Oklahoma Family Law

Cases and Materials

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Oklahoma Statutes are current through the 57th Legislature, Second Regular Session (2021); and Federal Statutes are current through 117th Congress, 1st Session, Public Law-117-31.

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§ 4. Repealed by Laws 2009, c. 233, § 156, emerg. eff. May 21, 2009.
§ 5. Renumbered as 43 O.S. § 109.4 by Laws 2009, c. 233, § 197, emerg. eff. May 21, 2009.
§ 5.1. Repealed by Laws 2009, c. 233, § 157, emerg. eff. May 21, 2009.
§ 5.2. Renumbered as 43 O.S. § 109.6 by Laws 2009, c. 233, § 198, emerg. eff. May 21, 2009.
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§ 7. Repealed by Laws 2009, c. 233, § 160, emerg. eff. May 21, 2009.
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§ 11. Repealed by Laws 2009, c. 233, § 164, emerg. eff. May 21, 2009.
§ 12. Repealed by Laws 2009, c. 233, § 165, emerg. eff. May 21, 2009.
§ 13. Renumbered as 43 O.S. § 209.2 by Laws 2009, c. 233, § 199, emerg. eff. May 21, 2009.
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§ 15. Renumbered as 43 O.S. § 112.4 by Laws 2009, c. 233, § 199, emerg. eff. May 21, 2009.
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§ 18. Repealed by Laws 2009, c. 233, § 169, emerg. eff. May 21, 2009.
§ 19. Renumbered as 43 O.S. § 112.2A by Laws 2009, c. 233, § 202, emerg. eff. May 21, 2009.
§ 20. Renumbered as 76 O.S. § 1.1 by Laws 2009, c. 233, § 203, emerg. eff. May 21, 2009.
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§ 21.1. Renumbered as 43 O.S. § 112.5 by Laws 2009, c. 233, § 204, emerg. eff. May 21, 2009.
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§ 21.4. Repealed by Laws 2009, c. 233, § 172, emerg. eff. May 21, 2009.
§ 21.5. Repealed by Laws 2009, c. 233, § 173, emerg. eff. May 21, 2009.
§ 21.6. Repealed by Laws 2009, c. 233, § 174, emerg. eff. May 21, 2009.
§ 21.10. Child Voluntarily Place With Child-Placing Agency—Placement Plan—Medical Examination—Effect of Exam on Placement in Foster Home.

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Selected Oklahoma Statutes as amended by the 56th Legislature, 1st Regular Session (2017).

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Title 10.
Children

Chapter 1.
General Provisions

§ 1. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 1.1. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 1.2. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 2. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

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§ 4. Repealed by Laws 2009, c. 233, § 156, emerg. eff. May 21, 2009.

§ 5. Renumbered as 43 O.S. § 109.4 by Laws 2009, c. 233, § 197, emerg. eff. May 21, 2009.

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§ 5A. Repealed by Laws 2009, c. 233, § 158, emerg. eff. May 21, 2009.

§ 6. Repealed by Laws 2009, c. 233, § 159, emerg. eff. May 21, 2009.

§ 6.5. Use of Certain Words in Reference to Children Born Out of Wedlock Prohibited.

A. On and after the date upon which this act becomes operative, the designations “illegitimate” or “bastard” shall not be used to designate a child born out of wedlock.

B. No person, firm, corporation, agency, organization, the State of Oklahoma nor any of its agencies, boards, commission officers or political subdivisions, nor any hospital, nor any institution supported by public funds, nor any employee of any of the above, shall use the term “illegitimate” or “bastard” in referring to or designating any child born on or after the operative date of this act.

Laws 1974, c. 297, § 1, operative July 1, 1974.

§ 7. Repealed by Laws 2009, c. 233, § 160, emerg. eff. May 21, 2009.

§ 8. Repealed by Laws 2009, c. 233, § 161, emerg. eff. May 21, 2009.

§ 9. Repealed by Laws 2009, c. 233, § 162, emerg. eff. May 21, 2009.

§ 10. Repealed by Laws 2009, c. 233, § 163, emerg. eff. May 21, 2009.

§ 11. Repealed by Laws 2009, c. 233, § 164, emerg. eff. May 21, 2009.

§ 12. Repealed by Laws 2009, c. 233, § 165, emerg. eff. May 21, 2009.

§ 13. Renumbered as 43 O.S. § 209.2 by Laws 2009, c. 233, § 199, emerg. eff. May 21, 2009.

§ 14. Repealed by Laws 2009, c. 233, § 166, emerg. eff. May 21, 2009.

§ 15. Renumbered as 43 O.S. § 112.4 by Laws 2009, c. 233, § 200, emerg. eff. May 21, 2009.

§ 16. Repealed by Laws 2009, c. 233, § 167, emerg. eff. May 21, 2009.

§ 17. Repealed by Laws 2009, c. 233, § 168, emerg. eff. May 21, 2009.

§ 17.1. Renumbered as 12 O.S. § 2025.1 by Laws 2009, c. 233, § 201, emerg. eff. May 21, 2009.

§ 18. Repealed by Laws 2009, c. 233, § 169, emerg. eff. May 21, 2009.

§ 19. Renumbered as 43 O.S. § 112.2A by Laws 2009, c. 233, § 202, emerg. eff. May 21, 2009.

§ 20. Renumbered as 76 O.S. § 1.1 by Laws 2009, c. 233, § 203, emerg. eff. May 21, 2009.

§ 21. Renumbered as § 109.1 of Title 43 by Laws 1990, c. 188, § 4, eff. Sept. 1, 1990. (Also renumbered as § 112.1 of Title 43 by Laws 1990, c. 171, § 3, said renumbering is superseded by Laws 1990, c. 188, § 4.)

§ 21.1. Renumbered as 43 O.S. § 112.5 by Laws 2009, c. 233, § 204, emerg. eff. May 21, 2009.

§ 21.2. Repealed by Laws 2009, c. 233, § 170, emerg. eff. May 21, 2009.

§ 21.3. Repealed by Laws 2009, c. 233, § 171, emerg. eff. May 21, 2009.

§ 21.4. Repealed by Laws 2009, c. 233, § 172, emerg. eff. May 21, 2009.

§ 21.5. Repealed by Laws 2009, c. 233, § 173, emerg. eff. May 21, 2009.

§ 21.6. Repealed by Laws 2009, c. 233, § 174, emerg. eff. May 21, 2009.

§ 21.10. Child Voluntarily Place With Child-Placing Agency—Placement Plan—Medical Examination—Effect of Exam on Placement in Foster Home.

A. Upon any voluntary out-of-home placement of a child by a parent into foster care with a child-placing agency, the child-placing agency shall conduct an assessment of the child in its custody which shall be designed to establish an appropriate plan for placement of the child. Following the assessment, the child-placing agency shall establish an individual treatment and service plan for the child. A copy of each plan shall be provided to the child if the child is twelve (12) years of age or older and to the child's parent or guardian. The plan shall at a minimum:

1. Be specific;
2. Be in writing;
3. Be prepared by the agency in conference with the child's parents;
4. State appropriate deadlines;
5. State specific goals for the treatment of the child;
6. Describe the conditions or circumstances causing the child to be placed in foster care;
7. Describe the services that are necessary to remedy and that have a reasonable expectation of remedying the conditions or circumstances causing the child to be placed in foster care;

8. State to whom the services will be delivered and who will deliver the services; and

9. Prescribe the time the services are expected to begin and the time within which expected results can reasonably be accomplished.

B. The child shall receive a complete medical examination within thirty (30) days of placement in foster care.

C. The child may receive such further diagnosis and evaluation as is necessary to preserve the physical and mental well-being of the child.

D. Subsequent to initial placement, the child placed in foster placement shall have a medical examination, at periodic intervals, but not less than once each year.

E. Prior to any proposed counseling, testing, or other treatment services, the court or child-placing agency shall first determine that the proposed services are necessary and appropriate.

F. If the assessment and medical examination disclose no physical, mental, or emotional reasons for therapeutic foster care, a child voluntarily placed with a child-placing agency shall be placed in a regular foster family home. If therapeutic foster care is required, the child may be placed only in foster homes that are certified as therapeutic foster homes pursuant to the Oklahoma Child Care Facilities Licensing Act.

Added by Laws 2009, c. 233, § 110, emeg. eff. May 21, 2009.

Chapter 1B.
Oklahoma Indian Child Welfare Act

§ 40. Short Title.

Sections 1 through 10 of this act shall be known and may be cited as the "Oklahoma Indian Child Welfare Act".

Added by Laws 1982, c. 107, § 1, emerg. eff. April 6, 1982.

§ 40.1. Purpose—Policy of State.

The purpose of the Oklahoma Indian Child Welfare Act is the clarification of state policies and procedures regarding the implementation by the State of Oklahoma of the federal Indian Child Welfare Act, P.L. 95-608. It shall be the policy of the state to recognize that Indian tribes and nations have a valid governmental interest in Indian children regardless of whether or not said children are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated. It shall be the policy of the state to cooperate fully with Indian tribes in Oklahoma in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced.

Added by Laws 1982, c. 107, § 2, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 1, eff. Sept 1, 1994.

§ 40.2. Definitions.

For the purposes of the Oklahoma Indian Child Welfare Act:

1. "Indian" means a person who is a member of an Indian tribe;
2. "Indian child" means any unmarried or unemancipated person who is under the age of eighteen (18) and is either:
   a. a member of an Indian tribe, or
   b. is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
3. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child; and
4. "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Added by Laws 1982, c. 107, § 3, emerg. eff. April 6, 1982.

§ 40.3. Application of Act—Exemptions—Determination of Indian Status.

A. The Oklahoma Indian Child Welfare Act, in accordance with the federal Indian Child Welfare Act, applies to all child custody proceedings involving any Indian child except the following:

1. A child custody proceeding arising from a divorce proceeding; or
2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. Except as provided for in subsection A of this section, the Oklahoma Indian Child Welfare Act applies to all state voluntary and involuntary child custody court proceedings involving Indian children, regardless of whether or not the children involved are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated.

C. The court shall seek a determination of the Indian status of the child in accordance with the preceding standard in the following circumstances:

1. The court has been informed by an interested party, an officer of the court, a tribe, an Indian organization or a public or private agency that the child is Indian; or

2. The child who is the subject of the proceeding gives the court reason to believe he is an Indian child; or

3. The court has reason to believe the residence or domicile of the child is a predominantly Indian community.

D. The court shall seek verification of the Indian status of the child from the Indian tribe or the Bureau of Indian Affairs. A determination of membership by an Indian tribe shall be conclusive. A determination of membership by the Bureau of Indian Affairs shall be conclusive in the absence of a contrary determination by the Indian tribe.

E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of Section 40.4 of this title.

Added by Laws 1982, c. 107, § 4, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 2, eff. Sept 1, 1994.

§ 40.4. Involuntary Indian Child Custody Proceedings—Notice.

A. In all Indian child custody proceedings of the Oklahoma Indian Child Welfare Act, including voluntary court proceedings and review hearings, the court shall ensure that the district attorney or other person initiating the proceeding shall send notice to the parents or to the Indian custodians, if any, and to the tribe that is or may be the tribe of the Indian child, and to the appropriate Bureau of Indian Affairs area office, by certified mail return receipt requested, except as provided by subsection B of this section. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;

2. A copy of the petition by which the proceeding was initiated;

3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:

a. to intervene in the proceeding,

b. to petition the court to transfer the proceeding to the tribal court of the Indian child, and

c. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;

4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians;

5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and

6. A statement that tribal officials should keep confidential the information contained in the notice.

B. Notice of review hearings shall be sent, via regular first-class mail, to the tribe of the Indian child unless the tribe is present at the time the review hearing is set and consents to the date of the review. A tribe's right to notice under this section is not dependent on intervention into the case. The notice shall be evidenced by filing a certificate of mailing prior to the review hearing.

Added by Laws 1982, c. 107, § 5, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 3, eff. Sept 1, 1994; Laws 2006, c. 136, § 2, eff. Nov. 1, 2006; Laws 2017, c. 81, § 1, eff. Nov. 1, 2017.

§ 40.5. Emergency Removal of Indian Child from Parent or Custodian—Order.

A. When a court order authorizes the emergency removal of an Indian child from the parent or Indian custodian of such child in accordance with 25 U.S.C. Section 1922, the order shall be accompanied by an affidavit containing the following information:

1. The names, tribal affiliations, and addresses of the Indian child, the parents of the Indian child and Indian custodians, if any;

2. A specific and detailed account of the circumstances that lead the agency responsible for the removal of the child to take that action; and

3. A statement of the specific actions that have been taken to assist the parents or Indian custodians so that the child may safely be returned to their custody.

B. No pre-adjudicatory custody order shall remain in force or in effect for more than thirty (30) days without a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. However, the court may, for good and sufficient cause shown, extend the effective period of such order for an additional period of sixty (60) days.

Added by Laws 1982, c. 107, § 6, emerg. eff. April 6, 1982.

§ 40.6. Placement Preference.

The placement preferences specified in 25 U.S.C. Section 1915, shall apply to all preadjudicatory placements, as well as preadoptive, adoptive and foster care placements. In all placements of an Indian child by the Oklahoma Department of Human Services (DHS), or by any person or other placement agency, DHS, the person or placement agency shall utilize to the maximum extent possible the services of the Indian tribe of the child in securing placement consistent with the provisions of the Oklahoma Indian Child Welfare Act. This requirement shall include cases where a consenting parent evidences a desire for anonymity in the consent document executed pursuant to Section 60.5 of this title. If a request for anonymity is included in a parental consent document, the court shall give weight to such desire in applying the preferences only after notice is given to the child's tribe and the tribe is afforded twenty (20) days to intervene and request a hearing on available tribal placement resources which may protect parental confidentiality, provided that notice of such hearing shall be given to the consenting parent.

Added by Laws 1982, c. 107, § 7, emerg. eff. April 6, 1982. Amended by Laws 1994, c. 30, § 4, eff. Sept 1, 1994.

§ 40.7. Agreements with Indian Tribes for Care, Custody, and Jurisdiction of Indian Children.

The Director of the Department of Human Services and the Executive Director of the Office of Juvenile Affairs are authorized to enter into agreements on behalf of the state with Indian tribes in Oklahoma regarding care and custody of Indian children and jurisdiction over child custody proceedings including agreements which provide for orderly transfer of jurisdiction on a case by case basis and agreements which provide for concurrent jurisdiction between the state and the Indian tribe, as authorized by the Federal Indian Child Welfare Act, 25 U.S.C. Section 1919. The State of Oklahoma hereby ratifies all agreements in conformity with the Federal Indian Child Welfare Act executed prior to the enactment of this act, and any such agreement shall be enforceable in any case filed or pending at the time that an agreement vesting concurrent jurisdiction is entered into between the state and an Indian tribe.

Added by Laws 1982, c. 107, § 8, emerg. eff. April 6, 1982. Amended by Laws 1997, c. 293, § 1, operative July 1, 1997; Laws 2021, c. 186, § 1, emerg. eff. April 23, 2021.

§ 40.8. Payment of Foster Care Expenses Under Certain Circumstances.

A. In the event the Department of Human Services has legal custody of an Indian child, and that child is placed with a tribally licensed or approved foster home, the state shall pay the costs of foster care in the same manner and to the same extent the state pays the costs of foster care to state-licensed or state-approved foster homes, provided that the tribe shall have entered into an agreement with the state pursuant to Section 8 herein, which shall require tribal cooperation with state plans required by federal funding laws.

B. The state shall pay the costs of foster care of a child placed with a tribally licensed or approved foster home where the placement is made by a tribe having jurisdiction of the proceeding, provided that the tribe shall have entered into an agreement with the state pursuant to Section 8 herein, which shall require tribal cooperation with state plans required by federal funding laws.

Added by Laws 1982, c. 107, § 9, emerg. eff. April 6, 1982.

§ 40.9. Records.

The Department of Human Services shall establish a single location where all records of every involuntary foster care, pre-adoptive placement and adoptive placement by the courts of any Indian child in the custody of the Department of Human Services or under Department of Human Services supervision will be available within seven (7) days of a request by the tribe of the Indian child or by the Secretary of Interior. The records shall include, but not be limited to, all reports of the state caseworker, including a summary of the efforts to rehabilitate the parents of the Indian child, a list of the names and addresses of families and tribally approved homes contacted regarding placement, and a statement of reason for the final placement decision.

Added by Laws 1982, c. 107, § 10, emerg. eff. April 6, 1982.

Chapter 2. Adoption
[Repealed or renumbered]

Chapter 2A.
Oklahoma Adoption Act

[Repealed or renumbered]

Chapter 2B.
Subsidized Adoption Act
[Repealed or renumbered]

Chapter 2C.
[Repealed or renumbered]

Chapter 3.
Paternity Proceedings

§ 70. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 71. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§§ 72-76. Repealed.

§ 76.1. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 77. Repealed.

§ 77.1. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 78. Repealed by Laws 2007, c. 140, § 7, eff. Nov. 1, 2007.

§ 79. Repealed.

§ 80. Appeals.

Appeals may be taken in cases brought under the provisions of this article, in the same manner and with like effect as in other actions in the district court.

R.L.1910, § 4410.

§§ 81, 82. Repealed.

§ 83. Father's Liability to Support and Educate Child.

A. An individual who has been legally determined to be the father of a child pursuant to the Uniform Parentage Act, or an individual who has been judicially or administratively determined to be the father of a child is liable for the support and education of the child to the same extent as the father of a child born in wedlock.

B.1. An action to enforce the obligation of support and education may be brought by the mother or custodian or guardian of the child, by the public authority chargeable with the support of the child, or by the child.

2. If paternity has been legally determined pursuant to the Uniform Parentage Act, an action to enforce this obligation of support may be brought within the time period specified by paragraph 8 of subsection A of Section 95 of Title 12 of the Oklahoma Statutes.

3. The father's obligation to support is terminated if the child is adopted.

4. The court may order the payments made to the mother or custodian or guardian of the child, or to some other person, corporation or agency to administer under the supervision of the court.

C. An individual who has been legally determined to be the father of a child pursuant to the Uniform Parentage Act shall be ordered to pay all or a portion of the costs of the birth and the reasonable expenses of providing for the child, provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action.

D. The amount of child support and other support including amounts provided for in subsection C of this section shall be ordered and reviewed in accordance with the child support guidelines provided in Section 118 of Title 43 of the Oklahoma Statutes. Interest shall accrue on the support amounts pursuant to Section 114 of Title 43 of the Oklahoma Statutes.

E. If both the mother and the father agree to change the surname of the child to that of the father, the court may order the name changed. Upon receipt of an order changing the child's surname, the State Department of Health, Division of Vital Records, shall correct its records and amend the birth certificate to reflect the name change.

Added by Laws 1965, c. 378, § 3. Amended by Laws 1985, c. 297, § 4, eff. Oct. 1, 1985; Laws 1987, c. 230, § 4, eff. Oct. 1, 1987; Laws 1989, c. 198, § 3, eff. Nov. 1, 1989; Laws 1990, c. 309, § 1, eff. Sept. 1, 1990; Laws 1991, c. 71, § 2, emerg. eff. April 15, 1991; Laws 1994, c. 356, § 4, eff. Sept. 1, 1994; Laws 1997, c. 402, § 2, emerg. eff. July 1, 1997; Laws 1998, c. 323, § 2, eff. Oct. 1, 1998; Laws 2006, c. 116, § 1, eff. Nov. 1, 2006; Laws 2012, c. 253, § 1, eff Nov. 1, 2012..

§ 84. Repealed by Laws 2008, c. 99, § 6, eff. Nov. 1, 2008.

§ 85. Repealed.

§ 86. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 87, 88. Repealed.

§ 89. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 89.1. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§ 89.3. Repealed by Laws 2006, c. 116, § 62, eff. Nov. 1, 2006.

§§ 90.1-90.3. Repealed.

§ 90.4. Changing Child's Name to Paternal Surname.

A. At any time after a determination of paternity, the mother, father, custodian or guardian of the child may file a motion requesting the court to order that the surname of the child be changed to the surname of its father. The court shall thereafter set a hearing on said motion. Notice of the filing of the motion and the date of the hearing shall be served by process on all parties.

B. If, after said hearing, the judge finds that it is in the best interest of the child to bear the paternal surname, the court shall enter an order to that effect which shall include findings of fact as to each issue raised by the parties.

C. The practice, pleading, and proceedings as set forth in this section shall conform to the applicable rules prescribed by the Code of Civil Procedure.

Added by Laws 1986, c. 82, § 1, emerg. eff. April 3, 1986.

§ 90.5. District Court Shall Make Inquiry to Determine Denial of Visitation in all Paternity or Arrearage Actions.

In all cases of paternity and for arrearage of child support, the district court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the district court shall include visitation provisions in the support order.

Added by Laws 1990, c. 309, § 2, eff. Sept. 1, 1990. Amended by Laws 1991, c. 71, § 4, emerg. eff. April 15, 1991; Laws 1998, c. 323, § 4, eff. Oct. 1, 1998.

Chapter 26.
Services to Children and Youth

Power of Attorney

§ 700. Power of Attorney—Authority—Delegation—Requirements.

A. A parent or legal custodian of a child, by a properly executed power of attorney provided in Section 2 of this act, may delegate to another person, for a period not to exceed one (1) year, any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. A delegation of powers under this section shall not deprive the parent or legal custodian of any parental or legal authority regarding the care and custody of the child.

B. The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by subsection A of this section at any time. If the delegation of authority lasts longer than one (1) year, the parent or legal custodian of the child shall execute a new power of attorney for each additional year that the delegation exists.

C. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less than twenty-four (24) hours and without compensation for the intended duration of the power of attorney authorized by subsection A of this section and shall not be subject to the requirements of the Oklahoma Child Care Facilities Licensing Act.

D. Except as provided by Section 1-4-904 of Title 10A of the Oklahoma Statutes, a parent or legal custodian who executes a power of attorney authorized by subsection A of this section shall not constitute abandonment, abuse or neglect as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes unless the parent or legal custodian fails to make contact or execute a new power of attorney after the one-year time limit has elapsed.

E. Under a delegation of powers as authorized by subsection A of this section, the child or children subject to the power of attorney shall not be considered placed in foster care as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes and the parties shall not be subject to any of the requirements or licensing regulations for foster care.

Added by Laws 2014, c. 172, § 1, emerg. eff. April, 28, 2014.

§ 701. Statutory Form of Power of Attorney to Delegate Parental or Legal Custodian Powers.

A. The following statutory form of power of attorney to delegate parental or legal authority as authorized by Section 1 of this act is legally sufficient:

Statutory Form for Power of Attorney to Delegate Parental or Legal Custodian Powers

1. "I certify that I am the parent or legal custodian of:

_____ _____
(Full name of minor child) (Date of birth)

_____ _____
(Full name of minor child) (Date of birth)

_____ _____
(Full name of minor child) (Date of birth)
(minor child(ren))."

2. "I designate _____,
(Full name of Attorney-in-fact)
_____,
(Street address, city, state and zip code of Attorney-in-fact)
_____ _____
(Home phone of Attorney-in-fact) (Work phone of Attorney-in-fact)

as the attorney-in-fact of each minor child named above."

