

New Developments in Child Support: Enforcement of Foreign Orders Under the 2001 Amendments to the Uniform Interstate Family Support Act

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Every state adopted the Uniform Interstate Family Support Act (UIFSA)¹ when Congress included a federal fund contingency provision in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.² The UIFSA represents a waiver of state sovereignty in family law, an area constitutionally reserved to the states,³ in the name of settling jurisdiction uniformly across the states. Prior to the UIFSA's enactment, states operated under the Uniform Reciprocal Enforcement of Support Act (URESA)⁴ and its rewritten version, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA).⁵ Despite their names, states adopted these laws non-uniformly, allowing judges and support enforcement agencies to alter jurisdiction to fit their needs. This resulted in competing support orders from different states, confusing modification of orders in multiple states, reluctance by some states to enforce an order issued by another state, and a general disrespect of orders by obligors.⁶ The UIFSA sought to repair these deficiencies by getting states to agree to settle jurisdiction in the areas of establishment, modification, and enforcement, before applying their own individual "best interests of the child" formulas to the specifics of support. By agreeing to settle jurisdiction first and in a uniform way, states would ameliorate the problems that resulted from URESA, because they would eliminate multiple and conflicting orders.

The UIFSA also recognized that states were conducting the day-to-day aspects of child support through administrative agencies within the states. Again seeking to enable support, the UIFSA empowered these Child Support Enforcement Agencies, or Title IV-D agencies, to communicate among themselves across state lines, and to exercise personal jurisdiction over obligors on behalf of obligees in separate states.⁷ The UIFSA has resulted in an increase in the number of supported children where interstate support settings are involved across the nation.⁸ Military legal assistance attorneys have a heightened interest in awareness of the interstate and international hurdles involving the establishment, modification and enforcement of child support, due to the itinerant nature of military service.⁹

If jurisdictional obstacles pose hardships across state lines, even further challenges come to light when a support order originates in a foreign country and an obligee seeks enforcement in a particular U.S. jurisdiction. The UIFSA recognized this dynamic when it defined a "state" in §101 as follows:

(19) "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 subject to the jurisdiction of the United States. The term includes:

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¹ UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 255 (Supp. 2001) [hereinafter UIFSA 2001].

² Pub. L. No. 104-193, 110 Stat. 2166 (1996) (codified as amended at 42 U.S.C. § 666(f) (2000)). The UIFSA was first drafted by the National Conference of Commissioners for Uniform State Laws (NCCUSL) in 1992. UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 77 (1992). It was amended in 1996 and it is the 1996 version that states had to adopt in order to continue to receive federal funds for child support under the Personal Responsibility and Work Opportunity Reconciliation Act. UNIF. INTERSTATE FAMILY SUPPORT ACT 1996, 9 U.L.A. 235 [hereinafter UIFSA 1996]. The states had to adopt the UIFSA by 1 January 1998, and all states complied. 90 A.L.R. 5th 1 (2001). It was amended again in 2001, and it is this latest version that is the focus of this piece. UIFSA 2001, *supra* note 1

³ See *In re Burrus*, 136 U.S. 586 (1890) where the U.S. Supreme Court famously said "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *Id.* at 593-94.

⁴ UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA) (amended 1968), 9 U.L.A. 553 (1987). The NCCUSL originally authored URESA in 1950.

⁵ REVISED UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT (RURESA) (1968), 9 U.L.A. 381 (1987).

⁶ See generally LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION ch. 1 (Supp. 2007) (providing a discussion of UIFSA's history and the problems that resulted from states' non-uniform adoption of URESA and RURESA).

⁷ UIFSA 1996, *supra* note 2, §§ 101(20), 310.

