Super. Ct. 1999) (citing Sherrer v. Sherrer, 334 U.S. 343 (1948)).

213. U.I.F.S.A. § 607(a)(2), 9 (pt. IB) U.L.A. 365 (1999). *See, e.g.*, State v. McDuffy, 742 So. 2d 87 (La. Ct. App. 1999) (rejecting nonregistering party's fraud defense where he presented no evidence). *Cf.* Department of Human Resources v. Fenner, 510 S.E.2d 534, 536 (Ga. Ct. App. 1998) (holding that the Full Faith and Credit for Child Support Orders Act did not preclude obligor from raising a fraud defense in a registration proceeding, if otherwise allowed by Georgia law; but holding that fraud defense was "unavailing" under Georgia law requiring the fraud to be "unmixed with the negligence or fault of the movant," where the obligor claimed that the child support order was obtained by fraud because he was not the children's biological father, but he had been on notice of this possibility for at least four years after the entry of the order and had not conducted paternity tests).

214. U.I.F.S.A. § 607(a)(3), 9 (pt. IB) U.L.A. 365 (1999). *See, e.g.*, Henderson v. Henderson, 598 N.W.2d 490 (N.D. 1999). However, an agreement between parents that is not court-approved does not qualify as a "later order" under this defense. *See id.*; State *ex rel.* Wyoming v. Stout, 969 P.2d 819 (Colo. Ct. App. 1998).

215. U.I.F.S.A. § 607(a)(4), 9 (pt. IB) U.L.A. 365 (1999).

216. *Id.* § 607(a)(5). *See* State *ex rel.* George v. Bray, 503 S.E.2d 686, 690-91 (N.C. Ct. App. 1998) (holding that the language "defense . . . to the remedy sought" in UIFSA section 607(a)(5) refers only to "the procedural means of enforcing support orders," not "the enforcement itself"). *But see* State *ex rel.* Wyoming v. Stout, 969 P.2d 819 (Colo. Ct. App.

(6) "full or partial payment has been made";[217] or
(7) "the statute of limitation under Section 604 (Choice of Law) precludes enforcement of some or all of the arrearages."[218]

The allowable defenses are similar to the standard defenses to a judgment[219] and are "narrowly defined,"[220] giving the impression that section 607 is an exclusive list.[221] However, it appears that a court may consider certain defenses even if they do not appear in section 607. First, FFCCSOA suggests other defenses the nonregistering party might make to the registered order based on a denial of procedural due process: lack of subject matter jurisdiction of the issuing tribunal,[222] or failure to receive notice and an opportunity to be heard[223] before the entry of the order in question.[224] Second, by negative implication, UIFSA section 315 suggests

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1998) (suggesting in *dictum* that estoppel defense should be considered under UIFSA section 607(a)(5)).

217. U.I.F.S.A. § 607(a)(6), 9 (pt. IB) U.L.A. 365 (1999). *See, e.g.*, Henderson v. Henderson, 598 N.W.2d 490 (N.D. 1999). This defense authorizes the responding court to consider payments that have been made *after*, not *before*, the entry of the out-of-state order sought to be enforced. *See* Linn v. Delaware Child Support Enforcement, 736 A.2d 954, 969-70 (Del. 1999).

218. U.I.F.S.A. § 607(a)(7), 9 (pt. IB) U.L.A. 365 (1999). For choice of law on statute of limitations defense, see *infra* Part VI.D.

219. *See, e.g.*, RESTATEMENT (SECOND) OF JUDGMENTS §§ 1, 68, 70-73, 81-82 (1982) (lack of subject matter jurisdiction, lack of personal jurisdiction, lack of notice, fraud, mistake, duress, and incapacity). These are similar to the defenses available under the Uniform Enforcement of Foreign Judgments Act (1964), 13 U.L.A. 149 (1986). *See* Thoma v. Thoma, 934 P.2d 1066, 1068 (N.M. Ct. App. 1997) ("Potential defenses [under UEFJA] are lack of personal or subject matter jurisdiction, fraud in procuring the judgment, lack of due process, or other grounds making the judgment invalid or unenforceable.").

220. U.I.F.S.A. § 607 cmt., 9 (pt. IB) U.L.A. 365-66 (1999).

221. *See State* ex rel. *George*, 503 S.E.2d at 686 (list of defenses in UIFSA section 607 is exclusive).

222. *See* Hawley v. Murphy, 736 A.2d 268 (Me. 1999); Wall v. Stinson, 983 P.2d 736, 741-42 (Alaska 1999).

223. *See* Jennings v. Debussy, No. CK93-4153, 1998 WL 420749 (Del. Fam. Ct. Feb. 25, 1998).

224. FFCCSOA requires a state to "enforce according to its terms," 28 U.S.C. § 1738B(a)(1), another state's child support order unless the issuing state court lacked subject matter jurisdiction or personal jurisdiction over the parties, or the parties did not receive notice or an opportunity to be heard. *See* 28 U.S.C. § 1738B(c) (1994 & Supp. 1998). Because FFCCSOA, a federal statute, preempts contrary state law, it may appear at

that the nonregistering party could plead nonparentage as a defense if his parentage had *not* "been previously determined by or pursuant to law."[225] Third, some courts have considered, although ultimately rejected, defenses not listed in section 607,[226] even though section 607's limitations may suggest that these courts should not have even considered other defenses on the merits. However, at least one court has held that a responding court may not consider forum state equitable defenses, which are not listed in UIFSA section 607, to registration of another state's child support order.[227]

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first glance that FFCCSOA's reference to only three defenses preempts UIFSA's longer list of defenses in section 607. However, FFCCSOA provides that "[i]n a proceeding to . . . enforce a child support order, the forum State's law shall apply . . . ." *Id.* § 1738B(h)(1). The "forum State's law" includes UIFSA, and therefore the defenses available under UIFSA section 607 or other applicable law might still be asserted consistently with FFCCSOA. *Id.* *See* Department of Human Resources v. Fenner, 510 S.E.2d 534, 536 (Ga. Ct. App. 1998) (section 1738B(h)(1) of the Full Faith and Credit for Child Support Orders Act did not preclude obligor from raising a fraud defense in a registration proceeding, if otherwise allowed by Georgia law). *Cf.* Comer v. Comer, 927 P.2d 265, 279 (Cal. 1996) (not reaching the issue, but considering the obligor's argument that FFCCSOA requires the application of the law of California, the forum state, which allegedly provided a defense to arrearages based on the obligee's concealment of herself and the children).

225. U.I.F.S.A. § 315, 9 (pt. IB) U.L.A. 326 (1999) (prohibiting the nonregistering party from pleading nonparentage as a defense if his parentage "has been previously determined by or pursuant to law"). *See, e.g.*, State v. Hanson, 725 So. 2d 514, 515 (La. Ct. App. 1998) (putative father could not raise defense of nonparentage in enforcement proceeding in Louisiana where parentage had been determined in Iowa); Reid v. Dixon, 524 S.E.2d 576 (N.C. Ct. App. 2000); Beyer v. Metze, 482 S.E.2d 789 (S.C. Ct. App. 1997) (holding that where Ohio divorce decree stated that three children were born during marriage, coupled with provisions allowing father visitation and ordering father to pay child support, Ohio court had "previously determined" father's parentage under UIFSA section 315, such that father could not raise nonparentage as a defense to an enforcement action in South Carolina). *See* Georgia Dep't of Human Resources v. Pinter, 525 S.E.2d 715 (Ga. Ct. App. 1999) (FFCCSOA). Of course, the obligee should not be able to establish a child support order without a finding of the nonregistering party's parentage.

226. *See, e.g.*, Child Support Enforcement Div. of Alaska v. Brenckle, 675 N.E.2d 390, 396-97 (Mass. 1997) (rejecting noncustodial parent's defense of laches in an enforcement action brought after custodial parent had not sought to enforce the child support order for thirteen years); Mathis v. Texas, 930 S.W.2d 203 (Tex. App. 1996) (allowing an obligor to challenge the registration and enforcement of a New Jersey judgment on the ground that two slightly different copies of the judgment had been filed, although the Texas courts ultimately rejected this defense).

227. *See* Alaska Dep't of Revenue *ex rel.* Wallace v. Delaney, 962 P.2d 187 (Alaska 1998).

6. Procedure if Defense Established

If the nonregistering party establishes a valid full or partial defense, the responding tribunal "may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders."[228]

In one case, the registration of the out-of-state order was vacated when the state's child support enforcement agency, intending to enforce the order administratively, did not oppose the noncustodial parent's motion to vacate.[229] The vacation of registration was later held not to constitute collateral estoppel on the issue of the validity of the out-of-state order.[230]

7. Confirmation of Child Support Order

If the nonregistering party does not request a hearing within twenty days of notice of registration of a child support order, the order is "confirmed" by operation of law.[231] If the nonregistering party did timely request a hearing but fails to establish a valid defense, the registering tribunal must enter an order "confirming" the registered order.[232] The tribunal must determine the amount of any arrearage at the time of confirmation.[233] The tribunal "shall" order the nonregistering party to pay

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228. U.I.F.S.A. § 607(b), 9 (pt. IB) U.L.A. 365 (1999). *E.g.*, Henderson v. Henderson, 598 N.W.2d 490 (N.D. 1999) (affirming dismissal of request for registration).

229. *See* Wall v. Stinson, 983 P.2d 736 (Alaska 1999).

230. *See id.*

231. *See* U.I.F.S.A. § 606(b), 9 (pt. IB) U.L.A. 362 (1999). *E.g.*, Louisiana v. Batiste, 669 So. 2d 553 (La. Ct. App. 1997) (decided under URESA). *But see* South Carolina Dep't of Soc. Servs. v. Bess, 489 S.E.2d 671 (S.C. Ct. App. 1997) (although obligor did not request a hearing in the twenty-day period, appellate court held state's failure to appeal from trial court order allowing obligor an opportunity to be heard on his objections to registration was law of the case; court did not consider obligor's argument that Rule 60(b), regarding relief from judgments, could be used for "excusable neglect" in not objecting to registration within twenty days).

232. *See* U.I.F.S.A. § 607(c), 9 (pt. IB) U.L.A. 365 (1999). In addition, any "uncontested portion of the registered order may be enforced by all remedies available under the law of [the responding state]." *Id.* § 607(b).

233. *See* Slawski v. Virginia Dep't of Soc. Servs., 514 S.E.2d 773, 774 (Va. Ct. App. 1999).

costs and reasonable attorneys' fees if it determines that he or she requested a hearing "primarily for delay."[234]

Confirmation of a registered order "precludes further contest of the order with respect to any matter that could have been asserted at the time of registration."[235]

8. Enforcement Mechanisms

Along with confirmation of the registered support order, the responding tribunal may employ one or more of several enforcement means specified in UIFSA,[236] as provided by other applicable law of the responding state.[237]

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234. U.I.F.S.A. § 313(c), 9 (pt. IB) U.L.A. 323 (1999). *See, e.g.*, Linn v. Delaware Child Support Enforcement, 736 A.2d 954, 970 (Del. 1999).

