

# The Interstate Child UCCJEA & UIFSA

**Barry J. Brooks**  
Assistant Attorney General  
Child Support Division  
Office of the Attorney General of Texas  
P. O. Box 12027, Mail Code 590  
Austin, TX 78711-2027  
[512] 433-4678  
FAX [512] 433-4679  
[barry.brooks@oag.texas.gov](mailto:barry.brooks@oag.texas.gov)

## Table of Contents

	<u>Page</u>
Background.....	1
Part A - Basic Concepts	
A-1    Subject Matter Jurisdiction. ....	2
A-2    Status vs. Personal Jurisdiction. ....	3
A-3    ECJ/CEJ.....	4
Part B - The Process	
B-1    Courts, Tribunals and Private Attorneys. ....	6
B-2    Information Provided to the Tribunal.....	7
B-3    Choice of Law/Service of Process.....	9
B-4    Evidence Discovery, and Procedures.....	10
B-5    Communication Between Tribunals.....	12
B-6    Immunity.....	14
B-7    Emergency and Simultaneous Proceedings /“Clean Hands”.....	14
B-8    Inconvenient or Inappropriate Forum.....	18
B-9    Costs.....	19
Part C - Going Interstate	
C-1    Registration.....	20
C-2    Assuming Modification Jurisdiction.....	25
C-3    Enforcement.....	27
C-4    Agency Involvement.....	31
Part D - Unique Provisions	
D-1    UCCJEA - Expedited Processing.....	35
D-2    UCCJEA - Temporary Visitation.....	35
D-3    UIFSA - Multiple Orders.....	35
D-4    UIFSA - Minor as a Party.....	37
D-5    UIFSA - Defense of Nonparentage.....	37
Part E - Interjurisdictional applications	
E-1    Tribes.....	38
E-2    International.....	38

## The Interstate Child

(As used in this paper, “family” means one child, at least, and the parents of that child, regardless of the marital status of the parents.)

### Background

Historically, family law is a matter of state rather than federal law. However, for various reasons, people travel more. As a result, family law has to take on an interstate, and international component. The Uniform Law Commission (ULC) is tasked with drafting laws on various subjects that attempt to bring a uniformity across state lines.

With respect to family law, different states had adopted different approaches to issues related to custody and visitation, a.k.a. “parenting time”, that often resulted in conflicting resolutions. To seek harmony in this area, the ULC has promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Likewise, it also promulgated the Uniform Interstate Family Support Act (UIFSA) to govern issues related to family support. In doing so, the UIFSA was specifically written to stop the existing practice of creating multiple valid orders with differing support amounts that could be entered as an obligor moved around the country.

While each Act deals with a different family related issue, they share very common features. Often, there are virtually identical provisions although the placement within the act; although, within a certain section, it may vary.

UIFSA	UCCJEA
<ul style="list-style-type: none"> <li>• is the successor to the Uniform Reciprocal Enforcement of Support Act (URESA) &amp; the the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) which had been adopted by different states with differing versions</li> <li>• was originally “mandated “ for adoption by all states under the provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996</li> <li>• all states* must have enacted the version promulgated in 2008</li> <li>• is in harmony with the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A.1738B</li> </ul>	<ul style="list-style-type: none"> <li>• is the successor to the Uniform Child Custody Jurisdiction Act (UCCJA)</li> <li>• is not mandated for adoption</li> <li>• 45 states have adopted the UCCJEA with the others having some version of the UCCJA</li> <li>• is in harmony with the federal Full Faith and Credit Given to Child Custody Determinations more commonly known as the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. 1738A</li> </ul>

\* the “states” subject to the mandate are all 50 States plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands

The UCCJEA was approved by the then NCCUSL, now ULC, in 1997 and has been unchanged. The UIFSA has been more of a “work in progress”. Originally approved in 1992, it underwent revisions in 1996 primarily to accommodate the needs expressed by employers regarding the new ability to seek implementation of income withholding across state lines. The UIFSA was also revised in 2001 and 2008 with the main focus on the processing of international cases. The excerpts used in this paper are from the UIFSA 2008.

## **Part A - Basic Concepts**

### **A-1 Subject Matter Jurisdiction**

Both the UCCJEA and the UIFSA make clear exactly what aspects of the family dynamic are governed by which act. They do so using both inclusive and exclusive language. The most important feature of both acts is the specific exclusion of the subject matter covered by the other act. The UCCJEA also deliberately omits adoption proceedings and there are several Interstate Compacts that cover this issue.

One shared element that each act must deal with is the issue of parentage. Parentage may arise in the context of either getting a custody order or obtaining a support order. While parentage issues under the Uniform Parentage Act (UPA) are beyond the scope of this paper, the UPA is drafted to work in harmony with both the UCCJEA and the UIFSA.

While the primary focus of the UIFSA is upon child support, it is also the legal mechanism through which spousal support can be established, modified, and enforced.

<b>UCCJEA</b>	<b>UIFSA</b>
<p><b>SECTION 102. DEFINITIONS.</b> In this [Act]:</p> <p><b>(3)</b> “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.</p> <p><b>(4)</b> “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.</p> <p><b>SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW.</b> This [Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a</p>	<p><b>SECTION 102. DEFINITIONS.</b> In this act:</p> <p><b>(28)</b> “Support order” means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.</p> <p><b>SECTION 104. REMEDIES CUMULATIVE.</b></p> <p><b>(a)</b> Remedies provided by this act are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.</p> <p><b>(b)</b> This act does not:</p> <p><b>(1)</b> provide the exclusive method of establishing or enforcing a support order under the law of this state; or</p> <p><b>(2)</b> grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this</p>

child.	act.
--------	------

## **A-2 Status vs Personal Jurisdiction**

The most fundamental difference between the UCCJEA and the UIFSA is the approach to the “other” jurisdiction needed. In addition to the requisite subject matter jurisdiction, the UCCJEA requires a court have “status” jurisdiction vis-a-vis the child. This status jurisdiction is based on the location of the child and the significant connection the child has with the forum state. The ultimate determining factor is the “home state” of the child. The historical basis for the home state approach is that a state has an interest in the protection and use of “property” located in that state. While a state is empowered to make a custody determination without having personal jurisdiction over every individual, the UCCJEA recognizes that a binding effect can only be imposed on those who have been served or notified.

To impose a financial obligation upon an individual, the U. S. Constitution requires the forum to have “personal” jurisdiction over the obligor. However, the requirement for personal jurisdiction does not mean the obligor has to be currently residing in the forum state. The inquiry is whether the individual has taken some purposeful act which would create a reasonable expectation that the forum would have a justiciable interest in the action or the result of the action. In promulgating the UIFSA, the ULC set forth several bases that are intended to encompass all conduct that is legally sufficient for personal jurisdiction.

