

CHAPTER TWELVE INTERSTATE CHILD SUPPORT REMEDIES

INTRODUCTION

A 1992 GAO report estimated that in 25.6 to 37 percent of all child support case, the noncustodial parents lived in a different State than their children.¹ Enforcement in these interstate cases has long posed a problem. In fact, total interstate collections in child support agency (IV-D) cases represented only slightly more than seven percent of the total distributed collections in such cases.² The U.S. Commission on Interstate Child Support identified the following barriers to collection across State lines:³

- myriad laws—despite increasing Federal mandates, wide variance existed among States with regard to child support laws and procedures; even the “uniform” laws were applied differently from State to State, particularly with respect to arrears (credits because of retroactive modification) and medical support;
- myriad players—the laws and procedures for interstate cases required many steps and people to successfully establish or enforce child support, allowing cases to get lost in the shuffle;
- insufficient staff—long delays and unknown case status were typically a result of understaffed child support offices, lack of focus on out-of-State cases, and lack of support services;
- inadequate training—in both the public and private sectors, insufficient knowledge of interstate remedies and procedures thwarted the interstate collection of child support;
- inability to obtain current case information—because of a lack of timely communication and resources, information necessary for successful child support enforcement was often out-of-date and useless;
- inadequacy and incompatibility of automated systems—even though States were required to have automated statewide systems, States were proceeding at a widely varying pace;

¹ U.S. General Accounting Office, *Interstate Child Support: Mothers Report Receiving Less Support from Out-of-State Fathers*, HRD-92-39FS (1992).

² See Office of Child Support Enforcement, Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., *Twenty-Third Annual Rep. to Congress for the Period Ending September 30, 1998* (2000), Tables 4 and 76.

³ U.S. Commission on Interstate Child Support, *Supporting Our Children: A Blueprint for Reform* (U.S. Gov’t Printing Office: Washington, DC 1992).

- problems with service of process—cooperation between States for effective service of process was deficient;
- legal barriers—barriers, such as jurisdiction over parties, continued to plague the child support enforcement community; and
- lack of support from the Federal level—State and local child support agencies needed assistance, both in training and technical support, from their Federal partners, in addition to adjustments to Federal incentives.

Recent Federal and State legislation has done a great deal to standardize State laws and improve interstate support enforcement. As a result, today's Child Support Enforcement (CSE or IV-D) attorney has more tools available for interstate case processing.

HISTORY OF INTERSTATE CHILD SUPPORT

Establishment and enforcement of support for the family across State lines is not a new problem. Ever since improved means of transportation have made it possible to travel, seekers of fortune have left their families behind to find a "better life."

Model State Laws

Historically, the resolution of family issues such as custody and support was governed by State law. In 1910, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Desertion and Non-Support Act. This model act made it a criminal offense to fail to support or to desert a wife and children. Unfortunately, the Act was limited in two ways. It only provided criminal penalties; when a person was jailed for nonsupport, the family was left without financial resources. It also lacked interstate remedies; the only option when the noncustodial parent lived out of State was to attempt extradition.

In response to the need for a simple, inexpensive, and consistent interstate process, NCCUSL drafted and approved the Uniform Reciprocal Enforcement of Support Act (URESA).⁴ URESA provided a uniform process for a custodial parent to use the courts of another State without traveling to that State or becoming subject to the jurisdiction of that State's courts for purposes other than the support proceeding. The URESA action began with the filing of a petition in the appropriate court of the State where the custodial parent lived. The judge in that initiating State would then review the pleadings to determine whether the allegations indicated that a duty of support existed and whether the State where the petition was being sent (the responding State) appeared to have jurisdiction

⁴ Unif. Reciprocal Enforcement of Support Act (1950) (amended 1952 and 1958), 9B U.L.A. 553 (1987) (superseded by the Unif. Family Support Act (1992), 9 Pt. 1B U.L.A. 393 (1999)).

over the noncustodial parent. After those elements were determined, the initiating court certified the case to the proper court in the responding State. The original version of URESA also contained a provision for criminal enforcement through “rendition” or extradition.

The Act was amended several times—in 1952, 1958, and in 1968. The 1968 amendments, which included provisions for paternity establishment, were extensive and became the Revised Uniform Reciprocal Enforcement of Support Act, or RURESА.⁵ All States and U.S. territories enacted some form of URESA or similar legislation. Some States, however, modified or omitted certain provisions to comply with their own State laws on procedure and enforcement. The Uniform Act was therefore never truly uniform.

In 1989, NCCUSL reviewed RURESА and determined the need for major revisions. The result was the development of the Uniform Interstate Family Support Act (UIFSA), a new interstate Act that supercedes URESA and RURESА.⁶ The most revolutionary aspects of UIFSA are the concepts of one controlling order for prospective support and limitations on modification jurisdiction. NCCUSL amended UIFSA in 1996 and 2001. UIFSA is discussed in detail below.⁷

Federal Legislation

Because of the dramatic increases in the number of public assistance cases, Congress increasingly became involved in child support. Federal law has improved the establishment and enforcement of support in interstate cases in three ways:

1. by mandating enactment of State laws as a condition of receiving Federal funds;
2. by the expansion of full faith and credit; and
3. by providing for Federal criminal remedies.

In 1984, Congress passed the Child Support Enforcement Amendments of 1984⁸, in part to assist in the processing of interstate cases. States were mandated, as a condition of receiving Federal funds, to enact and implement certain enforcement techniques such as interstate wage withholding and

⁵ Revised Unif. Reciprocal Enforcement of Support Act (1968), 9B U.L.A. 381(1987) (superceded by Unif. Interstate Family Support Act (1992), 9 Pt. 1B U.L.A. 393 (1999)).

⁶ Unif. Interstate Family Support Act (1992) (amended 1996 and 2001), 9 Pt. 1B U.L.A. 393 (1999).

⁷ At the time of publication of this book, the 2001 amendments to UIFSA have not been enacted in any State. They are, therefore, noted largely through footnotes rather than extensive discussion within the text.

⁸ P.L. No. 98-378 (1984).

expedited processes. The statute also provided for Federal tax refund intercepts for nonassistance IV-D cases, a powerful collection method in the interstate context. The law provided Federal funds for demonstration projects on innovative interstate enforcement techniques and Federal incentive payments to both the initiating and responding States for interstate collections.

These measures failed to satisfactorily improve child support collections in interstate cases. Congress again tried to improve interstate enforcement with a provision in the Omnibus Budget Reconciliation Act of 1986. The so-called Bradley Amendment⁹ required States, as a condition of receiving Federal funds, to provide that child support payments must become final judgments on the date they come due, thus eliminating the need to go to court to have arrears reduced to a sum certain judgment. States were also required to give full faith and credit to these judgments. Thus, existing orders of other States could be enforced in a State without creating a new order or recalculating the amount of support due. The Bradley Amendment also prohibited retroactive modification of a child support order before the date a petition for modification was filed and notice given to the nonrequesting party. Retroactive modification had been particularly problematic in the interstate case where the obligee was not present or able to testify about an alleged change in circumstances that the obligor raised during enforcement or registration hearings.

With passage of the Family Support Act of 1988,¹⁰ Congress established the U.S. Commission on Interstate Child Support. Congress directed the 15-member Commission to submit a report containing recommendations for improving the interstate establishment and enforcement of child support orders and for revising URESA. The Commission held hearings and public forums across the country to formulate these recommendations. Its final report to Congress, entitled “Supporting Our Children: A Blueprint for Reform,”¹¹ contained 120 recommendations. Many of these recommendations provide the basis for today’s interstate child support case processing.

Among the Commission’s recommendations was one that Congress require States to pass UIFSA as it was approved by NCCUSL. Without such a mandate, States were free to enact or ignore the new model act. Not knowing how many States would enact UIFSA, or in what form, Congress passed the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)¹² in July 1994. The Federal statute, which does not require enabling State legislation, requires courts and administrative agencies in the United States and its territories to give full faith and credit to any child support order properly issued by another State with personal jurisdiction over the parties and subject matter jurisdiction.

⁹ P.L. No. 99-509, § 9103 (1986) (codified at 42 U.S.C. § 666(a)(9)).

¹⁰ P.L. No. 100-485 (1988).

¹¹ U.S. Commission on Interstate Child Support, *Supporting Our Children: A Blueprint for Reform* (U.S. Gov’t Printing Office: Washington, DC 1992).

¹² P.L. No. 103-383 (1994).

Only the standard defenses of fraud, duress, irregularity, and mistake of fact are permitted to contest the enforcement of another State's order. FFCCSOA also limits States' jurisdiction to modify, consistent with UIFSA's rules.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹³ commonly known as welfare reform. Included in the child support title was a requirement that States, as a condition of receiving Federal funds, enact UIFSA, with its 1996 amendments, by January 1, 1998. UIFSA has now been adopted in all States and U.S. territories.¹⁴ In addition to enacting UIFSA, PRWORA required every State, as a condition of receiving Federal funds, to grant authority to its IV-D agency to take certain enforcement actions administratively, without obtaining a judicial order.¹⁵ These actions—income withholding, interception and seizure of lump sum payments, seizure of assets from financial institutions, attachment of retirement funds, and ordering payments on arrears—apply to interstate cases as well as intrastate cases.

PRWORA also required States to provide that child support liens arise by operation of law when there is an arrearage and that such liens are entitled to full faith and credit in every State. This requirement includes liens placed against bank accounts, stocks, Government benefits, lottery winnings, and other real and personal property. States are also required to cooperate and use high-volume and automated administrative enforcement in interstate cases (AEI). There are additional Federal remedies that apply in both interstate and intrastate cases: Administrative Offset, Federal Tax Refund Offset, and Passport Denial.¹⁶

PRWORA amended FFCCSOA.¹⁷ The amendments added the same provisions as UIFSA for determining which of multiple orders is the controlling order for prospective enforcement of support.

Federal criminal prosecution is also available to enforce interstate support cases. The Child Support Recovery Act (CSRA) of 1992, and the Deadbeat Parents Punishment Act of 1998, which amends CSRA,¹⁸ make it a Federal offense to willfully fail to pay support for a child living in another State or nation, if the unpaid amount exceeds \$5,000 or remains unpaid for more than 1 year. The crime is punishable by fine and imprisonment and restitution is required. "Willfulness" has been defined as a knowing and intentional violation of a legal duty and is presumed under the 1998 amendment. Partial payment of support does not negate the criminal intent, but inability to pay does. The 1998 amendments also create a felony offense, where the parent moves to another

¹³ P.L. No. 104-193 (1996).

¹⁴ See Exhibit 12-1.

¹⁵ 42 U.S.C. § 666(c) (Supp. V 1999).

¹⁶ For further discussion of AEI and these additional remedies, see Ten: Enforcement of Support Obligations.

¹⁷ See 28 U.S.C. § 1738B (1994 & Supp. V 1999).

¹⁸ 18 U.S.C. § 228 (1994 & Supp. V 1999).

State or country to evade the support obligation and arrears remain unpaid in excess of 2 years, or exceed \$10,000. A Federal prosecution under these statutes can be brought where the nonpaying parent resides, where the payments are to be made, or where the child resides.¹⁹

Other Federal Initiatives

In 1985, the Federal Office of Child Support Enforcement (OCSE) formed a work group to develop standardized forms to be used in interstate cases. The forms were designed to simplify recordkeeping and the transmission of URESA cases, enhance communication between States, improve the efficiency in processing interstate cases and, ultimately, increase interstate collections. In 1997, OCSE developed new forms, which could be used in UIFSA cases. Updated interstate forms were issued in 2000. Additionally, the Secretary of HHS developed a Federal Income Withholding Order/Notice form, an Administrative Subpoena form, and a Notice of Child Support Lien form.²⁰

In 1988, OCSE issued new regulations designed to expedite interstate cases. These regulations directed that States establish central registries for receiving, tracking, and monitoring interstate cases; encouraged the use of long-arm jurisdiction where available and appropriate; required responding States to meet specific timeframes in handling requests from an initiating State; and required States to treat local and interstate cases equally. Some of these regulations remain in effect today, although there have been some changes to the provisions.²¹

THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

The mandate of PRWORA forced States to move toward improving interstate child support collection. With advancements in technology, the opportunity to use new methods and mechanisms to work difficult interstate cases was inviting.

Overview

From 1950 until 1998, URESA was the primary mechanism for the interstate litigation of child support. Both URESA and its 1968 revision were

¹⁹ *United States v. Crawford*, 115 F.3d 1397 (8th Cir. 1997). For further discussion of the CSRA, the Deadbeat Parents Punishment Act, and the constitutionality of federal criminal prosecution for failure to pay child support, see Chapter Ten: Enforcement of Support Obligations.

²⁰ OCSE disseminated updated Federal interstate forms in Action Transmittal AT-00-11 (Dec. 18, 2000). The revised Federal standardized income withholding form titled "Order/Notice to Withhold Income for Child Support" was disseminated by AT-01-07 (Mar. 29, 2001). The Administrative Subpoena and Notice of Lien forms were reauthorized by the Office of Management and Budget and disseminated by AT-01-06 (Apr. 4, 2001). All can be found on the OCSE web site at www.acf.dhhs.gov.

²¹ 45 C.F.R. §§ 301.1, 302.36, 303.7, and 303.52 (2000).

considered revolutionary when they were adopted, but their shortcomings become apparent. They failed to reflect important changes in child support collection—the subsequent passage of Title IV-D of the Social Security Act in 1975, which authorized the Office of Child Support Enforcement and the Federal program; and vast technological strides, such as the use of computers and databases to obtain information. Recognizing the need to keep up with child support enforcement innovations, NCCUSL approved the Uniform Interstate Family Support Act (UIFSA) in 1992. In July 1996, amendments to the original act were adopted to clarify some provisions and resolve some omissions.²² NCCUSL approved additional amendments to the Act in August 2001.²³

Terminology

Although UIFSA retains much of the terminology of URESA to minimize confusion, there are notable changes in some terms that reflect the different approach to interstate child support.²⁴

Petitioner. URESA was an Act that only applied to obligees. There was no authorization for an obligor to initiate an action. In contrast, UIFSA uses the term “petitioner” to refer to the moving party. Either a custodial parent or noncustodial parent can be a petitioner under UIFSA. Examples of when a noncustodial parent might be a petitioner are actions to establish paternity or to seek a downward adjustment in the support obligation.

Tribunal. Because URESA predated establishment of the Title IV-D child support program, it failed to recognize the role of the child support agency and administrative procedures. UIFSA recognizes the role of the support enforcement agency. It also recognizes the fact that many jurisdictions have created administrative entities to handle child support matters. Where URESA used a court-to-court process, UIFSA has a much broader scope. UIFSA uses the term “tribunal,” which means “a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.”²⁵

Pursuant to Section 102 of UIFSA, a State designates the tribunal in that State. Many States limit the definition of tribunal to the court. Other States, however, define tribunal to include both the court and the administrative child support agency.

²² Unif. Interstate Family Support Act (1996) (amended in 2001) [hereinafter UIFSA], 9 Pt. 1B U.L.A. 235 (1999).

²³ Unif. Interstate Family Support Act (2001), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

²⁴ While UIFSA uses the terms “obligee” and “obligor” (§§ 101(12) and 101(13) (renumbered as §§ 102(12) and 102(13) in 2001), 9 Pt. 1B U.L.A. 257(1999)) to address the parties, this publication elsewhere uses the terms “custodial parent” and “noncustodial parent” as that language is used in Federal legislation.

²⁵ UIFSA § 101(22) (renumbered as § 102(24) in 2001), 9 Pt. 1B U.L.A. 258 (1999).

State. The term “state” takes on a broader meaning in UIFSA, including in its definition both Indian tribes and “a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures in this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.”²⁶ The 2001 Amendments approved by NCCUSL expand the definition of a “State” to include a “foreign country or political subdivision that: (i) has been declared to be a foreign reciprocating country or political subdivision under federal law; (ii) has established a reciprocal arrangement for child support with this State as provided in Section 308; or (iii) has enacted a law or established procedures which are substantially similar to the procedures under this [Act].”²⁷

Child’s Home State. UIFSA also incorporates the concept of a child’s “home State,” new to child support litigation, using the definition found in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)²⁸ and the Parental Kidnapping Prevention Act (PKPA)²⁹. It is defined as

the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing a [petition] or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month or other period.³⁰

Continuing, exclusive jurisdiction. To achieve a one-order world, UIFSA introduces the concept of continuing, exclusive jurisdiction (CEJ). A tribunal has continuing, exclusive jurisdiction if it has issued an order and is the residence of the individual obligee, obligor, or child.³¹

Controlling order. UIFSA also introduces the concept of “controlling order,” which is the support order that governs prospective enforcement of support.³² In existing cases where there are multiple support orders, a crucial step to achieve a one-order world is the determination of the controlling order.

Reciprocity. It is important to note that UIFSA has largely eliminated the reciprocity requirement of URESA. Because of the Federal mandate that States

²⁶ UIFSA § 101(19) (renumbered as § 102(21) in 2001), 9 Pt. 1B U.L.A. 257-8 (1999).

²⁷ Unif. Interstate Family Support Act (2001) § 102(21)(B), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

The 2001 Amendments to UIFSA take into account actions by the State Department to declare foreign countries to be reciprocating and the ability of States to individually enter into agreements with foreign countries for the reciprocal enforcement of child support.

²⁸ Unif. Child Custody Jurisdiction and Enforcement Act, 9 Pt. 1A U.L.A. 649 (1999).

²⁹ 28 U.S.C. § 1738A (1994 & Supp. 2001).

³⁰ UIFSA § 101(4) (renumbered as § 102(4) in 2001), 9 Pt. 1B U.L.A. 256 (1999).

³¹ UIFSA § 205 (amended 2001), 9 Pt. 1B U.L.A. 284-5 (1999).