235. U.I.F.S.A. § 608, 9 (pt. IB) U.L.A. 367 (1999). *See id.* § 605 cmt., 9 (pt. IB) U.L.A. 359 (1999) (absent a successful contest by the nonregistering party, the order will be confirmed and future contest will be precluded"). *But see* Kelly v. Otte, 474 S.E.2d 131, 136-37 (N.C. Ct. App. 1996) (allowing obligor to present statute-of-limitations defense after confirmation of registration of foreign order). *Kelly*, which applied URESA, now superseded in North Carolina by UIFSA, would probably come out the other way today. The obligor's failure to interpose the statute of limitations as a defense under UIFSA section 607(a)(7) prior to confirmation of the registered order would now result in a preclusion of that defense. *See* U.I.F.S.A. § 608, 9 (pt. IB) U.L.A. 367 (1999).

236. UIFSA section 305(b) authorizes the responding tribunal, "to the extent otherwise authorized by law," to:

> (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;
> . . .
> (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.

U.I.F.S.A. § 305(b), 9 (pt. IB) U.L.A. 306 (1999). *See, e.g.*, Hawley v. Murphy, 736 A.2d 268 (Me. 1999) (responding state may place lien on obligor's property located in state); State *ex rel.* Freeman v. Sadlier, 586 N.W.2d 171 (S.D. 1998) (responding state enforcing order by contempt). *Cf.* Stagg v. Stagg, 721 So. 2d 1097 (La. Ct. App. 1998) (because UIFSA would authorize the trial court to order the obligor to execute an assignment of his interest in a succession in an interstate case, this remedy must also be available in an intrastate case); Virginia Dep't of Social Servs. *ex rel.* Gagne v. Chamberlain, 525 S.E.2d

C. Direct Enforcement Action in Obligor's State of Residence

An individual obligee or child support enforcement agency[238] may also file a UIFSA enforcement proceeding "directly in a tribunal of another state which has or can obtain personal jurisdiction over the . . . respondent . . . [obligor]."[239] An individual may request[240] the help of that state's child support enforcement agency.[241] The direct-filing option is new to UIFSA; it did not exist under URESA.[242]

An out-of-state order must be registered in the enforcement state.[243] The same procedures for registering, contesting, confirming, and enforcing a registered order described above for the "two-state" proceeding[244] also apply in a "direct filing."[245]

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19 (Va. Ct. App. 2000) (UIFSA permits one state to determine the existence of a public assistance debt owed to another state). *But see* Child Support Enforcement Unit *ex rel.* Judith S. v. John M., 701 N.Y.S.2d 880 (Fam Ct. 1999) (neither civil nor criminal contempt available as enforcement tool).

If the petitioner intends to seek interest on arrearages, this should be done before, not after, the responding state enters a judgment for the amount of the arrearages. *See* California v. West, 964 S.W.2d 221 (Ark. Ct. App. 1998).

237. *See* U.I.F.S.A. §§ 305(b)(12), 9 (pt. IB) U.L.A. 306 (1999); *id.* § 603(b), 9 (pt. IB) U.L.A. 356 (1999). "A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of [the responding state]." *Id.* § 603(b); *see id.* § 305(b)(12), 9 (pt. IB) U.L.A. 306 (1999). For a description of common enforcement remedies, see, for example, NANCY S. ERICKSON, CHILD SUPPORT MANUAL FOR ATTORNEYS AND ADVOCATES 334-44 (1992).

238. *See Child Support Enforcement Unit* ex rel. *Judith S.*, 701 N.Y.S.2d at 880.

239. U.I.F.S.A. § 301(c), 9 (pt. IB) U.L.A. 300 (1999); *see id.* § 301(b)(3); *id.* § 305(a)-(b), 9 (pt. IB) U.L.A. 305-06 (1999); *id.* § 601, 9 (pt. IB) U.L.A. 352 (1999); *id.* § 602, 9 (pt. IB) U.L.A. 353 (1999).

240. *See* U.I.F.S.A. § 307(a), 9 (pt. IB) U.L.A. 312 (1999); *id.* § 101 cmt., 9 (pt. IB) U.L.A. 258-60 (1999).

241. *See supra* note 16.

242. *See* U.I.F.S.A. § 301 cmt., 9 (pt. IB) U.L.A. 301 (1999).

243. *See id.* § 601, 9 (pt. IB) U.L.A. 352 (1999); *id.* § 602(a), 9 (pt. IB) U.L.A. 353 (1999).

244. *See id.* § 201 cmt., 9 (pt. IB) U.L.A. 275 (1999). *See supra* Part VI.B.

245. *See* U.I.F.S.A. § 301 cmt., 9 (pt. IB) U.L.A. 301 (1999); *id.* § 301(c), 9 (pt. IB) U.L.A. 300 (1999); *id.* § 602, 9 (pt. IB) U.L.A. 353 (1999).

D. Choice of Law in Enforcement Actions

As noted above,[246] the general choice-of-law rule of UIFSA and FFCCSOA is that the forum state's law applies.[247] In an enforcement action, this general rule is subject to two exceptions.

First, "[t]he law of the issuing state [not the forum state] governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order."[248] For example, in an enforcement proceeding, the forum state must apply the issuing state's age of majority (and consequent termination of a child support obligation), even if it is higher than the age of majority in the forum state[249] or the age of majority in the child's state.[250] As another example, "the law of the issuing state governs whether a payment made for the

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246. *See supra* Part V.D.

247. *See* U.I.F.S.A. § 303, 9 (pt. IB) U.L.A. 303 (1999); 28 U.S.C. § 1738B(h)(1) (Supp. 1998). This includes the forum state's choice-of-law rules, so that if those rules respect the parties' agreement that another state's law will govern, the forum state must apply the other state's law. *See* Whitfield v. Whitfield, 716 A.2d 533, 541 (N.J. Super. Ct. App. Div. 1998) (New Jersey must apply Virginia child support guidelines where parties' divorce agreement had so provided).

248. U.I.F.S.A. § 604(a), 9 (pt. IB) U.L.A. 357 (1999). Similarly, FFCCSOA provides, "[i]n interpreting a child support order, including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order." 28 U.S.C. § 1738B(h)(2) (Supp. 1998). *See, e.g.*, Kelly v. Otte, 474 S.E.2d 131, 134-36 (N.C. Ct. App. 1996) (decided under FFCCSOA; where New Jersey would enforce an automatic escalation clause in its divorce decree, but such clauses were void in North Carolina, the North Carolina court must apply New Jersey law until order is modified in North Carolina). For a questioning of some other aspects of *Kelly*, see Hatamyar, *supra* note *, at 36 n.157.

249. *See* U.I.F.S.A. § 604 cmt., 9 (pt. IB) U.L.A. 357-58 (1999). *See, e.g.*, Welsher v. Rager, 491 S.E.2d 661 (N.C. Ct. App. 1997) (both UIFSA and FFCCSOA require North Carolina court, where enforcement of New York-issued child support order was sought, to apply New York law to determine age of emancipation for purposes of a child support obligation); Gibson v. Baxter, 434 N.W.2d 486 (Minn. Ct. App. 1989) (same result reached under RURESA). *But see* Marino v. Lurie, 39 Cal. Rptr. 2d 835 (Ct. App. 1995) (decided under FFCCSOA former section (g)(2), which provided, "[i]n interpreting a child support order, a court shall apply the law of the State of the court that issued the order."). *See* Margaret Campbell Haynes, *Federal Full Faith and Credit For Child Support Orders Act*, 14 DEL. L. 26, 28 & n. 14 (1996) (suggesting *Lurie* was wrongly decided).

250. *See* Brickner v. Brickner, 723 N.E.2d 468 (Ind. Ct. App. 2000).

benefit of a child, such as a Social Security benefit for a child of a disabled obligor, should be credited against the obligor's child support obligation."[251]

Second, both UIFSA and FFCCSOA provide that in an action to enforce arrearages, the statute of limitations of the issuing state or the forum state applies, whichever is longer.[252] In this context, it has been held that even if a state other than the original issuing state has modified the original order, the original state remains the "issuing state."[253]

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251. U.I.F.S.A. § 604 cmt., 9 (pt. IB) U.L.A. 357-58 (1999).

252. *See id.* § 604(b), 9 (pt. IB) U.L.A. 357 (1999); 28 U.S.C. § 1738(h)(3). *See, e.g.*, King v. Office of Child Support Enforcement, 952 S.W.2d 180 (Ark. Ct. App. 1997) (statute of limitations of Arkansas, the forum state, should be applied because it was longer than the statute of limitations of New York, the issuing state); Trend v. Bell, 68 Cal. Rptr. 2d 54 (Ct. App. 1997) (affirming trial court's application of California statute of limitations on arrearages, which had no time limit, where the statute of limitations of the issuing state, Montana, was ten years); Day v. Montana Dep't of Soc. & Rehabilitation Servs., 900 P.2d 296, 300 (Mont. 1995) (FFCCSOA required application of Montana's ten-year statute of limitations on enforcement of judgment for past-due child support rather than Tribal Code's five-year statute of limitations); State *ex rel.* George v. Bray, 503 S.E.2d 686 (N.C. Ct. App. 1998) (holding that both UIFSA and FFCCSOA required application of Indiana's statute of limitations, as it was longer than North Carolina's); Attorney Gen. of Texas v. Litten, 999 S.W.2d 74 (Tex. App. 1999); Utah Dep't of Human Servs. v. Jacoby, 975 P.2d 939, 944-45 (Utah Ct. App. 1999) (applying Pennsylvania statute of limitations under UIFSA section 604, because although the Pennsylvania and Utah statutes of limitations required a child support arrearage action to be commenced within six and eight years, respectively, from the date the last child support payment was due, the Pennsylvania statute of limitations allowed the party seeking arrearages to collect all past due amounts, while the Utah statute of limitations only allowed collection of past due amounts going back eight years).

253. *See* U.I.F.S.A. § 604(b), 9 (pt. IB) U.L.A. 357 (1999). *See* Fitzhugh v. Dupree, No. 1388-97-1, 1997 WL 695592 (Va. Ct. App. Nov. 10, 1997) (not for publication) (where California issued original child support order, New York, where father resided, modified the order nine years later, and mother filed enforcement action in Virginia over twenty years later, court held that California remained the "issuing state" under UIFSA section 604(b), and thus California's law, which imposed no time limit on arrearages, should be applied).