⁸ The U.S. Census Bureau reported that "[t]he proportion of custodial parents who received the full amount of owed child support increased from 37 percent in 1993 to 47 percent in 2005." Press Release, U.S. Census Bureau, Fewer Custodial Parents on Public Assistance (Sept. 20, 2007), <http://www.census.gov/Press-Release/www/releases/archives/children/010634.html>; TIMOTHY S. GRALL, U.S. CENSUS BUREAU, CHILD SUPPORT, REPORTS AND TABLES, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2005 (Aug. 2007), <http://www.census.gov/prod/2007pubs/p60-234.pdf>.

⁹ See Major Robert D. Broughton, Jr., *Modification of Child Support Orders Under the Uniform Interstate Family Support Act (UIFSA)*, ARMY LAW., Dec. 2004, at 57 (providing an excellent summary of the UIFSA's basic provisions and their application to military legal assistance practice).

(i) an Indian tribe; and

(ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.¹⁰

By defining “state” this way, the 1996 UIFSA incorporated foreign support orders into its rules, but only after satisfaction of a due process type of finding of “substantial similarity” by the U.S. jurisdiction.¹¹ For this reason, obligees seeking enforcement in a U.S. jurisdiction still found it cumbersome to make the required “substantially similar” finding. Many parties found themselves seeking to have states register foreign child support orders the way they would any foreign judgment; they had to rely on a separate statute in a state that took cognizance of a foreign judgment, or they had to rely on the doctrine of comity. The doctrine of comity stands for the proposition that a particular jurisdiction will respect a judgment from another jurisdiction not out of any obligation under law to do so, but out of good will and an interest in having the other jurisdiction reciprocate.¹² Both avenues were litigious, expensive and slow, and obligors were sometimes able to use the United States as a haven from support obligations handed down in other lands.

The NCCUSL promulgated further amendments to the UIFSA in 2001. The federal government has not given the 2001 Amendments the same enthusiastic support that it gave the 1996 UIFSA in that there are no federal funds contingent on their adoption. For this reason, state legislatures have been passing the 2001 UIFSA Amendment provisions as they see fit. Currently, twenty-two U.S. jurisdictions have passed the amendments into law.¹³ The amendments contain several provisions that seek to clarify the 1996 UIFSA without substantially changing the law. There are also a few housekeeping alterations.¹⁴

The New Jersey Appellate Court discussed a provision of the 2001 UIFSA Amendments in the case of *Marshak v. Weser* in 2008.¹⁵ In *Marshak*, the parties were divorced in Pennsylvania and a Pennsylvania court issued a support order.¹⁶ Both parents and the children in question moved to New Jersey.¹⁷ Pennsylvania law does not require an obligor to pay college expenses of a child who has reached majority, but New Jersey law does.¹⁸ The father-obligor brought an action in New Jersey to have one of the children declared emancipated when he turned eighteen, and the mother-obligee argued that because everyone had relocated to New Jersey, a New Jersey court should apply New Jersey’s rules on emancipation to the

¹⁰ UIFSA 1996, *supra* note 1, § 101(19).

¹¹ For example UIFSA § 203 read: “Under this [Act], a tribunal of this State may serve as an initiating tribunal to forward proceedings to another State and as a responding tribunal for proceedings initiated in another State.” *Id.* § 203.

¹² The U.S. Supreme Court spoke extensively on the doctrine of comity in the case of *Hilton v. Guyot*, and said:

‘Comity,’ in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

159 U.S. 113, 163–64 (1895).

¹³ As of December 2008, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Maine, Mississippi, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming have passed the 2001 Amendments to the UIFSA. Uniform Law Comm’rs, A Few Facts About the . . . Uniform Interstate Family Support Act (2001), http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uifsa.asp (last visited Dec. 4, 2008). The legislatures of Maryland and New Jersey introduced the Amendments in 2008. *Id.*

¹⁴ In addition to the grander provisions discussed *infra*, the 2001 Amendments contain a provision that allows parties to confer subject matter jurisdiction over modification to the issuing jurisdiction, even when they have all moved out of the order issuing state. See UIFSA, 2001, *supra* note 1, § 205(a)(2). The 2001 Amendments also eliminate a pedantic roadmap for state officials that previously existed at § 301. Finally, the 2001 Amendments define “person” and “record” at § 102, and clarify § 201’s long arm jurisdiction provision by attempting to limit the long-arm rules for personal jurisdiction to establishment of a support order, rather than modification of an existing support order. *Id.* §§ 102, 201.