3. _____ "I delegate to the attorney-in-fact all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child." or

4. _____"I delegate to the attorney-in-fact the following specific powers and responsibilities (write in):
_____

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."

5. "This power of attorney is effective for a period not to exceed one year, beginning _____, 20__, and ending _____, 20__. I reserve the right to revoke this authority at any time."

By:_____
(Parent/Legal Custodian signature)

6. "I hereby accept my designation as attorney-in-fact for
_____
(Minor child(ren)) as specified in this power of attorney."

_____
(Attorney-in-fact signature)
State of _____
County of _____
ACKNOWLEDGEMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this _____ day of _____, 20__, personally appeared _____ (Name of Parent/Legal Custodian) and _____ (Name of Attorney-in-fact), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

_____
(Signature of notarial officer)
(Seal, if any)

_____
(Title and Rank)
My commission expires: _____

B. The power of attorney is legally sufficient under this act, if the wording of the form complies substantially with subsection A of this section, the form is properly completed, and the signatures of the parties are acknowledged.

Added by Laws 2014, c. 172, § 2, emerg. eff. April, 28, 2014.

Chapter 77.
Uniform Parentage Act

NACCUSL PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws has addressed the subject of parentage throughout the 20th Century. In 1922, the Conference promulgated the "Uniform Illegitimacy Act," followed by the "Uniform Blood Tests To Determine Paternity Act" in 1952, the "Uniform Paternity Act" in 1960, and certain provisions in the "Uniform Probate Code" in 1969. The "Uniform Illegitimacy Act" was withdrawn by the Conference and none of the other Acts were widely adopted. As of June 1973, the Blood Tests to Determine Paternity Act had been enacted in nine states, the "Uniform Paternity Act" in four, and the "Uniform Probate Code" in five.

The most important uniform act addressing the status of the nonmarital child was the Uniform Parentage Act approved in 1973 [hereinafter referred to as UPA (1973)]. As of December, 2000, UPA (1973) was in effect in 19 states stretching from Delaware to California; in addition, many other states have enacted significant portions of it. Among the many notable features of this landmark Act was the declaration that all children should be treated equally without regard to marital status of the parents. In addition, the Act established a set of rules for presumptions of parentage, shunned the term "illegitimate," and chose instead to employ the term "child with no presumed father."

UPA (1973) had its genesis in a law review article, Harry D. Krause, *A Proposed Uniform Act on Legitimacy*, 44 TEX. L. REV. 829 (1966); *see also* Krause, *Equal Protection for the Illegitimate*, 65 MIC. L. REV. 477 (1967). Professor Krause followed with a pathfinding book, ILLEGITIMACY: LAW AND SOCIAL POLICY (1971), and then went on to serve as the reporter for UPA (1973). When work on the Act began, the notion of substantive legal equality of children regardless of the marital status of their parents seemed revolutionary. Even though the Conference had put itself on record in favor of equal rights of support and inheritance in the Paternity Act and the Probate Code, the law of many states continued to differentiate very significantly in the legal treatment of marital and nonmarital children. A series of United States Supreme Court decisions invalidating state inheritance, custody, and tort laws that disadvantaged out-of-wedlock children provided the both the impetus and a receptive climate for the Conference to promulgate UPA (1973).

Case law has not always reached consistent results in construing UPA (1973). Moreover, widely differing treatment on subjects not dealt with by the Act has been common. For example, California courts have held that a nonmarital father does not have standing to sue an intact family to assert his rights of fatherhood. Another UPA (1973) state, Colorado, has declared that under its state constitution the father may not be denied such rights. Texas, which has adopted many of the provisions of UPA (1973), reached much the same conclusion. Similarly, a judgment's binding effect on the child or on others seeking to claim a benefit of the judgment or to attack the judgment collaterally is confused in the case law. Adding to the confusion is the fact that UPA (1973) is entirely silent regarding the relationship between a divorce and a determination of parentage. Finally, the incredible scientific advances in parentage testing since 1973 warrant a thoroughgoing revision of the Act.

Beginning in the 1980s, states began to adopt paternity registries in an attempt to deal with the risk of a man's subsequent claim of paternity after the mother relinquishes a child for adoption. Although at that time the Conference rejected a paternity registry as a solution, it promulgated the Uniform Putative and Unknown Fathers Act in 1988 (UPUFA) to deal with the rights of such men. However, UPUFA has not been enacted by any state. In 1988 the Conference also adopted the Uniform Status of Children of Assisted Conception Act (USCACA). Assisted reproduction and gestational agreements became commonplace in the 1990s, long after the promulgation of UPA (1973). The USCACA resembled a model act more than a uniform act because it provided two opposing options regarding "gestational agreements." To date, only two states have enacted USCACA, each choosing a different option.

The promulgation of the UNIFORM PARENTAGE ACT in 2000, as amended in 2002, is now the official recommendation of the Conference on the subject of parentage. This Act relegates to history all of the earlier uniform acts dealing with parentage, to wit, UPA (1973). UPUFA (1988), and USCACA (1988). The amendments of 2002 are the end-result of objections lodged by the American Bar Association Section of Individual Rights and Responsibilities and the ABA Committee on the Unmet Legal Needs of Children, based on the view that in certain respects the 2000 version did not adequately treat a child of unmarried parents equally with a child of married parents. Because equal treatment of nonmarital children was a hallmark of the 1973 Act, the objections caused the drafters of the 2000 version to reconsider certain sections of the Act. Through extended discussion and a meeting of representatives of all the entities involved, a determination was made that the objections had merit. As a result of this process, the amendments shown in this Act were presented by mail ballot to the Commissioners and unanimously approved in November 2002.

In brief outline, UPA (2002) is structured as follows: Article 1, General Provisions, adds many new definitions to clarify the participants in determinations of parentage and adapt the Act to recent scientific developments. Article 2, Parent-Child Relationship, will look familiar to past users of UPA (1973) because it continues a number of the 1973 provisions with little or no change, while eliminating the ambiguous term "natural" to describe a genetic parent. Article 3, Voluntary Acknowledgment of Paternity, is entirely new and is driven by federal mandates that states provide simplified nonjudicial means to establish paternity, especially for newborns and young children. Article 4, Registry of Paternity, is entirely new and incorporates a tightly integrated registry law to deal with the rights of a man who is neither an acknowledged, presumed or adjudicated father. A primary goal of this article is to facilitate adoption proceedings. Article 5, Genetic Testing, comprehensively covers that subject in ten separate sections (the 1973 Act had one section on the subject). Article 6, Proceeding to Adjudicate Parentage, sets forth the parties to, and the procedures for, adjudicating parentage and challenging acknowledgments, presumptions, and judgments. Article 7, Child of Assisted Reproduction, recodifies USCACA (1988), but applies its provisions to nonmarital as well as marital children born as a result of

assisted reproductive technologies. The bracketed Article 8, Gestational Agreement, is based upon USCACA (1988), but follows only the option that permits enforcement of a gestational agreement. Moreover, the Act makes a number of important changes in that option.

UPA (1973) contained a number of other substantive provisions, including those applicable to child support and custody. These subjects are omitted from UPA (2002) because other state law adequately provides for them.

Finally, Uniform Parentage Act (2002) is consistent with the provisions of two other uniform acts of great significance, namely the Uniform Interstate Family Support Act [UIFSA (1996) and UIFSA (2001)] and the Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA (1997)].

Article 1.
General Provisions

§ 7700-101. Short Title.

Sections 2 through 58 of this act [10 O.S. §§ 7700-101 through 7700-902] shall be known and may be cited as the "Uniform Parentage Act".

Added by Laws 2006, c. 116, § 2, eff. Nov. 1, 2006.

§ 7700-102. Definitions.

For purposes of the Uniform Parentage Act:

1. "Acknowledged father" means a man who has established a father-child relationship by signing an acknowledgment of paternity under Article 3 of the Uniform Parentage Act;

2. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child;

3. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father;

4. "Child" means an individual of any age whose parentage may be determined under the Uniform Parentage Act;

5. "Determination of parentage" means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under this section or adjudication by the court;

6. "Duress" means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity;

7. "Effective date" means when the acknowledgment of paternity is fully executed, by the later of the signature dates;

8. "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information;

9. "Fraud" means an intentional misrepresentation of a material fact that could not have been discovered with reasonable diligence and was reasonably relied upon;

10. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

a. deoxyribonucleic acid, and

b. blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes;

11. "Man" means a male individual of any age;

12. "Material mistake of fact" means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity;

13. "Parent" means an individual who has established a parent-child relationship under Section 7700-201 of this title;

14. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship;

15. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

a. the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child, and

b. the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man;

16. "Presumed father" means a man who, by operation of law under Section 7700-204 of this title, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

17. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability;

18. "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;

19. "Signatory" means an individual who authenticates a record and is bound by its terms; and

20. "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.

Added by Laws 2006, c. 116, § 3, eff. Nov. 1, 2006. Amended by Laws 2019, c. 151, § 1, eff. Nov. 1, 2019.

NACCUSL Comment

Four separate definitions of "father" are provided by the Act to account for the permutations of a man who may be so classified. Subsection (1), "acknowledged father," directly responds to a 1996 federal mandate encouraging states to adopt nonjudicial means for a man to identify himself as the father of a child in order to achieve an early determination of paternity. The term "acknowledged father" is given a relatively narrow meaning, rather than the broader definition previously accorded to the term. Only a man who acknowledges paternity of a child in accordance with the formal requirements established in Article 3 qualifies as an "acknowledged father." Because the mother of the child must concur in the formal acknowledgment, the federal mandate declares that the states must treat the action as the equivalent of an adjudication of paternity.

Subsection (2), "adjudicated father," although self-defining, presents a policy choice reached by the Conference that contested parentage matters are reserved for courts to resolve. The definition is limited to judicial adjudication of parentage, rather than providing for an alternative of administrative determination of parentage.

Subsection (3), "alleged father," is derived from the UPUFA § 1(1), although much of the terminology has been changed. A man who is asserted to be, or asserts himself to be or possibly to be, the father of a child is the primary target of the Uniform Parentage Act.

Subsection (16), "presumed father," is more fully defined by the factual circumstances establishing a presumption of paternity in § 204, *infra*.

Closely related to the definitions of "father," Subsection (12) is derived from the UPUFA § 1(1). Defining "man" to include all male humans eliminates the connotation of adulthood, thereby satisfying the obvious need for the Act to cover under-age progenitors. Although objection to calling a 14-year-old father a "man" was raised when UPUFA was considered by the Conference, for purposes of procreation such a teen-age boy is a man.

Note that a wide variety of other terms historically employed to identify the male parent are not defined in this section. Specifically, the term "putative father" has been replaced by the broader term "alleged father." According to Webster's, "putative" means "commonly accepted or supposed." Clearly, many "alleged fathers" do not fit that definition. Further, UPUFA chose the term "biological father" over more ambiguous "natural father." Because one woman may be the genetic mother of a child while another woman is the gestational mother, for consistency the term "genetic father" was substituted for "biological." Definitions are not supplied for such terms as "unknown father, legal father, real father, and the like," either because the term is self-defining or because it is ambiguous.

Subsection (8) was amended in 2002 to clarify that an individual who becomes a parent through assisted reproduction as provided in Article 7 is not a "donor." Similarly, if bracketed Article 8, Gestational Agreement, is enacted, an individual who is an intended parent through the procedure implemented in that article is not a "donor." No substantive change is intended by this clarification.

Subsection (9), "ethnic or racial group," relates to an individual only for purposes of genetic testing. The genetic tests themselves do not determine the race or ethnic group of the individual. Rather, if a tested individual is not excluded, his race or ethnic group provided is used in the paternity calculations because those calculations give the most conservative result, that is, those most favoring non-paternity.

Subsection (10), "genetic testing," contemplates that paternity testing must be broadly defined to include all of the traditional genetic tests, such as blood types and HLA (Human Leukocyte Antigen), as well as newer DNA technologies. In the past the term "blood test" was commonly applied to paternity testing. However, this usage actually referred to the sample collected; in fact, the tests were genetic tests performed on blood samples. The Act uses the scientific term "deoxyribonucleic acid." This is to accommodate the changes in technology used to evaluate the DNA. Early DNA testing involved RFLP technology (Restriction Fragment Length Polymorphism), followed by PCR techniques (Polymerase Chain Reaction); these may be replaced by newer technology, such as SNP (Single Nucleotide Polymorphisms). The type of DNA technology to be employed is best left to scientific bodies, such as accreditation agencies, *see* § 503(a), *infra*.

Subsection (11), "gestational mother," is derived from USCACA (1988) § 1(4), which employed the now-discarded term "surrogate mother" to define the same factual circumstances dealt with in bracketed Article 8, Gestational Agreement, *infra*. For purposes of this Act, a woman giving birth to her own genetic child, a.k.a. "birth mother," is distinguished from a "gestational mother." The former is both a gestational and genetic mother, while the latter also gives birth to a child, who may or may not be her genetic child. In the Act the term "gestational mother" is narrowly defined to restrict it to a situation in which a woman gives birth to a child pursuant to a gestational agreement validated under Article 8. If Article 8 is not enacted, this definition should be omitted from the Act. The 2002 amendment providing that the gestational mother must be an adult corrects a drafting oversight.

A 2002 amendment deleted former subsection (12), "intended parents," as adopted in UPA 2000. That term is now employed exclusively in bracketed Article 8, and thus is no longer appropriate as a definition for the Act.

Subsection (14), "parent-child relationship," is derived from UPA (1973) § 1. A wide variety of the rights and duties flowing to and from parents and children are found in many other laws of this state.

Subsection (15), "paternity index," defines a complex scientific and mathematical concept. Note that the definition includes statistical measures of the mother and tested man. The tested man may be an alleged father, or any other potential biological father. In fact, under appropriate circumstances Article 5 provides for testing without samples from the mother or the alleged father. In these cases the expert statistically reconstructs the missing potential mother or biological father from genetic testing of samples from their relatives. Therefore the definition is correct even in cases involving a missing parent.

Subsection (18) is derived from the UNIFORM ELECTRONIC TRANSACTIONS ACT § 102(13), which establishes a standard for either paper or electronic record keeping.

§ 7700-103. Applicability and Effect of Act—Adjudication Authority.

A. The Uniform Parentage Act applies to determination of parentage in this state.

B. The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

1. The place of birth of the child; or

2. The past or present residence of the child.

C. The Uniform Parentage Act does not create, enlarge, or diminish parental rights or duties under other laws of this state.

D. The district or administrative courts are authorized to adjudicate parentage under the Uniform Parentage Act.

Added by Laws 2006, c. 116, § 4, eff. Nov. 1, 2006.

NACCUSL Comment

The new UPA conforms to the requirement of 42 U.S.C. § 666(a)(5)(A), that a state must provide that parentage proceedings be available at any time before a child attains 18 years of age or suffer the potential penalty of forfeiture of the federal funds that subsidize child support enforcement by the state, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

Subsection (a) was amended in 2002 in response to objections that the phrase "governs every determination of parentage" was excessively broad and could conflict with other state laws, such as those governing probate issues.

Subsection (b) is derived from the UIFSA (1996) § 303 and UPA (1973) § 8(b). This section simplifies choice of law principles; the local court is directed to apply local law. If in fact this state is an inappropriate forum, dismissal for forum non-conveniens may be appropriate.

Subsection (d) is bracketed. If a state enacts Article 8, Gestational Agreement, this subsection should be omitted. If a state does not enact Article 8, this subsection should be included to make clear that this Act does not affect other law of the jurisdiction on the subject, if any. The 2002 amendment employs consistent language in order to treat married and unmarried couples alike with regard to parentage issues, and reflects the terminology in Articles 2, 7, and bracketed Article 8.

Article 2.
Parent-Child Relationship

§ 7700-201. Establishment of Mother-Child and Father-Child Relationships.

A. The mother-child relationship is established between a woman and a child by:

1. The woman's having given birth to the child;

2. Adoption of the child by the woman; or

3. As otherwise provided by law.

B. The father-child relationship is established between a man and a child by:

1. An unrebutted presumption of the man's paternity of the child under Section 8 of the Uniform Parentage Act [10 O.S. § 7700-204];

2. An effective acknowledgment of paternity by the man under Article 3 of the Uniform Parentage Act, unless the acknowledgment has been timely rescinded or successfully challenged;

3. An adjudication of the man's paternity;

4. Adoption of the child by the man; or

5. As otherwise provided by law.

Added by Laws 2006, c. 116, § 5, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973), § 4; expanded to include all possible bases of the parent-child relationship

Subsection (b)(5) and bracketed subsections (a)(4) and (b)(6) reflect the fact that Article 7 provides that both a married and an unmarried couple are entitled to assisted reproductive technologies in order to become parents and, if bracketed Article 8 is enacted, to enter into a gestational agreement. If a state enacts Article 8, Gestational Agreement, the brackets should be removed. If a state does not enact Article 8, the bracketed subsections should be omitted.

§ 7700-202. Rights of Children Born to Parents Not Married to Each Other.

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

Added by Laws 2006, c. 116, § 6, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 2 and Massachusetts Gen. Laws c. 209C, § 1.

From a legal and social policy perspective, this is one of the most significant substantive provisions of the Act, reaffirming the principle that regardless of the marital status of the parents, children and parents have equal rights with respect to each other. As discussed in the Prefatory Note, *supra*, U.S. Supreme Court decisions and lower federal and state court decisions require equal treatment of marital and nonmarital children without regard to the circumstances of their birth.

Nonetheless, the equal treatment principle does not necessarily eliminate all distinctions in the application of other substantive laws to different kinds of children. For example, as amended in 1991 the UNIFORM PROBATE CODE § 2-705(b), states:

> in construing a dispositive provision of a transferor who is not a natural parent, an individual born to the natural parent is not considered a child of that parent unless the individual while a minor lived as a regular member of the household of that parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

8 U.L.A. 188 (1998)

In short, the UPC provides that an individual is presumed not to be included in a class gift from someone other than the child's parent unless that individual lived as a member of the parent's family during childhood. This presumed intent of the donor is rebuttable. Although this provision probably has a disproportionate effect on nonmarital children, the disparity is not based on the circumstances of birth, but rather on post-birth living conditions.

§ 7700-203. Duration and Scope of Parent-Child Relationship.

Unless parental rights are terminated, a parent-child relationship established under the Uniform Parentage Act applies for all purposes, except as otherwise provided by the laws of this state.

Added by Laws 2006, c. 116, § 7, eff. Nov. 1, 2006.

NACCUSL Comment

Source: USCACA (1988) § 10.

This section may seem to state the obvious, but both the statement and the qualifier are necessary because without this explanation a literal reading of §§ 201-203 could lead to erroneous statutory constructions. The basic purpose of the section is to make clear that a mother, as defined in § 201(a), is not a parent once her parental rights have been terminated. Similarly, a man whose paternity has been established by acknowledgment or by court adjudication may subsequently have his parental rights terminated.

The qualifier, "as otherwise provided by other law of this State," is necessary because other statutes may restrict rights of a parent. For example, UPC (1993) § 2-114(c) precludes a parent of a child (and the parent's family) from inheriting from the child by intestate succession "unless that natural parent has openly treated the child as his [or hers] and has not refused to support the child." Similarly, as discussed in the preceding Comment, UPC (1993) § 2-705(b) affects the right of a child to take under a class gift from a person who is not a parent of the child.

§ 7700-204. Presumption of Paternity—Rebuttal.

A. A man is presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;

4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

a. the assertion is in a record with the State Department of Health, Division of Vital Records or the Department of Human Services,

b. he agreed to be and is named as the child's father on the child's birth certificate, or

c. he promised in a record to support the child as his own; or

5. For the first two (2) years of the child's life, he resided in the same household with the child and openly held out the child as his own.

B. A presumption of paternity established under this section may be rebutted only by an adjudication under Article 6 of the Uniform Parentage Act.

Added by Laws 2006, c. 116, § 8, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 4.

A network of presumptions was established by UPA (1973) for application to cases in which proof of external circumstances indicate a particular man to be the probable father. The simplest of these is also the best known--birth of a child during the marriage between the mother and a man. When promulgated in 1973 the contemporaneous commentary noted that:

> While perhaps no one state now includes all these presumptions in its law, the presumptions *are* based on existing presumptions of 'legitimacy' in state laws and do not represent a serious departure. Novel is that they have been collected under one roof. All presumptions of paternity are rebuttable in appropriate circumstances. UNIFORM PARENTAGE ACT (1973), Prefatory Note, 9B U.L.A. 379 (2001).

After amendments adopted in 2002, the Uniform Parentage Act retains all but one of the original presumptions of paternity contained in UPA § 4 (1973). Originally the 2000 version of the new Act limited presumptions of paternity to those related to marriage. The objection by the ABA Steering Committee on the Unmet Legal Needs of Children and the Section of Individual Rights and Responsibilities that this could result in differential treatment of children born to unmarried parents resulted in the revision to this section.

Subsection (1) deals with a child born during a marriage; subsection (2) deals with a child conceived during marriage but born after its termination; subsection (3) deals with a child conceived or born during an invalid marriage; and, subsection (4) deals with a child born before a valid or invalid marriage, accompanied by other facts indicating the husband is the father.

Added by amendment in 2002, subsection (5), is a significant revision of UPA § 4(4) (1973), which created a presumption of paternity if a man "receives the child into his home and openly holds out the child as his natural child." Because there was no time frame specified in the 1973 act, the language fostered uncertainty about whether the presumption could arise if the receipt of the child into the man's home occurred for a short time or took place long after the child's birth. To more fully serve the goal of treating nonmarital and marital children equally, the "holding out" presumption is restored, subject to an express durational requirement that the man reside with the child for the first two years of the child's life. This mirrors the presumption applied to a married man established by § 607, *infra*. Once this presumption arises, it is subject to attack only under the limited circumstances set forth in § 607 for challenging a marital presumption, and is similarly subject to the estoppel principles of § 608.

One presumption found in UPA (1973) is not repeated in the new Act. Former UPA §4(5) created a presumption of paternity if the man "acknowledges his paternity of the child in a writing filed with [named agency] [and] the mother does not dispute the acknowledgment within a reasonable time." This presumption

was eliminated because it conflicts with Article 3, Voluntary Acknowledgment of Paternity, under which a valid acknowledgment establishes paternity rather than a presumption of paternity.

Finally, subsection (b) is a complete rewrite of UPA (1973) § 4(b). The requirement that a presumption "may be rebutted only by clear and convincing evidence" was eliminated from the Act. The same fate was accorded the statement that: "If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls." Nowadays the existence of modern genetic testing obviates this old approach to the problem of conflicting presumptions when a court is to determine paternity. Nowadays, genetic testing makes it possible in most cases to resolve competing claims to paternity. Moreover, courts may use the estoppel principles in § 608 in appropriate circumstances to deny requests for genetic testing in the interests of preserving a child's ties to the presumed or acknowledged father who openly held himself out as the child's father regardless of whether he is in fact the genetic father.

