



ST. MARY'S
UNIVERSITY

Digital Commons at St. Mary's University

Faculty Articles

School of Law Faculty Scholarship

1997

Critical Applications and Proposals for Improvement of the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act

Patricia W. Moore

St. Mary's University School of Law, pmoore17@stmarytx.edu

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Courts Commons](#), and the [Family Law Commons](#)

Recommended Citation

Patricia Wick Hatamyar, Critical Applications and Proposals for Improvement of the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act, 71 St. John's L. Rev. 1 (1997).

This Article is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact sfowler@stmarytx.edu, egoode@stmarytx.edu.

ST. JOHN'S LAW REVIEW

VOLUME 71

WINTER 1997

NUMBER 1

CRITICAL APPLICATIONS AND PROPOSALS FOR IMPROVEMENT OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT AND THE FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

PATRICIA WICK HATAMYAR*

TABLE OF CONTENTS

INTRODUCTION	3
I. CRITICAL APPLICATIONS OF UIFSA AND FFCCSOA	9
A. <i>Cases 1-3: Initial Establishment of Support Order</i>	10
Case 1. Establishing a support order in connection with a divorce; a single petition is filed and the spouses reside in two different states.....	10
<i>Case 1(a): NCP moves out of the marital state</i>	10
<i>Case 1(b): CP and C move out of the marital state</i>	14
<i>Case 1(c): Variation on facts to test UIFSA's personal jurisdiction provisions</i>	15
Case 2. Competing petitions for support filed in two different states.....	17
<i>Case 2(a): Child support sought and the child has a "home state"</i>	17
<i>Case 2(b): Child support sought and the child</i>	

* Assistant Professor, Oklahoma City University School of Law (B.A., Northwestern University; J.D., University of Chicago). Former partner, Sonnenschein Nath & Rosenthal, Chicago, Illinois. A Kerr Foundation grant supported work on this article. I am grateful to Andrew Spiropoulos for his insightful comments on an earlier draft; to Ronnie Bates, President of the Oklahoma Child Support Enforcement Association, for providing materials and information; to Drew Houghton for his research assistance; and to Fran Deathe, reference librarian.

	<i>has no "home state".....</i>	19
	<i>Case 2(c): Only spousal support sought.....</i>	19
	Case 3. Establishing a child support order where the parents have never been married and they reside in two states.....	24
B.	<i>Cases 4-6: Enforcement and Modification of an Ex- isting Support Order.....</i>	26
	Case 4. Divorce in State 1, NCP moves to State 2.....	26
	Case 4(a): CP seeks enforcement.....	26
	Case 4(b): What state law applies?.....	35
	Case 4(c): CP seeks modification of child sup- port.....	37
	Case 4(d): CP seeks modification of alimony in State 2.....	41
	Case 4(e): NCP seeks modification in State 2.....	43
	Case 4(f): What law applies to NCP's requested modification in State 1?.....	45
	Case 5. Divorce in State 1, CP and C move to State 2.....	45
	Case 5(a): CP seeks enforcement in State 2.....	45
	Case 5(b): CP seeks modification in State 2.....	46
	Case 6. Divorce in State 1, CP and C move to State 2, NCP moves to State 3.....	48
	Case 6(a): CP seeks enforcement.....	48
	Case 6(b): NCP seeks modification of alimony in the State 3 UIFSA proceeding.....	48
	Case 6(c): The extent of State 1's continuing, ex- clusive jurisdiction over the spousal support order.....	49
	Case 6(d): NCP seeks modification of visitation or custody in the State 3 UIFSA proceeding.....	54
	Case 6(e): CP seeks modification of child sup- port in State 3 proceeding.....	55
	Case 6(f): NCP seeks modification of child sup- port in State 3 proceeding.....	61
	Case 6(g): The human error factor.....	63
II.	PROPOSALS TO CLARIFY UIFSA AND FFCCSOA.....	69
	A. <i>Competing Petitions to Establish Support Filed in Two States.....</i>	69
	B. <i>Additional Ways of Consenting to Jurisdiction to Modify.....</i>	70
	1. Consent to Jurisdiction to Modify a Spousal Support Order.....	70
	2. Consent to Jurisdiction to Modify Child Support Orders.....	72
	C. <i>The Problem of a "Gap" in Jurisdiction.....</i>	73
	D. <i>Consistency in Choice-of-Law Provisions.....</i>	73
	E. <i>Lack of Nonresident-Petitioner Requirement in FFCCSOA for Modification Jurisdiction.....</i>	74

<i>F. Applicability of FFCCSOA to a State That has Adopted UIFSA</i>	74
CONCLUSION.....	75
APPENDIX	76

INTRODUCTION

The problems inherent in interstate child and spousal support enforcement¹ have been lamented for at least a half century.² The federal and state governments have taken numerous steps to enhance interstate establishment and collection of support.³ Two of the latest steps in this process were the 1992

¹ See U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 3 (1992) [hereinafter BLUEPRINT FOR REFORM] (citing coordination between individuals and agencies in two or more jurisdictions; differing forms, policies, and procedures; and lengthier processing time as some of challenges in handling interstate cases); *id.* at 4 (“It is well known that the easiest way to avoid paying child support is to leave the state in which you were ordered to pay support.”) (quoting Wendy Epstein, Executive Director, Illinois Task Force on Child Support); MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW 88 (1987) (“The obstacles encountered by support creditors when the support debtor defaults, especially if [the debtor] is located in another state, have often proven practically insurmountable.”); LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 286-87 (1985) (emphasizing costs associated with initiation of new legal proceedings to enforce support decrees); Janelle T. Calhoun, Comment, *Interstate Child Support Enforcement System: Juggernaut of Bureaucracy*, 46 MERCER L. REV. 921, 924 (1995) (noting that “conflicting state regulations, confusing federal requirements, and overwhelming caseloads” have frustrated interstate enforcement efforts).

² See UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT (“URESA”) prefatory note, 9B U.L.A. 556 (1987) (discussing Uniform Desertion and Non-Support Act, adopted in 1910, as early effort to remedy problem of non-support); Marygold S. Melli, *The United States: Child Support Enforcement For the 21st Century*, 32 U. LOUISVILLE J. FAM. L. 475, 475 (1994) (“United States public policy has struggled with the interstate nature of the child support problem since the early 1900s.”).

³ 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.A. §§ 651-669 (West 1991 & Supp. 1996), increasingly specific requirements relating to child support enforcement as a condition of receiving federal funds for social welfare programs. See, e.g., BLUEPRINT FOR REFORM, *supra* note 1, at 12-14 (detailing difficulties faced by obligees seeking enforcement of support orders which led Congress to enact Child Support Enforcement Amendments to Title IV-D in 1984 and Family Support Act of 1988); Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, reprinted in STEPHEN D. SUGARMAN & HERMA HILL KAY, DIVORCE REFORM AT THE CROSSROADS 166, 169-174 (1990) (discussing development of increasingly stringent child support enforcement legislation); Charlotte L. Allen, *Federalization of Child Support: Twenty Years and Counting*, 73 MICH. B.J. 660, 660-61 (1994) (analyzing impact of federal legislation on state procedure); Calhoun, *supra* note 1, at 929 (“The states were coerced into compliance by the threat of

promulgation of the Uniform Interstate Family Support Act ("UIFSA")⁴ and the 1994 adoption of the federal Full Faith and Credit For Child Support Orders Act ("FFCCSOA").⁵ The 1996 federal "welfare reform" bill⁶ affected both of these statutes by requiring the states to pass UIFSA by January 1, 1998,⁷ and by amending FFCCSOA to achieve greater consistency with UIFSA.⁸

Each of these statutes is premised upon the laudably straightforward "one-order-at-a-time" system:⁹ only one state's order should govern, at any given time, an obligor's support obligation to any particular obligee or child; only one state should have continuing jurisdiction to modify that order; and all other states should give that one order full faith and credit¹⁰ and re-

AFDC funding loss.").

⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 1996) [copy on file with author]. The National Conference of Commissioners on Uniform State Laws ("NCCUSL") adopted several "non-controversial" amendments at its annual conference in July, 1996. *Proceedings in the Committee of the Whole, Amendments to Uniform Interstate Family Support Act of the National Conference of Commissioners on Uniform State Laws 7*, July 12-19, 1996 [hereinafter, "NCCUSL Proceedings"]. At this writing, no state has adopted any of these recent amendments. But Congress has required the states to adopt any amendments approved by NCCUSL before January 1, 1998. See *infra* note 7. Therefore, citations to UIFSA in this article will be to the newly amended act, which was issued by NCCUSL on November 19, 1996.

⁵ 28 U.S.C.A. § 1738B (West, WESTLAW through Pub. L. No. 104-333).

⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁷ 42 U.S.C.A. § 666(f) (West, WESTLAW through Pub. L. No. 104-333). The section provides:

In order to satisfy section 454(20)(A) [42 U.S.C. § 654(20)(A) (1994)], on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.

Id. Section 454 of the Social Security Act, 42 U.S.C.A. § 654 (West Supp. 1996), enumerates the requirements that a state's "plan for child and spousal support" must include in order to be eligible for federal payments under section 455. 42 U.S.C.A. § 655 (West Supp. 1995).

⁸ 28 U.S.C.A. § 1738B (West Supp. 1996); H.R. CONF. REP. NO. 104-725 (1996).

⁹ See UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note; *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. 9-10, 28 (1992) [hereinafter *Interstate Modifications Hearings*]; S. REP. NO. 103-361, at 4-5 (1994), reprinted in 1994 U.S.C.C.A.N. 3259, 3260-61; BLUEPRINT FOR REFORM, *supra* note 1, at 87 ("The Commission strongly believes that only one tribunal should control the terms of the support order.").

¹⁰ 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

frain from modifying it unless the first state no longer has jurisdiction.

These are major changes from the Uniform Reciprocal Enforcement of Support Act ("URES A"),¹¹ UIFSA's immediate uniform-law predecessor.¹² Under URES A, a state often felt free to modify another state's support order while maintaining that the original order remained in effect.¹³ Frequently, two or more valid

often absent from the typical ongoing child or spousal support order. *See, e.g.,* *Sistare v. Sistare*, 218 U.S. 1, 16-17 (1909) (holding that no full faith and credit entitlement exists in judgment for alimony allocation since annulment or modification of amount is continually subject to discretion of issuing court); *cf. Barber v. Barber*, 323 U.S. 77, 86 (1944) (affording protection of Full Faith and Credit Clause to judgment for arrears of alimony since it was not subject to judicial modification). *See generally* RESTATEMENT (SECOND) OF JUDGMENTS § 73 (1982); LEA BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM 360-61 (1986); William L. Reynolds, *The Iron Law of Full Faith and Credit*, 53 MD. L. REV. 412, 419-21 (1994) (positing that judgment which is not final under law of forum state is not entitled to full faith and credit). Since 1986, Congress has required states to recognize past-due child support installments as final judgments entitled to full faith and credit. *See* 42 U.S.C. § 666(a)(9)(A) (1994). Since its inception, the amendment, commonly referred to as the "Bradley Amendment," has been highly successful in enhancing interstate enforcement of delinquent support payments. BLUEPRINT FOR REFORM, *supra* note 1, at 90.

¹¹ 9B U.L.A. 567 (1987). In 1968, URES A was revised and retitled the Revised Uniform Reciprocal Enforcement of Support Act ("RURES A"). 9B U.L.A. 381 (1987). While the majority of states eventually enacted RURES A, the original URES A remained on the books in many states. In order to remedy perceived enforcement difficulties, some states 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, 86 (1993). Unless otherwise indicated, this Article uses the term "URES A" to include URES A, RURES A, and USDL.

¹² UIFSA builds upon URES A's establishment of the "two-state" enforcement proceeding, through which an obligee in one state does not have to travel to the obligor's state or hire a private attorney for enforcement. *See* John J. Sampson, *Uniform Interstate Family Support Act (With Unofficial Annotations)*, 27 FAM. L.Q. 93, 151 n.127 (1993) (noting that mechanics of registering foreign support order under UIFSA "are only slightly changed from those found in RURES A § 39"). Instead, the obligee may initiate a proceeding in her own state to forward the order to the obligor's state for registration and enforcement. *Id.* at 150-51. For thorough descriptions of the URES A two-state procedure, see HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 276-81 (1988); Tina M. Fielding, Note, *The Uniform Interstate Family Support Act: The New URES A*, 20 U. DAYTON L. REV. 425, 436-40 (1994).

¹³ *See* REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 531 (1987) ("A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by ... a support order made by a court of any other state pursuant to a substantially similar act"); *id.* § 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."); UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 30, 9B U.L.A. 600 (1987) ("No order

court orders from different states established entirely different support obligations for the same obligor and child, engendering uncertainty and complicating the calculation of arrearages.¹⁴ Moreover, URESA encouraged forum-shopping by allowing relatively easy modification in a state inconvenient to an ex-spouse.¹⁵

The rationale for promulgating both a uniform law, URESA, and a federal statute, FFCCSOA, that accomplish essentially the same objective is somewhat elusive. Many states began enacting UIFSA after the National Conference of Commissioners on Uniform State Laws approved UIFSA in 1992.¹⁶ Some child support advocates, however, worried that piecemeal, state-by-state adoption of UIFSA would delay receipt of the intended benefits by interstate obligees.¹⁷ In addition, given the states' patchwork adoption of variants of URESA—the Revised Uniform Reciprocal Enforcement of Support Act (“RURES A”), the Uniform Support of Dependents Law (“USDL”), and similar statutes—UIFSA supporters believed that the “uniform law” would become anything but uniform.¹⁸

of support issued by a court of this state when acting as a responding state shall supersede any other order of support”; *id.* § 38, 9B U.L.A. 606 (1987) (“The support order ... shall have the same effect and may be enforced as if originally entered in the court of this state.”); BLUEPRINT FOR REFORM, *supra* note 1, at 230 (“[M]ost practitioners believe that once a registered order is modified, the underlying order is modified as well.”); *see also infra* notes 183-84 and accompanying text (discussing modification of child support orders).

¹⁴ *See, e.g.*, Office of Child Support Enforcement v. Troxel, 931 S.W.2d 784 (Ark. 1996); Shepherd v. Shepherd, 429 N.W.2d 145 (Iowa 1988); Taylor v. Vilcheck, 745 P.2d 702 (Nev. 1987); Hubanks v. Hubanks, 555 N.W.2d 647 (Wis. Ct. App. 1996); Kranz v. Kranz, 525 N.W.2d 777 (Wis. Ct. App. 1994); *see also* CLARK, *supra* note 12, at 282-84; Andrea G. Nadel, Annotation, *Construction and Effect of Provision of Uniform Reciprocal Enforcement of Support Act That No Support Order Shall Supersede or Nullify Any Other Order*, 31 A.L.R. 4th 347, 352-53, 356-60 (1984).

¹⁵ *See Interstate Modification Hearings, supra* note 9, at 9-10 (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).

¹⁶ Fielding, *supra* note 12, at 425.

¹⁷ *Interstate Modifications Hearings, supra* note 9, at 16, 20, 28-29, 38-39 (remarks of Representative Frank) (“I want to do what I can to put this in place while we go to whatever new system we go to.”).

¹⁸ *See* S. REP. NO. 103-361, at 5 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3259, 3262 (“[T]he laws by which courts determine their authority to establish and modify child support orders are not uniform.”); BLUEPRINT FOR REFORM, *supra* note 1, at 231 (noting that lack of uniformity among URESA provisions adopted by individual states engendered uncertainty among obligees seeking to enforce URESA petition in another state); Paula Roberts, *The Case For Fundamental Child Support Reform*, 13

Congress ultimately adopted two solutions to the threat of non-uniform state law. First, FFCCSOA required states to accord full faith and credit to another state's child support order under most circumstances.¹⁹ Second, Congress recently required every state to pass UIFSA without alteration.²⁰

Although the "one-order-at-a-time" principle of UIFSA and FFCCSOA is conceptually simple, the language of the statutes, particularly that of UIFSA,²¹ is a bit more problematic. Like the federal Parental Kidnapping Prevention Act ("PKPA")²² and the state Uniform Child Custody Jurisdiction Act ("UCCJA")²³ before them, the federal FFCCSOA and the state UIFSA do not work entirely in tandem.²⁴ In an ironic and seemingly unintended

FAIR\$HARE 8, 10 (1993) (asserting that failure to adopt uniform versions of UIFSA would result in replication of current URESA problems).

¹⁹ 28 U.S.C.A. § 1738B(a) (West, WESTLAW through Pub. L. No. 104-333). Oddly, the legislative reports accompanying the bills that became FFCCSOA, passed in 1994, do not mention UIFSA, a statute adopted in 1992. See S. REP. NO. 103-361 (1994), reprinted in 1994 U.S.C.C.A.N. 3259.

²⁰ See *supra* note 7. The constitutionality of a federal requirement that states enact a specific family law statute is beyond the scope of this Article. See *New York v. United States*, 505 U.S. 144, 166 (1992) ("We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.") It appears, however, that Congress may attempt to compel states to enact legislation by conditioning the receipt of federal funding dispensed under the Spending Clause. See *South Dakota v. Dole*, 483 U.S. 203 (1987).

²¹ Although UIFSA's drafters endeavored to make the act "user-friendly," Sampson, *supra* note 12, at 126-27 nn.78-79, it is debatable whether the drafters wholly achieved their desired result.

²² 28 U.S.C. § 1738A (1994). Congress explicitly analogized FFCCSOA to the PKPA. S. REP. NO. 103-361, at 5 (1994), reprinted in 1994 U.S.C.C.A.N. 3259, 3261 ("This bill is similar to legislation passed by Congress in 1980 to address the problems caused by the lack of uniform enforcement of child custody orders.")

²³ 9 U.L.A. pt. I, 115 (1988).

²⁴ RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 274-75 (3d ed. 1986); Anne B. Goldstein, *The Tragedy of the Interstate Child: A Critical Reexamination of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act*, 25 U.C. DAVIS L. REV. 845, 938-39 (1992) (characterizing application of UCCJA and PKPA as "disaster" and "spectacularly unsuccessful").

For example, the PKPA prohibits State 1 from modifying a child custody determination by State 2 unless State 1 "has jurisdiction [under State 1's UCCJA] to make such a child custody determination" and State 2 "no longer has jurisdiction [under State 2's UCCJA], or it has declined to exercise such jurisdiction to modify such determination." 28 U.S.C. § 1738A(f) (1994). The PKPA further provides that State 2's jurisdiction continues so long as State 2 continues to have jurisdiction under its UCCJA and "remains the residence of the child or of any contestant." 28 U.S.C. § 1738A(d) (1994). Some courts have held that a state loses custody modification jurisdiction under the UCCJA if the child has left the state for a period of time. *E.g.*, *Breaux v. Mays*, 746 P.2d 708, 710 (Okla. Ct. App. 1987) (reasoning that

twist, FFCCSOA may arguably preempt parts of UIFSA—parts which Congress required the states to pass.²⁵

But ironies and woebegone comparisons to the UCCJA/PKPA conundrum do not assist those on the front lines who must work with the new statutes. UIFSA currently has been adopted in thirty-five states along with the District of Columbia²⁶ and bills to enact it are pending in an additional ten states.²⁷ In order to assist family law practitioners, judges, students, and other interested readers²⁸ in understanding the over-

because children had moved to Texas two years earlier from Oklahoma, the marital state, Oklahoma lacked custody modification jurisdiction even though father remained in Oklahoma and children visited him in Oklahoma); *Rosics v. Heath*, 746 P.2d 1284, 1287 (Wyo. 1987) (stating that because children had moved to Wyoming from Texas, the marital state, more than six months earlier, Texas lacked custody modification jurisdiction even though father remained in Texas). Other courts have held that a state continues to have custody modification jurisdiction under the UCCJA so long as one contestant remains in the state. *E.g.*, *O'Daniel v. Walker*, 686 S.W.2d 805, 807 (Ark. Ct. App. 1985) (noting that Arkansas retained custody modification jurisdiction because father continued to live there, although mother and children had moved to Tennessee two years earlier); *Kumar v. Superior Court*, 652 P.2d 1003, 1009-10 (Cal. 1982) (noting that New York retained custody modification jurisdiction because father continued to live there and exercise visitation rights there although mother and child had moved to California). A State 2 court might decide that State 1 “no longer has jurisdiction” if the child has moved out of State 1, and thus take jurisdiction of a modification petition, while the State 1 court might conclude the opposite, taking jurisdiction of a competing modification petition.

²⁵ See *infra* notes 263, 274-77 and accompanying text.

²⁶ The states are Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming, and the District of Columbia. See UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note (listing jurisdictions that have adopted UIFSA).

²⁷ Bills to enact UIFSA are pending in Alabama, 1997 H.B. 358, 1997 Reg. Sess. (Ala. 1997), California, 1997 S.B. 568, 1997-98 Reg. Sess. (Cal. 1997), Connecticut, H.B. 5822, 1996 Reg. Sess. (Conn. 1996), Hawaii, H.B. 2861, 18th Legis. (Haw. 1996), Mississippi, H.B. 777, 1997 Reg. Sess. (Miss. 1997), New Hampshire, H.B. 609, 1997 Reg. Sess. (N.H. 1997), New Jersey, S.B. 153, 207th Legis. (N.J. 1996), New York, S.B. 3539, 219th Gen. Ass. (N.Y. 1995), Vermont, H.B. 125, 64th Biennial Sess. (Vt. 1997), and West Virginia, S.B. 292, 1996 Reg. Sess. (W. Va. 1996). Before the recent federal requirement that states adopt UIFSA, see *supra* note 7, bills to enact UIFSA failed in Mississippi and New Hampshire. S. 2300, 1996 Leg. Sess. (Miss. 1996); S. 166, 1996 Reg. Sess. (N.H. 1996).

²⁸ Perhaps those most affected by the new laws are state IV-D agency workers. These officials are named after Title IV-D of the Social Security Act, which required states to designate a “single and separate organizational unit” centrally responsible for child support enforcement activities for both welfare recipients and others. 42 U.S.C. § 654(3) (1994). Title IV-D also required the Federal Office of Child Support Enforcement to provide “technical assistance” to state IV-D agencies. 42 U.S.C.

lapping operation of these new statutes, Part I of this Article presents several hypothetical fact patterns that illustrate recurring problems in interstate support cases and applies UIFSA and FFCCSOA to each pattern.²⁹ This Part identifies several scenarios where the application of these statutes generates conflicting or inequitable results and suggests possible solutions based upon principles of statutory interpretation, existing case law, and public policy considerations. Part II of this Article, based upon these applications of the statutes, proposes clarifying amendments to each.³⁰

I. CRITICAL APPLICATIONS OF UIFSA AND FFCCSOA

The following hypothetical fact patterns assume that, unless otherwise specified, all states have adopted UIFSA without modification. In addition, unless otherwise stated, child custody is assumed to be undisputed and the hypothetical does not mention any request for custody that would be filed as a matter of course. Cases 1-3 involve the initial establishment of a support order.³¹ Cases 4-6 address enforcement and modification of established support orders. This Article utilizes the following abbreviations:

§ 652(a)(7) (1994); see U.S. DEPT OF HEALTH AND HUMAN SERVS., ADMINISTRATION FOR CHILDREN AND FAMILIES, OFFICE OF CHILD SUPPORT ENFORCEMENT, UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) HANDBOOK [hereinafter, "OCSE HANDBOOK"].

²⁹ Commentators have argued that UIFSA does not go far enough to aid children entitled to support. See, e.g., Carol S. Bruch, *Statutory Reform of Constitutional Doctrine: Fitting International Shoe to Family Law*, 28 U.C. DAVIS L. REV. 1047, 1055-56 & n.36 (1995); Roberts, *supra* note 18, at 10 (characterizing as "questionable" assumption that "enactment of UIFSA will radically improve interstate support enforcement"). Conversely, at least one member of the USCICS asserts that UIFSA's broad jurisdictional provisions may violate due process. Don Chavez, *Minority Report of the U.S. Commission on Interstate Child Support 21-22* [hereinafter Chavez], reprinted in BLUEPRINT FOR REFORM, *supra* note 1, at 347-48.

