

INTERSTATE ENFORCEMENT OF SUPPORT - A SHORT PRIMER ON FEDERAL AND UNIFORM LAW

By: Gunnar J. Gitlin
The Gitlin Law Firm, P.C., Woodstock, Illinois
© 2016 - May 13, 2016

www.gitlinlawfirm.com

I. EXECUTIVE SUMMARY

From 1996 and within the past 16 years, there have been very significant changes in the uniform laws addressing both interstate child support and interstate custody and visitation issues. Perhaps one of the most critical laws that every family law attorney must know: the Uniform Interstate Family Support Act (UIFSA), now enacted in all jurisdictions — 755 ILCS 22/100 et. seq.; and the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B enacted in 1994 and amended in 1996. The most important of these Acts for the family lawyer to know as to jurisdictional issues is the UIFSA, which has been comprehensively amended in 2001 with more recent additional amendments in 2008 (with the 2008 amendments being to comport with requirements of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance). [See recent Colorado presentation.](#)

Because the ULC adopted a 2008 amendments to UIFSA, and failure to adopt in 2015 could result in a state's loss of Federal funding, nearly all states have have adopted this updated version of the UIFSA.

Due to the requirement of receiving matching funds, all states, including Illinois. that have adopted the **2008 amended version** of UIFSA.

More information about the 2001 amendments to the UIFSA are available in the U.S. Department of Health and Human Services' Office of Child Support Enforcement website under their December 2005 [Techniques for Effective Management of Program Operations \(Tempo\)](#). This is an excellent practical guide. Also, see their [procedural guideline handbook: www.acf.hhs.gov/programs/cse/ftc/uifsahb.htm](#). To see the full 2008 version with redlining compared to the 2001 version, see: http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_2008_second%20draft_012009.pdf

See also, the Uniform Law Commission website at:

☞ [uniformlaws.org/Act.aspx?title=Interstate Family Support Act \(2001\)](http://uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20(2001)) and
☞ [http://uniformlaws.org/Act.aspx?title=Interstate Family Support Act Amendments \(2008\)](http://uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)).

This article will highlight some of the basic issues that arise in interstate cases under the UIFSA and discuss case law. It will also address why the amendments to the UIFSA were necessary.

A lawyer handling family law cases must understand that while there are many similarities between the UIFSA and the UCCJA and especially the UCCJEA, there are critical differences. The reason for these differences is illustrated by the decision of *May v. Anderson*, 345 U.S. 528 (1953) and *Kulko v. Superior Court*, 436 U.S. 84 (1978). The gist of this difference is that the United States Supreme Court views child custody matters differently from child support matters. While both the uniform custody and uniform child support legislation provides for continuing exclusive jurisdiction in the forum state and while both establish as a key principle the issue of the child's home state, by virtue of constitutional law, there are critical differences. Once such critical difference involves modification. For example, for child custody purposes, assume that both parents leave the child's home state and move to different states. Under both sets of uniform acts, the original forum state will generally lose its continuing jurisdiction modify the original order. For child custody purposes, the new home state and the forum for litigation will be the child's new home state (the state the child where the custodial parent and the child will be then residing). But for support purposes, the child's new home state does not control the law that will apply for modification proceedings. Instead, for support modification purposes, the party seeking modification must play an "away game" and proceed in the forum where the other parent resides.

II. THE FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT (FFCCSOA)

A. Why Should I Know About the FFCCSOA:

The Full Faith and Credit for Child Support Orders Act is often overlooked by family lawyers who focus only on the UIFSA FFCCSOA, 28 U.S.C. § 1738. While lawyers addressing custody issues often understand that the PKPA must be read together with the provisions of the UCCJEA, these same lawyers often overlook the provisions of the FFCCSOA, altogether.

B. The Basic Provisions of FFCCSOA:

FFCCSOA is federal law that is consistent with the full faith and credit clause of the constitution -- the same clause which is receiving significant attention when addressing such issues as same sex marriage. Accordingly, when you look to an issue such as the *Mattmuller* decision, 336 Ill.App.3d 984, 271 Ill.Dec. 545, 785 N.E.2d 196 (5th Dist. 2003), you need to understand what the FFCCSOA is and why it is a very limited decision -- and was actually wrongly decided if we are looking to the proper interpretation of UIFSA.