³² UIFSA § 207(amended 2001), 9 Pt. 1B U.L.A. 291-2 (1999).

enact UIFSA, eliminating that provision has no effect within the United States and its territories. It is, however, important for the CSE attorney to know that Tribal support orders must be enforced under UIFSA even if a Tribe has not enacted support laws substantially similar to UIFSA. The only area in which there continues to be a reciprocity requirement is in international support cases. For handling a child support case involving another country, UIFSA continues to require that the foreign jurisdiction have laws that are substantially similar to UIFSA.³³

Role of Support Enforcement Agency

Under UIFSA, a support enforcement agency must provide services to any petitioner, on request. Services include the following actions:

- take all steps necessary to enable a tribunal to obtain jurisdiction over the respondent;
- request the tribunal to set a time, date, and place for a hearing;
- make a reasonable effort to obtain all relevant information, including information as to the income and property of the parties;
- send appropriate notices and correspondence received from the responding State to the petitioner in a timely manner; and
- notify the petitioner if jurisdiction cannot be obtained over the respondent.

Private Attorneys

UIFSA explicitly authorizes individuals to employ private counsel to represent them in UIFSA proceedings.³⁴

Evidentiary Provisions

Interstate cases present unique challenges for completing discovery, submitting information, and presenting testimony by the parties. UIFSA has specific provisions for transmitting and admitting evidence, as well as provisions for obtaining assistance from another State. The provisions in Sections 316³⁵ and 318³⁶ are applicable in long-arm proceedings as well as in UIFSA's two-State

³³ Note that the 2001 Amendments to UIFSA delete the references to URESA and RURESAs. See Unif. Family Support Act (2001) § 102(21)(B), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

³⁴ UIFSA § 309, 9 Pt. 1B U.L.A. 316 (1999).

³⁵ UIFSA § 316 (amended 2001), 9 Pt. 1B U.L.A. 327-8 (1999).

³⁶ UIFSA § 318, 9 Pt. 1B U.L.A. 331 (1999).

proceedings. They are also expressly available to a nonresident party in a child support action heard by a tribunal with CEJ.³⁷

The majority of UIFSA's evidentiary proceedings are in Section 316:

- The physical presence of the petitioner in a responding tribunal is not required for establishing, enforcing, or modifying support or determining parentage.³⁸
- Verified and sworn pleadings, affidavits, documents complying with federally mandated forms, and documents incorporated by reference therein, are admissible in evidence in another State by a witness or party, so long as they would not otherwise be excluded under the hearsay rule if given in person.
- A copy of the child support payment record certified to be a true copy by the custodian of the records is admissible as evidence of whether payments were made and what is due and owing.
- Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, when furnished to the adverse party at least 10 days before trial, are admissible as evidence of the amount of the charges and that the charges were reasonable, necessary, and customary.³⁹
- Documents to be used as evidence that are transmitted from one State to another by telephone, telecopier, or other means that do not provide an original cannot be excluded because of the means of transmission.
- A party or witness can give testimony by telephone, audiovisual, or other electronic means at a location designated by the tribunal.

It is interesting that although a responding tribunal may not require a petitioner to be present physically, the Act does not contain a similar statement regarding the physical presence of witnesses. Because UIFSA allows either a nonresident petitioner or witness to be deposed or to testify by telephone, audiovisual means, or other electronic methods, however, it appears that the responding tribunal has discretion regarding the manner in which it will obtain evidence from a nonresident witness.

³⁷ See UIFSA § 301 (amended 2001), 9 Pt. 1B U.L.A. 300 (1999) and UIFSA § 316 (amended 2001), 9 Pt. 1B U.L.A. 327-8 (1999).

³⁸ UIFSA § 316(a) (amended 2001), 9 Pt. 1B U.L.A. 327 (1999). This is an integral component of UIFSA. It was designed to ensure expeditious hearings, with minimal continuances and to assure that evidence is fully and fairly placed before the decision-maker.

³⁹ The 2001 amendments to UIFSA add a new § 316(j): "A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child."

To make UIFSA meaningful for petitioners, States need to ensure that their tribunals have appropriate procedures and equipment to facilitate the interstate provision of testimony. For instance, the West Virginia legislature gave the State Supreme Court rulemaking authority to implement telephone hearings.⁴⁰ CSE attorneys must also ensure that if they participate in telephone hearings, they comply with ethical requirements concerning authorization to practice law in a State.⁴¹

UIFSA also addresses communications between tribunals. For example, Section 317 authorizes tribunals to communicate, in writing, by phone, or other means, in order to obtain information about another State's laws, the legal effect of a judgment, decree, or order, and the status of a proceeding in the State. A tribunal in one State can also call on the tribunal in another State to provide assistance in obtaining discovery or in compelling a person to respond to a discovery order.⁴²

Domestic Violence Protection

There are important privacy safeguards in UIFSA to ensure that a family does not have to choose between financial support and safety. The Act permits a tribunal to allow address and/or identifying information of a child or party to be withheld from pleadings or other documents filed in connection with the proceeding.⁴³ As a basis for this nondisclosure order, the tribunal must find that the health, safety, or liberty of a parent or child would be unreasonably put at risk by such a disclosure. This finding can be made in an *ex parte* proceeding or can be based on a pre-existing order, such as a protection order.⁴⁴

⁴⁰ “[T]he supreme court of appeals shall promulgate new rules or amend the rules of practice and procedure for family law to establish procedures pertinent to the exercise of cross-examination in those instances involving the receipt of testimony by means other than direct or personal testimony.” W.Va. Code § 48B-3-316(f)(1998). See also W. Va. Code §§ 48-16-316 and 48-16-317 (2001). For more information regarding telephone hearings, see, e.g., Susan Paikin, “Use of Teleconferencing in Interstate Child Support Cases,” 13 Fairshare 12 (July 1993); Center for Public Policy Studies, “Telephone Conferencing in Interstate Child Support Cases: Final Report,” State Justice Institute Grant No. SJI-88-06E-G-059 (1990). CSE attorneys may also contact the National Center for State Courts and the National Council of Juvenile and Family Court Judges for research, protocols, and guidance. See Exhibit 12-7 for a sample transcript of a telephonic hearing.

⁴¹ For further discussion on ethical considerations, see Chapter Four: The Role of the Attorney in Child Support Enforcement.

⁴² UIFSA § 318, 9 Pt. 1B U.L.A. 331 (1999).

⁴³ UIFSA § 312 (amended 2001), 9 Pt. 1B U.L.A. 322 (1999).

⁴⁴ In 2001, NCCUSL amended § 312 of UIFSA to require that “if a party alleges in an affidavit or pleading under oath that the health, safety, or liberty of the party or child would be jeopardized by disclosure of identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.”

Although separate, it is important to note that UIFSA's nondisclosure safeguards work in tandem with the family violence protections developed for the Federal Parent Locator Service (FPLS) and State data systems.⁴⁵ Thus, tribunals should develop procedures to ensure that the existence of a UIFSA nondisclosure order is properly conveyed within the State so that the party or child also receives the benefit of these other State and Federal protection mechanisms.

Choice of Law

For most UIFSA proceedings, the law of the forum State, i.e., the State hearing the action, applies. There are, however, some additions or exceptions:

- Certain procedures are required in UIFSA cases, even if they are not consistent with those applicable to intrastate cases, e.g., the contents of an interstate pleading,⁴⁶ the ability of the tribunal to order nondisclosure of information to prevent placing a party or child at risk,⁴⁷ the authority to award attorney's fees and costs when the tribunal determines that a hearing was requested primarily for delay,⁴⁸ the limited immunity from service of process that the UIFSA petitioner receives while participating in a proceeding under UIFSA,⁴⁹ and the prohibition against the use of nonparentage as a defense to an action if parentage has been previously determined,⁵⁰
- A responding tribunal may not condition the payment of support upon compliance with visitation provisions of an order;⁵¹
- Special rules for the interstate transmission and receipt of evidence and for discovery ensure that the decision-maker has as much information as possible in order to make a just decision;⁵² and
- UIFSA specifies choice of law rules in certain types of proceedings. Section 502 (d) sets forth choice-of-law rules that apply with regard to direct withholding. Section 604 sets forth choice-of-law rules that apply in a registration proceeding. It provides that the law of the State that issued the controlling order governs the nature, extent, amount, and duration of the current support payments, other obligations and arrears

⁴⁵ See Susan Notar and Vicki Turetsky, *Models for Safe Child Support Enforcement* (Center for Law and Social Policy, October 1999).

⁴⁶ UIFSA § 311 (amended 2001), 9 Pt. 1B U.L.A. 321 (1999).

⁴⁷ UIFSA § 312 (amended 2001), 9 Pt. 1B U.L.A. 322 (1999).

⁴⁸ UIFSA § 313(c) (amended 2001), 9 Pt. 1B U.L.A. 323 (1999).

⁴⁹ UIFSA § 314 (amended 2001), 9 Pt. 1B U.L.A. 325 (1999).

⁵⁰ UIFSA § 315, 9 Pt. 1B U.L.A. 326 (1999).

⁵¹ UIFSA § 305(d), 9 Pt. 1B U.L.A. 305-6 (1999).

⁵² UIFSA § 316 (amended 2001), 9 Pt. 1B U.L.A. 327-8 (1999) and § 318, 9 Pt. 1B U.L.A. 331 (1999).

payments under the order. The statute of limitations shall be that of the issuing State or the State in which the proceedings are taking place, whichever is longest.⁵³ This ensures that orders can be enforced for the longest time possible. Finally, Section 611(d) makes it clear that the law of the State that issues the order initially determined to be controlling governs the nonmodifiable terms of the order. The 2001 Amendments to UIFSA state specifically, in a modification proceeding, “the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support.”⁵⁴

Notice Requirements

UIFSA includes many notice requirements. Most have specific timeframes for compliance. These notice requirements are further evidence of the efforts to streamline and facilitate interstate case processing.⁵⁵

MAIN UIFSA PRINCIPLES

Basic concepts, so integral to UIFSA, are what set it apart from former laws and mechanisms set in place to collect child support. UIFSA addresses the shortcomings of previous laws and offers new solutions to the problems that beset the child support enforcement community.

One-Order World

The ultimate goal of UIFSA is the efficient processing of interstate cases. One of the major barriers to interstate collection of child support was the multiple-order world under URESA.

Prohibition against *de novo* orders. URESA expressly provided that a URESA order did not nullify, and was not nullified by, any other support order.⁵⁶ As a result, courts often issued *de novo* support orders that existed independently from any other support order involving the same parties and child(ren). Often these *de novo* support orders were for a different support amount. The drafters of UIFSA were determined to end this practice. Under

⁵³ UIFSA § 604(b) (amended 2001), 9 Pt. 1b U.L.A. 355 (1999). See *King v. State*, 58 Ark. App. 298, 952 S.W.2d 180 (1997).

⁵⁴ Unif. Interstate Family Support Act (2001) § 611(d), 9 Pt. 1B U.L.A. ____ (Supp. 2001). According to comments to this new section, “[a]lthough from its original promulgation UIFSA determined that the duration of child-support obligation should be fixed by the controlling order, see *Robau v. Dep’t of Social Servs.*, 35 Va. App. 128, 543 S.E.2d 602 (2001), if that was insufficiently clear before 2001, the amendments should make this decision absolutely clear.”

⁵⁵ See Exhibit 12-2, UIFSA Notice Requirements.

⁵⁶ Revised Unif. Enforcement of Support Act (1968) § 31, 9B U.L.A. 531 (1987).

UIFSA, if there is a support order entitled to recognition under the Act, a tribunal cannot establish a new support order.⁵⁷

Continuing, exclusive jurisdiction. An important concept to UIFSA's one-order world is continuing, exclusive jurisdiction (CEJ). A tribunal has CEJ to modify a support order if it has issued a support order and is the residence of the individual obligee, obligor, or child.⁵⁸ A tribunal will "lose" CEJ when all of the individual parties and child(ren) have moved away⁵⁹ or when the individual parties file a written consent with the issuing tribunal to have another State exercise modification jurisdiction and assume CEJ.⁶⁰ Keep in mind, however, that the forum tribunal will determine CEJ by looking at where the parties reside at the time the action is filed.⁶¹ Therefore, should a party or child who had previously left the issuing State return to the State prior to modification and assumption of CEJ by another State, the issuing State will still have CEJ.⁶²

The following are some case examples:

- The Arkansas court lacked jurisdiction to modify a Florida support order because the mother and children remained in Florida and the mother had not consented to modification in Arkansas;⁶³
- The New Mexico trial court lacked authority to transfer modification jurisdiction over a support case to Tennessee because the father remained in New Mexico and had not consented to modification in Tennessee. UIFSA does not allow the CEJ court to transfer the case to another State on the basis of forum *non conveniens* simply because the other State has jurisdiction over custody;⁶⁴
- The Colorado court, with jurisdiction under the UCCJA, could not modify a Montana support order because the mother remained in Montana and had not consented to modification in a Colorado court;⁶⁵

⁵⁷ UIFSA § 401(a), 9 Pt. 1B U.L.A. 333 (1999).

⁵⁸ See, e.g., *Peddar v. Peddar*, 43 Mass. App. Ct. 192, 683 N.E.2d 1045 (1997); *Daknis v. Burns*, 719 N.Y.S.2d 134, 278 A.D.2d 641 (N.Y. App. Div. 2000); *State ex rel. Harnes v. Lawrence*, 140 N.C. App. 707, 538 S.E.2d 223 (2000); *Link v. Alvarado*, 929 S.W.2d 674 (Tex. Ct. App. 1996).

⁵⁹ See John J. Sampson, *Uniform Interstate Family Support Act (1996) (with More Unofficial Annotations by John J. Sampson)*, 23 Fam. L. Q. 2, 435 n. 89 (Summer 1998). See also *Loden v. Loden*, 740 N.E.2d 865 (Ind. App. 2000).

⁶⁰ UIFSA § 205 (amended 2001), 9 Pt. 1B U.L.A. 284-5 (1999) and § 206 (amended 2001), 9 Pt. 1B U.L.A. 289 (1999).

⁶¹ UIFSA § 205(a)(1) (amended 2001), 9 Pt. 1B U.L.A. 285 (1999).

⁶² See *Porter v. Porter*, 684 A. 2d 259 (R.I. 1996) (a State can have continuous, exclusive jurisdiction, despite an intervening absence of the parties and child from the State, so long as the individual obligee, obligor, or child returns to the State before a new State of residence modifies the order).

⁶³ *Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998).

⁶⁴ *Rosen v. Lantis*, 123 N.M. 231, 938 P.2d 729 (1997).

⁶⁵ *In re Marriage of Zinke*, 967 P.2d 210 (Colo. Ct. App. 1998).

- The trial court correctly dismissed the mother's petition to modify an Oklahoma support order because the father remained in Oklahoma and had not consented to modification in a Texas court.⁶⁶

There is a distinction between “controlling order” and “continuing, exclusive jurisdiction” to modify. If there is only one support order, that is the controlling order. It is enforceable in any State where the obligor is located or has income or assets. It remains the controlling order even if no individual party or child lives in the State. If the obligor, obligee, and child have, however, left the State that issued the controlling order, the issuing State lacks CEJ to modify the order.⁶⁷

Controlling order when multiple support orders exist. Because of URESA, cases that predate 1994 often contain multiple support orders.⁶⁸ Both FFCCSOA and UIFSA contain rules for determining which of these support orders is controlling and governs prospective enforcement of support. See the discussion below regarding determination of the controlling order (DCO).

Identification of Support Orders

Before seeking a tribunal determination of the controlling order, the CSE attorney should ensure that the agency worker has identified all support orders involving the obligor and child, and has obtained certified copies of the orders. The most important sources of information about the existence of orders are the parties themselves. Inquiries about where they have lived and whether they have received public assistance from any State might facilitate the location of orders. In addition, the Federal Case Registry (FCR) can provide assistance in locating orders. The FCR is a national registry of participants in IV-D cases and in non-IV-D orders established or modified on or after October 1, 1998. The FCR contains data identifying cases and orders transmitted electronically from the State Case Registries (SCRs). The FCR does not provide a copy of the order. Non-IV-D orders issued or modified before October 1, 1998, and any closed IV-D cases are not required to be placed on the SCR and, therefore, will not be reported to the FCR. Nor does the FCR identify States that have issued support orders. The FCR does not, therefore, identify the controlling support order under UIFSA. The FCR does, however, identify the existence of a support order and what State agencies are working the case. The initiating support enforcement agency can then contact those other State agencies to discover which State(s) issued the reported order(s).

⁶⁶ *In re Henderson*, 982 S.W.2d 566 (Tex. Ct. App. 1998).

⁶⁷ See *Lackman v. Rosenstock*, 24 Fam. L. Rptr. (BNA) 1296 (D.C. Super. Ct. Feb. 1998) (After the parties and child have left the jurisdiction, D.C. has “lost” continuing, exclusive jurisdiction and cannot modify its own support order. It can enforce the order, as it is the only order, and thus enforceable even though no one now lives in D.C.).

⁶⁸ With the enactment of FFCCSOA in July 1994, tribunals should no longer have issued *de novo* support orders when there was already a support order between the parties.

It is important to remember that only orders that contain a prospective support obligation qualify for controlling order status. Temporary *ex parte* support orders, income withholding orders, and orders collecting arrears alone should not be considered.

Even using all the sources available, it is conceivable that a tribunal could determine the controlling order based on incorrect information about the existence of support orders. UIFSA itself does not specify what should happen in such a situation. There is, however, guidance provided in the comments:

Section 207 presumes that a tribunal will be fully informed about all existing orders if it is requested to determine which one of the existing multiple child support orders is to be accorded prospective enforcement. If this does not occur and one or more existing orders is not considered by the tribunal, the finality of its decision is likely to turn on principles of estoppel on a case-by-case basis. Assuming that the parties were accorded notice and opportunity to be heard by the tribunal, a final decision on the subject is entitled to full faith and credit.⁶⁹

UIFSA's Official Comments are consistent with long-standing legal principles of *res judicata*. Assuming that all necessary parties received notice of the proceeding and had an opportunity to present testimony, the final determination of controlling order is binding, even if it did not include all existing orders. On the other hand, a party who was not given proper notice should later be able to ask for consideration of other orders. There also may be a basis for setting aside the ruling pursuant to Rule 60b or a similar Rule of Civil Procedure.