E. Income-Withholding Orders

1. Procedure in General

Without filing a UIFSA proceeding at all, the obligee[254] may simply send[255] an income-withholding order[256] to the obligor's out-of-state employer.[257] The employer must "immediately provide a copy of the order to the obligor."[258]

The employer must treat the order, if it appears "regular on its face,"[259] just as though it had been issued by a tribunal located in the employer's state.[260] Accordingly, the employer must withhold and distribute the funds as the withholding order directs,[261] including:

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254. UIFSA does not restrict who may send the income-withholding order to the employer. It may be the obligee, his or her attorney, the child support enforcement agency, the obligor, or "any other person." U.I.F.S.A. § 501 cmt., 9 (pt. IB) U.L.A. 336 (1999); *see id.* § 502 cmt., 9 (pt. IB) U.L.A. 340-41 (1999).

255. The obligee may send a copy of the withholding order "by facsimile, regular first class mail, registered or certified mail, or [by providing] any other type of direct notice" to the employer. *Id.* § 501 cmt., 9 (pt. IB) U.L.A. 337 (1999).

256. "'Income-withholding order' means an order or other legal process directed to an obligor's employer [or other debtor], as defined by [the income-withholding law of this State], to withhold support from the income of the obligor." *Id.* § 101(6), 9 (pt. IB) U.L.A. 256 (1999).

257. *See id.* § 501, 9 (pt. IB) U.L.A. 336 (1999). "[T]he support order may be mailed directly to an obligor's employer in another state (section 501), which triggers wage withholding by that employer without the necessity of a hearing unless the employee objects." *Id.* Prefatory Note, 9 (pt. IB) U.L.A. 242 (1999).

258. *Id.* § 502(a), 9 (pt. IB) U.L.A. 339 (1999).

259. This term "should be liberally construed." U.I.F.S.A. § 502 cmt., 9 (pt. IB) U.L.A. 340 (1999). Now that there is a federally-mandated uniform income withholding form for use in interstate cases, *see infra* Part VI.E.5, it should be increasingly infrequent for an employer to have to judge whether the order is "regular on its face"; if it follows the form, it will comply. *Id.*

260. *See id.* § 502(b), 9 (pt. IB) U.L.A. 339 (1999). All states, as required by federal law, require procedures for direct income withholding and require employers to comply with such orders. *See* 42 U.S.C. § 666(b)(2) (Supp. 1998).

261. *See* U.I.F.S.A. § 502(c), 9 (pt. IB) U.L.A. 339 (1999). This general rule is subject to exceptions if the order conflicts in certain ways with the income-withholding law of the state of the obligor's principal place of employment. *See id.*; *id.* § 502(d), 9 (pt. IB) U.L.A. 340 (1999); *id.* § 503, 9 (pt. IB) U.L.A. 344 (1999). *See supra* Part VI.E.2.

> (1) "the duration and amount of periodic payments of current child-support, stated as a sum certain;"[262]
> (2) "the person or agency designated to receive payments and the address to which the payments are to be forwarded;"[263]
> (3) "medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;"[264]
> (4) "the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and"[265]
> (5) "the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain."[266]

The obligor may contest "the validity or enforcement" of the out-of-state income-withholding order.[267] The obligor must give notice of any contest to any assisting support enforcement agency, the employer, and the person or agency designated to receive payments (or, if no such person or agency is designated, to the obligee).[268] UIFSA contemplates that the employee, not the employer, will challenge the withholding order, and that

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262. U.I.F.S.A. § 502(c)(1), 9 (pt. IB) U.L.A. 339 (1999). Thus, "[a]n order for a 'percentage of the obligor's net income' . . . does not satisfy [the sum-certain] requirement," and "is not entitled to compliance." *Id.* § 502 cmt., 9 (pt. IB) U.L.A. 341 (1999). The order must state the duration of the support obligation "so that the employer is informed of the date on which the withholding is anticipated to terminate." *Id.*

263. *Id.* § 502(c)(2), 9 (pt. IB) U.L.A. 339 (1999). "[T]he destination of the payments must correspond to the destination originally designated or subsequently authorized by the issuing tribunal." *Id.* § 502 cmt., 9 (pt. IB) U.L.A. 341 (1999).

264. *Id.* § 502(c)(3), 9 (pt. IB) U.L.A. 339 (1999). If the order does not specify payment of a sum certain, "an order for medical support as child support requires the employer to enroll the obligor's child for coverage if medical insurance is available through the obligor's employment." *Id.* § 502 cmt., 9 (pt. IB) U.L.A. 341 (1999).

265. *Id.* § 502(c)(4), 9 (pt. IB) U.L.A. 339 (1999).

266. *Id.* § 502(c)(5), 9 (pt. IB) U.L.A. 340 (1999).

267. *Id.* § 506(a), 9 (pt. IB) U.L.A. 346 (1999).

268. *See id.* § 506(b).

in the absence of a contest that is timely under local law, the employer must begin income withholding.[269]

The UIFSA commentary[270] and federal law[271] limit the obligor's contest of a withholding order to "mistake[s] of fact," such as errors in the amount of current support, accrued arrearages, or the obligor's identity.[272] Other matters, such as the obligor's changed financial circumstances or troubles in obtaining visitation, are not properly raised in an income-withholding order contest, and "must be pursued in a separate legal action in the state having continuing, exclusive jurisdiction over the support order, not in a UIFSA proceeding."[273]

2. Choice of Law

In general, the employer must comply with the withholding order's specific terms, and thus, the law of the issuing state,[274] "but there are exceptions."[275] The income-withholding law of the state of the obligor's principal place of employment (rather than the issuing state) governs: "(1) the employer's fee for processing an income-withholding order; (2) the maximum amount permitted to be withheld from the obligor's income; and

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269. *See id.* § 506 cmt. *But see* Dotzler v. Coldwell Banker Island Realtors, 941 S.W.2d 315 (Tex. App. 1997) (even though neither obligor nor obligor's alleged employer had challenged a withholding order within twenty days of receipt, as required by Texas law, the court had jurisdiction to consider the employer's asserted defense that the obligor was an independent contractor rather than an employee, because obligee had raised the issue of whether the employer was obligor's "employer" by filing a motion to hold the employer liable for failure to withhold child support).

270. *See* U.I.F.S.A. § 506 cmt., 9 (pt. IB) U.L.A. 346 (1999).

271. *See* 42 U.S.C. § 666(b)(4)(A)(ii) (Supp. 1998).

272. U.I.F.S.A. § 506 cmt., 9 (pt. IB) U.L.A. 346 (1999) (quoting H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983)). The commentary suggests, as additional acceptable defenses in a contest to an income-withholding order, the occurrence of a contingency ending the support obligation, such as the child's death, or the superceding of the order. *See id.* § 506 cmt., 9 (pt. IB) U.L.A. 346-47 (1999). The obligor may also raise the issue that "the withholding order received by the employer is not based on the controlling child support order issued by the tribunal with continuing, exclusive jurisdiction." *Id.*, 9 (pt. IB) U.L.A. 347 (1999) (citing *id.* § 207, 9 (pt. IB) U.L.A. 291-92 (1999)).

273. *Id.* § 506 cmt., 9 (pt. IB) U.L.A. 346 (1999).

274. *See id.* § 502(c), 9 (pt. IB) U.L.A. 339-40 (1999); *id.* § 502 cmt., 9 (pt. IB) U.L.A. 340-41 (1999).

275. *Id.* § 502 cmt., 9 (pt. IB) U.L.A. 340 (1999).

(3) the times within which the employer must implement the withholding order and forward the child support payment."[276]

Further, the law of the state of the obligor's principal place of employment establishes priorities if the employer receives more than one income-withholding order with respect to the obligor's earnings.[277]

If the obligor contests the validity or enforcement of an out-of-state income-withholding order, local law applies to the manner of the contest,[278] but UIFSA section 604 otherwise applies.[279]

3. Employer's Immunity from Civil Liability

Both UIFSA[280] and federal law[281] grant the employer immunity from civil liability for complying with an income-withholding order that appears regular on its face.

4. Employer's Liability for Failure to Honor Income-Withholding Order

All states subject employers to penalties for failure to comply with in-state income-withholding orders.[282] The same penalties apply if the employer "willfully fails to comply" with an out-of-state income-withholding order.[283]

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276. *Id.* § 502(d).

277. *See id.* § 503, 9 (pt. IB) U.L.A. 344 (1999).

278. *See id.* § 506(a), 9 (pt. IB) U.L.A. 346 (1999).

279. *See supra* Part VI.D.

280. *See* U.I.F.S.A. § 504, 9 (pt. IB) U.L.A. 345 (1999).

281. *See* 42 U.S.C. § 666(b)(6)(A)(i) (Supp. 1998). "An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice." *Id.*

282. *See id.* § 666(b)(6)(C), (D)(ii).

283. U.I.F.S.A. § 505, 9 (pt. IB) U.L.A. 345 (1999). "The rules governing intrastate procedure and defenses for withholding orders will apply to interstate orders. Thus, . . . employers who refuse to recognize out of state withholding orders will be subjected to whatever remedies are otherwise available under state law." *Id.* § 502 cmt., 9 (pt. IB) U.L.A. 340 (1999).

Moreover, the employer's "[f]ailure to enroll the child [in medical insurance coverage specified in the order] should elicit, at the least, registration of the order for enforcement in the responding state, to be implemented by an order of a tribunal directing the employer to comply." *Id.*, 9 (pt. IB) U.L.A. 341 (1999).

5. Form to Use

The federally-mandated form entitled "Order/Notice To Withhold Income For Child Support,"[284] or its substantial equivalent,[285] should be sent to the obligor's employer.

F. Administrative Enforcement

1. Procedure in General

Again without registering an out-of-state support order or income-withholding order with a tribunal, the party seeking enforcement of such an order may request the child support enforcement agency in the obligor's state to attempt administrative enforcement methods. This is done by sending the documents required for registering the order to the agency, which must "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."[286] If the obligor contests the validity or administrative enforcement of the order, or if no administrative enforcement remedies are available, the agency must register the order with the appropriate tribunal for enforcement.[287]

2. Forms Available

Federal law requires states to authorize their child support enforcement agencies to issue subpoenas and to impose liens on the obligor's property administratively (without first obtaining a tribunal's order).[288] The

284. *See infra* Appendix A to this Article.

285. For example, the practitioner may wish to format the form on his or her own word processing system. So long as the form is formatted the same way, so that it is uniform, it will probably comply with the requirement that this form be used. *See* Remarks of Steve Cesar, *Child and Spousal Support Forms: What You Must Know To Comply With the Federally Mandated UIFSA Forms*, American Bar Association Section of Family Law Telephone Seminar, June 16, 1997 [hereinafter *Support Forms*].

286. U.I.F.S.A. § 507(b), 9 (pt. IB) U.L.A. 349 (1999). Thus, the agency "is authorized to apply its ordinary rules [such as exhaustion of administrative remedies] equally to both intrastate and interstate orders." *Id.* § 507 cmt.