<b>UCCJEA</b>	<b>UIFSA</b>
<p><b>SECTION 102. DEFINITIONS.</b> In this [Act]:  <b>(7)</b> “Home State” means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.</p> <p><b>SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.</b>  <b>(a)</b> Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if:  <b>(1)</b> this State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;  <b>(2)</b> a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208,</p>	<p><b>SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.</b>  <b>(a)</b> In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual [or the individual’s guardian or conservator] if:  <b>(1)</b> the individual is personally served with [citation, summons, notice] within this State;  <b>(2)</b> the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;  <b>(3)</b> the individual resided with the child in this State;  <b>(4)</b> the individual resided in this state and provided prenatal expenses or support for the child;  <b>(5)</b> the child resides in this state as a result of the acts or directives of the individual;  <b>(6)</b> the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;  <b>(7)</b> [the individual asserted parentage of a child in the [putative father registry] maintained in this state by the [appropriate agency]; or  <b>(8)</b> there is any other basis consistent with the</p>

and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

#### **SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.**

A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) 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 are met, or, in the case of a foreign support order, unless the requirements of Section 615 are met.

#### **SECTION 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.

### **A-3 ECJ/CEJ**

The historical problem addressed by both the UCCJEA and the UIFSA was the practice of different courts or tribunals issuing different orders. The pervasive practice pre-UIFSA was for a state with current jurisdiction over an obligor to issue its own order setting a support amount even when there were previous orders in one or more states. The fundamental problem was that each of those orders was valid which resulted in the ultimate support obligation being a consolidation of the various amounts ordered, using the highest order in effect at the time. Often, the higher order was not the most recent order and not the order being actively enforced. The multiple order situation was confusing to both the obligor and obligee.

A similar problem existed when the current home state entered a custody or visitation order different from the order entered in a previous home state. A federal attempt using the Parental Kidnaping Prevention Act ( PKPA), 28 U.S.C.A. 1738A, had not resolved the problem.

Thus, both the UCCJEA and the UIFSA adopted a concept recognized in many states that there should be only one tribunal with the exclusive jurisdiction to modify the current

arrangement. The UIFSA uses the term “continuing, exclusive jurisdiction”; the UCCJEA uses “exclusive, continuing jurisdiction”. It should be noted that the exclusivity to modify does not preclude another forum from enforcing the existing order. Especially for support, nothing precludes several forums from taking simultaneous enforcement actions based upon the location of the obligor or an obligor’s asset. Of course, the enforcement actions must be coordinated in order to prevent double payment by the obligor or one action having some preclusive effect on the other action.

UCCJEA	UIFSA
<p><b>SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION.</b></p> <p>(a) Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:</p> <p>(1) a court of this State determines that neither the child, the child’s parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child’s care, protection, training, and personal relationships; or</p> <p>(2) a court of this State or a court of another State determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this State.</p> <p>(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.</p>	<p><b>SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.</b></p> <p>(a) A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:</p> <p>(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or</p> <p>(2) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order.</p> <p>(b) A tribunal of this state that has issued a child-support order consistent with the law of this State may not exercise continuing, exclusive jurisdiction to modify the order if;</p> <p>(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or</p> <p>(2) its order is not the controlling order.</p> <p>(c) If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that Act which modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.</p> <p>(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.</p> <p>(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the</p>

	<p>issuing tribunal.</p> <p><b>SECTION 206. CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT ORDER.</b></p> <p>(a) A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:</p> <p>(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or</p> <p>(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.</p> <p>(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.</p> <p><b>SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.</b></p> <p>(a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.</p> <p>(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another State having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.</p> <p>(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:</p> <p>(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or</p> <p>(2) a responding tribunal to enforce or modify its own spousal-support order.</p>
--	--

**Part B - The Process**

**B-1 Courts, Tribunals, and Private Attorneys**

The task of the ULC is to draft uniform Acts for general use and applicability. It is certainly anticipated these will be used by private practitioners. However, in drafting the UIFSA, the ULC was acutely aware of the role the state-based child support agencies (a.k.a. IV-D agencies, based on the section of the Social Security Act that created them) play in the establishment, modification, and enforcement of child support obligations. To seek harmony between the way these agencies operate and the legal structure imposed by the UIFSA, the Drafting Committee invited numerous Observers to participate.



One of the early issues identified is the fact that many states operate their child support programs using an administrative or quasi-judicial process. As a result, the UIFSA uses the term “tribunal” to describe the entity with the authority to handle support issues. Each state designates its particular tribunal. Some states have designated courts for some functions and administrative agencies for others.

Another area the drafters of the UIFSA were sensitive to was a possible perception that the Act could only be used by the child support agencies. To allay any concerns, the UIFSA contains a specific provision regarding private counsel representation.

As a general matter, the Title IV-D child support agencies are precluded from active involvement in child custody matters; however, local Domestic Relations Offices may offer these services. Due to the absence of most IV-D issues, the UCCJA contains neither the tribunal concept nor any specific language about private counsel involvement. The term “tribunal” will be used to include courts unless there is a need for a distinction.

UCCJEA	UIFSA
<p><b>SECTION 102. DEFINITIONS.</b> In this act:  <b>(6)</b> “Court” means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.</p>	<p><b>SECTION 102. DEFINITIONS.</b> In this act:  <b>(29)</b> “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.</p> <p><b>SECTION 103. TRIBUNAL OF STATE.</b>  <b>(a)</b> The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this state.  <b>(b)</b> The [public official, governmental entity, or private agency] [is] [are] the support enforcement [agency] [agencies] of this state.</p> <p><b>SECTION 309. PRIVATE COUNSEL.</b> An individual may employ private counsel to represent the individual in proceedings authorized by this act.</p>

**B-2 Information Provided to the Tribunal**

Both the UCCJEA and the UIFSA recognize they are inheriting a world in which some information must be shared and other information protected. Both acts also recognize they became effective in a world that had created multiple orders dealing with the same rights and duties. As a result, the UCCJEA requires the existence of other orders or other proceedings involving the child be revealed in the initial pleading. The court can then decide if it is appropriate for it to assert any jurisdiction.

The UIFSA dynamic regarding multiple orders contemplates the registration process will be utilized. [see C-1] In the UIFSA 96, a strict reading might lead to the conclusion that submission of all existing orders to the tribunal was duplicated by having them included both at the time of registration and when a pleading was filed, which could be simultaneously. The UIFSA 2008 revises this to provide a “fall back” requirement to include copies of multiple orders only if they have not been tendered as part of the registration process.

With respect to nondisclosure of identifying information to protect a person from potential harm or abuse, the UIFSA 96 adopted a process that was soon seen to be unworkable. Ostensibly, the party seeking protection had to pursue getting an order for nondisclosure in that person's state. In the UIFSA 2008, the drafters adopted the process already in the UCCJEA, i.e. based upon a sworn affidavit or pleading filed in the state ruling on the custody or support issues, the tribunal would order the information not be disclosed unless the other party demonstrates a need for disclosure.