¹⁵ *Marshak v. Weser*, 915 A.2d 613 (N.J. Super. Ct. App. Div. 2007).

¹⁶ *Id.* at 614.

¹⁷ *Id.*

¹⁸ *Id.*

Pennsylvania order, not Pennsylvania's.¹⁹ Her argument would have required the father to continue supporting the children after they turned eighteen. The lower court agreed with the mother, reasoning "that [the] Legislature had not adopted a 2001 amendment to UIFSA specifically providing that the duration of child support obligation imposed by the courts of one state may not be extended by the courts of another state."²⁰ The appellate level court overruled the lower court, determining that the 2001 UIFSA amendment in question did not change the extant version of the UIFSA in New Jersey, but only clarified it.²¹ For that reason, the father succeeded in having the child declared emancipated.²² The New Jersey court could not apply its own rules to the parties, all of whom now resided in New Jersey. Instead, New Jersey's adoption of the UIFSA forced it to continue to defer to Pennsylvania's rules on emancipation because the order in question came from Pennsylvania.²³

The most substantial changes in the 2001 UIFSA Amendments, however, come with the recognition of foreign support orders. First, an entirely new section of the UIFSA states that the rules having to do with recognition of foreign judgments are cumulative, and that they are not to be used to exclude recognition by any other mechanism a party seeking support might muster, including the old doctrine of comity.²⁴ Second, the definition of "state" has been broadened to expand reciprocity with foreign countries and even political subdivisions of foreign countries:

(21) "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 subject to the jurisdiction of the United States. The term includes:

(A) an Indian tribe; and

(B) a foreign country or political subdivision that:

(i) has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) has established a reciprocal arrangement for child support with this State as provided in Section 308; or

(iii) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act].²⁵

¹⁹ *Id.*

²⁰ *Id.* at 614–15.

²¹ *Id.* at 616. The provision in question honed in on an area of controversy that has persisted despite the UIFSA's adoption, that is, orders from one state, but recognized in another state, when there is a difference on the duration of support (some states have child support expiring at age eighteen, others at twenty-one and still others with accompanying provisions dealing with college enrollment). The 2001 version of § 611 explicitly says that the issuing state's law applies. The *Marschak* case quoted from the Comment to § 611(d) of the Amendment, saying "[f]rom its original promulgation UIFSA determined that the duration of child-support obligation[s] should be fixed by the controlling order If the language was insufficiently specific before 2001, the amendments should make this decision absolutely clear," even though New Jersey had not adopted the Amendments. *Id.* at 616 (quoting UIFSA 2001, *supra* note 1, § 611(d)).

²² *Id.*

²³ *Id.* at 615.

²⁴ The language of § 104 reads:

(a) Remedies provided by this [Act] are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) This [Act] does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this State; or

(2) 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 [Act].

UIFSA 2001, *supra* note 1, § 104.

²⁵ *Id.* § 102(21).

The resultant effect of the 2001 UIFSA Amendments is to give a foreign support order the same gravitas as an order from a U.S. jurisdiction. A party seeking support has essentially four ways to achieve that end. First, the party can seek to invoke the old doctrine of comity, notwithstanding any other specifics of the UIFSA.²⁶ Second, they can ask the responding state tribunal to examine “the law or established procedures” of the foreign jurisdiction for “substantial similar[ity]” in accordance with § 102(21)(B)(iii), as was the case under the universally adopted the UIFSA.²⁷ These two avenues represent no change. The third mechanism under § 102(21)(B)(ii) recognizes the inherent power of a sovereign U.S. state to independently agree with a foreign jurisdiction to reciprocate child support.²⁸ Finally, § 102(21)(B)(i) relinquishes a state’s power to examine the underlying law and procedure of the foreign country whose order a party is seeking to enforce in certain circumstances.²⁹ It says that the state will entrust the federal government to declare certain countries as foreign reciprocating countries, and will recognize support provisions from those countries.³⁰ This subtle incorporation of a federal pronouncement into which foreign support orders a state will enforce represents a further shift away from true state sovereignty in family law.

