

DRAFT
FOR DISCUSSION ONLY

**AMENDMENTS TO
UNIFORM INTERSTATE FAMILY SUPPORT ACT
(2001)**

ARTICLES 1-7

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 14-16, 2008 Drafting Committee Meeting

Changes Shown in Strike and Score

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FAMILY SUPPORT ACT (2001)**

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AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

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AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

Reporter's Note

This represents a drafting approach in anticipation of a comprehensive revision of UIFSA 2001 in order to integrate the appropriate provisions of the new Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The Convention was signed by the United States at The Hague, Netherlands, on November 23, 2007. A version of what purports to be final is available and is submitted together with this draft. The goal of this draft is to deal only with provisions that directly affect the law of “this State.” In my opinion, less than 50% of the 65 articles in the Convention are appropriate to incorporate into an amended UIFSA or otherwise recognized as applicable to state law. Many of the articles in the Convention do not direct action be taken by a tribunal or agency of a U.S. State. A number of the remaining provisions direct action that is already covered in whole or part by UIFSA, some of which trigger minimal amendments to the existing text. To be sure, the Convention is a complex document that, if ratified, will make significant changes in substantive state law, and even change some state procedural practice. My preliminary conclusions are shown in the Table of Contents, above, which identifies those provisions in the Convention that seem relevant to a redraft of UIFSA.

Please evaluate the draft for possible inclusions and exclusions. The opinions of experts in the field—those who enforce child support orders—are more persuasive than those of a law professor, no matter how long he has dabbled in the area. The hallmark should be that UIFSA is state law, which by definition is created by a state legislature to regulate the actions of judges, citizens, etc. in that State, and only in that State.

The approach that follows is relatively simple, i.e., breaking down the Convention language into a few general categories: (1) does not need to be included because it speaks to the Contacting Country, a.k.a. “Contracting State” in the Convention, or its “Central Authority”; (2) include the language or the principle of the Convention in the current text of UIFSA (Arts. 1-6) as applicable to domestic as well as international cases; (3) identify the text or principles in the Convention that relate only to international maintenance issues. For these, draft a stand-alone article for UIFSA to direct a “tribunal of this State” on the do’s and don’ts unique to the Convention, e.g., reasons to refuse recognition of a support order of a foreign country; (4) identify those Convention articles that cause problems re inclusion/exclusion and hope for resolution by the expert observers and members of the drafting committee.

1 **AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4
5 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Interstate
6 Family Support Act.

7 **SECTION 102. DEFINITIONS.** In this [Act]:

8 (1) “Child” means an individual, whether over or under the age of majority, who is or is
9 alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the
10 beneficiary of a support order directed to the parent.

11 (2) “Child-support order” means a support order for a child, including a child who has
12 attained the age of majority under the law of the issuing State.

13 (3) “Convention” means the Convention on the International Recovery of Child Support
14 and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

15 (4) ~~(3)~~ “Duty of support” means an obligation imposed or imposable by law to provide
16 support for a child, spouse, or former spouse, including an unsatisfied obligation to provide
17 support.

18 (5) “Foreign country” means a political entity that under its law authorizes the issuance of
19 support orders and which has:

20 (A) been declared to be a foreign reciprocating country or political subdivision
21 under federal law;

22 (B) established a reciprocal arrangement for child support with this State as
23 provided in Section 308; or

(C) ratified the Convention or acceded to the United States with regard to the
Convention.

Reporter's Note

The proposed addition of these stand-alone definitions of iterations of “foreign country” and “foreign tribunal” are to be read in conjunction with the prior definition of “State,” *infra*, which under certain circumstances declared a foreign country or political subdivision to be a “State.” Defining a foreign country or a political subdivision thereof, e.g. Canadian province, as a “State” may be traced back to 1968, where this approach first appeared in the Revised Uniform Reciprocal Enforcement of Support Act, a.k.a. RURESA. No one thinks a support order of a foreign country is entitled to Full Faith and Credit. Indeed, such orders of the sister states were only relatively recently accorded that treatment after congressional action in 1994. Thus, constitutional analysis is not required; only state statutory issues are involved. Moreover, asserting that a foreign order be treated “equally” to a sister state order could well result in a manifestly unfair decision. For example, reading Sections 611 and 615 strictly, modification of a foreign child support should be refused under Section 611 if Section 615 is inapplicable, such as when the obligee-petitioner continues to reside in the issuing foreign country which does modify its orders. Such application of Section 611 in the State where the obligor resides would frustrate application of local guidelines that recognize a greatly increased obligation and ability to pay.

The terms “foreign order” or “foreign judgment” are used ambiguously in the original definition, and throughout the [Act]. The sense of the usage in UIFSA seems to be “out-of-state, rather than “out-of-country.” If an international construction is intended, the text is “foreign country or political subdivision.” After ratification of the Convention, such ambiguity must be eliminated.

(6) “Foreign order” means a child-support or spousal support order issued by a foreign tribunal.

(7) “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country authorized to establish, enforce, or modify support orders or to determine parentage. As provided by the Convention, the term includes a “competent authority,” which may be a judicial or administrative authority in a proceeding in a foreign country.

(8) [(4)] “Home State” means the State in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the State

1 in which the child lived from birth with any of them. A period of temporary absence of any of
2 them is counted as part of the six-month or other period.

3 (9) [(5)] “Income” includes earnings or other periodic entitlements to money from any
4 source and any other property subject to withholding for support under the law of this State.

5 (10) [(6)] “Income-withholding order” means an order or other legal process directed to
6 an obligor’s [employer] [or other debtor], as defined by [the income-withholding law of this
7 State], to withhold support from the income of the obligor.

8 [(7) “Initiating State” means a State from which a proceeding is forwarded or in which a
9 proceeding is filed for forwarding to a responding State under this [Act] or a law or procedure
10 substantially similar to this [Act]].

11 [(8) “Initiating tribunal” means the authorized tribunal in an initiating State.]

Reporter’s Note

12 The process of an “initiating tribunal” in one State that vets an outgoing request for child
13 support in a proceeding and then forwards that proceeding to a tribunal in another State is an
14 anachronism, left over from the days of URESA/RURESA which ended for all States in 1998.
15 Indeed, such actions were statutorily reserved to “courts” until the advent of UIFSA, beginning
16 in 1993. Similarly, the process of filing that “proceeding” initiated elsewhere in a “responding
17 tribunal” is equally an anachronism, see subsection [(49)], *infra*. Experience with the actual
18 practice of support enforcement in the United States since 1993 has demonstrated that the
19 URESA procedure is no longer utilized.

20 Further, such a process is inconsistent with the Convention, which employs procedures
21 involving central authority to central authority or direct requests. It is also inconsistent with the
22 actual practice of IV-D agencies and private practitioners in this country. Moreover, if anyone
23 still employs this process, UIFSA should end that practice, which amounts to a waste of judicial
24 resources to accomplish a basically irrelevant action. I suggest deleting the definitions of
25 “initiating tribunal,” and “initiating State,” which are no longer viable. *See* additional suggested
26 amendments to Article 3, *infra*.

27 (11) [(9)] “Issuing State or foreign country” means the State or foreign country in which
28 a tribunal issues a support order or issues a judgment determining parentage.
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1 (12) [(40)] “Issuing tribunal” means the tribunal of a State or foreign country that issues a
2 support order or issues a judgment determining parentage.

3 (13) [(41)] “Law” includes decisional and statutory law and rules and regulations having
4 the force of law.

5 (14) [(42)] “Obligee” means:

6 (A) an individual to whom a duty of support is or is alleged to be owed or in
7 whose favor a support order has been issued or a judgment determining parentage has been
8 issued;

9 (B) a State or political subdivision to which the rights under a duty of support or
10 support order have been assigned or which has independent claims based on financial assistance
11 provided to an individual obligee; [Ø]

12 (C) an individual seeking a judgment determining parentage of the individual’s
13 child; or

14 (D) as provided by the Convention, an individual or entity named as a “creditor”
15 in a proceeding involving a foreign country.

16 (15) [(43)] “Obligor” means an individual, or the estate of a decedent:

17 (A) who owes or is alleged to owe a duty of support;

18 (B) who is alleged but has not been adjudicated to be a parent of a child; [Ø]

19 (C) who is liable under a support order. ; or

20 (D) as provided by the Convention, an individual named as a “debtor” in a
21 proceeding involving a foreign country.

22 (16) [(44)] “Person” means an individual, corporation, business trust, estate, trust,
23 partnership, limited liability company, association, joint venture, government, governmental

subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(17) [(45)] “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.

(18) [(46)] “Register” means to [record; file] a support order or judgment determining parentage issued by a tribunal of another State or foreign country in [the] a tribunal of this State for registration, enforcement, or modification of the order or judgment [appropriate location for the recording or filing of foreign judgments or support orders generally or foreign support orders specifically].

(19) [(47)] “Registering tribunal” means a tribunal in which a support order is registered.

[(18) “Responding State” means a State in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating State under this [Act] or a law or procedure substantially similar to this [Act].]

[(19) “Responding tribunal” means the authorized tribunal in a responding State.]

Reporter’s Note

The terms “responding tribunal” and “responding State,” both of which act in response to a proceeding filed in an “initiating tribunal in another State and is forwarded to the tribunal another State” are anachronisms. They are left over from the days of URESA/RURESA which ended for all States in 1998. *See* comments to subsection [(8)], *supra*.

(20) [(20)] “Spousal-support order” means a support order for a spouse or former spouse of the obligor.

(21) [(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.

