

BASICS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

**Effective January 3, 2011, the Federal Regulations have substituted
“intergovernmental” in lieu of “interstate,” and changed some of the responsibilities
of the initiating and responding jurisdictions.**

LOUISIANA SUPPORT ENFORCEMENT ASSOCIATION

ANNUAL MEETING AND TRAINING CONFERENCE

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UIFSA BASICS

1. What is the Uniform Interstate Family Support Act?

Drafted by the National Conference of Commissions on Uniform State Laws, the purpose of the Uniform Interstate Family Support Act (“UIFSA”) is to expedite interstate and intrastate proceedings involving child support or spousal support. Originally, the Conference was going to make significant revisions to the Uniform Reciprocal Enforcement of Support Act (“URES”) and the Revised Uniform Reciprocal Enforcement of Support Act (“RURES”). However, Committee came to conclude that RURES needed such extensive changes that it decided to draft a new act called UIFSA. (See *Journal of the American Academy of Matrimonial Lawyers*, Vol. 16, 1999, Page 243, et seq)

UIFSA governs several proceedings:

- A. the establishment of an order for spousal support or child support;
 - B. the enforcement of a support order;
 - C. the registration of an order for spousal support or child support
 - i. for enforcement;
 - ii. for modification;
 - D. the determination of parentage; and
 - E. the assertion of jurisdiction over non-residents.
- ### 2. UIFSA is a “road map” or “guide to practice.”

UIFSA attempts to formulate rules for how each state is to treat the enforcement and modification of orders, and what part the state which rendered the order plays in the process.

3. What is continuing exclusive jurisdiction (“CEJ”)?

- A. “Jurisdiction” means “subject matter jurisdiction”
- B. “Continuing” means “continues until another state assumes jurisdiction”
- C. “Exclusive” means “to the exclusion of any other state”

“Essentially, only one state’s order should govern, at any given time, an obligor’s support obligation to any particular obligee or child. Only one state should have continuing jurisdiction to modify that order, and all other states should give that one order full faith and credit and refrain from modifying it, unless the first state no longer has jurisdiction. (See Patricia Wick Hatamyar, *Critical Applications and Proposals for Improvement of the Uniform Interstate: Family Support Act and the Full Faith and Credit for Child Support Orders Act*, 71 ST. JOHN’S L. REV. 1, 6 n. 14 (1997).

4. What does CEJ mean to you?

Essential to the concept of UIFSA, is that there should be **ONLY ONE ORDER**, which may follow the obligor or obligee and which may **ONLY BE MODIFIED UNDER CERTAIN CONDITIONS**. UIFSA’s enactment was mandated in every state by Congress’ enactment of the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (“PRWORA”).

PRWORA mandated states to adopt UIFSA “in order for a state to remain eligible for the federal funding of child support enforcement.” However, since URESA and RURESAs have been around so long (enacted in 1951 in Louisiana), there are still many competing orders which still remain. Hopefully, those “old URESA” orders, and any competing child and spousal support orders, have now been resolved under the new UIFSA rules.

5. What does the Model say about which state can establish the order?

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

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

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

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

- (2) the contesting party timely challenges the exercise of jurisdiction in this State; and
 - (3) if relevant, the other state is the home state of the child.”
6. Which order is to be used - how do I know?

UIFSA sets out rules to determine which - if there are more than one - order is to be followed and enforced (or modified). [See chart at the end of the outline]

7. Can a state lose jurisdiction?

There are essentially two ways in which a state can lose jurisdiction under UIFSA. First, “none of the litigants or the child live in the state any longer, or second, the parties allow another state to assume exclusive, continuing jurisdiction.” When a state loses continuing, exclusive jurisdiction another state does not obtain that jurisdiction merely on the basis that one of the parties is a resident of that state. When a state loses continuing exclusive jurisdiction, that state can no longer modify the order it issued nor can it recognize its previous order once the order has been modified by another state. However, it must still enforce another state’s order or another state’s modification of the order.

LOUISIANA’S ENACTMENT OF UIFSA

8. Louisiana enacted UIFSA in the Children’s Code under Articles 1301.1 through 1308.2. When doing so, the Legislature tried to number the Articles to conform to the Uniform Act Section numbers. For instance, when you wish to do national research on Article 1302.1 (Basis for Jurisdiction Over Non-Residents), you may wish to refer to the Model Act §201.
9. UIFSA cases are of two general kinds. These are referred to as “initiating” and “responding” cases. An initiating case is where a case is initiated in Louisiana and is transmitted (sent) to another state pursuant in that other state. A responding case is one where the other state, or party in the other state, initiates a proceeding to be heard in Louisiana.