³⁰ See *infra* Part II and Appendix.

³¹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(21) and subsection (b) of FFCCSOA, 28 U.S.C.A. § 1738B(b) (West, WESTLAW through Pub. L. No. 104-333), define the term "support order" broadly. For example, an order directing NCP to pay C's health care expenses would be a "support order," see Sampson, *supra* note 12, at 106 n.22, although the parameters of the term "health care" would be defined by state law. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 101 cmt. *But see* Commonwealth of Va. *ex rel. Kenitzer v. Richter*, 475 S.E.2d 817, 819-20 (Va. Ct. App. 1996) (holding that order that merely stayed obligee's petition to begin automatic wage withholding due to factual dispute concerning the existence of arrearages was not "support order" or "income-withholding order" that could be registered in another state under UIFSA).

CP = Custodial Parent
 NCP = NonCustodial Parent
 C = Child(ren)
 F = Father
 M = Mother
 H = Husband
 W = Wife

A. *Cases 1-3: Initial Establishment of a Support Order*

It is important to note, in connection with these hypothetical cases involving the initial establishment of a support order, that FFCCSOA does not apply unless a support order has been entered.³² These cases, therefore, will be decided under applicable state law, including UIFSA.

Case 1. Establishing a support order in connection with a divorce; a single petition is filed and the spouses reside in two different states.

Case 1(a): NCP moves out of the marital state. H, W, and C reside in State 1 during their marriage of five years. H and W separate and H/NCP moves to State 2. W/CP and C continue to reside in State 1. W/CP seeks a divorce, child support, and spousal support in State 1.³³

This is probably the most simple two-state hypothetical that

³² The only relevance of FFCCSOA, before a support order is ever entered, is that in order for a support order to be given full faith and credit under FFCCSOA, the court issuing the order must have had subject matter jurisdiction to hear the matter and personal jurisdiction over the contestants, who must have been given reasonable notice and opportunity to be heard. 28 U.S.C.A. § 1738B(c) (West Supp. 1996).

³³ For a case with facts similar to Case 1(a), except that the wife did not seek spousal support, see *Taylor v. Taylor*, 672 A.2d 44, 46 (Del. 1996).

Case 1(a) ignores considerations of child custody jurisdiction, which is determined under the state's enacted version of the UCCJA. See Juliet A. Cox, Note, *Judicial Wandering Through a Legislative Maze: Application of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act to Child Custody Determinations*, 58 MO. L. REV. 427, 437 (1993) (explaining that where UCCJA grants more than one forum jurisdiction, it generally "provides that [child custody] jurisdiction rightfully vests in the court in which the action was first pending"). The PKPA does not strictly apply unless a custody order has been entered, except that the PKPA would deny full faith and credit to an order that was not "made consistently with the provisions of [the PKPA] by a court of another State." 28 U.S.C. § 1738A(a) (1994); see *Eberhardt v. Eberhardt*, 672 F. Supp. 464, 465 (D. Colo. 1987).

can be imagined. A state court must have personal jurisdiction over the obligor to order a support obligation as part of a divorce decree.³⁴ UIFSA section 201 enumerates eight bases for a court's assertion of personal jurisdiction over a nonresident obligor in any action where support is sought.³⁵ In Case 1(a), UIFSA section 201(3)³⁶ provides a basis for the exercise of personal jurisdiction over H/NCP for the establishment of child support because H/NCP once lived in State 1 with C.

³⁴ *Kulko v. Superior Court*, 436 U.S. 84 (1978). Personal jurisdiction over the respondent is not generally considered necessary for the court to grant a divorce or to render a child custody decree. For jurisdiction to grant a divorce, all that is constitutionally required is that one of the spouses be domiciled in the state. *Sosna v. Iowa*, 419 U.S. 393, 409-10 (1975); *Williams v. North Carolina*, 317 U.S. 287, 298-99 (1942). Most commentators consider the UCCJA, rather than traditional concepts of personal jurisdiction, to govern child custody jurisdiction. See generally BRILMAYER, *supra* note 10, at 343, 364-69; Bruch, *supra* note 29, at 1051-53. But see Linda M. Denelis, *Interstate Child Custody and the Parental Kidnapping Prevention Act: The Continuing Search for a National Standard*, 45 HASTINGS L.J. 1329, 1353 (1994) (suggesting that dicta in *Burnham v. Superior Court*, 495 U.S. 604, 623 (1990), "implied that personal jurisdiction over an absent parent was necessary to decide child custody"). These jurisdictional oddities created the concept of "divisible divorce," where one court might grant the divorce, another court might order support, and a third court might decide child custody. See, e.g., *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418-19 (1957); *Estin v. Estin*, 334 U.S. 541, 548-49 (1948).

USCICS, established as a part of the Family Support Act of 1988, Pub. L. No. 100-485, § 126 (1988), debated whether to recommend that Congress enact a statute providing for "child-state" jurisdiction under which the courts of the state where the child resides would have jurisdiction over any person legally responsible for the child's support. BLUEPRINT FOR REFORM, *supra* note 1, at 82-84; Sampson, *supra* note 12, at 112-13 n.42. Some commentators have argued that such a statute enacting child-state jurisdiction would be constitutional despite *Kulko*. See Bruch, *supra* note 29, at 1053-57; 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, 509-13 (1993). But see Monica J. Allen, *Child-State Jurisdiction: A Due Process Invitation to Reconsider Some Basic Family Law Assumptions*, 26 FAM. L.Q. 293, 301 (1992) ("The Supreme Court can probably only uphold child-state jurisdiction by overruling, either explicitly or implicitly, *Kulko v. Superior Court*"). USCICS ultimately decided not to recommend the adoption of "child-state" jurisdiction.

³⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 201.

³⁶ "In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if ... (3) the individual resided with the child in this State." *Id.* State 1 could also assert personal jurisdiction over the husband in this hypothetical under UIFSA § 201(4)-(6). *Id.* § 201(4) ("[T]he individual resided in this State and provided prenatal expenses or support for the child."); *id.* § 201(5) ("[T]he child resides in this State as a result of the acts or directives of the individual"); *id.* § 201(6) ("[T]he individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse.").

Only UIFSA subsections 201(1), 201(2), and 201(8), however, could provide a statutory basis for asserting personal jurisdiction to establish spousal support.³⁷ A court acquires personal jurisdiction to establish spousal support under UIFSA if H is served with process in State 1,³⁸ submits to State 1's jurisdiction,³⁹ or if any other constitutional basis for exercising personal jurisdiction exists.⁴⁰ State 1's assertion of jurisdiction over H to establish spousal support easily satisfies the Supreme Court's due process jurisprudence. H maintained intentional and extensive contacts with State 1 by residing there for five years, thus availing himself of the privileges and benefits of State 1's laws; the litigation is closely related to those contacts (H lived there with W and C, the present claimants); and State 1 has an interest in affording complete relief to W and C. Under these circumstances, it is unlikely that State 1's jurisdiction over H would offend "traditional notions of fair play and substantial justice."⁴¹

³⁷ UIFSA § 201 provides:

[A] tribunal of this state may exercise personal jurisdiction over a nonresident individual ... if: (1) the individual is personally served with [citation, summons, notice] within this State; (2) the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; ... or (8) there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

Id. § 201.

³⁸ *Id.* § 201(1). The Court upheld the constitutionality of in-state service of process as an independent basis of personal jurisdiction in *Burnham v. Superior Court*, 495 U.S. 604 (1990). Justice Brennan's concurrence, joined by three other justices, left open the possibility, however, that a defendant could have so few contacts with a state that the exercise of personal jurisdiction, even with in-state service of process on the defendant, might violate due process. *Id.* at 628-40.

³⁹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 201(2); see *McDonald v. Mabee*, 243 U.S. 90 (1917); *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878).

⁴⁰ In addition to UIFSA, a state may also have a long-arm statute that can be used to establish jurisdiction for spousal support. See, e.g., MASS. GEN. LAWS ANN. ch. 223A, § 3(g) (West 1996); N.Y. C.P.L.R. 302(b) (McKinney 1997); OKLA. STAT. ANN. tit. 43, § 104 (West 1996) ("A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who lived within this state in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in this state"). UIFSA's drafters did not include "the most obvious basis for asserting long-arm jurisdiction over spousal support, i.e., 'last matrimonial domicile,' " to avoid the possibility that a court might have jurisdiction to order spousal support but not to divide property. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt.

⁴¹ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Miliken v. Meyer*, 311 U.S. 457, 463 (1940)); see, e.g., *Burger King Corp. v. Rudzewicz*,

Since State 1 can directly exercise personal jurisdiction over H, it is considered a “one-state” proceeding rather than a true UIFSA “two state” proceeding.⁴² Even in a “one-state” proceeding, however, UIFSA requires State 1 to use innovative rules of evidence and discovery to streamline procedures when one of the litigants is a nonresident.⁴³

Finally, the hypothetical provides that W seeks relief in State 1. Even though W can establish personal jurisdiction over H in State 1, she has alternatives to proceeding in this manner. She could either file an action for child and spousal support directly in State 2⁴⁴ or “initiate a two-state action under the succeeding provisions of UIFSA seeking to establish a support order in the respondent’s state of residence.”⁴⁵ In the latter case, W

471 U.S. 462, 472 (1985) (stating that due process requires that individuals have “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign”) (citation omitted); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984).

⁴² The official comment to UIFSA § 201 provides:

In situations in which the long-arm statute can be satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the long-arm statute to obtain personal jurisdiction over the respondent; or (2) initiate a two-state action under the succeeding provisions of UIFSA seeking to establish a support order in the respondent’s state of residence.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt. The drafters favored a one-state proceeding whenever possible. *Id.* (“The frequency of a two-state procedure involving the participation of tribunals in both states should be substantially reduced by the introduction of this long-arm statute.”).

⁴³ *See id.* §§ 202; 316, 318. In order to facilitate the gathering of information, traditional hearsay, authentication, and “best evidence” rules are greatly relaxed. *Id.* at § 316(b)-(e). Certified copies of records and bills are admissible to establish that payments were made as well as the reasonableness of charges. *Id.* § 316 (c)-(d). Out-of-state witnesses may testify by telephone from a designated location or tribunal within that state. *Id.* § 316(f). Certain testimonial privileges are inapplicable. For example, adverse inferences may be drawn if a party refuses to answer on the grounds of self-incrimination. *Id.* § 316(g). The spousal communication privilege and immunity defense are also not applicable. *Id.* § 316 (h)-(i). Moreover, the State 1 tribunal may request a State 2 tribunal to compel NCP to respond to a State 1 discovery order. *Id.* § 318(2).

⁴⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT § 103 cmt. (“[A] petitioner may decide to file an original action for child support ... directly in the state of residence of the respondent and proceed under that forum’s generally applicable support law. In so doing, the petitioner thereby submits to the personal jurisdiction of the forum and foregoes reliance on UIFSA.”); *see Sampson, supra* note 12, at 111 n.39 (noting that although this alternative entails expense of hiring private counsel and possible disadvantageous application of State 2’s laws, it may provide most expedient method of resolving dispute). Depending on State 2’s domiciliary requirements for divorce jurisdiction, W might also file for divorce in State 2. *See infra* note 50.

⁴⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt.; *id.* § 401(a) (“If a support order entitled to recognition under this [Act] has not been issued, a responding tri-

would follow the two-state procedure outlined in Case 4(a) below⁴⁶ and simply seek to establish, rather than enforce, a support obligation.

An interesting choice-of-law issue arises since W/CP has three alternatives: (1) filing in State 1; (2) filing in State 2; or (3) initiating a UIFSA proceeding in State 1 to be forwarded to State 2.⁴⁷ UIFSA provides a clear solution to this problem. If the case is filed in State 1, then the law of State 1 applies. If the case is filed in or forwarded to State 2, then the law of State 2 applies.⁴⁸ Competent counsel, therefore, should ascertain the law of both State 1 and State 2 to determine which state's law is more favorable to the client before filing suit.⁴⁹

Case 1(b): CP and C move out of marital state. H, W, and C reside in State 1 during the marriage of five years. H and W separate. W/CP and C move to State 2 and satisfy State 2's domiciliary requirement for divorce jurisdiction. W/CP seeks divorce, child support, and spousal support in State 2.

W may obtain a dissolution of marriage in State 2 since she

bunal of this State may issue a support order if: (1) the individual seeking the order resides in another state; or (2) the support enforcement agency seeking the order is located in another state"). For a modified example of such a two-state establishment proceeding under URESA, see *Kansas v. Briggs*, 925 S.W.2d 892 (Mo. Ct. App. 1996).

⁴⁶ See *infra* notes 103-53 and accompanying text; see also *supra* note 12 (describing procedures necessary to initiate "two-state" action).

⁴⁷ See *infra* notes 98-153 and accompanying text.

⁴⁸ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 202 (providing that, except for special evidence and discovery rules, state's "tribunal shall apply the procedural and substantive law of this State" when exercising jurisdiction over nonresident pursuant to UIFSA's long-arm section); *id.* § 303 ("[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 (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State."); see also Sampson, *supra* note 12, at 144 n.112 (stating that in two-state establishment proceeding, "local law rather than the law of the initiating state applies").

⁴⁹ For example, on exactly the same facts, the application of State 1's child support guidelines could result in a significantly higher or lower child support obligation than the application of State 2's guidelines. See *Elortegui v. Elortegui*, 616 So. 2d 69, 70 (Fla. Dist. Ct. App. 1993) (applying law of issuing state, rather than law of obligor's new state of residence, and enforcing award of support to adult child enrolled as full-time student); *In re Marriage of Abel*, 886 P.2d 1139, 1140-41 (Wash. Ct. App. 1995) (noting that Washington and Montana child support worksheets yielded monthly obligations of \$563.16 and \$340.01, respectively; forum state applied its own guidelines); see also Melli, *supra* note 2, at 486 (noting that applicable law in two-state proceeding is usually law of parent's state while one-state proceedings generally are governed by law of state in which child resides).

has met the domiciliary requirements necessary for State 2 to exercise divorce jurisdiction.⁵⁰ There is no basis, however, without additional facts, for State 2 to exercise personal jurisdiction over H.⁵¹ Therefore, W must either file for a divorce and support in State 1 or file a two-state proceeding for support in State 2 which is forwarded to State 1.⁵²

Case 1(c): Variation on facts to test UIFSA's personal jurisdiction provisions. H and W live in State 1 and C1 is born in State 1 in 1994. H, W, and C1 move to State 2 in January, 1995 and C2 is born in State 2 in July, 1995. C3 is born in State 2 in 1996. W and all three C return to State 1 where W seeks a divorce and child support for all three C. H remains outside State 1. The question then arises as to whether State 1 may exercise personal jurisdiction over H to order support for all three children.

Case 1(c) is a modification of the facts of *Abu-Dalbouh v. Abu-Dalbouh*,⁵³ a recent Minnesota case decided under UIFSA. On the facts of Case 1(c), State 1 has jurisdiction to order H to pay support for C1 because H and C1 resided in the same household within State 1.⁵⁴ State 1 may also have jurisdiction to order H to pay support for C2 if H resided in State 1 and provided prenatal expenses or support for C2⁵⁵ or if C2 may have been conceived in State 1.⁵⁶

⁵⁰ Most states require a spouse to have been domiciled, or to have resided in, the state for a prescribed time period before the state's courts can take jurisdiction of a petition for dissolution of marriage. CLARK, *supra* note 12, at 413; *see, e.g.*, N.Y. DOM. REL. LAW § 230 (McKinney 1996) (one or two years); OKLA. STAT. ANN. tit. 43, § 102 (West 1996) (six months). In this and all remaining hypotheticals, it is assumed that a party seeking a divorce in a given state has lived in that state long enough to satisfy the domiciliary requirement.

⁵¹ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 201.

⁵² *Id.* § 401(a); *see, e.g.*, *Deltoro v. McMullen*, 471 S.E.2d 742 (S.C. Ct. App. 1996); *Hubanks v. Hubanks*, 555 N.W.2d 647 (Wis. Ct. App. 1996). For a description of two-state enforcement proceedings, *see infra* notes 101-57 and accompanying text.

⁵³ 547 N.W.2d 700 (Minn. Ct. App. 1996). In *Abu-Dalbouh*, the court awarded child support only for the oldest of three children. *Id.* at 705. The oldest child was conceived, born, and resided in Minnesota with both parents. *Id.* The two youngest children were born in Jordan and had never resided with their father in Minnesota. *Id.* at 702. The court reasoned that since none of the factors enumerated in UIFSA § 201 applied to the younger children, support could be awarded only for the oldest child. *Id.* at 705.

⁵⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT § 201(3).

⁵⁵ *Id.* § 201(4).

⁵⁶ *Id.* § 201(6).

State 1 may not, however, possess the necessary jurisdiction over H to order H to provide support for C3. The court in *Abu-Dalbouh* ordered H to pay child support for C1, but not for C2 or C3.⁵⁷ The *Abu-Dalbouh* court may have been too conservative in exercising its jurisdiction since the bifurcation of the father's support obligation of his three children may not be required by either UIFSA or the Constitution.

The language of UIFSA section 201 does not neatly encompass this hypothetical; it speaks of one "child," not a spillover jurisdictional sweep covering the support of all siblings when the jurisdictional prerequisite for a single child is met.⁵⁸ Yet, the policy behind section 201 is "to give the tribunals in the home state of the supported family the maximum possible opportunity to secure personal jurisdiction over an absent respondent."⁵⁹ Accordingly, section 201 includes a "catch-all" provision which allows the court to exercise personal jurisdiction over a nonresident individual to the maximum extent allowed by the Constitution.⁶⁰

Thus, the question remains whether State 1 can constitutionally exercise personal jurisdiction over H to order child support for C3 when jurisdiction over H to order child support for C1 and, most likely, C2 already exists. C3 is H's child and is part of the same family that H resided with in State 1 prior to the birth of C3. It is foreseeable, therefore, that H may someday be subject to an adjudication in State 1 of his support obligations to his family.⁶¹ H is already subject to State 1's jurisdiction for some of the support obligations, so the added inconvenience of litigating the C3 obligation in State 1 is minimal and evidence regarding

⁵⁷ *Abu-Dalbouh*, 547 N.W.2d at 705. Unlike the hypothetical Case 1(c), the facts of *Abu-Dalbouh* did not permit the possible imputation to F of sexual intercourse conceiving C2 in State 1.

⁵⁸ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 201.

⁵⁹ *Id.*, prefatory note.

⁶⁰ *Id.* § 201(8).

⁶¹ Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [the] "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum ... and the litigation results from alleged injuries that 'arise out of or relate to' those activities.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) (citations omitted); cf. Bjordahl v. Bjordahl, 308 N.W.2d 817, 819 (Minn. 1981) (suggesting, but not deciding, that non-support could constitute an "[a]ct outside the state causing injury or damage within the state" thus subjecting non-paying spouse to state's long-arm jurisdiction).

H's income will already be before the court.⁶² State 1, where W and her children reside, has an interest in providing a forum where W may obtain the maximum amount of child support.⁶³ Thus, as with the discussion of spousal support jurisdiction above, State 1's exercise of personal jurisdiction over H to decide the spectrum of support obligations appears well within the limits of due process.

Case 2. Competing petitions for support filed in two different states.

Case 2(a): Child support sought and the child has a "home state." H, W, and C reside in State 1 during the marriage of five years. H and W separate. H moves to State 2, where he resides for State 2's requisite domiciliary period, and then files a divorce petition seeking child custody and child support. W files a timely motion to dismiss H's petition for lack of jurisdiction and files her own divorce petition in State 1, seeking child custody and child support.

The first question raised by this hypothetical is whether State 1 can assume jurisdiction of W's petition, even though H filed his petition first. UIFSA section 204(a) provides that it can.⁶⁴ State 1 can assume jurisdiction since W filed her petition in State 1 before the time to respond to the State 2 petition expired, she challenged jurisdiction in State 2 within the necessary

⁶² See *Burnham v. Superior Court*, 495 U.S. 604, 638-39 (1990) (Brennan, J., concurring) (discussing factor of inconvenience to defendant).

⁶³ See *Burger King*, 471 U.S. at 473 ("A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.") (citations omitted).

⁶⁴ UIFSA § 204(a) provides:

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.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 204(a). This provision significantly changes the law under RURESA, which prohibited the responding state from staying the proceeding even if there was a pending divorce action in another state. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 30, 9B U.L.A. 529 (1987).

time period, and State 1 is the child's "home state."⁶⁵ In accord with the PKPA, the official UIFSA commentary states that the child's home state has priority as the governing forum:⁶⁶

In this regard, UIFSA marks a significant departure from the approach adopted by UCCJA, which chooses "first filing" as the method for resolving competing jurisdictional disputes. In the analogous situation, the federal PKPA chooses the home state of the child to establish priority. Given the preemptive nature of the PKPA and the likelihood that both custody and support are involved in most cases, UIFSA opts for the federal method of resolving disputes between competing jurisdictional assertions by establishing a priority for the tribunal in the child's home state. If there is no home state, "first filing" controls.⁶⁷

Thus, if one state is the child's "home state," UIFSA provides a simple, although not entirely satisfactory, answer to the jurisdictional dispute. UIFSA's drafters believed that the PKPA would give State 1, C's home state, jurisdictional priority over the custody dispute.⁶⁸ They intended the child support issue to be heard with the custody issue, "which would be an efficient use of resources."⁶⁹ Strictly following UIFSA section 204(b), the

⁶⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(4) defines "Home state" of child as:

the state in which a child lived with a parent or a person acting as parent for at least six consecutive months 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.

Id. § 101(4). Custody practitioners and others will recognize this as essentially the definition of the child's "home state" contained in UCCJA § 2(5), 9 U.L.A. pt. I, 133 (1988), and the PKPA. 28 U.S.C. § 1738A(b)(4) (1994).

⁶⁶ See 28 U.S.C. § 1738A(c)(2)(A) (1994). The goals of this section include: (1) establishing national standards for courts to determine jurisdiction in child custody disputes, see Parental Kidnapping Prevention Act of 1980, Pub. L. 96-611, § 7(b) (congressional statement of purpose); (2) discouraging forum shopping, see *Tufares v. Wright*, 644 P.2d 522, 525 (N.M. 1982); and (3) preventing the issuance of inconsistent judicial decrees, see *Nielsen v. Nielsen*, 472 So. 2d 133, 136 (La. Ct. App. 1985); *Holm v. Smilowitz*, 615 N.E.2d 1047, 1054 (Ohio Ct. App. 1992).

⁶⁷ UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt.; see also BLUEPRINT FOR REFORM, *supra* note 1, at 87-88.

⁶⁸ See *Atkins v. Atkins*, 823 S.W.2d 816, 819 (Ark. 1992) (concluding that home state jurisdiction preempted sister state with significant connection). *But see* *Lustig v. Lustig*, No. C4-96-940 1996 WL 679693 (Minn. Ct. App. Nov. 26, 1996); Goldstein, *supra* note 24, at 925 ("Although courts routinely enforce initial decrees made by courts with home state jurisdiction, they occasionally refuse to do so.").

⁶⁹ BLUEPRINT FOR REFORM, *supra* note 1, at 88.

State 2 court should grant W's motion to the extent that H seeks a support order.⁷⁰

The drafters incorrectly assumed that the court of the child's home state would always exercise custody jurisdiction. In a case similar to Case 2(a), a South Dakota court declined to exercise custody jurisdiction even though South Dakota was the child's home state and H, a South Dakota resident, had filed his divorce petition first.⁷¹ The court remanded the case for findings on support jurisdiction.⁷² If UIFSA section 204 is strictly construed on remand, South Dakota will have jurisdiction of the support issues. Thus, the burgeoning UIFSA case law has already produced a case in which UIFSA may cause, rather than prevent, the bifurcation of custody and support issues.⁷³

Case 2(b): Child support sought and the child has no "home state." H, W, and C reside in State 1 for two months, then reside in State 2 for one month. H and W separate. H moves back to State 1, where he files a divorce petition seeking spousal support, custody, and child support. Within the time limit for contesting State 1's jurisdiction, W files a motion to dismiss H's petition for lack of jurisdiction and files her own divorce petition in State 2, seeking spousal support, custody, and child support.