UCCJEA	UIFSA
<p><b>SECTION 209. INFORMATION TO BE SUBMITTED TO COURT.</b></p> <p>(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:</p> <p>(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;</p> <p>(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and</p> <p>(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.</p> <p>(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.</p> <p>(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.</p> <p>(d) Each party has a continuing duty to inform</p>	<p><b>SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.</b></p> <p>(a) In a proceeding under this [Act], a [petitioner] seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of another state or a foreign country must file a [petition]. Unless otherwise ordered under Section 312, the [petition] or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the [petition] must be accompanied by a copy of any support order known to have been issued by another tribunal. The [petition] may include any other information that may assist in locating or identifying the [respondent].</p> <p>(b) The [petition] must specify the relief sought. The [petition] and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.</p> <p><b>SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.</b></p> <p>If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific 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.</p>

<p>the court of any proceeding in this or any other State that could affect the current proceeding.</p> <p>[(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]</p>	
---	--

**B-3 Choice of Law/Service of Process**

Section 201(c) of the UCCJEA states that personal jurisdiction over a particular person is not necessary in order to enter a child custody determination. To effectuate this concept, the UCCJEA links when notice or joinder are required, and the effects of failure to join or notify, to the laws and procedures applicable to intrastate cases. However, it recognizes that an order entered without notice may not be enforceable against the person who did not receive the notice. For the initial establishment of an order under § 205, the UCCJEA provides that the method of service can be in accordance with the law of the forum or the location of the nonresident person. For enforcement of any custody determination, service must be in accordance with the law of the enforcing state. § 309.

Needing to have all affected parties properly noticed, the UIFSA specifies simply that the law of the forum state applies to all aspects. To obtain valid service, it must be accomplished in compliance with the forum’s law. With respect to the establishment of the initial order or the modification of the tribunal’s own order, § 303 states the law of the forum will apply, but with exceptions. Those exceptions involve the modification or enforcement of another state’s order.

When enforcing another state’s order, basic choice of law concepts distinguish between the law applicable to substantive issues versus the law applicable to procedural aspects. Section 604 of the UIFSA sets out in detail the resolution. One interesting choice is that the statute of limitations of the order issuing forum or order enforcing forum, whichever is longer, applies. Clearly, the most vexing problem, particularly for the IV-D agencies, is interest. The collection of interest is a matter of substantive law; thus, linked to the law of the order issuing forum. When pursuing enforcement in another jurisdiction, the calculation can be problematic. The issue is compounded when there are multiple orders contributing portions to the consolidated arrears and is exacerbated when one jurisdiction modifies the order of another jurisdiction. To give some clarity, the UIFSA 2008 provides that the law of the forum whose order will govern prospective support should apply to the interest to be applied not only on missed payments in the future but also to the arrears.

UCCJEA	UIFSA
<p><b>SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER.</b></p> <p>(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section</p>	<p><b>SECTION 303. APPLICATION OF LAW OF STATE.</b></p> <p>Except as otherwise provided in this act, a responding tribunal of this state shall:</p> <p>(1) apply the procedural and substantive law</p>

108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This [Act] does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State.

**SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.**

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

**SECTION 309. SERVICE OF PETITION AND ORDER.** Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

**SECTION 604. CHOICE OF LAW.**

(a) Except as otherwise provided in subsection (d), the law of the issuing state or foreign country 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; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or foreign country registered in this state.

(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 or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

**B-4 Evidence, Discovery, and Procedure**

Some of the more significant provisions of both the UCCJEA and UIFSA are those that provide for use of technology in conducting hearings with parties and witnesses in places other than the hearing room.

Both Acts permit telephonic testimony and participation. However, there is a significant difference regarding the compulsion to appear. The UCCJEA makes specific provisions that enable a court to compel the appearance of a party with or without the child. This is appropriate since the matter to be resolved involves custody of the particular child and having the physical presence of the parent with physical possession of the child at the hearing may increase the ability to actually enforce the determination.

The UIFSA, especially in the 2008 version, takes the opposite approach in stating that physical presence is not required and telephonic testimony shall be used. Note that the language in the UIFSA should not be taken to mean physical presence is not required when the remedy sought requires it, i.e. when contempt is sought, the physical presence of the person who is the potential contemnor is compelled to avoid a *capias* or arrest warrant being issued.

Recognizing the interstate aspects of the issues involved, both acts allow the admission of documents and records without the requirement for production of the original. As use of technology and the internet increases, especially in child support cases, these Acts seek to make both custody and support proceedings as “user friendly” as possible while still assuring the due process and other rights of all parties.

Both Acts abolish any privilege or immunity deriving from the family relationship and the assertion of the right against self- incrimination can result in a negative inference.

The UIFSA contains a rather unique provision regarding the use of “standard forms”. Because of the substantial involvement of IV-D agencies in processing interstate support cases, the federal Office of Child Support Enforcement (OCSE) was authorized to promulgate forms that are routinely used. These include a General Testimony and Declaration in Support of Establishing Parentage. They serve the purpose of providing evidence in the absence of the nonresident party. There is nothing in the UIFSA that prohibits use by private practitioners and the forms are readily available from the OCSE website.

UCCJEA	UIFSA
<p><b>SECTION 111. TAKING TESTIMONY IN ANOTHER STATE.</b></p> <p>(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken.</p> <p>(b) A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony.</p> <p>(c) Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.</p>	<p><b>SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.</b></p> <p>(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.</p> <p>(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.</p> <p>(c) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.</p> <p>(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least [10] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.</p> <p>(e) Documentary evidence transmitted from outside this state to a tribunal of this state by</p>

**SECTION 210. APPEARANCE OF PARTIES AND CHILD.**

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

**SECTION 310. HEARING AND ORDER.**

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article].

telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this act, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this act.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this act.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

**SECTION 210. APPLICATION OF ACT TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION.**

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this act, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to Section 316, communicate with a tribunal outside this state pursuant to Section 317, and obtain discovery through a tribunal outside this state pursuant to Section 318. In all other respects, Articles 3 through 6 do not apply and the tribunal shall apply the procedural and substantive law of this state.

**B-5 Communication between tribunals**

To have a legal structure that is designed for situations where not all parties reside in the same state, it is critical that tribunals in different states be able to communicate and assist each other. This is particularly true in custody and visitation disputes. Thus, in many situations under the UCCJEA, communication and co-ordination is required: § 204 - Temporary Emergency Jurisdiction, § 206 - Simultaneous Proceedings, and § 307 - Simultaneous Proceedings [see B-7].

Both acts go beyond basic communication and empower courts in one state to assist courts in other states with obtaining evidence. The UCCJEA contemplates another court can conduct hearings and order evaluations even when it is not the forum where the issues will be resolved.