287. *See id.* § 507(b); Remarks of Margaret Campbell Haynes, *Support Forms*, *supra* note 283.

288. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, §§ 325, 368.

federally-mandated forms[289] entitled "Administrative Subpoena" and "Notice of Lien" fulfill these purposes. The federal Office of Child Support Enforcement has determined that the subpoena should be used only to request documents, not to compel a witness' appearance.[290] While only a state child support enforcement agency may use the "Administrative Subpoena," either an agency or a private practitioner may use the "Notice of Lien," so long as the local lien filing procedures are followed.[291]

G. Enforcement When There Are Multiple Orders Regarding the Same Obligor and Child

There may be more than one coexisting support order for the same obligor and child.[292] If the obligee initiates a UIFSA proceeding to enforce one of those orders, she may request the court to determine which order is controlling.[293] The prioritization rules of UIFSA[294] and FFCCSOA[295] are discussed in a later subsection,[296] following a fuller introduction of the concept of continuing, exclusive jurisdiction.

H. Enforcement When There Are Multiple Orders Regarding the Same Obligor and Two or More Different Obligees

An obligor may have had more than one family, resulting in more than one child support order with different obligees. In a UIFSA proceeding seeking to enforce one of those orders, a tribunal "shall enforce those orders in the same manner as if the multiple orders had been issued" in the tribunal's own state.[297] In other words, the forum state's law "allocate[s] resources between competing families" by treating "every child support

289. *See infra* Appendix A.

290. *See* Remarks of Steve Cesar, *Support Forms*, *supra* note 283. The special rules of evidence provided by UIFSA § 316, 9 (pt. IB) U.L.A. 327-28 (1999), should be used if there is a need for interstate live testimony. *See id.*

291. *See id.*

292. *See supra* Part II.

293. *See* U.I.F.S.A. § 207(c), 9 (pt. IB) U.L.A. 292 (1999).

294. *See id.* § 207(a), (b).

295. *See* 28 U.S.C. § 1738B(f) (Supp. 1998).

296. *See infra* Part VII.F.

297. U.I.F.S.A. § 208 , 9 (pt. IB) U.L.A. 298 (1999)

order," both in-state and out-of-state, "as if it had been issued by a tribunal of the forum state."[298]

I. Child Custody and Visitation Issues

As noted above, a court's jurisdiction to hear an interstate child support enforcement proceeding does not confer jurisdiction to hear child custody or visitation matters.[299]

VII. INTERSTATE MODIFICATION OF AN EXISTING CHILD SUPPORT ORDER

A. Introduction

A child support obligation usually endures until the child reaches the age of majority. Over the course of time after the initial establishment of a child support order, parties frequently experience material changes in their financial and other circumstances requiring the order's modification.[300] When one or both parties have moved out of the state issuing the original order, one party's motion for modification[301] may potentially inconvenience or prejudice the other party. UIFSA and FFCCSOA attempt to minimize these problems, which earlier uniform laws exacerbated,[302] by providing predictable rules as to which state will have modification jurisdiction and what law will govern.

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298. *Id.* § 208 cmt.

299. *See supra* Part V.H. and *infra* Part VII.D.

300. State law usually requires a material or substantial change in circumstances since the entry of the original child support order to modify the order. This Article considers only jurisdictional limitations on modification in the interstate context.

301. FFCCSOA defines "modification" as "a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, otherwise is made subsequent to the child support order." 28 U.S.C. § 1738B(b) (1994 & Supp. 1998). *See, e.g.*, Reis v. Zimmer, 700 N.Y.S.2d 609, 613 (App. Div. 1999) (explaining that the order that directed noncustodial parent to deposit his child support payments into an account to be used for travel expenses was a "modification" of an existing order, even though the amount of the payment remained unchanged).

302. *See supra* Part II.

As with an establishment[303] or enforcement[304] proceeding, a petitioner[305] in a modification proceeding may follow any of several alternative paths:

> (1) petitioner may file a "one-state" modification proceeding in her own state, if that state may exercise personal jurisdiction over the respondent under UIFSA section 201;[306]
> (2) petitioner may pursue the two-state procedure (invoking "initiating" and "responding" states);[307] or
> (3) petitioner may file a proceeding directly in the respondent's state.[308]

However, UIFSA's and FFCCSOA's strict limitations on modification jurisdiction may dictate the path taken. In other words, counsel must first determine which state has statutory jurisdiction to modify the child support order before deciding which of the above procedures to follow.

B. The Concept of Continuing, Exclusive Jurisdiction

Central to determining modification jurisdiction is the concept of continuing, exclusive jurisdiction.[309] The general rule is that a tribunal that validly[310] issues a child support order[311] has continuing, exclusive

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303. *See supra* Part V.

304. *See supra* Part VI.

305. In an enforcement proceeding, the "petitioner" will usually be the obligee. In a modification proceeding, the petitioner may be either the obligee or the obligor.

306. *See* U.I.F.S.A. § 202, 9 (pt. IB) U.L.A. 281 (1999); *id.* § 201. *See, e.g.*, DeMello v. DeMello, 953 P.2d 968 (Haw. Ct. App. 1998). Again, even in this "one-state proceeding," UIFSA's special evidence and discovery rules apply "to facilitate interstate exchange of information." U.I.F.S.A. § 202, 9 (pt. IB) U.L.A. 281 (1999); *id.* § 202 cmt.; § 316, 9 (pt. IB) U.L.A. 327 (1999); § 318, 9 (pt. IB) U.L.A. 331 (1999).

307. *See* U.I.F.S.A. § 301(c), 9 (pt. IB) U.L.A. 300 (1999); *id.* § 301(b)(3); *supra* Parts V.C., VI.B.

308. *See supra* Part VI.A.

309. *See* U.I.F.S.A. § 205 cmt., 9 (pt. IB) U.L.A. 285 (1999) (characterizing section 205, which defines continuing, exclusive jurisdiction, as "perhaps the most crucial provision in UIFSA").

310. In order to issue a valid order, the issuing state must have personal jurisdiction over the parties and subject matter jurisdiction over the action, and the parties must be given notice and an opportunity to be heard. *See* 28 U.S.C. § 1738B(c) (1994 & Supp. 1998); Jones v. Jones, No. C3-98-593, 1998 WL 436866 (Minn. Ct. App. Aug. 4, 1998) (dicta)

jurisdiction over that order so long as the obligor, individual obligee,[312] or child resides in the state.[313] Moreover, the issuing state has no authority to decline to exercise jurisdiction over a modification petition.[314] All other states' tribunals must recognize the continuing, exclusive jurisdiction of the issuing tribunal[315] and may not modify that tribunal's order.[316]

This general rule is subject to only two exceptions. First, all individual parties may consent in writing to modification in a different state.[317] Second, if another state's tribunal modifies the order consistently with

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(explaining that because Missouri lacked personal jurisdiction over respondent, Missouri decree was not "consistent" with Missouri law and therefore not entitled to continuing, exclusive jurisdiction).

311. Again, "child support order" is broadly defined. *See* U.I.F.S.A. § 101(21), 9 (pt. IB) U.L.A. 258 (1999); 28 U.S.C. § 1738B(b). *See also supra* Part VI.A.

312. The statutes refer to the residence of an "individual obligee" to clarify that the location of any state child support enforcement agency that might be involved (and technically might be an "obligee" if the individual obligee receives government assistance and has assigned her rights to the agency) is irrelevant for this purpose.

313. U.I.F.S.A. section 205(a) provides:

> (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 . . . .

U.I.F.S.A. § 205(a), 9 (pt. IB) U.L.A. 284-85 (1999). *See, e.g.*, Urso v. Urso, 724 So. 2d 1253 (Fla. Dist. Ct. App. 1999); Carr v. Carr, 724 So. 2d 937 (Miss. Ct. App. 1998). *See also* 28 U.S.C. § 1738B(d).

314. *See* Early v. Early, 499 S.E.2d 329 (Ga. 1998) (citing FFCCSOA).

315. *See* U.I.F.S.A. § 205(d), 9 (pt. IB) U.L.A. 285 (1999). "A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child-support order pursuant to this [Act] or a law substantially similar to this [Act]." *Id.* (brackets in original).

316. *See* 28 U.S.C. § 1738B(a)(2) (1994 & Supp. 1998). "As long as the issuing state retains its continuing, exclusive jurisdiction over its child support order, a registering sister state is precluded from modifying that order." U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 370 (1999).

317. *See* U.I.F.S.A. § 205(a)(2), 9 (pt. IB) U.L.A. 285 (1999); 28 U.S.C. § 1738B(d), (e)(2)(B). *See also* Peace v. Peace, 737 A.2d 1164 (N.J. Super. Ct. Ch. Div. 1999) (mother's signing, in New Jersey, of Property Settlement Agreement, which was incorporated into a divorce decree entered in Nevada, did not constitute express or implied consent to allow New Jersey to relinquish continuing, exclusive jurisdiction over previous child support order).

UIFSA and FFCCSOA,[318] the issuing state loses continuing, exclusive jurisdiction.[319]

Most courts assume that UIFSA and FFCCSOA affect their subject matter jurisdiction to modify another state's order.[320] At least one court has held, however, that while it retains subject matter jurisdiction to hear child support matters, UIFSA limits its competency to consider a modification of another state's order.[321]

C. The Modification Provisions

1. In General

The statutory provisions granting modification jurisdiction to a state other than the issuing state[322] effectuate the concept of continuing, exclusive jurisdiction and add a measure of convenience to the respondent. The petitioner begins the process by registering the existing child support order in the state in which modification is sought.[323] Of course, the order may have already been registered for enforcement in that state; in that case, no

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318. If one of the contestants continues to reside in the issuing state, the only way that another state's tribunal would be able to validly modify the child support order would be if all individual parties consented in writing, or if there were more than one existing order and the other state's tribunal determined under the prioritization rules, UIFSA section 207 and 28 U.S.C. § 1738B(f) that the "issuing state's" order was not entitled to priority. *See infra* Parts VII.C.4, F.3.

319. *See* U.I.F.S.A. § 205(b), 9 (pt. IB) U.L.A. 285 (1999); 28 U.S.C. § 1738B(d). *See also In re* Marriage of Hartman, 712 N.E.2d 367 (Ill. Ct. App. 1999) (explaining that Florida court's entry of an order setting an arrearage payment schedule does not constitute a "modification" of the original Illinois order so as to deprive Illinois, the issuing state, of continuing, exclusive jurisdiction).

320. *See, e.g., In re* Marriage of Zinke, 967 P.2d 210 (Colo. Ct. App. 1998); State *ex rel.* Havlin v. Jamison, 971 S.W.2d 938 (Mo. Ct. App. 1998); State *ex rel.* Freeman v. Sadlier, 586 N.W.2d 171 (S.D. 1998).