As a federal statute, the FFCCSOA (like the PKPA) preempts any similar state law. First, be aware of some of the key definitions in the FFCCSOA. A key principle, as is indicated in subsection (a), is that under the FFCCSOA the originating state has "continuing, exclusive jurisdiction" to modify its child support orders. The general rule for jurisdiction is stated in subsection (a). It provides that "the appropriate authorities of each State (a) shall enforce according to its terms a child support order made consistently with this Section by a court of

another state; and (2) shall not seek or make a modification of such order except in accordance with subsections (e), (f), and (I)." The principle is simply that a court must enforce an order of another state if it made consistently with the Federal law and the court may not modify the order of another state except under the stated circumstances. So the point of the *Mattmuller* decision was simply that even if an out of state order was rendered incorrectly, it might be entitled to full faith and credit given the circumstances of the case.

III. UIFSA

A. UIFSA - An Overview:

UIFSA was originally drafted by the National Conference of Commissioners on Uniform Laws (Uniform Laws Commission) in 1992. We now have several series of groups of amendments to this so called uniform law:

- 1996 Amendments;
- 2001 Amendments; and
- 2008 Amendments [In 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains many provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments serve as the implementing language for the Convention throughout the states – at least for those states adopting it.]

There is a reason that as a baseline all states had adopted at least the 1996 package of amendments. Less than a month after the ULC adopted the 1996 amendments, the U.S. Congress assured nationwide acceptance of the UIFSA as amended by a provision in the welfare reform legislation tying Federal funding of child support enforcement to adoption of UIFSA. All states were required to enact UIFSA [read the 1996 UIFSA] by January 1, 1998, per 42 U.S.C. Section 666(f). This occurred with the 2008 amendments and accordingly, almost all states have now adopted the 2008 version of the UIFSA.

The 2001 amendments expanded the definition of “state” so that other countries may have their orders enforced in the United States under the terms of UIFSA. It also allowed for an individual state to make an arrangement with a foreign country for reciprocal enforcement of support. If all parties have left the state where the original order was issued, the new amendments would ensure that the state will continue to have exclusive jurisdiction if the parties agree to that. Procedures for voluntary acknowledgment of parentage have also been integrated into the Act.

The Uniform Reciprocal Enforcement of Support Act (URESAs) had dated back to 1950. But it created a host of problems for a number of reasons which will not be discussed here. In short, though, it was in 1998 that the National Conference of Commissioners on Uniform State Laws formed a drafting committee. The goal was to revise the URESAs but the drafting committee chose to gut the law and draft an entirely new law -- the UIFSA. See Uniform Interstate Family Support Act (2001) with Prefatory Note and Comments by John J. Sampson and Barry J. Brooks.

B. UIFSA Definitions and Provisions:

Overview: June 23, 2011

Article 1 — Definitions: Definitions are contained in Section 101 of the Act. (under the amended version of the UIFSA, these charges would be in Section 102 with the sections being renumbered starting with 101.

Child: A child includes child over the age of majority if he or she is the beneficiary of a support order. Therefore, the UIFSA is a support enforcement vehicle even if the child no longer is a minor.

Child Support Order: A support order for a child, including a child who has attained the age of majority under the law of the issuing state.

The 2008 amendments adds a definition of "Convention" as meaning the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

Duty of support: An obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

Foreign Country: *The 2008 amendments provide a definition of "foreign country," "foreign tribunal" and "Issuing Foreign Tribunal" which will not be discussed in this article.*

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

Home state is a key concept with the UIFSA. Its definition is consistent with the provisions of the UCCJEA and the PKPA. But it is easy to overlook differences between the UCCJEA and the UIFSA regarding the home state concept when it comes to the matter of continuing jurisdiction and modification of child support.

Income is defined as earnings or other periodic entitlements to money from any source and from any other property subject to withholding for support under the law of the state.

Obligee is defined to include a spouse in the case of spousal support, in the case of child support it can be the child, the custodial parent or other legal guardian, or a support enforcement agency to whom the right of support has been assigned. Obligor is the person who owes the duty of

support.

State includes any foreign jurisdiction that has established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA.

The 2001 amendments contained language including a “foreign country” or political subdivision that (i) has been declared to be a foreign reciprocating country or political subdivision under federal law and (ii) has established a reciprocal arrangement for child support with this State as provided in Section 308 (as well as the previous provision for having enacted a law or established procedures of support orders substantially similar to the provisions of the Act.). Countries that have established foreign reciprocating agreements include Australia, various Canadian provinces, Nova Scotia, Czech Republic, Ireland, Poland, Portugal, Slovak Republic, Netherlands, and Norway.

Support Enforcement Agency: Under the 2001 amendments the support enforcement agency would have the power to determine the controlling order of support (in addition to the usual powers which included the ability to establish, modify and enforce support, determine parentage and locate obligors or their assets).