Is a child support agency a necessary party in all DCO actions? There is not a universally agreed-upon answer. In some States, there is law providing that the child support agency is a necessary party in any action involving a IV-D case.⁷⁰ In such States, the IV-D agency would be a necessary party to a DCO and should receive notice. In other States that lack such legislation, arguably the child support agency is not a necessary party to a DCO. In those States, a failure to provide notice to the child support agency regarding an upcoming DCO should not affect the validity of the DCO. An exception would be where the custodial parent is currently receiving assistance under the Temporary Assistance for Needy Families (TANF) program, Medicaid, or the IV-E foster care program or has previously received such assistance, in which case the agency may be considered an "obligee." One cannot rely on the caption of an order nor the current TANF, Medicaid, or foster care status of the obligee to determine whether the State IV-D agency is a necessary party. It might, therefore, be advisable to give notice of an upcoming DCO not only to individual parties, but also to any

⁶⁹ UIFSA § 207 cmt, 9 Pt. 1B U.L.A. 291 (1999). For further discussion, see Sampson, *supra* note 59, at 444-445 n. 105.

⁷⁰ See, e.g., Iowa Code Ann. § 598.21(8) (1996).

IV-D agency that is currently enforcing the order or is otherwise connected with support orders in the case. The best way to identify these agencies is to check the FCR.⁷¹

Determination of Controlling Order

Before any action can be taken to collect child support, and after the existing orders are discovered, the controlling order must be determined. This is the one order to be prospectively enforced, and the law of the State that issued it governs the nonmodifiable aspects of the order.⁷²

Who can determine a controlling order. For the controlling order determination to be binding, it must be made by the appropriate tribunal. A preliminary determination of the controlling order by the child support agency, an attorney, or a party, is insufficient to resolve the issue. Each State has discretion in defining what entity is a tribunal. In States that have limited the definition of “tribunal” to the courts, a support enforcement agency should not proceed with administrative enforcement in a multiple support order case until the court has determined the controlling order.⁷³

When a tribunal can determine a controlling order. Normally, a tribunal will make a determination of controlling order in the context of a registration proceeding for enforcement or modification.⁷⁴ The issue also could arise in two other contexts. First, if there are multiple support orders but no order was issued by a tribunal with continuing, exclusive jurisdiction, there is no controlling support order and the proper action for a party is to seek the establishment of a support order.⁷⁵ Before the responding tribunal issues a support order, it should first find that there is no controlling order. Secondly, UIFSA allows a party to bring a stand-alone proceeding to determine the controlling order.⁷⁶ One of the individual parties must reside in the State where the determination is sought. The request must include a certified copy of every existing support order, and the requester must provide notice of the action to each party whose rights might be affected by the ruling.⁷⁷

What type of jurisdiction is required. As originally drafted, UIFSA was silent regarding the requisite jurisdiction for a tribunal to determine the controlling

⁷¹ Caveat: States are required to report to the FCR all open IV-D cases and all non-IV-D orders established or modified on or after October 1, 1998. If the case has been closed in IV-D using criteria at 45 C.F.R. § 303.11 (2000), it will remain on the FCR as a non-IV-D order until the order expires under State law. IV-D cases closed before establishment of the FCR might never be on the FCR.

⁷² UIFSA § 611 (amended 2001), 9 Pt. 1B U.L.A. 369-370 (1999).

⁷³ UIFSA § 307(c) (amended 2001), 9 Pt. 1B U.L.A. 312 (1999).

⁷⁴ UIFSA §§ 602 (d) and (e) (amended 2001), 9 Pt. 1B U.L.A. 353 (1999).

⁷⁵ UIFSA § 207(b)(3) (amended 2001), 9 Pt. 1B U.L.A. 292 (1999).

⁷⁶ UIFSA § 207(c) (amended 2001), 9 Pt. 1B U.L.A. 292 (1999).

⁷⁷ *Id.*

order. The 2001 amendments clarify that the tribunal must have personal jurisdiction over both individual parties.⁷⁸ The requirement of personal jurisdiction is consistent with the view by many judges that a DCO is similar to a declaratory judgment, which requires personal jurisdiction.

What rules apply. Both UIFSA and FFCCSOA specify rules that a tribunal must apply in determining the controlling order that will govern prospective enforcement of support:

- If only one State has issued a child support order, that order must be recognized as the controlling order even when both of the parties and the child(ren) have left the jurisdiction.⁷⁹
- If there are multiple support orders, and only one tribunal has CEJ (because it issued an order and has an individual party or child residing there), then that order must be recognized as the controlling order.⁸⁰
- If there are multiple support orders, and more than one tribunal can claim CEJ, then the order issued by the child's "home State" must be recognized as the controlling order.⁸¹ "Home State" is defined in UIFSA as the State in which a child has lived with a parent, or person acting as a parent, for the prior consecutive 6 months (before filing the UIFSA action), or if the child is under 6 months of age, since birth. If neither CEJ State is the child's home State, the most recent order will prevail.
- Where multiple support orders exist, but none of the individual parties or the child reside in a State that issued an order, then there is no controlling support order. The responding jurisdiction with jurisdiction over the parties must issue a new support order, which will then be recognized as the controlling order.⁸² This new order will also set the nonmodifiable terms, such as the duration of the order.

See Exhibit 12-3 for a Determination of Controlling Order flowchart.

States that allowed intercounty proceedings under URESA face the dilemma of how to handle multiple support orders existing within the State. UIFSA does not address this issue. Pennsylvania has adopted an intrastate act to address conflicting intrastate orders and other issues that arise in a State

⁷⁸ UIFSA (2001) § 207(b), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

⁷⁹ UIFSA § 207(a), 9 Pt. 1B U.L.A. 291 (1999). See *Lackman v. Rosenstock*, 24 Fam. L. Rptr. (BNA) 1296 (D.C. Super. Ct. Feb. 1998).

⁸⁰ UIFSA § 207(b)(1), 9 Pt. 1B U.L.A. 291 (1999).

⁸¹ UIFSA § 207(b)(2) (amended), 9 Pt. 1B U.L.A. 291 (1999).

⁸² UIFSA § 207(b)(3) (amended), 9 Pt. 1B U.L.A. 292 (1999).

where counties act independently.⁸³ A 2001 survey of State child support agencies found that most States lacked laws or policy on how to handle inconsistent intrastate orders.⁸⁴ Even the UIFSA drafters were unclear about the application of UIFSA in this situation. The official comment to Section 207 (b) states:

It is not altogether clear whether the terms of UIFSA apply to a strictly intrastate case; that is, a situation in which multiple child support orders have been issued by multiple tribunals of a single [S]tate and all parties and the child continue to reside in that [S]tate.... A literal reading of the statutory language suggests the section applies. For a tribunal of the issuing [S]tate to so conclude will further the goal of the Act of identifying a single controlling order for prospective enforcement and modification. At the very least, the section provides a template for resolving such conflicts, most likely yielding a determination that the last order is the controlling order.⁸⁵

A New York court has specifically held that UIFSA jurisdiction extends only to interstate child support cases and cannot be applied to reconcile intrastate cases.⁸⁶

How arrears are addressed. Note that neither FFCCSOA nor UIFSA invalidates any of the existing orders. Each order remains in full force and effect until a tribunal makes a controlling order determination. Therefore, arrears will accrue under existing support orders up to the point of a DCO. When there are concurrent support orders, the highest amount due under any order at any given time is due for that period. Once there is a DCO, the controlling order determination cuts off the accumulation of additional arrears under the “old” orders.

The only time that UIFSA (as currently enacted by States) requires a determination of arrears is in the context of a registration for enforcement or a registration for modification. In seeking registration, the petitioner must allege the amount of any arrears; thereafter, both the order and the arrears are confirmed.⁸⁷ At least one appellate court has held that confirmation of an order registered under UIFSA must include a determination of arrears.⁸⁸

Although not required by UIFSA, some State IV-D agencies have adopted a policy of seeking a reconciliation of arrears, under all orders, any time a controlling order determination is made. By proceeding in this way, they ensure that all interested parties receive notice of the proposed action and that the

⁸³ 23 Pa. Cons. Stat. Ann. §§ 8101-8415 (2001).

⁸⁴ 2001 survey conducted by Iowa Attorney General's Office.

⁸⁵ UIFSA § 207(b) (amended 2001) cmt., 9 Pt. 1B U.L.A. 292 (1999)

⁸⁶ *Anostario v. Anostario*, 670 N.Y.S.2d 629, 249 A.D.2d 612 (N.Y. App. Div. 1998).

⁸⁷ UIFSA §§ 602(a)(3) (amended 2001), 608, and 609, 9 Pt. 1B U.L.A. 353, 367, and 368 (1999).

⁸⁸ *Slawski v. Dep't of Social Servs.*, 29 Va. App. 721, 514 S.E.2d 773 (1999).

arrears determination can properly be considered *res judicata*. This “best practice” is codified in the 2001 amendments to UIFSA, in Section 207(f), which requires the tribunal that makes the controlling order determination to state in its order “the total amount of consolidated and accrued interest, if any, under all of the orders” after giving appropriate credits under Section 209. Section 209 addresses reconciliation of multiple order accounts by requiring the tribunal to “credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child”

What type of notice is required. When determination of controlling order is made, the tribunal is required to state the basis on which its determination is made.⁸⁹ Within 30 days of the determination, the party who requested the determination must file a certified copy of the order with each tribunal that issued or registered a prior order. UIFSA permits the imposition of sanctions for failure to do this, but provides that the failure does not affect the validity of the determination or the enforceability of the controlling order. OCSE has developed a Federal form for use in providing notice of a determination of controlling order.⁹⁰ Note that although UIFSA places the responsibility for providing notice on the parties, many support enforcement agencies have also voluntarily assumed that responsibility in IV-D cases.

Impact of a controlling order determination. Under UIFSA, there can be only one order controlling the ongoing support amount. This amount can be enforced prospectively in all States where the obligor or his or her assets or income are located. A State issuing the controlling order has CEJ to modify the order as long as either of the individual parties or the child resides there. The law of the State that is determined, under Section 207, to have issued the initial controlling order governs the nonmodifiable aspects of the order, regardless of where enforcement and subsequent modifications take place.⁹¹

INTERSTATE PATERNITY AND SUPPORT ESTABLISHMENT

The central point in UIFSA is the “one order in time” concept. The general rule is that a tribunal can issue a paternity or child support order only if no support order entitled to recognition as a controlling order already exists.⁹²

Thus, the initial inquiry for the CSE attorney should be whether there is an existing order entitled to recognition. As previously discussed in the section on

⁸⁹ UIFSA § 207(f) (renumbered in 2001 as § 207(g)), 9 Pt. 1B U.L.A. 292 (1999).

⁹⁰ See Exhibit 12-4.

⁹¹ UIFSA § 604(a) (amended 2001), 9 Pt. 1B U.L.A. 355 (1999).

⁹² UIFSA § 401(a), 9 Pt. 1B U.L.A. 333 (1999). If there already is a valid order, it must be recognized as controlling under UIFSA § 207(a). Then, the appropriate action is either to enforce or modify it. Note that an order is controlling, even if neither individual party nor the child remains in the issuing jurisdiction. The fact that the issuing tribunal might not have continuing, exclusive jurisdiction (CEJ) *to modify* its order does not diminish that order’s status as controlling.

identification of support orders for the controlling order determination, there are several ways to discover existing orders. The primary means is through an effective client interview. Because UIFSA requires a petitioner to append any existing order to the pleadings when seeking to establish a parentage or support order,⁹³ the CSE agency should ask the custodial parent to disclose, and provide copies of, any existing support orders. The respondent also has an opportunity to bring omitted orders to the tribunal's attention in responsive pleadings. The third method is through the FCR.⁹⁴ One component of the FCR data is an *order indicator*, which identifies whether a support order exists for a particular child. If there is a support order entitled to recognition under UIFSA, no other tribunal can establish a *de novo* order.

Sometimes, there might be multiple support orders but no controlling order because none of the tribunals that has issued a support order has CEJ. In that situation, there is no order entitled to recognition under the Act. Section 207 of UIFSA directs the responding tribunal with personal jurisdiction over the parties to issue a new order. That new order becomes the controlling order in the case.

Initial Establishment of Paternity or Support

Standing. UIFSA authorizes either the mother or a man alleging himself to be the father of a child to initiate a paternity action. If the case is being initiated by a IV-D agency, an action to determine parentage will usually also seek establishment of a support order.

Jurisdiction. For a tribunal to establish paternity and/or a support order, it must have jurisdiction over the parties.⁹⁵ A tribunal can assert jurisdiction over a nonresident respondent by means of UIFSA's long-arm provisions.⁹⁶ In a two-State UIFSA action, the petitioner files a paternity/support action in the State where the respondent lives.⁹⁷

Long-arm proceeding. When a person commits certain acts within a State, the State can exercise jurisdiction over the person, even though the person is not a resident of the State. The State can reach out its "long arm" to require the person to resolve issues related to that person's acts in the State. Pursuant to State law, the State must specify which acts will subject an individual to the State's jurisdiction. Historically, most States have had long-arm statutes that were applicable to child support cases.⁹⁸ UIFSA includes expansive long-arm provisions for establishing paternity and support that are now available in

⁹³ UIFSA § 311(a) (amended 2001), 9 Pt. 1B U.L.A. 321 (1999).

⁹⁴ 42 U.S.C. § 653(h) (Supp. V 1999).

⁹⁵ *Kulko v. California Superior Court*, 436 U.S. 84 (1978); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

⁹⁶ UIFSA § 201 (amended 2001), 9 Pt. 1B U.L.A. 275 (1999).

⁹⁷ UIFSA § 401 (amended 2001), 9 Pt. 1B U.L.A. 333 (1999).

⁹⁸ See Elizabeth Weinberg, *Obtaining Personal Jurisdiction Over a Nonresident from Within One's Own State*, in Margaret C. Haynes, ed., *Interstate Child Support Remedies* (U.S. Dep't of Health & Human Services, 1989).

every State.⁹⁹ These provisions incorporate essentially every constitutionally permissible basis of obtaining authority over an out-of-state party:

- the individual is personally served with the appropriate citation, summons, or notice within the forum State;¹⁰⁰
- the individual submits to the jurisdiction of the forum State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;¹⁰¹
- the individual resided with the child in the forum State;
- the individual resided in the forum State, and provided prenatal expenses or support for the child;
- the child resides in the State as a result of the acts or directives of the individual;¹⁰²
- the individual engaged in sexual intercourse in the forum State, and the child might have been conceived by that act of intercourse;¹⁰³
- the individual asserted parentage in the alleged father registry maintained by the appropriate agency in the forum State;¹⁰⁴ or
- there is another basis consistent with the constitutions of the forum State and the United States for the exercise of personal jurisdiction.¹⁰⁵

⁹⁹ UIFSA § 201 (amended 2001), 9 Pt. 1B U.L.A. 275 (1999). UIFSA stops short of adopting the UCCJA *child's home State* jurisdictional model. See Sampson, *supra* note 59, at 421-22 n. 56 for information about the U.S. Commission on Interstate Support and the UIFSA Drafting Committee discussions over use of child-state jurisdiction. See also *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. Ct. App. 1996) (the jurisdictional bases specified in the UCCJA and UIFSA differ. Minnesota had jurisdiction to decide custody concerning all of the parties' children, but it only had jurisdiction to order child support for the parties' oldest child, who was conceived in Minnesota and had been domiciled with the father there. None of UIFSA's jurisdictional bases applied to the two younger children who had been conceived overseas.)

¹⁰⁰ Section 201(1) codifies the holding in *Burnham v. Superior Court*, 495 U.S. 604 (1990).

¹⁰¹ See, e.g., *Carrington v. Unseld*, 22 Kan. App. 2d 815, 923 P.2d 1052 (1996); *Harvey v. Harvey*, 575 N.W.2d 167 (Neb. Ct. App. 1998).

¹⁰² See, e.g., *McGlothen v. Superior Court*, 175 Cal. Rptr. 129, 121 Cal. 3d 106 (1981); *Miles v. Perroncel*, 598 So. 2d 662 (La. Ct. App. 1992); *Ford v. Durham*, 624 S.W.2d 737 (Tex. Ct. App. 1981); *Bergdoll v. Whitley*, 598 S.W.2d 932 (Tex. Civ. App. 1980); *Franklin v. Virginia Dep't of Social Servs.*, 27 Va. App. 136, 497 S.E.2d 881 (1998).

¹⁰³ See, e.g., *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. Ct. App. 1996).

¹⁰⁴ See, e.g., *Shirley D. v. Carl D.*, 224 A.D.2d 60, 648 N.Y.S.2d 650 (1996).

¹⁰⁵ See, e.g., *Kulko v. California Superior Court*, 436 U.S. 84 (1978); *McCubbin v. Seay*, 749 So.2d 1127 (Miss. Ct. App.) (mere presence of child insufficient basis for personal jurisdiction); *Katz v. Katz*, 310 N.J. Super. 25, 707 A.2d 1353 (1998); *Isaacson v. Fenton*, 1998 WL4296S4 (Tenn. Ct. App. 1998) (an alleged obligor's one 10-day visit in the forum State is not sufficient contact between the nonresident and the forum State to satisfy due process requirements for assertion of long-arm jurisdiction).

Note that personal jurisdiction over a nonresident respondent is subject to challenge. The typical claim is that there is an insufficient nexus between the act involved and the forum State to pass the *fundamental fairness* test or, in other words, maintain certain minimum contacts. While it might be possible to assert long-arm jurisdiction over the respondent, the petitioner can choose to use UIFSA's two-state procedures if more appropriate.¹⁰⁶

Two-State proceeding. If long-arm jurisdiction is not available or appropriate, a petitioner can file a UIFSA petition in his or her State. That petition is transmitted to the State with jurisdiction over the respondent. This two-state process can be used to seek paternity only, paternity and support, or support alone.¹⁰⁷

Initiating tribunal. Although the initiation of a UIFSA two-state case is similar to the process under URESA, there are several critical differences. First, URESA provided a court-to-court process. A lawsuit was filed in a court in the initiating State. A judge reviewed the pleadings and, if they were found to be legally and factually sufficient, the judge signed a Certificate and Order to transfer the matter to the appropriate court with jurisdiction over the respondent. In actuality, this initial review rarely consisted of more than a *pro forma* signature on a stack of pleadings, accomplishing little more than delay. In an effort to streamline the process, UIFSA did away with this review and eliminated the Certificate and Order requirement.¹⁰⁸ Thus, in the current two-state process, the role of the initiating tribunal is largely ministerial. It is charged with forwarding three copies of the petition and supporting documents to the responding State's tribunal or CSE agency, as appropriate.¹⁰⁹ Note that when dealing with the tribunal of a country that does not have a law substantially similar to UIFSA, the initiating State tribunal can issue a URESA-like certificate, and make any findings required by the responding jurisdiction before forwarding the petition.¹¹⁰ For example, for petitions sent to Canada, an initiating U.S. tribunal can enter a finding of the amount of support being requested, as required by Canadian law.