321. *See In re* Marriage of Cepukenas, 584 N.W.2d 227 (Wis. Ct. App. 1998).

322. *See* U.I.F.S.A. § 611, 9 (pt. IB) U.L.A. 369-70 (1999); *id.* § 613, 9 (pt. IB) U.L.A. 378 (1999); 28 U.S.C. § 1738B(e), (i) (1994 & Supp. 1998).

323. *See* U.I.F.S.A. § 609, 9 (pt. IB) U.L.A. 368 (1999); 28 U.S.C. § 1738B(i). For a description of the registration process, see U.I.F.S.A. § 602, 9 (pt. IB) U.L.A. 353-54 (1999) and *supra* Part VI.B. For a list of the forms to use for registration for modification, see *infra* Part VII.H.

further registration is necessary.[324] A registration for purposes of both enforcement and modification is also permitted.[325]

Once the child support order has been registered in another state, the general rule (subject to the exceptions stated below)[326] is that the registration state may only modify the order if: (1) all individuals involved have moved out of the issuing state;[327] (2) the petitioner for modification does not reside in the registration state;[328] and (3) the registration state's tribunal may exercise personal jurisdiction over the respondent.[329]

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324. *See* U.I.F.S.A. § 609, 9 (pt. IB) U.L.A. 368 (1999).

325. *See id.* § 609 & cmt.

326. *See infra* Part VII.H.

327. "Proof of the fact that neither individual party nor the child continues to reside in the issuing state may be made directly in the forum state . . . ." U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 371 (1999).

328. For a discussion of the lack of a "nonresident petitioner for modification" requirement in FFCCSOA, see Hatamyar, *supra* note *, at 61-63. In some cases, this difference between UIFSA and FFCCSOA can lead to different results. *See* Letellier v. Letellier, No. 01 A01-9903-JV-00157D, 1999 WL 732487 (Tenn. Ct. App. Sept. 21, 1999).

329. UIFSA section 611(a) provides:

> After a child-support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if Section 613 does not apply and after notice and hearing it finds that:
> (1) the following requirements are met:
> (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 . . . .

U.I.F.S.A. § 611(a), 9 (pt. IB) U.L.A. 369-70 (1999). FFCCSOA provides:

> A court of a State may modify a child support order issued by a court of another State if--
> (1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and
> (2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant. . . .

28 U.S.C. § 1738B(e) (Supp. 1998). Subsection (i) provides, "[i]f there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State

2. One Contestant Remains in Issuing State (or State of Continuing Exclusive Jurisdiction)

If either of the individual contestants remains in the issuing state, the issuing state retains continuing, exclusive jurisdiction[330] and no other state's tribunal may modify the child support order,[331] whether the petitioner for modification is the obligee[332] or the obligor.[333] The party who still resides

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shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification." *Id.*

330. *See* U.I.F.S.A. § 205(a)(1), 9 (pt. IB) U.L.A. 285 (1999).

331. *See supra* Part VII.C.4 for exceptions to this general rule.

332. *See, e.g.*, Kilroy v. Superior Ct., 63 Cal. Rptr. 2d 390 (Ct. App. 1997) (FFCCSOA); Woodward v. Berkery, 714 So. 2d 1027 (Fla. Dist. Ct. App. 1998) (where New York court entered judgment incorporating parties' settlement as to child support obligation, Florida court would not have authority to modify the judgment absent satisfaction of conditions of FFCCSOA sections (e) and (i)); Connell v. Woodward, 509 S.E.2d 647 (Ga. Ct. App. 1998) (FFCCSOA); *In re* Marriage of Carrier, 576 N.W.2d 97 (Iowa 1998) (FFCCSOA); Harbour v. Harbour, 677 So. 2d 700 (La. Ct. App. 1996); Peddar v. Peddar, 683 N.E.2d 1045 (Mass. App. Ct. 1997) (same result under UIFSA and FFCCSOA); State *ex rel.* Havlin v. Jamison, 971 S.W.2d 938 (Mo. Ct. App. 1998); Schuyler v. Ashcraft, 680 A.2d 765, 780-81 (N.J. Super. Ct. App. Div. 1996) (FFCCSOA); State *ex rel.* Freeman v. Sadlier, 586 N.W.2d 171 (S.D. 1998) (purported modification made when father still resided in issuing state void); Link v. Alvarado, 929 S.W.2d 674 (Tex. App. 1996) (UIFSA); Thompson v. Thompson, 893 S.W.2d 301 (Tex. App. 1995) (UIFSA); *In re* Marriage of Erickson, 991 P.2d 123, 126 (Wash. Ct. App. 2000). *Cf.* Deltoro v. McMullen, 471 S.E.2d 742 (S.C. Ct. App. 1996) (reaching opposite result under URESA, but recognizes that obligee could not have obtained modification in new state under UIFSA when obligor still resided in issuing state).

333. *See, e.g.*, Alaska Dep't of Revenue *ex rel.* Wallace v. Delaney, 962 P.2d 187 (Alaska 1998) (alternative holding) (UIFSA prohibited Washington from modifying child support order so long as mother continued to reside in Alaska, the issuing state); *In re* Marriage of Yuro, 968 P.2d 1053 (Ariz. Ct. App. 1998) (FFCCSOA); *In re* Marriage of Zinke, 967 P.2d 210 (Colo. Ct. App. 1998) (UIFSA); Florida Dep't of Revenue *ex rel.* Hylton v. Hylton, 703 So. 2d 533 (Fla. Dist. Ct. App. 1997) (FFCCSOA); Florida Dep't of Revenue v. Fleet *ex rel.* Jorda, 679 So. 2d 326 (Fla. Dist. Ct. App. 1996) (applying FFCCSOA, granting writ of prohibition against Florida court modifying Georgia order when custodial parent and child still lived in Georgia); Florida Dep't of Revenue *ex rel.* Skladanuk v. Skladanuk, 683 So. 2d 624 (Fla. Dist. Ct. App. 1996) (FFCCSOA); Jackson v. Meeks, No. C3-97-1877, 1998 WL 268092 (Minn. Ct. App. May 26, 1998) (unpublished) (UIFSA) (Minnesota could not modify Indiana child support order when father still resided in Indiana); Wilkie v. Silva, 685 A.2d 1239 (N.H. 1996) (FFCCSOA); Reis v. Zimmer, 700 N.Y.S.2d 609 (App. Div. 1999) (FFCCSOA and UIFSA); Isabel M. v. Thomas M., 624 N.Y.S.2d 356, 359-60 (Fam. Ct. 1995) (FFCCSOA); Hinton v. Hinton, 496 S.E.2d 409 (N.C. Ct. App. 1998) (UIFSA and FFCCSOA); Paton v. Brill, 663 N.E.2d 421 (Ohio Ct. App. 1995); Badeaux v. Davis, 522

in the issuing state must seek modification there.[334] The party who moved out of (or did not reside in) the issuing state must either return to the issuing state for modification[335] or may use UIFSA's two-state procedure (initiating a modification proceeding in his state and forwarding the necessary documents to the issuing state).[336] The same result occurs even if all parties have left the issuing state, but another state has properly modified the order, thereby assuming continuing, exclusive jurisdiction, and one contestant remains in the state with continuing, exclusive jurisdiction.[337]

3. Both Individual Contestants Have Moved Out of Issuing State and Reside in Different States

When all individual contestants and the child move out of the issuing state, the issuing state loses continuing, exclusive jurisdiction.[338] This opens the door for another state to modify the order so long as the requirements of UIFSA section 611 are met.

S.E.2d 835 (S.C. Ct. App. 1999) (UIFSA and FFCCSOA). *But see* Keith G. v. Suzanne H., 62 Cal. App. 4th 853 (1998) (FFCCSOA did not prevent responding state in a URESA proceeding from awarding a setoff of father's arrearages under one order against mother's arrearages under another order).

334. *See, e.g.*, Kilroy v. Superior Ct., 54 Cal. App. 4th 793 (1997) (under FFCCSOA, mother could not obtain modification of Georgia child support order in California when she and child still lived in Georgia).

335. *But see* Cross v. Mastowski, 650 N.Y.S.2d 511 (Fam. Ct. 1996) (upholding, despite FFCCSOA, Florida's "supersed[ing]" and increasing a New York child support order, even though father continued to reside in New York).

336. *See* U.I.F.S.A. § 206(b), 9 (pt. IB) U.L.A. 289 (1999). "A tribunal of this State having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce *or modify* the order." *Id.* (emphasis added). The obligor may request the services of the issuing state's child support enforcement agency. *See id.* § 307(a), 9 (pt. IB) U.L.A. 312 (1999); *id.* § 307 cmt., 9 (pt. IB) U.L.A. 312-13 (1999). "[E]ither the obligee or the obligor [may] request services," and the special interstate evidence and discovery rules will apply. *Id.* § 307 cmt., 9 (pt. IB) U.L.A. 312 (1999). *See supra* Part V.B.2.

337. *See, e.g.*, Kramer v. Kramer, 698 So. 2d 894 (Fla. Dist. Ct. App. 1997) (under FFCCSOA, Florida did not have jurisdiction to modify a New York order, which itself had modified an earlier New Jersey order, when noncustodial parent continued to live in New York, because New York had continuing exclusive jurisdiction); *In re* Marriage of Zahnd, 567 N.W.2d 684 (Iowa Ct. App. 1997).

338. *See* U.I.F.S.A. § 205(a)(1), 9 (pt. IB) U.L.A. 285 (1999).

a. Obligee (Custodial Parent) as Petitioner for Modification

As petitioner, the obligee must seek any modification of the order in the obligor's state of residence[339] (or some other state in which the obligee does not reside and which can assert personal jurisdiction over the obligor).[340]

b. Obligor (Noncustodial Parent) as Petitioner for Modification

As petitioner, the obligor must seek any modification of the order in the obligee's state of residence[341] (or some other state in which the obligor does not reside and which can assert personal jurisdiction over the obligee).[342]

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339. *See id.* § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999). *See, e.g.*, Phillips v. Fallen, 6 S.W.3d 862 (Mo. 1999) (en banc); Isabel M. v. Thomas M., 624 N.Y.S.2d 356 (Fam. Ct. 1995); Compton v. Compton, No. 99-CA-17, 1999 WL 375578 (Ohio Ct. App. June 11, 1999); *In re* Marriage of Cepukenas, 584 N.W.2d 227 (Wis. Ct. App. 1998); *In re* Marriage of Oimoen, 581 N.W.2d 594 (Wis. Ct. App. 1998) (unpublished). *But see* Lewis v. Lewis, No. 96APF07-868, 1997 WL 128566 (Ohio Ct. App. Mar. 18, 1997) (unpublished) (suggesting that FFCCSOA would not prohibit Ohio from modifying Pennsylvania order where all parties had moved out of Pennsylvania, even though petitioner for modification was Ohio resident; UIFSA not in force at time of decision); *In re* Marriage of Cooney, 946 P.2d 305 (Or. Ct. App. 1997). In the latter case, the obligee petitioned in Oregon, her state of residence, to extend the obligor's child support obligation until the child reached the age of twenty-one, as Oregon law allowed. The court considered and rejected the obligee's request on the merits. Either the court failed to notice that UIFSA section 611(a)(1)(ii) prohibited the obligee, as petitioner, from requesting a modification in her state of residence, or the obligor's consent to the court's jurisdiction was obtained. (On the merits, the court held that because the age of majority in Nevada, the issuing state, was eighteen, Nevada could not have modified the order as the obligee requested, and therefore Oregon could not modify it under UIFSA section 611(c), which provides that a tribunal may not modify any aspect of a child support order that may not be modified under the law of the issuing state.)