Case 2(c): Only spousal support sought. During their marriage, H and W reside for five years in State 1 and then move to State 2 for a year. H and W separate. H returns to State 1, where he files a divorce petition seeking spousal support. W files a timely motion to dismiss H's petition for lack of jurisdiction and files her own divorce petition in State 2, seeking spousal support.

In Case 2(b), there is no home state of the child.⁷⁴ In Case

⁷⁰ Since UIFSA does not affect State 2's jurisdiction to dissolve a marriage, UIFSA does not dictate that State 2 grant W's motion to dismiss the entire action because H seeks a divorce decree as well as support. As a matter of comity and judicial economy, however, State 2 should dismiss H's entire petition to avoid bifurcated proceedings since State 2 is required to dismiss H's petition for support.

⁷¹ *Lustig*, 1996 WL 679693 at * 2-3.

⁷² *Id.* at *3.

⁷³ See *infra* notes 314-19 and accompanying text (proposing amendments to UIFSA § 204 which rectify potential bifurcation problems).

⁷⁴ If a child has not "lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of" the support petition, there is no "home state." UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(4); *cf.* *St. Andrie v. St. Andrie*, 473 So. 2d 140, 144 (La. Ct. App. 1985) (holding that child lacked "home state" under UCCJA where child spent 3-1/2 months in Georgia and 2-

2(c), there is no child at all; only spousal support is sought.

While UIFSA section 204 clearly prioritizes competing petitions where child support is sought for a child with a home state, it operates somewhat ambiguously where there is no home state or, indeed, no child. Under section 204(a), a court may take jurisdiction of a second-filed support proceeding if certain time limits are met⁷⁵ and “if relevant, [the state in which the second-filed support proceeding commenced] is the home state of the child.”⁷⁶

The clause “if relevant” creates unnecessary confusion. Does the phrase mean if there is no child’s home state (or no child), this factor is not “relevant” and, therefore, need not be met? Under this interpretation, the only requirements for the court to assume jurisdiction would be the satisfaction of mere filing time limits. Simply challenging the first petition and filing the second petition on time cannot be sufficient conditions to allow the second-filed court to proceed in favor of the first. Such a statutory construction would operate as an absolute “second-filed” priority and would contain no more, and possibly less, merit than an automatic “first-filed” rule.

Another possible construction of section 204(a)(3) is that the state of the second-filed proceeding *must* be the home state of *some* child to trump the first-filed state’s jurisdiction. Under this interpretation, if there is no home state, or no child, then the first-filed state would have priority. Such a reading, however, renders the words “if relevant” superfluous. The same result could be reached by amending section 204(a)(3) to provide that the second-filed state “is the home state of a child for whom child support is sought.”⁷⁷

Despite this possible drafting error, UIFSA’s official commentary clearly supports the latter suggested construction. The commentary flatly states that “[i]f there is no home state, ‘first filing’ controls,” and suggests that this is “the approach adopted by UCCJA.”⁷⁸ In general, that statement is true: under UCCJA,

1/2 months in Louisiana).

⁷⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 204(a)(1)-(2). These time limits are assumed to be met in this hypothetical.

⁷⁶ *Id.* § 204(a)(3) (emphasis added).

⁷⁷ See *infra* Part II(A) and Appendix (proposing clarifications to this section).

⁷⁸ UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt. The members of USCICS shared this view. See BLUEPRINT FOR REFORM, *supra* note 1, at 88 (“[T]he defendant may only claim the child’s home state as an alternative to the state asserting juris-

a State 2 court should not exercise custody jurisdiction if a custody proceeding is already pending in State 1.⁷⁹ The UCCJA, however, contains several exceptions to this general rule which are not contained in UIFSA. For example, under UCCJA, the court addressing the first-filed petition may decline to exercise jurisdiction "any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum."⁸⁰ In addition, the court addressing the first-filed petition may decline to exercise jurisdiction "[i]f the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct."⁸¹

Under the UCCJA, even if State 1 determined that it had child custody jurisdiction,⁸² it could decline to exercise jurisdiction because the child currently resides in State 2.⁸³ Despite the commentary's claim that UIFSA section 204 is "similar to Section 6 of the [UCCJA],"⁸⁴ the language of UIFSA section 204 does not appear to afford similar discretionary power to decline ju-

diction.").

⁷⁹ UNIF. CHILD CUSTODY JURISDICTION ACT § 6(a), 9 U.L.A. pt. I, 219-20 (1988). *But see* Goldstein, *supra* note 24, at 888-93 (suggesting that some courts do not defer to pending custody proceedings in another state despite UCCJA section 6).

⁸⁰ UNIF. CHILD CUSTODY JURISDICTION ACT § 7(a), 9 U.L.A. pt. I, 233 (1988). UCCJA section 7(c) lists certain factors the court may consider in "determining if it is an inconvenient forum." These factors include: whether another state recently constituted the child's "home state"; whether an alternative state has greater interest in child's welfare; availability of evidence; and the parties' choice of alternative forum. *Id.* § 7(c), 9 U.L.A. pt. I, 233.

⁸¹ *Id.* § 8(a), 9 U.L.A. pt. I, 251.

⁸² State 1 could conceivably assert custody jurisdiction under the "significant connection" jurisdiction of UCCJA § 3(a)(2):

[I]t is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships.

UNIF. CHILD CUSTODY JURISDICTION ACT § 3(a)(2), 9 U.L.A. pt. I, 143.

⁸³ *See id.* § 7(a), 9 U.L.A. pt. I, 233; *id.* § 7(c), 9 U.L.A. pt. I, 233. The PKPA also does not adopt an inflexible "first filed" rule in the absence of a child's home state. *See* 28 U.S.C. § 1738A(c) (1994) (giving jurisdictional priority to state with "significant connections" to child when there is no home state).

⁸⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt. (amended 1996); *see also* Robert E. Oliphant, *Is Sweeping Change Possible? Minnesota Adopts the Uniform Interstate Family Support Act*, 21 WM. MITCHELL L. REV. 989, 1014-15 (1996) (noting that, unlike PKPA, privilege of declining jurisdiction is not contained within UIFSA).

risdiction. UIFSA's drafters clearly intended to have a single court decide child support and child custody issues together.⁸⁵ That intention is thwarted if UIFSA does not allow State 1 the same flexibility as UCCJA to decline jurisdiction. The commentary hints at such flexibility:

[The one-order system] requires cooperation between, and deference by, sister-state tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in other states concerning the same child. Depending on the circumstances, one or the other of two tribunals considering the same support obligation should decide to defer to the other.⁸⁶

Thus, in Case 2(b), if the State 1 court decided under UCCJA sections 6 and 7 that custody proceedings should be stayed in favor of the second-filed proceeding in State 2, then, despite the potentially contrary language of UIFSA section 204(a)(3),⁸⁷ the child support request should follow the custody request to State 2. If the State 1 court chooses to exercise custody jurisdiction, then the support issue should remain with the custody issue in State 1.

The drafters failed to enunciate policy considerations to guide the court in applying UIFSA section 204(a) where, as in Case 2(c), only spousal support is sought. The drafters apparently crafted UIFSA's rules concerning simultaneous proceedings in two states with child support, not spousal support, in mind.

⁸⁵ See BLUEPRINT FOR REFORM, *supra* note 1, at 88 (asserting that adjudicating child support and custody issues in same forum promotes efficient use of judicial resources); Sampson, *supra* note 12, at 119 n.63 ("Bifurcated decisions are interesting for law school hypotheticals, but should be avoided in real life at almost any cost"); see also Chauncey Brummer, *Statutory Primer: The Uniform Interstate Family Support Act*, 1994 ARK. L. NOTES 77, 80 (1994) ("UIFSA enhances the likelihood that both child support and child custody will be brought before the same court.").

⁸⁶ UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt.; see also Brummer, *supra* note 85, at 80 ("This approach necessitates cooperation among the states in furnishing information relevant to child support and proceedings which may be pending in their respective states."). Moreover, UIFSA section 317, which authorizes communications between tribunals of different states to ascertain the status of a proceeding in another state, was "derived from UCCJA § 7(d) (Inconvenient Forum)." UNIF. INTERSTATE FAMILY SUPPORT ACT § 317 cmt. This suggests that UIFSA's drafters may have envisioned a similar "inconvenient forum" determination for competing support proceedings.

⁸⁷ See *infra* Part II(A) and Appendix (proposing amendments to prevent such bifurcated proceedings).

First, to conform with the federal PKPA, they chose the child's "home state" as the forum of priority.⁸⁸ Second, in the absence of a home state, the drafters of UIFSA chose the "first filed" forum as the forum of priority to conform with UCCJA.⁸⁹ The rationale underlying these rules, keeping custody and child support decisions in a single forum, is irrelevant where only spousal support is sought.

When the parties seek only spousal support, section 204 thus provides a black-letter, first-filed rule which lacks an apparent policy rationale (besides the unexpressed rationale that even a bad clear rule at least reduces litigation expense and uncertainty).⁹⁰ In Case 2(c), if State 1 decides it has personal jurisdiction over W, then UIFSA section 204(a) probably prevents State 2 from exercising jurisdiction over W's second-filed support proceeding. Normally, this may not make much sense, but dueling petitions for spousal support alone appear to be rare.⁹¹

⁸⁸ "Given the preemptive nature of the PKPA, and the possibility that custody and support are both involved in the case, UIFSA opts for the federal method of resolving disputes between competing jurisdictional assertions by establishing a priority for the tribunal in the child's home state." UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt. "To the extent [they] conflict, the PKPA preempts the UCCJA." Linda D. Elrod, *Summary of the Year in Family Law*, 27 FAM. L.Q. 485, 501 (1994). "PKPA, which preempts UCCJA under the Supremacy Clause, provides that if a 'home state' exists, a state assessing enforcement need not consider whether another state has a 'significant connection' to the child." Fielding, *supra* note 12, at 432. "PKPA supersedes UCCJA and favors the child's home state in determining the jurisdiction of a child custody dispute." *Id.* at 433; *see Atkins v. Atkins*, 823 S.W.2d 816, 819 (Ark. 1992) (holding that PKPA preempts UCCJA) (citing *Norsworthy v. Norsworthy*, 713 S.W.2d 451 (Ark. 1986)); *Michalik v. Michalik*, 494 N.W.2d 391, 394 (Wis. 1993) (holding that PKPA preempts UCCJA to extent they conflict).

⁸⁹ "If the child has no home state, 'first filing' controls." UNIF. INTERSTATE FAMILY SUPPORT ACT §204 cmt. "Section 204 of UIFSA contains provisions similar to those in the UCCJA. UCCJA provides a 'first filing' method for resolving problems of competing jurisdictions." Fielding, *supra* note 12, at 458 (footnote omitted). "Rather than applying a 'first filing' approach, such as that used by the Uniform Child Custody Jurisdiction Act, to resolve jurisdictional disputes, UIFSA establishes priority for the tribunal in the child's home state." Oliphant, *supra* note 84, at 1030. "Only if there is no home state does 'first filing' control." *Id.*

⁹⁰ *Cf.* FRIEDRICH A. HAYEK, 2 LAW, LEGISLATION AND LIBERTY: THE MIRAGE OF SOCIAL JUSTICE 29 (1976) ("Where, as is the case with law, some of the rules of conduct are deliberately laid down by authority, they will thus perform their function only if they become the basis of the planning of the individuals."); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1179 (1978) (stating that, to foster predictability, "[t]here are times when even a bad rule is better than no rule at all").

⁹¹ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(f) (stating that court issuing spousal support order has continuing, exclusive jurisdiction over that order); *cf.*

Case 3. Establishing a child support order where the parents have never been married and they reside in two states. F, M, and C reside in State 1. F and M are not married. F moves to State 2. How can M establish a support order against F?

Since the parents were never married, a judicial finding of F's parentage is a prerequisite to the establishment of a support obligation.⁹² Once parentage is established, M can either file a "one-state" proceeding in State 1⁹³ or initiate a "two-state" UIFSA proceeding in State 1, which will be forwarded to State 2, the responding state.⁹⁴

If M files a "one-state" proceeding in State 1, State 1 will have personal jurisdiction over F under either subsection (3) or subsection (4) of UIFSA section 201. State 1 will apply its own procedural and substantive law to determine F's parentage and the resulting child support obligation.⁹⁵ This option should be

Sampson, *supra* note 12, at 121 n.69 ("The avoidance of interstate modification of alimony decrees reflects, at least in part, the disinterest in the topic of the Drafting Committee and its co-reporters, advisors and observers. Throughout the revision process the focus of all concerned was almost entirely on child support.").

⁹² See UNIF. INTERSTATE FAMILY SUPPORT ACT § 201. Such a finding is not necessary in a divorce proceeding since the husband is presumed to be the father of any children of the marriage. See UNIF. PARENTAGE ACT § 4, 9B U.L.A. 298 (1987); *State ex rel. Clanton v. Clanton*, No. A-95-361, 1996 WL 456037, at *6 (Neb. Ct. App. Aug. 13, 1996) ("The legitimacy of all children conceived before the commencement of the dissolution of marriage suit shall be presumed until the contrary is shown."); see also *Pierce v. Pierce*, 374 N.W.2d 450, 451 (Minn. Ct. App. 1985) (discussing statutory presumption that husband was natural father under Uniform Parentage Act); *Williams v. Milliken*, 506 A.2d 918, 924-25 (Pa. Super. 1996) (discussing presumption that husband is natural father of child).

⁹³ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt.; see *supra* notes 42-43 and accompanying text.

⁹⁴ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 701(a) (providing guidelines for proceedings to determine parentage); see also *Davis v. Child Support Enforcement Unit*, 933 S.W.2d 798, 798 (Ark. 1996) (reviewing case where Minnesota mother properly filed paternity and support petition in Minnesota court which forwarded it to Arkansas court for hearing); *Neville v. Perry*, 648 N.Y.S.2d 508, 509 (Fam. Ct. 1996) (Texas Attorney General initiated paternity action and then forwarded petition to New York for hearing). In addition, UIFSA:

permits the direct filing of an interstate action in the responding state without an initial filing in an initiating tribunal. Thus ... a petitioner in one state may seek to establish a support order in a second state by either filing in the responding state's tribunal or by directly seeking the assistance of the support enforcement agency in the second state.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 101 cmt., 9 U.L.A. pt. I, at 265.

⁹⁵ At some point, enforcement of the support obligation obtained in State 1 may be necessary in State 2, the state where F resides. See BLUEPRINT FOR REFORM, *supra* note 1, at 36 ("A support order obtained through the assertion of a long-arm statute must still be enforced in the state in which the absent party resides."); see

more advantageous to M since State 1, where M resides, will retain continuing, exclusive jurisdiction over the order.⁹⁶ Litigation in M's state of residence probably enhances her ability to retain private counsel and eases the prosecutorial logistics.⁹⁷

If M chooses to file a "two-state" UIFSA proceeding,⁹⁸ State 1 will be the initiating state and will forward the necessary documents to State 2, the responding state.⁹⁹ The State 2 court will apply State 2's procedural and substantive law, including rules on choice of law, to determine F's parentage¹⁰⁰ and the resulting

also Brummer, *supra* note 85, at 79 ("Non-residents subject to jurisdiction under the Act's one-state (long arm) provision are covered by this state's substantive and procedural law governing the enforcement of child support."). For hypotheticals addressing enforcement, see Cases 4-6 *infra*.

⁹⁶ Brummer, *supra* note 85, at 81 (discussing application of UIFSA and benefits of utilizing "one-state" proceeding). "Section 205 of UIFSA provides that a state tribunal which issues a support order retains jurisdiction over that order while that state is the residence of the obligor, obligee, or child who will benefit from the support order." Fielding, *supra* note 12, at 459. Section 205 can serve to discourage forum shopping by preventing the obligor from avoiding his support obligation by moving to another state and forcing the obligee to incur the expense of litigating in another state. *Id.* at 459-460.

⁹⁷ UIFSA's drafters preferred the one-state proceeding where possible. See Brummer, *supra* note 85, at 78 ("To the extent UIFSA broadens the basis for exercising personal jurisdiction in a single state, there is the opportunity to avoid the many uncertainties and extensive delay in the two-step (two-state) procedure."); *supra* note 42.

⁹⁸ For a more extensive discussion of two-state proceedings, see Case 4(a), *infra* notes 101-53 and accompanying text.

⁹⁹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 701(a) (amended 1996); see State *ex rel.* Clanton v. Clanton, No. A-95-361, 1996 WL 456037 (Neb. Ct. App. Aug. 13, 1996) (forwarding petition to State 2 in case decided under RURESAs where F moved to State 2, M moved to State 3, and M filed RURESAs petition in State 3 seeking to establish paternity and support obligation). "The authorized court in the initiating state is referred to as the initiating tribunal, and its responsibility is to forward copies of the petition and its accompanying documents to the responding state and the responding tribunal or appropriate support enforcement agency in the responding state." Brummer, *supra* note 85, at 78.

¹⁰⁰ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 701(b) ("In a proceeding to determine parentage, a responding tribunal of this State shall apply the [Uniform Parentage Act; procedural and substantive law of this State,] and the rules of this State on choice of law."). The differences in the laws and procedures of State 1 and State 2 regarding the determination of parentage may be substantial. See BLUEPRINT FOR REFORM, *supra* note 1, at 121.

M or F may also use UIFSA simply to determine parentage without seeking a support order. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 701(a). *But see* OCSE HANDBOOK, *supra* note 28, at 3-EP-1 (stating that, in interstate IV-D cases under UIFSA, child support orders should be sought since "the initiating State cannot pick and choose the services to be provided by the responding State" and that "it remains the responsibility of the responding State to provide the full range of appropriate services."). Title IV of the Social Security Act requires states "as a condition of re-

child support obligation.¹⁰¹

B. Cases 4-6: Enforcement and Modification of an Existing Support Order.

The remaining cases assume that the initial support order has been established. When a party seeks to enforce or modify that order, the federal FFCCSOA, as well as UIFSA, must be considered.

Case 4. Divorce in State 1, NCP moves to State 2.¹⁰²

Case 4(a): CP seeks enforcement. H and W are divorced in State 1. State 1 orders H, the NCP, to pay child support and alimony to W, the CP. H/NCP moves to State 2 and stops paying child support and alimony.

UIFSA offers four alternatives that enable W to enforce the State 1 support order without hiring an attorney in State 2: (1) the two-state enforcement procedure;¹⁰³ (2) direct recognition of an income-withholding order by NCP's employer in State 2;¹⁰⁴ (3)

ceiving federal AFDC funding, to provide free child support enforcement services to both AFDC recipients and other custodial parents." Kathleen A. Burdette, Comment, *Making Parents Pay: Interstate Child Support Enforcement After United States v. Lopez*, 144 U. PA. L. REV. 1469, 1473 (1996). "A custodial parent in a low- or middle-income family may seek assistance through his or her local child support enforcement agency. The agency may enforce the collection of support under Title IV-D of the Social Security Act Title IV-D authorizes funding for the agency to locate absent parents, establish paternity, and obtain child and spousal support." Sharon A. Drew, *Remedies for Nonpayment*, 16 FAM. ADVOC. 36, 36 (1993).

¹⁰¹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 401. UIFSA section 401 "authorizes a tribunal of the responding state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction." *Id.* § 401 cmt. The Arkansas Supreme Court has held that the establishment of paternity in an interstate proceeding based on the affidavits of the mother and a blood-test expert did not violate the father's Sixth Amendment right of confrontation when the father failed to utilize UIFSA section 316(f) to obtain the mother's testimony by telephone. *Davis v. Child Support Enforcement Unit*, 933 S.W.2d 798, 799-800 (Ark. 1996).

¹⁰² In this and the following hypotheticals unless otherwise noted, it is assumed that NCP is the only party ordered to pay child support.

¹⁰³ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 301 cmt. (stating that two-state enforcement proceeding contemplated in UIFSA section 301 is derived from two-state procedure of RURESA); Brummer, *supra* note 85, at 78 ("When there exists no basis for exercising personal jurisdiction over a non-resident obligor the Act [UIFSA] resorts to the RURESA model using an initiating state and a responding state."); see also *infra* notes 108-43 and accompanying text.

¹⁰⁴ See UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 501-506. A court in the responding state that has personal jurisdiction over the obligor may "order income withholding, determine the amount of arrearage and methods of payment, cite an

filing a UIFSA action directly in State 2,¹⁰⁵ with the help of State 2's IV-D agency if requested;¹⁰⁶ or (4) administrative enforcement of the order by State 2's IV-D agency.¹⁰⁷

If W chooses the two-state enforcement procedure, she must register the State 1 order in State 2 for enforcement.¹⁰⁸ In order to register the State 1 order, W must contact either State 1's IV-D agency¹⁰⁹ or a private attorney¹¹⁰ and complete the necessary

uncooperative party for civil or criminal contempt, set aside property for the satisfaction of support, place liens, and order execution against the obligor's property." Brummer, *supra* note 85, at 78; see also *infra* notes 134-43 and accompanying text.

¹⁰⁵ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 301(c) ("An individual [petitioner] or a support enforcement agency may commence a proceeding authorized under this [Act] by filing a [petition] in an initiating tribunal for forwarding to a responding tribunal or by filing a [petition] or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the [respondent].").

¹⁰⁶ See *id.* § 307(a) ("A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act]."); Sampson, *supra* note 12, at 107 n.28 (comparing procedure under URESA to UIFSA procedure and stating that, under UIFSA, "many petitioners may choose to have a local tribunal and a particular governmental employee (or set of employees) who can respond to inquiries about the progress in the case. That choice is left to the individual."); see also *supra* note 28 (discussing assistance provided by IV-D agencies responsible for child support enforcement activities).

¹⁰⁷ (a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State. (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 507. UIFSA Section 507 "authorizes summary enforcement of an interstate child support order through any administrative means available for intrastate orders." *Id.* § 507 cmt.

¹⁰⁸ See UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 601, 602; see also *id.* § 601 cmt. ("Registration of that order in the responding state is the first step to enforcement by a tribunal of that state.").

¹⁰⁹ See *id.* § 307(a). This Article does not attempt to evaluate either the effectiveness or promptness of the state IV-D agencies, especially in light of budgetary and staffing constraints. For example, in March 1996, Oklahoma's IV-D agency, the Department of Human Services, handled approximately 4,000 UIFSA cases with a staff of six agency employees specifically assigned to handle UIFSA cases, a per-worker caseload of about 667 cases. Interview by Drew Houghton with Ronnie Bates, President of the Oklahoma Child Support Association (March 1996); see also *Child Support Enforcement, 1994: Hearings Before the U.S. Senate Subcomm. on Federal Services, Postal Serv. and Civil Serv. of the Senate Comm. on Gov't Affairs*, 103d Cong., 2d Sess. (1994) (providing testimony of Nancy Ebb and statement of Pat Addison). One commentator has argued that "[t]he two-state process under ... UIFSA is obviously cumbersome, time-consuming, and totally dependent upon an aggressive child support enforcement unit in the responding state." Brummer, *supra*

forms.¹¹¹ State 1 then becomes the "initiating state"¹¹² and the State 1 court or other forum authorized to accept such filings is the "initiating tribunal."¹¹³ The State 1 initiating tribunal then forwards the documents¹¹⁴ to the appropriate "responding tribunal"¹¹⁵ or "support enforcement agency"¹¹⁶ in State 2, the

note 85, at 78. The drafters of RURESA noted in 1968 that some state officials were not performing similar duties under URESA. REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT prefatory note, 9B U.L.A. 382 (1987); *see also* CLARK, *supra* note 12, at 285 ("[URESAs] efficiency depends in large part upon the willingness of the authorities in responding states to perform the obligations which the statutes impose upon them.").

¹¹⁰ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 309 ("An individual may employ private counsel to represent the individual in proceedings authorized by this [Act]."); David H. Levy & Cecelia A. Haynes, *Highlights of the Uniform Interstate Family Support Act*, 83 ILL. B.J. 647, 648 (1995) (stating that private attorney can apply to court to enforce order); Oliphant, *supra* note 84, at 1044 (asserting that UIFSA section 309 "recognizes the right of a person to employ private counsel to handle a dispute").