UCCJEA	UIFSA
<p><b>SECTION 110. COMMUNICATION BETWEEN COURTS.</b></p> <p>(a) A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act].</p> <p>(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.</p> <p>(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.</p> <p>(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.</p> <p>(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p><b>SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.</b></p> <p>(a) A court of this State may request the appropriate court of another State to:</p> <ol style="list-style-type: none"> <li>(1) hold an evidentiary hearing;</li> <li>(2) order a person to produce or give evidence pursuant to procedures of that State;</li> <li>(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;</li> <li>(4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and</li> <li>(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.</li> </ol> <p>(b) Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a).</p> <p>...</p> <p>(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with</p>	<p><b>SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS.</b> A tribunal of this state may communicate with a tribunal outside this state in a record, or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.</p> <p><b>SECTION 318. ASSISTANCE WITH DISCOVERY.</b></p> <p>A tribunal of this State may:</p> <ol style="list-style-type: none"> <li>(1) request a tribunal of another State to assist in obtaining discovery; and</li> <li>(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another State.</li> </ol>

<p>respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of those records.</p>	
--	--

**B-6 Immunity**

Both Acts recognize the interplay of support and custody/visitation issues. All too frequently, one issue may be raised as a “defense” to the other. The UIFSA specifically states that custody and visitation issues should not be “linked” with the duty to pay support. Certainly, when one tribunal has both ECJ under the UCCJEA and CEJ under the UIFSA, it will be one place where both issues can be appropriately raised. The concern is when a tribunal without the required subject matter jurisdiction tries to enter an order that is void. The drafters of the UIFSA were particularly concerned about the potential to “ambush” the party exercising a visitation right by filing a motion to modify support.

In addition to the substantive restrictions on where an existing order can be modified, both acts provide a procedural “shield” so that a participant in a court action under that act is immune from most other civil process.

UCCJEA	UIFSA
<p><b>SECTION 109. APPEARANCE AND LIMITED IMMUNITY.</b>  <b>(a)</b> A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.  <b>(b)</b> A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State.  <b>(c)</b> The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.</p>	<p><b>SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.</b>  ...  <b>(d)</b> A responding tribunal of this state may not condition the payment of a support order issued under this act upon compliance by a party with provisions for visitation.</p> <p><b>SECTION 314. LIMITED IMMUNITY OF [PETITIONER].</b>  <b>(a)</b> Participation by a [petitioner] in a proceeding under this act before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the [petitioner] in another proceeding.  <b>(b)</b> A [petitioner] is not amenable to service of civil process while physically present in this state to participate in a proceeding under this act.  <b>(c)</b> The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this act committed by a party while physically present in this State to participate in the proceeding.</p>

**B-7 Emergency and Simultaneous Proceedings/ “Clean Hands”**

The paramount concern of both acts is to make determinations that are in the best interest of the children involved. While it is certainly important to provide for the support of a child (or



spouse in appropriate situations), it is more important to provide the child with a safe and stable physical environment. The UCCJA provides a structure that enables a court to enter temporary emergency orders when needed while acting consistently with the concept that there is to be one court with exclusive, continuing jurisdiction. The UIFSA has no such compelling need for a second tribunal to enter a temporary emergency support order.

Given the emotional subject matter combined with the interstate aspect, a “race to the courthouse” is a very real possibility under both the UCCJA and the UIFSA. The resolutions taken by each act are slightly different. Under the UCCJEA, the simultaneous proceeding issue should most often be moot as there will be only one “home state” at a time. Modifications are completely finessed by the ECJ concept. If there is no home state, no court with ECJ and both courts are in states with a “significant connection”; then, the first court to have the proceeding commenced is the “winner”.

The UIFSA resolution takes a couple of additional steps. When a pleading is filed in the first state, the second pleading must be filed in the second state within the time allowed for a responsive pleading challenging the jurisdiction of the first state and an timely challenge must be made to the original filing. At that point, if the matter is purely one of subject matter or personal jurisdiction, it should be able to be resolved based upon prevailing law. More commonly, both states may have the requisite subject matter and personal jurisdiction. In those situations, the “home state” of the child will be the “winner”. It should be noted that this one time use of the “home state” concept in the UIFSA is based upon the same definition of “home state” which appears in and is used throughout the UCCJEA. The UIFSA section is also limited to only establishment actions in recognition that the CEJ concept precludes simultaneous filings for modification.

In resolving both the potential need for temporary emergency orders and well as which court prevails when simultaneous proceedings are filed, the UCCJEA imposes the requirement that the person seeking the relief not have engaged in “unjustifiable conduct” (more often described as “having clean hands”). This same doctrine is applicable when resolving the Inconvenient Forum issue discussed in B-8. Such a person is also potentially subject to extensive costs and other remedies. [see B-9] There is no comparable provision in the UIFSA.

As mentioned in B-5, there is also the requirement under the UCCJEA that a court being asked to issue an emergency order or that becomes aware of simultaneous proceedings is to communicate with other appropriate courts to make the appropriate resolution. There is no comparable requirement for tribunal communication under the UIFSA; however, there is also no prohibition. Ostensibly, the timing of the UIFSA related pleadings filed in the other state can be used to resolve the issue. Nevertheless, the tribunals in an action under the UIFSA may want to communicate to assure the support issue is timely resolved by some tribunal.

UCCJEA	UIFSA
<p><b>SECTION 204. TEMPORARY EMERGENCY JURISDICTION.</b>  <b>(a)</b> A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with</p>	<p><b>SECTION 204. SIMULTANEOUS PROCEEDINGS.</b>  <b>(a)</b> 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 or foreign country only if:  <b>(1)</b> the [petition] or comparable pleading in this</p>

mistreatment or abuse.

**(b)** If there is no previous child-custody determination that is entitled to be enforced under this [Act] and a child-custody proceeding has not been commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this State becomes the home State of the child.

**(c)** If there is a previous child-custody determination that is entitled to be enforced under this [Act], or a child-custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under Sections 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.

**(d)** A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another State under a statute similar to this section shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

#### **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

**(a)** Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been

state is filed before the expiration of the time allowed in the other state or foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or foreign country;

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

**(3)** if relevant, this state is the home state of the child.

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

**(1)** the [petition] or comparable pleading in the other state or foreign country 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 or foreign country is the home state of the child.

commenced in a court of another State having jurisdiction substantially in conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

**(b)** Except as otherwise provided in Section 204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another State having jurisdiction substantially in accordance with this [Act], the court of this State shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this [Act] does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

**(c)** In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

**(1)** stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying, denying, or dismissing the proceeding for enforcement;

**(2)** enjoin the parties from continuing with the proceeding for enforcement; or

**(3)** proceed with the modification under conditions it considers appropriate.

**SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.**

**(a)** Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

**(1)** the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

**(2)** a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; or

**(3)** no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203.

**(b)** If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may

<p>fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.</p> <p>...</p>	
--	--

**B-8 Inconvenient or Inappropriate Forum**

The UCCJEA has several sections that establish when it is appropriate for a court to exercise its jurisdiction. As discussed in B-7, resolution of the issue can also be affected by the “clean hands” of a person seeking relief. Even if it is determined that the court is an appropriate forum and there is no compelling basis to refuse to assert jurisdiction, the court may still decline jurisdiction. While specific factors to consider are enumerated, the abiding concern is to have the matter resolved in a forum with the best ability to obtain the information necessary while also considering the relative impact on the participants. One interesting consideration is (b)(5) with allows the parties to agree on a preferred jurisdiction. There appears to be no time limit such that the agreement could be made prior to the litigation.