It is important to note, that unlike the former URESA proceedings, there is no requirement that something be filed in the initiating state. Hence, the local Louisiana court need not be involved should a proceeding under UIFSA be sent to another state.

However, if Louisiana is the responding state, there must be something filed with the Court - usually, the Uniform Petition and any attachments (see online forms).

REVIEW OF IMPORTANT UIFSA ARTICLES IN LOUISIANA

Long Arm Jurisdiction

UIFSA expands the “long-arm jurisdiction” of the court as we normally use it. Although very similar to LSA - R.S. 13:3201, it concentrates mainly on parental / spousal relationships. Children’s Code Article 1302.1 confers personal jurisdiction if:

- (1) The individual is personally served with citation, summons, or notice within this state.
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any exception or contest to personal jurisdiction.
- (3) The individual resided with the child in this state.
- (4) The individual resided in this state and provided prenatal expenses or support for the child.
- (5) The child resides in this state as a result of the acts or directives of the individual.
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.
- (7) The individual asserted parentage in the putative father registry maintained in this state by the Department of Health and Hospitals, office of preventive and public health services.
- (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Other state agencies (when acting as a responding jurisdiction) may legally require that you (or the initiating state) attempt jurisdiction by long-arm if available prior to sending a request under UIFSA. *(This may have changed under the new regulations!)*

Continuing Exclusive Jurisdiction

Central to UIFSA is the concept of continuing exclusive jurisdiction. Much like the Uniform Child Custody Jurisdiction and Enforcement Act, UIFSA tries to limit the jurisdictions where orders may be established and modified. (*Children's Code Article 1302.5*)

If a state issues an order, it retains CEJ:

- A. As long as that state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order was issued.
- B. Until all of the parties who are individuals have filed written consent with the tribunal of that state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. (*Note that the written consent has to be filed with the state and court which issued the order, not the new state and court where the CEJ is to be assumed.*)
- C. A state never loses CEJ over a spousal support order!

If a state issues an order, it loses CEJ:

- A. If it has been modified by another state (under a request to do so under UIFSA, or a similar law); and,
- B. May only enforce (until the modified order is registered):
 1. The order as to amount which accrued prior to the modification;
 2. Non-modifiable portions of the order; and,
 3. Violations of the order which occurred before the effective date of the modification.

Generally: What Law Applies?

When establishing a support order, the responding state must:

- (1) apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in the responding state and may exercise all powers and provide all remedies available in those proceedings; and
- (2) Determine the duty of support and the amounts payable in accordance with the law and support guidelines law of the responding state.

Hence, if there is no support order, and Louisiana initiates a proceeding under UIFSA to establish paternity and/or a support order in another state, the other state must use its support laws to establish the paternity and/or an order. Likewise, if another state sends a request to Louisiana to establish paternity and/or a support order, the law of Louisiana will apply.

When enforcing a support order:

(1) The law of the issuing state (which may not be the initiating state) governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

Hence, if the age of majority in the issuing state is 21, the order (probably) continues until 21 or after, not 18 (or 19) as in Louisiana..

(2) In a proceeding for arrearages, the prescriptive period under the laws of this state or of the issuing state, whichever is longer. Some states have no statute of limitations!

(See Article 1306.4)

When modifying a support order:

(1) The same requirements, procedures, and defenses that apply to the modification of an order issued by this state and the order may be enforced and satisfied in the same manner.

(2) Louisiana may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(3) If an order issued by another state is (legally) modified in Louisiana, then the Louisiana court becomes the tribunal having continuing, exclusive jurisdiction.

What about immunity?

When a proceeding is sent to another state, it does not confer personal jurisdiction over the petitioner in another proceeding in that state. Hence, a request sent to another state to establish support for a minor child living in Louisiana, does not confer personal jurisdiction over the petitioner for purposes of a reconventional demand for custody (see the UCCJEA).

Further, should the petitioner attend the UIFSA proceedings in the other state (some states actually require the physical presence of the petitioner, although this is against the general precepts of the enactment of UIFSA and Louisiana's Article 1303.16), the petitioner is (generally) not amenable to service of civil process. This does not extend to litigation based on other acts committed by petitioner while present in the state to participate (automobile accident).

What evidence can be used?

Article 1303.16, because it allows the proceeding without the physical presence of the petitioner, provides for special rules of evidence, including telephonic or video testimony.