¹¹¹ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 602(a) (listing documentation that must be forwarded); *see also id.* § 311 (requiring verified pleading when petitioner seeks to establish or modify support order or establish parentage). Courts expect strict compliance with the requirements of section 602(a). *See* Allen v. Allen, No. A-95-1047, 1996 WL 547919 at *4 (Neb. Ct. App. Sept. 17, 1996) (vacating registration of support order for failure to supply "a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage" in accordance with UIFSA section 602(a)(3)).

¹¹² 'Initiating state' means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this [Act] or a law or procedure substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(7). The terms "initiating" and "responding" state were retained from URESA. *Id.* prefatory note (amended 1996).

¹¹³ UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(8) (" 'Initiating tribunal' means the authorized tribunal in an initiating state"). The drafters chose "tribunal" rather than "court" in order to encompass administrative proceedings. *Id.* prefatory note.

¹¹⁴ *See id.* § 304(a) (providing duties of issuing tribunal); *id.* § 602(a) (describing procedures to register order for enforcement). One copy of the order to be registered must be certified. *Id.* § 602(a)(2); *see also* Mathis v. State of Texas, 930 S.W.2d 203, 205-06 (Tex. Ct. App. 1996). The initiation of the proceeding is a ministerial task "rather than a matter of court adjudication or review." UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note; *id.* § 304 cmt.; *cf.* REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 14, 9B U.L.A. 450 (1988) (requiring initiating state to determine whether petition states facts from which it may be determined that respondent owes duty of support).

¹¹⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(17) ("Responding tribunal" means the authorized tribunal in a responding state."). It appears that the "responding tribunal" will be the same as the "registering tribunal." *See id.* § 101(15) (defining "registering tribunal" as "tribunal in which a support order is registered").

¹¹⁶ *Id.* § 101(20); *see* Brummer, *supra* note 85, at 78 (explaining that petition and

“responding state.”¹¹⁷ W’s petition and the State 1 order are then filed in the State 2 responding tribunal.¹¹⁸

Upon filing in State 2, the State 1 order is considered “registered.”¹¹⁹ Once this occurs, there is no defense to the registration per se of the State 1 order.¹²⁰ The registered State 1 order is “enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of” State 2,¹²¹ and State 2 must enforce the registered order unless NCP prevails on a permitted defense.¹²² A government attorney in State 2 appears on W’s behalf.¹²³

document may be forwarded to support enforcement agency).

¹¹⁷ ‘Responding state’ means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this [Act] or a law or procedure substantially similar to this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 101(16).

¹¹⁸ See *id.* § 305(a) (setting forth duties and powers of responding tribunal).

¹¹⁹ *Id.* § 603(a) (“A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this State.”). In addition, “the registering tribunal shall cause the order to be filed as a foreign judgment” *Id.* § 602(b).

¹²⁰ *Cowan v. Moreno*, 903 S.W.2d 119, 124 (Tex. Ct. App. 1995) (dismissing appeal for lack of jurisdiction since trial court order did not constitute final judgment on damages) (citing UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt., 9 U.L.A. pt. I, 307 (Supp. 1996)).

¹²¹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 603(b) (“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 this State.”). The drafters emphasized that, unlike the result under URESA where the registered State 1 order became a State 2 order, REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 40(a) (“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”), under UIFSA the State 1 order remains a State 1 order, enforced by State 2. UNIF. INTERSTATE FAMILY SUPPORT ACT § 603 cmt.; Sampson, *supra* note 12, at 152 n.128 (discussing UIFSA provision that allows State 2 to register and enforce State 1 child support order and noting that order remains order of State 1). The rules of evidence and procedure of State 2 apply, but they are supplemented or superseded by UIFSA. UNIF. INTERSTATE FAMILY SUPPORT ACT § 603 cmt. The order, however, remains a state order. *Id.* Case law confirms this analysis of the comment. See, e.g., *Kelly v. Otte*, 474 S.E.2d 131, 134 (N.C. Ct. App. 1996) (holding that law of forum state applies to foreign support orders), *review denied*, 479 S.E.2d 204 (N.C. 1996); *Price v. Price*, 435 S.E.2d 652, 658-59 (Va. Ct. App. 1993) (holding civil enforcement by State 2 valid).

¹²² UNIF. INTERSTATE FAMILY SUPPORT ACT § 603(c) (“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.”).

¹²³ See BLUEPRINT FOR REFORM, *supra* note 1, at 228-30 (describing similar process under URESA). UIFSA leaves unresolved the question of whether the gov-

After registering the State 1 order, the State 2 tribunal must notify H/NCP.¹²⁴ The notice served must include several important pieces of information, including the necessity of a request by NCP for a hearing to contest the validity or enforcement of the registered State 1 order within twenty days.¹²⁵ Should NCP request a hearing in State 2,¹²⁶ he may assert only those defenses enumerated in section 607,¹²⁷ which mirror defenses typical to

ernment attorney represents W in an attorney-client relationship. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 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."). Additional state law, however, may answer that question. See *Vanzant v. Purvis*, 927 S.W.2d 339, 342 (Ark. Ct. App. 1996) (noting that under Arkansas statute attorney for Arkansas Child Support Enforcement Unit does not represent 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) (asserting that while state attorneys represent state agency and not AFDC mother as matter of law, exceptions to this rule make certain information privileged).

¹²⁴ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 605(a). The notice must include a copy of the registered order and accompanying relevant documents. *Id.*

¹²⁵ *Id.* § 605(b)(2). If NCP does not request a hearing within twenty days of receipt of notice, he is precluded from "further contest of that order with respect to any matter that could have been asserted." *Id.* § 605(b)(3); see also *id.* § 606(a) (stating that non-registering party has twenty days to request hearing, vacate registration, assert defenses, or contest remedies sought). The official comment to UIFSA section 606 notes that "[a] contest of the fundamental provisions of the registered order is not permitted [in State 2]. [NCP] must return to the issuing state [State 1] to prosecute such a contest (obviously only as the law of that state permits)." UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt.

¹²⁶ Section 606(c) provides that if NCP requests a hearing, the State 2 tribunal shall schedule one and give notice of the hearing to NCP, CP, and any state support enforcement agency. UNIF. INTERSTATE FAMILY SUPPORT ACT § 606(c). UIFSA does not place a time limit on the scheduling of the hearing, noting in the official comment that "[a]t present, federal regulations govern the allowable time frames for contesting income withholding in IV-D cases. See 42 U.S.C.A. § 666(b) (West 1991)." The drafters of UIFSA cautioned that "[a]dditional, [sic] codification of the procedure process is unwise." UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt.

¹²⁷ See UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 606(a), 607. The defenses enumerated in section 607(a) include: lack of personal jurisdiction over the contesting party; fraudulently obtaining the order; modification, suspension or vacation of the order; a stay of the order pending appeal by the issuing tribunal; a defense under the laws of State 2 to the remedy sought; full or partial payment; and statutes of limitation. See *id.* § 607(a). NCP has the burden of proving his defense. *Id.* NCP's defenses are limited, however, because "[a] contest of the fundamental provisions of the registered order is not permitted" in State 2. *Id.* § 606 cmt. Therefore, NCP must return to State 1 to prosecute such a contest. *Id.*

NCP may not plead nonparentage as a defense if his parentage "has been previously determined by or pursuant to law," as would likely be the case if C was born during CP and NCP's marriage. See *id.* § 315. But see Sampson, *supra* note 12, at 139 n.102 (discussing situations where child or next friend of child could subse-

any judgment, such as lack of personal jurisdiction.¹²⁸ CP need not personally appear at the hearing contesting the validity or enforcement of the support order in State 2 in order to testify in support of the requested relief.¹²⁹ If NCP does not request a hearing within twenty days, or does not establish one of the enumerated defenses to the order, the State 1 support order is "confirmed."¹³⁰ Confirmation of a registered support order in State 2 "precludes further contest of the order with respect to any matter that could have been asserted at the time of registration."¹³¹

quently bring suit attacking paternity). This statutory limitation implies that NCP *could* plead nonparentage as a defense if the issue had not been previously determined. CP should not have obtained the original support order in State 1, however, without a finding of NCP's parentage. *See Villanueva v. Office of the Attorney Gen.*, 935 S.W.2d 953, 956-57 (Tex. Ct. App. 1996) (holding that Indiana court order referring to "child of the marriage" constituted paternity determination to be given full faith and credit by Texas courts).

Although the permitted defenses to the validity or enforcement of a registered order are "narrowly defined," UNIF. INTERSTATE FAMILY SUPPORT ACT § 607 cmt., a Texas appellate court permitted an obligor to challenge the registration and enforcement of a New Jersey judgment on the ground, *inter alia*, that two slightly different copies of the judgment had been filed. *Mathis v. State*, 930 S.W.2d 203, 205 (Tex. Ct. App. 1996). The Texas court ultimately rejected this defense, stating that the certified judgment involved satisfied the authenticity requirements and that the second judgment did not undermine the validity of the certified copy since both were signed on the same day by the same judge. *Id.* at 207.

¹²⁸ *See* RESTATEMENT (SECOND) OF JUDGMENTS §§ 1, 2, 5, 11, 68, 70-73 (1982) (describing typical defenses to judgments such as: lack of subject matter jurisdiction, lack of personal jurisdiction, lack of notice, fraud, mistake, duress, modification, and incapacity); *see also* *Gruber v. Wallner*, 598 P.2d 135, 137-38 (Colo. 1979) (refusing to recognize suspension of visitation rights as defense to support order); *Price v. Price*, 435 S.E.2d 652, 657-58 (Va. Ct. App. 1993) (holding that lack of personal jurisdiction is valid defense).

¹²⁹ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 316(a). CP may use the special evidence and discovery provisions for out-of-state participants. Subsections (b) through (f) of section 316 detail these procedures. For example, an out of state party is allowed to testify by telephone and transmit documents to the court by facsimile. *See id.* § 316(f); *see also supra* notes 42-44.

¹³⁰ UNIF. INTERSTATE FAMILY SUPPORT ACT § 606(b). Confirmation occurs either by operation of law, when NCP does not request a hearing, *id.*, or by order of the registering tribunal if NCP requested a hearing but failed to "establish a defense ... to the validity or enforcement of the order." *Id.* § 607(c). The tribunal "shall" order NCP to pay costs and reasonable attorneys' fees if it determines that NCP requested a hearing "primarily for delay." *Id.* § 313(c). A hearing is presumed to be requested primarily for delay "if a registered support order is confirmed or enforced without change." *Id.*

¹³¹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 608; *see also id.* § 605 cmt. ("[A]bsent a successful contest by the nonregistering party, the order will be confirmed and future contest will be precluded.")

Once the support order is confirmed, the State 2 support agency, or a private attorney if CP prefers, can request income withholding, garnishment, or a lien on NCP's property.¹³² CP may also move to have NCP held in contempt, initiate a criminal prosecution, or pursue any other remedies available in State 2.¹³³

If State 1 issues an income-withholding order garnishing NCP's wages, then CP or anyone else¹³⁴ may simply send a copy of the order to NCP's employer in State 2 without filing a UIFSA proceeding and have NCP's employer withhold income.¹³⁵ NCP's employer must treat the income withholding order, if it appears "regular on its face,"¹³⁶ as though it had been issued by a State 2 court.¹³⁷ The employer must provide a copy of the order to NCP¹³⁸

¹³² See UNIF. INTERSTATE FAMILY SUPPORT ACT § 305(b). For a description of common enforcement remedies, see NANCY S. ERICKSON, CHILD SUPPORT MANUAL FOR ATTORNEYS AND ADVOCATES 334-44 (1992); Calhoun, *supra* note 1, at 933-39. Such remedies, however, are often ineffective. See Calhoun, *supra* note 1, at 940-46 (describing failure of state to enforce adequately support orders and positing factors which contribute to such failure).

¹³³ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 305(b).

¹³⁴ *Id.* § 501 cmt.

¹³⁵ See *id.* § 501 ("An income withholding order issued in another state may be sent to ... obligor's employer ... without first filing a [petition] or comparable pleading or registering the order with a tribunal of this State."); *id.* prefatory note ("[T]he support order may be sent directly to the 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."); see Brummer, *supra* note 85, at 81 ("The prudent approach [in this situation] would be to seek direct enforcement through income withholding initially, and as soon as possible, register the order in [State 2].").

¹³⁶ UNIF. INTERSTATE FAMILY SUPPORT ACT § 502(b). The drafters intended a liberal construction of this phrase. See *id.* § 502 cmt.; *United States v. Morton*, 467 U.S. 822, 828-29 (1984) (holding test for the term "regular on its face" contained in 42 U.S.C. § 659 (f) is met by simple examination of writ of garnishment); Sampson, *supra* note 12, at 147 n.120. Federal law provides that "[a]n 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." 42 U.S.C.A. § 666(b)(6)(A)(i) (West Supp. 1996); see also UNIF. INTERSTATE FAMILY SUPPORT ACT § 504 ("An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.").

¹³⁷ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 501(b). If NCP resides in State 2 and his employer is served in State 3, the employer must treat the income withholding order as if it were issued by a State 3 court, and a hearing on NCP's objections, if any, must be held in State 3. Sampson, *supra* note 12, at 146-47, nn.118 & 121 (citing BLUEPRINT FOR REFORM, *supra* note 1, at 151-52, 234).

¹³⁸ UNIF. INTERSTATE FAMILY SUPPORT ACT § 502(a).

and distribute the funds as the order directs.¹³⁹ NCP, upon receiving notice, may then contest "the validity or enforcement" of the order.¹⁴⁰ The UIFSA commentary¹⁴¹ and federal law,¹⁴² however, limit this contest to "mistake[s] of fact," including errors in the amount of current support, accrued arrearages, or the obligor's identity.¹⁴³

With respect to the child support portion¹⁴⁴ of the order in Case 4(a), FFCCSOA appears to, and certainly was intended to, reach the same result as UIFSA.¹⁴⁵ State 2 must recognize and enforce the State 1 support order.¹⁴⁶ FFCCSOA mandates that the "appropriate authorities of each State ... enforce according to its terms a child support order made consistently with this section by a court of another State."¹⁴⁷ The phrase "consistently with this section" is a term of art which requires that the issuing court have "subject matter jurisdiction to hear the matter and enter such an order," "personal jurisdiction over the contestants," and that the contestants received "reasonable notice and oppor-

¹³⁹ See *id.* § 502(c).

¹⁴⁰ *Id.* § 506(a). NCP must give notice to CP, any support enforcement agency assisting CP, and each employer that has directly received an income withholding order. *Id.* § 506(b). Section 604 choice of law provisions govern any such contest. *Id.* § 604. In the event of a contest, "the hearing is held in the state where the employer [was] served." Sampson, *supra* note 12, at 147 n.121.

¹⁴¹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 506 cmt.

¹⁴² See 42 U.S.C. § 666(b)(4)(A) (1994) (providing procedure to contest withholding based upon "mistake of fact").

¹⁴³ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 506 cmt. (quoting H.R. REP. NO. 98-257 (1983)); see also *Cowan v. Moreno*, 903 S.W.2d 119, 123-24 (Tex. Ct. App. 1995) (reasoning that NCP's defense of incorrect calculation of arrearages related to support order's enforceability). Grounds such as "inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation," therefore, are excluded and must be pursued in a non-UIFSA proceeding in State 1. UNIF. INTERSTATE FAMILY SUPPORT ACT § 506 cmt. (quoting H.R. REP. NO. 98-527 (1983)); see also *Chaisson v. Ragsdale*, 914 S.W.2d 739, 741-42 (Ark. 1996) (noting that UIFSA goal of streamlining support enforcement proceedings would be thwarted by joining collateral issues such as visitation).

¹⁴⁴ FFCCSOA applies solely to child support and does not apply to alimony. UIFSA applies to both child support and alimony.

¹⁴⁵ See Margaret Campbell Haynes, *Federal Full Faith and Credit For Child Support Orders Act*, 14 DEL. L. 26, 29 (1996) ("A second question is 'Does the FFCCSOA significantly affect UIFSA states?' Again, the simple answer is 'No.' "). Haynes notes, however, that there are several inconsistencies between FFCCSOA and UIFSA that may lead to litigation. See *id.* (describing possible litigation issues regarding interplay of multiple support orders and jurisdictional dilemma).

¹⁴⁶ See *supra* notes 119-31 and accompanying text (discussing State 2's obligation to enforce registered order of State 1).

¹⁴⁷ 28 U.S.C.A. § 1738B(a)(1) (West, WESTLAW through Pub. L. No. 104-333).

tunity to be heard."¹⁴⁸ Since it is assumed that these requirements were met when State 1 issued the original support order, State 2 must enforce the State 1 support order "according to its terms."¹⁴⁹

Even in the simple case of enforcement of the State 1 support order in State 2, there is a potential inconsistency between UIFSA and FFCCSOA. UIFSA appears to allow NCP to assert more defenses in State 2, the responding state, than FFCCSOA does. Under UIFSA, NCP may assert full or partial payment as a defense to the registered support order in the responding state.¹⁵⁰ Under FFCCSOA, however, State 2 must "enforce according to its terms" State 1's order unless the State 1 court lacked subject matter jurisdiction, personal jurisdiction over the parties, or the parties did not receive adequate notice or an opportunity to be heard.¹⁵¹ No other defense, including payment of support, is specified in the federal law. A rigid interpretation of FFCCSOA to prevent the assertion of defenses that are not enumerated would lead to absurd results. Section (h)(1) of

¹⁴⁸ *Id.* § 1738B(c); see *Bednarsh v. Bednarsh*, 660 A.2d 575, 580-81 (N.J. Super. Ct. Ch. Div. 1995) (holding that issue of whether possible fraud violated "reasonable notice" requirement is to be decided by State 1 court). The requirements involving the validity of the original child support orders mirror the well-established requisites of a valid judgment, see RESTATEMENT (SECOND) OF JUDGMENTS § 1 (1982), and the elements of federal procedural due process. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318-20 (1950) (requiring reasonable notice and opportunity to be heard); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1946) (requiring requisite level of minimum contacts with forum state in order for court to assert personal jurisdiction); see also *Griffin v. Griffin*, 327 U.S. 220, 228 (1945) ("A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction.") (citing *National Exch. Bank v. Wiley*, 195 U.S. 257, 270 (1904)). Thus, these defenses are already available in any court without FFCCSOA's imprimatur.

¹⁴⁹ 28 U.S.C.A. § 1738B(a)(1) (West Supp. 1996); see, e.g., *State Dep't of Revenue ex rel. Jorda v. Fleet*, 679 So.2d 326, 329 (Fla. Dist. Ct. App. 1996) (holding that, absent narrow exceptions, FFCCSOA prohibits modification of State 1 child support orders by State 2).

¹⁵⁰ UNIF. INTERSTATE FAMILY SUPPORT ACT § 607(a)(6) (amended 1996); see *Altman v. Altman*, 683 P.2d 62, 68 (N.M. Ct. App. 1984) (holding that previous payments sufficient reason to contest and modify support order under URESA).

¹⁵¹ 28 U.S.C.A. § 1738B(a)(1) (West Supp. 1996). If NCP unsuccessfully raised the defense of lack of personal or subject matter jurisdiction in the State 1 issuing court, NCP will be precluded from raising the same issue again in another state's court. See *Durfee v. Duke*, 375 U.S. 106, 112 (1963) (subject matter jurisdiction); *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-26 (1931) (personal jurisdiction); see also *Reynolds*, *supra* note 10, at 427-29 (stating that Supreme Court decided that litigation of subject matter jurisdiction objections in one court may preclude relitigation in subsequent court).

FFCCSOA, however, may provide a solution. This section states that “[i]n a proceeding to ... enforce a child support order, the forum State’s law shall apply except as provided in paragraphs (2) and (3).”¹⁵² The “forum State’s law” includes UIFSA if that state has enacted it, and consequently the defenses available under UIFSA section 607 might still be asserted consistently with FFCCSOA. In addition, the phrase “forum State’s law” has been held to include other defenses, including the statute of limitations, which also may be asserted consistently with FFCCSOA.¹⁵³

Case 4(b): What law applies to the enforcement action? Assume that the facts are the same as in Case 4(a), except that the original State 1 support order required NCP to pay child support until C reached the age of “majority.” The age of majority in State 1 is 19, while the age of majority in State 2 is 18. After NCP moves to State 2, C turns 18 and NCP stopped paying child support. CP files a UIFSA proceeding, forwarded to State 2, to enforce the State 1 order until C reaches 19.¹⁵⁴ Which state’s law governs the issue of whether C has reached the age of “majority”?

In an enforcement proceeding, “[t]he law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.”¹⁵⁵ Therefore, State 2 should follow State 1 law and enforce the support order until C reaches age 19,

¹⁵² 28 U.S.C.A. § 1738B(h)(1) (West, WESTLAW through Pub. L. No. 104-333). The exceptions enumerated in subsections (2) and (3) are not relevant to these hypotheticals.

¹⁵³ See *Kelly v. Otte*, 474 S.E.2d 131, 136-37 (N.C. Ct. App.) (allowing obligor to present statute of limitations defense after confirmation of registration of foreign order), *review denied*, 479 S.E.2d 204 (N.C. 1996). Under UIFSA, which superseded URESA in North Carolina, the *Kelly* court probably would have reached a different result. The obligor’s failure to interpose the statute of limitations as a defense prior to confirmation of the registered order would preclude that defense. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 608; see also *Comer v. Comer*, 927 P.2d 265, 272 (Cal. 1996) (considering, but not deciding upon, NCP’s argument that FFCCSOA requires application of law of forum state which provided defense to arrearages based upon CP’s concealment of herself and her children).

¹⁵⁴ For a similar fact pattern, see *Gibson v. Baxter*, 434 N.W.2d 486 (Minn. Ct. App. 1989). *Gibson* involved an appeal from a decision applying State 1’s law regarding the duration of a child support obligation under RURESА. *Id.* at 487. In affirming the trial court’s ruling, the appellate court reasoned that RURESА was designed to prevent forum shopping by obligors. *Id.* at 488; see also *Gonzalez-Goenaga v. Gonzalez*, 426 So. 2d 1106, 1106 (Fla. Dist. Ct. App. 1988) (applying State 1’s age of majority).

¹⁵⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 604(a).

the age of majority in State 1.

The same result is reached under FFCCSOA section (h)(2). It provides that, "[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."¹⁶⁶ The meaning of "majority" in the State 1 support order is a matter of "interpretation" affecting the "duration of current payments" since payments will continue longer under State 1's law. Therefore, State 1's law applies.¹⁵⁷

¹⁶⁶ 28 U.S.C.A. § 1738B(h)(2) (West Supp. 1996). *But see* *Marino v. Lurie*, 39 Cal. Rptr. 2d 835, 841-42 (Ct. App. 1995) (modifying order of State 1 under law of State 2 since neither ex-spouse nor children resided in State 1); Haynes, *supra* note 145, at 28 & n.14 (asserting that *Marino* was wrongly decided since "UIFSA and the FFCCSOA include consistent choice of law rules"). Similarly, FFCCSOA requires State 2 to apply the law of State 1 when *interpreting* an out-of-state child support order, 28 U.S.C.A. § 1738B(g)(2) (West Supp. 1996), but requires application of the longest of the applicable states' statute of limitations when *enforcing* a child support order. *Id.* § 1738B(g)(3) (emphasis added).

¹⁵⁷ *See Kelly*, 474 S.E.2d at 134-36 (holding that under FFCCSOA North Carolina trial court did not violate full faith and credit by voiding automatic escalation clause in New Jersey divorce decree since neither child nor parents resided in New Jersey). At least part of the trial court's order upheld in *Kelly* should have been reversed. CP registered the New Jersey order for child support, with its automatic escalation clause, for enforcement in North Carolina. *Id.* at 133. NCP received notice of the registration, but did not contest the registration within 20 days, as required by URESA. *Id.* at 135. Therefore, the order was confirmed. *Id.* Six months later, NCP filed a motion to vacate the registration, in part on the ground that North Carolina law invalidated the order's escalation clause. *Id.* at 133. The appellate court affirmed the grant of NCP's motion and determined that, as of the date the New Jersey order was registered in North Carolina, NCP's child support obligation would be limited to the original amount without escalation. *Id.* at 135-36.