Support Order: A support order is defined broadly and the definition states it an order, etc., which "provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief." Under the UIFSA a support order is defined broadly. Other relief is kept deliberately vague and could include a provision for such items as day care expenses.

Tribunal: A court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

Article 2 — Jurisdiction: The jurisdictional provision are in Article 2 of UIFSA, Sections 201 and 202. Section 201 contains the bases for jurisdiction over a nonresident. It provides that the court may assume what is essentially long arm jurisdiction if:

- (1) the individual has been properly served in the state;
- (2) the individual submits to the jurisdiction of the court by entering a general appearance or by filing a responsive document;
- (3) the individual resided with the child for whom support is being sought within the state;
- (4) the individual provided prenatal expenses or child support while residing within the state;
- (5) the child resides within the forum state because of some activities of the individual; (6) the individual engaged in sexual intercourse in the state;
- (7) [language may be omitted in certain states providing "the individual asserted parentage in the state's registry or in another appropriate agency];
- (8) there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

The intent of the long arm provisions was to insure that every enacting state has a long arm statute applied to support issues that is as broad as is constitutionally permitted. In cases where

the long arm statute can be satisfied, the petitioner (usually the potential support recipient), has two options (1) use the long arm statute to obtain personal jurisdiction over the respondent or (2) initiate a two state proceeding under the provisions of UIFSA seeking to establish a support order in the respondent's state of residence.

Keep in mind that the long arm statute applies both to child support and maintenance although virtually all of the provisions of the UIFSA relate to child support orders or determination of parentage (and not to maintenance).

Basis (1) is essentially a codification of *Burnham v. Superior Court*, 495 U.S. 604 (1990), which affirmed the constitutionality of asserting personal jurisdiction based on personal service within a state (the tag rule). In *Burnham*, recall that the husband was personally served with a divorce petition in California while attending a business conference and visiting his children. This so called “transient presence” was determined to be enough to allow personal jurisdiction to be claimed. The UIFSA choose to specifically reject tag jurisdiction in cases seeking to modify support.

Note that subsections (3) through (6) identify specific fact situations which would justify a court's assertion of long arm jurisdiction over a non-resident. The 2001 *FLQ* article discusses this and states, “Further each subsection does contain a possibility that an overly literal construction of the terms of the statute will overreach due process.” The article gives an example. Assume two parents and a child live in state A and then decide to move to state B for many years. Then assume one parent unilaterally decides to return to State A. The author, Sampson, states, “It is a reasonable expectation that all tribunals will conclude that the assertion of personal jurisdiction over the absent parent immediately after the return based on Subsection (3) [the individual resided with the parent in that state] would offend due process.” If this is the case, then the two state procedures would be available to the parent returned to State A.

Finally, note that Subsection (8) (of the original version of the UIFSA) tracks the broad catch-all provisions found in many state statutes. However, note that this provision standing alone was determined to be inadequate to maintain a child support order under the facts of *Kulko v. Superior Court*, 436 U.S. 84 (1978).

The 2001 amendments to subsection (a) which deleted the term “modify” and added a new subsection (b) [which reads, "The bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of the State to modify a child support order of another state unless the requirements of Section 611 and 615 are met.] were designed to preclude a tribunal of the forum from ignoring the “away game” concept discussed below which applies to cases where all the parties have left the original forum state. As stated by Sampson's UIFSA 2001 article, “Some courts broadly construed the former reference to “modify” to justify ignoring the requirements of Section 611 — which provide that absent an agreement of the parties, the petitioner for modification of a support order of an issuing state when all parties have left that State must be a resident of the forum.” Sampson at 361. The critical concept is that long-arm jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction over a proposed modification to the tribunal in the

state of residence of the petitioner. See *LeTellier v. LeTellier*, 40 S.W. 3d 490 (Tenn. 2001). So, even if everyone has moved away from the issuing state, a tribunal having personal jurisdiction over both parties (e.g., long arm jurisdiction), may not modify the order if the petitioner is a resident in the forum — unless both the petitioner and the respondent are residents in this state.

The original version of the UIFSA contained Part B of Article 2, Sections 203-206. Section 202 of the amended law provides:

Sec. 202. Duration of personal jurisdiction. Personal jurisdiction acquired by a tribunal of this State in a proceeding under this Act or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

The law previous to the amendments in this regard provided, "Procedure when exercising jurisdiction over nonresident. A tribunal of this State exercising personal jurisdiction over a nonresident under Section 201 may apply Section 316 to receive evidence from another state, and Section 318 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this Act."

Section 204 addresses circumstances where there are simultaneous proceedings. The amendments eliminate the verbiage "simultaneous proceedings in another state." This section provides for the circumstances in which a court may exercise and may not exercise jurisdiction giving priority to the home state.