[(B) a foreign country 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]].~~

Reporter's Note

The amended definition of "State" eliminates the fiction that a foreign country can be a U.S. State, and clarifies and implements the purpose of the Act to enforce an international order under state law. If the new Convention is ratified by the Senate and signed by the President, the federal preemption of the issue via the treaty clause will be sufficient to accomplish that goal, U. S. Const. Art. VI., cl. 2. But, additional state statutory enforcement should be added to make the terms of the Hague Convention more accessible to bench and bar. Further, UIFSA can supply answers to questions the new Convention does not even ask. This is particularly clear with regard to modification of existing orders when the parties have moved from the issuing state or foreign country, or other factual circumstances have changed significantly.

Another problem is presented by the fact that in the U.S. the term "foreign order" often means an order from whatever source outside of the particular State, and most often relates to an order of a sister State. Ultimately it will be best to avoid the term "foreign order," and refer to "an order of a foreign tribunal." Although somewhat awkward, that terminology is unambiguous.

(22) ~~(22)~~ "Support enforcement agency" means a public official or agency authorized to seek:

- (A) enforcement of support orders or laws relating to the duty of support;
- (B) establishment or modification of child support;
- (C) determination of parentage;
- (D) location of obligors or their assets; or
- (E) determination of the controlling child-support order.

(22) ~~(23)~~ "Support order" means a judgment, decree, order, decision, or directive,

1 whether temporary, final, or subject to modification, issued by a tribunal or a foreign tribunal, for
2 the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health
3 care, arrearages, retroactive support or reimbursement, and may include related costs and fees,
4 interest, income withholding, automatic adjustment by indexation, attorney’s fees, and other
5 relief.

6 (23) [(24)] “Tribunal” means a court, administrative agency, or quasi-judicial entity
7 authorized to establish, enforce, or modify support orders or to determine parentage.

GLOSSARY FOR INFORMATION ONLY

Reporter’s Note

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13 The Convention employs a substantial number of key terms that do not appear in the
14 following text of UIFSA. I believe maximum understanding of the integration of the Convention
15 into state law will be significantly facilitated by restricting the introduction of new terminology
16 to a minimum and retaining current usage to the maximum possible. For example, the term
17 “application” as defined in the Convention, below, means a request, the key document, and in the
18 sense of applying the terms of the Convention. UIFSA uses the term repeatedly, but only in the
19 latter sense.

20
21 The activities between the Central Authorities described at length in the Convention are
22 not included in the proposed UIFSA amendments because those activities do not involve judicial
23 or administrative proceedings in “a tribunal of this State” to establish, enforce, or modify support
24 orders. When necessary the terms “[petition]” or “request for services” are substituted in the
25 proposed amendments to UIFSA for the “application” process of the Convention.

26
27 “Application” means a request available to creditors and debtors made through one central
28 authority for assistance under the Convention from another central authority. It also means the
29 form and content suggested in the Convention’s annex. Finally, the term is also present in the
30 sense of applying or using something. When a word had eight definitions in Webster’s, its
31 multiple meanings depend on context.

32
33 “Central authority” means the entity designated by each Contracting State to discharge the duties
34 imposed by the Convention on such an authority. The Central Authority for the United States is
35 the Office of Child Support Enforcement, within the U.S. Department of Health and Human
36 Services (HHS). In this State, OCSE has delegated many of its Convention functions to [].

37
38 “Contracting State” means a country that has ratified, or acceded to the United States with
39 regard to the Convention.

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Reporter's note

Depending on the context, the Convention refers to Contracting States in a wide variety of terms, to wit: requesting State, requested State, State addressed, State of origin, State other than the ..., and State of habitual residence.

“Direct request” means a [petition] regarding support filed by an individual residing in a foreign country made directly to a tribunal of this State without the assistance of a central authority.

Reporter's Note

The Convention emphasizes repeatedly that a person resident in a Contracting State has the right to make a request for relief directly to the appropriate tribunal (competent authority) for relief in another Contracting State. *See* Convention arts. 19,20, 23,37. Because the U.S. tribunals are open, it is not necessary to incorporate these provisions.

“Maintenance decision” means a child support order and a spousal support order, and may include an order covering the maintenance obligation arising from a wide variety of other family relationships, by consanguinity or affinity.

Reporter's Note

The appropriate definition of this term remains in doubt. Although “maintenance” is not specifically defined in the Convention, its definition is implied by Convention art. 2, Scope, as follows:

This Convention shall apply—

- a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21;
- b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
- c) with the exception of Chapters II and III, to spousal support.

2. *A Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18. A Contracting State which makes this reservation shall not be entitled to claim the application of this Convention to persons of the age excluded by its reservation.*

3. *Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.*

1 4. *The provisions of this Convention shall apply to children regardless of the marital status*
2 *of the parents.*

3
4 In sum, the Convention employs the term “maintenance” with a much expanded reach
5 rather than the “support order” defined in UIFSA. For ease of understanding, the familiar
6 terminology is continued in UIFSA for the U.S. bench, bar, and IV-D agencies. The terms of the
7 current version of the federal law of subsidizing child support enforcement do not compensate
8 States for enforcing alimony. Thus, the IV-D agencies do not enforce spousal support orders
9 unless rendered in conjunction with child support.

10
11 Thus, child support orders and spousal support orders made in association with child
12 support will be enforced ;for case when the child is up to 18 or 21 years of age, as determined by
13 the foreign tribunal. Note that other spousal support is not included in Chapter II, Designation of
14 Central Authorities (arts. 4-8), and Chapter III, Applications through Central Authorities (arts. 9-
15 17), do not apply. As a consequence, the Convention will obligate U.S. tribunals to recognize
16 and enforce a foreign spousal order, but not by the IV-D system. Therefore, because the “free
17 legal services” contemplated by the Convention are found in art. 15, a former spouse will be able
18 to enforce a valid foreign maintenance order through private counsel.

19
20 UIFSA has always taken the federal law into account, but has steadfastly refused to meld
21 state law into federal practice if the private bar may fill the gaps.

22
23 *“Vulnerable person” means a person who, by reason of an impairment or insufficiency of his or*
24 *her personal faculties, is not able to support him or herself.*

25
26 **SECTION 103. TRIBUNAL OF STATE.** The [court, administrative agency, quasi-
27 judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

28 **SECTION 104. REMEDIES CUMULATIVE.**

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

32 (b) This [Act] does not:

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

35 (2) grant a tribunal of this State jurisdiction to render judgment or issue an order
36 relating to [child custody or visitation] in a proceeding under this [Act].

1 **ARTICLE 2**
2 **JURISDICTION**

3
4 **SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.**

5 (a) In a proceeding to establish or enforce a support order or to determine parentage, a
6 tribunal of this State may exercise personal jurisdiction over a nonresident individual [or the
7 individual's guardian or conservator] if:

8 (1) the individual is personally served with [citation, summons, notice] within this
9 State;

10 (2) the individual submits to the jurisdiction of this State by consent, by entering a
11 general appearance, or by filing a responsive document having the effect of waiving any contest
12 to personal jurisdiction;

13 (3) the individual resided with the child in this State;

14 (4) the individual resided in this State and provided prenatal expenses or support
15 for the child;

16 (5) the child resides in this State as a result of the acts or directives of the
17 individual;

18 (6) the individual engaged in sexual intercourse in this State and the child may
19 have been conceived by that act of intercourse;

20 (7) [the individual asserted parentage in the [putative father registry] maintained
21 in this State by the [appropriate agency]; or

22 (8)] there is any other basis consistent with the constitutions of this State and the
23 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 issued by a tribunal of another State unless the requirements of Section 611 ~~or~~ 615] are met.

(c) If the obligor resides in a foreign country that recognizes a child support order issued by a tribunal in which the obligee or the child resides as being based on binding jurisdiction, a tribunal of this State may establish a child support order or modify that order in conformance with this [Act].

Reporter's Note

Section 201(b) solidifies the concepts of personal jurisdiction and its progeny, continuing jurisdiction and controlling orders, for tribunals of the United States. The long-arm provisions were originally written with only domestic cases in mind. If the tribunal of this State, or of another State, had personal jurisdiction over an individual residing in another State, the application of local law is entitled to recognition and enforcement, Full Faith and Credit for Child Support Orders Act, a.k.a. FFCCSOA, 28 USC 1738B.

As indicated by new Section 201(c), most, if not all, foreign countries recognize and enforce a child support order based on the residence of the obligee or the child. The U.S. requirement of personal jurisdiction over the obligor is generally regarded abroad as an idiosyncratic error. Nonetheless, the new Convention requires recognition of U.S. orders based on long-arm jurisdiction asserted over the obligor, a.k.a. "debtor." Of course, in such cases the U.S. tribunal also has jurisdiction over the obligee, a.k.a. "creditor." From the perspective of a tribunal in a foreign Contacting State, such an order is valid even though the U.S. tribunal requires a personal nexus between the parties and the State tribunal as described in Section 201. To the extent statutory authorization for the actions described in UIFSA is applicable internationally, reference is made to new Article 7.

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.

1 ~~**[SECTION 203. [INITIATING AND RESPONDING TRIBUNAL OF STATE.**~~

2 Under this ~~[Act]~~, a tribunal of this State may serve as an initiating tribunal to forward
3 proceedings to another State and as a responding tribunal for proceedings initiated in another
4 State.]

5 **SECTION 204. SIMULTANEOUS PROCEEDINGS.**

6 (a) A tribunal of this State may exercise jurisdiction to establish a support order if the
7 [petition] or comparable pleading is filed after a pleading is filed in another State only if:

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

11 (2) the contesting party timely challenges the exercise of jurisdiction in the other
12 State; and

13 (3) if relevant, this State is the home State of the child.