This decision appears to be erroneous on several grounds. First, the North Carolina order retroactively modified approximately four months' worth of past-due child support payments in violation of federal law. *See* 42 U.S.C.A. § 666(a)(9) (West 1991 & Supp. 1996) (providing that "[p]rocedures which require that any payment or installment of support under any child support order ... [are] ... not subject to retroactive modification by such State or by any other state"). Second, the court appeared to address NCP's motion to vacate the registration as a motion to modify the order. *See Kelly*, 474 S.E.2d at 136. Although FFCCSOA would permit the North Carolina court to modify the New Jersey court's judgment, since all parties no longer resided in New Jersey, it could be argued that the North Carolina legislature's voiding of escalation clauses comprised the only "changed circumstance" supporting modification of the New Jersey order. *See* 28 U.S.C.A. § 1738B(e)(2)(A) (West, WESTLAW through Pub. L. No. 104-333); *Altman v. Altman*, 683 P.2d 62, 66-67 (N.M. Ct. App. 1984) (holding that under URESA State 2 may modify child support order if there exists "a showing of changed circumstances"). Elimination of the escalation clause seems more like a hometown application of forum-state law than a true modification based on changed circumstances. *See* 28 U.S.C.A. § 1738B(e) (West Supp. 1996); UNIF. MARRIAGE & DIVORCE ACT § 316(a), 9A U.L.A. 489-90

Case 4(c): CP seeks modification of child support. Assume that the facts remain identical to those in Case 4(a). Assume further that CP follows UIFSA's two-state enforcement procedure, but CP also seeks an increase in the amount of child support in the proceeding forwarded to State 2. CP and C continue to reside in State 1. Can the State 2 court require such an increase in NCP's child support obligation?

The answer is "no" under both UIFSA and FFCCSOA unless CP and NCP consent in writing to State 2's jurisdiction to modify the support order.¹⁵⁸ Absent such consent, however, State 2 may only modify State 1's support order if the elements of UIFSA section 611(a)(1) are satisfied.¹⁵⁹ Since CP and C reside in

(1973) ("[T]he provisions of any decree respecting ... support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable."). The application of North Carolina law, therefore, arguably violated at least the spirit of FFCCSOA's choice-of-law provision, which requires application of the law of the issuing state in "interpreting a child support order." 28 U.S.C.A. § 1738B(h)(2).

The *Kelly* court, however, did possess the requisite judicial power to modify the New Jersey court's order, prospectively at least. FFCCSOA explicitly states that State 2 may modify State 1's child support order if State 1 is no longer the child's state of residence or the residence of any contestant. See 28 U.S.C.A. § 1738B(e)(2)(A) (West Supp. 1996); see *supra* note 154; see also *Thompson v. Thompson*, 645 S.W.2d 79, 87 (Mo. Ct. App. 1982) (noting ability of State 2 to modify order of State 1 court under URESA where all parties to action resided in State 2 at time of requested modification).

¹⁵⁸ See 28 U.S.C.A. § 1738B(e) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(2). After such an order is signed, an individual party or the child is subject to personal jurisdiction in State 2 and State 2 may modify the order and assume continuing, exclusive jurisdiction. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(d). An agreement signed by the parties must be initiated and confirmed by the State 1 court and State 1 files a copy of the agreement. *Id.* § 611 cmt.

¹⁵⁹ 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; or

(2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this State to modify the support order and assume continu-

State 1, the "issuing state,"¹⁶⁰ the first required element, that neither the child nor the parents reside in the issuing state, is not satisfied. Thus, State 1 remains the state of continuing, exclusive jurisdiction and only State 1 may modify the child support order.¹⁶¹

CP must therefore seek modification of the order in her own state, State 1, and then forward the modified order to State 2 for enforcement. While it usually would be more convenient for CP to seek the modification in her own state, she may prefer to seek the modification in NCP's state, State 2. In Case 4(c), since CP is already forwarding a UIFSA proceeding to State 2 for enforcement, she may wish to consent to State 2's jurisdiction to modify.¹⁶² Such a decision, however, should be made thoughtfully because State 2 becomes the state of continuing, exclusive jurisdiction after modifying the order. CP would then be prevented from moving to modify the support order further in her own state without NCP's consent.¹⁶³

The same result is reached under FFCCSOA. Absent the parties' consent, the State 2 court cannot modify the State 1 child support order.¹⁶⁴ Generally, FFCCSOA prohibits a state from modifying another state's child support order unless the requirements of subsections (e), (f), and (i) are met.¹⁶⁵ Since

ing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support order.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a). New section 613 does not apply to Case 4(c); it applies only where the parties have left the issuing state and moved to the same new state, which is the forum state.

¹⁶⁰ *Id.* § 101(9) (" 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage. ").

¹⁶¹ *See id.* § 205(a)-(c); Haynes, *supra* note 145, at 28 (defining continuing, exclusive jurisdiction).

¹⁶² UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 205(a)(2), 611(a)(2).

¹⁶³ *Id.* § 611(d) ("On issuance of an order modifying a child-support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction. ").

¹⁶⁴ 28 U.S.C.A. § 1738B(e)(2)(B) (West, WESTLAW through Pub. L. No. 104-333). Each contestant must provide written consent to the court that will modify the order and the modifying court assumes continuing, exclusive jurisdiction over the order. *Id.*

¹⁶⁵ 28 U.S.C.A. § 1738B(a)(2) (West Supp. 1996). Subsection (e) provides:

A court of a State may make a modification of a child support order with respect to a child that is made by a court of another State if—

State 1 remains the “child’s State”¹⁶⁶ and “the residence of” CP, State 2 cannot modify State 1’s child support order without the requisite consent.

If a state has not yet adopted UIFSA, FFCCSOA will preempt URESA on this point. URESA encourages a responding state to enter a new support order that “does not nullify” the old support order,¹⁶⁷ and to modify a registered foreign support order on the theory that it “shall be treated in the same manner as a support order issued by a court” of the responding state.¹⁶⁸ Since the provisions of URESA concerning modification of support orders directly conflict with the provisions of FFCCSOA that prohibit a responding state from modifying a prior child support or-

-
- (1) the court has jurisdiction to make such a child support order; 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 contestant; or
 - (B) each contestant has filed written consent to that court’s making the modification and assuming continuing, exclusive jurisdiction over the order.

Id. § 1738B(e). The statute defines “contestant” as “a person ... who claims a right to receive child support; is a party to a proceeding that may result in the issuance of a child support order, or is under a child support order.” *Id.* § 1738B(b).

¹⁶⁶ 28 U.S.C.A. § 1738B(b) (West Supp. 1996) (“‘Child’s State’ means the State in which a child resides.”).

¹⁶⁷ See REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 531 (1987) (“A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by ... a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court ...”); UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 30, 9B U.L.A. 600 (1987) (“No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support ...”).

¹⁶⁸ UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 38 (“The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state”); REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 40(a) (“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.”). The Uniform Enforcement of Foreign Judgments Act (“UEFJA”), adopted in 46 states and territories, 13 U.L.A. 14 (Supp. 1996), contains a similar provision. Section 2 of UEFJA provides that upon registration of a foreign judgment in another state, the latter state “shall treat the foreign judgment in the same manner as a judgment of the [court] of this state.” *Id.* § 2, 13 U.L.A. 154 (1986). Under this provision, courts have allowed modification of a decree for alimony and child support in the state of registration as well as the state of issuance. See *Worthley v. Worthley*, 283 P.2d 19, 24 (Cal. 1955) (explaining that to hold otherwise would result in unreasonable outcome); *Salmeri v. Salmeri*, 554 P.2d 1244, 1251 (Wyo. 1976) (asserting that forum state possesses modification jurisdiction concurrent with issuing state). FFCCSOA preempts UEFJA to the extent that UEFJA permits this modification of child support orders. See *infra* note 170.

der unless certain conditions are satisfied,¹⁶⁹ the URESA provisions are preempted by the federal statute.¹⁷⁰

A recent New York case, *Cross v. Mastowski*,¹⁷¹ presents an interesting variant of this fact pattern, and may have been wrongly decided under FFCCSOA.¹⁷² Prior to divorcing F, M obtained a New York court order requiring F to pay \$50 per month in child support through the New York equivalent of a URESA proceeding.¹⁷³ At the time that M filed her URESA petition, she lived in Florida.¹⁷⁴ M subsequently obtained a default divorce in Florida which included an order requiring F to pay \$70 per week in child support.¹⁷⁵ After registering the Florida order in New York, M sought to enforce arrearages under the Florida order, even though F had paid all amounts due under the New York order. The New York court held that the Florida order had "supersede[d]" the New York order.¹⁷⁶ Furthermore, the court held that "FFCCSOA does not apply to pre-existing [URESAs] orders which are neither granted under the continuing jurisdiction contemplated by [FFCCSOA] nor meant to be the final adjudica-

¹⁶⁹ See 28 U.S.C.A. § 1738B(a)(2) (West Supp. 1996). The statute allows modification of a child support order if the court has jurisdiction to issue such an order and "the court of the [issuing] State no longer has continuing, exclusive jurisdiction of the child support order" *Id.* § 1738B(e)(2)(A).

¹⁷⁰ See, e.g., *Kelly v. Otte*, 474 S.E.2d 131, 134 (N.C. Ct. App.) (stating that Supremacy Clause requires FFCCSOA to be "binding on all states and supersede any inconsistent provision of state law, including any inconsistent provisions of uniform state laws such as URESA"), *review denied*, 1996 WL 762108 (N.C. Dec. 5, 1996); U.S. CONST. art. VI, § 2; *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (stating that even if Congress has not entirely assumed regulation of field, "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") (citations omitted); *Haynes*, *supra* note 145, at 28-29 (concluding that "it is, at a minimum, contrary to the stated purpose of the FFCCSOA for a URESA state to issue an order in a different amount when there is an existing support order that the obligee is trying to enforce").

¹⁷¹ 650 N.Y.S.2d 511 (Fam. Ct. 1996).

¹⁷² New York has not yet adopted UIFSA. See *supra* note 26 (listing states that have adopted UIFSA).

¹⁷³ *Cross*, 650 N.Y.S.2d at 512.

¹⁷⁴ *Id.* The opinion does not clarify whether M ever resided in New York.

¹⁷⁵ *Id.* The opinion does not explicitly state the basis utilized by the Florida court to assert personal jurisdiction over F. If Florida did not have personal jurisdiction over F, the court's judgment of child support would have been void, although the divorce decree would be valid if M met Florida's domiciliary requirement. See *supra* notes 36, 44, 50-52 and accompanying text.

¹⁷⁶ *Cross*, 650 N.Y.S.2d at 512.

tion of the child support rights of the parties or their children.”¹⁷⁷

The latter part of this holding—that FFCCSOA only applies to “final adjudication[s]”—is clearly wrong. A “child support order” subject to FFCCSOA includes an “order of a court requiring the payment of child support in periodic amounts ... and ... includes (i) a ... *temporary* order; and (ii) an *initial* order”¹⁷⁸ FFCCSOA, therefore, may apply to orders that are not intended to be the final adjudication between the parties. The remainder of the holding is wrong if New York had personal jurisdiction over M when the New York court ordered F to pay \$50 per month. If New York had personal jurisdiction over M, then the New York “child support order” was “made consistently with” section (c) of FFCCSOA.¹⁷⁹ Thus, the Florida court should have enforced the order “according to its terms”¹⁸⁰ because the court did not have jurisdiction to modify the support order while F continued to reside in New York.¹⁸¹

Case 4(d): CP seeks modification of alimony in State 2. Assume the same facts as in Case 4(c), except that CP also seeks an increase in alimony in the UIFSA proceeding forwarded to State 2. Can the State 2 court order such an increase in NCP’s alimony obligation?

Under UIFSA, State 2 cannot order an increase in NCP’s alimony obligation. UIFSA provides that the court issuing a spousal support order “has continuing, exclusive jurisdiction over [the] spousal support order throughout the existence of the support obligation.”¹⁸² Thus, only the issuing court has jurisdiction under UIFSA to modify a spousal support order.¹⁸³ This restric-

¹⁷⁷ *Id.* at 513 n.1.

¹⁷⁸ 28 U.S.C.A. § 1738B(b) (West, WESTLAW through Pub. L. No. 104-333) (emphasis added); cf. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(e) (amended 1996) (“A temporary order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.”).

¹⁷⁹ 28 U.S.C.A. § 1738B(c) (West Supp. 1996) (providing that order is made consistent with section when court possesses both subject matter and personal jurisdiction). It is apparent from the opinion in *Cross* that all other requirements of FFCCSOA section (c) were met.

¹⁸⁰ 28 U.S.C.A. § 1738B(a)(1) (West Supp. 1996); see *State ex rel. Skladanuk v. Skladanuk*, 683 So. 2d 624, 626 (Fla. Dist. Ct. App. 1996) (holding that FFCCSOA deprived Florida court of jurisdiction to modify New York child support order when both mother and child reside in New York).

¹⁸¹ 28 U.S.C.A. § 1738B(e)(2)(A) (West Supp. 1996).

¹⁸² UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(f).

¹⁸³ *Id.* (“A tribunal of this State may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that or-

tion upon the power to modify spousal support orders is another change from URESA; URESA could be construed to allow modification by a state other than the issuing state.¹⁸⁴

Although UIFSA enables the parties to consent to child support modification jurisdiction,¹⁸⁵ the statute does not contain a "parties' consent" exception to the rule prohibiting modification of alimony by a court other than the issuing court.¹⁸⁶ Thus, in Case 4(d), even if W wanted to consent to State 2's modification of the spousal support order, UIFSA would appear to prevent W from consenting.¹⁸⁷ If W seeks modification of both child support

der under the law of that state."); *see also id.* § 611 (allowing modification by another state only for "child support orders"). The court issuing the spousal support order must have subject matter jurisdiction and personal jurisdiction over the parties and the parties must receive notice and an opportunity to be heard.

¹⁸⁴ *See id.* § 205 cmt. (stating that UIFSA effects "radical" departure from URESA, but "[i]nterstate modification of pure spousal support was relatively rare under RURESAS"); REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 31, 9B U.L.A. 531 (1987); *id.* § 40(a), 9B U.L.A. 546 (1987); UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 30, 9B U.L.A. 600 (1987); *id.* § 38, 9B U.L.A. 606 (1987); *see also* Mullis v. Mullis, 669 P.2d 763, 764-65 (Okla. 1983) (allowing modification of future obligations where State 2 court finds that modification is justified); Commonwealth *ex rel.* Byrne v. Byrne, 243 A.2d 196, 197 (Pa. Super. 1968) (acknowledging that courts in responding states have power to modify judgments under URESA); Koehler v. Koehler, 559 S.W.2d 944, 949 (Tenn. Ct. App. 1977) (noting that states have "right to modify decrees in domestic relations matters"); Jaramillo v. Jaramillo, 618 P.2d 528, 530 (Wash. Ct. App. 1980) (noting that "liberal interpretation of URESA" allows responding state to decide "amount of support properly due a person").

¹⁸⁵ *See* UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 205(a)(2), 611(a)(2).

¹⁸⁶ *See id.* § 205(f).

¹⁸⁷ If UIFSA section 205(f) is construed as a limitation on subject matter jurisdiction, then the parties may not be able to confer jurisdiction upon a court merely by consenting to the court's exercise of jurisdiction. *See* Louisville & Nashville R.R. v. Mottley, 211 U.S. 149, 152 (1908) ("Neither party has questioned [federal subject matter jurisdiction], but it is the duty of this court to see to it that the jurisdiction of the circuit court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion."). *But see* BRILMAYER, *supra* note 10, at 44 ("The parties to a state court lawsuit can waive objections to the jurisdiction of the court, either by agreeing to the forum in advance of the litigation or by failing to object to jurisdiction after litigation commences.") (emphasis added); Dan B. Dobbs, *The Decline of Jurisdiction By Consent*, 40 N.C. L. REV. 49 (1961) (questioning rule preventing waivers of subject matter jurisdiction defects by consent). If section 205(f) is construed as a party-protection provision rather than a limitation on subject matter jurisdiction, courts may allow parties to waive such protection and consent to alimony modification jurisdiction. For example, a party may consent to a court's exercise of personal jurisdiction, even if the court would not otherwise have been able to exercise constitutionally such jurisdiction. *See* Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982) ("Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived."); *see also* UNIF. IN-

and spousal support, there is good reason for W not to consent to State 2's jurisdiction to modify the child support order. If W did consent to State 2's jurisdiction to modify, she would have to prosecute two actions, one for child support modification in State 2 and another for alimony modification in State 1.¹⁸⁸

FFCCSOA does not apply to spousal support orders. Moreover, some states still operate under URESA, which may allow modification of a spousal support order by a court other than the issuing court.¹⁸⁹ Thus, if W seeks modification of both spousal support and child support in a state that has not adopted UIFSA, W might simultaneously be prevented from modifying the child support order by FFCCSOA and encouraged by URESA to modify the spousal support order. Hopefully, the State 2 court would decline to bifurcate interrelated financial issues.¹⁹⁰

Case 4(e): NCP seeks modification in State 2. Assume the same facts as in Case 4(a), but, in response to the UIFSA petition forwarded to State 2 for enforcement, H/NCP claims that he has lost his job. H/NCP then moves to reduce his child support and alimony payments. Can State 2 take jurisdiction of his modification petition?

In Cases 4(c) and (d), W/CP unsuccessfully sought an increase in support payments in State 2. This time H/NCP seeks a decrease in support payments in State 2. The result here is the same as in Cases 4(c) and (d). Under UIFSA, State 2 does not have jurisdiction to modify either the child support order, absent the parties' consent,¹⁹¹ or the spousal support order.¹⁹² State 2 also does not have jurisdiction to modify the child support order under FFCCSOA, which preempts URESA to the extent that URESA would dictate a contrary result.¹⁹³

UNIFORM INTERSTATE FAMILY SUPPORT ACT § 201(2).

¹⁸⁸ See *infra* Part II(B)(1) and Appendix (proposing amendment to broaden parties' ability to consent to modification jurisdiction).

¹⁸⁹ See *supra* note 184 and accompanying text.

¹⁹⁰ Due to Congress' recent mandate that states adopt UIFSA by January 1, 1988, see *supra* note 7, URESA-related problems should gradually be obviated.

¹⁹¹ Since W/CP and C continue to reside in State 1, State 1 has continuing, exclusive jurisdiction over the child support order and State 2 cannot modify the order absent the parties' written consent. See *supra* notes 158-61 and accompanying text (discussing requirements for effective consent agreement).

¹⁹² Only State 1, the issuing state, may modify the spousal support order. See *supra* notes 181-82 and accompanying text.

¹⁹³ See *State ex rel. Skladanuk v. Skladanuk*, 683 So. 2d 624, 626 (Fla. Dist. Ct. App. 1996) (denying motion to decrease child support order while mother and child continued to reside in issuing state); *State ex rel. Jorda v. Fleet*, 679 So. 2d 326, 329

Proceeding with the modification litigation in State 1 may create a significant difference in the relative inconvenience to the parties. While W/CP lives in State 1, H/NCP resides in State 2 and a modification proceeding in State 1 will be significantly more inconvenient for him. The fact that H/NCP voluntarily moved to State 2, thereby causing his own inconvenience, does not provide a satisfactory justification. People move for many reasons, some of which may be outside of their control. In addition, H/NCP may have good reason for the requested modification. For example, H/NCP may have lost his job and has been unable to secure another. Alternatively, W may have remarried which, according to the terms of the order, terminates H/NCP's alimony obligation.

Under these circumstances H/NCP may avail himself of UIFSA's two-state procedure. H/NCP may initiate a UIFSA proceeding in State 2 which is forwarded to State 1 for modification without H/NCP having to appear or hire a lawyer in State 1.¹⁹⁴ NCP may request the services of State 1's support enforcement agency,¹⁹⁵ and the special interstate evidence and discovery rules

(Fla. Dist. Ct. App. 1996) (granting writ of prohibition against Florida court modifying Georgia order when CP and C maintained residence in Georgia); *Wilkie v. Silva*, 685 A.2d 1239, 1240 (N.H. 1996) (holding that FFCCSOA prohibited modification of support order); *Isabel M. v. Thomas M.*, 624 N.Y.S.2d 356, 359-60 (Fam. Ct. 1995) (concluding that FFCCSOA's preemption of USDL warranted denial of motion to modify support order issued in Pennsylvania); *Paton v. Brill*, 663 N.E.2d 421, 424-25 (Ohio Ct. App. 1995) (holding that FFCCSOA explicitly prohibits modifications).

¹⁹⁴ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 206(b) (amended 1996) ("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.") (emphasis added); see also *id.* prefatory note ("Spousal support is modifiable in the interstate context under UIFSA only when such a request is forwarded to the original issuing state from an initiating state."); *id.* § 205 cmt. ("Under UIFSA, modification of spousal support is limited to a procedure whereby an action is initiated outside of the issuing state and a tribunal in that original state modifies its order under its law."); *id.* § 611 cmt. (stating that subsection 611(a)(1) "contemplate[s] that the issuing state has lost continuing, exclusive jurisdiction and that the obligee may seek modification in the obligor's state of residence, or that the obligor may seek a modification in the obligee's state of residence"); Sampson, *supra* note 12, at 120 n.65 ("[I]f the support order is to be relitigated in the context of a motion to modify, the burden is on the party who moved to return to the state of continuing, exclusive jurisdiction whether that individual is the obligor or the obligee."); see also Sampson, *supra*, at 155 n.138 ("[I]t is at least theoretically possible that the obligor would seek to register an order, either in his own state or in the state in which the obligee resides.").

¹⁹⁵ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 307(a); *id.* § 307 cmt. (noting that "either the obligee or the obligor [may] request services"); Sampson, *supra* note 12, at 134 n.96 (explaining that official comment to section 307 changes outdated presumption that "mother-obligee" is only partly entitled to state-subsidized legal

would apply.¹⁹⁶

Case 4(f): What law applies to NCP's requested modification in State 1? Assume the same facts as in Case 4(a). Assume further that NCP files a motion directly in State 1 claiming he has lost his job and seeking to reduce his child support payments. Assume that State 2's law is more lenient than State 1's in accounting for an obligor's temporary decrease in income. NCP argues that State 1 should apply State 2 law to his modification petition since he is a citizen of State 2. Which state's law should State 1 apply to the modification proceeding?

Neither UIFSA nor FFCCSOA provide the answer because this is no longer a two-state proceeding.¹⁹⁷ NCP filed his petition directly in State 1, the issuing state. Thus, State 1's general conflicts-of-law principles would apply. Since the order was originally issued by a State 1 court, which has continuing jurisdiction, State 1 will continue to apply its own law.¹⁹⁸

Case 5. Divorce in State 1, CP and C move to State 2

Case 5(a): CP seeks enforcement in State 2. Assume that H and W were divorced in State 1 and the court ordered H to pay child support and spousal support. W/CP and C move to State 2. H/NCP remains in State 1 and discontinues all support payments. Can CP file a UIFSA enforcement action in State 2, even though there is no personal jurisdiction over NCP?

Yes; this case is the reverse of Case 4(a). W/CP could file a two-state enforcement proceeding in State 2, as described in reverse for Case 4(a).¹⁹⁹ State 2 does not actually exercise personal

assistance).

¹⁹⁶ See *supra* note 43.

¹⁹⁷ Cf. UNIF. INTERSTATE FAMILY SUPPORT ACT § 202 (providing that when "tribunal of this State [exercises] personal jurisdiction over a nonresident under Section 201 ... Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this [Act]").

¹⁹⁸ Even if UIFSA or FFCCSOA applied to Case 4(f), the answer would probably remain the same. State 1 law will still govern the modification petition. See 28 U.S.C.A. § 1738B(h) (West, WESTLAW through Pub. L. No. 104-333) ("In a proceeding to ... modify ... a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3)"); UNIF. INTERSTATE FAMILY SUPPORT ACT § 202 ("A tribunal of this State exercising personal jurisdiction over a nonresident under Section 201 ... shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this [Act]").