The UIFSA makes no provision for an inconvenient forum. Presumably, the general concept of *forum non conveniens* would be applicable. What the UIFSA does provide is for one tribunal to forward documents to another tribunal when appropriate. This provision recognizes the difficulty often faced by an obligee in trying to obtain a support remedy against a person who will frequently move to intentionally avoid the process.

UCCJEA	UIFSA
<p><b>SECTION 207. INCONVENIENT FORUM.</b></p> <p>(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.</p> <p>(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:</p> <ul style="list-style-type: none"> <li>(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;</li> <li>(2) the length of time the child has resided outside this State;</li> <li>(3) the distance between the court in this State and the court in the State that would assume jurisdiction;</li> <li>(4) the relative financial circumstances of the</li> </ul>	<p><b>SECTION 306. INAPPROPRIATE TRIBUNAL.</b></p> <p>If a [petition] or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another s state and notify the [petitioner] where and when the pleading was sent.</p>

<p>parties;</p> <p>(5) any agreement of the parties as to which State should assume jurisdiction;</p> <p>(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;</p> <p>(7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and</p> <p>(8) the familiarity of the court of each State with the facts and issues in the pending litigation.</p> <p>(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.</p> <p>(d) A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.</p>	
---	--

**B-9 Costs**

It has been a requirement for interstate support cases since the promulgation of URESA in 1950 that there be no filing fee assessed. Under URESA and RURESAs, the provision specifically applied to fees assessed against an obligee. Recognizing that obligors may also utilize the UIFSA, it provides for no filing fees from the petitioner. While usually considered in the context of a nonresident party seeking relief, the section could be read as applying when a resident files the petition seeking relief against a nonresident. When it comes to enforcement under the UIFSA, it allows costs to be assessed against the obligor if the obligee prevails with no corresponding assessment if the obligor prevails.

The UCCJEA has the more balanced approach. Although stated in different ways, the UCCJEA provides that the “winner” recover costs from the “loser”.

Neither act can serve as the legal basis for imposition of costs against a state agency involved in the case although other state law’s may allow for the assessment.

UCCJEA	UIFSA
<p><b>SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.</b></p> <p>(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.</p> <p><b>SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.</b></p> <p>(c) If a court dismisses a petition or stays a</p>	<p><b>SECTION 313. COSTS AND FEES.</b></p> <p>(a) The [petitioner] may not be required to pay a filing fee or other costs.</p> <p>(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney’s fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the</p>

proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this [Act].

### **Article 3 - Enforcement**

#### **SECTION 310. HEARING AND ORDER.**

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

#### **SECTION 312. COSTS, FEES, AND EXPENSES.**

(a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act].

#### **SECTION 317. COSTS AND EXPENSES.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316.  
317

support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

## **Part C - Going Interstate**

### **C-1 Registration**

When an action is taken regarding an order issued by a tribunal in one state, a procedure is needed to bring the order to the attention of the tribunal in another state. Classically, the taking

of judicial notice under the second state’s Rules of Evidence is the process. However, both the UCCJEA and the UIFSA established a “registration” process. Except for some difference in the information to be contained in the respective documents, the procedures for registration are basically the same:

- A. The proponent of the order requests the Clerk of the appropriate court or tribunal issue a Notice of Registration
- B. The Notice of Registration asserts the validity of the order (and includes a calculation of arrears under the UIFSA) and puts the nonregistering party on notice that the nonregistering party must contest the assertions regarding the validity of the order (and the arrears)
- C. Failure of the nonregistering party to contest results in confirmation of the validity of the order (and the arrears) by operation of law.
- D. If contested, there are limited defenses.

The major change wrought by the Registration process is a shifting of the burden to obtain confirmation of the order (and arrears).

The Registration process is made explicit in the UIFSA for either enforcement or modification actions. While explicit only for enforcement under the UCCJEA, it should be considered a viable procedure regarding modifications as well.

Actions for support can often involve the enforcement of several orders issued by different tribunals over time. The procedure for this in the UIFSA 96 was an implicit registration of each order. Under the UIFSA 2001, only the alleged “controlling” order for prospective support is actually registered along with an assertion of the consolidated arrears. Failure to contest either the controlling order assertion or the consolidated arrears amount results in confirmation by operation of law. For a greater discussion of the multiple order issues, see D-3.

UCCJEA	UIFSA
<p><b>SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.</b></p> <p>(a) A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:</p> <ul style="list-style-type: none"> <li>(1) a letter or other document requesting registration;</li> <li>(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and</li> <li>(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.</li> </ul> <p>(b) On receipt of the documents required by subsection (a), the registering court shall:</p> <ul style="list-style-type: none"> <li>(1) cause the determination to be filed as a</li> </ul>	<p><b>SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.</b></p> <p>A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.</p> <p><b>SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.</b></p> <p>(a) Except as otherwise provided in Section 706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the [appropriate tribunal] in this state:</p> <ul style="list-style-type: none"> <li>(1) a letter of transmittal to the tribunal requesting registration and enforcement;</li> <li>(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;</li> <li>(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;</li> <li>(4) the name of the obligor and, if known:</li> </ul>

foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under [Article] 2;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) 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.

### **SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.**

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2, a registered child-

(A) the obligor's address and social security number;

(B) the name and address of the obligor's employer and any other source of income of the obligor; and

(C) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in Section 312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

### **SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.**

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this State.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this act, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.



custody determination of a court of another State

**SECTION 605. NOTICE OF REGISTRATION OF ORDER.**

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within [20] days after notice unless the registered order is under Section 707;

(3) 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

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must 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) 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 may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or registering tribunal shall notify the obligor's employer pursuant to [the income-withholding law of this State].

**SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED SUPPORT ORDER.**

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within the time required by Section 605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 607).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT.**

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(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 statute of limitation under Section 604 precludes enforcement of some or all of the alleged arrearages; or

(8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

**SECTION 608. CONFIRMED ORDER.**

Confirmation of a registered support 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.

**SECTION 609. PROCEDURE TO REGISTER**

	<p><b>CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION.</b></p> <p>A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this state in the same manner provided in Sections 601 through 608 if the order has not been registered. A [petition] for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.</p> <p><b>SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION.</b></p> <p>A tribunal of this state may enforce a child-support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 611 or 613 have been met.</p>
--	--

**C-2 Assuming Modification Jurisdiction**

Both the ECJ and CEJ concepts have the **exclusive** jurisdiction to **modify** remain with the issuing state so long as one of the parties (parent per UCCJEA; obligor/obligee per UIFSA) or the child continues to reside in the order issuing state. However, since both acts are focused upon situations where not all family members reside in the same state, provisions are made for the assumption (“transfer”) of jurisdiction to modify.