Section 205 is, the critical provision in UIFSA. It establishes the principle of continuing, exclusive jurisdiction over support orders. The key provision is that the issuing tribunal retains CEJ over the support order except in exceptional circumstances which are defined. These circumstances are where there is an agreement of the parties; or the obligor, obligee and the child have permanent left the issuing state. Thus, the UIFSA is significantly more strict than provisions of the UCCJEA addressing exceptions to the principle of CEJ.

Maintenance orders (called spousal support within the UIFSA), are only to be modified by the issuing state, i.e., the issuing tribunal retains continuing, exclusive jurisdiction over an order of spousal support throughout the entire existence of the support obligation.

The 2001 amendments to **Section 205** provide that there is continuing exclusive jurisdiction if, "the parties appear in person or through an attorney and agree in open court or in a record that the tribunal may continue to exercise its jurisdiction to modify its order over all matters in controversy." This provision was added, (a)(3), to allow parties to have the option to seek modification of their existing order from a tribunal they know and trust. Originally the drafters believed that neither the tribunal nor the parties would prefer a forum to which no party has a direct affiliation (assuming all parties and the child had moved from the original

state). Time has proved this to be wrong. After all, the parties and child may have moved only a few miles and changed their state of residence.

The 2001 amendments make changes to clarify the intent of this section. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether all parties and the child have left the state, is explicitly stated to be the date of the *filing* in a proceeding to modify support. The second significant change per the amendments was substituting the term “is the residence” for “remains the residence.” This was designed to make it clear that any interruption of residence of a party between the date of the issuance of the order and the date of the filing of a request for modification will not affect jurisdiction to modify.

An example of the difference between the UIFSA and the UCCJEA (discussed further below) is that under the UCCJEA the return to the decree state does not “re-establish” CEJ. Under the UIFSA similar facts would allow the issuing state to exercise CEJ to modify its support order if at the time of the filing the issuing state is the residence of one of the individual parties or of the child. See Section 205(a).

In short, under the UIFSA there is one controlling order in effect and enforceable in the issuing state despite the fact that everyone has left the issuing state. If the order is not modified after everyone leaves, then a return by a party (or the child) to live in the issuing state, means that the issuing state remains the proper forum for modification proceedings. In a number of cases a party will be temporarily employed in another state. According to the comments, temporary employment in another state should not forfeit a claim of residence in the issuing state. See *State ex. Rel. Havlin v. Johnson*, 971 S.W.2d 938 (Mo. App. 1998).

Section 207 previously was under Part 3 titled, "Reconciliation of Multiple Orders." It has been changed under the 2001 amendments to "Determination" of the controlling support order. Under the amendments there are revisions to subsection (b) which provide:

(b) If a proceeding is brought under this Act, and two or more child-support orders have been issued by tribunals of this State or another state with regard to the same obligor and same child, a tribunal of this State having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine in determining which order controls to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Act, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Act : (A), an order issued by a tribunal in the current home state of the child controls ; and must be so recognized, but (B) if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

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

An amendment from the 2001 UIFSA provides: "(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination."

Thus, one of the critical provisions to Section 207 is the "controlling order" provisions. It states that when a court determines which order is the controlling order or when it issues a new controlling order, in addition to stating the basis for the court's determination, the court shall, "state the amount of prospective support, if any, that shall be due and owing, and the total amount of arrears, if any, that have accrued under all of the orders considered after crediting all payments made on each order as payment on every order as provided by § 209."

Section 208 addresses child support orders for two or more obligees. In many cases there are two or more families of a single obligor, often due to several parentage cases. Although all such orders are subject enforcement, there are practical difficulties. For example, full enforcement of each order may exceed the maximum allowed for income withholding. Remember that the Federal state, 42 U.S.C. Section 666(b)(1), requires that to be eligible for federal funding for enforcement, states must provide a ceiling for child support withholding expressed in a percentage that cannot exceed the federal consumer credit code limitations on garnishment, 15 U.S.C. Section 1673(b). Thus, UIFSA here refers to state law and states that every child support order should be treated as if it had been issued by a tribunal of the forum State.

Section 209 (750 ICS 22/209) provides for credit for payments:

A tribunal of this State shall credit amounts collected and credited 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 a support order issued by a tribunal of this or another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State .