¹⁹⁹ See *supra* notes 108-33 and accompanying text.

jurisdiction over H/NCP, but forwards the proceeding to State 1 for enforcement.²⁰⁰

Case 5(b): CP seeks modification in State 2. Assume the same facts as in Case 5(a), except that W/CP files a petition in State 2 to register and modify the State 1 order by increasing the child and spousal support obligations. Can State 2 modify the State 1 order?

The answer is no. The analysis is identical to Cases 4(c) and 4(d).²⁰¹ State 1 retains continuing, exclusive jurisdiction over the child support order because H/NCP still resides there.²⁰² Under UIFSA section 611(a), a state other than State 1 cannot modify the child support order unless the parties agree.²⁰³ FFCCSOA dictates the same result with respect to the child support order.²⁰⁴

W/CP's request to modify the spousal support order presents a slightly different problem. Under UIFSA, State 1 has continuing, exclusive jurisdiction for the life of the support obligation and no other state may modify the spousal support order.²⁰⁵ In this case, CP, the obligee, is the inconvenienced party. UIFSA

²⁰⁰ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 206(a) ("A tribunal of this State [State 2] may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state."); *id.* § 206(b) ("A tribunal of this State [State 1] having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order.").

²⁰¹ See *supra* notes 158-90 and accompanying text.

²⁰² See UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(1); see also *id.* § 205(d) ("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].").

²⁰³ See *Link v. Alvarado*, 929 S.W.2d 674, 676 (Tex. Ct. App. 1996) (noting that Texas' adoption of UIFSA prevents modification of issuing state's child support order); *Thompson v. Thompson*, 893 S.W.2d 301, 302 (Tex. Ct. App. 1995) (same); *cf.* *Deltoro v. McMullen*, 471 S.E.2d 742, 744-45 (S.C. Ct. App. 1996) (allowing modification of child support order by State 2 under URESA, but recognizing that UIFSA would prevent modification).

²⁰⁴ See 28 U.S.C.A. § 1738B(d) (West, WESTLAW through Pub. L. No. 104-333) ("A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f) has made a modification of the order."); *Harbour v. Harbour*, 677 So. 2d 700, 702-03 (La. Ct. App. 1996); *Schuyler v. Ashcraft*, 680 A.2d 765, 780-81 (N.J. Super. Ct. App. Div. 1996). FFCCSOA pre-empts URESA and UEFJA to the extent that those acts would permit State 2 to modify the State 1 order. See *supra* notes 167-70 and accompanying text.

²⁰⁵ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(f); *supra* notes 181-83 and accompanying text.

anticipates that CP may use the two-state procedure of filing a petition for modification in State 2 to be forwarded to State 1.²⁰⁶

A recent case following this fact pattern, however, illustrates the full extent of possible inconvenience to CP despite the ability to utilize the two-state procedure if custody as well as support issues are involved. In *Schulyer v. Ashcraft*,²⁰⁷ the parties divorced in Florida and CP and C moved to New Jersey. NCP attempted to gain custody of C through repeated successful *ex parte* applications to Florida courts, stalked CP, threatened her with murder and kidnapping, and even fraudulently obtained a Florida order to extradite her. The New Jersey Superior Court held that it had sole subject matter jurisdiction under both the UCCJA and PKPA to modify and restrict NCP's visitation rights.²⁰⁸ The court then held, however, that under FFCCSOA it lacked authority to modify the support provisions of the Florida order since NCP still resided in Florida.²⁰⁹ Accordingly, the New Jersey court relegated CP to filing a two-state URESA²¹⁰ proceeding in New Jersey to be forwarded to Florida.²¹¹

Schulyer illustrates that UIFSA's and FFCCSOA's rule of continuing exclusive jurisdiction over child support when the noncustodial parent resides in the issuing state,²¹² combined with UCCJA and PKPA's rule granting jurisdiction over custody issues to the child's "home State,"²¹³ can create an unfortunate bifurcation of custody and support issues—the precise dilemma

²⁰⁶ See *supra* notes 194-96 and accompanying text. W/CP may also file a modification petition directly in State 1 and this modification petition would not constitute a proceeding governed by UIFSA.

²⁰⁷ 680 A.2d 765, 780-81 (N.J. Super. Ct. App. Div. 1996).

²⁰⁸ *Id.* at 773-80.

²⁰⁹ *Id.* at 780-81. The court also held that it lacked "subject matter jurisdiction" to enforce the Florida support order. *Id.* at 781 (emphasis added). This holding is contrary to section (a)(1) of FFCCSOA, 28 U.S.C.A. § 1738B(a)(1) (West Supp. 1996), and inconsistent with the court's assertion of personal jurisdiction over NCP by reason of his appearance in New Jersey. *Schulyer*, 680 A.2d at 780.

²¹⁰ New Jersey has not yet adopted UIFSA. See *supra* note 27.

²¹¹ *Schulyer*, 680 A.2d at 780-89. This ruling is particularly disturbing since NCP had successfully obtained numerous *ex parte* orders in Florida based on fraudulent representations to different Florida judges. See *id.* at 770-72. The New Jersey court, however, correctly interpreted FFCCSOA and concluded that it did not have jurisdiction to modify the child support order.

²¹² See 28 U.S.C.A. § 1738B(d) (West, WESTLAW through Pub. L. No. 104-333); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(1) (amended 1996).

²¹³ See 28 U.S.C. § 1738A(c)(2)(A) (1994); UNIF. CHILD CUSTODY JURISDICTION ACT § 5, 9 U.L.A. pt. I, 145 (1988).

that UIFSA's drafters hoped to avoid.²¹⁴ Of course, NCP could consent to State 2's jurisdiction to modify the child support order.²¹⁵ In a case like *Schuyler*, however, where NCP seemed to win in Florida and lose in New Jersey, NCP's consent to New Jersey's jurisdiction is unlikely.

Case 6. Divorce in State 1, CP and C move to State 2, NCP moves to State 3.

Case 6(a): CP seeks enforcement. H and W reside in State 1 during the marriage and are divorced in State 1, where W/CP is awarded alimony and child support for C. W/CP and C move to State 2 and H/NCP moves to State 3. H/NCP stops making all support payments. How can W/CP enforce the State 1 order from her home state, State 2?

The registration and enforcement process in this three-state hypothetical is essentially the same as the one described in Case 4(a) for a two-state hypothetical.²¹⁶ CP initiates a UIFSA proceeding in her home state, State 2, the "initiating state."²¹⁷ State 2 forwards the necessary documents, including the State 1 order, to State 3, the "responding state" where NCP resides, for registration and enforcement in State 3.²¹⁸

Case 6(b): NCP seeks modification of alimony in the State 3 UIFSA proceeding. Assume the same facts as in Case 6(a) except that, in responding to the UIFSA proceeding in State 3, NCP moves to terminate the alimony payments on the ground that CP has remarried. Can the State 3 court terminate the alimony?

As in Cases 4(d), 4(e) and 5(b), the answer is no. UIFSA provides that the jurisdiction of the issuing court over a spousal support order continues throughout the life of the obligation and no other state may modify the award.²¹⁹ Both parties are somewhat inconvenienced by having to litigate the modification of

²¹⁴ See Denelis, *supra* note 34, at 1353 (discussing burdens to litigants caused by bifurcated proceedings); *supra* note 85 and accompanying text.

²¹⁵ See 28 U.S.C.A. § 1738B(e)(2)(B) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(2).

²¹⁶ See *supra* notes 108-33 and accompanying text (substituting "State 3" for Case 6(a) in place of "State 2" as described in Case 4(a)).

²¹⁷ See UNIF. INTERSTATE FAMILY SUPPORT ACT §101(7). CP may either employ the services of State 2's IV-D agency, *id.* § 307, or hire a private attorney. *Id.* § 309.

²¹⁸ See *supra* notes 111-31 and accompanying text.

²¹⁹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(f). FFCCSOA does not apply to actions concerning spousal support orders.

spousal support in State 1, a state in which neither party currently resides. UIFSA does not appear to allow the parties to stipulate to the jurisdiction of a state other than State 1 to modify spousal support.²²⁰ NCP could, however, institute a UIFSA action in State 3 that is forwarded to State 1 for modification of the alimony award.²²¹

Case 6(c): The extent of State 1's continuing, exclusive jurisdiction over the spousal support order. Assume the same facts as in Case 6(a) except that H files a UIFSA proceeding in State 3 to be forwarded to State 1, seeking termination of alimony on the ground that W has remarried. Since the parties are properly before the State 1 court on the issue of alimony modification, can H or W request that the State 1 court modify the child support obligation in the same proceeding?

This seemingly straightforward hypothetical generates a somewhat complicated analysis. To illustrate its potential difficulties, contrast Case 6(c)'s hypothetical of a two-state UIFSA proceeding with another probable scenario: direct filing of a motion for modification in State 1. When the petitioner avoids the UIFSA two-state procedure and files an action directly in State 1 for modification of child support, UIFSA²²² and FFCCSOA²²³ probably do not apply. Before the advent of UIFSA and FFCCSOA, the direct filing of a petition for modification of child support in State 1 would generally have been considered a continuation of the original divorce action. State 1 would therefore have both personal jurisdiction over the parties, even if they have moved out of state,²²⁴ and subject matter jurisdiction to

²²⁰ See *supra* notes 186-88 and accompanying text.

²²¹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 206(a)-(b); *supra* notes 194-96 and accompanying text.

²²² A tribunal of this State exercising personal jurisdiction over a nonresident under Section 201 may apply Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another state, and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another state. *In all other respects, Articles 3 through 7 do not apply* UNIF. INTERSTATE FAMILY SUPPORT ACT § 202 (emphasis added).

²²³ See *Porter v. Porter*, 684 A.2d 259, 262 (R.I. 1996) ("Because the instant case involves a Rhode Island state court enforcing its own order that has not been modified by another state, [FFCCSOA] does not control.")

²²⁴ See *Michigan Trust Co. v. Ferry*, 228 U.S. 346, 353 (1913) ("[I]f a judicial proceeding is begun with jurisdiction over the person of the party concerned it is within the power of a State to bind him by every subsequent order in the cause"); *Elkins v. Elkins*, 299 F. 690, 693 (D.C. Cir. 1924) (asserting that jurisdiction continues as long as necessary to make court's decree effective); *Massimino v. Massimino*, 162

modify.²²⁵ If UIFSA applies and is construed to prevent State 1 from modifying its own order even with a direct filing in State 1 (and assuming there is no motion to modify properly pending in another state), that is a major change from preexisting law that went unremarked upon by the official UIFSA commentators. It is unlikely, therefore, that UIFSA and FFCCSOA apply to the direct filing of a modification motion in the issuing state when no other state has exercised jurisdiction to modify and State 1 could properly assume jurisdiction to modify both the alimony and the child support orders.

Case 6(c), however, does not postulate a direct filing in State 1. This case concerns a UIFSA two-state proceeding initiated in either State 2 or State 3 which is forwarded to State 1 for modification. Since UIFSA now applies, the result may be different than if parties had filed directly in State 1.

Under both UIFSA and FFCCSOA, State 1 appears to have lost continuing, exclusive jurisdiction over the child support order when CP, C, and NCP all moved out of State 1.²²⁶ The fact

N.Y.S.2d 646, 649 (Sup. Ct. 1957) (authorizing court to annul, vary, or modify divorce judgment); RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 26 (1989) ("If a state obtains judicial jurisdiction over a party to an action, the jurisdiction continues throughout all subsequent proceedings which arise out of the original cause of action. Reasonable notice and reasonable opportunity to be heard must be given the party at each new step in the proceeding."); *id.* § 26 cmt. b ("Even without the continued existence of some jurisdictional basis, a state retains judicial jurisdiction to render judgment ... on the original cause of action."); E.H. Schloper, Annotation, *Necessity of Personal Service Within State Upon Nonresident Spouse as Prerequisite of Court's Power to Modify Its Decree as to Alimony or Child Support in Matrimonial Action*, 62 A.L.R.2d 544, 546 (1958).

²²⁵ See, e.g., *Porter*, 684 A.2d at 260 (holding that parties' absence from state for four years did not impair State 1's jurisdiction); *Sheffield v. Sheffield*, 148 S.E.2d 771, 774 (Va. 1966) (holding jurisdiction over husband unimpaired after husband departed from issuing state); *Commonwealth ex rel. Kenitzer v. Richter*, 475 S.E.2d 817, 820 (Va. Ct. App. 1996) (citing *Sheffield*, 148 S.E.2d at 774) (holding that State 1 possessed jurisdiction over father despite his departure from state); CLARK, *supra* note 12, at 725-26 & nn.21-24.

²²⁶ See 28 U.S.C.A. § 1738B(d) (West, WESTLAW through Pub. L. No. 104-333); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(1); *id.* § 611 cmt. ("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."); *Kelly v. Otte*, 474 S.E.2d 131, 135 (N.C. Ct. App.) (holding that issuing court lost continuing, exclusive jurisdiction when all parties moved from state), *review denied*, 479 S.E.2d 404 (N.C. 1996); John L. Sayon, *The Federal "Full Faith and Credit for Child Support Orders Act,"* 5 INST. OF GOV'T FAM. L. BULL. 1, 3 (1995) (stating that issuing state loses continuing, exclusive jurisdiction when either: (1) C, CP, and NCP do not reside in issuing state; or (2) parties

that State 1 appears to have lost its jurisdiction to modify the child support order in Case 6(c)²²⁷ reveals a drafting error in both statutes. It is clear that if CP, C, and NCP leave State 1 and another state modifies the child support order consistently with UIFSA and FFCCSOA, then the modifying state acquires continuing, exclusive jurisdiction.²²⁸ If, as in Case 6(c), no other state has modified the State 1 order, there appears to be a void in jurisdiction over the child support order. State 1 has lost continuing, exclusive jurisdiction to modify, but no other state has acquired continuing, exclusive jurisdiction.

If the sole issue was personal jurisdiction, UIFSA would continue to grant the State 1 court personal jurisdiction over W/CP because she "resided with the child in [State 1]."²²⁹ UIFSA's provisions governing modification jurisdiction, however, purport to affect courts' subject matter jurisdiction to modify, at least in the context of a two-state UIFSA proceeding. If NCP is the petitioner, the only state that clearly possesses subject matter jurisdiction to modify the child support order under UIFSA is State 2, the state where CP resides.²³⁰ Since financial support issues are usually interrelated and State 1 is the only state with jurisdiction to modify alimony, NCP may want State 1 to consider the requested child support modification.

consented to jurisdiction in another state). *But see Kenitzer*, 475 S.E.2d at 820 (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]") (emphasis added).

²²⁷ UNIF. INTERSTATE FAMILY SUPPORT ACT § 205 cmt. ("[I]f all the relevant persons—the obligor, the individual obligee, and the child—have permanently left the issuing state, the issuing state no longer has an appropriate nexus with the parties or child to justify exercise of jurisdiction to modify."); see also Fred Cornish et al., *Oklahoma Introductory Comment on the Uniform Interstate Family Support Act*, reprinted in 43 OKLA. STAT. ANN. tit. 43, § 601 (West Supp. 1996) ("[This section] overrules *Bailey v. Bailey*, 867 P.2d 1267 (Okla. 1994), which authorized the district court to exercise continuing jurisdiction even though all parties and the child had left the state.").

²²⁸ See 28 U.S.C.A. § 1738B(d) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(c). Other states have jurisdiction to enforce a support order. See 28 U.S.C.A. § 1738B(g) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(c). Moreover, a court has the inherent power to punish contempt of its own order. *Porter*, 684 A.2d at 261; *State v. Price*, 672 A.2d 893, 898 (R.I. 1996); see CLARK, *supra* note 12, at 675.

²²⁹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 201(3) (amended 1996); *Kenitzer*, 475 S.E.2d at 820.

²³⁰ UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1). Conversely, if CP is the petitioner, the only state with clear subject matter jurisdiction to modify child support under UIFSA is State 3, the state in which NCP resides. *Id.*

Allowing the parties to consent to State 1's jurisdiction to modify the child support order, even if State 1 would not otherwise have modification jurisdiction, is one possible solution to the dilemma created by this "gap" in jurisdiction.²³¹ The statutory language on consent, however, does not quite fit this hypothetical. Both UIFSA and FFCCSOA assume there is a court with continuing, exclusive jurisdiction, a court with which the parties must file their written consent to a *different* state's modification jurisdiction.²³² That assumption does not apply to Case 6(c), where State 1, the issuing state, has lost continuing, exclusive jurisdiction even though the parties may wish to consent to State 1's jurisdiction to modify. Both UIFSA and FFCCSOA, however, could be construed to allow the parties to consent to jurisdiction. In order to avoid potentially inconsistent judicial determinations, however, the statutes should be amended to clarify this result.²³³

But what if the respondent objects to State 1's jurisdiction to modify in the UIFSA proceeding? A possible solution to this problem, adopted in *Porter v. Porter*,²³⁴ is to allow the issuing state to retain modification jurisdiction until another state properly exercises modification jurisdiction. In *Porter*, the parties received a divorce decree in Rhode Island and F/NCP moved to Massachusetts. M/CP then obtained a child support order in Rhode Island. CP and C moved to Florida for four years, then returned to Rhode Island, where CP filed a motion to modify the support order and to hold NCP in contempt for nonpayment. NCP filed a motion to dismiss, arguing that CP's and C's four-

²³¹ See 28 U.S.C.A. § 1738B(e)(2)(B) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT §§ 205(a)(2), 611(a)(2).

²³² 28 U.S.C.A. § 1738B(e)(2)(B) (West, WESTLAW through Pub. L. No. 104-333) ("A court 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:") (emphasis added); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(2) ("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 all of the parties who are individuals have filed written consents with the tribunal of *this State* for a tribunal of *another state* to modify the order and assume continuing, exclusive jurisdiction.") (emphasis added); *Isabel M. v. Thomas M.*, 624 N.Y.S.2d 356, 361 (Fam. Ct. 1995) (holding under FFCCSOA that New York court did not have jurisdiction to modify Pennsylvania support order where parties failed to file written notice of consent to jurisdiction).

²³³ See *infra* Part II(B) and Appendix.

²³⁴ 684 A.2d 259 (R.I. 1996).

year absence from Rhode Island terminated the family court's jurisdiction over the matter.

The trial court granted NCP's motion to dismiss, but the Rhode Island Supreme Court reversed. The appellate court noted that the family court had statutorily-conferred continuing jurisdiction to modify.²³⁵ The court recognized that, under FFCCSOA,²³⁶ another state's proper modification of the child support order would terminate Rhode Island's continuing jurisdiction to modify.²³⁷ The court noted, however, that no state had modified the order:

Although "continuing, exclusive jurisdiction" is not defined in [FFCCSOA], we interpret the phrase as drawing a distinction between "continuing jurisdiction" and "exclusive jurisdiction." The jurisdiction of the court originally issuing a child-support order may continue beyond the removal of parties from the state but the jurisdiction may no longer be exclusive under the act. That is, the jurisdiction of the originating state continues even after the contestants and their children leave the state, until such time as a new state of residence modifies the order. If, before such a modification occurs, a contestant or a child returns, the originating state's jurisdiction is again exclusive and no longer subject to modification by another state under the act, save by agreement of the parties, 28 U.S.C. § 1738B(e)(2)(B). Thus, subsection (d) provides for the continuing, exclusive jurisdiction of the originating state if a child or a contestant resides there, whether continuously or upon return, unless a court of another state has modified the order in accordance with subsection (e).²³⁸

²³⁵ *Id.* at 261-62. The opinion does not explicitly state whether the court is addressing the family court's subject matter jurisdiction to modify or the court's ability to exercise personal jurisdiction over NCP. Since the opinion references FFCCSOA, a subject matter jurisdiction statute, the court probably meant to address the issue of subject matter jurisdiction in this portion of the opinion.

²³⁶ Rhode Island had not yet adopted UIFSA.

²³⁷ *Porter*, 684 A.2d at 262. The court noted that modification by another state would not terminate Rhode Island's jurisdiction to hold NCP in contempt. *Id.* at 261; see 28 U.S.C.A. § 1738B(g) (West, WESTLAW through Pub. L. No. 104-333) ("A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f)."); see also UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(c) (amended 1996).

²³⁸ *Porter*, 684 A.2d at 263. In *Commonwealth ex rel. Kenitzer v. Richter*, 475 S.E.2d 817, 818 (Va. 1996), CP and NCP moved to California and South Carolina after Virginia issued a divorce decree containing the child support order. CP sought

The difference between *Porter* and Case 6(c) is that in *Porter*, CP resided in State 1 when she sought the modification. In Case 6(c), both CP and NCP left State 1 and do not reside in State 1 at the time the motion to modify was filed. Despite this difference, the concept that the issuing state retains "continuing" but not "exclusive" jurisdiction to modify a child support order when no other state has modified the order can be profitably transported to Case 6(c).²³⁹ Allowing State 1 to exercise jurisdiction to modify the child support order will harmonize the result in a UIFSA two-state proceeding forwarded to State 1 with the result of a direct filing in State 1. If, however, another state has exercised modification jurisdiction, State 1 loses modification jurisdiction.²⁴⁰

Case 6(d): NCP seeks modification of visitation or custody in the State 3 UIFSA proceeding. Assume the same facts as in Case 6(a) except that, in responding to the UIFSA proceeding in State 3, NCP moves to enforce his visitation rights or to modify visitation or custody. Can the State 3 court address these issues in the UIFSA proceeding?

State 3 cannot enforce NCP's visitation rights or modify visitation or custody.²⁴¹ One of the major purposes of UIFSA, to

to recover alleged arrearages through a somewhat circuitous route. She registered the Virginia order in her home state of California, and then forwarded a URESA petition to Virginia, where Virginia's IV-D agency moved for a judgment of arrearages and interest. *Id.* at 819. The trial court held that Virginia lacked subject matter jurisdiction since South Carolina had stayed an earlier request by CP to institute automatic withholding of NCP's wages. *Id.* The appellate court reversed, holding that "Virginia [the issuing state] continues to have the right to enforce its own decrees even if all parties are no longer residents When South Carolina declined to issue an income-withholding order and made no determination of arrearages, [CP] could invoke Virginia's jurisdiction for the purpose of enforcing its own decree." *Id.* at 820-21 (emphasis added). The court thereby clarified that an issuing court is not required to have "continuing, exclusive jurisdiction" merely to enforce an order.

²³⁹ See 28 U.S.C.A. § 1738B(d) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a); see also *infra* Part II(C) and Appendix (proposing amendments to UIFSA and FFCCSOA to resolve this dilemma).

²⁴⁰ See *supra* note 228 and accompanying text.

²⁴¹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 305(d) ("A responding tribunal of this State may not condition the payment of a support order issued under this [Act] upon compliance by a party with provisions for visitation."); *Chaisson v. Ragsdale*, 914 S.W.2d 739, 741 (Ark. 1996) (holding that UIFSA does not authorize jurisdiction over custody and setoff); *State ex rel. Finley v. Robinson*, 842 S.W.2d 47, 48 (Ark. 1992) (stating that under URESA court cannot determine visitation rights); *Department of Human Servs. v. Pavlovich*, No. 82,363, 1996 WL 297413 (Okla. Sup. Ct. June 4, 1996) (holding that under URESA State 3 needs UCCJA jurisdiction to modify child support order) (citations omitted); cf. UNIF. INTERSTATE FAMILY

streamline multi-state procedures for support enforcement, would be defeated if parties could “counterclaim” on issues collateral to support.²⁴² Unlike filing a civil lawsuit in a foreign state, which subjects the plaintiff to the personal jurisdiction of that state with respect to any counterclaims filed by the defendant,²⁴³ the forwarding of a UIFSA proceeding to a state that would not normally have jurisdiction over custody issues²⁴⁴ does not subject the petitioner to custody claims asserted by the respondent.²⁴⁵

Case 6(e): CP seeks modification of child support in State 3 proceeding. Assume the same facts as in Case 6(a). In addition to instituting a UIFSA enforcement proceeding in State 2, CP also seeks to increase NCP’s child support obligation as part of

SUPPORT ACT § 314(a) (“Participation by a [petitioner] in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the [petitioner] in another proceeding.”).