Article 3.
Acknowledgment of Paternity

NACCUSL Comment

Voluntary acknowledgment of paternity has long been an alternative to a contested paternity suit. Under UPA (1973) § 4, the inclusion of a man's name on the child's birth certificate created a presumption of paternity, which could be rebutted. In order to improve the collection of child support, especially from unwed fathers, the U.S. Congress mandated a fundamental change in the acknowledgment procedure. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, also known as the Welfare Reform Act) conditions receipt of federal child support enforcement funds on state enactment of laws that greatly strengthen the effect of a man's voluntary acknowledgment of paternity, 42 U.S.C. § 666(a)(5)(C). This statute is reproduced in APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902]. In brief, it provides that a valid, unrescinded, unchallenged acknowledgment of paternity is to be treated as equivalent to a judicial determination of paternity.

Because in many respects the federal act is nonspecific, the new UPA contains clear and comprehensive procedures to comply with the federal mandate. Primary among the factual circumstances that Congress did not take into account was that a married woman may consent to an acknowledgement of paternity by a man who may indeed be her child's genetic father, but is not her husband. Under the new UPA, the mother's husband is the presumed father of the child, *see* § 204, *supra*. By ignoring the real possibility that the child will have both an acknowledged father and a presumed father, Congress left it to the states to sort out which of the men should be recognized as the legal father.

Further, PRWORA does not require that a man acknowledging paternity must assert genetic paternity of the child. Section 301 is designed to prevent circumvention of adoption laws by requiring a sworn assertion of genetic parentage of the child.

Sections 302-305 clarify that, if a child has a presumed father, that man must file a denial of paternity in conjunction with another man's acknowledgment of paternity in order for the acknowledgement to be valid. If the presumed father is unwilling to cooperate, or his whereabouts are unknown, a court proceeding is necessary to resolve the issue of parentage.

Congress also directed that the acknowledgment can be "rescinded" within a particular timeframe, and subsequently can be "challenged" without stating a timeframe. Those procedures are dealt with in §§ 307-309.

Finally, the related issue of issuance or revision of birth certificates is left to other state law.

§ 7700-301. Signed Acknowledgment of Paternity.

The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

Added by Laws 2006, c. 116, § 9, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(C), *see* preceding Comment and APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

PRWORA does not explicitly require that a man acknowledging parentage necessarily is asserting his genetic parentage of the child. In order to prevent circumvention of adoption laws, § 301 corrects this omission by requiring a sworn assertion of genetic parentage of the child. A 2002 amendment provides that a man who signs an acknowledgment of paternity declares that he is the genetic father of the child. Thus both the man and the mother acknowledge his paternity, under penalty of perjury, without requiring the parents to spell out the details of their sexual relations. Further, the amended language also takes into account a situation in which a man, who is unable to have sexual intercourse with his partner, may still have contributed to the conception of the child through the use of his own sperm. Henceforth, a man in that situation will be able to recognize legally his paternity through the voluntary acknowledgment procedure.

§ 7700-302. Content and Form of Acknowledgment—Void and Voidable Acknowledgments—Authentication.

A. An acknowledgment of paternity shall:

1. Be in a record and on the form prescribed by the Department of Human Services pursuant to Section 20 of this act [10 O.S. § 7700-312];

2. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;

3. State that the child whose paternity is being acknowledged:

a. does not have a presumed father, or has a presumed father whose full name is stated, and

b. does not have another acknowledged or adjudicated father;

4. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

5. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two (2) years.

B. An acknowledgment of paternity shall be void if it:

1. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the State Department of Health, Division of Vital Records; or

2. States that another man is an acknowledged or adjudicated father.

C. An acknowledgment of paternity is voidable if it falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

D. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

Added by Laws 2006, c. 116, § 10, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(C), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE [following 10 O.S. § 7700-902], *infra*.

The federal statute cited above provides that receipt of the federal subsidy by a state for its child support enforcement program is contingent on state enactment of laws establishing specific procedures for voluntary acknowledgment of paternity. This deceptively simple principle proved difficult to implement.

Problems most notably include fact situations in which the mother of the child is married to someone other than the man who intends to acknowledge his paternity. With an acknowledgment the child would then have both an acknowledged father and a presumed father. To deal with this circumstance, many states have passed laws allowing the presumed father to sign a denial of paternity, which must be filed as part of the acknowledgment. This Act adopts this common sense solution; otherwise the acknowledgment would have no legal consequence because it cannot affect the legal rights of the presumed father.

At least two other provisions of this section warrant special emphasis. Subsection (a)(2) requires that the acknowledgment be "signed, or otherwise authenticated, under penalty of perjury," just as income tax returns and many other government documents require. Clearly, the potential punishment for false swearing is substantial, and the benefits from avoiding the complication of requiring witnesses and a notary are significant in this context. Mandating greater formality would greatly discourage the in-hospital signatures so earnestly desired in 42 U.S.C. § 666(a)(5)(C)(ii), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902.].

Similarly, in an attempt to ensure full disclosure and avoid false swearing, subsection (a)(4) requires that the results of genetic testing, if any, be reported along with confirmation that the acknowledgment is consistent with the results of that testing. This provision is also designed to avoid a possible subversion of the requirements for an adoption. A would-be "father" whose parentage of a child has been excluded by genetic testing may not validly sign an acknowledgment once that fact has been established.

§ 7700-303. Signed Denial of Paternity—Validity.

A presumed father may sign a denial of his paternity. The denial is valid only if:

1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 20 of this act [10 O.S. § 7700-312];

2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury;

3. The presumed father has not previously:

a. acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 15 of this act or successfully challenged pursuant to Section 16 of this act [10 O.S. § 7700-308], or

b. been adjudicated to be the father of the child; and

4. The denial is signed not later than two (2) years after the birth of the child.

Added by Laws 2006, c. 116, § 11, eff. Nov. 1, 2006.

§ 7700-304. Simultaneous Documents—Time of Execution—Signature of Minor.

A. An acknowledgment of paternity and a denial of paternity may be executed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are executed.

B. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

C. Subject to subsection A of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the execution of the document, whichever occurs later.

D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with the Uniform Parentage Act.

Added by Laws 2006, c. 116, § 12, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(C)(i), requiring a "simple civil process" for voluntary acknowledgment of paternity, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-305. Effect of Valid Acknowledgment or Denial of Paternity.

A. Except as otherwise provided in Sections 15 and 16 of this act [10 O.S. §§ 7700-307 and 7700-308], a valid acknowledgment of paternity signed by both parents is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

B. Except as otherwise provided in Sections 15 and 16 of this act [10 O.S. §§ 7700-307 and 7700-308], a valid denial of paternity by a presumed father when executed in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

Added by Laws 2006, c. 116, § 13, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(D)(ii), requiring that an acknowledgment of paternity be "a legal finding of paternity," and 42 U.S.C. § 666(a)(5)(M), directing that acknowledgments be "filed with the State registry of birth records . . ."; *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-306. No Charge for Filing.

The State Department of Health, Division of Vital Records shall not charge for filing an acknowledgment of paternity, denial of paternity, rescission of acknowledgment of paternity, or rescission of denial of paternity.

Added by Laws 2006, c. 116, § 14, eff. Nov. 1, 2006.

§ 7700-307. Recission of Acknowledgment or Denial of Paternity.

A. A signatory may sign a rescission of acknowledgment of paternity or sign a rescission of denial of paternity before the earlier of:

1. Sixty (60) days after the effective date of the acknowledgment; or

2. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

B. A signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days of reaching the age of eighteen.

Added by Laws 2006, c. 116, § 15, eff. Nov. 1, 2006.

NACCUSL Comment

This section reflects a decision by NCCUSL to require a judicial adjudicatory process to rescind a voluntary acknowledgment of paternity. The federal statute, 42 U.S.C. § 666(a)(5)(c)(D)(ii), does not prescribe the method for the rescission, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-308. Proceeding to Challenge Acknowledgment or Denial of Paternity—Burden of Proof.

A. After the period for rescission under Section 7700-307 of this title has expired, a signatory of an acknowledgment of paternity may commence a proceeding to challenge the acknowledgment only:

1. On the basis of duress or material mistake of fact within two (2) years after the acknowledgment is executed; or

2. On the basis of fraud at any time in accordance with subsection D of Section 7700-607 of this title.

B. After the period for rescission under Section 7700-307 of this title has expired, a signatory of a denial of paternity may commence a proceeding to challenge the denial only:

1. On the basis of fraud, duress or material mistake of fact; and

2. Within two (2) years after the denial is executed.

C. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof, which shall be by clear and convincing evidence.

Added by Laws 2006, c. 116, § 16, eff. Nov. 1, 2006. Amended by Laws 2019, c. 151, § 2, eff. Nov. 1, 2019.

NACCUSL Comment

The federal statute also includes a provision for a "challenge" of an acknowledgment of paternity after the period for rescission of a voluntary acknowledgment of paternity has elapsed. Such a collateral attack is to be limited to a challenge based on alleged "fraud, duress, or material mistake of fact," and according to 42 U.S.C. § 666(a)(5)(c)(D)(iii), must be made "in court," *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-309. Necessary Parties—Personal Jurisdiction—No Suspension of Paternal Duties—Procedure—Amendment of Birth Records.

A. Every signatory to an acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to challenge the acknowledgment or denial.

B. For the purpose of challenging an acknowledgment of paternity or a denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial.

C. Except for good cause shown, during the pendency of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

D. A proceeding to challenge an acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Article 6 of the Uniform Parentage Act.

E. At the conclusion of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the court shall order the State Department of Health, Division of Vital Records, to amend the birth record of the child, if appropriate.

Added by Laws 2006, c. 116, § 17, eff. Nov. 1, 2006.

NACCUSL Comment

Although the federal statute does not prescribe the method for "rescission" of an acknowledgment of paternity, it does require a judicial proceeding for a subsequent "challenge." Overturning an acknowledgment of paternity through either of the prescribed methods has significant legal consequences. Thus, both methods should require a formal procedure because either one may result in the setting aside of an otherwise valid legal determination of the child's parentage. A procedure that allows a signatory of an acknowledgment of paternity merely to file a rescission with the state bureau of vital statistics would be an unwise policy choice. Many jurisdictions have come to the same conclusion.

§ 7700-310. Effect of Unchallenged Acknowledgment of Paternity.

A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

Added by Laws 2006, c. 116, § 18, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(E), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-311. Full Faith and Credit.

A court of this state shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

Added by Laws 2006, c. 116, § 19, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(C)(iv).

PRWORA requires states "to give full faith and credit to such an affidavit [of acknowledgment of paternity] signed in any other State according to its procedures." Id. And, § 666(a)(5)(D)(ii) provides that a "signed voluntary acknowledgment is considered a legal finding of paternity. . . ." In sum, federal law requires that an acknowledgment of paternity has the same status as a "judgment," 28 U.S.C. § 1738, a "child custody determination," 28 U.S.C. § 1738A, and a "child support order," 28 U.S.C. § 1738B. This section implements these mandates.

§ 7700-312. Forms for Acknowledgment and Denial of Paternity and Recission of Same—Availability—Effect of Modification.

A. The Department of Human Services shall prescribe forms for the acknowledgment of paternity and the denial of paternity, which shall be filed with the State Department of Health, Division of Vital Records, pursuant to Section 1-311.3 of Title 63 of the Oklahoma Statutes.

B. The rescission of the acknowledgment of paternity shall be prescribed by the Department of Human Services and made available at the same locations as the acknowledgment of paternity form provided for in Section 1-311.3 of Title 63 of the Oklahoma Statutes.

C. A valid acknowledgment of paternity, rescission of acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

Added by Laws 2006, c. 116, § 20, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)C)(i),(iv), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

The federal Office of Child Support Enforcement has issued an Action Transmittal to all IV-D agencies specifying how to ensure that the forms comply with PRWORA, OCSE-AT-98-02, Required Data Elements for Paternity Acknowledgment Affidavits, http://www.acf.dhhs.gov/ programs/cse/1998-at.htm.

§ 7700-313. Release of Copies of Acknowledgments and Denials of Paternity.

The State Department of Health, Division of Vital Records shall release copies of the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and to the agency designated to administer a statewide plan for child support in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq.

Added by Laws 2006, c. 116, § 21, eff. Nov. 1, 2006.

§ 7700-314. Promulgation of Rules.

The Department of Human Services shall promulgate and adopt rules to implement the provisions of this Article.

Added by Laws 2006, c. 116, § 22, eff. Nov. 1, 2006.

NACCUSL Comment

This section is bracketed to account for situations in which it may conflict with other rulemaking limitations in a particular state. States will implement voluntary acknowledgment of paternity procedures in a variety of ways, depending on local practice. This grant of rulemaking authority to carry out the provisions of this article may include electronic transmission of birth and acknowledgment data to the designated state agency.

Article 4.
Reserved

Article 5.
Genetic Testing

§ 7700-501. Matters Governed by Article.

This article governs genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or
2. Is tested pursuant to an order of the court or the Department of Human Services.

Added by Laws 2006, c. 116, § 23, eff. Nov. 1, 2006.

NACCUSL Comment

This section is intended to avoid problems with regard to the admissibility of the results of voluntary genetic testing. Testing is often agreed upon to avoid the cost and delay engendered by requiring a proceeding to be filed before the results of genetic testing can be admitted as evidence. If the test excludes the man's paternity, an unnecessary step has been avoided.

§ 7700-502. Order of Court or DHS for Genetic Testing—In Utero Testing—Concurrent and Sequential Testing.

A. In a civil action in which paternity is a relevant fact and at issue, except as otherwise provided in this Article and Article 6 of the Uniform Parentage Act, the court shall order the child and other designated individuals to submit to genetic testing if the request is made by a party to the proceeding to determine parentage.

B. The Department of Human Services Child Support Enforcement Division may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.

C. If a request for genetic testing of a child is made before birth, the court or the Department of Human Services may not order in utero testing.

D. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

Added by Laws 2006, c. 116, § 24, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 11; 42 U.S.C. § 666(a)(5)(B)(i) requiring genetic testing in certain cases, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

The progress that science has made in understanding molecular genetics since the promulgation of UPA (1973) is phenomenal. Subsection (a) speaks to testing of a "designated individual" other than of the "mother, and alleged or presumed father" to take into account the fact that testing for paternity may proceed without testing the mother. Further, testing may also proceed without testing the alleged father by testing close relatives of that man. Moreover, the right of the court to order testing is not absolute; §§ 607-609 place limitations on genetic testing if the child has a presumed, acknowledged, or adjudicated father.

Subsection (c) is intended to prevent the court from ordering the mother to undergo prenatal testing, such as through amniocentesis or other in utero collection method. These procedures pose a measurable risk to the life and health of both the fetus and the mother. If the mother volunteers for such testing, she may undergo prenatal sample collection for parentage determination.

Subsection (d) recognizes that multiple men may be participating in the establishment process. The laboratories prefer to evaluate all persons concurrently, as concurrent testing may prevent multiple sample collections from the child and in rare cases (such as evaluating two non-identical siblings) the laboratory can continue testing until one or both of the tested men are excluded. However, sequential testing is also acceptable.

§ 7700-503. Standards for Genetic Testing—Specimens—Database Selection—Recalculation—Inconclusive Test.

A. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

1. The American Association of Blood Banks, or a successor to its functions;
2. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
3. An accrediting body designated by the federal Secretary of Health and Human Services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

C. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

1. The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;

2. The individual objecting to the testing laboratory's initial choice shall:

a. if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies, or

b. engage another testing laboratory to perform the calculations; and

3. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

D. If, after recalculation using a different ethnic or racial group, genetic testing does not conclusively identify a man as the father of a child under Section 27 of this act [10 O.S. § 7700-505], an individual who has been tested may be required to submit to additional genetic testing.

Added by Laws 2006, c. 116, § 25, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. §§ 666(a)(5)(B)(i)(I)(II) and 666(a)(5)(F)(i)(I)(II), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

As of December 2000, the Secretary of Health and Human Services had not officially designated any accreditation bodies as referenced in subsection (b)(3). But, Information Memorandum OCSE-IM-97-03, April 10, 1997, from the Deputy Director of the Office of Child Support Enforcement identifies the American Association of Blood Banks and American Society for Histocompatibility and Immunogenetics as meeting this requirement. The accreditation requirement assures that the testing will "be of a type reasonably relied upon by experts in the field of genetic testing."

Subsection (b) clarifies that a "specimen" suitable for genetic testing may be composed from one of a wide variety of constituent elements of "body tissue and fluids." This conforms the statutory language to biological terminology to assure common understanding between the scientific community and the legal profession. In states with statutes employing only the broad terms, bench and bar have evidenced confusion about the fact that blood, buccal cells, bone, hair, etc. are "body tissues."

Subsections (c) and (d) are designed to clarify the use of "race or ethnic group" in the paternity calculations. Generally, the individual tested provides the information regarding the ethnic or racial group to use in the calculations. These sections are designed to avoid last minute changes in the racial designation, a scientific version of "forum shopping", and to easily correct any misunderstanding about which race should be used.

§ 7700-504. Report of Genetic Testing—Admissability—Establishing Chain of Custody.

A. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this Article will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

1. The names and photographs of the individuals whose specimens have been taken;

2. The names of the individuals who collected the specimens;

3. The places and dates the specimens were collected;

4. The names of the individuals who received the specimens in the testing laboratory; and

5. The dates the specimens were received.

Added by Laws 2006, c. 116, § 26, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(F) requiring genetic testing in certain cases, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

Subsection (b) is designed to indicate that in civil trials only a minimal showing of reliability of the chain of custody is needed. This avoids evidentiary problems, such as arguments modeled on criminal cases in which the chain of evidence is crucial. If an element of the chain is missing, such a defect may be corrected by affidavit or other testimony as to the reliability of the sample. For example, samples from a deceased individual may be obtained from a coroner's office and a picture of the individual need not be taken. In this case, proof of the chain of custody of the body maintained by the coroner may be provided.

§ 7700-505. Presumption Created by Testing—Rebuttal—Further Testing.

A. Under the Uniform Parentage Act, a man is rebuttably identified as the father of a child if the genetic testing complies with this Article and the results disclose that the man has:

1. At least a ninety-nine-percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and

2. A combined paternity index of at least 100 to 1.

B. A man identified under subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this Article which:

1. Excludes the man as a genetic father of the child; or

2. Identifies another man as the possible father of the child.

C. Except as otherwise provided in Section 32 of this act [10 O.S. § 7700-510], if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

Added by Laws 2006, c. 116, § 27, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(G) requiring genetic testing in certain cases, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

The selection of a probability of paternity of 99.0% and a combined paternity index of 100 to 1 as the rebuttably identified man as father of the child is consistent with the year 2000 standard of practice in the genetic-testing community. Accrediting agencies require the reporting of both of these numbers. As of December, 2000, 27 states have established a presumption at less than this level. However, for several years the standard of practice in the scientific community has been 99.0%. Therefore, raising the genetic presumption to the 99.0% level should have no impact on those states. This number represents a reasonable level of testing, given the breadth of the Act and potential difficulty of working with some specimens in a probate case. It is not intended as a standard of practice for the laboratories, but as a legal presumption to satisfy the legal standard of proof. Given the rapid progress of science, it is likely that accrediting standards will rise over time. If the standard of practice becomes more strict, the newer standards will be made routine by the requirement that laboratories be accredited in order to perform testing under the Act. But, the legal significance of the genetic presumption stated in this section will be unaffected.

Genetic testing results will usually exceed the statutory minimum. During the drafting of the new UPA several statutory presumptions were considered, *i.e.*, 95%, 99%, 99.9% and 99.99%. Genetic testing laboratory representatives presented quite persuasive arguments for a variety of choices. The Drafting Committee ultimately chose to settle on the 99% standard because:

(1) the 99% standard reflects the current standard of the American Association of Blood Banks (STANDARDS FOR PARENTAGE TESTING LABORATORIES, 4th ed. 1999), and the proposed standards (5th ed. 2001);

(2) the standards promulgated by the various accrediting bodies (American Association of Blood Banks and the American Society for Histocompatibility and Immunogenetics) will, in reality, set the benchmark for genetic testing;

(3) the 99% standard is consistent with the standards of the plurality of American jurisdictions as of December, 2000;

(4) a standard higher than 99% could cause evidentiary problems in probate proceedings because of degraded specimens. Similarly, that problem may arise in cases involving one or more missing individuals, *e.g.*, the mother is not available, but the child and alleged father are available;

(5) the percentage is an evidentiary presumption that the respondent may always challenge by requesting a second test under § 507; and

(6) a proceeding to adjudicate paternity is a civil action based on a preponderance of the evidence, not a criminal action based on evidence beyond reasonable doubt.

§ 7700-506. Cost of Genetic Testing—Reimbursement of Costs Advanced by Department.

A. Subject to assessment of costs under Article 6 of the Uniform Parentage Act, the cost of initial genetic testing shall be advanced by the Department of Human Services in a proceeding in which the Department is providing services.

B. In cases in which the Department of Human Services is not providing services, the cost of initial genetic testing shall be advanced:

1. By the individual who made the request;

2. As agreed by the parties; or

3. As ordered by the court.

C. In cases in which the cost is advanced by the Department of Human Services, the Department may seek reimbursement from a man who is identified as the father.

Added by Laws 2006, c. 116, § 28, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(I), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902]; *Little v. Streater*, 452 U.S. 1, (1981).

In general, the party seeking relief from a court must bear the cost of the initial genetic testing. The federal law mandates that the support enforcement agency pay the cost of testing, subject to recoupment. Subsection (a)(3) does present the possibility that a court might order a respondent to pay the initial cost.

§ 7700-507. Additional Testing of Man Previously Identified by Genetic Testing as Father.

If the previous genetic testing identified a man as the father of the child under Section 27 of this act, the court or the Department of Human Services may not order additional testing unless the party challenging the test provides advance payment for the testing.

Added by Laws 2006, c. 116, § 29, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 11; 42 U.S.C. § 666(a)(5)(B)(ii)(II).

Obviously the opportunity for additional testing should be provided if the original testing is contested in good faith, *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902]. The requirement that the contestant provide advance payment if prior testing has identified a man as the father is intended to discourage spurious contests. This section provides the most important mechanism for determining the accuracy of a paternity test. While extremely rare, even after initial tests indicate a probability of paternity greater than 99.99% it is theoretically possible that additional testing can result in exclusion of the tested man. Likewise, if there is an error in the chain of custody or testing procedures, exclusion is the expected outcome. The only way to reliably determine whether an error occurred is to obtain a second test.

§ 7700-508. Others Who May Be Tested When Testing Specimen Unavailable from Man Who May be Father.

A. Subject to subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:

1. The parents of the man;
2. Brothers and sisters of the man;
3. Other children of the man and their mothers;
4. Other relatives of the man necessary to complete genetic testing; and
5. Any other custodians of genetic material.

B. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

Added by Laws 2006, c. 116, § 30, eff. Nov. 1, 2006.

NACCUSL Comment

In some cases, the alleged father may be unavailable for testing. Subsection (a) accommodates those cases by providing for testing of the man's relatives to establish his paternity or nonpaternity of a child. Depending on the proceeding, some of the individuals listed for testing in subsection (a) will be parties to the paternity proceeding and others will not. If an individual does not volunteer to participate in the testing and is not a party, in the absence of this provision the court would be required to decide whether it has the authority to order the testing and whether testing the objecting individual is necessary. This provision resolves the issues. Given the fact that genetic testing in the modern age is not invasive--use of the buccal swab method means that the intrusion into the privacy of the individual is relatively slight compared to the right of the child to have parentage established. Moreover, the alleged parent also has a right to have that fact determined.

Note that no provision is explicitly made for court-ordered testing of maternal relatives because the establishment of paternity by genetic testing is in no way dependent on testing the mother of the child. However, if maternity is at issue, § 106, Determination of Maternity, directs that this section be construed to test the relatives of the mother.

§ 7700-509. Testing of a Deceased Individual.

For good cause shown, the court may order genetic testing of a deceased individual.

Added by Laws 2006, c. 116, § 31 eff. Nov. 1, 2006.

NACCUSL Comment

In some states, the court with jurisdiction to adjudicate parentage may lack authority to order disinterment of a deceased individual. If so, that authority is provided by this section.

§ 7700-510. Identical Brothers—Testing—Nongenetic Evidence to Determine Father.

A. The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

B. If each brother satisfies the requirements as the identified father of the child under Section 27 of this act without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Added by Laws 2006, c. 116, § 32, eff. Nov. 1, 2006.

NACCUSL Comment

This section refers to "identical brothers" rather than "identical twins" to account for the possibility of identical triplets, etc. In some cases, non-identical brothers (and even other related men) will not be excluded after initial genetic testing. This section should not be used to resolve those cases because more sophisticated genetic testing can differentiate between non-identical siblings. If a case occurs in which, after initial testing, two men are not excluded, both men should be ordered to submit to additional testing as provided in § 505(c) to determine which is the father. In the extremely rare case in which a competent laboratory exhausts all of its in-house testing and still cannot determine which non-identical sibling is excluded, the common practice is to provide the genetic material to another laboratory for more extensive testing to resolve the case.

Contrasting identical brothers with non-identical brothers, identical brothers can never be differentiated by additional genetic testing. This creates a completely different situation for the court. This section resolves the identical-brother conundrum as much as possible, and is designed to prevent the court from simply dismissing the case.

§ 7700-511. Release of Report of Genetic Testing.

Release of the report of genetic testing for parentage is controlled by Section 237 of Title 56 of the Oklahoma Statutes.

Added by Laws 2006, c. 116, § 33, eff. Nov. 1, 2006.

NACCUSL Comment

This section seeks to protect the privacy rights of persons who are tested for a parentage determination. Although the Drafting Committee was not informed of an instance in which a paternity-testing laboratory had released samples or performed unauthorized testing, several states have proposed or passed laws regulating the "genetic privacy" of paternity tests. This section is intended to provide some guidance in this area. The term "identifiable specimen" is included, as there are beneficial uses of samples for anonymous research purposes. For example, the frequency tables used to make calculations are compiled from anonymous data and provide a more precise calculation for all persons involved in paternity testing. On occasion, a court may order the laboratory to release samples. For instance, a man who had been tested in one paternity proceeding and then dies may have his samples utilized in another paternity proceeding if a court orders testing in the second action. Courts have also ordered the release of samples when the tested man has allegedly engaged in criminal conduct. This has occurred when the alleged father has sent an imposter for sample collection. If the state pursues criminal charges, a court might order the laboratory to release the samples to a state crime laboratory for further identification and possible criminal prosecution.

The Drafting Committee was informed that in one case, a grand jury brought indictments for multiple counts of a scheme to defraud, tampering with physical evidence and perjury against the alleged father and the imposter. The results of genetic testing for paternity purposes appear to have no medical or predictive value in any other context. Thus, regulation of the paternity-test results is left to the states. In some states, the records of paternity proceedings are open, thus allowing anyone to obtain the results. A more comprehensive treatment on this subject must necessarily be left to other laws.

The control of the records is left to other state law. In some states paternity records are open to the public, and a fundamental change in handling of the records is beyond the scope of this Act. The accreditation agencies provide guidance on this subject. For example, the American Association of Blood Banks requires that accredited laboratories maintain records for at least five years. Because a laboratory performing testing under this Act should be accredited, *see* § 503(a), *supra*, protection is thus provided to the tested person's records under the accreditation standards.

Article 6.
Proceeding to Adjudicate Parentage

Part 1.
Nature of Proceeding

§ 7700-601. Civil Proceeding to Adjudicate Parentage.

A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the applicable rules prescribed by the Code of Civil Procedure of the State of Oklahoma.

Added by Laws 2006, c. 116, § 34, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 14.

A determination of paternity is governed by the ordinary rules of civil procedure. The party seeking to establish paternity is entitled to full discovery, to compel the testimony of all witnesses, and to have the case tried by a preponderance of the evidence. "The equipoise of the private interests that are at stake in a paternity proceeding supports the conclusion that the standard of proof normally applied in private litigation is also appropriate for these cases." *Rivera v. Minnich*, 483 U.S. 574, 581 (1987).

A corresponding amendment to UPC § 2-114 was not made until the major revision of 1990 (as further revised in 1993). By that time, it had been recognized as illogical and unjust to impose discriminatory burdens on children born out-of-wedlock who were seeking paternal inheritance. It also had been ruled unconstitutional by application of the intermediate scrutiny test formulated under the 14th Amendment. *Reed v. Campbell*, 476 U.S. 852 (1986) Moreover, by 1990 the preponderance of the evidence standard had been widely applied to determinations of paternity and probate proceedings. Against this background, UPC (1993) abandoned the clear and convincing evidence standard for determining paternal relationships.

§ 7700-602. Who May Maintain Proceeding to Adjudicate Parentage.

Subject to Article 3 of the Uniform Parentage Act and Sections 40 and 42 of this act [10 O.S. §§ 7700-607 and 7700-609, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The Department of Human Services; or
5. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

Added by Laws 2006, c. 116, § 36, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 6.

This section grants standing to a broad range of individuals and agencies to bring a parentage proceeding. But, several limitations on standing to sue are contained within the Act. Article 3 details the procedures involved in a voluntary acknowledgment of parentage. Sections 607 and 609 establish the ground rules for proceedings involving children with, and without, a presumed father. Article 8 regulates parentage determinations arising from a gestational agreement.

§ 7700-603. Who May Be Joined.

The following individuals may be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

Added by Laws 2006, c. 116, § 36, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 9.

This section partially follows and partially rejects the UPA (1973) requirements regarding who must be named as parties in a parentage proceeding. First, contra to UPA (1973), the child is not a necessary party. Few states require children as necessary parties. Further, with the widespread use of DNA testing, such a requirement has outlived its usefulness. On the other hand, failure to join a child as a party may later result in a child's successful collateral attack on the original determination of paternity to be filed by the child. This subject is discussed more fully in the comment to § 637, *infra.*

Second, as far as can be ascertained, no state requires the children born to a woman during marriage to be named as parties in a divorce proceeding. Divorce decrees generally serve as res judicata in the event of a subsequent challenge to the decree's determination of parentage. *Id.*

§ 7700-604. Personal Jurisdiction.

A. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

B. A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in Section 601-201 of Title 43 of the Oklahoma Statutes are fulfilled.

C. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

Added by Laws 2006, c. 116, § 37, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 6(b).

Although custody and visitation proceedings are considered to be status adjudications, and therefore do not require personal jurisdiction over both parents, subsection (a) confirms the long-standing view that paternity proceedings require personal jurisdiction.

Subsection (b) incorporates the long-arm provision for establishing personal jurisdiction over an absent respondent set forth in UIFSA (1996), which is in effect in every state.

Subsection (c) makes the best of a situation in which an adjudication will almost inevitably be incomplete because not all the necessary parties are subject to the personal jurisdiction of the court. The most likely scenario for this unfortunate circumstance is one in which the mother and alleged father of the child are subject to the court's jurisdiction, but the mother's absent husband is not. Even if the husband's whereabouts are known, if both the forum court and the court of his residence lack jurisdiction over all three parties, there still is no court with power to bind all of them to a parentage determination.

Subsection (c) takes the common sense approach that a court should not be dissuaded from making a parentage decision, even if it cannot bind all appropriate parties. In the scenario described above, binding the mother and alleged father to a decision of the man's parentage may not technically bind the husband (the presumed father), but more than likely it will end litigation on the subject.

§ 7700-605. Venue.

Venue for a proceeding to adjudicate parentage is in the county of this state in which:

1. The child resides or is found;
2. The respondent resides or is found if the child does not reside in this state; or
3. A proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

Added by Laws 2006, c. 116, § 38, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 8(c).

The venue provision provides choices proven to be reasonable and convenient since its inclusion in the 1973 Act.

§ 7700-606. Commencement of Proceeding—Child Attaining Adulthood—Earlier Proceeding.

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

Added by Laws 2006, c. 116, § 39, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) §§ 6, 7.

For a state to retain the federal child support enforcement subsidy, 42 U.S.C. § 666(a)(5)(A)(i) mandates that the states must have laws to "permit the establishment of the paternity of a child at any time before the child attains 18 years of age." States have chosen a wide range of age options: age 18 (20 states),

age 19 (6 states), age 20 (2 states), age 21 (10 states), age 22 (2 states), age 23 (2 states), and no limitation (9 states). Several states limit the establishment of parental rights to a shorter period.

The new UPA directs that an individual whose parentage has not been determined has a civil right to determine his or her own parentage, which should not be subject to limitation except when an estate has been closed. Accordingly, if the action is initiated by the child this section allows a proceeding to adjudicate parentage after the child has reached the age of majority. Such a proceeding is the exclusive province of the child, however. This limitation prohibits the filing of an intrusive proceeding by an individual claiming to be a parent of an adult child, or by a legal stranger. There appear to be no reported problems encountered in states without a statute of limitations for such actions.

§ 7700-607. Limitations of Actions.

A. Except as otherwise provided in subsection B of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child.

B. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time in accordance with Section 7700-608 of this title if the court, prior to an order disproving the father-child relationship, determines that:

1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

2. The presumed father never openly held out the child as his own.

C. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed or acknowledged father may be maintained at any time if the court determines that the biological father, presumed or acknowledged father, and the mother agree to adjudicate the biological father's parentage in accordance with Sections 7700-608 and 7700-636 of this title. If the presumed or acknowledged father or mother is unavailable, the court may proceed if it is determined that diligent efforts have been made to locate the unavailable party and it would not be prejudicial to the best interest of the child to proceed without that party. In a proceeding under this section, the court shall enter an order either confirming the existing father-child relationship or adjudicating the biological father as the parent of the child. A final order under this subsection shall not leave the child without an acknowledged or adjudicated father.

D. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed or acknowledged father may be maintained at any time before the child is eighteen (18) years of age on the basis of fraud as defined in Section 7700-102 of this title. A party bringing a challenge under this section has the burden of proving fraud by clear and convincing evidence. Upon a finding of fraud, the court shall conduct a best-interest hearing to determine if genetic testing should be ordered pursuant to Section 7700-608 of this title. Court-ordered genetic testing shall be performed prior to an order of nonparentage under Sections 7700-621 and 7700-631 of this title. Any genetic test performed shall be in accordance with Sections 7700-501 through 7700-511 of this title.

1. The cost of the genetic testing to disprove parentage shall be advanced by the individual challenging parentage;

2. In a court order of nonparentage, a noncustodial parent has no right to reimbursement for child support and medical support payments made under a child support order; and

3. The court shall order the State Department of Health, Division of Vital Records, to amend the birth record of the child, if appropriate.

Added by Laws 2006, c. 116, § 40, eff. Nov. 1, 2006. Amended by Laws 2008, c. 99, § 2, eff. Nov. 1, 2008; Laws 2014, c. 96, § 1, eff. Nov. 1, 2014; Laws 2019, c. 151, § 3, eff. Nov. 1, 2019.

NACCUSL Comment

Source: UPA (1973) § 6; *cf.* UPC (1993) § 2-114(c).

This section deals with difficult issues. First, it establishes the right of a mother or a presumed marital or nonmarital father to challenge the presumption of his paternity established by § 204. Second, it clarifies the right of a third-party male to claim paternity of a child who has an existing presumed father.

UPA (1973) § 6(a) places a [five-year] limitation on the time in which a proceeding may be brought "for the purpose of declaring the non-existence of the father and child relationship presumed under [the Act]." At that time, the comment noted that:

> "Ten states have denied standing to a man claiming to be the father when the mother was married to another at the time of the child's birth. In some of these states, even though a presumed father may seek to rebut his presumed paternity, a third-party male will be denied standing to raise that same issue."

As of the year 2000, the right of an "outsider" to claim paternity of a child born to a married woman varies considerably among the states. Thirty-three states allow a man alleging himself to be the father of a child with a presumed father to rebut the marital presumption. Some states have granted this right through legislation, while in other states case law has recognized the alleged father's right to rebut the presumption and establish his paternity. In some states, there is both statutory and common law support for the standing of a man alleging himself to be the father to assert his paternity of a child born to a married woman. Not that long ago, some states imposed an absolute bar on a man commencing a proceeding to establish his paternity if state law provides a statutory presumption of the paternity of another man. *See Michael H. v. Gerald D.*, 491 U.S. 110, (1989). It is increasingly clear that those days are coming to an end.

The new UPA attempts to establish a middle ground on these exceedingly complex issues. Subsection (a) establishes a two-year limitation for rebutting the presumption of paternity established under § 204 if the mother and presumed father were cohabiting at the time of conception. The presumption of paternity may be attacked by the mother, the presumed father, or a third-party male during this limited period; thereafter the presumption is immune from attack by any of those individuals except as provided in subsection (b).

The reverse fact situation is also clear; a presumption of paternity may be challenged at any time if the mother and the presumed father were not cohabiting and did not engage in sexual intercourse at the probable time of conception and the presumed father never openly held out the child as his own.

Under the fact circumstances described in subsection (b), nonpaternity of the presumed father is generally assumed by all the parties as a practical matter. It is inappropriate for the law to assume a presumption known by all those concerned to be untrue.

§ 7700-608. Circumstances Requiring and Effect of Denial of Motion for Genetic Testing—Factors—Incapacitated or Minor Child.

A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court shall deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:

1. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

2. It would be contrary to the child's best interests to disprove the father-child relationship between the child and the presumed or acknowledged father.

B. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

1. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

2. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;

3. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;

4. The nature of the relationship between the child and the presumed or acknowledged father;

5. The age of the child;

6. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

7. The nature of the relationship between the child and any alleged father;

8. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

9. Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

C. In a proceeding to disprove the father-child relationship between a child over two (2) years of age and the child's presumed or acknowledged father, the court shall appoint a guardian ad litem to represent the child prior to ruling on a motion seeking an order of genetic testing. If the child is under two (2) years of age, or if the proceeding is brought under subsection B of Section 7700-607 of this title, the court may, at its own discretion or upon request by any party, appoint a guardian ad litem to represent the child.

D. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

Added by Laws 2006, c. 116, § 41, eff. Nov. 1, 2006. Amended by Laws 2014, c. 96, § 2, eff. Nov. 1, 2014.

NACCUSL Comment

This section incorporates the doctrine of paternity by estoppel, which extends equally to a child with a presumed father or an acknowledged father. In appropriate circumstances, the court may deny genetic testing and find the presumed or acknowledged father to be the father of the child. The most common situation in which estoppel should be applied arises when a man knows that a child is not, or may not be, his genetic child, but the man has affirmatively accepted his role as child's father and both the mother and the child have relied on that acceptance. Similarly, the man may have relied on the mother's acceptance of him as the child's father and the mother is then estopped to deny the man's presumed parentage.

Subsection (b) delineates the standards for denying genetic testing. Subsection (c) requires the child to be independently represented. Subsection (d) requires an elevated standard of proof before the order for genetic testing can be denied.

Because § 607 places a two-year limitation on challenging the presumption of parentage, the application of this section should be applied in those meritorious cases in which the best interest of the child compels the result and the conduct of the mother and presumed or acknowledged father is clear.

§ 7700-609. Time Limitation for Commencing Proceeding—Signatory to Acknowledgment of Paternity—Others.

A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity may commence a proceeding seeking to challenge the paternity of the child only within the time allowed under Section 15 or 16 of this act [10 O.S. §§ 7700-307 or 7700-308].

B. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding not later than two (2) years after the effective date of the acknowledgment or adjudication.

C. A proceeding under this section is subject to the application of Section 16 of this act [10 O.S. § 7700-308].

Added by Laws 2006, c. 116, § 42, eff. Nov. 1, 2006.

NACCUSL Comment

A two-year period is prescribed in § 307 for a challenge in which the acknowledged or adjudicated father mistakenly believed himself to be the genetic father. A similar limitation is prescribed in § 607(a) for an individual who was not a signatory or a party to the earlier determination.

The 2002 amendment adding subsection (c) authorizes the court to deny genetic testing in accordance with the principles enumerated in § 608 in a fact situation in which equity justifies a denial. For example, if there is an untimely challenge by a third party to the paternity of an acknowledged or adjudicated father long after an actual father-child relationship has been formed, the court has discretion to refuse to order genetic testing.

§ 7700-610. Joinder of Proceedings.

A. Except as otherwise provided in subsection B of this section, a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, dissolution of marriage, annulment, legal separation, probate or administration of an estate, or other appropriate proceeding.

B. A respondent may not join a proceeding described in subsection A of this section with a proceeding to adjudicate parentage brought under Section 601-101 et seq. of Title 43 of the Oklahoma Statutes.

Added by Laws 2006, c. 116, § 43, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 8.

Joinder of paternity proceedings with related matters is common, especially when a child support agency seeks to establish paternity and fix child support.

Subsection (b) restricts counterclaims in those instances in which an initiating state sends a paternity suit to the responding state. Because petitioner is "appearing" in the other forum, to permit counterclaims would serve as a major deterrent to bringing such proceedings. This bar does not prevent a separate action for such matters, but there must be independent jurisdiction not arising from the petitioner's appearance in the paternity proceeding.

§ 7700-611. Commencement of Proceeding Before Birth of Child—Actions That May Be Taken Before Child's Birth.

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by Section 24 of this act [10 O.S. § 7700-502], collection of specimens for genetic testing.

Added by Laws 2006, c. 116, § 44, eff. Nov. 1, 2006.

NACCUSL Comment

This section recognizes that establishing a parental relationship as quickly as possible may be in the best interest of a child. To facilitate that process, some initial steps may be completed prior to the birth of the child.

§ 7700-612. Child Not Necessary Party—Guardian Ad Litem.

A. A minor child is a permissible party, but is not a necessary party to a proceeding under this Article.

B. The court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the court finds that the interests of the child are not adequately represented.

Added by Laws 2006, c. 116, § 45, eff. Nov. 1, 2006.

NACCUSL Comment

This section rejects UPA (1973) § 9. Consistent with § 603, *supra*, this Act rejects the view that the child necessarily has independent standing in a parentage proceeding. On the other hand, if the court determines that the child in fact does have a position at variance with all the other litigants, an attorney may be appointed to represent that interest.

Part 2.
Special Rules for Proceeding to Adjudicate Parentage

§ 7700-621. Admissability of Records—Genetic Testing Experts—Admissability of Results of Genetic Testing and Copies of Bills.

A. Except as otherwise provided in subsection C of this section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its mailing and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

1. Voluntarily or pursuant to an order of the court or the Department of Human Services; or
2. Before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

C. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed pursuant to an order of the court under Sections 7700-502 and 7700-608 of this title.

D. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten (10) days before the date of a hearing are admissible to establish:

1. The amount of the charges billed; and

2. That the charges were reasonable, necessary, and customary.

Added by Laws 2006, c. 116, § 46, eff. Nov. 1, 2006. Amended by Laws 2008, c. 99, § 3, eff. Nov. 1, 2008.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(F)(ii), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902]; UPA (1973) §§ 10, 13.

Justification for additional testing is provided by subsection (a). If the objecting party can state with specificity the grounds for rejecting a genetic test, and those grounds cannot be clarified under Article 5, retesting should be ordered. For example, if the chain of custody is seriously flawed, or the testing laboratory is not accredited, errors of this sort may be corrected by collecting new specimens and repeating the testing. Unlike the samples collected in a potential criminal proceeding which cannot be replaced, such as a blood alcohol test, the samples in a paternity proceedings remain the same no matter when, or how often, the samples are collected. Any flaw in the original test can be corrected by collection of new samples and additional testing of the individuals.

§ 7700-622. Contempt of Testing Order—Refusal to Submit to Testing—Failure to Answer or Appear—Testing of Mother.

A. An order for genetic testing is enforceable by contempt.

B. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.

C. If a defendant fails to answer, or to appear for hearing or genetic testing after being ordered to appear, and all other duly served defendants have been excluded as possible fathers by genetic testing, the court shall enter an order establishing the defendant who failed to answer or appear as the father.

D. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

Added by Laws 2006, c. 116, § 47, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 10.

§ 7700-623. Admission of Paternity.

A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

B. If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

Added by Laws 2006, c. 116, § 48, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(D)(i)(II), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-624. Temporary Order of Support—Custody and Visitation.

A. In a proceeding under this Article, the court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

1. A presumed father of the child;

2. Petitioning to have his paternity adjudicated;

3. Identified as the father through genetic testing under Section 27 of this act [10 O.S. § 7700-505];

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; or

6. The mother of the child.

B. A temporary order may include provisions for custody and visitation as provided by other law of this state.

Added by Laws 2006, c. 116, § 49, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UIFSA (1996) § 401; 42 U.S.C. § 666(a)(5)(J), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

Part 3.
Hearings and Adjudications

§ 7700-631. Rules to Adjudicate Paternity of a Child.

The court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child;

2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 27 of this act [10 O.S. § 7700-505] shall be adjudicated the father of the child;

3. If the court finds that genetic testing under Section 27 of this act [10 O.S. § 7700-505] neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity; and

4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

Added by Laws 2006, c. 116, § 50, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 14.

This section establishes the controlling supremacy of admissible genetic test results in the adjudication of paternity. Other matters such as statute of limitations, equitable estoppel and res judicata may preclude the matter from reaching trial or the court denying genetic testing. However, if test results are admissible, those results control unless other test results create a conflict rebutting the admitted results.

Paragraph (3) is included to ensure that the fact a genetic test does not reach the 99% level decreed in § 505 will not be perceived as an indicator of an exclusion of paternity. Although test results that do not reach that level do not create a presumption of paternity, the testing should be evaluated as an indicator of paternity along with the other evidence of paternity presented in the proceeding. Presumably expert testimony will be required to provide information about the measure of the weight of a test that does not achieve "at least a 99 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing, and a combined paternity index of at least 100 to 1."