14 (b) A tribunal of this State may not exercise jurisdiction to establish a support order if the
15 [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in
16 another State if:

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

20 (2) the contesting party timely challenges the exercise of jurisdiction in this State;
21 and

22 (3) if relevant, the other State is the home State of the child.

Reporter's Note

In my opinion, the provision for simultaneous proceedings should be limited to the sister State. The primary tie-breaker is home state of the child, a concept not found in the Convention or foreign law

**SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY
CHILD-SUPPORT ORDER.**

(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:

(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

(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.

(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:

(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 who is located in the State of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

(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-

1 support order of a tribunal of this State, tribunals of this State shall recognize the continuing,
2 exclusive jurisdiction of the tribunal of the other State.

3 (d) ~~[A tribunal of this State that lacks continuing, exclusive jurisdiction to modify a child-~~
4 ~~support order may serve as an initiating tribunal to a tribunal of another State to modify a~~
5 ~~support order [issued in that State]-(e)]~~ A temporary support order issued ex parte or pending
6 resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the
7 issuing tribunal.

8 **SECTION 206. CONTINUING JURISDICTION TO ENFORCE CHILD-**
9 **SUPPORT ORDER.**

10 ~~[(a) A tribunal of this State that has issued a child support order consistent with the law~~
11 ~~of this State may serve as an initiating tribunal to request a tribunal of another State to enforce:~~

12 ~~(1) the order if the order is the controlling order and has not been modified by a tribunal~~
13 ~~of another State that assumed jurisdiction pursuant to the [Uniform Interstate Family Support~~
14 ~~Act]; or~~

15 ~~(2) a money judgment for arrears of support and interest on the order accrued before a~~
16 ~~determination that an order of another State is the controlling order.]~~

17 ~~[(b)]~~ A tribunal of this State having continuing~~;~~ jurisdiction over a support order ~~[may~~
18 ~~act as a responding tribunal to]~~ shall enforce ~~[the]~~ its order on the request of an individual
19 [petitioner] or a support enforcement agency.

20 **SECTION 207. DETERMINATION OF CONTROLLING CHILD-SUPPORT**
21 **ORDER.**

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

1 (b) If a proceeding is brought under this [Act], and two or more child-support orders have
2 been issued by tribunals of this State or another State with regard to the same obligor and same
3 child, a tribunal of this State having personal jurisdiction over both the obligor and individual
4 obligee shall apply the following rules and by order shall determine which order controls:

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

7 (2) If more than one of the tribunals would have continuing, exclusive jurisdiction
8 under this [Act]:

9 (A) an order issued by a tribunal in the current home State of the child
10 controls; but

11 (B) if an order has not been issued in the current home State of the child,
12 the order most recently issued controls.

13 (3) If none of the tribunals would have continuing, exclusive jurisdiction under
14 this [Act], the tribunal of this State shall issue a child-support order, which controls.

15 (c) If two or more child-support orders have been issued for the same obligor and same
16 child, upon request of a party who is an individual or a support enforcement agency, a tribunal of
17 this State having personal jurisdiction over both the obligor and the obligee who is an individual
18 shall determine which order controls under subsection (b). The request may be filed with a
19 registration for enforcement or registration for modification pursuant to Article 6, or may be filed
20 as a separate proceeding.

21 (d) A request to determine which is the controlling order must be accompanied by a copy
22 of every child-support order in effect and the applicable record of payments. The requesting
23 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 208. CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGES.

In responding to registrations or [petitions] for enforcement of two or more child-support orders in effect at the same time with regard to the same obligor and different individual obliges, at least one of which was issued by a tribunal of another State or foreign country, a tribunal of this

1 State shall enforce those orders in the same manner as if the orders had been issued by a tribunal
2 of this State.

3 **SECTION 209. CREDIT FOR PAYMENTS.** A tribunal of this State shall credit
4 amounts collected for a particular period pursuant to any child-support order against the amounts
5 owed for the same period under any other child-support order for support of the same child
6 issued by a tribunal of this or another State or foreign country.

7 **SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO**
8 **PERSONAL JURISDICTION.** A tribunal of this State exercising personal jurisdiction over a
9 nonresident in a proceeding under this [Act], under other law of this State relating to a support
10 order, or recognizing a support order of a foreign country [~~or political subdivision~~] on the basis
11 of comity may receive evidence [~~from another State~~] pursuant to Section 316, communicate with
12 a tribunal [~~of another State~~] pursuant to Section 317, and obtain discovery through a tribunal [~~of~~
13 ~~another State~~] pursuant to Section 318. In all other respects, Articles 3 through 7 do not apply
14 and the tribunal shall apply the procedural and substantive law of this State.

15 **Reporter's Note**

16
17 A tribunal of this State may not exercise personal jurisdiction based on the law of a
18 foreign country, but is free to recognize an order based on comity. The tribunal is also free to
19 employ internationally other procedural and evidentiary provisions of the Act without constraint.
20

21 **SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY**
22 **SPOUSAL-SUPPORT ORDER.**

23 (a) A tribunal of this State issuing a spousal-support order consistent with the law of this
24 State has continuing, exclusive jurisdiction to modify the spousal-support order throughout the
25 existence of the support obligation.

26 (b) A tribunal of this State may not modify a spousal-support order issued by a tribunal of

1 another State or foreign country having continuing, exclusive jurisdiction over that order under
2 the law of that State or foreign country.

3 (c) If a [A] tribunal of this State ~~[that]~~ has continuing, exclusive jurisdiction over a
4 spousal-support order, an individual [petitioner] or a support enforcement agency another State
5 or foreign country of this State may request ~~[serve as]~~:

6 (1) ~~[an initiating tribunal to request]~~ a tribunal of another State or foreign country
7 to enforce the spousal-support order issued in this State; or

8 (2) ~~[a responding tribunal]~~ the tribunal of this State to enforce or modify its own
9 spousal-support order.

Reporter's Note

10 The amendments to Section 211 continue the decision made first in UIFSA 1992 that
11 declined modification of a spousal support order. The same treatments is to be accorded to an
12 order by a foreign tribunal. The bases of this decision are explained in the UIFSA 2001
13 Comment as follows:

14 *The prohibition of modification of spousal support by a nonissuing state tribunal under*
15 *UIFSA is consistent with the principle that a tribunal should apply local law to such cases to*
16 *insure efficient handling and to minimize choice of law problems. Avoiding conflict of law*
17 *problems is almost impossible if spousal support orders are subject to modification in a second*
18 *State. For example, States take widely varying views of the effect on a spousal support order of*
19 *the obligee's remarriage or nonmarital cohabitation. Making a distinction between spousal and*
20 *child support is further justified because the standards for modification of child support and*
21 *spousal support are very different. In most jurisdictions a dramatic improvement in the obligor's*
22 *economic circumstances will have little or no relevance in a proceeding seeking an upward*
23 *modification of spousal support, while a similar change in an obligor's situation typically is the*
24 *primary basis for an increase in child support. This disparity is founded on a policy choice that*
25 *post-divorce success of an obligor-parent should benefit the obligor's child, but not the obligor's*
26 *ex-spouse.*

1 **ARTICLE 3**

2 **CIVIL PROVISIONS OF GENERAL APPLICATION**

3
4 **Reporter's Note**

5
6 The procedure described in Sections 301, and 304-307 are wholly incompatible with the
7 "application" process established in the Convention, which is based on central authority to
8 central authority or direct application. These articles are passé with regard to the actual practice
9 between IV-D agencies in the U.S., and with lawsuits pursued by private counsel. The present
10 system of vetting by an initiating tribunal in one State and forwarding that paperwork to a
11 tribunal in another State has been replaced by direct contact with the tribunal being requested to
12 take action. The two-state tribunal involvement originated in URESA/RURESA, and was
13 continued in UIFSA 1992. It has long since been virtually (or completely) abandoned by both
14 IV-D agencies and private counsel. It is doubtful that any agency, and very few, if any, private
15 counsel, actually file a petition in a tribunal in the initiating state, which is then vetted by that
16 tribunal and forwarded to a tribunal in the responding state. Given the disparity between the
17 written law and actual practice, these sections should be revised at this opportunity. Equally
18 important, such a revision will then model the process established in the Convention for
19 international cases.
20

21 **SECTION 301. PROCEEDINGS UNDER [ACT].**

22 (a) Except as otherwise provided in this [Act], this article applies to all proceedings under
23 this [Act].