²⁴² Some father’s rights advocates, however, forcefully assert that NCP’s access to visitation is one of the principal determinants of NCP’s compliance with his child support obligation. These advocates argue that a closer link exists between issues of financial and emotional support. See *Interstate Modification Hearings*, *supra* note 9, at 84 (positing that one of three principal determinants of child support compliance is access to children); Chavez, *supra* note 29, at 6-9 (surveying studies showing positive correlation between noncustodial parents’ adequate visitation with children and compliance with child support obligations); see also CLARK, *supra* note 12, at 280 (“If the contacts with the responding state are sufficiently close to justify either a divorce or a custody proceeding, and if all issues are or can be brought before the same court, there seems good reason to permit the court to deal with the other matters in addition to support.”).

The 1996 welfare reform bill addressed this concern by providing that the new “Administration for Children and Families shall make grants ... to enable States to establish and administer programs to support and facilitate noncustodial parents’ access to and visitation of their children” 42 U.S.C.A. § 669b(a) (West Supp. 1996).

²⁴³ See *Adam v. Saenger*, 303 U.S. 59 (1938).

²⁴⁴ Under the PKPA, the child’s home state is the favored jurisdiction for custody issues. See 28 U.S.C. § 1738A(c)(2)(A) (1994). The UCCJA, to a lesser extent, further supports this proposition. See UNIF. CHILD CUSTODY JURISDICTION ACT § 3(a)(1), 9 U.L.A. pt. I, 151 (1988).

²⁴⁵ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 305 cmt. (“[U]nder a UIFSA action the petitioner generally is not present before the tribunal. This distinction justifies prohibiting visitation issues from being litigated in the context of a support proceeding.”). Similarly, if NCP raised a claim that State 3 would need personal jurisdiction over CP to decide, such as modification of child support, the forwarding of a UIFSA proceeding to State 3 would not subject CP to State 3’s jurisdiction to decide that claim. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 314(a); *id.* § 314 cmt. (stating that under section 314(a) “direct or indirect participation in a UIFSA proceeding does not subject a petitioner to an assertion of personal jurisdiction over the petitioner by the forum state in other litigation between the parties”).

her UIFSA proceeding forwarded to State 3. Can the State 3 court order the modification CP requests?

Yes; State 3 has jurisdiction to modify the child support order under UIFSA section 611(a)(1).²⁴⁶ All parties no longer reside in State 1. The "petitioner," CP, is a nonresident of State 3.²⁴⁷ State 3 has personal jurisdiction over NCP since NCP is a citizen of State 3.²⁴⁸ The same result, allowing State 3 to modify the State 1 order, is reached under FFCCSOA.²⁴⁹

Another issue is which state's law State 3 should apply to determine whether the increase should be ordered. Assume that the ground for CP's request to increase child support is that inflation eroded the purchasing power of the original award. Assume further that State 1 and State 2 recognize inflation as a potential reason for an increase while State 3 does not.²⁵⁰ Which state's law should the State 3 court apply in considering the requested increase?

The short answer is probably the law of the forum state, State 3. This seems clear under FFCCSOA. The answer may be the same under UIFSA, but one could plausibly read UIFSA as supplying a different answer.

FFCCSOA section (h) provides:

- (1) In general.—In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

²⁴⁶ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1). CP must follow the statutory procedure for registration of the order in State 3, *see supra* notes 216-18 and accompanying text, either before or contemporaneously with her request for modification. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 609.

²⁴⁷ "Subsection (a)(1) contemplate[s] that the issuing state has lost continuing, exclusive jurisdiction and that the obligee may seek modification in the obligor's state of residence, or that the obligor may seek a modification in the obligee's state of residence." UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt.

²⁴⁸ See *Milliken v. Meyer*, 311 U.S. 457, 463-64 (1940) (recognizing domicile as valid basis for assertion of personal jurisdiction). State 3 may not, however, "modify any aspect of a child-support order that may not be modified under the law of the issuing state [State 1]." UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(c).

²⁴⁹ See 28 U.S.C.A. § 1738B(e) (West, WESTLAW through Pub. L. No. 104-333); *Isabel M. v. Thomas M.*, 624 N.Y.S.2d 356, 361 (Fam. Ct. 1995); *Kelly v. Otte*, 474 S.E.2d 131, 135 (N.C. Ct. App.), *review denied*, 1996 WL 762108 (N.C. Dec. 5, 1996).

²⁵⁰ Compare *Pope v. Pope*, 342 So. 2d 1000, 1002 (Fla. Dist. Ct. App. 1977) (holding that material increase in cost of maintaining and providing for children was sufficient to allow modification of support award), with *Baker v. Baker*, 332 S.E.2d 550, 552 (S.C. Ct. App. 1985) ("[I]nflation, without more, is insufficient to establish changed circumstances or justify an increase in alimony.").

(2) Law of State of Issuance of Order.—In 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.

(3) Period of Limitation.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.²⁵¹

Unless the original order contains a provision regarding inflation that requires “interpretation,” subsection (h)(2) does not apply. In addition, subsection (h)(3) does not apply because Case 6(e) does not involve a statute of limitations. Case 6(e) would therefore be governed by the “general” rule stated in subsection (h)(1) and the law of State 3, the forum state, would apply to the modification petition.

UIFSA’s drafters probably intended that the law of the forum state would apply,²⁵² but the statutory language is ambiguous and allows an alternative interpretation. UIFSA’s section 303, the general choice-of-law provision that applies to all UIFSA proceedings,²⁵³ provides:

Except as otherwise provided by this [Act], 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.²⁵⁴

Subsection (2) appears to indicate that the law of State 3 should apply.²⁵⁵ State 3 is the “responding tribunal” and CP is

²⁵¹ 28 U.S.C.A. § 1738B(h) (West Supp. 1996).

²⁵² See UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note (“[UIFSA] provides that the procedures and law of the forum apply, with some significant additions or exceptions”); *id.* § 303 cmt.

²⁵³ See *id.* § 301(a); *id.* prefatory note (stating that “separate articles are created for provisions common to all types of actions (Article 3)”). Section 303 is within Article 3.

²⁵⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT § 303.

²⁵⁵ See also *id.* § 303 cmt. (“Historically states have insisted that forum law be

asking State 3 to "determine" the "amount" of support "payable." In addition to the apparent statutory mandate that the law of the forum state should apply, family law courts often apply the forum-state's law with little or no analysis of choice of law principles.²⁵⁶ Subsection 303(1), however, complicates this analysis. It could be argued that subsection 303(1) merely requires State 3 to apply State 3's "rules on choice of law." Under those choice-of-law principles, State 3 might be required to apply the law of State 1 or State 2.²⁵⁷

Moreover, UIFSA section 604 provides competing choice-of-law rules specifically applicable to enforcement and modification proceedings.²⁵⁸ Section 604, entitled "Choice of Law," tends to counteract the general "forum-state" rule of section 303:

(a) The law of the issuing state [State 1] governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this State or of the issuing state, whichever is longer, applies.

Section 604(a) could be interpreted broadly enough to swallow the general "forum-state" rule of section 303. While the commentary reveals that the drafters did not intend section 604(a) always to override the "forum-state" rule of section 303,²⁵⁹ the phrase "nature, extent, [and] amount ... of current payments" is imprecise.

The only example given by the official comment to UIFSA section 604 does not apply to Case 6(e):

This section identifies situations in which local law is inappli-

applied to support cases whenever possible.").

²⁵⁶ See CLARK, *supra* note 12, at 284.

²⁵⁷ See *In re Marriage of Adams*, 551 N.E.2d 635, 639 (Ill. 1990) (holding that Illinois' choice-of-law rules required application of Florida law to determine paternity and duty of support in Illinois divorce proceeding where wife claimed support for child conceived during marriage through artificial insemination in Florida); RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 6 cmt. b (1989).

²⁵⁸ Article 6 of UIFSA, within which section 604 appears, is entitled "Enforcement and Modification of Support Order After Registration." See also UNIF. INTERSTATE FAMILY SUPPORT ACT prefatory note (asserting that Article 6 contains provisions for "the enforcement and modification of support orders after registration").

²⁵⁹ See *id.* §604 cmt. ("This section identifies situations in which local law is inapplicable.").

cable For example, under Subsection (a) the responding state must recognize and enforce an order of the issuing state for the support of the child under age 21, notwithstanding the fact that the duty of support of a child ends at age 18 under the law of the responding state.²⁶⁰

The comment clarifies the part of subsection 604(a) that addresses the "duration of current payments and other obligations of support."²⁶¹ This example, however, sheds little light on the meaning of the phrase "the nature, extent, [or] amount ... of current payments and other obligations of support."²⁶²

Under UIFSA, therefore, the crucial question presented by Case 6(e) is whether a request for an increase in child support due to inflation constitutes an issue regarding "the nature [or] extent ... of current payments and other obligations of support." If a court determines that such a request falls within section 604(a), a conclusion that would not be facially unreasonable, then the law of State 1, the issuing state, applies.

If FFCCSOA requires the application of the forum state's law while UIFSA indicates that another state's law governs,²⁶³ FFCCSOA may preempt UIFSA. Courts could avoid the issue of federal preemption and harmonize the results obtained under the two laws by concluding, as a matter of statutory interpretation, that whether child support should be increased due to inflation is not an issue of "the nature, extent, amount, and duration of current payments and other obligations of support." This interpretation would not trigger the application of "issuing-state" law under UIFSA section 604(a).²⁶⁴

A word might be added here about the policy behind the rule that the forum state should usually apply its own law. The drafters of UIFSA emphasized ease of judicial administration and recognized that courts were likely to apply the law of their own state.²⁶⁵ As this hypothetical suggests, however, this rule

²⁶⁰ *Id.* (citations omitted); see also Sampson, *supra* note 12, at nn.134-36.

²⁶¹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 604(a).

²⁶² *Id.*

²⁶³ See *supra* notes 257-59 and accompanying text.

²⁶⁴ See *infra* Part II(D) and Appendix (proposing amendments to UIFSA section 604).

²⁶⁵ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 303 cmt. ("Historically states have insisted that forum law be applied to support cases whenever possible To insure the efficient processing of the huge number of interstate support cases, it is vital that decision-makers apply familiar rules of local law to the maximum degree possible.").

does not result in the most equitable solution in every case. NCP's move to State 3, which frowns on inflation as a ground for an increase in child support, is entirely fortuitous under these facts.²⁶⁶

Moreover, the regular application of the law of the forum state raises the potentially more far-reaching question of whether CP may seek an increase in child support because State 3's child support guidelines²⁶⁷ would result in a higher child support award than State 1's guidelines initially authorized.²⁶⁸ A request to modify an award merely because one of the parties has moved to a state with different guidelines would appear not to meet any standard of "changed circumstances" sufficient to warrant modification.²⁶⁹ Different areas of the country, however, have markedly different costs of living,²⁷⁰ and it is possible that interstate moves will cause real changes in the parties' needs and available resources. By omitting any specific reference to this issue, UIFSA and FFCCSOA appear to leave the issue to be

²⁶⁶ See CLARK, *supra* note 12, at 284 ("In the vast majority of cases there is no difference between the laws of the various states, but where there is, there is no entirely satisfactory way of resolving the conflict thus created.")

²⁶⁷ Federal law requires states to adopt numerical guidelines that provide a "rebuttable presumption" for child support awards. 42 U.S.C. § 667(b)(2) (1994). Federal law does not prescribe the nature of the guidelines and states have adopted a number of different formulas for determination of awards. See generally Linda Henry Elrod, *The Federalization of Child Support Guidelines*, 6 J. AM. ACAD. MATRIM. L. 103, 118-23 (1990) (discussing guidelines states could adopt to determine appropriate child support awards).

²⁶⁸ Conversely, NCP might seek a decrease because State 2's guidelines would result in a lower award than State 1's. For example, Illinois uses a percentage of income model, 750 ILL. COMP. STAT. ANN. 5/505(a)(1) (West 1996), while Oklahoma uses an income shares model. OKLA. STAT. ANN. tit. 43, §§ 118, 119 (West Supp. 1997). Assume that: H/NCP grosses \$2,000 per month and nets \$1,500 per month; W/CP grosses \$1,500 per month; there are two children and day care for these children costs \$400 per month; and medical insurance for the children is \$100 per month. Under the Illinois guidelines, the award of child support to W/CP would be \$350.00 per month plus a probable award of \$100.00 per month for the medical insurance. See 750 ILL. COMP. STAT. ANN. 5/505(a)(4) (West 1996); *id.* § 5/505.2(b)(1). Assuming that CP paid day care and medical insurance, the award under the Oklahoma guidelines would be \$640.55 per month.

²⁶⁹ See UNIF. MARRIAGE & DIVORCE ACT § 316(a), 9 U.L.A. 147 (1987); *cf. In re Abel*, 886 P.2d 1139, 1141-42 (Wash. Ct. App. 1995) (reversing trial court's application of Montana guidelines to reduce amount of child support decree obtained in Washington even though ex-wife and children had moved to Montana).

²⁷⁰ See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 488 (1996). For the third quarter of 1995, the cost of living index ranged from 87.0 in Fort Smith, Arkansas, to 221.1 in New York City. *Id.* at 488-89.

resolved on a case-by-case basis.²⁷¹

Case 6(f): NCP seeks modification of child support in State 3 proceeding. Assume the same facts as in Case 6(a): that CP initiates a UIFSA enforcement proceeding in State 2 which is forwarded to State 3. This time, however, NCP seeks a decrease in his child support obligation in response to the State 3 UIFSA proceeding. Can the State 3 court order the modification NCP requests if NCP has good grounds?

The answer is “no” under UIFSA, but the answer may be less clear under FFCCSOA. Under UIFSA section 611, the first element for modification jurisdiction is met because NCP, CP, and C no longer reside in State 1.²⁷² The second and third elements, however, are not satisfied. The “petitioner” seeking the modification, NCP, is a resident of State 3, and CP, on these facts, is not subject to personal jurisdiction in State 3.²⁷³ As the drafters of UIFSA stated:

This restriction attempts to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party. For example, an obligor visiting the children at the residence of the obligee cannot be validly served with citation accompanied by a motion to modify the support order.²⁷⁴

State 3, therefore, does not have jurisdiction to modify the child support order under UIFSA.

A slight alteration of the facts reveals a potentially different answer under FFCCSOA. Assume that CP drives C to State 3 to begin a scheduled visitation with NCP after she filed a UIFSA proceeding. While physically present in State 3, NCP serves CP with a petition to modify his child support obligation, styled either as a response to CP’s UIFSA proceeding or as an independent proceeding filed in State 3. State 3 probably has personal

²⁷¹ 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.*”) (emphasis added).

²⁷² 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

UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1)(i) (amended 1996).

²⁷³ See *id.* §611(a)(1)(ii)-(iii).

²⁷⁴ See *id.* § 611 cmt.

jurisdiction over CP to hear the child support modification petition because CP was properly served with process while physically present in State 3.²⁷⁵ Nevertheless, the second element of modification jurisdiction under UIFSA would not be satisfied. The "petitioner," NCP, seeking the modification is not "a non-resident" of State 3. Thus, UIFSA prohibits State 3 from modifying the child support order at NCP's request.²⁷⁶

FFCCSOA, however, does not contain the "nonresident petitioner" restriction on modification jurisdiction. Newly-amended subsection (e) merely provides that:

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 contestant²⁷⁷

Subsection (i) allows the party seeking to modify the order to register the order "in a State with jurisdiction over the nonmovant for the purpose of modification."²⁷⁸

If the word "jurisdiction" in subsection (i) refers only to *personal* jurisdiction over the nonmovant, then FFCCSOA does not appear to prohibit State 3 from modifying the child support order since State 3 can exercise personal jurisdiction over CP. Subsection (e)(1) appears satisfied since State 3 has personal jurisdiction over CP and NCP has filed his petition in the State 3 tribunal with subject matter jurisdiction over child support matters. Subsection (e)(2)(A) is also satisfied because State 1

²⁷⁵ *Burnham v. Superior Court*, 495 U.S. 604, 620 (1990) (holding that state may exercise personal jurisdiction over a non-resident served with process while temporarily in that state, even when suit is unrelated to activities within state). Personal jurisdiction might be defeated if NCP fraudulently enticed CP into State 3. *See, e.g., Wyman v. Newhouse*, 93 F.2d 313, 314-15 (2d Cir. 1937); *Neotex Mfg. Co. v. Eidinger*, 294 N.Y.S. 767, 768 (App. Div. 1937); *Waljohn Waterstop, Inc. v. Webster*, 232 N.Y.S.2d 665, 666-67 (Sup. Ct. 1962).

²⁷⁶ UIFSA would permit State 3 to modify the child support order upon a request by CP. *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1); *see also* David S. Dolowitz, *Jurisdiction Issues in Child Custody, Visitation and Support Cases*, 9 UTAH B.J. 10, 13 (1996) (noting that UIFSA prevents foreign court from modifying order of issuing state while parent or child continues to reside in issuing state).

²⁷⁷ 28 U.S.C.A. § 1738B(e) (West, WESTLAW through Pub. L. No. 104-333).

²⁷⁸ *See id.* § 1738B(i).

lost continuing, exclusive jurisdiction of the child support order when NCP, CP, and C moved out of the state. Since the statute does not contain any additional explicit restrictions, it appears that State 3 is free to assume modification jurisdiction under FFCCSOA.

Interpreting the word "jurisdiction" in FFCCSOA subsection (i) to mean both personal jurisdiction *and* subject matter jurisdiction to modify would avoid the anomaly of reaching different results under FFCCSOA and UIFSA. FFCCSOA subsection (i) requires that State 3 have "jurisdiction over the nonmovant for the purpose of modification" of the child support order.²⁷⁹ Since State 3 would not have subject matter jurisdiction to modify the child support order under UIFSA, it could be argued that State 3 does not have "jurisdiction over the nonmovant for the purpose of modification" under FFCCSOA. This construction would harmonize the results attained under FFCCSOA and UIFSA.²⁸⁰

*Case 6(g): The human error factor.*²⁸¹ Assume that in Case 6(f), where NCP improperly sought a modification in the State 3 UIFSA proceeding, the State 3 court erroneously believed it had jurisdiction under UIFSA section 611 to reduce NCP's child support obligation. Assume further that the court ordered the reduction and CP did not appeal that order. NCP then returns to State 1, where CP seeks enforcement of the original State 1 order. Is the State 1 court bound by the State 3 court's order,

²⁷⁹ *Id.*

²⁸⁰ Congress enacted the latest amendments to FFCCSOA in order to make the federal statute more consistent with UIFSA. See H.R. CONF. REP. NO. 104-725, reprinted in 1996 U.S.C.C.A.N. 2649, 2651; Haynes, *supra* note 145, at 26, 29-30. These amendments evidence Congress' intention to harmonize the two statutes, rather than allowing FFCCSOA to preempt UIFSA. The desire to achieve uniform results is consistent with the legislative history of the original FFCCSOA. See S. REP. NO. 103-361, reprinted in 1994 U.S.C.C.A.N. 3259 ("[T]he bill ... provide[s] that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought"). The language ultimately enacted by Congress, however, does not necessarily compel this result. See *infra* Part II(E) and Appendix (proposing amendments to clarify FFCCSOA in order to harmonize FFCCSOA and UIFSA).

²⁸¹ A similar situation would arise if State 3 was operating under URESA and the State 3 court either ignored FFCCSOA or improperly decided that it could still make a *de novo* determination of support. See OCSE HANDBOOK, *supra* note 28, at 1-7; Haynes, *supra* note 145, at 30. Additionally, Professor Sampson has suggested that "you could have two orders under UIFSA in a UIFSA state when the parties don't communicate, don't serve properly, et cetera." *NCCUSL Proceedings*, *supra* note 4, at 27.

which erroneously reduced NCP's child support obligation?²⁸²

The statutes operate on the presumption that they will be correctly applied. They do not provide an easy answer when that presumption proves false. Two separate interpretive paths lead to conflicting conclusions.

The initial step on the first path of statutory analysis is noting that UIFSA section 612 requires the issuing tribunal to "recognize a modification of its earlier child support order by a tribunal of another state *which assumed jurisdiction pursuant to a law substantially similar to this [Act] ...*"²⁸³ CP could argue that State 3 modified the order *in spite of* UIFSA, not "pursuant to" UIFSA.²⁸⁴ Since State 3 erroneously exercised jurisdiction to modify the order, the State 1 court could decline to recognize the modification and enforce the original (State 1) support order.

Similarly, FFCCSOA requires State 1 to "enforce according to its terms a child support order made consistently with this section by a court of another State."²⁸⁵ In order for the State 3 court to have made its order "consistently with" FFCCSOA, the court must have had, "pursuant to the laws of [State 3] ..., (A) ... subject matter jurisdiction to hear the matter and enter such an order"²⁸⁶ CP could argue that "the laws of" State 3 include UIFSA section 611, which did not grant State 3 subject matter jurisdiction to modify the order. CP would assert, therefore, that State 3's order was not made "consistently with" FFCCSOA and that State 1 is not required to give the State 3 order full faith

²⁸² If State 3 did not have personal jurisdiction over CP to render the modification, or if CP did not receive notice and opportunity to be heard in the State 3 proceeding, State 3's order would be void. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Pennoy v. Neff*, 95 U.S. 714 (1877). The remainder of this hypothetical assumes that State 3 had personal jurisdiction over CP and that CP received proper notice.

²⁸³ UNIF. INTERSTATE FAMILY SUPPORT ACT § 612 (emphasis added). This Article assumes that a "law substantially similar to this [Act]" means UIFSA and not URESA.

²⁸⁴ *Id.* § 612. The official comment to UIFSA section 612 further supports CP's argument. "[D]eference to the support order of a sister state ... applies not just to the original order, but also to a modified child support order issued by a second state *under the standards established by Section 611 ...*" UNIF. INTERSTATE FAMILY SUPPORT ACT § 612 cmt. (emphasis added). State 3 modified the order *in violation of* section 611 because the "petitioner" seeking modification, NCP, was a resident of State 3, the modifying state. See *id.* § 611(a)(1)(ii).

²⁸⁵ 28 U.S.C.A. § 1738B(a)(1) (West, WESTLAW through Pub. L. No. 104-333).

²⁸⁶ *Id.* § 1738B(c)(1)(A). In order to enter an order "consistently with" FFCCSOA, State 3 must have met the other requirements of subsection (c) and adhered to subsections (e), (f), and (g). See *id.* § 1738B(c)(1).

and credit.

Conversely, NCP could argue that CP had the opportunity to object to State 3's subject matter jurisdiction to modify the order in the State 3 proceeding. By failing to assert that UIFSA section 611 prevented the modification, CP waived the objection to subject matter jurisdiction,²⁸⁷ and State 1, therefore, should "recognize"²⁸⁸ and "enforce"²⁸⁹ the State 3 order.

UIFSA section 207 and FFCCSOA subsection (f) provide the second statutory path in analyzing Case 6(g).²⁹⁰ These sections set forth rules of priority governing competing support orders for the same obligor and obligee or child.²⁹¹ The first rule of priority is that if only one of the issuing tribunals would have continuing, exclusive jurisdiction under UIFSA, the order of that tribunal controls.²⁹²

²⁸⁷ See RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1985) (stating that, subject to exception, "[w]hen a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation ..."); *id.* § 11 cmt. d; BRILMAYER, *supra* note 10, at 44; Reynolds, *supra* note 10, at 428-29 (opining that Supreme Court has issued disparate rulings on when, if ever, subject matter jurisdiction can be collaterally attacked). NCP can assert an even stronger argument if CP objected to subject matter jurisdiction in State 3 and State 3 erroneously rejected CP's argument. See RESTATEMENT (SECOND) OF JUDGMENTS § 12 cmt. c ("When the question of the tribunal's jurisdiction is raised in the original action, in a modern procedural regime there is no reason why the determination of the issue should not thereafter be conclusive under the usual rules of issue preclusion."); Reynolds, *supra* note 10, at 426-30.