Only the Comments to § 102 identify which part of the federal government will make the declaration of who is and who is not “a foreign reciprocating country or political subdivision”; it is the U.S. State Department.³¹ The State Department, with the concurrence of the Secretary of Health and Human Services, has had the authority to make such declarations under Title IV-D of the Social Security Act since 1996.³² Currently, the countries of Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and The United Kingdom and Northern Ireland have been declared to be “foreign reciprocating countries.”³³ Additionally, the Canadian Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan, and Yukon have achieved the same status.³⁴ This means that for those states who have adopted the 2001 UIFSA Amendments, an individual seeking to enforce or register a support order from any of the above foreign countries or provinces should need no more action by any tribunal than a trip to the local CSEA office. Likewise, the same fast track treatment should occur at the administrative agency in the other reciprocating country for an order emanating from the 2001 UIFSA Amendments adopting U.S. jurisdiction.

A few cases from around the country have put the UIFSA’s definition of “state” to the test since the UIFSA’s adoption. The case of *Gur v. Gur* involved a support order from Israel and the mother-obligee’s attempt to enforce it in California where the father-obligor had relocated and stopped making payments.³⁵ The California court focused on the definition of “state” under the UIFSA and found that even though neither the State Department nor California had declared Israel to be a “foreign reciprocating state,” the Israeli court had “established procedures for the issuance and enforcement of support orders which are substantially similar” to California’s law.³⁶ The father pointed out several dissimilarities between the child support systems in Israel and California, including the exclusive jurisdiction of the Rabbinical Court in Israel.³⁷ His most compelling argument came when he pointed out that under Israeli law, a court could order support beyond the age of majority, but California law prohibited such an order.³⁸ The court did not directly refute the father’s arguments, but instead found his

²⁶ *Id.* § 104(a)

²⁷ *Id.* § 102(21)(B)(iii).

²⁸ *Id.* § 102(21)(B)(ii).

²⁹ *Id.* § 102(21)(B)(i).

³⁰ *Id.*

³¹ *Id.* at cmt.

³² 42 U.S.C. § 659a(a)(1) (2000).

³³ The Department of Health and Human Services maintains the listing on its web page. U.S. Dep’t of Health and Human Servs., Int’l Resources, <http://www.acf.hhs.gov/programs/cse/international> (last visited Nov. 20, 2008).

³⁴ *Id.*

³⁵ 2005 WL 3409379 (Cal. Ct. App. 2005).

³⁶ *Id.* at *7.

³⁷ *Id.*

³⁸ *Id.*

arguments unpersuasive and grounded its opinion in the fact that a California order could be enforced in Israel and upheld the order under the doctrine of comity.³⁹

Similarly, a North Carolina court considered England a “state” under the UIFSA by referencing the New York Convention on the Recovery Abroad of Maintenance, a treaty to which the United States was not even a signatory, as persuasive authority in deciding that England’s procedures satisfied the UIFSA’s “substantially similar” prong.⁴⁰ When states have refused to respect foreign country support orders under the UIFSA’s provisions, it has commonly been for wont in the record of evidence of “substantially similar” procedures.⁴¹ Parties seeking enforcement have not met the burden of showing the foreign state’s procedures were “substantially similar” to those of the U.S. state.