The inclusion of the first clause in paragraph (4) indicates that although a genetic testing exclusion of paternity can be absolute, errors (and sometimes fraud) may occur in testing. Some courts have imposed a rule that a party must first show the test is in error before ordering another test. This imposes an impossible burden because the only accurate method to show that a test is in error is to repeat the testing. Without this clause, some litigants might argue that once an exclusion is obtained it is absolute and no other test can be ordered, even when the first test is shown to be wrong.

§ 7700-632. Court, Not Jury, Shall Adjudicate.

The court, without a jury, shall adjudicate paternity of a child.

Added by Laws 2006, c. 116, § 51, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(I), requiring state law to provide that "parties to an action to establish paternity are not entitled to trial by jury. . . ." *See* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

UPA (1973) § 14[(d)] prohibited jury trials in parentage proceedings on the basis that "The use of a jury is not desirable in the emotional atmosphere of cases of this nature." Congress agreed when it enacted an effectively identical prohibition in PRWORA (1996).

§ 7700-633. Close of Proceedings—Availability of Final Order and Other Papers and Records.

A. On request of a party and for good cause shown, the court may close a proceeding under this Article.

B. A final order in a proceeding under this Article is available for public inspection. Once a proceeding is closed under this Article, other papers and records are available only with the consent of the parties or on order of the court for good cause.

Added by Laws 2006, c. 116, § 52, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UPA (1973) § 20.

UPA (1973) § 20 was concerned with the privacy of the parties in a paternity proceeding and required closure of the proceedings. The high caseload and the desensitizing of such proceedings, however, lead to the conclusion that mandating closure of the proceedings is no longer appropriate.

§ 7700-634. Order Adjudicating Paternity—When Issued.

The court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and

2. Is found by the court to be the father of a child.

Added by Laws 2006, c. 116, § 53, eff. Nov. 1, 2006.

NACCUSL Comment

Source: 42 U.S.C. § 666(a)(5)(H), *see* APPENDIX: FEDERAL IV-D STATUTE RELATING TO PARENTAGE, *infra* [following 10 O.S. § 7700-902].

§ 7700-635. Dismissal for Want of Prosecution Must be Without Prejudice.

The court may issue an order dismissing a proceeding commenced under the Uniform Parentage Act for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

Added by Laws 2006, c. 116, § 54, eff. Nov. 1, 2006.

NACCUSL Comment

A major principle of the new UPA—and its predecessor—is that the child's right to have a determination of paternity is fundamental. This new section confirms this right by declaring that the delinquency of another person in prosecuting such a proceeding, *e.g.*, the mother or a support enforcement agency, may not permanently preclude the ultimate resolution of a parentage determination.

§ 7700-636. Orders—Assessment of Fees and Costs—Child's Surname—Amended Birth Certificate.

A. The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage shall identify the child by name and date of birth.

C. Except as otherwise provided in subsection D of this section, the court may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this Article. The court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

D. The court may not assess fees, costs, or expenses against the Department of Human Services or an agency of another state designated to administer a statewide plan for child support in accordance with Title IV, Part D, of the Federal Social Security Act, as amended, 42 U.S.C., Section 651 et seq., except as provided by other law.

E. If both the mother and the father agree to change the surname of the child to that of the father, the court may order that the name be changed.

F. If the order of the court is at variance with the child's birth certificate, the court shall order the State Department of Health, Division of Vital Records to issue an amended birth registration.

Added by Laws 2006, c. 116, § 55, eff. Nov. 1, 2006.

NACCUSL Comment

Source: UIFSA (1996) § 313; UPA (1973) §§ 15, 16, 23.

This Act differs from UPA (1973), which attempted to do more than merely establish parentage. For example, UPA (1973) § 15 provided for a wide range of court orders to be made relating to the child's support, custody, guardianship, visitation privileges, as well as to the payment by the father of the mother's expenses of pregnancy and confinement. This Act leaves such matters to other state law. Only in instances where other state law is likely to be inadequate does this Act specify special treatment for litigants, For example, subsections (c) and (d) may be required because ordinary civil litigation probably does not provide for the court to apportion the costs of litigation among the parties.

§ 7700-637. Upon Whom Determination of Parentage is Binding—Other Proceedings—Defensive Use—Appeals.

A. Except as otherwise provided in subsection B of this section, a determination of parentage is binding on:

1. All signatories to an acknowledgment or denial of paternity as provided in Article 3 of the Uniform Parentage Act; and

2. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Section 601-201 of Title 43 of the Oklahoma Statutes.

B. A child is not bound by a determination of parentage under the Uniform Parentage Act unless:

1. The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

2. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

3. The child was a party or was represented in the proceeding determining parentage by an attorney or guardian ad litem.

C. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of Section 601-201 of Title 43 of the Oklahoma Statutes and the final order:

1. Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or

2. Provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

D. Except as otherwise provided in subsection B of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

E. A party to an adjudication of paternity may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review.

Added by Laws 2006, c. 116, § 56, eff. Nov. 1, 2006.

NACCUSL Comment

A considerable amount of litigation involves exactly who is bound and who is not bound by a final order determining parentage. This section codifies rules regarding the effect of such orders. Subsection (a) provides that, if the order is issued under standards of personal jurisdiction of the UIFSA (1996), the order is binding on all parties to the proceeding. This solves the problem of an order issued without the appropriate jurisdiction, as would be the case of a divorce based on status jurisdiction in which the court lacked the requisite personal jurisdiction over a nonresident party.

Subsection (b) partially resolves the question of whether a child is bound by the terms of the order. UPA (1973) required that the child be made a party to a parentage proceeding, and be bound. However, the 1973 Act did not address whether a divorce decree had a legal impact on paternity. A majority of jurisdictions hold that the child is not bound by the divorce decree because the child was not a party to the proceeding. A minority of states hold that the child is bound by the order and that the child is in privity with the parents. In its present formulation, this subsection adopts the majority rule, which does not bind the child during minority unless the parentage order is based on genetic testing or the child was represented by an attorney ad litem (each state supplies its own terminology).

Subsection (c) resolves whether a divorce decree constitutes a finding of paternity. This subsection provides that a decree is a determination of paternity if the decree states that the child was born of the marriage or grants the husband visitation or custody, or orders support. This is the majority rule in American jurisprudence.

Subsection (d) gives protection to third parties who may claim benefit of an earlier determination of parentage

Finally, the section is silent on whether state IV-D agencies are bound by prior determinations of parentage. This controversial issue is left to other state law. Similarly, issues of collateral attack on final judgments are to be resolved by recourse to other state law, as in civil proceedings generally.

Article 9.
Miscellaneous Provisions

§ 7700-901. Application and Construction of Act—Uniformity of Law.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 2006, c. 116, § 57, eff. Nov. 1, 2006.

§ 7700-902. Effect of Act on Proceedings Commenced or Executed Before November 1, 2006.

A proceeding to adjudicate parentage or an acknowledgment of paternity which was commenced or executed before November 1, 2006, is governed by the Uniform Parentage Act.

Added by Laws 2006, c. 116, § 58, eff. Nov. 1, 2006.

NACCUSL Comment

Appendix

Federal IV-D Statute Relating to Parentage

42 U. S. C. § 666. Requirement of Statutorily Prescribed Procedures To Improve Effectiveness of Child Support Enforcement.

(a) Types of procedures required. In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

* * *

(5) Procedures concerning paternity establishment.

(A) Establishment process available from birth until age 18.

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing.

(i) Genetic testing required in certain contested cases. Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party:

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements. Procedures which require the State agency, in any case in which the agency orders genetic testing:

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) Voluntary paternity acknowledgment.

(i) Simple civil process. Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally or through the use of audio or video equipment and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services.

(I) State-offered services. Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations.

(aa) Services offered by hospitals and birth record agencies. The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities. The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit. Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) Status of signed paternity acknowledgment.

(i) Inclusion in birth records. Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if:

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity. Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest. Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) Bar on acknowledgment ratification proceedings. Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) Admissibility of genetic testing results. Procedures:

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is:

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) Presumption of paternity in certain cases. Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Default orders. Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) No right to jury trial. Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) Temporary support order based on probable paternity in contested cases. Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) Proof of certain support and paternity establishment costs. Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) Standing of putative fathers. Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) Filing of acknowledgments and adjudications in State registry of birth records. Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

§ 7800. Custody of Child Born Out of Wedlock.

Except as otherwise provided by law, the mother of a child born out of wedlock has custody of the child until determined otherwise by a court of competent jurisdiction.

Added by Laws 2010, c. 358, § 1, emerg. eff. June 7, 2010. Amended by Laws 2011, c. 51, § 1, eff. Nov. 1, 2011.

Title 12.
Civil Procedure

Chapter 21.
Attachment and Garnishment

§ 1171.2. Child Support Payments—Garnishment.

A. Any person awarded custody of and support for a minor child by the district court or awarded periodic child support payments by the Department of Human Services, or the Department of Human Services on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and Section 1171.3 of this title or Sections 240 through 240.3 of Title 56 of the Oklahoma Statutes or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. Fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child.

The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

C. When responding to a notice of income assignment pursuant to Section 1171.3 of this title and a National Medical Support Notice issued pursuant to Section 118.1 of Title 43 and Section 6058A of Title 36 of the Oklahoma Statutes, the payor shall allocate available income in the following priority:

1. Current child and spousal support;
2. Health insurance premiums;
3. Arrearages; and
4. Other child support obligations.

If after payment of current child and spousal support there is insufficient income to pay the premiums necessary to provide dependent health insurance, the payor shall allocate the remaining withholding to arrearages and then to other child support obligations. An obligor may voluntarily elect to have the payor withhold amounts in excess of the limits in subsection B of this section to pay the obligor's portion of the health insurance premium for a dependent child.

Added by Laws 1978, c. 190, § 2, eff. Oct. 1, 1978. Amended by Laws 1985, ch 297, § 11, eff. Oct. 1, 1985; Laws 1997, c. 272, § 2, eff. Nov. 1,1997; Laws 1997, c. 402, § 6, operative July 1,1997; Laws 2007, c. 41, § 2, eff. Nov. 1, 2007.

§ 1171.3. Income Assignments.

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the court shall order the payment of child support as provided under Section 115 of Title 43 of the Oklahoma Statutes.

B.1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Administrative Office of the Courts. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the Centralized Support Registry as provided for in Section 413 of Title 43 of the Oklahoma Statutes within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1171.2 of this title.

4. The income assignment is binding upon the payor until released or until further order of the court.

5. All payments shall be made through the Centralized Support Registry as provided in Section 413 of Title 43 of the Oklahoma Statutes.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by Section 1171.2 of this title, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to this subsection, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars ($200.00) for each failure to make the required deductions if the payor:

a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice, or

b. fails to notify the person or agency designated to receive payments as required.

10. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

11. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars ($5.00) per pay period but not to exceed Ten Dollars ($10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain in effect regardless of a change of payor.

14. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion.

C. Income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments.

D. Any existing support order or income assignment which is brought before the court shall be modified by the court to conform to the provisions of this section.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

F. The income assignment proceedings specified in this section shall be available to other states for the enforcement of support and maintenance or to enforce out-of-state orders. Venue for these proceedings is, at the option of the obligee:

1. In the county in this state in which the support order was entered;

2. In the county in this state in which the obligee resides; or

3. In the county in this state in which the obligor resides or receives income.

G.1. In all child support cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, all orders for support are subject to immediate income assignment without need for a hearing by the district or administrative court.

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

a. one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

(1) a written determination and explanation by the court or administrative authority of why implementing immediate income assignment would not be in the best interests of the child, and

(2) proof of timely payment of previously ordered support in cases involving modification of support orders, or

b. a written agreement is reached between the parties which provides for an alternative arrangement. For purposes of this subparagraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parents which has been reviewed by the court and entered into the record by the court or administrative authority.

Added by Laws 1985, c. 297, § 2, operative Oct. 1, 1985. Amended by Laws 1986, c. 176, § 2, emerg. eff. May 15, 1986; Laws 1989, c. 362, § 1, eff. Nov. 1, 1989; Laws 1990, c. 309, § 7, eff. Sept. 1, 1990; Laws 1991, c. 278, § 1, emerg. eff. May 28, 1991; Laws 1994, c. 356, § 23, eff. Sept. 1, 1994.; Laws 1997, c. 272, § 3, eff. Nov. 1, 1997; Laws 1997, c. 402, § 7, operative July 1, 1997; Laws 1998, c. 323, § 5, eff. Oct. 1, 1998; Laws 2000, c. 384, § 3, eff. Nov. 1, 2000; Laws 2004, c. 393, § 1, emerg. eff. June 3, 2004.

Chapter 39.
Oklahoma Pleading Code

§ 2025.1. Assignment by Parent to Child of Right to Recover for Injury to Child.

The parent or parents having the right to recover damages for an injury to a minor child may assign to said child their right to recover said damages, and where the parent or parents of a minor child bring an action as guardian or guardian ad litem or next friend on behalf of said child and ask for a judgment for him for damages to which said parent or parents are entitled, said parent or parents will be deemed to have assigned to the minor child their right to recover such damages. Any damages recovered pursuant to this section shall be disposed of in the same manner as provided by Section 83 of Title 12 of the Oklahoma Statutes.

Laws 1977, c. 138, § 1, eff. Oct. 1, 1977. (Transferred from 12 O.S. § 244.) Renumbered from 10 O.S. § 17.1 by Laws 2009, c. 233, § 201, emerg. eff. May 21, 2009.

Title 21.
Crimes & Punishment

Part II.
Crimes Against Public justice

Chapter 19.
Other Crimes against public justice

§ 566. Contempt for Failure to Comply with Child Support and Other Orders—Punishment.

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the court.

B.1. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, other support, visitation, or other court orders regarding minor children the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow said guidelines, the court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

a. the proportion of the child support, child support arrearage payments, or other support that was unpaid in relation to the amount of support that was ordered paid;,

b. the proportion of the child support, child support arrearage payments, or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;,

c. the present capacity of the party found in contempt to pay any arrearages,

d. any willful actions taken by the party found in contempt to reduce factor c,

e. the past history of compliance or noncompliance with the support or visitation order, and

f. willful acts to avoid the jurisdiction of the court.

2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:

a. proof that:

(1) the order was made, filed, and served on the parent, or

(2) the parent had actual knowledge of the existence of the order, or

(3) the order was granted by default after prior due process notice to the parent, or

(4) the parent was present in court at the time the order was pronounced, and

b. proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

C. Any court in this state has the power to enforce an order for current child support, past due child support and child support arrearage payments, other support, visitation, or other court orders regarding minor children and to punish an individual for failure to comply therewith, as set forth in subsection A of this section. Venue for an action under this section is proper, at the option of the obligee:

1. In the county in this state in which the support order was entered, docketed or registered;

2. In the county in this state in which the obligee resides; or

3. In the county in this state in which the obligor resides or receives income.

Orders for current child support, past due child support and child support arrearage payments are enforceable until paid in full. The remedies provided by this section are available regardless of the age of the child.

Added by R.L. 1910, § 2278. Amended by Laws 1984, c. 14, § 2, eff. Nov. 1, 1984; Laws 1989, c. 362, § 5, eff. Nov. 1, 1989; Laws 1990, c. 101, § 1, operative July 1, 1990; Laws 2002, c. 461, § 1, eff. Nov. 1, 2002; Laws 2007, c. 140, § 1, eff. Nov. 1, 2007.

§ 566.1. Indirect Contempt for Failure to Comply with an Order of Child Support—Punishment.

A. When a court of competent jurisdiction has entered an order compelling a parent to furnish child support, necessary food, clothing, shelter, medical support, payment of child care expenses, or other remedial care for the minor child of the parent:

1. Proof that:

a. the order was made, filed, and served on the parent,

b. the parent had actual knowledge of the existence of the order,

c. the order was granted by default after prior due process notice to the parent, or

d. the parent was present in court at the time the order was pronounced; and

2. Proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

B.1. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, punishment shall be, at the discretion of the court:

a. incarceration in the county jail not exceeding six (6) months, or

b. incarceration in the county jail on weekends or at other times that allow the obligor to be employed, seek employment or engage in other activities ordered by the court.

2. Punishment may also include imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00).

3. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, if the court finds by a preponderance of the evidence that the obligor is willfully unemployed, the court may require the obligor to work two (2) eight-hour days per week in a community service program as defined in Section 339.7 of Title 19 of the Oklahoma Statues, if the county commissioners of that county have implemented a community service program.

C.1. During proceedings for indirect contempt of court, the court may order the obligor to complete an alternative program and comply with a payment plan for child support and arrears. If the obligor fails to complete the alternative program and comply with the payment plan, the court shall proceed with the indirect contempt and shall impose punishment pursuant to subsection B of this section.

2. An alternative program may include:

a. a problem-solving court program for obligors when child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the benefit of the child. A problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial contempt prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program as a condition of the Department of Human Services agreement to stay contempt proceedings or in lieu of incarceration after a finding of guilt. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court, and

b. participation in programs such as counseling, treatment, educational training, social skills training or employment training to which the obligor reports daily or on a regular basis at specified times for a specified length of time.

D. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow the guidelines, the court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

1. The proportion of the child support, child support arrearage payments, or other support that was unpaid in relation to the amount of support that was ordered paid;

2. The proportion of the child support, child support arrearage payments, or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

3. The present capacity of the party found in contempt to pay any arrearages;

4. Any willful actions taken by the party found in contempt to reduce the capacity of that party to pay any arrearages;

5. The past history of compliance or noncompliance with the support order; and

6. Willful acts to avoid the jurisdiction of the court.

Added by Laws 2008, c. 407, § 13, eff. Nov. 1, 2008. Amended by Laws 2013, c. 28, § 1, eff. Nov. 1, 2013.

§ 567A. Violation of Child Custody Order—Defense—Emergency or Protective Order.

A. Any parent or other person who violates an order of any court of this state granting the custody of a child under the age of eighteen (18) years of age to any person, agency, institution, or other facility, wit the intent to deprive the lawful custodian of the custody of the child, shall be guilty of a felony. The fine for a violation of this subsection shall not exceed Five thousand Dollars ($5,000.00).

B. The offender shall have an affirmative defense if the offender reasonably believes that the act was necessary to preserve the child from physical, mental, or emotional danger to the child's welfare and the offender notifies the local law enforcement agency nearest to the location where the custodian of the child resides.

C. If a child is removed from the custody of the child's lawful custodian pursuant to the provisions of this section any law enforcement officer may take the child into custody without a court order and, unless there is a specific court order directing a law enforcement officer to take the child into custody and release or return the child to a lawful custodian, the child shall be held in emergency or protective custody pursuant to the provisions of Section 1-4-201 of Title 10A of the Oklahoma Statutes.

Added by Laws 1999, c. 385, § 1, emerg. eff. June 8, 1999. Amended by Laws 2009, c. 234, § 119, emerg. eff. May 21, 2009.

§ 644. Punishment for Assault and Battery.

A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

C. Any person who commits any assault and battery against a current or former intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense.

D.1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

E. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than one (1) year.

Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for not less than ten (10) years.

Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for not less than twenty (20) years.

F. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, or by imprisonment in the county jail for not more than one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

G. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars ($7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense. For every conviction of a domestic abuse crime in violation of any provision of this section committed against an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, the court shall:

1. Specifically order as a condition of a suspended or deferred sentence that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2.a. The court shall require the defendant to complete an assessment and follow the recommendations of a batterers' intervention program certified by the Attorney General. If the defendant is ordered to participate in a batterers' intervention program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by program staff. Three unexcused absences in succession

or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered batterers' intervention program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3.a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 7003-8.6 and 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

H. As used in subsection G of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and G of this section, "child" may be any child whether or not related to the victim or the defendant.

I. For the purposes of subsections C and G of this section, any conviction for assault and battery against an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutesshall constitute a sufficient basis for a felony charge:

1. If that conviction is rendered in any state, county or parish court of record of this or any other state; or

2. If that conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment

in the custody of the Department of Corrections for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction for a violation of this section, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars ($20,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction of a violation of this subsection. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to, asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the head.

K. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;

2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers, certified by the Attorney General.

L. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense in this state.

M. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

O. For purposes of subsection E of this section, “great bodily injury” means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

P. Any pleas of guilty or nolo contendere or finding of guilt to a violation of any provision of this section shall constitute a conviction of the offense for the purpose of any subsection of this section under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any sentence or court imposed probationary term.

Added by R.L. 1910, § 2343. Amended by Laws 1986, c. 143, § 1, emerg. eff. April 21, 1986; Laws 1996, c. 197, § 2, emerg. eff. May 20, 1996; Laws 1997, c. 133. § 217, operative July 1, 1998; Laws 1997, c. 368, § 3 effective date amended to July 1, 1999 by Laws 1998, c. 2 (1st Ex. Sess.), §§ 23-26 effective June 19, 1998; Laws 1999, c. 309. § 1, eff. Nov. 1, 1999; Laws 2000, c. 6, § 31, emerg. eff. March 20, 2000; Laws 2004, c. 516, § 1, operative July 1, 2005; Laws 2005, c. 1, § 12, operative July 1, 2005, Laws 2005, c. 348, § 9, operative July 1, 2005; Laws 2006, c. 284, § 1, emerg. eff. June 7, 2006; Laws 2008, c. 174, § 1, eff. Nov. 1, 2008; Laws 2008, c. 318, § 1, eff. Nov 1, 2008. Multiple version repealed by Laws 2009, c. 2, § 2, emerg. eff. March 12, 2009. Amended by Laws 2009, c. 2, § 1, emerg. eff. Mar. 12, 2009; Laws 2009, c. 87, § 1, eff. Nov. 1, 2009; Laws 2010, c. 113, § 1, eff. Aug. 27, 2010; Laws 2010, c. 348, § 1, eff. Nov. 1, 2010; Laws 2011, c. 385 § 2, eff. Nov. 1, 2011; Laws 2014, c. 71, § 2, eff. Nov. 1, 2014; Laws 2019, c. 200, § 1, eff. Nov. 1, 2019.

§ 644.1. Domestic Abuse with Prior Pattern of Physical Abuse—Penalty.

A. Any person who commits domestic abuse, as defined by subsection C of Section 644 of this title, and has a prior pattern of physical abuse shall be guilty of a felony, upon conviction, punishable by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years or by a fine not exceeding Five Thousand Dollars ($5,000.00) or by both such fine and imprisonment.

B. For purposes of this section, “prior pattern of physical abuse” means two or more separate incidences, including the current incident, occurring on different days and each incident relates to an act constituting assault and battery or domestic abuse committed by the defendant against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, a person living in the same household as the defendant, a current intimate partner or former intimate partner, or any combination of such persons, where proof of each incident prior to the present incident is established by the sworn testimony of a third party who was a witness to the alleged physical abuse or by other admissible direct evidence that is independent of the testimony of the victim.