24 (b) A nonresident individual [~~petitioner or a support enforcement agency~~] may initiate a
25 proceeding authorized under this [Act] [~~by filing a [petition] in an initiating tribunal for~~
26 ~~forwarding to a responding tribunal or~~] by filing a [petition] or a comparable pleading directly in
27 a tribunal of this [~~another~~] State [~~which has or can obtain personal jurisdiction over the~~
28 [~~respondent~~]].
29

30 **Reporter's note**

31
32 The revised language reflects actual practice under UIFSA. The statement that the filing
33 State may or must have personal jurisdiction over the respondent is axiomatic at best.
34

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

4 **SECTION 303. APPLICATION OF LAW OF STATE.** Except as otherwise provided
5 in this [Act], a [~~responding~~] tribunal of this State shall:

6 (1) apply the procedural and substantive law generally applicable to similar proceedings
7 originating in this State and may exercise all powers and provide all remedies available in those
8 proceedings; and

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

11 **SECTION 304. REQUEST FOR DOCUMENT TO ~~[DUTIES OF INITIATING]~~**
12 **TRIBUNAL.** [~~(a) Upon the filing of a [petition] authorized by this [Act], an initiating tribunal~~
13 ~~of this State shall forward the [petition] and its accompanying documents:~~

14 ~~(1) to the responding tribunal or appropriate support enforcement agency in the~~
15 ~~responding State; or~~

16 ~~(2) if the identity of the responding tribunal is unknown, to the State~~
17 ~~information agency of the responding State with a request that they be forwarded to the~~
18 ~~appropriate tribunal and that receipt be acknowledged.]~~

19 ~~[(b)]~~ If requested by [~~the responding~~] another tribunal, nonresident individual, or support
20 enforcement agency [of another State or foreign country], a tribunal of this State shall issue a
21 certificate or other document and make findings required by the law of another tribunal [~~the~~
22 ~~responding State~~]. If the request comes from [~~responding tribunal State is~~] a foreign tribunal, or a
23 nonresident individual or support enforcement agency of a foreign country, [or political

1 ~~subdivision, upon request]~~ the tribunal of this State shall specify the amount of support sought,
2 convert that amount into the equivalent amount in the foreign currency under applicable official
3 or market exchange rate as publicly reported, and provide any other documents necessary to
4 satisfy the requirements of the other country~~[responding State]~~.

5 **Reporter's Note**

6
7 The directives regarding foreign currency issues in Sections 304, 305, and 307, are
8 specifically directed to a tribunal "of this State," and do not affect the order going to, or coming
9 from the foreign country.

10
11 **SECTION 305. DUTIES AND POWERS OF ~~[RESPONDING]~~ TRIBUNAL**
12 **UNDER THIS [ACT].**

13 (a) ~~[When a responding tribunal of this State receives a [petition] or comparable pleading~~
14 ~~from an initiating tribunal or directly pursuant to Section 301(b), it shall cause the [petition] or~~
15 ~~pleading to be filed and notify the [petitioner] where and when it was filed.] [(b)] A [responding]~~
16 tribunal of this State, to the extent not prohibited by other law, may take [do] one or more of the
17 following actions in accordance with this [Act]:

18 (1) establish [issue] or enforce a support order, modify a child-support order,
19 determine the controlling child-support order, or [to] determine parentage;

20 (2) order an obligor to comply with a support order, specifying the amount and
21 the manner of compliance;

22 (3) order income withholding;

23 (4) determine the amount of any arrearages, and specify a method of payment;

24 (5) enforce orders by civil or criminal contempt, or both;

25 (6) set aside property for satisfaction of the support order;

26 (7) place liens and order execution on the obligor's property;

1 (8) order an obligor to keep the tribunal informed of the obligor's current
2 residential address, telephone number, employer, address of employment, and telephone number
3 at the place of employment;

4 (9) issue a [bench warrant/capias] for an obligor who has failed after proper notice
5 to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local
6 and State computer systems for criminal warrants;

7 (10) order the obligor to seek appropriate employment by specified methods;

8 (11) award reasonable attorney's fees and other fees and costs; and

9 (12) grant any other available remedy.

10 (b) ~~(c)~~ A [responding] tribunal of this State shall include in a support order issued under
11 this [Act], or in the documents accompanying the order, the calculations on which the support
12 order is based.

13 (c) ~~(d)~~ A [responding] tribunal of this State may not condition the payment of a support
14 order issued under this [Act] upon compliance by a party with provisions for visitation.

15 (d) ~~(e)~~ If a [responding] tribunal of this State issues an order under this [Act], the
16 tribunal shall send a copy of the order to the [petitioner] and the [respondent] ~~and to the~~
17 ~~initiating tribunal, if any~~.

18 (e) ~~(f)~~ If requested to enforce a support order, arrears, or judgment or modify a support
19 order stated in a foreign currency, a [responding] tribunal of this State shall convert the amount
20 stated in the foreign currency to the equivalent amount in dollars under the applicable official or
21 market exchange rate as publicly reported.

22 **Reporter's Note**

23 See Convention art. 19.
24
25

1 **SECTION 306. INAPPROPRIATE TRIBUNAL.** If a [petition] or comparable
2 pleading is received by an inappropriate tribunal of this State, the tribunal shall forward the
3 pleading and accompanying documents to an appropriate tribunal in this State or another State
4 and notify the [petitioner] where and when the pleading was sent.

5 **SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.**

6 (a) A support enforcement agency of this State, upon request, shall provide services to an
7 individual [petitioner] or another support enforcement agency in a proceeding under this [Act].

8 (b) A support enforcement agency of this State that is providing services to an individual
9 [petitioner] or another support enforcement agency shall:

10 (1) take all steps necessary to enable an appropriate tribunal in this State or
11 another State to obtain jurisdiction over the [respondent];

12 (2) request an appropriate tribunal to set a date, time, and place for a hearing;

13 (3) make a reasonable effort to obtain all relevant information, including
14 information as to income and property of the parties;

15 (4) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after
16 receipt of a written notice in a record from [~~an initiating, responding, or registering~~] a tribunal,
17 send a copy of the notice to the individual [petitioner] or other support enforcement agency;

18 (5) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after
19 receipt of a written communication in a record from the [respondent] or the [respondent's]
20 attorney, send a copy of the communication to the individual [petitioner] or another support
21 enforcement agency; and

22 (6) notify the individual [petitioner] or other support enforcement agency if
23 jurisdiction over the [respondent] cannot be obtained.

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

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

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

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

11 (e) A support enforcement agency of this State shall [issue or] request a tribunal of this
12 State to issue a child-support order and an income-withholding order that redirect payment of
13 current support, arrears, and interest if requested to do so by a support enforcement agency of
14 another State pursuant to Section 319 of the Uniform Interstate Family Support Act.

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

18 (g) ~~§ 206 (a)~~ If a tribunal of this State ~~[that]~~ has issued a child-support order consistent
19 with the law of this State, ~~[may serve as an initiating tribunal to]~~ a support enforcement agency
20 of this State may request a tribunal of another State or foreign country to enforce:

21 (1) the order if the order is the controlling order and has not been modified by a
22 tribunal of another State that assumed jurisdiction pursuant to the [Uniform Interstate Family
23 Support Act]; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of another State is the controlling order.]

Reporter's Note

Subsection (g) moves § 206(a), as revised, to recognize that it is a support enforcement agency that may request enforcement of prospective support and a judgment for consolidated arrears, not initiating tribunal to responding tribunal.

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 ~~or political subdivision~~ has established a reciprocal arrangement for child support with this State and take appropriate action for notification of the determination.

SECTION 309. PRIVATE COUNSEL. An individual may employ private counsel to represent the individual in proceedings authorized by this [Act].

SECTION 310. DUTIES OF [STATE INFORMATION AGENCY].

(a) The [Attorney General's Office, State Attorney's Office, State Central Registry, Interstate 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 or support enforcement agency ~~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 an initiating tribunal or the state information agency of the initiating State;~~ 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 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.

See Convention art. 25. Documents

(a) In a proceeding under this [Act], a [petitioner] seeking to establish a support order, to determine parentage, or to register and modify a support order of another State must file a [petition]. Unless otherwise ~~ordered~~ not to be disclosed under Section 312, the [petition] or accompanying documents must provide, so far as known, the name, location, ~~[residential address]~~, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, location, ~~[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

1 support order known to have been issued by another tribunal. The [petition] may include any
2 other information that may assist in locating or identifying the [respondent].

3 (b) The [petition] must specify the relief sought. The [petition] and accompanying
4 documents must conform substantially with the requirements imposed by the forms mandated by
5 federal law for use in cases filed by a support enforcement agency.

6 **Reporter's Note**

7
8 The process of nondisclosure established in § 312 contemplates nondisclosure on the
9 basis of an affidavit; disclosure may be “ordered” only after the fact, or if the other party requests
10 disclosure.

11
12 **SECTION 312. NONDISCLOSURE OF INFORMATION ~~[IN EXCEPTIONAL~~**
13 **~~CIRCUMSTANCES]~~.**

14 See Convention arts. 38, 39, & 40

15 (a) Personal information gathered or transmitted under this [Act] may only be used for
16 the purposes for which it was gathered or transmitted.

17 (b) If a party alleges in an affidavit or a pleading under oath that the health, safety, or
18 liberty of a party or child would be jeopardized by disclosure of specific identifying information,
19 that information must be sealed and may not be disclosed to the other party or the public.

20 (c) After a hearing in which a tribunal takes into consideration the health, safety, or
21 liberty of the party or child, the tribunal may order disclosure of information that the tribunal
22 determines to be in the interest of justice.

23 **SECTION 313. COSTS AND FEES.**

24 See Convention arts. 14 & 43

25 (a) The [petitioner] may not be required to pay a filing fee or other costs.

26 (b) The obligee may not be required to provide security, bond or deposit to guarantee the

1 payment of costs and expenses in proceedings brought by the obligee. If an obligee prevails, a
2 ~~[responding]~~ tribunal of this State may assess against an obligor filing fees, reasonable attorney's
3 fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and
4 the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the
5 individual obligee or a ~~[the]~~ support enforcement agency ~~[of either the initiating or the~~
6 ~~responding State]~~, except as provided by other law. Attorney's fees may be taxed as costs, and
7 may be ordered paid directly to the attorney, who may enforce the order in the attorney's own
8 name. Payment of support owed to the obligee has priority over fees, costs and expenses.