Under general “transfer” provisions, transfer is sought by returning to the original tribunal for an order transferring the case from that tribunal to another tribunal. The UCCJEA retains this return to the original court approach in the situation where either all family members have left the state or not all members have left but there is a “more convenient” forum. UIFSA does not vest the original tribunal with the ability to transfer the case to a tribunal in another state based on the “more convenient” concept.

The major change to “moving” jurisdiction in both the UCCJEA and the UIFSA is when all family members have left the original order issuing state. The tribunal where one on the parties resides is empowered, under certain circumstances, to “assume” jurisdiction. Under the UCCJEA, the assumption would be most often by a court in the child’s “home state”. Under the UIFSA, the party seeking the support modification has to have modification jurisdiction assumed by the tribunal where the other party resides. When all parties have left the original jurisdiction and the assumption action is taken by the tribunal in the successor jurisdiction, the “losing” tribunal has no authority to stop the assumption.

There is one significant change to the movement of jurisdiction that has occurred under the UIFSA. The general principle is that subject matter jurisdiction can not be conferred upon a tribunal by agreement. The original version of the UIFSA created an exception by allowing the parties to agree for the jurisdiction where the child currently resides or that has personal jurisdiction over one of the parties to assume CEJ even though someone remained in the original order issuing state. This “choice of forum” capability was expanded by UIFSA 2008 to

allow the parties to agree the issuing forum retains jurisdiction even when all parties have left that state. See § 205(a)(2) in A-3.

It was also recognized that the parties may have all left the order issuing state and one resides in another state while the other resides in another country. The UIFSA provides in that situation that the state that issued the order retains the jurisdiction to modify it. It may be possible that both parties can agree to have the state where the one party resides assume the jurisdiction.

Upon assuming jurisdiction to modify, there is an important limitation under the UIFSA to the tribunal's powers. The assuming tribunal is to apply its support guidelines in determining the amount of prospective support. However, the tribunal is not empowered to modify the duration of the support obligation.

UCCJEA	UIFSA
<p><b>SECTION 102. DEFINITIONS.</b> In this [Act]:  <b>(11)</b> "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.</p> <p><b>SECTION 203. JURISDICTION TO MODIFY DETERMINATION.</b>            Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:  <b>(1)</b> the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or  <b>(2)</b> a court of this State or a court of the other State determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other State.</p>	<p><b>SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.</b>  <b>(a)</b> If Section 613 does not apply, upon [petition] a tribunal of this state may modify a child-support order issued in another State which is registered in this state if, after notice and hearing the tribunal finds that:  <b>(1)</b> the following requirements are met:  <b>(A)</b> neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing State;  <b>(B)</b> a [petitioner] who is a nonresident of this state seeks modification; and  <b>(C)</b> the [respondent] is subject to the personal jurisdiction of the tribunal of this state; or  <b>(2)</b> this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.  <b>(b)</b> Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.  <b>(c)</b> 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. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section 207 establishes the aspects of the support order which are nonmodifiable.  <b>(d)</b> In a proceeding to modify a child-support order, the law of the state that is determined to</p>

	<p>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.</p> <p>(e) On the issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.</p> <p>(f) Notwithstanding subsections (a) through (e) and Section 201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:</p> <ul style="list-style-type: none"> <li>(1) one party resides in another state; and</li> <li>(2) the other party resides outside the United States.</li> </ul> <p><b>SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.</b></p> <p>(a) 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.</p> <p>(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.</p>
--	---

**C-3 Enforcement**

With respect to enforcing an existing order, the differences between the UCCJEA and the UIFSA are based on the ultimate goal of each. When custody or visitation issues are involved, the focus of the court is getting the child into the appropriate physical possession. Thus, the emphasis for the UCCJEA is orders granting possession with the ability to issue warrants to take physical custody of the child. To prevent a person who is in wrongful possession of the child from getting a favorable, "home town" order, courts in one state are to give full faith and credit to enforcement orders entered by another state. In appropriate circumstances, the enforcing court does have the ability to enter emergency orders. See B-7.

The enforcement objective under the UIFSA is for the obligor to pay the current and back support owed. To effectuate that goal, the tribunal is given a panoply of remedies. In situations where the obligor is charged with criminal non-support, the governor of the charging state can seek the extradition of the obligor from the state where the obligor currently resides.

UCCJEA	UIFSA
<p><b>SECTION 303. DUTY TO ENFORCE.</b>  <b>(a)</b> A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].  <b>(b)</b> A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.</p> <p><b>SECTION 307. SIMULTANEOUS PROCEEDINGS.</b> If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.</p> <p><b>SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.</b>  <b>(a)</b> A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.  <b>(b)</b> A petition for enforcement of a child-custody determination must state:  <b>(1)</b> whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;  <b>(2)</b> whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] and, if so, identify the court, the case number, and the nature of the proceeding;  <b>(3)</b> whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination</p>	<p><b>SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.</b>  <b>(a)</b> When a responding tribunal of this state receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(b), it shall cause the [petition] or pleading to be filed and notify the [petitioner] where and when it was filed.  <b>(b)</b> A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:  <b>(1)</b> establish or enforce a support order, modify a child-support order, determine the controlling child-support order, or determine parentage of a child;  <b>(2)</b> order an obligor to comply with a support order, specifying the amount and the manner of compliance;  <b>(3)</b> order income withholding;  <b>(4)</b> determine the amount of any arrearages, and specify a method of payment;  <b>(5)</b> enforce orders by civil or criminal contempt, or both;  <b>(6)</b> set aside property for satisfaction of the support order;  <b>(7)</b> place liens and order execution on the obligor's property;  <b>(8)</b> order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;  <b>(9)</b> issue a [bench warrant; capias] for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local and state computer systems for criminal warrants;  <b>(10)</b> order the obligor to seek appropriate employment by specified methods;  <b>(11)</b> award reasonable attorney's fees and other fees and costs; and  <b>(12)</b> grant any other available remedy.  <b>(c)</b> A responding tribunal of this state shall include in a support order issued under this act, or in the documents accompanying the order, the calculations on which the support order is based.  ...  <b>(e)</b> If a responding tribunal of this state issues an order under this act, the tribunal shall send a copy of the order to the [petitioner] and the [respondent] and to the initiating tribunal, if any.  <b>(f)</b> If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal</p>

of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

#### **SECTION 310. HEARING AND ORDER.**

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate

of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

#### **SECTION 801. GROUNDS FOR RENDITION.**

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this act.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

#### **SECTION 802. CONDITIONS OF RENDITION.**

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least [60] days previously the obligee had initiated proceedings for support pursuant to this act or that the proceeding would be of no avail.

(b) If, under this act or a law substantially similar to this act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the [petitioner] prevails and the individual whose rendition is demanded is subject

physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

...

**SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the

to a support order, the governor may decline to honor the demand if the individual is complying with the support order



child is taken into physical custody.