Added by Laws 2009, c. 457, § 1, operative July 1, 2009. Amended by Laws 2014, c. 71, § 2, eff. Nov. 1, 2014; Laws 2016, c. 128, § 2, eff. Nov. 1, 2016.

Title 22.
Criminal Procedure

Victims of Rape, Forcible Sodomy, or Domestic Abuse

§ 40. Definitions.

As used in Sections 40 through 40.3 of this title:

1. "Assault and battery with a deadly weapon" means assault and battery with a deadly weapon or other means likely to produce death or great bodily harm as provided in Section 652 of Title 21 of the Oklahoma Statutes;

2. "Forcible sodomy" means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to Sections 886 and 887 of Title 21 of the Oklahoma Statutes that is punishable under Section 888 of Title 21 of the Oklahoma Statutes;

3. "Kidnapping" means kidnapping or kidnapping for purposes of extortion as provided in Sections 741 and 745 of Title 21 of the Oklahoma Statutes;

4. "Member of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent by birth or adoption, a stepparent, a grandparent, a grandchild, a sibling or a stepsibling of a victim of first-degree murder;

5. "Rape" means an act of sexual intercourse accomplished with a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of the Oklahoma Statutes; and

6. "Sex offense" means the following crimes:

a. sexual assault as provided in Section 681 of Title 21 of the Oklahoma Statutes,

b. human trafficking for commercial sex as provided in Section 748 of Title 21 of the Oklahoma Statutes,

c. sexual abuse or sexual exploitation by a caretaker as provided in Section 843.1 of Title 21 of the Oklahoma Statutes,

d. child sexual abuse or child sexual exploitation as provided in Section 843.5 of Title 21 of the Oklahoma Statutes,

e. permitting sexual abuse of a child as provided in Section 852.1 of Title 21 of the Oklahoma Statutes,

f. incest as provided in Section 885 of Title 21 of the Oklahoma Statutes,

g. forcible sodomy as provided in Section 888 of Title 21 of the Oklahoma Statutes,

h. child stealing for purposes of sexual abuse or sexual exploitation as provided in Section 891 of Title 21 of the Oklahoma Statutes,

i. indecent exposure or solicitation of minors as provided in Section 1021 of Title 21 of the Oklahoma Statutes,

j. procuring, producing, distributing or possessing child pornography as provided in Sections 1021.2 and 1024.2 of Title 21 of the Oklahoma Statutes,

k. parental consent to child pornography as provided in Section 1021.3 of Title 21 of the Oklahoma Statutes,

l. aggravated possession of child pornography as provided in Section 1040.12a of Title 21 of the Oklahoma Statutes,

m. distributing obscene material or child pornography as provided in Section 1040.13 of Title 21 of the Oklahoma Statutes,

n. offering or soliciting sexual conduct with a child as provided in Section 1040.13a of Title 21 of the Oklahoma Statutes,

o. procuring a child for prostitution or other lewd acts as provided in Section 1087 of Title 21 of the Oklahoma Statutes,

p. inducing a child to engage in prostitution as provided in Section 1088 of Title 21 of the Oklahoma Statutes, and

q. lewd or indecent proposals or acts to a child or sexual battery as provided in Section 1123 of Title 21 of the Oklahoma Statutes.

Added by Laws 1982, c. 220, § 1. Amended by Laws 1991, c. 112, § 1, eff. Sept. 1, 1991; Laws 2000, c. 370. § 1, emerg. eff. June 6, 2000; Laws 2002,c. 466, § 1, emerg. eff. June 5, 2002; Laws 2015, c. 206, § 2, eff. Nov. 1, 2015; Laws 2016, c. 183, § 2, eff. Nov. 1, 2016.

§ 40.1. Repealed by Laws 2010, c. 135, § 16, eff. Nov. 1, 2010.

§ 40.2. Victim of Domestic Abuse—Notice of Rights.

A. A victim protection order for any victim of rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon shall be substantially similar to a protective order in domestic abuse cases pursuant to the Protection from Domestic Abuse Act [22 O.S. §§ 60 et seq.].

B. A member of the immediate family of a victim of first-degree murder may seek a victim protection order against the following persons:

1. The person who was charged and subsequently convicted as the principal in the crime of murder in the first degree; or

2. The person who was charged and subsequently convicted of being an accessory to the crime of murder in the first degree.

A victim protection order for a member of the immediate family of a victim of first-degree murder shall be substantially similar to a protective order in domestic abuse cases pursuant to the Protection from Domestic Abuse Act [22 O.S. §§ 60 et seq.].

C. No peace officer shall discourage a victim of rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon from pressing charges against any assailant of the victim.

Added by Laws 1982, c. 220, § 3. Amended by Laws 1993, c. 325, § 13, eff. Sept. 1, 1993; Laws 2002, c. 466, § 3, emerg. eff. June 5, 2002; Laws 2015, c. 206, § 3, eff. Nov. 1, 2015; Laws 2016, c. 183, § 3, eff. Nov. 1, 2016.

§ 40.3. Victims Not to be Discouraged from Pressing Charges.

A. When the court is not open for business, the victim of domestic violence, stalking, harassment, rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim or member of the immediate family of a victim of first-degree murder with a petition for an emergency temporary order of protection and, if necessary, assist the victim or member of the immediate family of a victim of first-degree murder in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order in domestic abuse cases;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Inform the victim or member of the immediate family of a victim of first-degree murder whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person or member of the immediate family of a victim of first-degree murder, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order, if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest or, upon identification of the assailant, notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.2 of this title.

Added by Laws 1982, c. 220, § 4. Amended by Laws 1986, c. 197, § 5, eff. Nov. 1, 1986; Laws 1993, c. 325, § 14, eff. Sept. 1, 1993; Laws 1997, c. 368, § 1, eff. Nov. 1, 1997; Laws 2000, c. 370. § 3, emerg. eff. June 6, 2000; Laws 2002, c. 466, § 4, emerg. eff. June 5, 2002; Laws 2010, c. 116, § 1, eff. Nov. 1, 2010; Laws 2015, c. 206, § 4, eff. Nov. 1, 2015; Laws 2016, c. 183, § 4, eff. Nov. 1, 2016.

§ 40.4. Renumbered as 43A O.S. § 3-314, eff. Nov. 1, 1986.

Domestic Abuse Reporting Act

§ 40.5. Title—Domestic Abuse Reporting Act.

Sections 2 through 4 of this act shall be known and may be cited as the "Domestic Abuse Reporting Act".

Added by Laws 1986, c. 197, § 2, eff. Nov. 1, 1986.

§ 40.6. Duty to Keep Record of Reported Incidents of Domestic Abuse—Monthly Report.

A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection B of this section and to submit a monthly report of such incidents as provided in subsection C of this section to the Director of the Oklahoma State Bureau of Investigation.

B. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred;
3. Show the time of day the incident occurred; and
4. Contain other information requested by the Oklahoma State Bureau of Investigation.

C. A monthly report of the recorded incidents of domestic abuse shall be submitted to the Director of the Oklahoma State Bureau of Investigation on forms provided by the Oklahoma State Bureau of Investigation for such purpose and in accordance with the guidelines established pursuant to Section 150.12B of Title 74 of the Oklahoma Statutes.

Added by Laws 1986, c. 197, § 3, eff. Nov. 1, 1986. Amended by Laws 2000, SB 1516 c. 370. § 4, emerg. eff. June 6, 2000.

§ 40.7. Expert Witness Testimony.

In an action in a court of this state, if a party offers evidence of domestic abuse, testimony of an expert witness including, but not limited to, the effects of such domestic abuse on the beliefs, behavior and perception of the person being abused shall be admissible as evidence.

Added by Laws 1992, c. 145, § 1, eff. Sept. 1, 1992. Amended by Laws 2019, c. 292, § 1, eff. Nov. 1, 2019.

Protection From Domestic Abuse

§ 60. Short Title.

This act shall be known and may be cited as the "Protection from Domestic Abuse Act".

Added by Laws 1982, c. 255, § 1.

§ 60.1. Definitions.

As used in the Protection from Domestic Abuse Act and in the Domestic Abuse Reporting Act, Sections 40.5 through 40.7 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Dating relationship" means intimate association, primarily characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

2. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member;

3. "Family or household members" means:

a. parents, including grandparents, stepparents, adoptive parents and foster parents,

b. children, including grandchildren, stepchildren, adopted children and foster children, and

c. persons otherwise related by blood or marriage living in the same household;

4. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

5. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

6. "Intimate partner" means:

a. current or former spouses,

b. persons who are or were in a dating relationship,

c. persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and

d. persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

7. "Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title;

8. "Rape" means rape and rape by instrumentation in violation of Sections 1111 and 1111.1 of Title 21 of the Oklahoma Statutes;

9. "Stalking" means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, or

g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual; and

10. "Victim support person" means a person affiliated with a domestic violence, sexual assault or adult human sex trafficking program, certified by the Attorney General or operating under a tribal government, who provides support and assistance for a person who files a petition under the Protection from Domestic Abuse Act.

Added by Laws 1982, c. 255, § 2, eff. Oct. 1, 1982. Amended by Laws 1986, c. 197, § 1, eff. Nov. 1, 1986; Laws 1991, c. 112, § 2, eff. Sept. 1, 1991; Laws 1992, c. 42, § 1, eff. Sept. 1, 1992; Laws 1994, c. 290, § 54, eff. July 1, 1994; Laws 1995, c. 297, § 1, eff. Nov. 1, 1995; Laws 1996, c. 247, § 29, eff. July 1, 1996; Laws 2000, c. 85, § 1, eff. Nov. 1, 2000; Laws 2000, c. 370, § 5, eff. July 1, 2000; Laws 2001, c. 279, § 2, eff. Nov. 1, 2001; Laws 2003, c. 407, § 1, eff. Nov. 1, 2003; Laws 2005, c. 348, § 14, operative July 1, 2005; Laws 2010, c. 116, § 2, eff. Nov. 1, 2010; Laws 2019, c. 200, § 2, eff. Nov. 1, 2019.

§ 60.2. Protective Order—Petition; Form; Preparation.

A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the Protection from Domestic Abuse Act.

1. The person seeking relief may file a petition for a protective order with the district court in the county in which the victim resides, the county in which the defendant resides, or the county in which the domestic violence occurred. If the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph 2 of subsection C of this section. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the county. If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order in the same county where the action for divorce or separate maintenance is filed, the petition for the protective order may be heard by the court hearing the divorce or separate maintenance action if:

a. there is no established protective order docket in such court, or

b. the court finds that, in the interest of judicial economy, both actions may be heard together; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as authorized by Section 40.3 of this title.

B. The petition forms shall be provided by the clerk of the court. The Administrative Office of the Courts shall develop a standard form for the petition.

C.1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

D. The person seeking relief shall prepare the petition or, at the request of the plaintiff, the court clerk or the victim-witness coordinator, victim support person, and court case manager shall prepare or assist the plaintiff in preparing the petition.

E. The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

F. A court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity or criminal proceedings prior to hearing a petition for protective order.

G. A victim of rape, forcible sodomy, a sex offense, kidnapping, assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder, as such terms are defined in Section 40 of this title, may petition for an emergency temporary order or emergency ex parte order regardless of any relationship or scenario pursuant to the provisions of this section. The Administrative Office of the Courts shall modify the petition forms as necessary to effectuate the provisions of this subsection.

Added by Laws 1982, c. 255, § 3. Amended by Laws 1983, c. 290, § 1, eff. Nov. 1, 1983; Laws 1991, c. 112, § 3, eff. Sept. 1, 1991; Laws 1992, c. 42, § 2, eff. Sept. 1, 1992; Laws 1993, c. 325, § 15, eff. Sept. 1, 1993; Laws 1994, c. 290, § 55, operative July 1, 1994; Laws 1996, c. 247, § 30, operative July 1, 1996; Laws 1997, c. 403, § 7, eff. Nov. 1, 1997; Laws 2000, c. 370, § 6, emerg. eff. June 6, 2000; Laws 2001, c. 279, § 3, eff. Nov. 1, 2001; Laws 2003, c. 407, § 2, eff. Nov. 1, 2003; Laws 2006, c. 302, § 1, eff. Nov. 1, 2006; Laws 2008, c. 189, § 1, eff. Nov. 1, 2008; Laws 2010, c. 116, § 3. eff. Nov. 1, 2010; Laws 2013, c. 198, § 1, eff. Nov. 1, 2013; Laws 2019, c. 113, § 1, eff. Nov. 1, 2019.

§ 60.3. Emergency Ex Parte Order—Hearing.

A. If a plaintiff requests an emergency ex parte order pursuant to Section 60.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order.

The Administrative Office of the Courts shall develop a standard form for emergency ex parte protective orders.

B. An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.

C. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 40.3 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the court date that was assigned by the court during the approval of the order. Emergency temporary ex parte orders shall be heard within fourteen (14) days after issuance. The court shall provide a list of available court dates for hearings.

D. If an action for divorce, separate maintenance, guardianship, adoption or any other proceeding involving custody or visitation has been filed and is pending in a county different than the county in which the emergency ex parte order was issued, the hearing on the petition for a final protective order shall be transferred and held in the same county in which the action for divorce, separate maintenance, guardianship, adoption or any other proceeding involving custody or visitation is pending.

Added by Laws 1982, c. 255, § 4. Amended by Laws 1983, c. 290, § 2, eff. Nov. 1, 1983; Laws 1992, c. 42, § 3, eff. Sept. 1, 1992; Laws 1993, c. 325, § 16, eff. Sept. 1, 1993; Laws 1994, c. 290, § 56, operative July 1, 1994; Laws 1996, c. 247, § 31, operative July 1, 1996; Laws 1999, c. 34, § 1, eff. Nov. 1, 1999; Laws 2000, c. 370. § 7, emerg. eff. June 6, 2000; Laws 2001, c. 279, § 4, eff. Nov. 1, 2001; Laws 2003, c. 407, § 3, eff. Nov. 1, 2003; Laws 2016, c. 183, § 5, eff. Nov. 1, 2016; Laws 2019, c. 113, § 3, eff. Nov. 1, 2019.

§ 60.4. Hearing—Service of Process—Emergency Ex parte Orders—Protective Orders—Period of Relief—Title to Real Property.

A.1. A copy of a petition for a protective order, notice of hearing and a copy of any emergency temporary order or emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. In addition, if the service is to be in another county, the court clerk may issue service to the sheriff by facsimile or other electronic transmission for service by the sheriff and receive the return of service from the sheriff in the same manner. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection C of Section 60.2 of this title and, if charged, shall be the same as the sheriff's service fee plus mileage expenses.

2. Emergency temporary orders, emergency ex parte orders and notice of hearings shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made upon the defendant by the sheriff, the sheriff may contact another law enforcement officer or a private investigator or private process server to serve the defendant.

3. An emergency temporary order, emergency ex parte order, a petition for protective order, and a notice of hearing shall have statewide validity and may be transferred to any law enforcement jurisdiction to effect service upon the defendant. The sheriff may transmit the document by electronic means.

4. The return of service shall be submitted to the sheriff's office or court clerk in the court where the petition, notice of hearing or order was issued.

5. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any temporary order or ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to Section 2-2-101 of Title 10A of the Oklahoma Statutes.

B.1. Within fourteen (14) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act [22 O.S. §§ 60-60.6] stated in the petition to hold such a hearing, regardless of whether an emergency temporary order or ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 2-2-101 of Title 10A of the Oklahoma Statutes, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency temporary order or ex parte order has been previously issued, requested or denied.

2. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues and emergency temporary order or ex parte order suspending child visitation rights due to physical violence or threat of abuse.

3. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall, upon the request of the petitioner, renew every fourteen (14) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time, however, a protective order must be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

6. A final protective order shall be granted or denied within six (6) months of service on the defendant unless all parties agree that a temporary protective order remain in effect; provided, a victim shall have the right to request a final protective order hearing at any time after the passage of six (6) months.

C.1. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment in a program certified by the Attorney General at the expense of the defendant pursuant to Section 644 of Title 21 of the Oklahoma Statutes

2. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Oklahoma Juvenile Code should be taken against a juvenile defendant.

D. Final protective orders authorized by this section shall be on a standard form developed by the Administrative Office of the Courts.

E.1. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim pursuant to Section 644 of Title 21 of the Oklahoma Statutes but shall not order any treatment or counseling that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions.

2. The defendant may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

3. Should the plaintiff choose to undergo treatment or participate in court-approved counseling services for victims of domestic abuse, the court may order the defendant to pay all or any part of the cost of such treatment or counseling services if the court determines that payment by the defendant is appropriate.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

G.1. Any protective order issued on or after November 1, 2012, pursuant to subsection C of this section shall be:

a. for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or

b. continuous upon a specific finding by the court of one of the following:

(1) the person has a history of violating the orders of any court or governmental entity,

(2) the person has previously been convicted of a violent felony offense,

(3) the person has a previous felony conviction for stalking as provided in Section 1173 of Title 21 of the Oklahoma Statute, or

(4) a court order for a final Victim Protection Order has previously been issued against the person in this state or another state.

Further, the court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

4. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence unless, upon further consideration by the court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

H.1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

I.1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support or division of property or any other like relief obtainable pursuant to Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

J.1. In order to ensure that a petitioner can maintain an existing wireless telephone number or household utility account, the court, after providing notice and a hearing, may issue an order directing a wireless service provider or public utility provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the care of the petitioning party or household utility account to the petitioner if the petitioner is not the wireless service or public utility account holder.

2. The order transferring billing responsibility for and rights to the wireless telephone number or numbers or household utility account to the petitioner shall list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers or household utility account will be transferred and each telephone number or household utility to be transferred to that person. The court shall ensure that the contact information of the petitioner is not provided to the account holder in proceedings held under this subsection.

3. Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or public utility provider listed with the Secretary of State or Corporation Commission of Oklahoma or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.

4. If the wireless service provider or public utility provider cannot operationally or technically effectuate the order due to certain circumstances, the wireless service provider or public utility provider shall notify the petitioner. Such circumstances shall include, but not be limited to, the following:

a. the account holder has already terminated the account,

b. the differences in network technology prevent the functionality of a mobile device on the network, or

c. there are geographic or other limitations on network or service availability.

5. Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers or household utility account to the petitioner under the provisions of this subsection by a wireless service provider or public utility provider, the petitioner shall assume all financial responsibility for the transferred wireless telephone number or numbers or household utility account, monthly service and utility billing costs and costs for any mobile device associated with the wireless telephone number or numbers. The wireless service provider or public utility provider shall have the right to pursue the original account holder for purposes of collecting any past due amounts owed to the wireless service provider or public utility provider.

6. The provisions of this subsection shall not preclude a wireless service provider or public utility provider from applying any routine and customary requirements for account establishment to the petitioner as part of this transfer of billing responsibility for a household utility account or for a wireless telephone number or numbers and any mobile devices attached to that number including, but not limited to, identification, financial information and customer preferences.

7. The provisions of this subsection shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.

8. No cause of action shall lie against any wireless service provider or public utility provider, its officers, employees or agents for actions taken in accordance with the terms of a court order issued under the provisions of this subsection.

9. As used in this subsection:

a. "wireless service provider" means a provider of commercial mobile service under Section 332(d) of the federal Telecommunications Act of 1996,

b. "public utility provider" means every corporation organized or doing business in this state that owns, operates or manages any plant or equipment for the manufacture, production, transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, and

c. "household utility account" shall include utility services for water, heat, light, power or gas that are provided by a public utility provider.

K.1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and

(2) each party acted primarily as aggressors,

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours of notice prior to the full hearing on the petition filed by the plaintiff.

L. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

Added by Laws 1982, c. 255, § 5. Amended by Laws 1983, c. 290, § 3, eff. Nov. 1, 1983; Laws 1987, c. 174, § 1, operative July 1, 1987; Laws 1992, c. 42, § 4, eff. Sept. 1, 1992; Laws 1992, c. 379, § 1, eff. Sept. 1, 1992; Laws 1994, c. 290, § 57, operative July 1, 1994; Laws 1996, c. 247, § 32, operative July 1, 1996; Laws 1999, c. 97, § 1, eff. Nov. 1, 1999; Laws 2000, c. 370. § 8, emerg. eff. June 6, 2000; Laws 2001, c. 279, § 5, eff. Nov. 1, 2001; Laws 2003, c. 407, § 4, eff. Nov. 1, 2003; Laws 2005 (1st Reg. Sess.), c. 348, § 15, operative July 1, 2005; Laws 2006 (2nd Reg. Sess.), c. 34, § 1, eff. Nov. 1, 2006; Laws 2009, c. 234, § 128, emerg. eff. May 21, 2009; Laws 2010, c. 116, § 4, eff. Nov. 1, 2010; Laws 2012, c. 313, § 1, eff. Nov. 1, 2012; Laws 2013, c. 198, § 2, eff. Nov. 1, 2013; Laws 2016, c. 281, § 1, eff. Nov. 1, 2016; Laws 2017, c. 173, § 1, eff. Nov. 1, 2017; Laws 2019, c. 113, § 3, eff. Nov. 1, 2019.

§ 60.5. Police to be Sent Copy of Protective Order.

A. Within twenty-four (24) hours of the return of service of any emergency temporary, ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within twenty-four (24) hours by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.

B Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the emergency temporary, ex parte or final protective order in the National Crime Information Center database.

Added by Laws 1982, c. 255, § 6. Amended by Laws 1983, c. 290, § 4, eff. Nov. 1, 1983; Laws 1994, c. 290, § 58, operative July 1, 1994; Laws 1997, c. 368, § 2, eff. Nov. 1, 1997; Laws 1999, c. 97, § 2, eff. Nov. 1, 1999; Laws 2000, c. 370, § 9, emerg. eff. June 6, 2000; Laws 2019, c. 113, § 4, eff. Nov. 1, 2019.

§ 60.6. Violation of Protective Order—Penalty.

A. Except as otherwise provided by this section, any person who:

1. Has been served with an emergency temporary, ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or by both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than three (3) years, or by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Ten
Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

B.1. Any person who has been served with an emergency temporary, ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00).

2. Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections of not less than one (1) year nor more than five (5) years, or by a fine of not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

3. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

4. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and paragraph 2 of subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2.a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3.a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment

program certified by the Attorney General and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of this title and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 1-8-103 and 2-2-702 of Title 10A of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

E. Emergency temporary, ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

G. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;

2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.

H. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

I. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Added by Laws 1982, c. 255, § 7. Amended by Laws 1983, c. 290, § 5, eff. Nov. 1, 1983; Laws 1988, c. 249, § 1, emerg. eff. June 27, 1988; Laws 1992, c. 42, § 5, eff. Sept. 1, 1992; Laws 1994, c. 290, § 59, operative July 1, 1994; Laws 1995, c. 297, § 2, eff. Nov. 1, 1995; Laws 1996, c. 247, § 33, operative July 1, 1996; Laws 2000, c. 85, § 2, eff. Nov. 1, 2000; Laws 2004, c. 516, § 2, operative July 1, 2005; Laws 2005, c. 348, § 16, operative July 1, 2005; Laws 2006, c. 284, § 4, emerg. eff. June 7, 2006; Laws 2007, c. 156, § 5, eff. Nov. 1, 2007; Laws 2008, c. 114, § 1, eff. Nov. 1, 2008; Laws 2008, c. 403, § 2, eff. Nov. 1, 2008; Laws 2009, c. 234, § 129, emerg. eff. May 21, 2009; Laws 2019, c. 113, § 4, eff. Nov. 1, 2019.