¹⁰⁶ In the initial rush to use UIFSA's enhanced long-arm provisions, some responding State IV-D agencies returned petitions asserting that the initiating State failed to assert long-arm jurisdiction over the respondent in available situations. This is not permissible under UIFSA or Federal regulations. The CSE agency in the responding State is not allowed to second-guess the remedy selected by the petitioner. See OCSE AT-98-30.

¹⁰⁷ UIFSA § 301 (amended 2001), 9 Pt. 1B U.L.A. 300 (1999). See *In re Peck*, 82 Wash. App. 809, 920 P.2d 236 (1996) (where a Washington court cannot obtain personal jurisdiction over a nonresident respondent, UIFSA provides an alternate mechanism for establishing, enforcing, or modifying a support order).

¹⁰⁸ UIFSA § 304 (amended 2001), 9 Pt. 1B U.L.A. 303-4 (1999).

¹⁰⁹ In most States, the IV-D agency forwards the initiating pleadings; if it is a IV-D case; the court is not involved at all.

¹¹⁰ UIFSA § 304(b) (amended 2001), 9 Pt. 1B U.L.A. 304 (1999).

Pleadings. UIFSA provides that a verified petition is admissible in evidence if given under oath by a party in another State.¹¹¹ Unless subject to an order for nondisclosure,¹¹² the petition must include, to the extent known, the parties' names, residential addresses, and Social Security Numbers, as well as the name, sex, residential address, Social Security Number, and date of birth of each child for whom support is sought.¹¹³

OCSE has developed a forms matrix that identifies Federal forms that should be forwarded in various interstate actions. For the initial establishment of a support order, the following documents should be forwarded: Child Support Enforcement Transmittal # 1—Initial Request, Uniform Support Petition, and General Testimony. If the petitioner is also seeking paternity establishment, the Affidavit in Support of Establishing Paternity should also be completed. The petitioner must verify the petition. There is a line on the petition for the signature of a IV-D representative; instructions to the Federal UIFSA forms indicate that an attorney's signature is not necessary. Note that if the petitioner is seeking establishment of a support order because the case has multiple support orders involving the same obligor and child, but no order is entitled to recognition as the controlling order, it might be necessary for the petitioner to also forward forms required for registration for enforcement in order to collect arrears under those prior support orders.

Unlike URESA, UIFSA permits a petitioner to bypass the initiating tribunal altogether and file the UIFSA petition directly in a State with jurisdiction over the respondent.¹¹⁴ A parallel provision requires the responding tribunal to act on any direct filing received.¹¹⁵ The direct filing of the action in another State (and similarly, representing a party or agency during a telephonic hearing to a tribunal in another State) raises the issue of unauthorized practice of law where counsel in the initiating State is not licensed to practice law in the responding State. In the future, States will have to address this issue to facilitate interstate litigation and further the purpose of UIFSA.¹¹⁶ A child support agency cannot use the direct filing provision; Federal regulations require that the initiating State agency forward the pleadings to the interstate central registry in the responding State.¹¹⁷

¹¹¹ UIFSA §§ 311(a) (amended 2001) and 316(b) (amended 2001), 9 Pt. 1B U.L.A. 321 and 327 (1999).

¹¹² UIFSA § 312 (amended 2001), 9 Pt. 1B U.L.A. 322 (1999).

¹¹³ UIFSA § 311(a) (amended 2001), 9 Pt. 1B U.L.A. 321 (1999). Although UIFSA itself does not mandate particular forms, it does give evidentiary weight to pleadings and supporting documents that substantially comply with Federal forms. UIFSA § 316(b) (amended 2001), 9 Pt. 1B U.L.A. 327 (1999). Copies of the forms are available through the local IV-D agency or on the OCSE Web site at <http://www.acf.dhhs.gov/programs/cse>.

¹¹⁴ UIFSA § 301(c) (renumbered as § 301(b) in 2001), 9 Pt. 1B U.L.A. 300 (1999).

¹¹⁵ UIFSA § 305(a) (amended 2001), 9 Pt. 1B U.L.A. 305 (1999).

¹¹⁶ For further discussions of the ethical considerations, see Chapter Four: The Role of the Attorney in Child Support Enforcement.

¹¹⁷ While Federal regulations require IV-D agencies to forward an interstate petition through a responding State's central registry, there is no requirement that the action first be filed in an initiating State tribunal.

For registry address information, check the National Roster and Interstate Referral Guide.¹¹⁸

Responding tribunal. Generally, a responding tribunal will hear and decide an interstate paternity or child support matter just as it would any intrastate case.¹¹⁹ UIFSA specifically directs the tribunal to apply its own procedural and substantive law, including its child support guidelines.¹²⁰ Therefore, although UIFSA offers special rules of evidence and procedures to assist in securing information from parties and other tribunals,¹²¹ the tribunal's duties do not differ much from the role it would play in a local matter.

Notwithstanding local law or procedures, a responding tribunal must:

- include in the support order, or accompanying documents, a copy of the calculations on which the child support order is based;¹²²
- not condition the support obligation on compliance with a visitation order;¹²³ and
- apply UIFSA's evidentiary provisions and not require the petitioner's presence.¹²⁴

The CSE attorney should request that the tribunal make specific findings in its order regarding the bases for jurisdiction over the respondent and the method of service. Such findings make it more likely that the orders will be upheld on review.

The responding tribunal must send copies of its order to the individual or agency petitioner, the respondent, and the initiating tribunal, if there was one.¹²⁵ Also, the tribunal will have to follow its State procedure for entry of the order into the SCR. This action makes relevant information about the order and the parties available for enforcement purposes within the State and nationwide, once the SCR data is forwarded to the FCR.

Nonparentage as a defense. UIFSA precludes a party from raising nonparentage in a UIFSA proceeding when parentage already has been determined by or pursuant to law.¹²⁶ A collateral attack on a parentage decree or

¹¹⁸ The Roster is available on-line through the OCSE Web site at <http://www.acf.dhhs.gov/programs/cse>.

¹¹⁹ UIFSA § 305(b) (amended 2001), 9 Pt. 1B U.L.A. 305-6 (1999).

¹²⁰ UIFSA § 303 (amended 2001), 9 Pt. 1B U.L.A. 303 (1999).

¹²¹ UIFSA §§ 316 – 318 (amended 2001), 9 Pt. 1B U.L.A. 327-331 (1999).

¹²² UIFSA § 305(c), 9 Pt. 1B U.L.A. 305-306 (1999).

¹²³ UIFSA § 305(d), 9 Pt. 1B U.L.A. 305-306 (1999).

¹²⁴ UIFSA §§ 316 (amended 2001) and 318, 9 Pt. 1B U.L.A. 327-8 and 331 (1999).

¹²⁵ UIFSA § 305(e), 9 Pt. 1B U.L.A. 305-306 (1999).

¹²⁶ UIFSA § 315, 9 Pt. 1B U.L.A. 326 (1999).

determination must be pursued in the issuing State, according to that State's laws; it is not an issue properly raised in a UIFSA proceeding.¹²⁷

The majority of State courts have taken this position. For example, where there was a prior order of support with a paternity determination, or made pursuant to a divorce proceeding, and no challenge to the determination was made for children born during the marriage, the Louisiana and South Carolina courts have held that the obligor cannot seek genetic testing in the responding tribunal.¹²⁸ A recent Maryland decision, however, promises to raise some interesting issues for that State as well as States that interact with Maryland on a regular basis. The Maryland Court of Appeals held that Md. Code Ann., Fam. Law § 5-1038(a)(2)(i)(2) applies to any action to disestablish paternity, regardless of the date paternity was established. This provision gives an adjudicated father the right to reopen and challenge the paternity declaration against him, whenever post-declaration genetic test results show that he is not the child's biological father. Not only can a challenge proceed, the adjudicated father can also request a blood or genetic test to confirm or deny paternity. The court found that a determination of the child's best interests is inappropriate and irrelevant to deciding whether to order genetic testing or to disestablish paternity.¹²⁹

This decision affects Maryland paternity determinations made without genetic testing, but not voluntary acknowledgments entered under Maryland's current statute. It also raises several questions as to whether a Maryland paternity order is entitled to full faith and credit as required under PRWORA when genetic testing is not involved; and whether a party, whose paternity determination is subject to reopening in Maryland, can request genetic testing in a subsequent UIFSA proceeding in another State.

PRWORA required States to enact specific laws and procedures related to paternity establishment as a condition of Federal funding.¹³⁰ Several of the provisions are relevant in deciding whether there has been a determination of paternity "by or pursuant to law," as required by UIFSA. For example, States now must have laws and procedures providing the following:

- a voluntary acknowledgment constitutes a legal finding of parentage, unless withdrawn within a 60-day rescission period;

¹²⁷ Note that this section does not apply to one-State UIFSA actions. UIFSA § 202 provides that only §§ 316 and 318 apply when a State is exercising personal jurisdiction over a nonresident pursuant to § 201 of UIFSA.

¹²⁸ *State v. Hanson*, 725 So. 2d 514 (La. Ct. App. 1998); *Beyer v. Metze*, 326 S.C. 356, 482 S.E.2d 789 (1997).

¹²⁹ See *Langston v. Riffe*, 359 Md. 396, 754 A.2d 389 (2000).

¹³⁰ Note that the PRWORA acknowledgment provisions are not limited to children born out of wedlock. They also extend to children born during a marriage. Some commentators, however, voice concern that a potential conflict exists for a child born as a result of an extramarital relationship. In 42 U.S.C. § 666(a)(5)(C)(iv), States are required to give full faith and credit to paternity acknowledgments. Yet, in 42 U.S.C. § 666(a)(11), States are mandated to give full faith and credit to paternity determinations, including those that arise by operation of law; in some States that would include children born during wedlock.

- tribunals must give full faith and credit to paternity acknowledgments properly executed in another State; and
- a State cannot require judicial or administrative proceedings to ratify an unchallenged acknowledgment of paternity.¹³¹

Challenging a decree on constitutional due process grounds is always permissible.¹³² The tribunal also might be asked to decide whether a UIFSA petitioner, including the IV-D agency or child, is bound by a prior parentage determination in an action to which it was not a party.¹³³

Simultaneous proceedings. Because UIFSA permits either parent or the IV-D agency to file actions, there might be instances in which proceedings are filed at roughly the same time in different States. UIFSA sets out clear instructions for when a tribunal can, and cannot, exercise jurisdiction if there is an action pending elsewhere.

Under UIFSA, a tribunal can exercise jurisdiction to establish an order only when:

- the pleading in the forum State was filed before the time expired to file a challenge to the other State's jurisdiction;
- the party contesting the other State's jurisdiction does so in a timely manner; and
- if relevant, the forum State is the child's home State.¹³⁴

According to UIFSA's Official Comments, this section "requires cooperation between, and deference by, sister-[S]tate tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active

¹³¹ 42 U.S.C. § 666(a)(5) (Supp. V 1999). The parents' completion of a voluntary paternity acknowledgment creates a conclusive finding of paternity unless either signatory rescinds his/her acknowledgment "within the earlier of 60 days or the date of an administrative or judicial proceeding to establish a support order in which the signatory is a party." Either party can rescind during this period. Beyond that time, a contest must be pursued in a State tribunal, and must be based on fraud, duress, or material mistake of fact. The person challenging the acknowledgment has the burden of proof, and the tribunal cannot stay a signatory's support obligation during the contest.

¹³² See, e.g., *South Carolina Dep't of Social Servs. v. Bess*, 327 S.C. 523, 489 S.E.2d 671 (1997).

¹³³ For a more detailed discussion of these issues, see the comments to the Uniform Parentage Ac (2000), 9 Pt. B U.L.A. 21 (Supp. 2001). The Revised UPA may be found on the NCCUSL Web site at www.nccusl.org.

¹³⁴ UIFSA § 204(a), 9 Pt. 1B U.L.A. 282 (1999). Although similar to the Uniform Child Custody Jurisdiction Act (UCCJA), UIFSA selects a priority scheme based on the *child's home State* (the Parental Kidnapping Protection Act model) over the premise of *first filed* (the UCCJA election). The latter tiebreaker is used if neither action was filed in the child's home State.

role in seeking out information about support proceedings in other [S]tates concerning the same child.”¹³⁵

ESTABLISHMENT VERSUS MODIFICATION

The Federal Full Faith and Credit for Child Support Orders Act¹³⁶ has an expansive definition of “modification.” Modification means “a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supercedes, or otherwise is made subsequent to the child support order.”¹³⁷ As discussed below, some modifications are permissible under UIFSA; others are not. One issue that has arisen is whether certain tribunal actions are considered establishment or enforcement actions or whether they are considered modifications.

Silent Order

If there is a divorce decree that is silent on the issue of support, the consensus among child support practitioners is that a subsequent action seeking a support order is considered an establishment action.

\$0 Support Order

If there is a support order for \$0, the consensus among child support practitioners is that any increase in the support amount is considered a modification.

Suspended Order

If there is a support order that has been suspended, case law supports the view that reinstatement of the order is considered a modification.¹³⁸

Issue of Support Reserved

Where the issue of support is reserved, there appears to be no consensus regarding whether such an order is considered a support order. Some tribunals will want to know the basis for the reservation and whether the issuing tribunal had personal jurisdiction over the respondent. Although UIFSA does not provide specific guidance in this situation, the Act does direct the forum tribunal to use the issuing State’s law to ascertain the nature of a support order.¹³⁹ Thus, it

¹³⁵ See Sampson, *supra* note 59, at 430.

¹³⁶ 28 U.S.C. § 1738B (1994 & Supp. V 1999).

¹³⁷ *Id.*

¹³⁸ See *Logan v. Gray*, 1997 WL 295706 (Del. Fam. Ct., Feb. 10, 1997) (where there is a divorce decree that is subsequently amended to suspend the support obligation, any subsequent action to order a support amount should be through a modification action, not an establishment action).

¹³⁹ UIFSA § 604(a) (amended 2001), 9 Pt. 1B U.L.A. 355 (1999).

appears that the existence of an order in these situations that is entitled to recognition under UIFSA may vary by State.

Addition of Medical Support

If a support order does not address health care, any addition of a provision requiring health insurance coverage or reimbursement of medical expenses is considered a modification of the support order.

Temporary Support Order

UIFSA clearly provides that a temporary support order, issued *ex parte* or pending resolution of a jurisdictional conflict, does not create CEJ in the issuing tribunal. Thus, in those instances, it will be necessary to establish a support order rather than modify the temporary order.¹⁴⁰

INTERSTATE MODIFICATION

Along with the State's legal criteria for when it is appropriate to modify an order, UIFSA plays a role in interstate modification decisions. Its provisions set forth who can modify and where the modification should take place.

Standing

Pursuant to UIFSA, a petitioner can be the obligee or the obligor. Therefore, UIFSA's modification provisions can be used to seek downward adjustments as well as increases in support.

Jurisdiction

To modify a support order, the tribunal must have personal jurisdiction as well as subject matter jurisdiction. UIFSA and the FFCCSOA are consistent with regard to the rules governing jurisdiction to modify. The cornerstone of the Act is CEJ. The 2001 amendments to UIFSA clarify that CEJ is a concept that applies to modification.¹⁴¹ As noted earlier, a tribunal has CEJ if it has issued a support order and is the residence of the child, individual obligee, or obligor.¹⁴² Regardless of how many support orders exist in the case, if there is only one tribunal with CEJ, that is the tribunal with exclusive jurisdiction to modify. If there is more than one support order and more than one tribunal that can claim CEJ, the tribunal must first determine the controlling order. The tribunal that issued the controlling order is the tribunal with exclusive jurisdiction to modify. If there is more than one support order but no tribunal can claim CEJ, then the responding jurisdiction with jurisdiction over the respondent must establish a new order that

¹⁴⁰ UIFSA § 205(e), 9 Pt. 1B U.L.A. 285 (1999).

¹⁴¹ Unif. Interstate Family Support Act (2001) § 205, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁴² UIFSA § 205 (amended 2001), 9 Pt. 1B U.L.A. 284-5 (1999).

will become the controlling order in the case. Finally, if there is only one support order but no one resides in the issuing State and therefore there is no tribunal with CEJ, then the party seeking modification must register the support order in a State—other than the petitioner’s State—that has jurisdiction over the respondent; usually that means registering the support order in the State where the respondent lives.¹⁴³ A flowchart outlining UIFSA’s modification rules is found in Exhibit 12- 6.

If a tribunal has CEJ, it cannot decline jurisdiction to modify based on forum *non conveniens*.¹⁴⁴ The only exception to CEJ is if the parties themselves file consent in the tribunal with CEJ, stating that they want another tribunal to exercise modification jurisdiction and assume CEJ.¹⁴⁵ This second State must be a tribunal that has some nexus with the parties.

There are three other exceptions to UIFSA’s modification rules. First, the rules only apply to modification of child support orders. UIFSA has a separate provision governing modification of spousal support orders.¹⁴⁶ Only the original issuing tribunal has CEJ to modify the spousal support order. Sometimes spousal support (alimony) and child support are combined in an undifferentiated amount. Two cases that addressed this issue held that UIFSA’s limitation on spousal support modification applied to the entire order amount, thereby prohibiting the tribunal from modifying child support.¹⁴⁷

The second exception is in international cases.¹⁴⁸ The consent required by Section 611 to shift CEJ is not required if a foreign country or political subdivision that is a State will not or cannot modify its order pursuant to its laws, regardless of the residence of the person seeking modification. The third exception applies when there is one support order, no party or child lives in the issuing State, and

¹⁴³ The 2001 amendments to UIFSA § 205, add a new basis for modification. An issuing State can exercise its continuing jurisdiction to modify a support order it has issued, even if all individual parties and child have moved away, if the parties consent in a record or in open court that the tribunal can continue to exercise its jurisdiction to modify its order. The drafters contemplate such a consent happening when the move from the State might have been of a very short distance and the parties continue to have a strong affiliation, perhaps through employment, with the issuing tribunal. See Unif. Interstate Family Support Act (2001) § 205 cmt, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁴⁴ See *Rosen v. Lantis*, 123 N.M. 231, 938 P.2d 729 (1997) (where tribunal had issued only support order and had continuing, exclusive jurisdiction, UIFSA does not allow the court to transfer the case to another State on the basis of forum *non conveniens* simply because the other State has jurisdiction over custody).