Within the Illinois 2004 amendments to the UIFSA (which adopted the 2001 revised version of the so called "uniform law," there is a new Section 210. This provides for application of the Act to non-residents subject to the personal jurisdiction of the state. Under the amendments to the UIFSA there is also be a new section, Section 211 addressing continuing exclusive jurisdiction to modify a spousal support order. The language from the section in this regard was taken from what had been section 205(f). The critical difference since 2004 for those states such as Illinois adopting what I refer to as the 2001 or the 2008 version of the

UIFSA is that *the issuing state always retains CEJ regarding a spousal support order*. The UIFSA is silent as to whether the parties could provide for a shifting of CEJ over a spousal support order by mutual agreement. The commentary states, “If the parties wish to enter into such an agreement, it is up to the individual States to decide whether to recognize it.”

Article 3 — Civil Provisions of General Application:

Article 3 of UIFSA, Sections 301-319, provides rules of general application, detailing the functions of the initiating and responding tribunals. While the system allows the involvement of both states, under the UIFSA the function of the initiating state court tribunal is merely to forward the appropriate documents to the responding state.

Section 301 provides that UIFSA governs proceedings for:

- establishment of an order for spousal support or child support
- enforcement of a support order and income-withholding order of another state without registration
- registration of an order for spousal support or child support of another state for enforcement
- modification of an order for child support or spousal support issued by a tribunal of this state
- registration of an order for child support of another state for modification
- determination of parentage
- assertion of jurisdiction over non-residents.

These provisions provide a road-map and an introduction to the overall features of the UIFSA. Because of the growing awareness of the UIFSA, the 2001 amendments would eliminate this road-map.

UIFSA provides that the procedures and law of the forum apply with some significant exceptions. These include:

(a) Certain procedures are prescribed for interstate cases even if there are inconsistent with local law such as the contents for interstate petitions which are set forth in Section 311, the provisions for non-disclosure of certain sensitive information, section 312; authority to award fees and costs including attorney's fees, section 313, the elimination of certain testimonial immunities, section 314 and limits on the assertion of non-parentage as a defense to support enforcement, Section 315.

(b) Visitation issues cannot be raised in interstate child support proceedings 305(d);

(c) Special rules for interstate transmission of evidence are discovery are added to make it easier to provided information to the deciding tribunal. (Section 316-318) and may have the effect of amending local law in long arm cases. UIFSA thus recognizes that interstate cases present special problems of evidence. It therefore contains provisions on the transmission of evidence and the relaxation of the best evidence rule. For example, tribunals are directed to

permit an out of state party or witness to be deposed or to testify by telephone conference, Section 316(f).

It is noteworthy that the UIFSA deliberately takes no position as to whether the support enforcement agency's assistance of a supported family established an attorney-client relationship with the applicant. Section 307(c) of the current legislation. See, *IRMO Hartman*, 305 Ill.App.3d 338,(2d Dist. 1999), discussed below.

UIFSA explicitly authorizes parties to retain private attorneys in support proceedings. Section 309, as well as to use the services of a state support enforcement agency. (Section 307(a)). Although the forms for interstate child support cases were developed in by the federal Office of Child Support Enforcement in conjunction with the Federal IV-D program, private attorneys who handle interstate cases should use the appropriate forms for transmission of information to the responding state. Section 311(b). The information in those forms is declined to be admissible evidence. Section 316(b). The 2001 amendments further provide that, "A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child."

Article 4 — Establishment of Support Order:

Article 4 of UIFSA, Section 401, is titled, "Petition to Establish A Support Order." Among other things it authorizes the entry of a temporary support order.

The 2001 rewording of subsection (b) conforms the language to the provisions of the Uniform Parentage Act (2000) (UPA) relating to the individual party who may be ordered to pay child support. The 2001 amendments provide that a tribune of this state may enter a **temporary** order if the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by [applicable state law]; or
- (7) the mother of the child.

Article 5 — Enforcement of Order of Another State Without Registration:

Article 5 of UIFSA, Sections 501-502, addresses direct enforcement of an out of state order for withholding.

Technically, while a notice is allowed by Illinois law, the UIFSA does not state whether an out of state employer would have to honor a "notice" rather than an order. Therefore, the safest course for the support recipient who wishes to have withholding honored in another state, would be to have the judge enter the order rather than merely serve a notice to withhold

income for support. The employer is to comply with the law of the state of the obligor's principal place of employment for withholding of income regarding the employer's processing fee, the maximum amounts to be withheld and the time within which the employer must implement the withholding order and forward the support payment. Keep in mind that the UIFSA requires the amounts to be stated for child support, medical support, attorney's fees, arrearages and interest must be stated as "sums certain." It would seem that this an out of state employer would be under no obligation to enforce a percentage order of support.

An interesting note is that the Act does not specify who must send the income withholding order to the employer. In fact, the order could be sent by a private attorney, a party or even a stranger to the litigation such as a grandparent.