**(e)** A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

**(f)** The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

**SECTION 313. RECOGNITION AND ENFORCEMENT.**

A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

**C-4 Agency Involvement**

The drafters of both acts recognized a major impediment to processing interstate cases is the inability of the nonresident person to obtain legal services in the state where an action needs to be taken. Thus, both Acts build upon common structures in each state for obtaining necessary services.

Under the UCCJEA, agency involvement does not occur until an order is being enforced. At that point, a local prosecutor or some other public official is permitted (“may”) to assist in the enforcement of the order. And, as expected, law enforcement personnel in the enforcing state may be called upon for assistance.

The UIFSA inherits the IV-D agency structure. Pursuant to federal regulations, each state has a “state information agency”, often referred to as the “central registry”. Compatible with these regulations, the UIFSA empowers this information agency to provide information and receive and process documents. It then applies the same duties in an interstate case to the “support enforcement agency” that provides services in intrastate cases. Lastly, it designates a public official to oversee and assure both the state information agency and state enforcement agency perform their respective duties and functions.

With the ratification and implementation of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, an issue arose as to whether person residing in a country that had adopted the Convention was compelled to use the support agency in that country that was created by the Convention. There was concern that some country might adopt the Convention and not provide a viable agency process. The converse issue was to provide an incentive for a country to adopt the Convention. The issue was

resolved by giving each state the option in § 307 whether to except “direct applications” from a person residing in a Convention country.

Another issue that has raised concerns, particularly in the IV-D community, is the legal relationship between attorneys employed by the IV-D agency and the individual who is being provided services. Most often, the attorneys may be providing services to someone they have never met. Like prosecutors, the IV-D agency attorneys are employed by their respective agency and sometimes the agency may have a position different from that of the person receiving services. Acknowledging the situation, both the UCCJEA and the UIFSA specifically provide that agency or government attorneys do not have an attorney-client relationship with the person receiving services under either Act.

Because of the availability of numerous support enforcement remedies that are automated (lottery, unemployment benefits, and tax intercepts; passport denial), the support enforcement agencies are empowered to begin these actions without the necessity of registering another state’s order. It is only when the enforcement action is contested that registration is necessary. In many instances, the contest can even be resolved without the necessity for registration.

UCCJEA	UIFSA
<p><b>SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL].</b>  <b>(a)</b> In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:</p> <ol style="list-style-type: none"> <li><b>(1)</b> an existing child-custody determination;</li> <li><b>(2)</b> a request to do so from a court in a pending child-custody proceeding;</li> <li><b>(3)</b> a reasonable belief that a criminal statute has been violated; or</li> <li><b>(4)</b> a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.</li> </ol> <p><b>(b)</b> A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.</p> <p><b>SECTION 316. ROLE OF [LAW ENFORCEMENT].</b>            At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.</p>	<p><b>SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.</b></p> <p style="text-align: center;"><b>Alternative A</b></p> <p><b>(a)</b> A support enforcement agency of this state, upon request, shall provide services to a [petitioner] in a proceeding under this act.</p> <p style="text-align: center;"><b>Alternative B</b></p> <p><b>(a)</b> In a proceeding under this [act], a support enforcement agency of this state, upon request:</p> <ol style="list-style-type: none"> <li><b>(1)</b> shall provide services to a [petitioner] residing in a state;</li> <li><b>(2)</b> shall provide services to a [petitioner] requesting services through a central authority of a foreign country as described in Section 102(5)(A) or (D); and</li> <li><b>(3)</b> may provide services to a [petitioner] who is an individual not residing in a state.</li> </ol> <p style="text-align: center;"><b>End of Alternatives</b></p> <p><b>(b)</b> A support enforcement agency of this state that is providing services to the [petitioner] shall:</p> <ol style="list-style-type: none"> <li><b>(1)</b> take all steps necessary to enable an appropriate tribunal to obtain jurisdiction over the [respondent];</li> <li><b>(2)</b> request an appropriate tribunal to set a date, time, and place for a hearing;</li> <li><b>(3)</b> make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;</li> <li><b>(4)</b> within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the [petitioner];</li> </ol>

(5) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication in a record from the [respondent] or the [respondent's] attorney, send a copy of the communication to the [petitioner]; and

(6) notify the [petitioner] if jurisdiction over the [respondent] cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall [issue or] request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to Section 319.

(f) This act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

**SECTION 308. DUTY OF [ STATE OFFICIAL OR AGENCY].**

(a) If the [appropriate state official or agency] determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the [state official or agency] may order the agency to perform its duties under this [Act] or may provide those services directly to the individual.

(b) The [appropriate state official or agency] may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

**SECTION 310. DUTIES OF [STATE**

**INFORMATION AGENCY].**

(a) The [Attorney General's Office, State Attorney's Office, State Central Registry or other information agency] is the state information agency under this act.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the [county] in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this act received from another state or foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

**SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.**

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this act.

## **Part D - Unique Provisions**

From the analyses above, it can be seen that the UCCJEA and UIFSA share many common concepts and processes. However, there are certain aspects of each act that have no counterpart.

### **D-1 UCCJEA - Expedited Processing**

Certainly mindful of due process considerations, the goal of the UCCJEA is to resolve custody and visitation disputes so the child is residing with the proper party as quickly as possible. Thus, determining whether a court is initially empowered to act is to be resolved expeditiously. Likewise, appeals are to be expedited to obtain finality.

#### **UCCJEA**

**SECTION 107. PRIORITY.** If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

**SECTION 314. APPEALS.** An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

### **D-2 Temporary Visitation**

The primary focus of the UCCJEA is resolution of custody issues. Nevertheless, being able to exercise visitation is an important right as well. If the custody order has a specific visitation schedule, it can, and should, be enforced. If visitation is authorized in the custody order but the details are not specified, an enforcing court can enter a temporary visitation order while a specific order is sought in the court with ECJ.

#### **UCCJEA**

##### **SECTION 304. TEMPORARY VISITATION.**

(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another State; or
- (2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.

### **D-3 UIFSA - Multiple Orders**

One of the major challenges facing the drafters of the UIFSA was dealing with the multiple support orders that were created under URESA and RURESAs. Based on a series of cases holding an order for support could always be modified as circumstances changed, an existing

order was not entitled to full faith and credit. Assuming the issuing court had subject matter and personal jurisdiction, it could enter an order that set a different amount of support as well as a different duration.

The task under the UIFSA became to set out a process to make one of the existing multiple orders be the “controlling” order. The resolution is founded upon what state is in the best situation to address the needs of the child or the ability of the obligor to pay. As a starting point, if there is only one order, it is the controlling order even if no one currently resides in the state that issued it. When there are at least two orders:

- A. The order issued by a “home “ state is the controlling order.
- B. If only one of the states that issued one of the orders has a person residing in that state, it is the controlling order.
- C. If no one resides in any of the states that entered the orders, there is no controlling order *per se* and a tribunal that currently has subject matter and personal jurisdiction is to establish a “replacement” order that will be the controlling order.