¹⁴⁵ UIFSA § 611(amended 2001), 9 Pt. 1B U.L.A. 369-370 (1999).

¹⁴⁶ UIFSA § 205(f), 9 Pt. 1B U.L.A. 285 (1999). The 2001 amendments to UIFSA move this provision to a new stand-alone section. See Unif. Family Support Act (2001) § 211, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁴⁷ See *Hibbitts v. Hibbitts*, 749 A.2d 975 (Pa. Super. Ct. 2000); *State ex rel. Kirby v. Jacoby*, 975 P.2d 939 (Utah Ct. App. 1999).

¹⁴⁸ UIFSA § 611(a)(2), 9 Pt. 1B U.L.A. 369 (1999). The 2001 amendments to UIFSA move this provision to a new expanded section. See Unif. Family Support Act (2001) § 615, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

now everyone lives in the same State. UIFSA provides that the party seeking a modification can register the support order in the State where everyone is living; the petitioner nonresidency that otherwise is required for registration for modification does not apply in this limited situation.¹⁴⁹

At least one State has held that having custody jurisdiction under the UCCJA affords a State proper jurisdiction to modify another State's order. The Alaska Supreme Court found that an Alaska court could exercise jurisdiction over the out-of-state father and modify a Texas order where Texas had lost CEJ, and Alaska had already exercised personal jurisdiction over the father under the UCCJA and PKPA for custody and visitation issues; it concluded that UIFSA's long-arm provisions authorized personal jurisdiction in this instance.¹⁵⁰ A later Arkansas case held just the opposite—that the UCCJA does not confer jurisdiction to modify in an interstate child support case; only UIFSA's bases for jurisdiction under Section 611 and corresponding provisions do so.¹⁵¹ New Jersey courts have also concluded that custody and child support jurisdiction have different legal bases.¹⁵²

The 2001 amendments to UIFSA clarify that the long-arm bases for jurisdiction found in Section 201 cannot be used to establish a basis for modification.¹⁵³ Section 201 applies only to establishment and enforcement proceedings.¹⁵⁴

Pleadings

If the petitioner is seeking modification in the issuing State because it has CEJ, the petitioner should file whatever pleadings are required by the issuing State. In most States, it will be considered a local action and therefore UIFSA pleadings are not required. It still might be advisable, however, for the petitioner to complete the UIFSA testimony form in order to provide the tribunal with personal and financial information.

If the petitioner is registering an order for modification, UIFSA requires all of the following documents:

- A complaint, petition, or comparable pleading alleging the grounds for modification.

¹⁴⁹ UIFSA § 613, 9 Pt. 1B U.L.A. 378 (1999).

¹⁵⁰ *McCaffery v. Green*, 931 P.2d 407 (Alaska 1997).

¹⁵¹ *Fox v. Fox*, 7 S.W.3d 339 (Ark. Ct. App. 1999).

¹⁵² See *Whitfield v. Whitfield*, 315 N.J. Super. 1, 716 A.2d 533 (1998); *Schuyler v. Ashcraft*, 293 N.J. Super. 261, 680 A.2d 765 (N.J. Super. Ct. 1997).

¹⁵³ Unif. Family Support Act (2001) § 201, 9 Pt. 1B U.L.A. ____ (Supp. 2001). See also *LeTellier v. LeTellier*, 40 S.W.3d 490, 90 A.L.R.5th 707 (Tenn. 2001), reversing 1999 WL 732487 (Tenn. App. 1999).

¹⁵⁴ Unif. Family Support Act (2001) § 201, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

The Federal Uniform Support Petition may be used to request modification of a support order. There is a second section of the Petition that provides the grounds supporting the remedy sought in Section I. In addition to checking the box stating “A modification is appropriate due to a change in circumstances,” it is advisable to include testimony regarding the basis for the changed circumstances, e.g., change in income, increased medical expenses.

- Two copies (of which one is certified) of the support order(s) to be registered.

If there has already been a determination of controlling order, that is the order that should be registered for modification. If there are multiple support orders and there has not been a determination of controlling order, every support order should be forwarded so that a DCO can be made.¹⁵⁵

- A sworn statement showing the amount of any arrears, and stating the name of the obligor and, if known, the obligor’s address and Social Security Number, the obligor’s employer name and address, any other source of income of the obligor, a description and the location of property of the obligor in the registering state not exempt from execution, the name and address of the obligee, and, if applicable, the agency or person to whom support payments are to be remitted.

Completion of the Federal Registration Statement provides the information required by UIFSA. According to instructions accompanying the Federal form, there must be a completed form for each registered support order.

The CSE attorney should advise caseworkers of the importance of an accurate completion of the Registration Statement. Tribunals have dismissed cases where there was no arrearage alleged, as required by the Act.¹⁵⁶

Although not required by UIFSA, the Federal forms matrix that applies in IV-D cases also requires the submission of the Child Support Enforcement Transmittal # 1—Initial Request. The petitioner can seek registration for modification, or registration for modification and enforcement, if there are arrears.

¹⁵⁵ See Unif. Family Support Act (2001) § 602(d), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁵⁶ See, e.g., *Allen v. Allen*, 1996 WLS47919 (Neb. Ct. App. Sept. 17, 1996) (failure of petitioner to allege specific amount of arrears was a procedural defect requiring that the registration be vacated); *In re Chapman*, 973 S.W.2d 346 (Tex. Ct. App. 1998) (the documentary requirements spelled out under UIFSA’s registration provisions are mandatory. Petitioner’s failure to submit a sworn statement or a certified statement by the custodian of the records showing the amount of any arrearage was a deficiency that should have resulted in the order not being registered.)

Registration for Modification

On receipt of the petition for modification and the documents for registration, most States require the registering tribunal to file the support order(s) with the registry for foreign support orders or other appropriate registry. UIFSA requires that the nonmovant receive notice of the registration. The notice must inform the nonmovant:

- that a registered order is enforceable as of the date of registration in the same manner as an order issued by the registering tribunal;
- that a hearing to contest the validity or enforcement of the registered order must be requested within a specified number of days after notice (UIFSA suggests 20 days but States have discretion in setting the number);
- that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and
- of the amount of any alleged arrearages.¹⁵⁷

The nonmovant must challenge the registration or alleged arrears within the specified time period. If the nonmovant requests a hearing, the registering tribunal must schedule the matter and give notice to the parties.

A registering tribunal has authority to modify a child support order if (1) the petitioner is not a resident of the registering State; the respondent is subject to the personal jurisdiction of the registering tribunal; and the original issuing State lacks CEJ because the child, individual obligee, and obligor no longer reside in the issuing State, or (2) an individual party or child is subject to the personal jurisdiction of the registering tribunal and all of the individual parties have filed written consent in the issuing State providing that the registering State can modify the order and assume CEJ.¹⁵⁸ The following cases are examples of decisions where the tribunal has correctly resolved CEJ issues:

- The Arkansas court held that under UIFSA, the court lacked jurisdiction to modify a Florida support order. Florida retained CEJ to modify child support because the mother and children remained there and the mother had not consented to modification in Arkansas;¹⁵⁹

¹⁵⁷ UIFSA § 605 (amended 2001), 9 Pt. 1B U.L.A. 359 (1999).

¹⁵⁸ UIFSA § 611(a) (amended 2001), 9 Pt. 1B U.L.A. 369 (1999).

¹⁵⁹ *Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998).

- A Colorado court, with jurisdiction under the UCCJA, could not modify a Montana support order because the mother remained in Montana and had not consented to modification in a Colorado court;¹⁶⁰
- The mother's petition to modify an Ohio child support order was dismissed, for lack of subject matter jurisdiction. The issuing court retained CEJ because, although the mother and child had relocated to Florida, the father remained in Ohio;¹⁶¹
- New York lacked subject matter jurisdiction to modify a New Hampshire child support order because the father continued to live there. New Hampshire maintained CEJ to modify its support order. Further, the mother could not seek modification in New York because she was a New York resident and therefore failed to meet the petitioner nonresidency requirement.¹⁶²
- A Connecticut court could modify a New Jersey child support order since none of the parties remained in New Jersey, the mother and child were residents of Connecticut, and the petitioner father was a resident of New York;¹⁶³
- A Wisconsin court can modify a foreign support order only if the petitioner is not a Wisconsin resident.¹⁶⁴

Evidentiary Provisions

UIFSA's evidentiary provisions in Sections 316 and 318 apply to a modification proceeding, regardless of whether it is pursuant to a petition for registration for modification or a pleading filed in the issuing State that has CEJ. In fact, Section 206 of UIFSA specifically provides the following: "If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal might 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." Therefore, in a modification proceeding where the parties live in different States, it is not necessary for the petitioner to be physically present in the forum State.

¹⁶⁰ *In re Marriage of Zinke*, 967 P.2d 210 (Colo. Ct. App. 1998).

¹⁶¹ *Lawlor v. Rasmussen*, 745 So. 2d 561 (Fla. Ct. App. 1999).

¹⁶² *Chisolm-Brownlee v. Chisholm*, 177 Misc. 2d 185, 676 N.Y.S. 2d 818 (N.Y. Fam. Ct. 1998).

¹⁶³ *Parry v Bellinson*, 1998 WL727894(Conn. Super. Ct. Oct. 3, 1998).

¹⁶⁴ *Cepukenas v. Cepukenas*, 221 Wis. 2d 166, 584 N.W.2d 227 (1998); *Oimoen v. Oimoen*, 581 N.W.2d 594 (Wis. Ct. App. 1998).

Choice of Law

When an order is registered for modification, the forum is to apply its own law, procedures, and defenses regarding modification.¹⁶⁵ Thus, the tribunal will apply its own threshold for determining whether modification is appropriate and, if so, apply its own support guidelines. For example, if a State conditions modification on a substantial change of circumstance or a numerical standard, such as a 25 percent change in the order amount, that standard applies to the registered order as well.¹⁶⁶ The forum cannot, however, change any term of the original order that is not modifiable in the State that issued the controlling order.¹⁶⁷ The example given in the Official Comments of a nonmodifiable term is the duration of support: “For example, if child support was ordered through age 21 in accordance with the law of the issuing State and the law of the forum State ends the support obligation at 18, modification by the forum tribunal cannot affect the duration of the support order to age 21.”¹⁶⁸ In 1996, NCCUSL amended Section 611 to clarify that it is the law of the State that issued the initially determined controlling order that “locks in” those nonmodifiable terms. The following cases have correctly resolved issues regarding modification and duration of support:

- A court with jurisdiction to modify an existing support order must retain the nonmodifiable terms of the controlling order, such as duration, and it must apply the issuing State’s law to interpret those terms. The forum State, however, is to apply its own law in determining the amount of support. Thus, the Oregon court was entitled to reduce the amount of the father’s support obligation, but lacked authority to extend the duration established by the original Nevada order.¹⁶⁹
- An Ohio court with jurisdiction to modify a New York child support order could not reduce the duration of the child support obligation.¹⁷⁰
- Under UIFSA, a Vermont court lacks authority to modify the duration of the New York child support order, regardless of whether all parties are currently Vermont residents.¹⁷¹

One issue that has arisen is whether a registering tribunal can establish a new support order under its laws after a child had reached the age specified under the duration of support law of the State that issued the registered order. A New York appellate court held that it could, concluding that a New York trial court

¹⁶⁵ UIFSA § 611(b), 9 Pt. 1B U.L.A. 369 (1999).

¹⁶⁶ For additional information on the basis for modification, see Chapter Nine: Modification of Child Support Obligations.

¹⁶⁷ UIFSA § 611(b), (c) (amended 2001), 9 Pt. 1B U.L.A. 369-370 (1999).

¹⁶⁸ UIFSA § 611 cmt, 9 Pt. 1B U.L.A. 370 (1999).

¹⁶⁹ *Cooney v. Cooney*, 150 Or. App. 323, 946 P.2d 305 (1997).

¹⁷⁰ *Vancott-Young v. Cummings*, 1999 WL 326149 (Ohio Ct. App. May 24, 1999).

¹⁷¹ *Cavallari v Martin*, 169 Vt. 210, 732 A.2d 739 (1999).

could extend the duration of the Maryland support order from 18 to 21 years, after finding that all the parties had relocated to New York.¹⁷² The 2001 amendments to UIFSA are “designed to eliminate such attempts to create multiple, albeit successive, support obligations.”¹⁷³ The new Section 611(d) provides: “In a proceeding to modify a child-support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor’s fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.”

Assumption of CEJ

Once an order is modified under UIFSA, the forum tribunal assumes CEJ over the support order.¹⁷⁴ Within 30 days of an order modifying the child support order, the party obtaining the modification must file a certified copy of the order with the issuing tribunal that had CEJ over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. The failure to file a certified copy with other tribunals does not affect the validity or enforceability of the modified order of the new CEJ tribunal. All States must recognize this assumption of jurisdiction.¹⁷⁵ The new order is comprised of the newly modified terms, nonmodifiable terms of the original order, and arrearage amounts that accrued before modification, all of which are enforceable.¹⁷⁶

Because UIFSA provisions leave it to each State to determine the appropriate tribunal for handling these matters, a court’s order can subsequently be modified by an administrative agency where the State has appropriately assumed CEJ. The court is required by its own State law (UIFSA) to recognize the modified order and the loss of CEJ.

Void vs. *Res Judicata*

An issue over which experts have disagreed is the effect of an order issued contrary to FFCCSOA’s and UIFSA’s rules regarding modification jurisdiction. Are such orders void for lack of subject matter jurisdiction, or *res judicata* if they are not timely appealed? Proponents of the latter view argue that any modification contrary to FFCCSOA and UIFSA is a mistake of law, rather than a lack of subject matter jurisdiction. If a court enters an incorrect decision, the remedy is to appeal the ruling or to file a Rule 60b (or equivalent) motion to

¹⁷² *Saxton v Saxton*, 699 N.Y.S. 2d 537, 267 A.D. 2688 (N.Y. App. Div. 1999).

¹⁷³ See Unif. Family Support Act (2001) § 611 cmt, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁷⁴ UIFSA § 611(d) (renumbered by 2001 amendments as 611(e)), 9 Pt. 1B U.L.A. 370 (1999).

¹⁷⁵ UIFSA § 612 (amended 2001), 9 Pt. 1B U.L.A. 377 (1999). UIFSA § 614, 9 Pt. 1B U.L.A. 380 (1999) requires the party obtaining a modification to file a certified copy of the order with the tribunal that issued the original order and with every tribunal in which that order was previously registered. This filing must take place within 30 days of the order’s issuance or the moving party is subject to sanctions.

¹⁷⁶ UIFSA § 610 (amended 2001), 9 Pt. 1B U.L.A. 368-9 (1999).

reopen the decision, as appropriate. Absent a proper challenge, even a wrong order is entitled to full faith and credit.¹⁷⁷ Proponents of the former view are supported by recent case law.¹⁷⁸ These decisions conclude that an order established contrary to the modification rules of UIFSA and FFCCSOA is void because of a lack of subject matter jurisdiction.

INTERSTATE ENFORCEMENT

Although UIFSA places clear restrictions on the establishment and modification of support orders, it does not limit a petitioner's enforcement options in the same way. An obligee can seek to enforce a support order in any, and every, State in which the obligor receives income, owns property, or has assets, as well as in each State with personal jurisdiction over the obligor. To maximize enforcement, UIFSA provides several enforcement options.

Direct Income Withholding

Income withholding is an enforcement tool where an employer or other income holder deducts the obligated support amount from the obligor's income. It is, by far, the most effective means of obtaining full and timely payment of child support debts. In fact, every State now provides for immediate income withholding, as soon as an order is established or modified, unless good cause is found.¹⁷⁹ Federal law first addressed income withholding in interstate cases in 1984. Interstate income withholding was not, however, as effective as Congress had hoped. To avoid the delays inherent when a second agency is involved, many child support agencies began sending income withholding orders directly across State lines to employers, even when there was no legal authority to do so because the employer did not conduct business in their State. A 1992 General Accounting Office study found that 75 percent of the surveyed IV-D offices directly served out-of-state employers with income withholding orders, with a median success rate of 72 percent.¹⁸⁰ After studying the effectiveness of direct income withholding, the U.S. Commission on Interstate Child Support recommended that the practice be legalized.

In 1994, PRWORA required States, as a condition of receiving Federal funds, to have laws and procedures that direct employers to comply with an income withholding order issued by any State and to treat that order as if it were

¹⁷⁷ For a more complete analysis of this subject, see Richman and Reynolds, Understanding Conflict of Laws (2nd ed. 1993), Chapter 5, Part B "The Reach and Limits of Full Faith and Credit" and in particular §§ 111 and 112 [b][2] at 346-348.

¹⁷⁸ See, e.g., *McCarthy v. McCarthy*, 785 So. 2d 1138 (Ala. Civ. App. 2000); *State ex rel. Harnes v. Lawrence*, 140 N.C. App. 707, 538 S.E.2d 223 (2000); *Onslow County o/b/o Patricia Roberts v. Roberts*, 531 S.E.2d 905 (N.C. Ct. App., Mar. 7, 2000) (unpublished opinion).

¹⁷⁹ See Chapter Ten: Enforcement of Child Support Obligations.

¹⁸⁰ U.S. General Accounting Office, *Interstate Child Support: Wage Withholding Not Fulfilling Expectations*, HRD-92-65BR (Washington, DC: Gov't Printing Office 1992).

issued by a tribunal in the employer's State.¹⁸¹ UIFSA contains a procedure for direct income withholding in Article 5 that satisfies the PRWORA requirement.