Remember, the other forms of discovery may be used such as Interrogatories, Request for Admission, Depositions (may need letters rogatory), etc. (Article 1303.18)

The “but, I’m not the daddy” defense

“A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this Chapter.” (Article 1303.15)

Registrations of Support Orders - Two Types: Enforcement or Modification

A. Registration of order for enforcement only (Articles 1306.1 - 1306.8)

1306.2: Certain documents, information and notices are required

1306.3: Registered when the order is filed and is enforceable in same manner as a Louisiana order (but can not be modified) if the issuing tribunal had jurisdiction

1306.5 Notice must be given to the non-registering party by the Court. The notice must include:

1. That the registered order is enforceable as of the date of registration in the same manner as an order of this state;
2. That a hearing to contest the validity or enforcement must be requested within twenty (20) days after notice;
3. Failure to contest the validity or enforcement will result in confirmation and will preclude further contest with respect to any matter which could have been asserted; and
4. The amount of any arrearages alleged.

1306.6 Contest must be filed within twenty days (to vacate the registration) or it is confirmed by operation of law.

- 1306.7 Contest grounds - the burden of proof is on the party contesting to show:
- (1) The issuing tribunal lacked personal jurisdiction over the contesting party.
 - (2) The order was obtained by fraud.
 - (3) The order has been vacated, suspended, or modified by a later order.
 - (4) The issuing tribunal has stayed the order pending appeal.
 - (5) There is a defense under the law of this state to the remedy sought.
 - (6) Full or partial payment has been made.
 - (7) The prescriptive period under Article 1306.4 (Choice of law) precludes enforcement of some or all of the arrearages.

B. Registration of order for modification (and enforcement) (Articles 1306.9 - 1306.14)

- 1306.9 Same registration procedure as above, if not previously registered, but if requesting a modification at the same time, must specify the grounds for the modification.
- 1306.10 May be enforced, as above, but if asking for modification, Article 1306.11 applies.
- 1306.13 **“If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.”**
- 1306.11 **IF ARTICLE 1306.13 DOES NOT APPLY**, then the Court may only modify the order if one of the two following clauses are met:
- (1) All of the following requirements are met:
 - A. The child, the individual obligee, and the obligor do not reside 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.

(2) The child or a party is subject to the personal jurisdiction of this state and all of the parties have filed a written consent in the issuing tribunal for this state to modify the support order and assume continuing, exclusive jurisdiction.

1306.14 If modified, the Court must send a certified copy of the modified order to the court whose order was modified.

Determination of Parentage - Paternity

Article 1307.1 Provides that states can initiate or respond to claims to establish that a respondent is a parent of a particular child. In such a proceeding, the procedural and substantive law of the responding state applies along with the rules on choice / conflicts of laws.

What if I am scared of the respondent but still want to pursue? (Non-disclosure)

Article 1303.12 provides for non-disclosure of information:

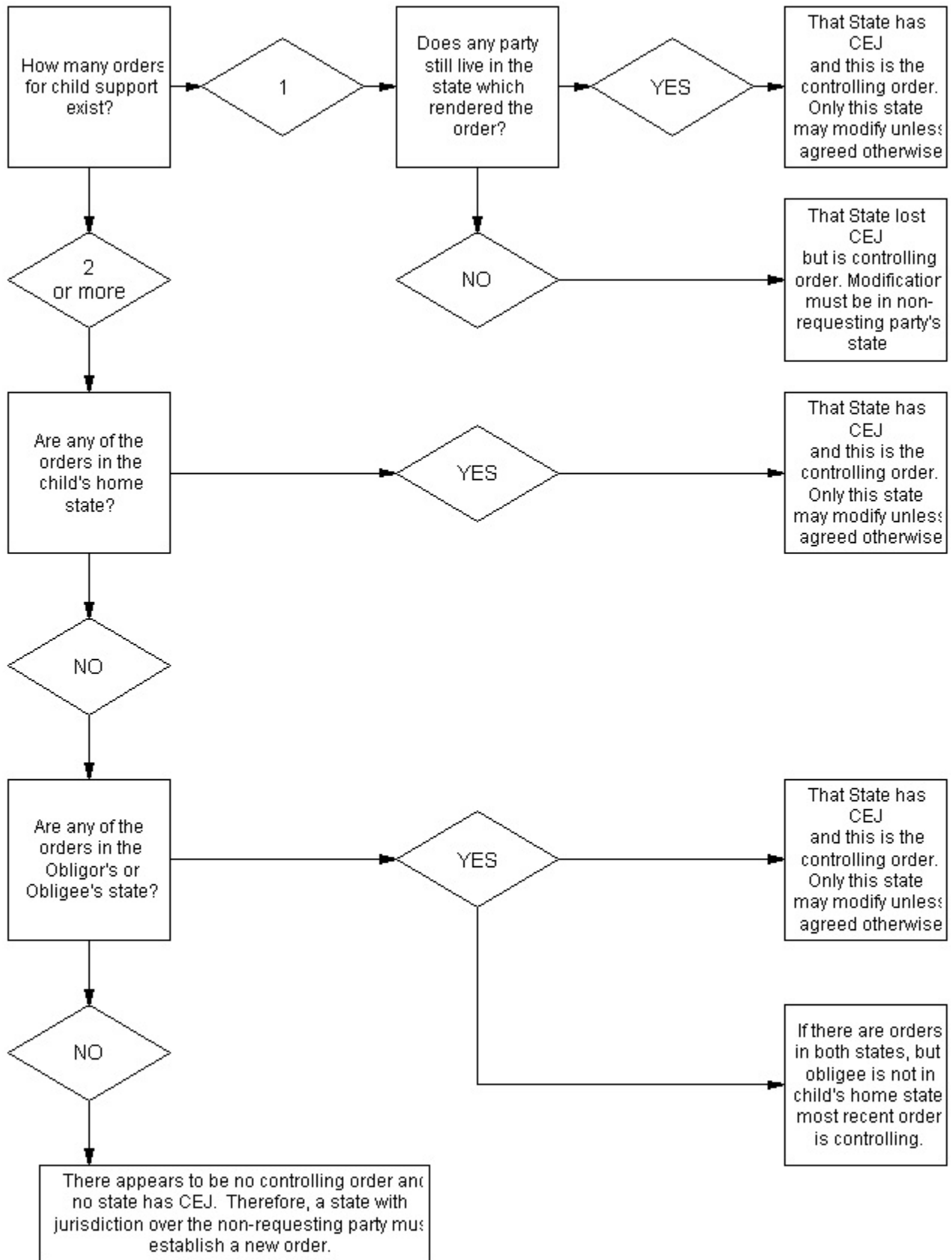
“Upon a finding, which may be made ex parte, that *the health, safety, or liberty of a party or child would be unreasonably put at risk* by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this Chapter.”

Which order is the controlling order?

The decision of which order is the controlling order and has CEJ can be made within the UIFSA proceeding. If the court makes such a determination, or issues a new controlling order (if none of the other orders had CEJ) must state in its order the basis upon which it made its determination. *(See new rules effective January 3, 2011 which add some additional requirements when determining controlling order)*

When a determination of the controlling order is made by a court, the party obtaining the order must file a certified copy with each tribunal that issued or registered an earlier order of child support. Failure to do so is sanctionable, but does not affect the validity nor the ability to enforce of the controlling order.

To help determine the controlling order, see the chart on the next page.



QUESTIONS FOR THOUGHT

- A. Can an order from state “A” be registered for enforcement in state “B” if the obligee and child still are domiciled in state “A” and the obligor is domiciled in state “B”? Can it be registered for enforcement and modification?
- B. Can an order from state “A” be registered for enforcement in state “B” if the obligee and child still are domiciled in state “A” and the obligor is domiciled in state “C”? Can it be registered for enforcement and modification?
- C. Can an order from state “A” be registered for enforcement in state “B” if the obligee and child are domiciled in state “B” and the obligor is domiciled in state “C”? Can it be registered for enforcement and modification?
- D. Can an order from state “A” be registered for enforcement in state “C” if the obligee and child are domiciled in state “B” and the obligor is domiciled in state “C”? Can it be registered for enforcement and modification?
- E. If the order from state “A” is registered in state “C” for enforcement and modification while the obligee and child are domiciled in state “B,” and obligee and child subsequently move back to state “A”, does state “A” still have CEJ? Can it modify it’s original order?
- F. Can an order from state “A” be registered for enforcement and modification in state “B” if the obligee and child are domiciled in state “B” and the obligor is domiciled in state “C”?
- G. Can an order from state “A” be modified in state “C” if the obligee and child move to state “C” and the obligor is domiciled in state “C”? Must state “A” recognize and enforce the order should the obligor move back to state “A”? Can the obligor then have the order modified in state “A”?