340. *See* U.I.F.S.A. § 611(a)(1), 9 (pt. IB) U.L.A. 369 (1999).

341. *See id.* § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999). *See, e.g.*, Gentzel v. Williams, 965 P.2d 855, 859-60 (Kan. Ct. App. 1998) (same result reached under both UIFSA and FFCCSOA even though FFCCSOA lacks an explicit nonresident petitioner requirement); *In re* Marriage of Cooney, 946 P.2d 305 (Or. Ct. App. 1997) (obligor, living in Tennessee, petitioned in Oregon, where obligee lived, to decrease child support); Utah Dep't of Human Servs. v. Jacoby, 975 P.2d 939, 945 (Utah Ct. App. 1999). *See* Reichenbacher v. Reichenbacher, 729 A.2d 97 (Pa. Super. Ct. 1999).

342. *See* U.I.F.S.A. § 611(a)(1)., 9 (pt. IB) U.L.A. 369 (1999). *See, e.g.*, Van Dyke v. Van Dyke, No. C144143, 1998 WL 966091 (Va. Cir. Ct. Dec. 2, 1998).

4. Exceptions to General Rule

There are two exceptions to this general rule limiting modification jurisdiction.[343] First, the individual parties may consent to another state tribunal's modification.[344] Second, if all parties have moved out of the issuing state and reside in the same new state, the new state may modify the order.[345] In either case, the issuing state will lose continuing, exclusive jurisdiction and the state that modifies the order will become the state of continuing, exclusive jurisdiction.[346]

5. The Continuing Jurisdiction, If Any, of the Issuing State When All Individual Contestants Have Left the State

The issuing state loses its continuing, exclusive jurisdiction to modify the child support order once the child and all individual contestants have left the issuing state.[347] Of course, the issuing state continues to have

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343. *See* U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999).

344. *See id.* § 611(a)(2), 9 (pt. IB) U.L.A. 369 (1999); 28 U.S.C. § 1738B(e)(2)(B) (1994 & Supp. 1998). The individual parties' consents must be in writing and filed in the issuing tribunal. *See* U.I.F.S.A. § 611(a)(2), 9 (pt. IB) U.L.A. 369 (1999). The modifying tribunal must be able to exercise personal jurisdiction over the child and individual parties. *See id.* Finally, "if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under [UIFSA], the consent otherwise required of an individual residing in [the state where modification is sought] is not required for the tribunal to assume jurisdiction to modify the child-support order." *Id. See also* Florida Dep't of Revenue *ex rel.* Hylton v. Hylton, 703 So. 2d 533 (Fla. Dist. Ct. App. 1997). "The mother's filing of a URESA action to collect child support payments does not amount to a 'written consent' [to modify] under subsection (e)(2)(B) [of FFCCSOA]." *Id.*

345. *See* U.I.F.S.A. § 613(a), 9 (pt. IB) U.L.A. 378 (1999). The child need not reside in the new state but must have moved out of the issuing state. *See id.* The usual requirement that the petitioner be a nonresident of the state in which modification is sought, UIFSA section 611(a)(1)(ii), does not apply if both individual parties reside in the same new state. *See id.* Also, in this situation, UIFSA "Articles 3, 4, 5, 7, and 8 do not apply." *Id.* § 613(b).

346. *See id.* § 611(a)(2), 9 (pt. IB) U.L.A. 369 (1999); *id.* § 613 cmt., 9 (pt. IB) U.L.A. 378-79 (1999).

347. *See id.* § 205(a)(1), 9 (pt. IB) U.L.A. 285 (1999); *id.* § 205 cmt., 9 (pt. IB) U.L.A. 285-87 (1999); *id.* § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999); 28 U.S.C. § 1738B(d). *See, e.g.*, Groseth v. Groseth, 600 N.W.2d 159, 166 (Neb. 1999); Kelly v. Otte, 474 S.E.2d 131, 135 (N.C. Ct. App. 1996). *See also* FRED CORNISH ET AL., OKLAHOMA INTRODUCTORY COMMENT ON THE UNIFORM INTERSTATE FAMILY SUPPORT ACT, *reprinted in* 43 OKLA. STAT. PREC. § 601-100. "This section overrules *Bailey v. Bailey*, 867 P.2d 1267 (Okla. 1994), which authorized the district court to exercise continuing jurisdiction even though

jurisdiction to *enforce* its unmodified order even if all parties have moved out of state.[348]

But what if one of the parties still wants the issuing state, not a new state, to modify the child support order? Or what if one of the parties later moves back into the issuing state and seeks modification of the order there?

The answer to the first question, while not entirely satisfactory, is relatively clear from the statute and commentary: despite one party's desire to return to the issuing state for modification, the issuing state has lost continuing, exclusive jurisdiction and cannot modify its own order.[349] Even if all individual parties consent, it does not appear that the issuing state that has lost continuing, exclusive jurisdiction can modify its order.[350]

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all parties and the child had left the state." *Id.*

348. *See* U.I.F.S.A. § 205(c), 9 (pt. IB) U.L.A. 285 (1999). *See, e.g.*, Linn v. Delaware Child Support Enforcement, 736 A.2d 954, 963-64 (Del. 1999); Desai v. Fore, 711 A.2d 822 (D.C. 1998); Nicholson v. Nicholson, 747 A.2d 588 (Me. 2000) (asserting that "[e]ven after an order has been modified by a tribunal of another state, the court that issued the original order may enforce the order 'as to amounts accruing before the modification'"); Youssefi v. Youssefi, 744 A.2d 662, 668-69 (N.J. Super. Ct. App. Div. 2000); State *ex rel.* Kenitzer v. Richter, 475 S.E.2d 817 (Va. Ct. App. 1996) (asserting that UIFSA section 205(a)(1) "does not state, either by express terms or by implication, that Virginia [the issuing state] loses *all* jurisdiction if none of the parties are residents of [Virginia]").

349. *See* U.I.F.S.A. § 611 cmt., 9(pt. IB) U.L.A. 370-73 (1999). "Once every individual party and the child leave the issuing state, *the continuing, exclusive jurisdiction of the issuing tribunal to modify its order terminates*, although its order remains in effect and enforceable until it is modified by another tribunal with authority to do so under the Act." *Id.*, 9 (pt. IB) U.L.A. 371 (1999) (emphasis added). *See* Virgin Islands *ex rel.* Simanca v. Proctor, No. S3/1998, 1998 WL 453666 (D.V.I. July 10, 1998). *But see* Karimi v. Karimi, No. 1416-97-3, 1998 WL 313412 (Va. Ct. App. June 16, 1998) (not for publication) (issuing court had continuing jurisdiction to modify its order even though both parents and child had moved out of the country, so long as no other court of competent jurisdiction had modified the original order).

350. The provisions on consent to jurisdiction in both UIFSA and FFCCSOA assume there *is* a court with continuing, exclusive jurisdiction, with which the parties must file their written consent to a *different* state's modification jurisdiction. *See* U.I.F.S.A. § 205(a)(2), 9 (pt. IB) U.L.A. 285 (1999).

> 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 . . . 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. § 205(b) (emphasis added). *See* 28 U.S.C.A. § 1738B(e)(2)(B) (Supp. 1998) "A court

As justification for this position, UIFSA's commentary suggests that once all individual parties have moved out of the issuing state, that state "no longer has a sufficient interest in the modification of its order"[351] and may be "without a nexus to the parties or the child."[352] While this is generally true, one can imagine circumstances in which the issuing state conceivably retains an interest in the order's modification despite the parties' departure from the state. For example, the obligor may continue to work in the issuing state, although both parties have moved to different, yet geographically close, neighboring states.[353] As another example, UIFSA requires the parties, without exception, to return to the issuing state to litigate the modification of an alimony order,[354] indicating that the issuing state continues to have a "sufficient interest in the modification of its order"[355] when that order is for alimony. Thus, if the parties are already before the issuing state's tribunal on a motion to modify an alimony order, one or both of the parties may well desire the issuing state to consider a child support modification as well, especially as financial support issues are usually interrelated.

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of a State may modify a child support order *issued by a court of another State* if . . . each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction *for a court of another State* to modify the order . . . ." *Id.* (emphasis added). *See* Linn v. Delaware Child Support Enforcement, 736 A.2d 954, 960 (Del. 1999) (amicus brief filed by National Conference of Commissioners on Uniform State Laws asserted that UIFSA section 205(a)(2) "applies only if at least one of the parties or the child remains in the state and therefore the issuing state still has continuing, exclusive jurisdiction, but the parties consent to have another tribunal assume continuing, exclusive jurisdiction"). That assumption does not apply when the issuing state has lost continuing, exclusive jurisdiction yet the parties wish to consent to the issuing state's jurisdiction to modify. *See also* U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 370-73 (1999). "UIFSA does not contemplate that absent parties can agree to confer jurisdiction on a tribunal without a nexus to the parties or the child. But if the other party agrees, either the obligor or the obligee may seek assertion of jurisdiction to modify by a tribunal of the state of residence of either party." *Id.* § 611 cmt., 9 (pt. IB) U.L.A. 372 (1999).

351. U.I.F.S.A. § 611 cmt., 9 (pt. IB) U.L.A. 370 (1999).

352. *Id.* § 611 cmt., 9 (pt. IB) U.L.A. 372 (1999).

353. *See, e.g.*, Lackman v. Rosenstock, No. DR2481-85 (D.C. Sup. Ct. Domestic Relations Branch, Feb. 5, 1998) (slip op.) (holding that the District of Columbia had no jurisdiction under UIFSA to modify its child support order when the father had moved to Virginia and the mother and child had moved to Pennsylvania, despite the fact that the father continued to work in the District of Columbia).

354. *See* U.I.F.S.A. § 205(f), 9 (pt. IB) U.L.A. 285 (1999).

355. *Id.* § 611 cmt., 9 (pt. IB) U.L.A. 370 (1999).