Initiation of direct income withholding. UIFSA allows anyone—an attorney, a child support enforcement (IV-D) agency, a parent, even a friend or relative—to initiate direct income withholding.¹⁸² This is accomplished by sending an income withholding order¹⁸³, issued by any State, directly to an obligor's employer or income holder. No pleading is required to accompany the order. Nor is it necessary to register the order for enforcement first.¹⁸⁴ OCSE has promulgated a form that IV-D agencies must use to initiate direct income withholding.¹⁸⁵

Although UIFSA permits direct income withholding, there are times when that remedy might not be appropriate. One example is when the initiating support enforcement agency or individual knows that there are multiple orders for a child, but there has not been a controlling order determination. Another is when the initiating support enforcement agency has already opened a two-state case and direct income withholding would duplicate action already being taken by the responding State. This problem has been exacerbated with the automated interplay between the National Directory of New Hires (NDNH) and the Federal Case Registry; IV-D agencies are getting address information and automatically generating income withholding orders, which often go to employers in other States. No one questions the crucial benefit of these new enforcement tools. To diminish the likelihood of employer backlash caused by receipt of multiple withholdings on the same case, however, State child support agencies are beginning to program appropriate flags in their statewide systems that suppress initiation of direct income withholding when a two-state case already exists.

Employer response. If the order appears regular on its face, the employer must immediately provide a copy to the employee/obligor and treat the order as if issued by the appropriate tribunal of the employer's State.¹⁸⁶ Withholding must begin on receipt of the order, with the income holder

¹⁸¹ 45 C.F.R. § 303.100(f)(1) (2000).

¹⁸² The 2001 amendments to Section 501 provide that "an income-withholding order issued in another State may be sent by or on behalf of the obligee, or by the support enforcement agency, ..." Unif. Family Support Act (2001) § 501, 9 Pt. 1B U.L.A. ____ (Supp. 2001).

¹⁸³ An income withholding order may be a provision within the support order that requires income withholding or a separate withholding order, based on the underlying support order. The Federal Order/Notice to Withhold Income is a stand-alone withholding order that is completed based on the underlying support order. UIFSA defines "income withholding order" as "an order or other legal process" directed to an employer to withhold support from the obligor's income. See UIFSA § 101(6) (renumbered in 2001 as § 102(6)), 9 Pt. 1B U.L.A. 256 (1999). The phrase "legal process" is meant to cover various types of legal processes used by States to initiate withholding.

¹⁸⁴ UIFSA § 501 (amended 2001), 9 Pt. 1B U.L.A. 336 (1999).

¹⁸⁵ Federal Order/Notice to Withhold Income for Child Support.

¹⁸⁶ UIFSA § 502(b), 9 Pt. 1B U.L.A. 339 (1999). See *United States v. Morton*, 467 U.S. 822 (1984).

distributing funds as directed in the order.¹⁸⁷ The employer must comply with the terms of the order/notice regarding:

- the amount and duration of the payments;
- the person or agency to receive payments;
- medical support (either periodic payment or provision of health insurance coverage for the child in question);
- the amount of the periodic payment of fees and costs for the support enforcement agency, issuing tribunal, or obligee's attorney; and
- the amount of payment on arrears and the interest on arrears.¹⁸⁸

In addition, the employer must comply with the State law of the obligor's principal place of employment to determine any employer processing fee, the maximum withholding amount, and the time period for forwarding payment.¹⁸⁹ Similarly, the law of the employer's State governs the way to prioritize withholding orders and to allocate withheld sums when there are multiple withholding orders for the same employee.¹⁹⁰

Contest to direct income withholding. The obligor has the right to challenge direct income withholding, but only on narrow grounds. Generally, a contest to the income withholding is limited to a mistake of fact, a statute of limitations issue, the issuing tribunal's lack of personal jurisdiction over the obligor, or another permissible constitutional due process challenge. According to the Official Comments to Section 506, the obligor can also assert that there is a different support order that should be the controlling order in the case.

To contest the direct income withholding order/notice, the obligor must notify the initiating support enforcement agency, if one is involved, each employer that received a copy of the order, and the person or agency designated to receive payments under the withholding order. If no payment recipient is designated, the obligor must notify the obligee.¹⁹¹ The Act requires notice to the initiating support enforcement agency so that hopefully—through an exchange of communication and/or documents—the challenge can be resolved without a hearing. If the issues cannot be resolved informally, UIFSA requires that the hearing or formal review occur in the State of the obligor's primary employer.¹⁹²

¹⁸⁷ UIFSA § 502(c) (amended 2001), 9 Pt. 1B U.L.A. 339-340 (1999).

¹⁸⁸ *Id.*

¹⁸⁹ UIFSA § 502(d), 9 Pt. 1B U.L.A. 340 (1999).

¹⁹⁰ UIFSA § 503 (amended 2001), 9 Pt. 1B U.L.A. 344 (1999).

¹⁹¹ UIFSA § 506(b) (amended 2001), 9 Pt. 1B U.L.A. 346 (1999).

¹⁹² UIFSA § 506(a) (amended 2001), 9 Pt. 1B U.L.A. 346 (1999). *But consider Barr v. Barr*, 2000 Pa. Super. 99, 749 A.2d 1992 (2000) (the father could not assert that the Alabama divorce court lacked jurisdiction to enter a default support order as a defense to UIFSA direct wage withholding).

The Act requires the challenge to be heard in the same manner as if the income withholding order had been issued by a tribunal of the employer's State.¹⁹³ Several States have faced implementation issues because they lack procedures for challenging an intrastate income withholding order after it has been issued. In these States, it is unclear what documents would be filed or how the pleading should be captioned. Because neither the tribunal nor the IV-D agency in the employer's State has knowledge of the direct withholding, there is no docket number or IV-D case number. As there is no IV-D case in the employer's State, the role of the IV-D agency in that State is also unclear.

Some experts recommend that, on contest, the initiating State should withdraw the direct withholding notice and the obligee should seek withholding under the traditional two-state process. UIFSA does not require the State to do so. At least one State has amended UIFSA to include procedures for registering the income withholding order so that the obligor can challenge it.¹⁹⁴ Other States, in the absence of statutory direction, are developing policies and procedures to handle such contests, including whether the local IV-D child support enforcement agency will provide assistance to the initiating support enforcement agency in defending the withholding order. The 2001 amendments to UIFSA address the issue by providing a bit more direction. Amended Section 506 provides that the obligor may challenge the direct income withholding "by registering the order in a tribunal of this State and filing a contest to that order as provided in Article 6, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this State." Section 604 (Choice of Law) applies to the contest.

Employer compliance. Employers should not fear liability for compliance with a direct income withholding order/notice; the Act provides immunity to an employer that proceeds accordingly.¹⁹⁵ In fact, an employer who fails to comply with another State's withholding order, is subject to the same penalties that would apply if the order had been issued by the employer's State.¹⁹⁶ A Connecticut court held a noncustodial parent's employer in contempt for failure to implement a direct income withholding order. The employer was required to (1) pay the custodial parent \$29,259 for the full amount of income not withheld after proper notice was received, and (2) post a performance bond in the amount of \$412,808 to secure future payments. After failure to comply, the CEO must appear and show cause why he should not be incarcerated until the bond is posted and income withholding is in place.¹⁹⁷

in Pennsylvania. The mother was not a Pennsylvania resident, and had not submitted to jurisdiction by registering the order in Pennsylvania. Therefore, the father must challenge the order in the issuing Alabama court.)

¹⁹³ UIFSA § 506(a) (amended 2001), 9 Pt. 1B U.L.A. 346 (1999).

¹⁹⁴ See Conn. Gen. Stat. Ann. § 46b-213w (Supp. 2001).

¹⁹⁵ UIFSA § 504, 9 Pt. 1B U.L.A. 345 (1999).

¹⁹⁶ UIFSA § 505, 9 Pt. 1B U.L.A. 345 (1999).

¹⁹⁷ *State ex rel Filipov v. Filipov*, 2000 Conn. Super. Lexis 266 (Conn. Super. Ct. Jan. 31, 2000).

Arrearage payback. According to Federal regulations, in addition to the amount to be withheld to pay current support, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.¹⁹⁸ States must have expedited procedures for adding an arrearage payback amount.

Redirection of Payments. Whether payments can be redirected to a different State after the custodial parent moves from the controlling order State is an issue in dispute among child support professionals, and there is no reported case law on point.¹⁹⁹ A recent Federal Policy Interpretation Question (PIQ) addresses the issue.²⁰⁰

Section 501 of the Uniform Interstate Family Support Act (UIFSA) authorizes that an income withholding order of another State can be sent directly to the obligor's employer in another State without filing a pleading or registering the order. There is no restriction under UIFSA on who can send the income withholding order to the employer. Section 502(c)(2) of UIFSA mandates the employer to "withhold and distribute funds as directed in the withholding order by complying with the terms of the order which specify ... (2) the person or agency designated to receive payments and the address to which payments are to be forwarded; ..." Therefore, if a support order or income withholding order issued by one State designates the person or agency to receive payments and the address to which payments are to be forwarded, an individual or entity in another State may not change the designation when sending an Order/Notice to Withhold Child Support [in the same case].

Section 466(c)(1)(E) of the Act requires States to have laws under which—in cases where support is subject to an assignment to the State or to a requirement to pay through the State disbursement unit—on notice to the obligor and obligee, the IV-D agency can direct the obligor or other payor to change the payee to the appropriate Government entity. States therefore must have the authority to administratively change the payee or redirect payments under an order issued in their State without obtaining an order from any other judicial or administrative tribunal in their own State. This requirement does not authorize a State IV-D agency to administratively change the payee or the agency designated to receive payments from any designation in, or subsequently authorized in, an order issued by another State.

¹⁹⁸ 45 C.F.R. § 303.100(a)(2) (2000). See also 42 U.S.C. § 666(c)(1)(H) (Supp. V 1999).

¹⁹⁹ In 2000, OCSE convened a work group of Federal, State, and local child support professionals to address issues such as this. Ultimately, OCSE might issue regulations that address specific interstate issues and offer direction to the IV-D community. While such regulations would not be binding on the private bar or the judiciary, they certainly will offer guidance.

²⁰⁰ Language from OCSE PIQ 01-01 (2001).

The policy concerns are how to ensure an accurate accounting of payments yet have support payments reach the relocated custodial parent as soon as possible. Recognizing the ongoing discussion within the CSE community, NCCUSL included a new provision within the 2001 amendments to UIFSA. Section 319 (Receipt and Disbursement of Payments) has been amended to include a new subsection (b):

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this State, on request from the support enforcement agency of this State or another State, [the support enforcement agency of this State or] a tribunal of this State shall:

(1) direct that the support payment be made to the support enforcement agency in the State in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this State receiving redirected payments from another State pursuant to a law similar to subsection (b) shall furnish to a requesting party or tribunal of the other State a certified statement by the custodian of the record of the amount and dates of all payments received.

There is a corresponding amendment to Section 307 that outlines duties of the support enforcement agency.²⁰¹

Administrative Enforcement

UIFSA provides another enforcement option that does not involve registration of the support order. UIFSA authorizes the responding support enforcement agency to use any administrative procedure authorized by State law to enforce a local support order.²⁰² Registration of the order is not necessary unless the obligor challenges the validity, or the enforcement, of the order.

To request administrative enforcement, the initiating support enforcement agency or party seeking enforcement must send the same documents required for registration for enforcement to the support enforcement agency in the responding State. On receipt of the documents, the responding support enforcement agency, without initially registering the order(s), must consider and, if appropriate, use any administrative procedure authorized by local law to

²⁰¹ Unif. Interstate Family Support Act (2001) § 307(e), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

²⁰² UIFSA § 507 (amended 2001), 9 Pt. 1B U.L.A. 349 (1999). For additional information on administrative enforcement, see Chapter Ten: Enforcement of Child Support Obligations. See also *Marriage of Titterness*, 77 Wash. App. 182, 890 P.2d 32 (1995).

enforce a support order or income withholding order. Given the broadened administrative authority of State IV-D agencies that resulted from PRWORA, administrative enforcement is usually the preferred method of enforcing an obligation for child support because it is usually faster than remedies requiring a court hearing. Administrative remedies must include authority to order income withholding; seize periodic or lump sum payments; attach and seize assets held in financial institutions; attach public and private retirement funds; impose liens, force the sale of property, and distribute proceeds; and increase monthly payments to cover amounts for arrearages.²⁰³

If the obligor challenges administrative enforcement and the administrative review process has been exhausted, then UIFSA directs the responding State support enforcement agency to register the order with the appropriate tribunal. The CSE attorney in the responding State can also seek registration for enforcement if administrative enforcement would not be effective and the attorney wants to seek a judicial remedy such as contempt.

Registration for Enforcement

UIFSA's registration for enforcement process is similar to the registration of foreign support orders under URESA. There are two critical differences, however. First, any contest to the amount of the arrears must be made at the time of the registration.²⁰⁴ Second, UIFSA prohibits the responding State from modifying an order that is registered for enforcement only.²⁰⁵ Under URESA, the registering court entered a conforming support order of its own. Accordingly, when the order was both registered and modified, it was unclear whether the modification also affected the original order.²⁰⁶ Registration for enforcement under UIFSA, however, does not affect the issuing tribunal's CEJ to modify the order. The registering State is simply authorized to enforce a sister State's order as it would its own. No conforming order is entered.

Initiation of a registration request. It is unlikely that a CSE attorney will be involved in the initiation of a registration request. To the extent that the attorney is involved in developing agency policies and procedures, however, the attorney should ensure that those procedures require the caseworker initiating the registration request to seek information about all existing support orders involving the same obligor and child(ren). In addition to intake, the worker should check

²⁰³ 42 U.S.C. § 666(c) (Supp. V 1999). For additional discussion of administrative and other enforcement remedies, see Chapter Ten: Enforcement of Support Obligations.

²⁰⁴ UIFSA § 605(b)(3), 9 Pt. 1B U.L.A. 359 (1999).

²⁰⁵ UIFSA § 603(c), 9 Pt. 1B U.L.A. 356 (1999).

²⁰⁶ See, e.g., *Alig v. Alig*, 255 S.E.2d 494 (Va. 1979); *Monson v. Monson*, 85 Wis. 2d 794, 271 N.W.2d 137 (1978) (modification of the registered order also might effect a modification in the rendering State.) *But see White v. Nathan*, 888 P.2d 237 (Ariz. App. 1994); *O'Halloran v. O'Halloran*, 580 S.W.2d 870 (Tex. Civ. App. 1979) (a support order entered by a responding court does not modify the original order absent the responding court's express statement otherwise).

the FCR to determine the existence of support orders.²⁰⁷ The worker should also know the current residences of the obligee, obligor, and child(ren). To register an order for enforcement, the initiating State agency, or the nonresident petitioner filing directly, must send the following documents to the responding State:

- a transmittal letter requesting registration and enforcement;
- two copies (including one certified copy) of all orders to be registered, including any modification of an order²⁰⁸;
- the petitioner's sworn statement, or a certified statement by the custodian of the records, showing the amount of any arrears²⁰⁹;
- the name, Social Security Number, and address of the obligor;
- the name and address of the obligor's place of employment and any source of income; and
- the name and address of the obligee and the entity to whom payments are to be sent.²¹⁰

According to the Federal forms matrix, the Federally developed forms that must be submitted with a Registration for Enforcement request are the Child Support Enforcement Transmittal # 1—Initial Request and the Registration Statement/Statement of Facts. Instructions specify that a separate Registration Statement must accompany each order. A pleading is not usually required unless the law of the registering State requires that the enforcement remedy be specifically pled. The caseworker or recipient of IV-D services can sign the Registration Statement; an attorney's signature is not necessary. Note that it is not necessary to register an order in a State if that State issued the order the agency wants enforced. If appropriate, under "I. Action" on the Child Support Enforcement Transmittal # 1—Initial Request, the worker should check "Enforcement of Existing Order."

Case law has held that the procedural requirements for registration of a foreign support order are mandatory. In *In re Chapman*, the Attorney General's failure to provide the required documentation was fatal; an order confirming the registration was reversed because the foreign judgment was not accompanied by

²⁰⁷ See *Commonwealth ex rel Kenitzer*, 23 Va. App. 186, 475 S.E.2d 817 (1996) (a stay of an income withholding order is neither a support order nor an income withholding order under UIFSA; therefore, it is not an order subject to registration under the Act).

²⁰⁸ See *Mathis v. State*, 930 S.W.2d 203 (Tex. Ct. App. 1996).

²⁰⁹ Several cases have held that such pleadings are deficient without the arrears documentation. See, e.g., *Allen v. Allen*, 1996 WLS47919 (Neb. Ct. App. Sept. 17, 1996); *In re Chapman*, 973 S.W.2d 346 (Tex. Ct. App. 1998).

²¹⁰ UIFSA § 602(a) (amended 2001), 9 Pt. 1B U.L.A. 353 (1999).

either a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearages.²¹¹

If there are multiple support orders in the case, the initiating support enforcement agency should also seek a determination of controlling order. In fact, such action is a requirement of the 2001 amendments to UIFSA. On the current Federal transmittal form, there is a place for the petitioner to check whether an order is the controlling order or the presumed controlling order.

Responsibilities of the registering tribunal. On receipt, the registering tribunal must file the order as a foreign judgment, regardless of its form.²¹² The registering tribunal must also provide notice to the nonregistering party.²¹³ The notice to the nonregistering party must include a copy of the registered order and any accompanying documents. It also must advise the party:

- that the registered order is enforceable as of the date registered;
- that a hearing to contest the validity or enforceability of the registered order must be requested within a specified number of days;²¹⁴
- that any contest to the alleged arrears amount must be made in a timely manner or the arrears will be confirmed as part of the registration process and will preclude further contest; and
- that the petitioner has alleged arrears totaling \$ X (insert sum).²¹⁵

Although not required by UIFSA, it might be advisable to inform the nonregistering party that the order being registered is the one that the petitioner asserts is the controlling order. This will permit that party to inform the registering tribunal of any other orders that might be appropriate for consideration in a controlling order determination. If an income-withholding order is being registered, UIFSA requires the tribunal to also notify the obligor's employer, pursuant to that State's withholding law.²¹⁶

If the obligor raises a defense after the 20-day challenge period expires, the CSE attorney should argue that the defense is barred; the order and arrears are already confirmed by operation of law. Case law has upheld that position when an obligor untimely raised the defense of statute of limitations.²¹⁷

²¹¹ 973 S.W. 2d 346 (Tex. Ct. App. 1998).

²¹² UIFSA § 602(b), 9 Pt. 1B U.L.A. 353 (1999).

²¹³ UIFSA § 605(a), 9 Pt. 1B U.L.A. 359 (1999).

²¹⁴ The Act suggests a 20-day response period. UIFSA § 605(b)(2), 9 Pt. 1B U.L.A. 359 (1999).