A brand new international treaty has the potential to drastically alter states’ involvement in the enforcement of foreign child support orders. The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) was signed by sixty-eight nations on 23 November 2007.⁴² The United States was one of the signatories, and on 8 September 2008, President Bush signed the Hague Convention and forwarded it to the Senate with his recommendation that the Senate give it “prompt and favorable consideration.”⁴³

The Hague Convention bypasses the splintered federal nature of the United States by exalting a central authority with whom central authorities from other countries can reciprocate and communicate. Rather than separate states agreeing to reciprocate with other countries directly, the Hague Convention would have the federal government do that for them, at least for some activities. This is important because other countries have sometimes refused to enforce state support orders because they did not come from a national central authority. Additionally, the Hague Convention seeks to allow state courts to exercise jurisdiction in a manner consistent with minimum contacts type rules, as opposed to the “habitual residence” of the obligee and child rules, as was the case under previous treaties and in most foreign jurisdictions. Finally, the Hague Convention allows for parties seeking enforcement in other countries to do so without expensive fees in many instances. All of these provisions are designed to enable the flow of support and lessen the ability of deadbeat obligors to find refuge behind international conflicts of law. They do so by further introducing federal involvement in an area constitutionally reserved to the states.

Because family law and child support matters are reserved to the laws of the states, states will have to voluntarily waive additional sovereignty in order to effectuate the Hague Convention’s procedures. To this end, the NCCUSL’s Interstate Family Support Committee is wrangling through the UIFSA and is hashing out an extensive overhaul of the UIFSA for 2008.⁴⁴ The proposed language removes the references to foreign countries in § 101 altogether.⁴⁵ It adds an entirely new article, Article 7, which references the Hague Convention articles, adopts the Hague Convention’s choice of wording for support related terms, creates a Central Authority for the United States and for each state, and attempts to create a hierarchy of respect so as to both enable enforcement of the treaty, as well as take cognizance of the existing UIFSA arrangements between the states.⁴⁶ If states adopt the proposed new UIFSA and its attendant respect for foreign support orders, as well as the ability to enforce U.S. support orders abroad, a new day in international child support will have dawned.

³⁹ *Id.*

⁴⁰ *Foreman v. Foreman*, 550 S.E.2d 792 (N.C. App. 2001).

⁴¹ In *Haker-Volkening v. Haker*, 547 S.E.2d 127 (N.C. App. 2001), the court found the obligee had not met her burden in showing that the procedures of a Swiss court were “substantially similar” to those of North Carolina. Likewise, the Ohio court in *Kalia v. Kalia*, 783 N.E.2d 623 (Ohio Ct. App. 2002), held that the party seeking to register and enforce an Indian support order had not met her burden under the UIFSA. A Mexican support order was at issue in *In re V.L.C.*, 225 S.W.3d 221 (Tex. App. El Paso 2006) where the party failed to show the issuing Mexican court’s “substantially similar” proceedings to those in Texas. By contrast, the California court found Germany to be a “foreign reciprocating country” under the UIFSA, not by the decree of the U.S. State Department, as the appellant urged was necessary, but instead by the Attorney General of California, in *Willmer v. Willmer*, 51 Cal. Rptr. 3d 10 (Cal. Ct. App. 2006).

⁴² Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Nov. 23, 2007), available at http://www.hcch.net/index_en.php?act=conventions.text&cid=131 (last visited Nov. 20, 2008).

⁴³ Message to the Senate transmitting the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 44 WEEKLY COMP. PRES. DOC. 36, 1187 (Sept. 15, 2008), available at http://www.hcch.net/index_en.php?act=conventions.pdf&cid=131 (follow “Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, message transmitting” hyperlink).

⁴⁴ The new language is available on the NCCUSL’s web page which has a link to the 2008 draft of the UIFSA. Uniform Law Comm’n, Interstate Family Support, <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=289> (follow “2008 Annual Meeting Draft” hyperlink).

⁴⁵ *Id.*

⁴⁶ *Id.* art. 7.