²⁸⁸ UNIF. INTERSTATE FAMILY SUPPORT ACT § 612.

²⁸⁹ 28 U.S.C.A. § 1738B(a)(1) (West Supp. 1996).

²⁹⁰ 28 U.S.C.A. § 1738B(f) (West Supp. 1996); UNIF. INTERSTATE FAMILY SUPPORT ACT § 207.

²⁹¹ UIFSA's drafters assumed that section 207 would be needed when one of the states applied URESA, not if a state applied UIFSA incorrectly. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 207 cmt.; see also *id.* prefatory note (stating that section 207 involves "reconciliation with orders issued before the effective date of [UIFSA]"); *NCCUSL Proceedings*, *supra* note 4, at 27 (remarks of Professor Sampson) ("This whole section [207] is about reconciling, going from a multiple-order system to a one-order system."). The statutory language, however, is not so limited.

²⁹² UNIF. INTERSTATE FAMILY SUPPORT ACT § 207(b)(1) states:

If a proceeding is brought under this [Act], and two or more child-support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction: (1) If only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal controls and must be so recognized.

Id. FFCCSOA contains substantially the same provision. See 28 U.S.C.A. § 1738B(f)(2) (West, WESTLAW through Pub. L. No. 104-333) ("If 2 or more courts

Under UIFSA, it is likely that neither State 1 nor State 3 has continuing, exclusive jurisdiction. State 1 lost continuing, exclusive jurisdiction when the parties initially moved out of State 1.²⁹³ Section 205(a)(1) of UIFSA appears to prevent the re-acquisition by State 1 of "continuing, exclusive jurisdiction" after NCP returns to State 1. Section 205(a)(1) states that the issuing court retains continuing, exclusive jurisdiction "as long as this State *remains* the residence of the obligor, the individual obligee, or the child"²⁹⁴ This language suggests that a continuity of residence from the date of the order's issuance is necessary for State 1 to maintain jurisdiction. State 3, if it ever possessed continuing, exclusive jurisdiction,²⁹⁵ lost such jurisdiction when NCP moved out of State 3. Therefore, UIFSA's first prioritization rule²⁹⁶ fails to resolve the dispute.

State 1, however, possibly has continuing, exclusive jurisdiction under FFCCSOA. Subsection (d) of FFCCSOA provides that:

A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.²⁹⁷

State 1 is currently "the residence of" NCP. Further, it can be argued that State 3 did not act "in accordance with subsections (e) and (f)" in modifying the order. For modification jurisdiction, subsection (e) requires the court to have "jurisdiction to make

have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.").

²⁹³ See *supra* notes 226-28 and accompanying text. Even if State 1 had not lost continuing, exclusive jurisdiction, State 1 "loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the [original] order issued in" State 1 when State 3 modifies that order "pursuant to this [UIFSA] or a law substantially similar to" UIFSA. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(c). It could be argued, however, that State 3 did not modify the order "pursuant to" UIFSA, and State 1 thus retained continuing, though perhaps not exclusive, jurisdiction. Cf. *Porter v. Porter*, 684 A.2d 259, 262-63 (R.I. 1996).

²⁹⁴ UNIF. INTERSTATE FAMILY SUPPORT ACT § 205(a)(1) (emphasis added).

²⁹⁵ Arguably, State 3 never acquired continuing, exclusive jurisdiction because it did not "issu[e] a support order consistent with the law of" State 3. *Id.* § 205(a). Since NCP was a resident of State 3, State 3 should not have modified the State 1 order under UIFSA section 611(a). See *id.* § 611(a).

²⁹⁶ *Id.* § 207(b)(1).

²⁹⁷ 28 U.S.C.A. § 1738B(d) (West Supp. 1996).

such a child support order pursuant to subsection (i),²⁹⁸ which requires the state to have "jurisdiction over the nonmovant for the purpose of modification."²⁹⁹ If the word "jurisdiction" is correctly interpreted to include subject matter jurisdiction, and not merely personal jurisdiction over CP,³⁰⁰ then State 3 did not have "jurisdiction over the nonmovant for the purpose of modification" under UIFSA section 611.³⁰¹ State 1 would therefore have continuing, exclusive jurisdiction under FFCCSOA and its order would take precedence under FFCCSOA's first rule of priority governing conflicting support orders.³⁰²

The contrary view is that CP had the opportunity to challenge State 3's modification jurisdiction. Regardless of whether CP failed to do so, or did so unsuccessfully, the State 3 order should be considered valid.³⁰³ Under this theory, State 1 lost continuing, exclusive jurisdiction under FFCCSOA subsection (d) when State 3 modified the order.³⁰⁴ Thus, the first prioritization rule provides no definitive answer.

The second prioritization rule states:

If ... two or more child-support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, ... (2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this [Act], 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.³⁰⁵

Based upon the above analysis, State 1 and State 3 probably do not have continuing, exclusive jurisdiction under either UIFSA or FFCCSOA. This prioritization rule thus appears inapplicable. If both states have continuing, exclusive jurisdiction, however,³⁰⁶ then State 3's order, the order "most recently issued,"

²⁹⁸ *Id.* § 1738B(e)(1) (West, WESTLAW through Pub. L. No. 104-333).

²⁹⁹ *Id.* § 1738B(i).

³⁰⁰ See *supra* notes 278-80 and accompanying text.

³⁰¹ 28 U.S.C.A. § 1738B(i) (West Supp. 1996); see UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1) (amended 1996).

³⁰² 28 U.S.C.A. § 1738B(f) (West Supp. 1996).

³⁰³ See *supra* note 287-89 and accompanying text.

³⁰⁴ 28 U.S.C.A. § 1738B(d) (West, WESTLAW through Pub. L. No. 104-333).

³⁰⁵ UNIF. INTERSTATE FAMILY SUPPORT ACT § 207(b)(2). FFCCSOA contains essentially the same provision. See 28 U.S.C.A. § 1738B(f)(3) (West Supp. 1996).

³⁰⁶ It appears logically impossible for two states to have continuing, *exclusive*

should be given priority.³⁰⁷

The final prioritization rule which may apply to Case 6(g) is as follows:

If none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State having jurisdiction over the parties shall issue a child-support order, which controls and must be so recognized.³⁰⁸

If neither State 1 nor State 3 has continuing, exclusive jurisdiction, this final prioritization rule appears to be applicable. Applying this rule, however, raises the issue of whether State 1 may recognize and enforce its own original order, as CP requests, or merely "issue" prospectively a new order. The commentary supports the latter construction: "[i]f none of the preceding priorities ... apply, the forum tribunal is directed to issue a new order The rationale for creating yet another order is that there is no valid reason under UIFSA to prefer the terms of one of the multiple orders over another."³⁰⁹

While Case 6(g) and similar cases have generated significant debate, observers have not reached definitive answers. The chairperson of the United States Commission on Interstate Child Support recently asked the question, "[I]f a court modifies an order when it lacks jurisdiction to do so under the FFCCSOA, is the modified order void, voidable, or res judicata between the parties if not appealed within a certain time period?"³¹⁰ She then reported that the answer to that question "is under discussion nationwide."³¹¹

Choosing the better of two imperfect solutions, this Article concludes that UIFSA and FFCCSOA's overriding policy of recognizing only one order at a time requires State 1 to recognize State 3's modification of the order. This result is also consistent with the weight of authority that precludes re-litigation of a court's subject matter jurisdiction after the court has rendered judgment.³¹² Regardless of the ultimate resolution of this contro-

jurisdiction. The drafters' anticipation of this occurrence is a tribute to their foresight, an implicit recognition of the inherent inconsistencies in the uniform statutes, or perhaps both.

³⁰⁷ State 2, the child's home state, has not issued an order in this hypothetical.

³⁰⁸ UNIF. INTERSTATE FAMILY SUPPORT ACT § 207(b)(3); see 28 U.S.C.A. § 1738B(f)(4) (West Supp. 1996) (containing substantially similar provision).

³⁰⁹ UNIF. INTERSTATE FAMILY SUPPORT ACT § 207 cmt.

³¹⁰ Haynes, *supra* note 145, at 31.

³¹¹ *Id.*

³¹² See *supra* note 287; see also RESTATEMENT (SECOND) OF JUDGMENTS § 13,

versy, CP has an immediate remedy since UIFSA section 611 allows CP to seek a further modification of the order in State 1.³¹³ As a practical matter, therefore, CP should ask State 1 either to enforce its original order or, in the alternative, to modify State 3's order.

II. PROPOSALS TO CLARIFY UIFSA AND FFCCSOA

Based upon the preceding discussion, this Article proposes amendments to UIFSA and FFCCSOA as follows.

A. *Competing Petitions to Establish Support Filed in Two States*

As discussed in Cases 2(b) and 2(c),³¹⁴ UIFSA prioritization rules operate ambiguously when the parties contemporaneously file petitions for support in two different states and there is either no home state of a child or no child. The drafters of UIFSA intended the first-filed petition to have priority.³¹⁵ UIFSA section 204(a)(3) should be amended to clarify ambiguous language and ensure achievement of this desired result.³¹⁶ Section 204(a)(3) should be amended from "(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: ... (3) if relevant, this State is the home state of the child" to "(3) *this state is the home state of a child for whom a child support order is sought to be established.*" This proposed amendment would clarify that a State 2 court would not have jurisdiction to establish a support order when a petition for child support has already been filed in State 1 unless State 2 is the home state of the child. In cases 2(b) and 2(c), the first-filed petition would certainly have priority because a court receiving the second-filed petition in another state would not be empowered to act upon it.

As also discussed, UIFSA's drafters assumed that giving the child's home state priority would accomplish the goal of keeping

cmt. c (1981).

³¹³ All parties have left State 3, now regarded as the "issuing state"; the "petitioner" for modification, CP, is a nonresident of State 1; and State 1 can exercise personal jurisdiction over NCP, its resident. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1).

³¹⁴ See *supra* notes 74-91 and accompanying text.

³¹⁵ See *supra* note 78 and accompanying text.

³¹⁶ The Appendix contains proposed language for all suggested amendments.

child custody and child support determinations in the same proceeding.³¹⁷ The UCCJA and PKPA, however, do not always operate to give priority to the child's home state.³¹⁸ In order to avoid bifurcated proceedings, UIFSA section 204 should be amended to add new subsections which authorize the court that has child custody jurisdiction to assume jurisdiction of the child support issue. This Article proposes that an additional subsection be added to section 204. The proposed subsection provides:

(b) Notwithstanding subsection (a), a tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed in this State after a [petition] or comparable pleading is filed in another state, if (1) the conditions of subsections (a)(1) and (a)(2) are met; and (2) the [petition] or comparable pleading raises issues of both child support and child custody, and the tribunal of this State determines that it properly may take jurisdiction of the child custody issues pursuant to the Parental Kidnapping Prevention Act and the Uniform Child Custody Jurisdiction Act.

This proposal may seem to aggravate the indefiniteness of the custody jurisdiction determination. To be sure, it sacrifices the predictability of a hard-and-fast first-filed rule. However, so long as petitioners seek custody and support in the same proceeding, and the PKPA and UCCJA do not definitively mandate custody jurisdiction in a particular state, an inflexible rule on child support jurisdiction will occasionally result in a bifurcation of issues.³¹⁹

B. Additional Ways of Consenting to Jurisdiction to Modify

1. Consent to Jurisdiction to Modify a Spousal Support Order

As discussed above in Cases 4(d), 5(b), and 6(b),³²⁰ the parties may wish to consent to a court's jurisdiction to modify a spousal support order even though UIFSA would not otherwise provide for such consent.³²¹ This Article proposes that the parties be al-

³¹⁷ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt. ("Given the ... possibility that custody and support are both involved in the case, UIFSA opts for ... establishing a priority for the tribunal in the child's home state.").

³¹⁸ *Id.* (noting that UCCJA "chooses 'first-filing' as the method for resolving competing jurisdiction disputes").

³¹⁹ *Cf. Lustig v. Lustig*, 1996 WL 679693 (Minn. Ct. App. Nov. 26, 1996).

³²⁰ See *supra* notes 182-90, 201-15, 219-21 and accompanying text.

³²¹ See *supra* notes 186-88 and accompanying text.

lowed to consent to the jurisdiction of a state other than the issuing state to modify an alimony award. Even though this proposal clashes with the general belief of the UIFSA drafters that interstate modification of alimony was ill-advised,³²² the rationales given by the drafters in support of their position are not particularly persuasive.

First, the official comment to UIFSA section 205 asserts that interstate modification of alimony has been "relatively rare."³²³ Even if this statement is true, it constitutes an insufficient reason for entirely forbidding interstate modification when the parties consent. Second, the comment notes that the states' laws regarding alimony issues vary widely.³²⁴ The states' laws on child support, however, are hardly uniform and UIFSA allows modification of child support orders. Finally, the drafters believed that an improvement in the obligor's status may justify an increase in child support, but not alimony.³²⁵ This merely constitutes an argument against modifications of spousal support orders due to changes in circumstances and does not justify the prohibition of interstate modification of alimony in all circumstances, particularly if the parties consent to jurisdiction.

In order to avoid bifurcation of support issues, this Article proposes that subsection (f) of UIFSA section 205 be amended to read as follows:

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation, *unless and until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the spousal support order and assume continuing, exclusive jurisdiction.* A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive

³²² See UNIF. INTERSTATE FAMILY SUPPORT ACT § 205 cmt.

³²³ *Id.*

³²⁴ *Id.* Moreover, the comment provides as an example that "states take widely varying views of the effect on a spousal support order of the obligee's remarriage or nonmarital cohabitation." *Id.* This would presumably be an issue of the "duration of current payments and other obligations of support" and hence, the issuing state's law would apply under UIFSA section 604(a). See UNIF. INTERSTATE FAMILY SUPPORT ACT § 604(a).

³²⁵ "This disparity is founded on a policy choice that post-divorce success of an obligor-parent should benefit the obligor's child, but not the obligor's ex-spouse." *Id.* § 205 cmt.

jurisdiction over that order under the law of that state, *unless and until all of the parties who are individuals have filed written consents with the tribunal of the other state for a tribunal of this State to modify the spousal-support order and assume continuing, exclusive jurisdiction.*

When neither party resides in the issuing state, such as in Case 6(b), this amendment would allow the responding state to entertain a party's motion for modification of a spousal support order.

2. Consent to Jurisdiction to Modify Child Support Orders

As discussed in Case 6(c),³²⁶ the parties may be unable to conduct a modification hearing in the issuing state for both spousal and child support obligations if the issuing state lost continuing, exclusive jurisdiction to modify the child support order but retains continuing, excessive jurisdiction to modify the spousal support order. Neither the UIFSA nor FFCCSOA provisions governing consent to jurisdiction to modify child support orders account for the possibility that the parties may wish to consent to the jurisdiction of the original issuing state to modify the order. This potential bifurcation of support issues can be rectified by adding the following consent provisions to UIFSA and FFCCSOA.

UIFSA section 611 should be amended to broaden the parties' ability to consent to jurisdiction to modify child support orders by adding the following new subsection:

(c) If this State was the issuing state, but no longer has continuing, exclusive jurisdiction over a child support order, a tribunal of this State may modify the order if (i) all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order

An analogous new subsection (e)(3) should be added to FFCCSOA:

(e)(3) If a court of a State once had but no longer has continuing, exclusive jurisdiction over a child-support order, a court of that State may modify the order if (i) all of the individual parties have filed a written consent in the appropriate court of that State, and in the state of continuing, exclusive jurisdiction (if any), providing that the court in the first State may modify the

³²⁶ See *supra* notes 222-40 and accompanying text.

support order and assume continuing, exclusive jurisdiction over the order....

C. *The Problem of a "Gap" in Jurisdiction*

As discussed in Case 6(c), a "gap" in modification jurisdiction arises under both UIFSA and FFCCSOA when all parties leave the issuing state but no other state has modified the child support order.³²⁷ It is unclear whether the issuing state has the authority to modify its own order at a party's request, even if no other state has yet modified the order. UIFSA section 611 and FFCCSOA subsection (e) could be amended to clarify that the issuing state still has jurisdiction to modify its own order in that situation. The following subsection should be added to the proposed amendment to UIFSA section 611(c):

(c) If this State was the issuing state, but no longer has continuing, exclusive jurisdiction over a child support order, a tribunal of this State may modify the order if ... (2) no tribunal of another state has modified the child support order pursuant to a law substantially similar to this [Act], thereby assuming continuing, exclusive jurisdiction pursuant to Section 205(d).

An analogous provision should be added to FFCCSOA as subsection (e)(3):

(e)(3) If a court of a State once had but no longer has continuing, exclusive jurisdiction over a child-support order, a court of that State may modify the order if (ii) no tribunal of another state has modified the child-support order pursuant to subsections (e) and (i), thereby assuming continuing, exclusive jurisdiction pursuant to subsection (d).

D. *Consistency in Choice-of-Law Provisions*

As discussed in Case 6(e), the choice-of-law rules in UIFSA and FFCCSOA are not entirely congruent.³²⁸ While FFCCSOA provides that the forum state's law should be applied except in certain limited circumstances, because of drafting ambiguities UIFSA does not offer the same certainty. UIFSA section 604 should be amended to track FFCCSOA section (h).³²⁹ The proposed amendment ensures that the law of the forum state would

³²⁷ See *supra* notes 222-40 and accompanying text.

³²⁸ See *supra* notes 246-71 and accompanying text.

³²⁹ 28 U.S.C.A. § 1738B(h) (West, WESTLAW through Pub. L. No. 104-333).

be applied in all circumstances, except where: (i) a provision of a support order, such as the term "majority," requires interpretation; or (ii) in an action to enforce arrears under a support order, the statute of limitations of the forum state is shorter than that of the issuing state.³³⁰ These proffered changes clarify ambiguities and ensure that the drafters' intent is satisfied.³³¹

E. Lack of Nonresident-Petitioner Requirement in FFCCSOA for Modification Jurisdiction

As discussed in Case 6(f), FFCCSOA, unlike UIFSA, does not expressly require that the petitioner requesting a modification of a child support order be a nonresident of the forum state.³³² The difference in statutory language could lead to inconsistent results under the two statutes. To correct this, the phrase "*and the party seeking modification is a nonresident of the State in which he or she seeks modification*" should be appended to FFCCSOA subsection (e)(2) to conform with the analogous provision in section 611 of UIFSA.

F. Applicability of FFCCSOA to a State That Has Adopted UIFSA

Finally, Congress should eliminate the potential for confusion wrought by the simultaneous existence of differently worded federal and state statutes designed to accomplish identical results. The legislative history of FFCCSOA fails to reveal a reason for requiring a UIFSA state to adhere to FFCCSOA. Therefore, a new subsection (j) should be added to FFCCSOA to provide that FFCCSOA is not applicable in a state that has adopted UIFSA without material alteration.³³³ The proposed subsection would read: "*(j) This section does not apply in a State that has in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993.*" In addition, FFCCSOA should be repealed when all states have met the federally-mandated goal of passage of UIFSA by January 1, 1998.

³³⁰ See *id.*; *infra* Appendix.

³³¹ See *supra* note 290 and accompanying text.

³³² See *supra* notes 272-80 and accompanying text.

³³³ See *infra* Appendix (proposing language making FFCCSOA inapplicable in UIFSA state).

CONCLUSION

The "one-order-at-a-time" concept underlying UIFSA and FFCCSOA should assist in bringing a semblance of rationality and predictability to the troubled area of interstate support enforcement. As to be expected with new statutes, UIFSA and FFCCSOA contain drafting glitches. This Article attempts to highlight and correct those errors. Finally, FFCCSOA is superfluous and unnecessarily complicating in a UIFSA state and will be entirely unnecessary when all states adopt UIFSA as a condition of federal funding.

APPENDIX

PROPOSED AMENDMENTS TO UIFSA³³⁴

SECTION 204:

§ 204. Simultaneous Proceedings In Another State

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

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

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) [if relevant, this State is the home state of the child] *this state is the home state of a child for whom a child support order is sought to be established.*

(b) Notwithstanding subsection (a), a tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed in this State after a [petition] or comparable pleading is filed in another state, if (1) the conditions of subsections (a)(1) and (a)(2) are met; and (2) the [petition] or comparable pleading raises issues of both child support and child custody, and the tribunal of this State determines that it properly may take jurisdiction of the child custody issues pursuant to the Parental Kidnapping Prevention Act³³⁵ and the Uniform Child Custody Jurisdiction Act.³³⁶

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

(1) the [petition] or comparable pleading in the other state is filed before the expiration of the time allowed in this

³³⁴ The deletions from existing statutes proposed by this Article are encased in brackets and underlined, while proposed additions are in italics.

³³⁵ 28 U.S.C. § 1738A (1994).

³³⁶ The forum state's statutory citation to the UCCJA may be added here.

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] *the other state is the home state of a child for whom a child support order is sought to be established.*

(d) *Notwithstanding subsection (c), a tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed in this State before a [petition] or comparable pleading is filed in another state, if (1) the conditions of subsections (c)(1) and (c)(2) are met; and (2) the [petition] or comparable pleading raises issues of both child support and child custody, and the tribunal of the other state determines that it properly may take jurisdiction of the child custody issues pursuant to the Parental Kidnapping Prevention Act³³⁷ and the Uniform Child Custody Jurisdiction Act.³³⁸*

SECTIONS 205(b) AND 205(c):

The phrase “child support order” should be changed to “support order.”

SECTION 205(f):

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation, *unless and until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the spousal support order and assume continuing, exclusive jurisdiction.* A tribunal of this State may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state, *unless and until all of the parties who are individuals have filed written consents with the tribunal of the other state for a tribunal of this State to modify the spousal-support order and assume continuing, exclu-*

³³⁷ 28 U.S.C. § 1738A (1994).

³³⁸ The forum state's statutory citation to the UCCJA may be added here.

sive jurisdiction.

SECTION 604 (The existing section is deleted and the following substituted):

(a) In general. In a proceeding to modify or enforce a support order, the law of this State shall apply except as provided in subsections (b) and (c).

(b) Law of issuing state. In interpreting a support order, including the duration of current payments and other obligations of support, a tribunal of this State shall apply the law of the issuing state.

(c) Period of limitation. In an action to enforce arrears under a support order, a tribunal of this State shall apply the statute of limitation of this State or the issuing state, whichever statute provides the longer period of limitation.

SECTION 611:

§ 611. Modification Of [Child] Support Order Of Another State

(a) 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; or

(2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual

residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support order.

(b) After a spousal-support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if, after notice and hearing, it finds that all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

(c) If this State was the issuing state, but no longer has continuing, exclusive jurisdiction over a child support order, a tribunal of this State may modify the order if (1) all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order, or (2) no tribunal of another state has modified the child support order pursuant to a law substantially similar to this [Act], thereby assuming continuing, exclusive jurisdiction pursuant to Section 205(d).

[(b)](d) 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 State and the order may be enforced and satisfied in the same manner.

[(c)](e) A tribunal of this State may not modify any aspect of a support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child-support orders for the same obligor and child, the order that controls and must be recognized under Section 207 establishes the aspects of the support order which are nonmodifiable.

[(d)](f) On issuance of an order modifying a support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

PROPOSED AMENDMENTS TO FFCCSOA

SUBSECTION (e):

(e) Authority to modify orders. 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, *and the party seeking modification is a non-resident of the State in which he or she seeks modification; or*

(3) *If a court of a State once had but no longer has continuing, exclusive jurisdiction over a child support order, a court of that State may modify the order if (i) all of the individual parties have filed a written consent in the appropriate court of that State, and in the state of continuing, exclusive jurisdiction (if any), providing that the court in the first State may modify the support order and assume continuing, exclusive jurisdiction over the order, or (ii) no tribunal of another state has modified the child support order pursuant to subsections (e) and (i), thereby assuming continuing, exclusive jurisdiction pursuant to subsection (d).*

NEW SUBSECTION (j):

(j) This section does not apply in a state that has in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993.