²¹⁵ UIFSA § 605(b) (amended 2001), 9 Pt. 1B U.L.A. 359 (1999).

²¹⁶ UIFSA § 605(c) (renumbered in 2001 as § 605(d)), 9 Pt. 1B U.L.A. 359 (1999).

²¹⁷ See *State of Louisiana v. Batiste*, 703 So. 2d 148 (La. Ct. App. 1997). But see *State of Washington v. Thompson*, 6 S.W.3d 82 (Ark. 1999) (in this case, the Supreme Court of Arkansas held that the notice of registration was so confusing that the respondent should be allowed to

If there is no contest or the contesting party does not establish a valid defense, the tribunal confirms the registered order.²¹⁸ After confirmation, UIFSA precludes further contest as to a matter that could have been asserted at the time of registration. Enforcement then proceeds as it would in a local matter.

Contest to registration. To contest registration of another State's order, the nonregistering party must request a hearing within a specified timeframe. The nonregistering party can seek to vacate the registration, assert a permissible defense to the noncompliance allegation, contest the remedies being sought, and/or challenge the alleged arrears amount.²¹⁹

If the obligor makes this challenge in a timely manner, the registering tribunal must schedule a hearing and give notice to all parties.²²⁰ The contesting party has the burden to establish one of the following limited defenses:

- the issuing tribunal lacked personal jurisdiction over the contesting party²²¹;
- the order was obtained by fraud;
- the order has been vacated, suspended, or modified by a later order;
- the issuing tribunal has stayed the order pending appeal;
- there is a defense in the registering State to the remedy sought;
- full or partial payment has been made; or
- the statute of limitations precludes enforcement of some or all of the arrears.²²²

Nonpaternity and reduced income are not permissible defenses.²²³ Presumably, however, the obligor can raise the fact that the order registered for enforcement is not the controlling order.²²⁴

raise his defense of lack of personal jurisdiction even though the 20-day challenge period had expired).

²¹⁸ UIFSA §§ 606(b) and 607(c), 9 Pt. 1B U.L.A. 362 (1999).

²¹⁹ UIFSA § 606(a) (amended 2001), 9 Pt. 1B U.L.A. 362 (1999).

²²⁰ UIFSA § 606(c), 9 Pt. 1B U.L.A. 362 (1999).

²²¹ See *South Carolina Dep't of Soc. Servs. v. Bess*, 327 S.C. 523, 489 S.E.2d 671 (1997) (obligor properly raised lack of personal jurisdiction as defense to registration of foreign support order. Trial court erred in holding that it could not rule on validity of foreign judgment). See also William Reynolds, "The Iron Law of Full Faith and Credit," 53 Md. L. Rev. 412 (1994).

²²² UIFSA § 607(a) (amended 2001), 9 Pt. 1B U.L.A. 365 (1999).

²²³ *Villanueva v. Office of the Att'y Gen. of Texas*, 935 S.W.2d 953 (Tex. Ct. App. 1996).

²²⁴ See UIFSA § 607(a) cmt., 9 Pt. 1B U.L.A. 365-6 (1999).

The registering tribunal can stay enforcement if the obligor presents evidence of a full or partial defense. It can continue the proceeding to permit production of additional relevant evidence. It can also enforce any uncontested portion of the registered order during a stay or continuance.²²⁵ It is clear, however, that when an order is registered for enforcement, the registering tribunal cannot modify the order.²²⁶

If there are multiple support orders for current support, the registering tribunal must determine the controlling order, as well as determine arrears under existing orders.

Choice of law. Generally, UIFSA provides that the law of the issuing State governs “the nature, extent, amount and duration of current support and other obligations of support and the payment of arrearages under the order.”²²⁷ Therefore, in calculating arrears under existing orders—including any interest owed -- the tribunal should follow the law of the issuing State. The issuing State’s law also governs whether the obligor should receive credit toward his or her child support obligation because of Social Security payments paid on his or her behalf to the child(ren).²²⁸ The law of the registering State governs the enforcement remedies that are available. With regard to the applicable statute of limitations for enforcement of arrears, UIFSA adopts a policy in favor of the longest enforcement; the statute of limitations of the issuing State or the registering State, whichever is longer, applies.²²⁹ A matrix of State statutes of limitations for enforcement purposes is found in Exhibit 8-1.

A question that attorneys have debated is whose law governs interest on arrears that accrue after an order has been registered for enforcement—the registering State’s law or the issuing State’s law. The 2001 amendments to UIFSA answer that question:

(d) After a tribunal of this or another State determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this State shall prospectively apply the law of the State issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.²³⁰

Confirmation of order. If the nonregistering party does not establish a valid defense to the validity or enforcement of the registered order, the tribunal must issue an order confirming the registration. According to Official Comments to Section 607, “[a]lthough the statute is

²²⁵ UIFSA § 607(b), 9 Pt. 1B U.L.A. 365 (1999).

²²⁶ UIFSA § 603(c), 9. See, e.g., *Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998).

²²⁷ UIFSA § 604(a) (amended 2001), 9 Pt. 1B U.L.A. 355 (1999).

²²⁸ UIFSA § 604 cmt, 9 Pt. 1B U.L.A. 355 (1999).

²²⁹ UIFSA § 604(b) (amended 2001), 9 Pt. 1B U.L.A. 355 (1999).

²³⁰ Unif. Family Support Act (2001) § 604(d), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

silent on the subject, it seems likely that *res judicata* requires that both the registering and nonregistering party who fail to register the ‘true’ controlling order will be estopped from subsequently collaterally attacking the confirmed order on the basis that the unmentioned ‘true order should have been confirmed instead.’” Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Registration of an order for enforcement does not shift CEJ to the registering tribunal. The order remains an order of the issuing State, enforceable anywhere the obligor has income or assets. Case law has upheld this fundamental principle of UIFSA.

- Illinois can initiate a foreign proceeding to enforce its support order, without losing CEJ to modify it.²³¹
- Although Pennsylvania retained CEJ to modify its support order, Delaware could properly assert subject matter jurisdiction to enforce the order. Under UIFSA, only one State can modify the support order, but that does not preclude other States from enforcing it.²³²

2001 amendments. In August 2001, the National Conference of Commissioners on Uniform State Laws approved a number of amendments to UIFSA. Many of the amendments address determination of the controlling order in multiple order cases. In addition to amendments to Section 207, the Commissioners approved amendments to Article VI that highlight the need to do a determination of controlling order in the context of registration for enforcement.

The amendments specify that, if there is more than one support order in effect, the person requesting registration must (1) furnish the tribunal with a copy of every support order in effect, (2) specify the order alleged to be the controlling order, and (3) specify the amount of consolidated arrears, if any, under existing orders.²³³ The latter requirement means that an attorney or caseworker must review pay records from various States and attempt to reconcile arrears that have accrued under orders running concurrently, giving the obligor appropriate credit for payments made in the various States. The petitioner can file a request for determination of controlling order separately or at the same time as a request for registration and enforcement.

²³¹ *Hartman v. Hartman*, 712 N.E.2d 367(Ill. App. Ct. 1999).

²³² *Mason v. Berkheimer*, Nos. CN-96-7215, 96-30010, 1997 WL 911242 (Del. Fam. Ct. Nov. 4, 1997).

²³³ Unif. Family Support Act (2001) § 602(d), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

If the registering party alleges that there are multiple support orders, the notice of registration must contain additional information. The amendments require that the notice also:

- (1) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;
- (2) notify the nonregistering party of the right to a determination of which is the controlling order;
- (3) state that the procedures provided in subsection (b) [of amended Section 605] apply to the determination of which is the controlling order; and
- (4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner can result in confirmation that the order is the controlling order.²³⁴

Although the 2001 amendments are not yet codified in any State, the CSE attorney might wish to follow the provisions regarding a request for determination of controlling order and contents of the notice in a multiple order case as a suggested best practice.

The 2001 amendments also discuss determination of the controlling order and arrears reconciliation in provisions regarding duties of the registering tribunal. Amended Section 607 provides that another valid defense to registration or enforcement of the registered order is the fact that the alleged controlling order is not in fact the controlling order. If a valid defense is not timely raised and proved, the tribunal can confirm that the alleged controlling order is the controlling order.

OTHER INTERSTATE REMEDIES

UIFSA is not the only avenue available for enforcement of child support interstate. On a nationwide level, Congress has tried to provide for other remedies that require minimal involvement of the courts. In addition, criminal prosecution is available for the most egregious cases.

Interstate Income Withholding

The Child Support Enforcement Amendments of 1984 required States, as a condition of receiving Federal funds, to have procedures for income withholding in interstate cases.²³⁵ Interstate income withholding results in a two-State case.

²³⁴ Unif. Family Support Act (2001) § 605(c), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

²³⁵ P..L. No. 98-378 (1984).

With the advent of direct income withholding under UIFSA, interstate income withholding is now rarely requested.

Liens

As a condition of receiving Federal funds, a State must have laws and procedures providing that on the date each support installment becomes due, it becomes a judgment by operation of law, if unpaid. This judgment is entitled to full faith and credit, and is enforceable in every State.²³⁶ Based on the judgment, the State can impose a lien against any real or personal property held by the obligor.²³⁷ Each lien also is entitled to full faith and credit in other States, and can be imposed administratively across State lines, without registration of the underlying support order.²³⁸ Child support liens serve as the basis for the seizure of bank accounts, Government benefits, lottery winnings, and other assets. For more information, see Chapter Ten: Enforcement of Support Obligations.

High-Volume, Automated Administrative Enforcement (AEI)

Pursuant to PRWORA, States also are required to implement AEI, which involves the use of automation to request and provide interstate enforcement assistance for blocks of cases.²³⁹ Requests must include specific information, including each obligor's name and Social Security number, so that the assisting State can electronically seek matches from its databases. AEI can be used to enforce ongoing support as well as arrears. However, note that, in making an AEI request, the requesting State certifies that the arrears amount is accurately stated and that the requesting State has complied with all applicable due process requirements.²⁴⁰

The assisting State can use automated processing to search various State resources, including license records, the State Directory of New Hires, and financial institution data, to locate an obligor and that person's assets to assist in meeting the child support obligation.²⁴¹ When a match is found, the assisting State IV-D agency can attach wages; suspend motor vehicle, recreational, or professional licenses; impose liens; and seize property, as appropriate, to enforce current and past-due support.

The CSE attorney will not be involved with enforcement through AEI unless there is a challenge requiring legal intervention. This is a "quick-grab" remedy. A case is not opened in the receiving State. Rather, the submitted case is included in the receiving State's tape match for whatever automated

²³⁶ 42 U.S.C. § 666(a)(9) (1994, Supp. IV 1998, & Supp. V 1999).

²³⁷ 42 U.S.C. § 666(a)(4)(A) (Supp. V 1999).

²³⁸ 42 U.S.C. § 666(a)(4)(B) (Supp. V 1999).

²³⁹ 42 U.S.C. § 666(a)(14) (Supp. V 1999).

²⁴⁰ *Id.*

²⁴¹ *Id.* See also 42 U.S.C. § 666(a)(17) (Supp. V 1999).

enforcement is available. It should not be used for cases that need ongoing monitoring.

Federal Criminal Nonsupport

The Child Support Recovery Act of 1992 (CSRA) made it a Federal crime to willfully fail to pay a past-due child support obligation for a child who resides in another State. The statute relates to obligations that remain unpaid for longer than 1 year or that are greater than \$5,000.²⁴² In 1998, Congress amended the Act by creating a felony offense. The Deadbeat Parents Punishment Act²⁴³ made it a felony offense to travel interstate or internationally to evade a child support obligation that has remained unpaid for longer than 1 year or is greater than \$5,000.²⁴⁴ In addition, the law covers the willful failure to pay any child support obligation for a child living in another State if the obligation has remained unpaid for a period longer than 2 years or is greater than \$10,000.²⁴⁵ The law also provides that a second or subsequent violation of 18 U.S.C. § 228(a)(1) becomes a felony. The CSE attorney will likely be asked to help prepare documentation for the assistant U.S. attorney general who will be prosecuting the case. Such documentation can include evidence that the obligor knew of the order, that the obligor had the ability to pay but had failed to do so, and that the State had unsuccessfully used available State enforcement remedies.

INTERNATIONAL CASES

Section 459 of the Social Security Act²⁴⁶ authorizes the Department of State and the Department of Health and Human Services to enter into agreements with foreign countries for child support enforcement. On May 19, 2000, the Department of State issued a public notice in the Federal Register²⁴⁷ regarding progress in this area. Additional notices will continue to update this information as new agreements are completed. The United States is also participating in the Hague Conference on Private International Law's work to achieve a new multilateral treaty on child support enforcement.

Since 1996, when Congress for the first time specifically authorized Federal-level agreements regarding child support enforcement, the United States

²⁴² P.L. No. 102-521 (1992), codified at 18 U.S.C. § 228(a)(1) (Supp. V 1999).

²⁴³ P.L. No. 105-187 (1998).

²⁴⁴ 18 U.S.C. § 228(a)(2) (Supp. V 1999).

²⁴⁵ 18 U.S.C. § 228(a)(3) (Supp. V 1999).

²⁴⁶ 42 U.S.C.A. § 659a(a) (Supp. 2001) provides that the Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to "declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of child support owed to persons who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b)."

²⁴⁷ Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 65 Fed. Reg. 31,953 (May 19, 2000).

has entered into a number of reciprocal agreements, which do not require U.S. Senate advice and consent. Currently, the U.S. has Federal reciprocal arrangements in force with Australia; the Canadian Provinces of Nova Scotia, Manitoba, and British Columbia; the Czech Republic; Ireland; Poland; Portugal; and the Slovak Republic. U.S. local child support offices can provide information about Federal international support agreements and State-level arrangements with foreign countries, as well as about the increasing variety of aggressive techniques now available to pursue enforcement in the U.S. and abroad, including garnishment of wages and Federal income tax refunds, revocation of licenses, direct contact with foreign employers, and criminal enforcement proceedings.

Uniform Interstate Family Support Act

UIFSA addresses international as well as interstate cases.

Definition of State. Under UIFSA, the term “*State*” includes any foreign jurisdiction with a law or procedures that are substantially similar to the act.²⁴⁸ For foreign jurisdictions meeting this definition, all of the provisions of UIFSA, including the evidentiary provisions, are applicable.

Reciprocal Agreements. The 2001 amendments to UIFSA amend Section 308 to authorize an appropriate State official or agency to determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with the State.²⁴⁹ Currently, there are reciprocal agreements between States and Australia, Austria, Bermuda, Canadian provinces, Czech Republic, England, Fiji, Finland, France, Germany, Hungary, Ireland, Jamaica, Mexico, New Zealand, Northern Ireland, Norway, Poland, Scotland, Slovak Republic, South Africa, and Wales.²⁵⁰

OCSE is also working with the U.S. State Department to develop reciprocal agreements with foreign countries rather than leaving it up to each State to negotiate such agreements.

Modification. There is a special provision in the Act regarding consent for another tribunal to assume modification jurisdiction. Normally a tribunal with CEJ is the only tribunal that can modify an order; the exception is when both parties

²⁴⁸ UIFSA §101(19)(ii) (renumbered in 2001 as § 102(21)), 9 Pt. 1B U.L.A. 257-8 (1999). The 2001 amendments to UIFSA expand the definition of “*State*.” According to amended Section 21(B), the term includes a foreign country or political subdivision that (1) has been declared to be a foreign reciprocating country or political subdivision under federal law; (2) has established a reciprocal arrangement for child support with the State as provided in Section 308 of UIFSA; or (3) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under UIFSA. Unif. Family Support Act (2001) § 102(21)(B), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

²⁴⁹ UIFSA § 308 (amended 2001), 9 Pt. 1B U.L.A. 315 (1999).

²⁵⁰ See http://travel.state.gov/child_support.html

file written consents for another State to modify the order and assume CEJ. If, however, the issuing State is a foreign country, without UIFSA or a similar statute, written consent by the party living in the United States is not required for a U.S. tribunal to assume jurisdiction to modify.²⁵¹ The Official Comments to this section explain the rationale for the exception:

The policies underlying provisions of UIFSA are wholly inapplicable to a jurisdiction [,] which is unlikely to enact the Act or even a similar act. For example, suppose the foreign jurisdiction has a prohibition against modification unless the parties actually appear before the tribunal in person. Without the amendment, an obligor who moved to the United States could have successfully warded off an attempt to modify the child support obligation in his [S]tate of residence by asserting that the obligee or child continued to reside in the foreign nation, which therefore had continuing, exclusive jurisdiction under UIFSA. This despite the fact that the issuing nation does not recognize a continuing, exclusive jurisdiction concept, and will not modify its own child support order without the obligor being physically present. Merely by refusing to agree to a modification and refusing to travel to the issuing nation, the obligor would have been able to forestall modification indefinitely. If the child support order is that of a foreign nation, the UIFSA [S]tate of residence of the obligor may decide whether modification of child support is appropriate under its internal law.

There are several cases that deal specifically with modification issues involving foreign countries:

- A Maine court retained jurisdiction to modify and enforce its order after the father, a British citizen, moved to England with one of the children.²⁵²
- A New York court retained CEJ to modify the child support order, because the mother lived part-time in New York, had an apartment there, and paid U.S. incomes taxes, even though she and the child spent approximately 10 months in Brazil.²⁵³
- The New York court lost CEJ to consider a father's request for reduction of child support when both parties left the State. In this case, the father resided in California, and the mother and child lived in Sweden.²⁵⁴

²⁵¹ UIFSA § 611(a)(2) (amended 2001), 9 Pt. 1B U.L.A. 369 (1999).

²⁵² *Nicholson v. Nicholson*, 2000 Me. 12, 747 A.2d 588 (2000).

²⁵³ *Matter of Horovitz*, No. QDS:28701578, N.Y.L.J. Sept. 24, 1999 (N.Y. Fam. Ct. 1999).

²⁵⁴ *Matter of Jolanda K.*, No. QDS:58700808, N.Y.L.J. Feb. 26, 1999 (N.Y. Fam. Ct. 1999).