Regarding penalties for non-compliance, the UIFSA provides that an employer who wilfully fails to comply with an income withholding order by another state is subject to the same penalties that may be imposed for non-compliance with an order issued by a tribunal of this state.

Assume an out of state employer receives a withholding order. The steps that would take place are that the employee would receive a copy of the withholding order and then the employee would have the opportunity to contest under Section 506. The critical difference is the obligor who is contesting the validity or the enforcement according to the 2001 amendments would "register the order in a tribunal of this State [the state where the obligor is employed] and filing a contested 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. The UIFSA provides that the obligor is to provide notice of the contest to any support enforcement agency providing services to the obligee, each employer that has received an income withholding order relating to the obligor and the person designated to receive payments in the income withholding order (or if no person is designated to the obligee).

Article 6 — Registration, Enforcement and Modification of Support Order: Article 6 is divided into three parts:

- 1) "Registration and Enforcement of Support Order",
- 2) "Contest of Validity of Enforcement" and
- 3) "Registration and Modification of Child-Support Order."

Part 1 - Registration and Enforcement of Support Order: Sections 601 through 604 address the procedure for registration for the purpose of enforcement (as opposed to registration for the purpose of modification). Keep in mind that registration is the first step necessary for enforcement of an order out of state. The same procedure applies for modification. Therefore, it is possible to choose to register an order for purposes of enforcement, for purposes of modification or for purposes of both enforcement and modification. If an order is to be registered for both enforcement and registration, the registering party should carefully follow the provisions both for enforcement as well as

registration. Registration of an order is part of a process to ensure that the order(s) to be registered is the controlling order.

Section 602 -- Registration Procedure: Assume an lawyer seeks registration for enforcement purposes of child support order from that state in another state. The steps this lawyer would take (pursuant to Section 602 of UIFSA) are to send:

- 1) a letter of transmittal to the tribunal requesting registration and enforcement;
- 2) two copies including one certified of the order to be registered (prior to the 2001 amendments all orders were required to be certified and submitted) including any modification of the order;
- 3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- 4) various information about the obligor (name, address, employment information, etc.) as set forth in Section 602(a).

There are new provisions in the 2001 amendments which provide at a new subsection (602(d)) which addresses the common situation where there are two or more orders in effect. In this instance, every support order asserted to be in effect must be provided. The order which is alleged to be the controlling order must be stated. The person registration must also "specify the amount of consolidated arrears, if any." Under a new provision, (602(e)), a request for determination of which order is the controlling order may be filed separately or with the request for registration (either for enforcement or modification purposes).

Section 604 -- Choice of Law Provisions: Section 604 contains choice of law procedures. It provides that the law of the issuing state governs 1) the nature extent, amount and duration of current payments under a registered support order; 2) the "computation and payment of arrearages and accrual of interest on the arrearages under the support order (bold set forth in 2001 amendments); and 3) the existence and satisfaction of other obligations under the support order." The comments to the 2001 amendments state, "In sum, the local tribunal applies its own familiar procedures to enforce a support order, but it is clearly enforcing an order of another state and not an order of the forum."

Notice Provisions: Section 604 provides that once an order is registered, "the registering tribunal" shall notify the other party." It further provides that the notice must inform the nonregistering party:

- that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;
- that a hearing to contest the validity or enforcement of the registered order must be requested within [20] days after notice;
- 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.

Part 2 — Contest of Validity or Enforcement: Sections 605 through 608 states the procedure to be used to contest the registration of an order. Generally, the nonregistering party may urge that the order is invalid, superceded or no longer in effect (the order is not valid). Alternatively, the other party may contest the registration because the enforcement remedy is opposed. In order that there be rights to contest an order, however, there are notice provisions which must be followed. The new notice provisions under the 2001 amendments address the common situation where there are two more orders in effect. If so, the party seeking registration must, identify the multiple orders, indicate which one is controlling, state any consolidated arrears, notify the nonregistering party of the right to a determination of which orders is the controlling order (as well as the procedure to be followed in determining the controlling order). Furthermore, under the 2001 amendments there is a provision which states that the notice must, "state that failure to contest the validity or enforcement of the order alleged to be controlling in a timely manner may result in a confirmation that the order is controlling." This is a key provision because it puts one on notice that the failure to act timely in demonstrating to the court which order is controlling may have severe consequences.

Section 607 states that the party contesting the validity or enforcement has the burden of proving at least once defense:

the issuing tribunal lacked personal jurisdiction over the contesting party;

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 under the law of the responding state to the remedy sought;

full or partial payment has been made;

the statute of limitations under the Section 604 precludes enforcement of some or all of the **alleged** (in 2001 amendment) arrearage;

the alleged controlling order is not the controlling order (only in the 2001 amendments).