In the above situations, it may be equitable at least to allow the parties to consent to the issuing state's jurisdiction to modify the child support order, even if it could not be done over one party's objection. However, UIFSA appears to prohibit the modification even with both parties' consent.

The second question posed at the beginning of this subsection was whether the issuing state may modify its order if, after all individual parties have left the issuing state, one of the parties moves back to the issuing state. If some other state has, in the interim, modified the child support order consistently with UIFSA and FFCCSOA, then that new state becomes the state of continuing, exclusive jurisdiction, and the issuing state may not modify its order.[356] But if no other state has yet modified the issuing state's child support order, and one of the parties moves back to the issuing state, one court has held that under FFCCSOA, the issuing state again has continuing, exclusive jurisdiction to modify its order.[357]

D. Child Custody and Visitation Issues

As noted above, a court's jurisdiction to hear an interstate child support modification proceeding does not confer jurisdiction to hear child custody or visitation matters, which are governed by the UCCJA, the UCCJEA, and the PKPA.[358] Nor does child custody jurisdiction confer jurisdiction over child support.[359]

UIFSA and FFCCSOA grant continuing, exclusive jurisdiction over child support to the issuing state so long as the noncustodial parent resides there.[360] In general, the UCCJA, UCCJEA, and PKPA prefer to rest

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356. *See id.* § 205(c), 9 (pt. IB) U.L.A. 285 (1999); 28 U.S.C. § 1738B(d) (Supp. 1998). *See, e.g.*, Porter v. Porter, 684 A.2d 259 (R.I. 1996). However, the issuing state still has jurisdiction to enforce its support order. *See* U.I.F.S.A. § 205(c), 9 (pt. IB) U.L.A. 285 (1999); 28 U.S.C. § 1738B(g); State *ex rel.* Kenitzer v. Richter, 475 S.E.2d 817 (Va. Ct. App. 1996). Moreover, a court has inherent power to punish contempt of its own order. *See, e.g.*, *Porter*, 684 A.2d at 259. *See* CLARK, *supra* note 17, at 675.

357. *See Porter*, 684 A.2d at 259 (where parties were divorced in Rhode Island, father moved to Massachusetts, mother and child moved to Florida for four years and then moved back to Rhode Island, and no other state had modified Rhode Island's order, Rhode Island had continuing, exclusive jurisdiction under FFCCSOA to modify its order at mother's request). Rhode Island had not yet adopted UIFSA at the time of the opinion in the case.

358. *See supra* Part V.8. *See, e.g.*, Early v. Early, 499 S.E.2d 329, 330 (Ga. 1998); *In re* Henderson, 982 S.W.2d 566 (Tex. App. 1998).

359. *See, e.g.*, Fox v. Fox, 7 S.W.3d 339 (Ark. Ct. App. 1999).

360. *See* U.I.F.S.A. § 205(a)(1), 9 (pt. IB) U.L.A. 285 (1999); 28 U.S.C. § 1738B(d).

jurisdiction over custody issues in the child's "home state."[361] Bifurcation of the support and custody issues may result from the combination of these rules.[362] The parties may avoid bifurcation in this situation if each party consents to the modification of the child support order by the state with child custody jurisdiction.[363]

E. Choice of Law

Just as in the establishment[364] and enforcement[365] contexts, the general choice-of-law rule in the modification context is that the forum state's law applies.[366] This appears to include the forum state's child support

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361. *See* U.C.C.J.A. § 5, 9 (pt. IA) U.L.A. 466 (1999); U.C.C.J.E.A. § 202(a)(1), 9 (pt. IA) U.L.A. 673 (1999); 28 U.S.C. § 1738A(c)(2)(A) (PKPA).

362. *See, e.g.*, McCaffery v. Green, 931 P.2d 407 (Alaska 1997) (because Alaska court believed that only Alaska would have custody jurisdiction, court held, in part to avoid bifurcation, that Alaska could also constitutionally exercise personal jurisdiction over the father to address the child support issue; UIFSA was not in effect in Alaska at the time); Fox v. Fox, 7 S.W.3d 339 (Ark. Ct. App. 1999) (Arkansas had jurisdiction over child custody issues but did not have jurisdiction to modify child support under UIFSA); *In re* Marriage of Zinke, 967 P.2d 210 (Colo. Ct. App. 1998) (Colorado had jurisdiction over custody issues, while Montana retained continuing, exclusive jurisdiction over child support issues); Early v. Early, 499 S.E.2d 329 (Ga. 1998) (California had jurisdiction over custody issues, while Georgia retained continuing, exclusive jurisdiction over child support issues); Schuyler v. Ashcraft, 680 A.2d 765 (N.J. Super. Ct. App. Div. 1996) (New Jersey had custody jurisdiction, while Florida had child support jurisdiction); *In re* Hattenbach, 999 S.W.2d 636 (Tex. App. 1999) (denying mandamus petition against Texas judge who declined custody jurisdiction in favor of Florida, while retaining support jurisdiction in Texas); *In re* Henderson, 982 S.W.2d 566 (Tex. App. 1998) (Texas had jurisdiction over custody issues, while Oklahoma had continuing, exclusive jurisdiction over child support issues).

363. *See* U.I.F.S.A. § 205(a)(2), 9 (pt. IB) U.L.A. 285 (1999); *id.* § 611(a)(2), 9 (pt. IB) U.L.A. 369 (1999); 28 U.S.C. § 1738B(e)(2)(B) (1994 & Supp. 1998).

364. *See supra* Part V.D.

365. *See supra* Part VI.D.

366. *See* U.I.F.S.A. § 303, 9 (pt. IB) U.L.A. 303 (1999); *Id.* § 611(b), 9 (pt. IB) U.L.A. 369 (1999). "Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this [forum] State and the order may be enforced and satisfied in the same manner." *Id. See* 28 U.S.C. § 1738B(h)(1) (Supp. 1998). *See, e.g.*, Alaska Child Support Enforcement Div. v. Bromley, 987 P.2d 183, 189-90 (Alaska 1999) (applying Alaska law to modification proceeding where Alaska properly had modification jurisdiction); Groseth v. Groseth, 600 N.W.2d 159, 168 (Neb. 1999) (the substantive law of the issuing state applies to a modification proceeding so long as the issuing state has continuing, exclusive

guidelines.[367] Note that the "forum state's law" includes its "rules on choice of law,"[368] which could dictate the application of another state's law.[369]

As in an enforcement action, however,[370] there are exceptions to the general "forum state" choice-of-law rule in a modification action. The issuing state's law still governs issues requiring the interpretation of the order, "including the duration of current payments and other obligations of support."[371] Further, the forum state "may not modify any aspect of a child-

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jurisdiction, but once another state properly assumes continuing, exclusive jurisdiction to modify, it should generally apply its own substantive law).

367. *See* U.I.F.S.A. § 303(2), 9 (pt. IB) U.L.A. 303 (1999). *Cf.* BLUEPRINT FOR REFORM, *supra* note 1, at 234 ("The law of the forum state governs application of support guidelines in the establishment or modification of a support award.") *See, e.g.*, State v. Frisard, 694 So. 2d 1032 (La. Ct. App. 1997); Rosen v. Lantis, 938 P.2d 729 (N.M. Ct. App. 1997) (New Mexico court applied, without discussion, New Mexico child support guidelines to a modification motion where father still lived in New Mexico, which was the issuing state retaining continuing, exclusive jurisdiction, although mother and child had moved to Tennessee); *In re* Marriage of Cooney, 946 P.2d 305, 306-07 (Or. Ct. App. 1997) (issuing state was Nevada, custodial mother and child moved to Oregon, and noncustodial father moved to Tennessee; citing a reduction in his income, father petitioned in Oregon for a decrease in his child support obligation to amount suggested by Oregon child support guidelines; Oregon court applied Oregon guidelines, resulting in a decrease in monthly obligation from $1000 to $380). *But see In re* Abel, 886 P.2d 1139, 1141-42 (Wash. Ct. App. 1995) (appeals court reversed trial court's decrease in child support based on Montana guidelines, where ex-wife and children had moved to Montana from Washington, where parties were divorced).

368. U.I.F.S.A. § 303(1), 9 (pt. IB) U.L.A. 303 (1999).

369. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 6 (1989). *See In re* Adams, 551 N.E.2d 635, 639 (Ill. 1990) (in Illinois divorce proceeding in which wife claimed child support for child conceived during marriage through artificial insemination in Florida, Illinois' choice-of-law rules required that Florida law would determine paternity and the duty of support).

370. *See supra* Part VI.D.

371. 28 U.S.C. § 1738B(h)(2) (1994 & Supp. 1998). *See* U.I.F.S.A. § 604(a), 9 (pt. IB) U.L.A. 357 (1999); *id.* Prefatory Note, 9 (pt. IB) U.L.A. 241 (1999). "The choice of law for the interpretation of a registered order is that the law of the issuing state governs the underlying terms of the controlling support order." *Id. See, e.g.*, Woodward v. Berkery, 714 So. 2d 1027 (Fla. Dist. Ct. App. 1998) (where New York courts had entered two judgments approving settlements of entertainer Tom Jones' child support obligations under a New York statute that allowed the enforcement of nonmodifiable child support obligations between consenting parents, and the mother later sought modification of these orders in Florida, the Florida appellate court suggested in *dictum* that even if Florida had jurisdiction to modify, FFCCSOA, 28 U.S.C. § 1738B(h)(2), might require Florida to apply New York law to determine whether the settlement agreements were modifiable "on account of an alleged change in [Jones'] income," because this "may be an interpretation of the New York

support order that may not be modified under the law of the issuing state."[372]

F. Reconciliation of Competing Child Support Orders

1. Prioritization Rules

One of URESA's hallmarks was the proliferation of competing child support orders for the same obligor and child.[373] UIFSA and FFCCSOA delineate rules for determining which, if any, of such competing orders should control.[374]

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orders"); State *ex rel.* Scioto County Child Support Enforcement Agency v. Adams, No. 98CA2617, 1999 WL 597257 (Ohio Ct. App. July 23, 1999). *But see* Hoehn v. Hoehn, 716 N.E.2d 479, 484 (Ind. Ct. App. 1999) (parties may choose to modify their separation agreement in accordance with the law of a different state than that potentially mandated by UIFSA); Hauger v. Hauger, 683 N.Y.S.2d 771 (App. Div. 1998) (allowing New York trial court to consider mother's petition for child support until oldest child was twenty-one years old, as New York law allowed, despite prior valid Nevada order ordering support until age eighteen, because child was nineteen at the time mother filed petition in New York); Cavallari v. Martin, 732 A.2d 739 (Vt. 1999) (FFCCSOA does not prohibit Vermont court from modifying New York child support order to terminate obligation at age eighteen—rather than age twenty-one, as New York law provides—when mother, father, and child all lived in Vermont at the time the petition to modify was filed).