- A New York court must enforce an order issued by a court in Kiev, Ukraine, pursuant to UIFSA, which required the father to pay one-third of all his earnings for child support. For the purposes of UIFSA, a “foreign order” refers to any order issued by a tribunal other than one located in New York, regardless of whether the issuing “State” has entered into a reciprocal agreement with the United States.²⁵⁵
- A support order issued in Italy should be enforced judicially rather than administratively and the terms should be interpreted according to Italian law.²⁵⁶

Currency Exchange Rate. 2001 amendments to Section 307 (Duties of Support Enforcement Agency) require a support enforcement agency requesting registration and enforcement of a support order, arrears, or judgment stated in a foreign currency, to convert the amounts stated in the foreign currency into the equivalent amounts in dollars under applicable official exchange rates as publicly reported. If the petitioner fails to do so, the responding tribunal has that responsibility.²⁵⁷

TRIBAL CASES

For the first time in the history of the program, PRWORA provided authority under Title IV-D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs.²⁵⁸ A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of Title IV-D of the Act when its Tribal CSE plan includes:

- Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and
- Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

UIFSA also recognizes the importance and sovereignty of the Tribal organization to provide for its children and provides specifically by definition that the term “State” includes a Tribal entity.²⁵⁹

²⁵⁵ *Taukatch v. Taukatch*, N.Y.L.J. Jan.19, 1999 (N.Y. Fam. Ct. 1999).

²⁵⁶ *Rains v. State*, 98 Wash. App. 127, 989 P.2d 558 (1999).

²⁵⁷ Unif. Interstate Family Support Act (2001) § 305(f), 9 Pt. 1B U.L.A. ____ (Supp. 2001).

²⁵⁸ 42 U.S.C. § 655(f) (Supp. V 1999).

²⁵⁹ UIFSA § 101(19) (renumbered in 2001 as § 102(21)(A)), 9 Pt. 1B U.L.A. 257-8 (1999).

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**Exhibit 12-1, The Uniform Interstate Family Support Act
(1996 version)**

State Citations

State	Citation
Alabama	Ala. Code §§ 30-3A-101 to 30-3A-906 (2000).
Alaska	Alaska Stat. §§ 25.25.010 to 25.25.903 (Michie 2000).
Arizona	1998 Ariz. Sess. Laws 25-621 <i>et seq</i> (2000).
Arkansas	Ark. Code Ann. §§ 9-17-101 to 9-17-903 (Michie 1999).
California	Cal. Fam. Code §§ 4900 to 5005 (Deering 2000).
Colorado	Colo. Rev. Stat. Ann. §§ 14-5-101 to 14-5-10007 (1999).
Connecticut	Conn. Gen. Stat. Ann. §§ 46b-212 to 46b-214 (1999).
Delaware	Del. Code Ann. tit. 13, §§ 601-691 (1999)
District of Columbia	D.C. Code Ann. §§ 30-341.1 <i>et seq.</i> (2000).
Florida	Fla. Stat. Ann. §§ 88.0011 to 88.9051 (1999).
Georgia	Ga. Code Ann. §§ 19-11-100 to 19-11-191 (2000).
Hawaii	Haw. Rev. Stat. §§ 576B-101 to 576B-902 (2000).
Idaho	Idaho Code §§ 7-1001 to 7-1087 (2000).
Illinois	750 Ill. Comp. Stat. §§ 22/100 to 22/999 (West 2000).
Indiana	Ind. Code Ann. §§ 31-9-2-13 <i>et seq.</i> (Burns Ind. Code Ann. 2000).
Iowa	Iowa Code Ann. §§ 252K.101 to 252K.904 (1999).
Kansas	Kan. Stat. Ann. §§ 23-9,101 to 23-9,903 (1999).
Kentucky	Ky. Rev. Stat. Ann. §§ 407.5101 to 407.5902 (1998).
Louisiana	La. Rev. Stat. Ann. §§ 1301.1 to 1308.2 (West 1999).
Maine	Me. Rev. Stat. Ann. tit. 19-A, §§ 2801 to 3401 (West 1999).
Maryland	Md. Code Ann. Fam. Law §§ 10-301 to 10-359 (1999).
Massachusetts	Mass. Gen. Laws Ann. ch. 209D, §§ 1-101 <i>et seq.</i> (LEXIS 2000).
Michigan	Mich. Stat. Ann. §§ 25.223 (101) (LEXIS 1999).
Minnesota	Minn. Stat. Ann. §§ 518C.101 to 518C.902 (1999).
Mississippi	Miss. Code Ann. §§ 93-25-1 to 93-25-117 (2000).
Missouri	Mo. Rev. Stat. tit. 30, §§ 454.850 to 454.997 (2000).
Montana	Mont. Code Ann. §§ 40-5-101 <i>et seq.</i> (1999).
Nebraska	Neb. Rev. Stat. Ann. §§ 42-701 to 42-751 (LEXIS 2000).
Nevada	Nev. Rev. Stat. §§ 130.0902 to 130.802 (2000).
New Hampshire	N.H. Rev. Stat. Ann. §§ 546-B: 1 to 546-B: 60 (1999).
New Jersey	N.J. Rev. Stat. §§ 2A: 4-30.24 to 2A: 4-30.124 (2000).

State	Citation
New Mexico	N.M. Stat. Ann. §§ 40-6A-101 to 40-6A-903 (2000).
New York	N.Y. Fam. Ct. Act §§ 580-101 to 580-905 (Consol. 2000).
North Carolina	N.C. Gen. Stat. §§ 52C-1-100 to 52C-9-902 (1999).
North Dakota	N.D. Cent. Code §§ 14-12.2-01 to 14-12.2-49 (2000).
Ohio	Ohio Rev. Code Ann. §§ 3115.01 to 3115.59 (Anderson 2000).
Oklahoma	Okla. Stat. tit. 43, §§ 601-100 to 601-901 (1999).
Oregon	Or. Rev. Stat. §§ 110.300 to 110.441 (1998).
Pennsylvania	23 Pa. Cons. Stat. Ann. §§ 7101 to 7901 (West 1999).
Rhode Island	R.I. Gen. Laws §§ 15-23.1-101 to 15-23.1-907 (2000).
South Carolina	S.C. Code Ann. §§ 20-7-965 <i>et seq.</i> (Law Co-op 1999).
South Dakota	S.D. Codified Laws §§ 25-9B-101 to 25-9B-903 (2000).
Tennessee	Tenn. Code Ann. §§ 36-5-2001 to 36-5-2902 (1999).
Texas	Tex. Fam. Code Ann. §§ 159.001 to 159.902 (West 2000).
Utah	Utah Code Ann. §§ 78-45f-100 to 78-45f-902 (2000).
Vermont	Vt. Stat. Ann. tit. 15B, §§ 101 to 904 (2000).
Virginia	Va. Code Ann. §§ 20-88.32 to 20-88.82 (2000).
Washington	Wash. Rev. Code. §§ 26.21.005 to 26.21.916 (2000).
West Virginia	W. Va. Code §§ 48B-1-101 to 48B-9-903 (2000).
Wisconsin	Wis. Stat. Ann. §§ 769.101 to 769.903 (West 1999).
Wyoming	Wyo. Stat. Ann. §§ 20-4-139 to 20-4-194 (2000).
Guam	Guam Civ. Code § 5-35 (2000).
Puerto Rico	P.R. Laws Ann. tit. 8, §§ 541 <i>et seq.</i> (1997).
Virgin Islands	V.I.Code Ann. tit. 16, §§ 391 <i>et seq.</i> (2000).

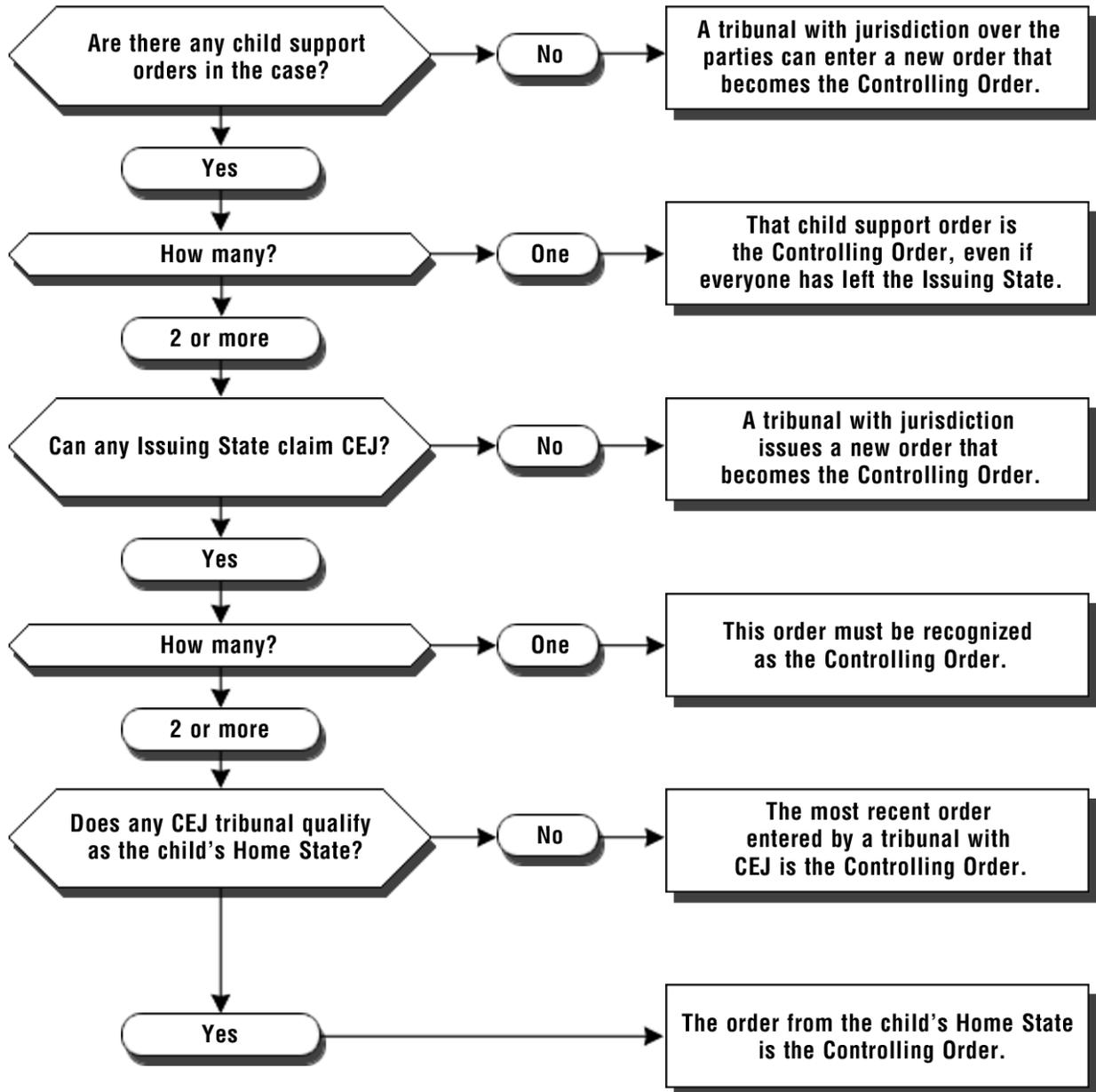
**Exhibit 12-2, UIFSA Notice Requirements
(1996 version of UIFSA)**

SECTION	ACTOR	RECIPIENT	TYPE OF NOTICE	TIME FRAME
207(c)	Party <i>seeking</i> controlling order determination	Each party whose rights might be affected	Notice of controlling order request	Prior to proceeding
207(f)	Party <i>obtaining</i> controlling order determination	Each Tribunal that had issued or registered an earlier order	Certified copy of order determining controlling order	Within 30 days after issuance of order
305 (a)	Responding Tribunal	Petitioner	Where/when petition or pleading filed	None specified
305(e)	Responding Tribunal	Petitioner/ Respondent/ Initiating Tribunal	Copy of order	None specified
307(b) (4)	Support Enforcement Agency	Petitioner	Copy of any written notice received from an Initiating, Responding, or Registering Tribunal	Within 2 business days of receipt
307(b) (5)	Support Enforcement Agency	Petitioner	Copy of any written communication from Respondent or Respondent's attorney	Within 2 business days of receipt
307(b) (6)	Support Enforcement Agency	Petitioner	Notice that jurisdiction over Respondent cannot be obtained	None specified
501(a)(2)	Employer	Obligor	Copy of income withholding order	Immediately

SECTION	ACTOR	RECIPIENT	TYPE OF NOTICE	TIME FRAME
501(b)	Obligor	Support Enforcement Agency providing services to Obligee <i>and</i> (i) person or entity identified for payment or (ii) Obligee, if none identified; and each employer that has directly received an income withholding order	Notice of contest to direct withholding	None specified
605(a)	Registering Tribunal	Nonregistering Party	Notice of registration	When order is registered
605(c)	Registering Tribunal	Employer	Notice of income withholding	Upon registration of income withholding order for enforcement
606(a)	Nonregistering Party	Registering Tribunal	Notice of contest to validity or enforcement of registered order	Within 20 days after date of mailing or personal service of registration notice
606(c)	Registering Tribunal	Parties	Notice of the date, time and place of hearing to contest registration I	None Specified
611(e)	Party obtaining modification	Issuing Tribunal that had CEJ and every Tribunal where order registered	Certified copy of modified order	Within 30 days after issuance of modified order

Exhibit 12-3, Determination of Controlling Order Flowchart

The DCO Decision Tree



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Exhibit 12-4, Federal Notice of Determination of Controlling Order

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Exhibit 12-5, Sample Personal Jurisdiction Worksheet

Personal Jurisdiction Over Non-Resident

Case ID	<input type="text"/>	Initiating State	<input type="text"/>	Responding State	<input type="text"/>
Obligee Name	<input type="text"/>			State of Residence	<input type="text"/>
Obligor Name	<input type="text"/>			State of Residence	<input type="text"/>

Ohio may exercise personal jurisdiction (long-arm) over a non-resident in a child support or paternity proceeding because one or more of the following apply (§3115.03):

1. He/she was personally served in Ohio with a summons:
Service Date: Service Provider:
2. He/she submits to the jurisdiction of Ohio:
 Evidence of Consent Attached
3. He/she resided in Ohio and provided prenatal expenses or support for the child:
Dates: Resided at:
 Evidence of Prenatal Expenses Attached Evidence of Support Provided Attached
4. The child resides in Ohio as a result of the acts or directives of the individual:
 Affidavit Attached
5. He/she engaged in sexual intercourse in Ohio and the child may have been conceived by that act of intercourse:
On or About Date: Full Term
Child's DOB: Premature
6. He/she registered in the putative father registry.
 Evidence Attached
7. There is any other basis for Ohio to exercise personal jurisdiction over the individual:

Ohio may obtain jurisdiction but elects to use the two-state process because:

There is no basis for jurisdiction. UIFSA petition initiated to:

Prepared By	<input type="text"/>	Date	<input type="text"/>
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Exhibit 12-6, Modification Jurisdiction

Modification Jurisdiction

Case ID

Obligee Name

Obligor Name

Initiating State

Responding State

State of Residence

State of Residence

State of the controlling order:
(See Determining the Controlling Order worksheet)

State:

Does the state of the controlling order have CEJ?

Yes →

CEJ state is where the modification action shall be filed and heard.

State:

STOP

UNLESS

Both parties file written request in the CEJ tribunal to confer jurisdiction to another state.

State:

Or

If the controlling order was issued in a foreign country that does not have a law comparable to UIFSA see the Best Practices guide.

Does the party requesting the modification live in Ohio?

Yes →

The controlling order must be registered for modification in the state of the non-requesting party and the modification heard in that state.

State:

STOP

UNLESS

Does Ohio have jurisdiction over the non-requesting party?

Yes →

Ohio may register the controlling order and modify.

Once the modification is complete, file a certified copy of the modification order in each tribunal that has issued or registered the prior order. (within 30 days)

STOP

No →

The controlling order must be registered for modification in the state of the non-requesting party and the modification heard in that state.

If the location of non-requesting party is known, forward the modification request to the central registry of that state. If location is not known, return request to the initiating jurisdiction with an explanation.

Sending request to:

Prepared By

Date

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Exhibit 12-7, Transcript of a Telephone Hearing

Sample transcript excerpted from “Telephonic Testimony in Criminal and Civil Trials,” 14 Hastings Communications and Entertainment Law Journal 107, 119-120 (1992).

THE COURT: Hello. This is the Superior Court for the State of California, Judge Hastings presiding. Is this Ms. Witness?

WITNESS: Yes, this is Ms. Witness.

THE COURT: Is there a notary public present?

NOTARY: Yes, your honor.

THE COURT: <To the Notary> Will you state your name and notary qualifications for the court?

NOTARY: My name is Mr. Notary. I am a notary for the City and County of New York, number XXXXX. Expiration date XX/XX/XXXX.

THE COURT: Mr. Notary, have you verified the identity of Ms. Witness?

NOTARY: Yes, your honor. I have.

THE COURT: In what form?

NOTARY: She has presented a valid New York driver’s license with the number W12345-12345-12345-64. The picture on the license appears to be the person currently present.

THE COURT: And have you made a photocopy of the identification with a signed statement by you certifying this information?

NOTARY: I have, your honor.

THE COURT: I would like to remind all parties that this certification along with any documents used by the witness must be received by this court before the close of evidence or the jury will be instructed to disregard this testimony. Mr. Notary, are you and Ms. Witness currently the only persons in the room?

NOTARY: We are, your honor.

THE COURT: Mr. Notary, at the close of this testimony, I will ask you to certify that to your knowledge, Ms. Witness was not guided

in her responses by any means including, but not limited to, a person visible to Ms. Witness nodding or giving other visual signals to the witness. Please be alert for such activity.

Ms. Witness, are you ready to begin to testify?

WITNESS: I am, your honor.

THE COURT: In a moment the court clerk will administer an oath to you. This is a very serious matter. Although you are currently outside of the State of California, this oath is valid and it requires that you speak the truth or be guilty of perjury. If you perjure yourself here today, the State of California will pursue your conviction with all power at its disposal. Do you understand what I have just said?

WITNESS: I do, your honor.

THE COURT: In addition, I would like to caution you that any misconduct or abusive language will not be tolerated. Are you ready to proceed?

WITNESS: I am, your honor.

THE COURT: <To the clerk> You may proceed.
<The clerk gives the accepted oath to the witness.>