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

13 **SECTION 314. LIMITED IMMUNITY OF NONRESIDENT INDIVIDUAL**
14 **[PETITIONER].**

15 (a) Participation by a nonresident individual ~~[petitioner]~~ in a proceeding under this [Act]
16 before a ~~[responding]~~ tribunal of this State, whether in person, by private attorney, or through
17 services provided by the support enforcement agency, does not confer personal jurisdiction over
18 the [petitioner] in another proceeding.

19 (b) A nonresident individual ~~[petitioner]~~ is not amenable to service of civil process while
20 physically present in this State to participate in a proceeding under this [Act].

21 (c) The immunity granted by this section does not extend to civil litigation based on acts
22 unrelated to a proceeding under this [Act] committed by a party while physically present in this
23 State to participate in the proceeding.

1 **SECTION 315. NONPARENTAGE AS DEFENSE.** A party whose parentage of a
2 child has been previously determined by or pursuant to law may not plead nonparentage as a
3 defense to a proceeding under this [Act].

4 **SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.**

5

See Convention art. 29

6 (a) The physical presence in a tribunal of this State of a nonresident individual [~~party who~~
7 ~~is an individual~~] or, as applicable, the child, [in a tribunal of this State] is not required for the
8 establishment, enforcement, or modification of a support order or the rendition of a judgment
9 determining parentage.

10 (b) An affidavit, a document substantially complying with federally mandated forms, or a
11 document incorporated by reference in any of them, which would not be excluded under the
12 hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a
13 party or witness residing in another State or foreign country.

14 (c) A copy of the record of child-support payments certified as a true copy of the original
15 by the custodian of the record may be forwarded to a [~~responding~~] tribunal of this State. The
16 copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

17 (d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of
18 the mother and child, furnished to the adverse party at least [ten] days before trial, are admissible
19 in evidence to prove the amount of the charges billed and that the charges were reasonable,
20 necessary, and customary.

21 (e) Documentary evidence transmitted from another State or foreign country to a tribunal
22 of this State by telephone, telecopier, or other means that do not provide an original record may
23 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 in another State or foreign country 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 in that State. A tribunal of this State shall cooperate with other tribunals [~~of other States~~] 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 317. COMMUNICATIONS BETWEEN TRIBUNALS. A tribunal of this State may communicate with another tribunal [~~of another State or foreign country or political subdivision~~] in a record, or by telephone 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 in the other State or foreign country [~~or political subdivision~~]. A tribunal of this State may furnish similar information by similar means to a tribunal of another State or foreign country [~~or political subdivision~~].

SECTION 318. ASSISTANCE WITH DISCOVERY. A tribunal of this State may:

(1) request another tribunal [~~of another State~~] to assist in obtaining discovery; and

(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by another tribunal ~~of another State~~.

SECTION 319. RECEIPT AND DISBURSEMENT OF PAYMENTS.

(a) A support enforcement agency or tribunal of this State shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or another tribunal ~~[of another State]~~ a certified statement by the custodian of the record of the amounts and dates of all payments received.

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

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

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

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

ARTICLE 4

ESTABLISHMENT OF SUPPORT ORDER

SECTION 401. [PETITION] TO ESTABLISH SUPPORT ORDER.

(a) If a support order entitled to recognition under this [Act] has not been issued, a [responding] tribunal of this State may issue a support order in accordance with this [Act] and other law of this State, if:

(1) the individual [petitioner] seeking the order resides in another State or foreign
country; or

(2) the support enforcement agency seeking the order is located in another State or foreign country.

(b) The tribunal may issue a temporary child-support order if, after notice and opportunity to be heard, the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by [applicable state law];
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

1 (c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of
2 support, the tribunal shall issue a support order directed to the obligor and may issue other orders
3 pursuant to Section 305.

4
5 **Reporter's Note**

6
7 This is a good place to move Section 701.
8

9 **SECTION 402 ~~[701]~~. PROCEEDING TO DETERMINE PARENTAGE.** A tribunal
10 ~~[court]~~ of this State authorized to determine parentage of a child may do so ~~[serve as a~~
11 ~~responding tribunal]~~ in a proceeding to determine parentage brought under this [Act] or a law or
12 procedure substantially similar to this [Act].
13

1 **ARTICLE 5**

2 **ENFORCEMENT OF ORDER [OF ANOTHER STATE] WITHOUT REGISTRATION**

3
4 **Reporter's Note**

5
6 The UIFSA system of direct collection of income withholding from employers across
7 State lines is not applicable to requests across international borders. Therefore, only Section 507
8 may be relevant for consideration in conjunction with the Convention.
9

10 **SECTION 501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING**

11 **ORDER OF ANOTHER STATE.**

12 **SECTION 502. EMPLOYER'S COMPLIANCE WITH INCOME-**

13 **WITHHOLDING ORDER OF ANOTHER STATE.**

14 **SECTION 503. EMPLOYER'S COMPLIANCE WITH TWO OR MORE**

15 **INCOME-WITHHOLDING ORDERS.**

16 **SECTION 504. IMMUNITY FROM CIVIL LIABILITY.**

17 **SECTION 505. PENALTIES FOR NONCOMPLIANCE.**

18 **SECTION 506. CONTEST BY OBLIGOR.**

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

20 (a) An ~~[party or]~~ individual [petitioner] or support enforcement agency seeking to enforce
21 a support order or an income-withholding order, or both, issued by a tribunal of another State or
22 foreign country may send the documents required for registering the order to a support
23 enforcement agency of this State.

24 (b) Upon receipt of the documents, the support enforcement agency, without initially
25 seeking to register the order, shall consider and, if appropriate, use any administrative procedure
26 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].

Reporter’s Note

If a support enforcement agency receives a request for services from an individual accompanied by a copy of a foreign support order, the agency should be able to commence administrative enforcement if available under applicable state law. In a case involving a foreign order, however, there will need to be a standard administrative process for determining currency equivalence.

1 **ARTICLE 6**

2 **REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER**

3
4 **PART 1**

5 **REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER**

7 **Reporter's Note**

8
9 With selective editing, the registration and enforcement provisions in Article 6, Part 1,
10 should conform to the provisions of the proposed Convention. Directives in Sections 601, 609,
11 and Article 7 may suffice to restrict international orders to the proper channels.
12

13 **SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.** A support
14 order or income-withholding order issued by a tribunal of another State or foreign country may
15 be registered in this State for enforcement.

16 **SECTION 602. PROCEDURE TO REGISTER ORDER [OF ANOTHER STATE]**
17 **FOR ENFORCEMENT.**

18 (a) A support order or income-withholding order of another State [or foreign country]
19 may be registered in this State by sending the following records and information to the
20 [appropriate tribunal] in this State:

21 (1) a letter of transmittal to the tribunal requesting registration and enforcement;
22 (2) two copies, including one certified copy, of the order to be registered,
23 including any modification of the order;

24 (3) a sworn statement by the person requesting registration or a certified statement
25 by the custodian of the records showing the amount of any arrearage;

26 (4) the name of the obligor and, if known:

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

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

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

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

8 (b) On receipt of a request for registration, the registering tribunal shall cause the order to
9 be filed as a order of a tribunal of another State [~~foreign judgment~~], together with one copy of the
10 documents and information, regardless of their form.

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

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

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

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

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

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

1 **Reporter's Note**

2
3 It can be argued that the list of documents required in Subsection (a) conflicts with
4 Convention articles 11(3) and 25. Given that millions of domestic cases have been processed
5 under the procedure specified in this section, and approximately less than one-tenth of one
6 percent (0.001%) have involved a foreign order (an absolutely perfect illustration of tail wagging
7 dog). My recommendation is to either decide that "or a foreign country" be added to Subsection
8 (a) and assume that the section is consistent with the Convention, or add a special rule for
9 documentation of foreign orders in Article 7, *infra*.

10
11 **SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.**

12 (a) A support order or income-withholding order issued by a tribunal of ~~[in]~~ another State
13 or foreign country is registered when the order is filed in the registering tribunal of this State.

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

17 (c) Except as otherwise provided in this [Act] ~~[article]~~, a tribunal of this State shall
18 recognize and enforce, but may not modify, a registered order if the issuing tribunal had
19 jurisdiction.

20 **SECTION 604. CHOICE OF LAW.**

21 (a) Except as otherwise provided in subsection (d), the law of the issuing State or foreign
22 country governs:

23 (1) the nature, extent, amount, and duration of current payments under a
24 registered support order;

25 (2) the computation and payment of arrearages and accrual of interest on the
26 arrearages under the support order; and

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

28 (b) In a proceeding for arrears under a registered support order, the statute of limitation of

1 this State or of the issuing State, whichever is longer, applies.

2 (c) A ~~[responding]~~ tribunal of this State shall apply the procedures and remedies of this
3 State to enforce current support and collect arrears and interest due on a support order of another
4 State registered in this State.

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

10 **PART 2**

11 **CONTEST OF VALIDITY OR ENFORCEMENT.**

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

14 See Convention art. 23

15 (a) When a support order or income-withholding order issued by a tribunal of ~~it~~ another
16 State or foreign country is registered, the registering tribunal shall notify the nonregistering
17 party. The notice must be accompanied by a copy of the registered order and the documents and
18 relevant information accompanying the order.

19 (b) A notice must inform the nonregistering party:

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

22 (2) that a hearing to contest the validity or enforcement of the registered order
23 must be requested within 30 ~~[20]~~ days after notice, except the contest must be requested within

1 60 days if the party resides in a foreign country;

2 (3) that failure to contest the validity or enforcement of the registered order in a
3 timely manner will result in confirmation of the order and enforcement of the order and the
4 alleged arrearages; and

5 (4) of the amount of any alleged arrearages.