372. U.I.F.S.A. § 611(c), 9 (pt. IB) U.L.A. 370 (1999). "For example, if child support was ordered through age 21 in accordance with the law of the issuing state and the law of the forum state ends the support obligation at 18, modification by the forum tribunal may not affect the duration of the support order to age 21." *Id.* § 611 cmt., 9 (pt. IB) U.L.A. 373 (1999). "[T]he duration of the support obligation remains fixed despite the subsequent residence of all parties in a new state with a different duration of child support." *Id.* § 613 cmt., 9 (pt. IB) U.L.A. 379 (1999). *See, e.g.*, Vancott-Young v. Cummings, No. CA 98-09-122, 1999 WL 326149 (Ohio Ct. App. May 24, 1999). *See also* U.I.F.S.A. § 612(2), 9 (pt. IB) U.L.A. 377 (1999) (if the issuing state's order is validly modified by another state, issuing state may "enforce only nonmodifiable aspects of [the original] order."). "For example, a contractual obligation to provide a college education trust fund for a child may be enforced under the law of the issuing state irrespective of the law of the modifying state." *Id.* § 612 cmt.

373. *See supra* Part II.

374. *See* U.I.F.S.A. § 207, 9 (pt. IB) U.L.A. 291-92 (1999); 28 U.S.C. § 1738B(f) (1994 & Supp. 1998). UIFSA's drafters primarily assumed that section 207 would be needed if for orders entered under URESA, not for orders applying UIFSA incorrectly. *See* U.I.F.S.A. Prefatory Note, 9 (pt. IB) U.L.A. 241 (1999) (section 207 involves "reconciliation with orders issued before the effective date of [UIFSA]."); *id.* § 207 cmt., 9 (pt. IB) U.L.A. 292-93 (1999). However, the statutory language is not so limited.

First, "[i]f only one of the tribunals would have continuing, exclusive jurisdiction under [UIFSA], the order of that tribunal controls and must be recognized."[375]

Second,

> [i]f more than one of the tribunals would have continuing, exclusive jurisdiction under [UIFSA], an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.[376]

Third, "[i]f none of the tribunals would have continuing, exclusive jurisdiction under [UIFSA], the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized."[377]

2. Procedure for Determination of Controlling Order

If either of the individual contestants resides in the forum state, a party may request the court to determine the controlling order under the above rules.[378] The requesting party must "give notice of the request to each party whose rights may be affected by the determination," and include "a certified copy of every support order in effect."[379]

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375. U.I.F.S.A. § 207(a)(2), 9 (pt. IB) U.L.A. 291 (1999). *See* 28 U.S.C. § 1738B(f)(2). "If two or more courts have issued child support orders for the same obligor and child, and only one of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized." *Id. See also* Dep't of Revenue v. Sloan, 743 So. 2d 1131 (Fla. Dist. Ct. App. 1999) (not explicitly citing UIFSA section 207(a)(2), but reaching result consistent with that section on motion for determination of controlling order).

376. U.I.F.S.A. § 207(b)(2), 9 (pt. IB) U.L.A. 291 (1999). *See, e.g.*, State v. McDuffy, 742 So. 2d 87 (La. Ct. App. 1999) (alternative holding); Peace v. Peace, 737 A.2d 1164 (N.J. Super. Ct. Ch. Div. 1999). Again, FFCCSOA is essentially the same. *See* 28 U.S.C. § 1738B(f)(3). *See, e.g.*, Mannor v. Mannor, 703 N.E.2d 716, 720 (Mass. App. Ct. 1998) (decided under former version of this section of UIFSA).

377. U.I.F.S.A. § 207(b)(3), 9 (pt. IB) U.L.A. 292 (1999). FFCCSOA is substantially the same. *See* 28 U.S.C. § 1738B(f)(4).

378. *See* U.I.F.S.A. § 207(c), 9 (pt. IB) U.L.A. 292 (1999). Section II of the federal form entitled "Child Support Enforcement Transmittal Letter #1" (*see infra* app. A) requests information about all outstanding orders in the case so that a priority determination may be made.

379. U.I.F.S.A. § 207(c), 9 (pt. IB) U.L.A. 292 (1999).

A tribunal that determines which order is the controlling order, or which issues a new controlling order, must "state . . . the basis upon which the tribunal made its determination."[380] Once the tribunal has determined which order is controlling, "the party obtaining the order must file a certified copy with each tribunal that issued or registered an earlier order of child support."[381] Failure to file does not affect the validity of the controlling order but may subject the party to "appropriate sanctions."[382]

3. Consequences of Priority

The tribunal that issued what is determined to be the controlling order under the above rules "is the tribunal that has continuing, exclusive jurisdiction under Section 205."[383] The controlling order also "establishes the aspects of the support order which are nonmodifiable."[384]

G. Transfer to Appropriate Tribunal or State

Because federal law prohibits the retroactive modification of a child support order, an order may only be modified as of the date the petition for modification was filed. If the petition is dismissed for failure to file in the proper tribunal, the party seeking modification must begin again in the proper tribunal. UIFSA requires a tribunal that receives an inappropriately-filed pleading to forward the pleading to "an appropriate tribunal," whether that be in the same or a different state, and to so notify the petitioner.[385] This may allow modification as of the date the motion was filed in the wrong tribunal.

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380. *Id.* § 207(e).

381. *Id.* § 207(f). See the federal form entitled "Notice of Determination of Controlling Order" referenced in Appendix A. The order making the determination should be attached to this "Notice." *See* Remarks of Margaret Campbell Haynes, *Support Forms*, *supra* note 283.

382. U.I.F.S.A. § 207(f), 9 (pt. IB) U.L.A. 292 (1999).

383. *Id.* § 207(d). *See* 28 U.S.C. § 1738B(f)(5) (Supp. 1998).

384. U.I.F.S.A. § 611(c), 9 (pt. IB) U.L.A. 370 (1999).

385. *Id.* § 306, 9 (pt. IB) U.L.A. 311 (1999). *See, e.g.*, V.G. v. Bates, No. C8-96-1654, 1997 WL 177705, at *5 (Minn. Ct. App. April 15, 1997) (stating that although Minnesota did not have jurisdiction under FFCCSOA to modify, the district court should have transferred action to Texas, not dismissed the action).

H. Forms to Use for Modification

The federal forms[386] to use in seeking modification, through UIFSA, of a child support order that the responding state issued are:

(1) Child Support Enforcement Transmittal #1—Initial Request
(2) General Testimony.

The federal forms to use in seeking modification of a child support order that the responding state did not issue are:

(1) Child Support Enforcement Transmittal #1—Initial Request
(2) Uniform Support Petition
(3) General Testimony
(4) Registration Statement

I. Effect of Valid Modification

Once a tribunal validly modifies another state's child-support order, the modifying tribunal "becomes the tribunal having continuing, exclusive jurisdiction."[387] The party that obtained the modification must file a certified copy of the modified order with the tribunal that previously had continuing, exclusive jurisdiction and with "each tribunal in which the party knows the earlier order has been registered."[388] The original issuing tribunal must recognize and, upon request, enforce the modified order.[389]

VIII. CONCLUSION

There has been a welter of decisional law interpreting UIFSA and FFCCSOA in the few years since the enactment of those statutes. Courts have, in the main, correctly applied the statutes and achieved uniform interpretation.

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386. *See supra* Part V.C.3 and *infra* Appendix A.

387. U.I.F.S.A. § 611(d), 9 (pt. IB) U.L.A. 370 (1999). *See* 28 U.S.C. § 1738B(d),(g).

388. U.I.F.S.A. § 614, 9 (pt. IB) U.L.A. 380 (1999). The failure to file does not affect the validity of the modified order, but may subject the party to "appropriate sanctions." *Id.*

389. *See id.* § 612, 9 (pt. IB) U.L.A. 377 (1999); 28 U.S.C. § 1738B(g) (1994 & Supp. 1998).

A few problem areas remain. There is some disagreement on whether UIFSA should be applied retroactively, an issue that UIFSA does not address.[390] There is some controversy over the continuing jurisdiction of an issuing state once all individual parties have left the state.[391] The somewhat vague choice-of-law provisions have been applied inconsistently in modification proceedings.[392] In some cases, the iron-clad modification jurisdiction provisions of UIFSA and FFCCSOA, coupled with the entirely different rules governing child custody jurisdiction, unfortunately operate to bifurcate child support and child custody issues between two states.[393]

In general, however, UIFSA and FFCCSOA appear to be accomplishing their purposes relatively well. Despite their flaws, they are establishing much-needed predictability in the area.

390. *See supra* Part III.C.
391. *See supra* Part VII.C.5.
392. *See supra* Part VII.E.
393. *See supra* Part VII.D.

APPENDIX A

Federally Mandated[394] UIFSA Forms[395]

- Child Support Enforcement Transmittal #1—Initial Request
- Child Support Enforcement Transmittal #2—Subsequent Actions
- Child Support Enforcement Transmittal #3—Request For Assistance/Discovery
- Uniform Support Petition
- General Testimony
- Affidavit in Support of Establishing Paternity
- Locate Data Sheet
- Notice of Determination of Controlling Order
- Registration Statement
- Order/Notice To Withhold Income For Child Support
- Administrative Subpoena
- Notice of Lien

394. Congress required the federal Office of Child Support Enforcement to promulgate forms to be used by the states in interstate child support cases by October 1, 1996, 42 U.S.C. § 652(a)(11), and required the states to use such forms by March 1, 1997. 42 U.S.C. § 654(9)(E). *See also* 42 U.S.C. § 654a(g)(1)(A)(ii)(requiring states to use automated system to assist in transmitting orders and notices to employers for income withholding using "uniform formats" prescribed by OCSE). The Office of Management and Budget approved the first nine forms listed above on April 30, 1997. (New UIFSA Forms, Child Support Report, Office of Child Support Enforcement, June 1997.) The Administrative Subpoena and Notice of Lien were approved October 28, 1997. (OCSE Child Support Enforcement Program Action Transmittal No. OCSE-AT-97-19, November 20, 1997.) The income withholding form was distributed on January 27, 1998. (OCSE Child Support Enforcement Program Action Transmittal No. OCSE-AT-98-03, January 27, 1998.)

395. These forms are available on the home page of the federal Office of Child Support Enforcement at <http://www.acf.dhhs.gov/programs/cse>. For all forms, first select "Policy Documents," then under "Policy Documents issued by Office of Child Support Enforcement arranged chronologically," select "Action Transmittals." From there, select "1997" and then document "AT-9706" for the standard interstate child support enforcement forms (the first nine forms listed above). The latter document also contains a "UIFSA Forms Matrix" that explains which forms to use in what circumstances, and a "Glossary of Terms." Also under the "1997" documents, select document "AT-9719" for the Administrative Subpeona and Notice of Lien. In the "1998" documents, select document "AT-9803" for the income withholding form.