The important aspect of a controlling order determination is that it determines the one order entitled to prospective enforcement. Attached to this prospective enforcement is the exclusivity to modify the prospective support obligation, i.e. the controlling order establishes the tribunal with CEJ to modify.

What a controlling order determination does not do is impact the amount of the consolidated arrears. Case law and a specific provision in RURESA established the concept that a successive order did not nullify or supercede the existing order(s) so that support continued to accrue. What does occur is the support amounts accrue simultaneously and not in the aggregate. The UIFSA and its predecessors specifically provide that payments made pursuant to one order are to be applied to the support accruing under another order in existence during the same time period.

The issue of determining which of two valid orders governs prospective support has become almost totally moot. The Full Faith and Credit for Child Support Orders Act became effective in October, 1994. Like UIFSA, it provided that there would only be one valid order regarding prospective support; thus, any attempt at a second order after the effective date are almost always declared to be void. Since the vast majority of orders do not extend beyond a child’s 23<sup>RD</sup> birthday, the situation of two, pre-1994, valid orders still being in force and effect for prospective support is really non-existent. However, the collection of support arrears under both the old orders is still viable and ongoing.

## UIFSA

### **SECTION 207. DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.**

**(a)** If a proceeding is brought under this act and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

**(b)** If a proceeding is brought under this act, and two or more child-support orders have been issued by tribunals of this state, another State or a foreign country 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 which order controls and must be recognized:

**(1)** If only one of the tribunals would have continuing, exclusive jurisdiction under this act, the order of that tribunal controls.

**(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 atate of the child controls; or

- (B) if an order has not been issued in the current home state of the child, the order most recently issued controls.
- (3) If none of the tribunals would have continuing, exclusive jurisdiction under this act, the tribunal of this state shall issue a child-support order, which controls.
- (c) If two or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this State having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b). The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6, or may be filed as a separate proceeding.
- (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.
- (e) The tribunal that issued the controlling order under subsection (a), (b), or (c) has continuing jurisdiction to the extent provided in Section 205 or 206.
- (f) A tribunal of this state that determines by order which is the controlling order under subsection (b)(1) or (2) or (c), or that issues a new controlling order under subsection (b)(3), shall state in that order:
- (1) the basis upon which the tribunal made its determination;
  - (2) the amount of prospective support, if any; and
  - (3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.
- (g) Within [30] days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.
- (h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this [Act].

**SECTION 209. CREDIT FOR PAYMENTS.**

A tribunal of this state shall 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 issued by a tribunal of this state or another state, or a foreign country.

**D-4 UIFSA - Minor as a Party**

The immutable fact is that minors are the parents of children. Lest there be doubt about the capacity of a minor to bring an action for support, the UIFSA makes it clear a minor can pursue obtaining support without the necessity of going through a “next friend”.

**UIFSA**

**SECTION 302. PROCEEDING BY MINOR PARENT.** A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor’s child.

**D-5 UIFSA - Defense of Nonparentage**

There are several defenses that can be raised at the time of registration of another state’s order. See C-1. There are other defenses that can be raised to the specific remedy sought.

One issue that can not be raised collaterally is parentage. Any attack on that issue must be made in the forum that issued the original order.

<b>UIFSA</b>
<b>SECTION 315. NONPARENTAGE AS DEFENSE.</b> 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 act.

**Part E - Interjurisdictional applications**

**E-1 Tribes**

The Indian Child Welfare Act (ICWA) applies primarily in custody situations where placement is being sought in institutions or with persons other than the parents. The UCCJEA seeks harmony with the ICWA by deferring to tribal proceedings and recognizing a tribal order when appropriate. The UIFSA recognizes the authority of tribal courts to enter valid support orders and treats a tribe the same as other “states”. It should be noted that FFCCSOA applies both to states and tribes.

<b>UCCJEA</b>	<b>UIFSA</b>
<p><b>SECTION 104. APPLICATION TO INDIAN TRIBES.</b>  <b>(a)</b> A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this [Act] to the extent that it is governed by the Indian Child Welfare Act.  <b>[(b)]</b> A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.  <b>[(c)]</b> A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]</p>	<p><b>SECTION 102. DEFINITIONS.</b> In this act:  <b>(26)</b> “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.</p>

**E-2 International**

The UCCJEA provides a general legal framework for recognition and enforcement of foreign custody and visitation decrees originating from foreign jurisdictions. It specifies that a decree made by a party to the Hague Convention on the Civil Aspects of International Child Abduction will be enforced and the United State is a party to Hague Convention on the Civil Aspects of International Child Abduction.

The United State is also a party to the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance which provides for the establishment, enforcement, and modification of child or spousal support; also referred to as child or spousal maintenance. However, there remains a large group of countries who are not parties to this Convention. With respect to establishing a support order, the status of the country of residence



of a person seeking to establish support under UIFSA is totally immaterial. The UIFSA applies to anyone who resides “outside this State”, regardless of the “status” of the country where they reside.

Where the status of a particular country comes into play is when an order from that country exists and a state is being asked to enforce or modify that order. Basically, a country can be a “foreign country” which includes a country that has enacted the Convention or has a state or federal level reciprocal agreement. A foreign country can then have its orders enforced under various provisions of the UIFSA.

For those countries that are not “foreign countries”, the enforcement of their order can be accomplished under the concept of “comity”. [see A-1, UIFSA § 104] However, the rules regarding comity only provide for enforcement and not modification.

**[NOTE:** The provisions for enforcing and modifying an order from a Convention country are contained in Article 7 of UIFSA. They are quite extensive and not set out or discussed in this paper.]

With regard to a foreign country order, one issue that does have distinct treatment is the ability of a state to modify the foreign support order of a non-Convention foreign country. If no one resides in the non-Convention foreign country that issued the order, the general modification provisions of the UIFSA apply. The UIFSA also enables either party to seek a modification in a state; but, only upon a showing that the non-Convention foreign country where a party resides “will not or may not” modify its order.

UCCJEA	UIFSA
<p><b>SECTION 105. INTERNATIONAL APPLICATION OF [ACT].</b>  <b>(a)</b> A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.  <b>(b)</b> Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.  <b>(c)</b> A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.</p> <p><b>SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION.</b>            Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.</p>	<p><b>SECTION 102. DEFINITIONS.</b> In this act:  <b>(3)</b> “Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.   <b>(5)</b> “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:  <b>(A)</b> which has been declared under the law of the United States to be a foreign reciprocating country;  <b>(B)</b> which has established a reciprocal arrangement for child support with this state as provided in Section 308;  <b>(C)</b> which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this act; or  <b>(D)</b> in which the Convention is in force with respect to the United States.  <b>(6)</b> “Foreign support order” means a support order of a foreign tribunal.  <b>(7)</b> “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish,</p>

enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

**SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY.**

(a) Except as otherwise provided in Section 711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child-support order otherwise required of the individual pursuant to Section 611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child-support order pursuant to this section is the controlling order.