6 (c) If the registering party asserts that two or more orders are in effect, a notice must also:

7 (1) identify the two or more orders and the order alleged by the registering person
8 to be the controlling order and the consolidated arrears, if any;

9 (2) notify the nonregistering party of the right to a determination of which is the
10 controlling order;

11 (3) state that the procedures provided in subsection (b) apply to the determination
12 of which is the controlling order; and

13 (4) state that failure to contest the validity or enforcement of the order alleged to
14 be the controlling order in a timely manner may result in confirmation that the order is the
15 controlling order.

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

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

21 See Convention arts.20 & 22

22 (a) A nonregistering party subject to the personal jurisdiction of a tribunal of this State
23 who [seeking to] contests the validity or enforcement of a registered order in this State shall

1 request a hearing within 30 [20] days after notice of the registration, except the contest must be
2 requested within 60 days if the party resides in a foreign country. The nonregistering party may
3 seek to vacate the registration, to assert any defense to an allegation of noncompliance with the
4 registered order, or to contest the remedies being sought or the amount of any alleged arrearages
5 pursuant to Section 607.

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

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

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

12 Reporter's Note
13
14 Proposed amendments consistent with Convention art. 19, & 20
15

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

18 (1) the issuing tribunal lacked personal jurisdiction over the contesting party;

19 (2) the order was obtained by fraud;

20 (3) the order has been vacated, suspended, or modified by a later order;

21 [(4) the issuing tribunal has stayed the order pending appeal;]

22 (5) there is a defense under the law of this State to the remedy sought;

23 (6) the alleged amount of arrears is incorrect [~~full or partial payment has been~~
24 ~~made~~];

25 (7) the statute of limitation under Section 604 precludes enforcement of some or

1 all of the alleged arrearages; or

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

3 **SECTION 608. CONFIRMED ORDER.** Confirmation of a registered order, whether
4 by operation of law or after notice and hearing, precludes further contest of the order with
5 respect to any matter that could have been asserted at the time of registration.

6
7 **PART 3**

8 **REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER.**

9
10 **SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF**
11 **ANOTHER STATE FOR MODIFICATION.** A party or support enforcement agency seeking
12 to modify, or to modify and enforce, a child-support order issued by a tribunal of [it] another
13 State shall register that order in this State in the same manner provided in Part 1 if the order has
14 not been registered. A [petition] for modification may be filed at the same time as a request for
15 registration, or later. The pleading must specify the grounds for modification.

16 **SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION.** A tribunal
17 of this State may enforce a child-support order of a tribunal of another State or foreign country
18 registered for purposes of modification, in the same manner as if the order had been issued by a
19 tribunal of this State, but the registered order may be modified only if the requirements of
20 Section 611, 613, or 615 have been met.

21 **SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER**
22 **STATE.**

23 (a) If Section 613 does not apply, [~~except as otherwise provided in Section 615~~], upon

1 [petition] a tribunal of this State may modify a child-support order issued by a tribunal of [in]
2 another State which is registered in this State if, after notice and hearing, the tribunal finds that:

3 (1) the following requirements are met:

4 (A) neither the child, nor the obligee who is an individual, nor the obligor
5 resides in the issuing State;

6 (B) a [petitioner] who is a nonresident of this State seeks modification;
7 and

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

10 (2) this State is the State of residence of the child, or a party who is an individual
11 is subject to the personal jurisdiction of the tribunal of this State, and all of the parties who are
12 individuals have filed consents in a record in the issuing tribunal for a tribunal of this State to
13 modify the support order and assume continuing, exclusive jurisdiction.

14 (b) Modification of a registered child-support order is subject to the same requirements,
15 procedures, and defenses that apply to the modification of an order issued by a tribunal of this
16 State and the order may be enforced and satisfied in the same manner.

17 (c) ~~[Except as otherwise provided in Section 615, a]~~ A tribunal of this State may not
18 modify any aspect of a child-support order that may not be modified under the law of the issuing
19 State, including the duration of the obligation of support. If two or more tribunals have issued
20 child-support orders for the same obligor and same child, the order that controls and must be so
21 recognized under Section 207 establishes the aspects of the support order which are
22 nonmodifiable.

23 (d) In a proceeding to modify a child-support order, the law of the State that is

1 determined to have issued the initial controlling order governs the duration of the obligation of
2 support. The obligor's fulfillment of the duty of support established by that order precludes
3 imposition of a further obligation of support by a tribunal of this State.

4 (e) On the issuance of an order by a tribunal of this State modifying a child-support order
5 issued by a tribunal of [it] another State, the tribunal of this State becomes the tribunal having
6 continuing, exclusive jurisdiction, and shall prospectively apply the law of this State regarding
7 interest on arrears, on current and future support, and on consolidated arrears.

8 (f) The provisions of this section do not apply to a support order issued by a tribunal of a
9 foreign country.

10 **SECTION 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.**

11 (a) If a child-support order issued by a tribunal of this State is modified by a tribunal of
12 another State which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act,
13 a tribunal of this State:

14 (1) may enforce its order that was modified only as to arrears and interest
15 accruing before the modification;

16 (2) may provide appropriate relief for violations of its order which occurred
17 before the effective date of the modification; and

18 (3) shall recognize the modifying order of the other State, upon registration, for
19 the purpose of enforcement.

20 (b) The provisions of this section do not apply to a support order issued by a tribunal of a
21 foreign country.

1 **SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER**
2 **ISSUED IN [OF] ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS**
3 **STATE.**

4 (a) If all of the parties who are individuals reside in this State and the child does not
5 reside in the issuing State, a tribunal of this State has jurisdiction to enforce and to modify the
6 issuing State's child-support order in a proceeding to register that order.

7 (b) A tribunal of this State exercising jurisdiction under this section shall apply the
8 provisions of Articles 1 and 2, this article, and the procedural and substantive law of this State to
9 the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

10 (c) The provisions of this section do not apply to a support order issued by a tribunal of a
11 foreign country.

12 **SECTION 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.**

13 (a) Within [30] days after issuance of a modified child-support order, the party obtaining
14 the modification shall file a certified copy of the order with the issuing tribunal that had
15 continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party
16 knows the earlier order has been registered. A party who obtains the order and fails to file a
17 certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file
18 arises. The failure to file does not affect the validity or enforceability of the modified order of the
19 new tribunal having continuing, exclusive jurisdiction.

20 (b) The provisions of this section do not apply to a support order issued by a tribunal of a
21 foreign country.

Reporter's Note

Section 615 moved to Article 7, Section 751.

**~~[SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF
FOREIGN COUNTRY OR POLITICAL SUBDIVISION.]~~**

~~(a) If a foreign country or political subdivision that is a State will not or may not modify its 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 or not 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 or political subdivision.~~

~~(b) An order issued pursuant to this section is the controlling order.]~~

1 **ARTICLE 7**

2 **SUPPORT ORDER INVOLVING FOREIGN COUNTRY**

3
4 **Reporter's Note**

5
6 In drafting a new iteration of UIFSA, one crucial fact must be kept in mind. If and when
7 the new Convention is ratified by the United States Senate and signed by the President, it
8 becomes the “law of the land.” However, it does not become the law of the several States.
9 Another crucial fact is that establishment, enforcement, and modification of child support and
10 spousal support orders is virtually an exclusive matter for State tribunals. Therefore, for the
11 Convention to function smoothly, the provisions that directly affect State law must be
12 incorporated into it.
13

14 Further, the language of the Convention is what it is, and is not subject to domestic
15 amendment. Indeed the choice for the U.S. Senate is to accept all or none of the provisions of the
16 Convention, other than those few that are subject to reservation or declaration by individual
17 “Contracting States” (nations and political subdivisions of some nations). For bench and bar in
18 the United States to function efficiently, a translation of HccH treaty-English into UIFSA
19 American-English is not only permissible, but, in my opinion, is vital to facilitate
20 implementation of the Convention at ground level. This conclusion, but not the actual execution
21 of that task found in this draft, has been sanctioned by William Duncan, Deputy Secretary
22 General of the HccH Secretariat.
23

24 Gathering the provisions of the Convention applicable to a proceeding involving a
25 foreign country in Article 7 not clearly already covered in UIFSA will eliminate the necessity to
26 pick and choose when to insert, amend, or delete existing UIFSA text throughout the Act. For
27 example, although chapter 2 is controlling insofar as establishing personal jurisdiction over a
28 party when required in a case involving a foreign country, the provisions to accomplish this do
29 not need to be amended in this chapter.
30

31 Moreover, UIFSA need not remain passive regarding the effect of a support order issued
32 by a foreign tribunal entitled to recognition and enforcement by a “tribunal of this State.” For
33 example, although the terms “modify” and “modification” are much employed in the text of the
34 draft Convention (17 times in all), many questions about that process go unanswered in the
35 Convention. UIFSA may fill these gaps. Moreover, many of the provisions in Convention chs.
36 VI to IX pose questions about which to include in UIFSA. For example, Articles 26 and 27 have
37 been included in rewritten form even though UIFSA already contains the principles expressed.
38 This duplication of effort, or more accurately the persuasive power of existing UIFSA practice, is
39 even clearer for Convention Articles 32 through 36. Some of Convention Articles 44-51 may
40 also be included. Advice of the committee and observers is needed to resolve these questions.
41
42

SECTION 701. APPLICATION OF [ACT] AND [ARTICLE] TO RESIDENTS OF
AND ORDERS FROM FOREIGN COUNTRIES.

(a) This [Act] applies to a support proceeding involving a resident of a foreign country and to a support order of a foreign tribunal.