The Fall 2002 discussion by Sampson on the UIFSA states, "The 2001 amendments added an obvious defense that was inadvertently omitted from the list of defenses. In a multiple order situation, if the nonregistering party contests the allegation regarding the controlling order... the nonregistering party may defense against enforcement of another order by asserting the existence of a controlling order." Comment by GJG: I have addressed this exact defect in the UIFSA under the law in existence prior to the 2001 amendments.

Part 3 — Registration and Modification of Child Support Order: Sections 609 through 611 address the situation where the order is to be registered prior to seeking to modify the order of another state. There are circumstances where the original registering state will not have continuing exclusive jurisdiction. Generally, such circumstances are where the none of the significant individuals (obligor, obligee or the child). Furthermore, under the "away game concept" (discussed below) it also only addresses the situation in which the petitioner who is a nonresident of the "this state" seeks modification. The only exception (obviously) is where the respondent is subject to the "personal jurisdiction of the tribunal of this state" (usually because it is the state of his residence).

Section 611 was significantly amended under the 2001 version of the UIFSA. The new provisions will provide:

(a) If Section 613 does not apply, except as otherwise provided in Section 615, upon [petition] a tribunal of this state may modify a child support order issued in another state has been which is registered in this State, the responding tribunal of this State may modify that order only if Section 613 does not apply and if, after notice and hearing, it the tribunal finds that:

(1) the following requirements are met:

(A) neither the child nor the individual obligee who is an individual, nor the obligor do not resides in the issuing state;

(B) a petitioner who is a nonresident of this State seeks modification;

(C) the respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) this State is the State of residence of the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

Subsection (c) per the 2001 amendments would provide: "Except as otherwise provided in Section 615, a tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing State, including the duration of the obligation of support..."

Under Subsection (a)(1), before a tribunal of a new forum may modify the controlling order three criteria must be satisfied. First, the individual parties affected by the controlling order and the child must no longer reside in the issuing state. Second, the party seeking modification must register the order in a new forum — which is almost always the state of residence of the other party. As stated by Sampson in Uniform Interstate Family Support Act (2001), the colloquial manner of describing this requirement is that the movant "must play an away game on the other party's home field." This rule applies to either the obligor or the obligee depending upon who seeks to modify the support obligation. Third, the forum must have personal jurisdiction over the parties.

There are two exceptions to the rule of Subsection (a)(1) requiring the petitioner to be a nonresident of the state in which modification is sought. First, under Subsection (a)(2), the parties may agree that a particular forum may serve to modify the order. Second, if all of the parties have left the original issuing state and the parties now reside in the same new forum state, obviously the proceedings will go forward in this new forum state. Of these sections, the important provision to keep in mind is the provision which authorizes the parties to terminate the continuing exclusive jurisdiction in the issuing state by agreement. This section applies even if the agreement is made when one of the parties still resides in the state with CEJ.

The UCCJEA [Enforcement Act] borrows heavily from UIFSA. Both the UIFSA and the UCCJEA seek a world in which there is only one order at a time for child support and custody and visitation. Both have similar restrictions on a court's ability to modify the existing order. The major difference between the two as results form the fact that the basic jurisdictional nexus of each is founded on quite different considerations. The focus of the UIFSA is on whether there is personal jurisdiction necessary to bind a child support obligor to the payment of a support order. The UCCJEA, on the other hand, places its focus on the factual circumstances of the child, that is, primarily on the “home state” of the child. According to the UCCJEA personal jurisdiction over a parent in order to “bind” that parent to the custody decree is not required.

Section 611 provides that the final, nonmodifiable aspects of a child support order may not be generally modified. The 2001 amendments to Subsection (c) and the addition of Subsection (d) were designed to address the conflicting decisions as to the duration of a child support order when one party moves to another state and the other state has different provisions with respect to the duration of the support order. For example, if the issuing state issued an order that child support terminates at age 21, the responding state cannot change that aspect of the order, even if support in the responding state ends at age 18.

Article 7 — Determination of Parentage: Article 7 of the UIFSA authorizes what might be referred to as a “pure” parentage action in an interstate contest, that is, while the UIFSA is thought of as relating only to child support, it also provides for an interstate action that would be brought to establish parentage even if not joined with a claim for child support.

Article 8: In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (“the Convention”). This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. For the United States to fully accede to this Convention, it was necessary to modify the UIFSA by incorporating provisions of the Convention that impact existing state law. According to the Uniform Law Commissions legislative fact sheet, “enacting the UIFSA amendments will improve the enforcement of American child support orders abroad and will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.”¹

¹ See: <http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA%202008%20Summary.pdf> (last visited March 6, 2016).