(b) This [Article] applies only to a support proceeding involving a resident of a foreign country or a support order of a foreign tribunal. If a tribunal of this State determines that a provision of this [Article] conflicts with a provision of another [Article] of this [Act], this [Article] applies.

Reporter's Note

The strong majority of references to an out-of-State support order in Article 1-6 are to “a support order of a tribunal of another State or foreign country.” On several occasion the reference is to “a tribunal,” which is intended to add “a tribunal of this State” to the mix as well as other State and foreign tribunals. In a handful of situations the reference is to only “a tribunal of another State”; this term is designed not to include foreign tribunals—the usual reason being that the applicable law in question is UIFSA. Whether this should be spelled out in the statute or left to the comments is for the drafting committee to decide.

SECTION 702. CENTRAL AUTHORITY OF THIS STATE.

See Convention arts. 4-17

(a) The [IV-D agency of this State] is recognized as the Central Authority of this State.

(b) The Central Authority of this State performs the functions required of it by the Convention and federal law, including assisting

(1) a resident of this State to file an [application] for services in a foreign country;

and

(2) the central authority of a foreign country to file a [petition] in this State.

(c) Without the assistance of a central authority, an individual [petitioner] residing in this

State may initiate a proceeding under the Convention by filing a [petition] or a comparable

1 pleading directly with a foreign tribunal without the assistance of a central authority.

2 (d) An individual residing in a foreign country may initiate a proceeding under the
3 Convention by filing a [petition] or a comparable pleading directly with a tribunal of this State
4 without the assistance of a central authority.

Reporter's Note

5
6
7 Heretofore, the Act has not referred to that governmental entity known as the “Central
8 Authority” in the Convention. In my opinion, there is no need to do so because the relationship
9 between OCSE and the IV-D agencies is a matter only for federal law. And, despite the fact that
10 reference is often made to the “federal mandate” is common parlance, that law is State law
11 enacted in response to the subsidy provided by the federal government, and not on substantive
12 federal law. Realistically, this is a distinction without much effect, thanks to the dependency of
13 the States on the considerable federal subsidy.

14
15 The fundamental principle of U.S. jurisprudence underlying this section, especially
16 subsections (c) and (d), is that our courts are open to all litigants with a proper cause of action.
17 While this may go without saying, saying it can do no harm. Further, ever since the first iteration
18 of UIFSA in 1992, the Uniform Law Commission, nee NCCUSL, has jealously guarded the
19 prerogative of a litigant to employ “private counsel” to enforce support orders, *see* UIFSA § 309.
20 That principle undoubtedly will continue to be a focal point of the ULC.

21 22 **SECTION 703. ESTABLISHMENT OF SUPPORT ORDER INVOLVING PARTY** 23 **OR CHILD RESIDING IN FOREIGN COUNTRY.**

24 See Convention arts. 10, 19, 20, 37

25 (a) A tribunal of this State with personal jurisdiction over an individual may establish a
26 support order involving an individual residing in a foreign country or a foreign support agency if:

27 (1) there is no existing order, or

28 (2) the existing support order of a foreign tribunal cannot be recognized or
29 enforced under the provisions of this [Act].

30 (b) In accordance with this section, a tribunal of this State shall establish a support order,
31 and if necessary, determine parentage without regard to whether the nonresident party or the

1 child reside in a foreign country that:

2 (1) is committed to recognize and enforce such an order of a tribunal of this State

3 by agreement, treaty, or otherwise; or

4 (2) will not recognize and enforce that order.

5 Reporter's note. See comment to Section 702, *supra*.

6
7 **SECTION 704. PROCEDURE FOR REGISTRATION OF SUPPORT ORDER OF**
8 **FOREIGN TRIBUNAL.**

9 See Convention arts. 23, 24

10 (a) An individual party or support enforcement agency seeking to enforce, modify, or to
11 modify and enforce a child-support order issued by a foreign tribunal shall register that order in
12 this State in the same manner provided in Sections 601 through 610 if the order has not been
13 registered. After registration, the procedure for modification of the order is not subject to
14 Sections 611 through 614, but is governed by the provisions of this Article.

15 (b) A [petition] may request partial recognition and enforcement of a support order issued
16 by a foreign tribunal.

17 (c) After registration a tribunal of this State:

18 (1) is bound by the findings of fact on which the foreign tribunal based the order
19 presented to be recognized, enforced, or modified; and

20 (2) may not review the merits of a support order of a foreign tribunal presented to
21 be recognized, enforced, or modified, but shall resolve a contest of the validity of the order as
22 provided in Sections 601 through 610.

1 **SECTION 705. BASES FOR RECOGNITION OF SUPPORT ORDER OF**
2 **FOREIGN TRIBUNAL.**

3 See Convention arts. 19, 20, 21

4 (a) A support order issued by a foreign tribunal may be recognized by a tribunal of this
5 State only if the order has effect in the foreign country, and may be enforced only if it is
6 enforceable there.

7 (b) A support order issued by a foreign tribunal shall be recognized and enforced by a
8 tribunal of this State if:

9 (1) the individual respondent was resident in the foreign country at the time
10 proceedings were instituted;

11 (2) the respondent submitted to the jurisdiction, either expressly or by defending
12 on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

13 (3) the child for whom support was ordered was resident in the foreign country at
14 the time proceedings were instituted, provided that the respondent lived with the child in that
15 foreign country or resided there and provided support for the child.

16 (c) A tribunal of this State shall recognize and enforce a support order issued by a
17 foreign tribunal, if, in similar factual circumstances, those facts would confer, or would have
18 conferred jurisdiction on the tribunal in this State to make such an order.

19 (d) A child support order issued by a foreign tribunal that cannot be recognized under
20 subsection (b) or (c) shall be accepted as establishing the eligibility of that obligee or child to
21 institute a support proceeding.

1 **SECTION 706. GROUNDS FOR REFUSING RECOGNITION AND**
2 **ENFORCEMENT OF SUPPORT ORDER OF FOREIGN TRIBUNAL.**

3 See Convention art. 22 and 25.

4 (a) A tribunal of this State may refuse recognition and enforcement of a support order of
5 a foreign tribunal if:

6 (1) recognition and enforcement of the order is manifestly incompatible with the
7 public policy ("ordre public") of the United States;

8 (2) the order was obtained by fraud in connection with a matter of procedure;

9 (3) the foreign order is incompatible with a more recent foreign support order
10 issued between the same parties and having the same purpose, provided that the more recent
11 support order fulfils the conditions necessary for its recognition and enforcement in this State;

12 (4) the respondent did not have:

13 (A) proper notice of the proceedings and an opportunity to be heard;

14 (B) proper notice of the order and the opportunity to challenge it on fact
15 and law; or

16 (5) the order was issued by a tribunal other than the tribunal that issued the
17 controlling order in accordance with Section 707.

18 (b) A tribunal of this State shall recognize and enforce a support order by a tribunal of
19 another State and refuse to recognize a support order of a foreign tribunal if the multiple support
20 orders resulted from proceedings between the same parties having the same purpose.

21 **Reporter's Note**

22 Subsection (1) should be read in the context of nationwide public policy if a foreign order
23 is to be refused on public policy grounds. Support for a former member of a same-sex couple
24 immediately comes to mind. Of course, this is not actually a UIFSA question because, for the
25 time being at least, public enforcement of a purely spousal support order is left to the individual
26

1 States. By its terms, UIFSA applies to a “support order” for a child, spouse, or former spouse.
2 A support order of another state is entitled to Full Faith, and Credit, 18 U.S.C.A. 1738B. This
3 situation will be one of the few, if any, instances in which tribunals of the United State might
4 claim violation of our public policy.

5
6 Hypothetically, Subsection (4) may come into conflict with the UIFSA system of
7 continuing exclusive jurisdiction. If so, perhaps there will be a situation in which the Convention
8 will control over state law; that does not seem likely enough to warrant drafting concern.

10 **SECTION 707. DETERMINATION OF CONTROLLING CHILD-SUPPORT**

11 **ORDER BY FOREIGN TRIBUNAL.**

12 (a) If a proceeding is brought under this [Act] and the only existing support order is an
13 order of a foreign tribunal, that order controls and must be so recognized except as otherwise
14 provided in this [Article].

15 (b) If a proceeding is brought under this [Act], and a child-support order has been issued
16 by two or more foreign tribunals regarding the same obligor and same child, a tribunal of this
17 State shall apply the following rules and by order shall determine which order controls:

18 (1) if only one of the tribunals had personal jurisdiction over the obligor and
19 obligee under this [Act], the order of that tribunal controls and must be so recognized.

20 (2) if more than one of the tribunals had personal jurisdiction over the obligor and
21 obligee under this [Act], the order most recently issued controls.

22 (3) if none of the tribunals had personal jurisdiction over the obligor and obligee,
23 a tribunal of this State with jurisdiction under this [Act] shall issue a child-support order binding
24 the parties.

25 (c) In making its determination, the tribunal of this State shall apply the procedures set
26 forth in Section 207(c)-(h), as applicable.

27 **Reporter’s Note**

28 The only significant difference between this section and Section 207 is that the “home
29

1 | state” of the child is not the first tiebreaker.

2
3 **SECTION 708. RECOGNITION AND ENFORCEMENT OF FOREIGN**
4 **MAINTENANCE ARRANGEMENT.**

5 | See Convention arts. 3, 30

6 (a) For purposes of this section, “maintenance arrangement” means an agreement in a
7 record which:

8 (1) has been formally drawn up or registered as an authentic instrument by a
9 foreign tribunal; or

10 (2) has been authenticated by, or concluded, registered or filed with a foreign
11 tribunal, and may be the subject of review and modification by a foreign tribunal.

12 (b) A maintenance arrangement made in a foreign country shall be entitled to recognition
13 and enforcement by a tribunal of this State, provided:

14 (1) it is enforceable in the foreign country; and

15 (2) the request for enforcement is made through a support enforcement agency of
16 this State.

17 (c) A tribunal of this State may refuse to recognize and enforce a foreign maintenance
18 arrangement if the principles expressed in Section 706 for non-recognition of a support order
19 apply to the maintenance arrangement.

20
21 **Reporter’s Note**

22
23 *Convention art. 62 states “A Contracting State may ... make one or more reservations*
24 *provided for in Articles ... 30(8)” This provision was opposed by members of the ULC*
25 *executive committee; I am assured it will NOT be the subject of a declaration or reservation as*
26 *provided in art. 30 by the U.S. In this instance, I believe inclusion of minimal text is preferable*
27 *For example, the federal Central Authority may need to declare what, if anything, is “manifestly*

1 incompatible with the public policy” that would justify refusal of recognition under art. 30(4)(a).
2 Leaving that decision to individual State tribunals might result in chaos.

4 **SECTION 709. PROVISIONAL AND CONFIRMATION ORDERS OF FOREIGN**
5 **TRIBUNALS.**

6 See Convention arts. 20, 22, and 31

7 If a support order is produced by the combined effect of a provisional support order issued by a
8 tribunal in one foreign country and a support order issued by a tribunal of this State or another
9 foreign country confirming the provisional order:

10 (1) each of those tribunals shall be considered an issuing tribunal;

11 (2) the requirements of Section 607 are met if the respondent had proper notice of the
12 proceedings in the confirming jurisdiction and an opportunity to oppose the confirmation of the
13 provisional order; and

14 (3) the requirement of Section 705 is met if the support order has effect and is
15 enforceable in the country of the confirming tribunal.

16 **Reporter’s Note**

17
18 Although this procedure may seem bewildering to those encountering it for the first time,
19 it has long been a part of the relationship between U.S. authorities and Commonwealth countries,
20 especially the Canadian provinces. The provisional order is just that; the confirming order is to
21 be treated as the controlling order. In fact, UIFSA § 304(b) was designed to facilitate this
22 process, but the Convention explains the procedure more clearly.

23
24 **SECTION 710. MODIFICATION OF SUPPORT ORDER OF FOREIGN**
25 **TRIBUNAL.**

26 See Convention art. 18.

27 (a) Subject to the limitation of subsection (b), a tribunal of this State may modify, or
28 modify and enforce the support order of a foreign tribunal which has been registered in this

1 State.

2 (b) A tribunal of this State may not modify the support order of a foreign tribunal if the
3 obligee remains a resident of the foreign country where the support order was issued. This
4 subsection does not apply if:

5 (1) the dispute relates to a support obligation other than that for a child, and the
6 parties agree in a record to submit to the jurisdiction of a tribunal of this State;

7 (2) the obligee submits to the jurisdiction of a tribunal of this State, either
8 expressly or by defending on the merits of the case without objecting to the jurisdiction at the
9 first available opportunity;

10 (3) the foreign tribunal cannot modify its support order or make a new support
11 order as provided in Section 711; or,

12 (4) the support order of the foreign tribunal cannot be recognized or declared
13 enforceable in this State.

14 **Reporter's Note**

15 The term “modify” and its variants is used 17 times in the text of the Convention, but
16 many questions remain unanswered. UIFSA may legitimately fill these gaps.
17
18

19 **SECTION 711. ISSUING SUPPORT ORDER WHEN FOREIGN TRIBUNAL**
20 **CANNOT MODIFY. [615]. [JURISDICTION TO MODIFY CHILD-SUPPORT ORDER**
21 **OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION].**

22 See Convention art. 18

23 (a) If a foreign tribunal ~~[country or political subdivision that is a State will not or may~~
24 ~~not]~~ cannot modify its order pursuant to its laws, a tribunal of this State may assume jurisdiction
25 to issue a [modify the] child-support order and bind all individuals subject to the personal
26 jurisdiction of the tribunal. ~~[whether or not the e]~~ Consent to modification of a child-support

1 order otherwise required of the individual pursuant to Section 611 is not required. ~~[been given or~~
2 ~~whether t].~~ The individual seeking modification may be [is] a resident of this State or of the
3 foreign country ~~[or political subdivision].~~

4 (b) An order issued pursuant to this section is the controlling order.

5 **Reporter's Note**

6
7 This revision of UIFSA § 615 is consistent with Convention art. 18 2. c), which limits
8 proceedings initiated by the debtor when the creditor remains in the issuing state. The
9 contemplation here is that the creditor will seek modification, but will be unable to obtain it
10 because the debtor will not appear to defend or the creditor must appear in a distant forum.
11

12
13 **SECTION 712. RECOGNITION AND ENFORCEMENT OF SUBSEQUENT**
14 **SUPPORT ORDER INVOLVING PARTY OR CHILD RESIDING IN FOREIGN**
15 **COUNTRY.**

16 (a) A tribunal of this State shall apply the provisions of this [Act] to register and enforce
17 a modified support order of a foreign tribunal if the modification was issued by the foreign
18 tribunal that issued the controlling order in accordance with Section 707.

19 (b) A tribunal of this State shall apply the provisions of this [Act] to register and enforce
20 a subsequent support order issued by a foreign tribunal other than the foreign tribunal that issued
21 the prior order if the subsequent order was issued consistently with the provisions of Sections
22 704 and 705.

23 (c) If the tribunal of this State cannot register and enforce a modified support order
24 issued by a foreign tribunal because the factual circumstances would not provide personal
25 jurisdiction over an individual party, the tribunal shall take all appropriate measures to establish
26 a support order if it may assert personal jurisdiction over the individual parties.

27 **Reporter's Note**
28

1 Because in the rest of the world the residence of the obligee (creditor) or the child is
2 determinative of jurisdiction to establish and modify a support order, the issue of personal
3 jurisdiction over the obligor (creditor) is basically moot for foreign tribunals. This distinction
4 forms the basis of Article 20. Bases for Recognition and Enforcement, *infra*. That the United
5 States will take a reservation regarding creditor-based jurisdiction is understood by all parties to
6 the negotiations in Article 20 2. This provision takes that understanding an identical step forward
7 with regard to a modification of the original support order.

8
9 **SECTION 713. MODIFICATION OF CHILD-SUPPORT ORDER OF STATE**

10 **TRIBUNAL IF PARTY RESIDES IN FOREIGN COUNTRY.**

11 Not derived from the Convention

12 (a) The restrictions on modification stated in Section 201(b) and 611 do not apply to a
13 tribunal of this State which has jurisdiction:

14 (1) to modify its own child-support order if the [petitioner] resides in the United
15 States and the respondent resides in a foreign country; and .

16 (2) to register and modify a child-support order of another State as provided by
17 Sections 609 to 610. The restrictions on modification stated in Sections 201(b) and 611 do not
18 apply if:

19 (A) the child-support order involves an obligor, obligee, or child residing
20 in a foreign country;

21 (B) the issuing State does not have continuing exclusive jurisdiction to
22 modify its order under Section 205; and

23 (C) this State is the home state of the child or the State of residence of one
24 of the parties.

25 **Reporter's Note**

26
27 In drafting UIFSA 1992 critical choices were made regarding modification of an existing
28 child support order when all parties and the child had left the issuing State. First, the original
29 order was to remain in force as the controlling order until modified. Second, the issue was what
30 to do when the parties resided in different States. The deciding factor centered on the undesirable

1 effect of ambush jurisdiction. The drafting committee objected to the possibility that the parties
2 would vie to strike first to obtain a home town advantage. Arguably this could discourage
3 continued contact with the children by the obligor for fear of a lawsuit in a distant forum. Thus,
4 modification in a forum with long-arm personal jurisdiction over the parties was avoided.
5 Indeed, repeated modification suits were to be avoided. Ultimately, an alternative was produced,
6 which has come to be known as “the movant must play an away game,” as exemplified in
7 Section 611.
8

9 The requirements of Section 611, and the prohibition against assertion of long-arm
10 jurisdiction in the international context makes much less sense. Only because the United States is
11 wedded to personal jurisdiction does this issue arise; a foreign country will regard the support
12 order to be one of the country or political subdivision, and jurisdiction is based on the creditor’s
13 residence. Consideration was given to labeling a support order of a State as an order of the
14 United States. Conforming modification to the general principles of state-control of the subject
15 matter through UIFSA, with an exception for appropriate assertion of long-arm jurisdiction,
16 seems the more conservative approach. Of course, the movant may also choose to seek
17 modification in the other party’s place of residence.
18

19 Some of the General Provisions in Convention ch. VIII do not direct action to be taken by
20 a tribunal or agency of a U.S. State, or direct action that is already covered by the law of the
21 State in UIFSA or otherwise. As a preliminary judgment, those that seem relevant to UIFSA
22 have been included in UIFSA arts. 1-6. Obviously, further study will be necessary to confirm
23 these preliminary conclusions. Please note any disagreement with the conclusions.
24

25 **SECTION 714. ENFORCING SUPPORT ORDER OF FOREIGN TRIBUNAL.**

26 See Convention art. 34

27 Consistent with Section 303 and as otherwise provided by this [Article], a tribunal of this State
28 shall apply the procedural and substantive law of this State to an order of a foreign tribunal.

29 **Reporter’s Note**

30 UIFSA arts. 8 and 9 are not relevant to the Convention and are omitted here.
31
32