The bulk of the 2008 are housed in a new section of the UIFSA: Section 7. It provides guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. More specifically, Section 7 provides that a support order from a country that has acceded to the Convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. Once registered, the non-registering party receives notice and is allowed the opportunity to challenge the order on certain grounds. Unless one of the grounds for denying recognition is established, the order is to be enforced. Additionally, Section 7 requires documents submitted under the Convention be in the original language and a translated version submitted if the original language is not English.

D. Case Law Interpreting UIFSA

1. Defenses to Registration Under UIFSA:

Substantial compliance with the requirements of the registration procedures outlined in Section 602(a) is required. For example, in *Twaddell v. Anderson*, 523 S.E. 710 (N.C. App. 1999), the obligee attempted to register a California order for enforcement in North Carolina. The trial court entered an order dismissing her attempted registration and held that her actions in attempting the registration were sanctionable because the registration did not contain the requisite documentation. In reversing the appellate court held, “[U]nder UIFSA, as under URESA, substantial compliance with the requirements of [Section 602] will suffice to accomplish registration of the foreign order.

However, the Texas appellate court came to a different opinion in *In Re Chapman*, 973 S.W.2d 346 (Tex. App. 1998). In *Chapman*, the trial court confirmed the registration of a Minnesota child support order. The obligor appealed and the Texas appellate court reversed without prejudice. The appellate court there stated that because UIFSA provides a mandatory procedure for registering a foreign support order, the failure to submit all of the listed documents (in that case a sworn statement of any arrearage) is fatal to the order confirming registration and a reversal is required.” Moreover, note that the failure to allege the proper arrears can result in bad consequences to the obligee. Section 606(b) states that the amount alleged is confirmed by operation of law, which then binds the registering party to the amount alleged. Accordingly, the obligee must make certain that upon registering the entire arrearage (if any) is stated.

A significant Illinois case is [*DHFS ex. Re. Heard v. Heard*](#), 916 N.E.2d 61 (3d Dist. 2009).

Recall from law school the series of minimum contact cases for a state court to have jurisdiction over child support issues. The issue in this case was whether there were minimum contacts to register a Germany child support order. The *Heard* court summarized the facts:

Here, Kevin’s contacts with Germany do not indicate that he purposely availed himself of the benefits and protections of German law. Kevin’s contacts with Germany as presented by the record are as follows: Kevin was stationed in Germany while in the United States Army and met a German citizen whom he married in Denmark in August 1997. Approximately nine months after their marriage, they moved to the United States in May 1998. In November 2001, Kevin and his German wife had a baby, Nicholas. In September 2003, Sandra and Nicholas traveled to Germany to visit her mother with Kevin’s knowledge. After Sandra indicated that she and Nicholas would not be returning to the United States, it appears from the nature of the action before us that Kevin failed to support Nicholas while Nicholas was living in Germany.

As in *Kulko* and *Boyer*, Kevin remained in Illinois where the family had lived for approximately two years, while Sandra left the marital home for Germany. In addition, the acts of marrying a German citizen and living briefly in Germany as a married couple are not, by themselves, acts by which Kevin purposely availed himself of the benefits of German law.

Accordingly, the appellate court ruled that trial court did not have sufficient minimum contacts to register the German child support order and, accordingly, reversed the trial court's decision.

VI. CONCLUSION

Most family lawyers have heard generally about the UIFSA but I have found that even lawyers who concentrate their practice on family law issues have never even heard of the FFCCSOA. This article has explored some of the differences including the 2008 amendments which as of 2016 were adopted in every state. Accordingly, for the first time in years the states have adopted the same version of the UIFSA.

I offer thanks to [Laura W. Morgan](#) for her article on which this was originally based. I have updated this article it so that it is more applicable to Illinois law. See <http://www.supportguidelines.com/main.html> For her family law consulting business, please see: <http://www.famlawconsult.com/>.

The Gitlin Law Firm, P.C., provides the above information as a service to other lawyers to assist with continuing legal education. A person's accessing the information contained in this web site is not considered as retaining The Gitlin Law Firm for any case nor is it considered as providing legal advice. The Gitlin Law Firm cannot guarantee the outcome of any case.

The Gitlin Law Firm

Practice Limited to Family Law

663 East Calhoun Street

Woodstock, IL 60098

815/338-9401

www.gitlinlawfirm.com

Last Updated: May 13, 2016

G:\Docs\Writings\UIFSA Article 2016.wpd

© 2016, The Gitlin Law Firm, P.C.