§ 60.7. Orders Valid Statewide Unless Expressly Modified.

All orders issued pursuant to the provisions of the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall have statewide and nationwide validity, unless specifically modified or terminated by a judge of the district courts.

Added by Laws 1983, c. 290, § 6, eff. Nov. 1, 1983. Amended by Laws 1991, c. 112, § 4, eff. Sept. 1, 1991; Laws 2000, c. 85. § 3, eff. Nov. 1, 2000.

§ 60.8. Seizure and Forfeiture of Weapons and Instruments.

A. Each peace officer of this state shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 60.1 of this title, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the District Attorney shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of Section 991a-19 of this title shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has

been filed within the time required by subsection B of this section, unless authorized by this section. Provided further the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

Added by Laws 1993, c. 235, § 1, eff. Sept. 1, 1993. Amended by Laws 2000, c. 370, § 10, emerg. eff. June 6, 2000; Laws 2002, c. 443, § 2, operative July 1, 2002.

§ 60.9. Warrantless Arrest—Proceedings.

A. Pursuant to paragraph 7 of Section 196 of this title, a peace officer, without a warrant, shall arrest and take into custody a person if the peace officer has reasonable cause to believe that:

1. An emergency ex parte or final protective order has been issued and served upon the person, pursuant to the Protection from Domestic Abuse Act;

2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the peace officer as provided in subsection D of this section;

3. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and

4. The person named in the order has violated the order or is then acting in violation of the order.

B. A peace officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:

1. The peace officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued;

2. A certified copy of the foreign protective order has been presented to the peace officer that appears valid on its face; and

3. The peace officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.

C. A person arrested pursuant to this section shall be brought before the court within twenty-four (24) hours after arrest to answer to a charge for violation of the order pursuant to Section 60.8 of this title, at which time the court shall do each of the following:

1. Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the alleged violation of the order; and

3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

The court may also consider the safety of any and all alleged victims that are subject to the protection of the order prior to the court setting a reasonable bond pending a hearing of the alleged violation of the order.

D. A copy of a protective order shall be prima facie evidence that such order is valid in this state when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

E. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00) and shall, in addition, be liable for any civil damages to the defendant.

Added by Laws 1994, c. 316, § 1, emerg. eff. June 8, 1994. Amended by Laws 2000, c. 85. § 4, eff. Nov. 1, 2000; Laws 2000, c. 370. § 11, emerg. eff. June 6, 2000; Laws 2006, c. 284, § 5, emerg. eff. June 7, 2006; Laws 2013, c. 198, § 3, eff. Nov. 1, 2013.

§ 60.11. Statement Required on All Ex Parte or Final Protective Order.

In addition to any other provisions required by the Protection from Domestic Abuse Act, or otherwise required by law, each ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have a statement printed in bold-face type or in capital letters containing the following information:

1 The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;

2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;

3. The order shall be in effect for a fixed period of five (5) years unless extended, modified, vacated or rescinded by the court or shall be continuous upon a specific finding by the court as provided in subparagraph b of paragraph 1 of subsection G of Section 60.4 of this title unless modified, vacated or rescinded by the court;

4. A violation of the order is punishable by a fine of up to One Thousand Dollars ($1,000.00) or imprisonment for up to one (1) year in the county jail, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year in the county jail or a fine of up to Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment; and

5. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.

Added by Laws 1995, c. 297, § 3, eff. Nov. 1, 1995. Amended by Laws 1999, c. 97, § 3, eff. Nov. 1, 1999. Amended by Laws 1999, c. 417, § 4, emerg. eff. June 10, 1999. Amended by Laws 2003, c. 407, § 5, eff. Nov. 1, 2003; Laws 2012, c. 313, § 2, eff. Nov. 1, 2012.

§ 60.12. Foreign Protective Orders.

A. It is the intent of the Legislature that all foreign protective orders shall have the rebuttable presumption of validity, even if the foreign protective order contains provisions which could not be contained in a protective order issued by an Oklahoma court. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all peace officers and courts in the State of Oklahoma.

B. A peace officer of this state shall be immune from liability for enforcing provisions of a foreign protective order.

Added by Laws 2000, c. 85, § 5, eff. Nov. 1, 2000.

§ 60.13. Repealed by Laws 2003, H.B. 1667, § 7, eff. Nov. 1, 2003.

§ 60.14. Address Confidentiality for Victims—Victims of Domestic Abuse, Sexual Assault, Stalking.

A. The Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this section is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking, to enable interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic abuse, sexual assault, or stalking, and to enable state and local agencies to accept an address designated by the Attorney General by a program participant as a substitute mailing address.

B. As used in this section:

1. "Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;

2. "Program participant" means a person certified as a program participant under this section;

3. "Domestic abuse" means an act as defined in Section 60.1 of this title and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers; and

4. "Stalking" means an act as defined in Section 60.1 of this title regardless of whether the acts have been reported to law enforcement.

C. The Address Confidentiality Program shall be staffed by unclassified employees, who have been subjected to a criminal history records search.

D.1. An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined by Section 1-111 of Title 30 of the Oklahoma Statutes, may apply to the Attorney General to have an address designated by the Attorney General serve as the address of the person or the address of the minor or incapacitated person. The Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if it contains:

a. a sworn statement by the applicant that the applicant has good reason to believe:

(1) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic abuse, sexual assault, or stalking, and

(2) that the applicant fears for the safety of self or children, or the safety of the minor or incapacitated person on whose behalf the application is made,

b. a designation of the Attorney General as agent for purposes of service of process and for the purpose of receipt of mail,

c. the mailing address where the applicant can be contacted by the Attorney General, and the phone number or numbers where the applicant can be called by the Attorney General,

d. the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic abuse, sexual assault, or stalking, and

e. the signature of the applicant and application assistant who assisted in the preparation of the application, and the date on which the applicant signed the application.

2. An adult or minor child who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant may apply. Each adult living in the household must complete a separate application. An adult may apply on behalf of a minor.

3. Applications shall be filed with the Office of the Attorney General.

4. Upon filing a properly completed application, the Attorney General shall certify the applicant as a program participant. Applicants shall be certified for four (4) years following the date of filing unless the certification is withdrawn or invalidated before that date. The Attorney General shall by rule establish a renewal procedure.

5. A person who falsely attests in an application that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, may be found guilty of perjury under Sections 500 and 504 of Title 21 of the Oklahoma Statutes.

E.1. If the program participant obtains a name change, the participant loses certification as a program participant.

2. The Attorney General may cancel the certification of a program participant if there is a change in the residential address, unless the program participant provides the Secretary of State with Attorney General notice no later than seven (7) days after the change occurs.

3. The Attorney General may cancel certification of a program participant if mail forwarded by the Attorney General to the address of the program participant is returned as nondeliverable.

4. The Attorney General shall cancel certification of a program participant who applies using false information.

F.1. A program participant may request that state and local agencies use the address designated by the Attorney General as the address of the participant. When creating a new public record, state and local agencies shall accept the address designated by the Attorney General as a substitute address for the program participant, unless the Attorney General has determined that:

a. the agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this section, and

b. this address will be used only for those statutory and administrative purposes.

2. A program participant may use the address designated by the Attorney General as a work address.

3. The Office of the Attorney General shall forward all first class, certified and registered mail to the appropriate program participants for no charge. The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a participant unless the mail is certified or registered mail.

G. The Attorney General may not make any records in a file of a program participant available for inspection or copying, other than the address designated by the Attorney General, except under the following circumstances:

1. If directed by a court order, to a person identified in the order; or

2. To verify the participation of a specific program participant to a state or local agency, in which case the Attorney General may only confirm information supplied by the requester.

No employee of a state or local agency shall knowingly and intentionally disclose a program participant's actual address unless disclosure is permitted by law.

H. The Attorney General shall designate state and local agencies, federal government, federally recognized tribes, and nonprofit agencies to assist persons in applying to be program participants. A volunteer or employee of a designated entity that provides counseling, referral, shelter, or other services to victims of domestic abuse, sexual assault, or stalking and has been trained by the Attorney General shall be known as an application assistant. Any assistance and counseling rendered by the Office of the Attorney General or an application assistant to applicants shall in no way be construed as legal advice.

I. The Attorney General may enter into agreements with the federal government and federally recognized tribes in the State of Oklahoma or other entities for purposes of the implementation of the Address Confidentiality Program, including the use and acceptance of the substitute address designated by the Attorney General.

J. Effective July 1, 2008, all administrative rules promulgated by the Office of the Secretary of State to implement this program shall be transferred to and become part of the administrative rules of the Office of the Attorney General. The Office of Administrative Rules in the Office of the Secretary of State shall provide adequate notice in "The Oklahoma Register" of the transfer of such rules, and shall place the transferred rules under the Administrative Code section of the Attorney General.

Such rules shall continue in force and effect as rules of the Office of the Attorney General from and after July 1, 2008, and any amendment, repeal or addition to the transferred rules shall be under the jurisdiction of the Attorney General. The Attorney General shall adopt and promulgate rules to implement this program, as applicable.

K. Beginning July 1, 2008, the Director of the Address Confidentiality Program shall cease to be a position within the Office of the Secretary of State. All unexpended funds, property, records, personnel, and outstanding financial obligations and encumbrances related to the position and the Office of Address Confidentiality Program with the Office of the Secretary of State shall be transferred to the Office of the Attorney General. All personnel shall retain their employment position and status as unclassified employees, any leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during tenure with the Office of the Secretary of State.

Added by Laws 2002, c. 415, § 1, eff. Nov. 1, 2002. [Enacted as 22 O.S. § 60.13 and renumbered as 22 O.S. § 60.14.] Amended by Laws 2008, c. 66, § 1, operative July 1, 2008.

§ 60.15. Notice of Victim's Rights.

Upon the preliminary investigation of any crime involving domestic abuse, rape, forcible sodomy or stalking, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse, rape, forcible sodomy or stalking to inform the victim of the twenty-four-hour statewide telephone communication service established by Section 18p-5 of Title 74 of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, rape, forcible sodomy or stalking you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."

Added by Laws 2002, c. 466, § 5, emerg. eff. June 5, 2002. [Enacted as 22 O.S. § 60.13 and renumbered as 22 O.S. § 60.15.] Amended by Laws 2010, c. 116, § 5, eff. Nov. 1, 2010.

§ 60.15. Repealed by Laws 2010, c. 135, § 17, eff Nov. 1, 2010.

*Laws 2010, c. 135, § 17, repealed 22 O.S. § 60.15 without reference to amendment by Laws 2010, c. 116, § 5.

For reconciliation see subsection (3) of Oklahoma Attorney General Opinion 89-011 (June 1, 1989) which holds: "Where two bills arising from the same legislative session are approved into law and address the same statute without reference to one another, effect, if possible, should be given to both bills, in preference to a conclusion that one bill is in conflict with the other. The adoption of the latter statute in time does not automatically negate and repeal by implication the terms of the statute adopted first in time. Each instance must be reviewed by a case by case basis."

§ 60.16. Duties of Police Officer—Emergency Temporary Order of Protection.

A. A peace officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim.

B.1. A peace officer may arrest without a warrant a person anywhere, including a place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

2. An arrest, when made pursuant to this section, shall be based on an investigation by the peace officer of the circumstances surrounding the incident, past history of violence between the parties, statements of any children present in the residence, and any other relevant factors. A determination by the peace officer shall be made pursuant to the investigation as to which party is the dominant aggressor in the situation. A peace officer may arrest the dominant aggressor.

C. When the court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection and notify the victim that the emergency temporary order shall be effective only until the close of business on the next day that the court is open for business;

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to such person; and

5. File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.

D. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.2 of this title.

Added by Laws 2002, c. 466, § 5, emerg. eff. June, 5, 2005. [Enacted as 22 O.S. § 60.13 and renumbered as 22 O.S. § 60.16.] Amended by Laws 2004, c. 516, § 3, eff. July 1, 2005.

§ 60.17. Duties of the Court—Emergency Temporary Order of Protection.

The court shall consider the safety of any and all alleged victims of domestic violence, stalking, harassment, sexual assault, or forcible sodomy where the defendant is alleged to have violated a protective order, committed domestic assault and battery, stalked, sexually assaulted, or forcibly sodomized the alleged victim or victims prior to the release of the alleged defendant from custody on bond. The court, after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order pursuant to the Protection from Domestic Abuse Act. The court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained under the Protection from Domestic Abuse Act. The court shall not consider a "no contact order as condition of bond" as a factor when determining whether the petitioner is eligible for relief. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the court dismissing the protective order. In conjunction with any protective order or restraining order authorized by this section, the court may order the defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device for such term as the court deems appropriate. Upon application of the victim, the court may authorize the victim to monitor the location of the defendant. Such monitoring by the victim shall be limited to the ability of the victim to make computer or cellular inquiries to determine if the defendant is within a specified distance of locations, excluding the residence or workplace of the defendant, or to receive a computer- or a cellular-generated signal if the defendant comes within a specified distance of the victim. The court shall conduct an annual review of the monitoring order to determine if such order to monitor the location of the defendant is still necessary. Before the court orders the use of a GPS device, the court shall find that the defendant has a history that demonstrates an intent to commit violence against the victim, including, but not limited to, prior conviction for an offense under the Protection from Domestic Abuse Act or any other violent offense, or any other evidence that shows by a preponderance of the evidence that the defendant is likely to commit violence against the victim. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

Added by Laws 2004, c. 516, § 4, eff. July 1, 2005. Amended by Laws 2008, c. 114, § 2, eff. Nov. 1, 2008; Laws 2010, c. 346, § 1, eff. Nov. 1, 2010; Laws 2019, c. 113, § 6, eff. Nov. 1, 2019.

§ 60.18. Expungement of Certain Victim Protective Orders.

A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the Protection from Domestic Abuse Act in this state must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;

2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;

3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or

4. The plaintiff or defendant is deceased.

B. For purposes of this section:

1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the district attorney;

2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and

3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed.

C.1. Any person qualified under subsection A of this section may petition the district court of the district in which the protective order pertaining to the person is located for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the district attorney, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.

3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the district attorney or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the district attorney to the Oklahoma Supreme Court in accordance with the rules of the Oklahoma Supreme Court.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records, or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, state and local government agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the district courts of this state on, before and after the effective date of this section.

Added by Laws 2005 (1st Reg. Sess.), c. 113, § 1, eff. Nov. 1, 2005.

§ 60.19. Issuance of Emergency Protective Orders.

In proceedings before the court pursuant to Title 10A of the Oklahoma Statutes in which a child is alleged to be deprived, the court, after consideration and to ensure the safety of any child brought into state custody, may issue against the alleged perpetrator of abuse an emergency protective order pursuant to the Protection from Domestic Abuse Act at the emergency custody hearing or after a petition has been filed alleging that a child has been physically or sexually abused. The protective order shall remain in effect until the case has been dismissed or until further order of the court. All emergency protective orders issued by the court pursuant to this section shall remain confidential and shall not be open to the general public; provided, however, copies of the emergency protective order shall be provided to any law enforcement agency designated by the court to effect service upon the defendant.

Added by Laws 2011, c. 102, § 2, eff. Nov. 1, 2011.

§ 60.20. Annual Domestic Violence Education Training for Members of the Judiciary.

The Administrative Office of the Courts shall provide annual domestic violence, substance abuse, addiction and mental health educational training for members of the judiciary. Subject to available funding, curriculum for training required under this section shall include, but not be limited to:

1. Dynamics of domestic violence;
2. The impact of domestic violence on victims and their children including trauma and the neurobiology of trauma;
3. Identifying dominant aggressor;
4. Tactics and behavior of batterers;
5. Victim protection orders and full faith and credit under the Violence Against Women Act of 1994;

6. Rights of victims; and

7. Evidence-based practices regarding behavioral health and treatment of those with substance abuse or mental health needs.

Added by Laws 2013, c. 198, § 4, eff. Nov. 1, 2013. Amended by Laws 2017, c. 351, § 3, eff. Nov. 1, 2017.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

§ 60.21. Short Title.

This act shall be known and may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act".

Added by Laws 2008, c. 76, § 1, eff. Nov. 1, 2008.

§ 60.22. Definitions.

As used in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act:

1. "Foreign protection order" means a protection order issued by a tribunal of another state;

2. "Issuing state" means the state whose tribunal issues a protection order;

3. "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;

4. "Protected individual" means an individual protected by a protection order;

5. "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual;

6. "Respondent" means the individual against whom enforcement of a protection order is sought;

7. "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 an Indian tribe or band that has jurisdiction to issue protection orders; and

8. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

Added by Laws 2008, c. 76, § 2, eff. Nov. 1, 2008.

§ 60.23. Judicial Enforcement of Order.

A. A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

B. A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

C. A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

D. A foreign protection order is valid if it:

1. Identifies the protected individual and the respondent;

2. Is currently in effect;

3. Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

4. Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

E. A foreign protection order valid on its face is prima facie evidence of its validity.

F. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

G. A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

1. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and
2. The tribunal of the issuing state made specific findings in favor of the respondent.

Added by Laws 2008, c. 76, § 3, eff. Nov. 1, 2008.

§ 60.24. Nonjudicial Enforcement of Order.

A. A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

B. If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

C. If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

D. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this act.

Added by Laws 2008, c. 76, § 4, eff. Nov. 1, 2008.

§ 60.25. Registration of Order.

A. Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall:

1. Present a certified copy of the order to the Secretary of State; or
2. Present a certified copy of the order to a law enforcement officer and request that the order be registered with the Secretary of State.

B. Upon receipt of a foreign protection order, the Secretary of State shall register the order in accordance with this section. After the order is registered, the Secretary of State shall furnish to the individual registering the order a certified copy of the registered order.

C. The Secretary of State shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this state.

D. An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

E. A foreign protection order registered under this act may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

F. A fee may not be charged for the registration of a foreign protection order.

Added by Laws 2008, c. 76, § 5, eff. Nov. 1, 2008.

§ 60.26. Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this act.

Added by Laws 2008, c. 76, § 6, eff. Nov. 1, 2008.

§ 60.27. Other Remedies.

A protected individual who pursues remedies under this act is not precluded from pursuing other legal or equitable remedies against the respondent.

Added by Laws 2008, c. 76, § 7, eff. Nov. 1, 2008.

§ 60.28. Uniformity of Application and Construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 2008, c. 76, § 8, eff. Nov. 1, 2008.

§ 60.29. Transitional Provision.

This act applies to protection orders issued before November 1, 2008, and to continuing actions for enforcement of foreign protection orders commenced before November 1, 2008. A request for enforcement of a foreign protection order made on or after November 1, 2008, for violations of a foreign protection order occurring before November 1, 2008, is governed by this act.

Added by Laws 2008, c. 76, § 9, eff. Nov. 1, 2008.

§ 60.30. Integrated Domestic Violence Docket—Pilot Program.

Beginning on January 1, 2016, the Administrative Office of the Courts shall administer a five-year pilot program in any county with a population exceeding five hundred thousand (500,000), which may consist of implementation of an Integrated Domestic Violence Docket to combine, where appropriate, proceedings related to divorce, child custody, domestic violence, protective orders, and criminal and juvenile court cases.

Added by Laws 2015, c. 389, § 1, eff. Nov. 1, 2015.

§ 60.31. Establishment of Family Justice Center.

Beginning on January 1, 2016, any governmental entity in a county that receives sufficient funds to implement such program may establish a family justice center to assist victims of domestic violence, sexual assault, elder or dependent adult abuse and stalking to ensure that victims of abuse are able to access all needed services in one location in order to enhance victim safety and increase offender accountability. Family justice centers shall comply with all applicable laws and regulations of this state, and may include, but not be limited to, the participation of law enforcement, the prosecuting authority, and an Attorney General certified victim services agency.

Added by Laws 2015, c. 389, § 2, eff. Nov. 1, 2015.

§ 61. Authorization of Domestic Violence Courts.

A. Subject to the availability of funds, any district or municipal court of record of this state may establish and maintain a domestic violence court program pursuant to the provisions of this section.

B. For purposes of this section, "domestic violence court" means a specialized judicial process for domestic matters both civil and criminal in nature that arise out of the same family or domestic circumstance.

C. The presiding judge of a district or municipal court of record may appoint an individual judge to preside over related criminal, family and matrimonial matters that arise in the context of domestic violence. Criminal domestic violence charges, protective orders and any actions for divorce, separate maintenance, guardianship, adoption or any other proceeding involving custody or visitation between the same parties may be presented to the domestic violence court.

D. The Administrative Office of the Courts may promulgate rules, procedures and forms necessary to implement a domestic violence court to ensure statewide uniformity.

Added by Laws 2017, c. 257, § 2 eff. Nov. 1, 2017.

Title 43.
Marriage & Family

Marriage

§ 1. Definition of Marriage.

Marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law.

R.L. 1910, § 3883.

§ 2. Consanguinity.

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited. Provided, that any marriage of first cousins performed in another state authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in this state as of the date of such marriage.

R.L. 1910, § 3884. Amended by Laws 1965, c. 101, § 1; Laws 1967, c. 344, § 1; Laws 1969, c. 139, § 1, emerg. eff. April 9, 1969.

§ 3. Persons Having Capacity to Marry.

A. Any unmarried person who is at least eighteen (18) years of age and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex.

B.1. Except as otherwise provided by this subsection, no person under the age of eighteen (18) years shall enter into the marriage relation, nor shall any license issue therefore, except:

a. upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license,

b. upon the written consent of the parent or guardian of such underage applicant executed and acknowledged in person before a judge of the district court or the court clerk of any county within the State of Oklahoma,

c. if the parent or guardian resides outside of the State of Oklahoma, upon the written consent of the parent or guardian executed before a judge or clerk of a court of record. The executed foreign consent shall be duly authenticated in the same manner as proof of documents from foreign jurisdictions,

d. if the certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to such licensing authority, upon the written consent of the parent or guardian, acknowledged in the same manner as the accompanying medical certificate,

e. if the parent or guardian is on active duty with the Armed Forces of the United States, upon the written permission of the parent or guardian, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths. Such permission shall be presented to the licensing authority, accompanied by a certificate executed by a commissioned officer in command of the applicant, to the effect that the parent or guardian is on active duty in the Armed Forces of the United States, or

f. upon affidavit of three (3) reputable persons stating that both parents of the minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for the minor. The judge of the district court issuing the license may in his or her discretion consent to the marriage in the same manner as in all cases in which consent may be given by a parent or guardian.

2. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation except when authorized by the court:

a. in settlement of a suit for seduction or paternity, or

b. if the unmarried female is pregnant, or has given birth to an illegitimate child and at least one parent of each minor, or the guardian or custodian of such child, is present before the court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license. If they are not present the parent, guardian, or custodian may be given notice of the hearing at the discretion of the court.

3. A parent or a guardian of any child under the age of eighteen (18) years who is in the custody of the Department of Human Services or the Department of Juvenile Justice shall not be eligible to consent to the marriage of such minor child as required by the provisions of this subsection.

4. Any certificate or written permission required by this subsection shall be retained by the official issuing the marriage license.

C. No marriage may be authorized when such marriage would be incestuous under this chapter.

R.L. 1910, § 3885. Amended by Laws 1947, p. 301, § 1; Laws 1959, p. 183, § 1; Laws 1959, p. 184, § 1; Laws 1963, c. 91, § 1; Laws 1965, c. 383, § 1; Laws 1970, c. 131, § 1, emerg. eff. April 7, 1970; Laws 1975, c. 39, § 1, eff. Oct. 1, 1975; Laws 2003 (Reg. Sess.) c. 422, § 4, operative July 1, 2004.

§ 3.1. Marriage between persons of Same Gender Not Recognized.

A marriage between persons of the same gender performed in another state shall not be recognized as valid and binding in this state as of the date of the marriage.

Added by Laws 1996, c. 131, § 9, eff. Jan. 1, 1997.

§ 4. Marriage License Requirement.

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in this state without a license being first issued by the judge or clerk of the district court, of some county in this state, authorizing the marriage between the persons named in such license.

R.L. 1910, § 3886.

§ 5. Issuance and Validity of Marriage License.

A. Persons desiring to be married in this state shall submit an application in writing signed and sworn to in person before the clerk of the district court by both of the parties setting forth:

1. The place of residence of each party;

2. The full legal name and the age of each party as they appear upon or are calculable from a certified copy of the birth certificate, the current driver license or identification card, the current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state, or political subdivision thereof, accepted as proof of identity and age;

3. For each party, the full name by which the party will be known after the marriage, which shall become the full legal name of the party upon the filing of the marriage license and certificate with the court, as required by law; provided, however, a marriage certificate issued prior to June 8, 2006, shall be reissued upon request by the certificate holder to include the information required by this paragraph. Such reissued certificate shall reflect the original marriage date and shall be signed by the court clerk. Signatures of the officiant and original witnesses shall not be required;

4. That the parties are not disqualified from or incapable of entering into the marriage relation; and

5. Whether the parties have successfully completed a premarital counseling program.

B.1. Upon application pursuant to this section and the payment of fees as provided in Section 31 of Title 28 of the Oklahoma Statutes, if the clerk of the district court is satisfied of the truth and sufficiency of the application and that there is no legal impediment to such marriage, the court clerk shall issue the marriage license authorizing the marriage and a marriage certificate, which shall be incorporated as one document. As required by law, the marriage certificate shall be completed immediately following the marriage, and the marriage license and certificate shall be returned to the court clerk.

2. Parties to be married and who present a certificate to the clerk of the district court that states the parties have completed the premarital counseling program pursuant to Section 5.1 of this title shall be entitled to pay a reduced fee for a marriage license in an amount provided in Section 31 of Title 28 of the Oklahoma Statutes.

C. In the event that one or both of the parties are under legal age, the application shall have been on file in the court clerk's office for a period of not less than seventy-two (72) hours prior to issuance of the marriage license.

D. The marriage license shall be valid in any county within the state.

E. The provisions hereof are mandatory and not directory except under the circumstances set out in the provisions of Section 3 of this title.

R.L. 1910, § 3887. Amended by Laws 1959, p. 183, § 2, emerg. eff. June 2, 1959; Laws 1965, c. 25, § 1, emerg. eff. Feb. 26, 1965; Laws 1974, c. 96, § 1; Laws 1989, c. 64, § 2, eff. Nov. 1, 1989; Laws 1999, c. 174, § 1, eff. Nov. 1, 1999; Laws 2006, c. 311, § 2, emerg. eff. June 8, 2006; Laws 2008, c. 313, § 1, Nov. 1, 2008; Laws 2013, c. 192, § 1, eff. Nov. 1, 2013.

§ 5.1. Marriage License Fee Reduction for Successful Completion of Premarital Counseling Program.

A. The clerk of the district court shall reduce the fee for a marriage license as prescribed by Section 31 of Title 28 of the Oklahoma Statutes to person who have successfully completed a premarital counseling program meeting the conditions specified by this section.

B.1. A premarital counseling program shall be conducted by a health professional or, an official representative of a religious institution, or a person trained by the principal authors or duly authorized agents of the principal authors of nationally recognized marriage education curriculum including, but not limited to, Prevention & Relationship Enhancement Program (PREP). Upon successful completion of the program, the counseling program provider shall issue to the persons a certificate signed by the instructor of the counseling program. The certificate shall state that the named persons have successfully completed the premarital counseling requirements. A minimum of four (4) hours of education or counseling shall be necessary for successful completion of the marriage education curriculum.

2. For purposes of this subsection, the term "health professional" means a person licensed or certified by this state to practice psychiatry or psychology; and licensed social worker with experience in marriage counseling; a licensed marital and family therapist; or a licensed professional counselor.

Added by Laws 1999, c. 174, § 2, eff. Nov. 1, 1999. Amended by Laws 2006 (2nd Reg. Sess.), c. 206, § 1, eff. Nov. 1, 2006.

§ 6. License—Contents.

A. The marriage license provided for in this title shall contain:

1. The date of its issuance,;

2. The name of the court issuing the license, and the name of the city or town and county in which the court is located;

3. The full legal names of the persons authorized to be married by the license, the full legal names by which the persons will be known after the marriage, their ages, and their places of residence;

4. Directions to any person authorized by law to perform and solemnize the marriage ceremony;

5. The date by which the completed marriage certificate, along with the marriage license, shall be returned to the judge or court, which shall not be more than thirty (30) days from the date of its issuance; and

6. Any other information, declarations, seals and signatures, as required by law.

B. The marriage certificate provided for in this title shall contain appropriate wording and blanks to be completed and endorsed, as required by Section 8 of this title, by the person solemnizing or performing the marriage ceremony, the witnesses, and the persons who have been married.

R.L. 1910, § 3888. Amended by Laws 1997, c. 402, § 9, operative July 1, 1997; Laws 2006 (2nd Reg. Sess.), c. 311, § 3, emerg. eff. June 8, 2006.

§ 7. Performance or Solemnization of Marriages—Witnesses.

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge of any court in this state, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.

B.1. The judge shall place his or her order of appointment on file with the office of the court clerk of the county in which he or she resides.

2. The preacher, minister, priest, rabbi, or ecclesiastical dignitary who is a resident of this state shall have filed, in the office of the court clerk of the county in which he or she resides, a copy of the credentials or authority from his or her church or synagogue authorizing him or her to solemnize marriages.

3. The preacher, minister, priest, rabbi, or ecclesiastical dignitary who is not a resident of this state, but has complied with the laws of the state of which he or she is a resident, shall have filed once, in the office of the court clerk of the county in which he or she intends to perform or solemnize a marriage, a copy of the credentials or authority from his or her church or synagogue authorizing him or her to solemnize marriages.

4. The filing by resident or nonresident preachers, ministers, priests, rabbis, ecclesiastical dignitaries or judges shall be effective in and for all counties of this state; provided, no fee shall be charged for such recording.

C. No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he or she has good reason to believe the persons presenting themselves before him or her for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

D. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Bahai's, or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church, or assembly.

R.L. 1910, § 3889. Amended by Laws 1951, p. 113, § 1; Laws 1961, p. 285, § 1; Laws 1971, c. 298, § 1, emerg. eff. June 24, 1971; Laws 1986, c. 24, § 1, eff. Nov. 1, 1986; Laws 1989, c. 333, § 3, eff. Nov. 1, 1989; Laws 1998, c. 214, § 1, eff. Nov. 1, 1998; Laws 1999, c. 305, § 1, emerg. eff. June 4, 1999.

§ 7.1. Prohibiting Requirement of Religious Official to Solemnize a Marriage—Civil Immunity—Definitions.

A. No regularly licensed, ordained or authorized official of any religious organization shall be required to solemnize or recognize any marriage that violates the official's conscience or religious beliefs. A regularly licensed, ordained or authorized

official of any religious organization shall be immune from any civil claim or cause of action based on a refusal to solemnize or recognize any marriage that violates the official's conscience or religious beliefs.

B. As used in this section:

1. "Recognize" means to provide religious-based services that:

a. are delivered by a religious organization or by an individual who is managed, supervised or directed by a religious organization, and

b. are designed for married couples or couples engaged to marry and are directly related to solemnizing, celebrating, strengthening or promoting a marriage, such as religious counseling programs, courses, retreats and workshops; and

2. "Religious organization" means any church, seminary, synagogue, temple, mosque, religious order, religious corporation, association or society, whose identity is distinctive in terms of common religious creed, beliefs, doctrines, practices or rituals of any faith or denomination, including any organization qualifying as a church or religious organization under Section 501(c)(3) or 501(d) of the United States Internal Revenue Code.

Added by Laws 2015, c. 204, § 1, eff. Nov. 1, 2015.

§ 8. Endorsement and Return of Marriage License.

A. The person performing or solemnizing the marriage ceremony shall, immediately upon the completion of the ceremony, endorse upon the license authorizing the marriage:

1. His or her name and official or clerical designation;

2. The court of which he or she is the judge, or the congregation or body of which he or she is pastor, preacher, minister, priest, rabbi or dignitary,; provided, that the authority to perform or solemnize marriages shall be coextensive with the congregation or body of which he or she is pastor, preacher, minister, priest, rabbi or dignitary; provided further, that all marriages solemnized among the society called Friends or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter-day Saints, in the form heretofore practiced and in use in their meetings shall be good and valid. One person chosen by such society, assembly, or church shall be responsible for completing the marriage certificate pursuant to this section in the same manner as a minister or other person authorized to perform marriages;

3. The town or city and county where the court, congregation, body, society, assembly, or church is located; and

4. His or her signature along with his or her official or clerical designation.

B. The witnesses to the ceremony shall endorse the marriage certificate, attesting to their presence at the ceremony, with their names and post office addresses.

C. The persons who have been married in the ceremony shall endorse the marriage certificate with the names by which they are to be known from the time of the marriage, as evidenced on the marriage license.

D. The marriage license, along with the completed marriage certificate shall be transmitted without delay to the judge or the court clerk who issued the license and certificate.

R.L. 1910, § 3890. Amended by Laws 1971, c. 298, § 2, emerg. eff. June 24, 1971; Laws 2006 (2nd Reg. Sess.), c. 311, § 4, emerg. eff. June 8, 2006.

§ 9. Record of Application, License and Certificate—Book.

The judge or clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, on an optical disc, microfilm, microfiche, imaging, or in a book kept by the judge or clerk for that purpose, properly indexed, or by electronic means using any method approved by the Supreme Court; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate affixed thereon showing the book and page or case number where the same has been recorded.

R.L.1910, § 3891. Amended by Laws 1945, p. 139, § 1; Laws 1947, p. 301, § 1; Laws 1998, c. 310, § 6, eff. Nov. 1, 1998; Laws 2005, c. 192, § 6, eff. Nov. 1, 2005; Laws 2012, c. 278, § 6, eff. Nov. 1, 2012.

§ 10. Additional Evidence to Determine Legal Capacity before Issuance of Marriage License.

If the judge or clerk of the district court before whom application for a marriage license is made shall be in doubt of the legal capacity of the parties for whose marriage a license is sought, to enter into the marriage relation, such judge or clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, he shall not issue a license therefor.

R.L. 1910, § 3892.

§ 11. Copies of Certified Records as Evidence.

Copies of any record required to be made and kept by the judge of the district court under the provisions of this chapter, certified to by the judge of said court, under his official signature and seal, shall be received as evidence in all courts of this state.

R.L. 1910, § 3893.

§ 14. Penalty for Solemnizing Unlawful Marriage.

Any minister of the Gospel, or other person authorized to solemnize the rites of matrimony within this state, who shall knowingly solemnize the rites of matrimony between persons prohibited by this chapter, from intermarrying shall be deemed guilty of a felony, and upon conviction thereof shall be fined in any sum not exceeding Five Hundred Dollars ($500.00) and imprisonment in the State Penitentiary not less than one (1) year nor more than five (5) years.

R.L. 1910, § 3896. Amended by Laws 1997, c. 133, § 461, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 335, eff. July 1, 1999; Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 461 from July 1, 1998, to July 1, 1999.

§ 15. Unlawfully Issuing Marriage License, Concealing Record or Performing Marriage Ceremony—Penalty.

Any judge of the district court, or clerk of the district court, knowingly issuing any marriage license, or concealing any record thereof, contrary to the provisions of this chapter, or any person knowingly performing or solemnizing the marriage ceremony contrary to any of the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than thirty (30) days nor more than one (1) year or by both such fine and imprisonment.

R.L. 1910, § 3897.

§ 16. Unlawful Solicitation of Performance of Marriage Ceremony.

It shall be unlawful for any person to solicit directly or indirectly within any courthouse, premises or grounds or lots on which a courthouse may be located in any county within the State of Oklahoma for himself or for and on behalf of any minister of the Gospel or other person, the performance of a marriage ceremony.

Laws 1941, p. 169, § 1.

§ 17. Punishment for Violation of Act.

Any person violating this act shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed Twenty-five Dollars ($25.00) for the first conviction, and for any second or subsequent conviction by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

Laws 1941, p. 170, § 2.

§ 18. Injunction Restraining Violation of Act.

In addition to the penalty provided in Section 2 hereof for a violation of this act, a cause of action shall exist in favor of any citizen of any county, or in favor of the State of Oklahoma on the relation of the district attorney of any county where the offense is committed to apply to the district court of the county for an injunction restraining the violation of this act.

Laws 1941, p. 170, § 3.

§ 19. Unlawful Sale of Papers Relating to Marriage Licenses—Penalty.

It shall be unlawful for the court clerk of any county of this state to sell, offer for sale, or permit the sale of any paper or instrument relating, directly or indirectly, to marriage licenses issued from the office of said court clerk except the license herein. Provided, any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), or by imprisonment in the county jail for not less than five (5) days nor more than ten (10) days, or by both such fine and imprisonment.

Laws 1959, p. 127, § 2; emerg. eff. April 8, 1959.

§ 20. Computation of Time.

The time within which an act is to be done, as provided for in Title 43 of the Oklahoma Statutes, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes, it shall be excluded. The provisions of this section are hereby declared to be a clarification of the law as it existed prior to the effective date of this act and shall not be considered or construed to be a change of the law as it existed prior to the effective date of this act. Any action or proceeding arising under Title 43 of the Oklahoma Statutes prior to the effective date of this act for which a determination of the period of time prescribed by this section is in question or has been in question

due to the enactment of Section 20, Chapter 293, O.S.L. 1999 [12 O.S. § 2006], shall be governed by the method for computation of time as prescribed by this section.

Added by Laws 2000, c. 260, § 4, emerg. eff. June 1, 2000.

§ 31. Certificate of Affidavit of Physician Required to Obtain Marriage License—Contents—Time.

A. If the State Board of Health requires a blood test for the discovery of communicable or infectious diseases prior to obtaining a marriage license, a person seeking to obtain a marriage license shall first file with the court clerk a certificate or affidavit from a duly-licensed physician, licensed to practice within the State of Oklahoma, stating that each party to the marriage contract has been given a blood test, as may be necessary for the discovery of communicable or infectious diseases, made not more than thirty (30) days prior to the date of such application to obtain a marriage license, and that, in the opinion of the physician, the persons named therein are not infected with a communicable or infectious disease, or, if infected, said disease is not in a stage which may be communicable to the marriage partner.

B. The State Board of Health shall promulgate rules in compliance with Article I of the Administrative Procedures Act to designate communicable or infectious diseases, if any, for which a blood test shall be conducted pursuant to subsection A of this section.

Laws 1945, p. 137, § 1. Amended by Laws 2004, c. 105, § 1, eff. Nov. 1, 2004.

*Laws 2004, c. 333, § 2 repealed 43 O.S. § 31 without reference to amendment by Laws 2004, c. 105, § 1.

For reconciliation see subsection (3) of Oklahoma Attorney General Opinion 89-011 (June 1, 1989) which holds: "Where two bills arising from the same legislative session are approved into law and address the same statute without reference to one another, effect, if possible, should be given to both bills, in preference to a conclusion that one bill is in conflict with the other. The adoption of the latter statute in time does not automatically negate and repeal by implication the terms of the statute adopted first in time. Each instance must be reviewed by a case by case basis."

§§ 31-35. Repealed by Laws 2004, R.S., c. 333, § 2, eff. Jan. 1, 2005.

§ 36. Marriage License—Issuance—Delivery to Clergy or Other Qualified Person—Return—Penalties.

Marriage licenses shall be issued to all applicants who are entitled under the laws of the State of Oklahoma to apply for a marriage license and to contract matrimony. Any person obtaining a marriage license from the court clerk shall deliver the license, within ten (10) days from the date of issue, to the clergy or other qualified person who is to officiate before the marriage can be performed. The license issued shall be returned by the clergy or other qualified person who officiated the marriage to the licensing authority who issued the same within five (5) days succeeding the date of the performance of the marriage therein authorized. Any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) for each and every offense.

Laws 1945, p. 138, § 6. Amended by Laws 2004 (Reg. Sess.), c. 333, § 1, eff. Jan. 1, 2005.

§ 37. Repealed by Laws 2004, R.S., c. 333, § 2, eff. Jan. 1, 2005.

Divorce and Alimony

§ 101. Grounds for Divorce.

The district court may grant a divorce for any of the following causes:

First. Abandonment for one (1) year.

Second. Adultery.

Third. Impotency.

Fourth. When the wife at the time of her marriage, was pregnant by another than her husband.

Fifth. Extreme cruelty.

Sixth. Fraudulent contract.

Seventh. Incompatibility. Provided, however, where the interest of a child under eighteen (18) years of age is involved, the adult parties shall attend an educational program concerning the impact of divorce on children as provided in subsection B of Section 107.2 of this title.

Eighth. Habitual drunkenness.

Ninth. Gross neglect of duty.

Tenth. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.

Eleventh. The procurement of a final divorce decree without this state by a husband or wife which does not in this state release the other party from the obligations of the marriage.

Twelfth. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or inmate of a state institution for the insane in some other state for such period, or of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians, one of whom shall be a superintendent of the hospital or sanitarium for the insane, in which the insane defendant is confined, and the other two to be appointed by the court before whom the action is pending, any two of such physicians shall agree that such insane person, at the time the petition in the divorce action is filed, has a poor prognosis for recovery; provided, further, however, that no divorce shall be granted on this ground to any person whose husband or wife is an inmate of a state institution in any other than the State of Oklahoma, unless the person applying for such divorce shall have been a resident of the State of Oklahoma for at least five (5) years prior to the commencement of an action; and provided further, that a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant. The court shall appoint a guardian ad litem to represent the insane defendant, which appointment shall be made at least ten (10) days before any decree is entered.

R.L. 1910, § 4962. Amended by Laws 1947, p. 79, § 1; Laws 1953, p. 59, § 1, Laws 1955, p. 141, § 1. Renumbered from Title 12, § 1271 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 2014, c. 428, § 1, eff. Nov. 1, 2014.

§ 102. Residency Requirement of Plaintiff or Defendant—Army Post or Military Reservation.

A. Except as otherwise provided by subsection B of this section, the petitioner or the respondent in an action for divorce or annulment of a marriage must have been an actual resident, in good faith, of the state, for six (6) months immediately preceding the filing of the petition.

B. Any person who has been a resident of any United States army post or military reservation within the State of Oklahoma, for six (6) months immediately preceding the filing of the petition, may bring action for divorce or annulment of a marriage or may be sued for divorce or annulment of a marriage.

R.L. 1910, § 4963. Amended by Laws 1939, p. 2 § 1; Laws 1957, p. 82, § 2; Laws 1961, p. 64, § 1; Laws 1965, c. 284, § 1, emerg. eff. June 24, 1965. Renumbered from Title 12, § 1272 by Laws 1989, c. 333. § 1, eff. Nov. 1, 1989. Amended by Laws 2002, c. 400, § 1, eff. Nov. 1, 2002.

§ 103. Venue—Divorce, Annulments, and Separate Maintenance.

A. The venue of any action for divorce, annulment of a marriage or legal separation may be in the following counties:

1. An action for divorce or annulment of a marriage may be filed in the county in which the petitioner has been a resident for the thirty (30) days immediately preceding the filing of the petition or in the county in which the respondent is a resident; provided, the action may be assigned for trial in any county within the judicial district by the chief judge of the district; and

2. An action for legal separation may be brought in the county in which either party is a resident at the time of the filing of the petition.

B. The court may, upon application of a party, transfer an action for divorce, annulment of marriage or legal separation at any time after filing of the petition to any county where venue would be proper under subsection A of this section if the requirements of subsection C or D of this section are met.

C. The court shall grant a party's application for change of venue when the other party is not a resident of this state at the time the application for change of venue is filed, or the plaintiff has departed from this state and has been absent for more than six (6) months preceding the date the application for change of venue is filed, and transfer is requested to the county where the applying party resides in this state.

D. The court shall grant a party's application for change of venue when the court determines that it is an inconvenient forum under the circumstances and the court in another county is a more appropriate forum consistent with the factors in subsection B of Section 551-207 of the Uniform Child Custody Jurisdiction and Enforcement Act after substitution of the word "county" for the word "state" in such section of the act, and transfer is requested to the county where the applying party resides in the state.

Added by Laws 1971, c. 23, § 1, emerg. eff. March 22, 1971. Renumbered from Title 12, § 1272.1 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1998, c. 310, § 7, eff. Nov. 1, 1998; Laws 2001, c. 308, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 400, § 2, eff. Nov. 1, 2002.

§ 104. Personal Jurisdiction—Persons Once Living Within the State—Service.

A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who lived within this state in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in this state. When the person who is subject to the jurisdiction of the court has departed from the state, he may be served outside of the state by any method that is authorized by the statutes of this state.

Added by Laws 1973, c. 21. § 2, emerg. eff. April 12, 1973. Renumbered from Title 12, § 1272.2 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 104.1. Appointment of Court Referees.

A. If funding is available, presiding judges of the district court may appoint court referees in their judicial districts to hear designated cases as assigned by the presiding judge.

B. Reasonable compensation for the referees shall be fixed by that presiding judge.

C. A referee shall meet the requirements and perform their duties in the same manner and procedure as set forth in Sections 1-8-103 and 2-2-702 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

Added by Laws 2002, H.B. 2397, § 9, eff. Nov. 1, 2002. Amended by Laws 2009, c. 234, § 136, emerg. eff. May 21, 2009.

§ 105. Petition—Summons.

A. A proceeding for dissolution of marriage, an annulment of a marriage, or a legal separation shall be titled "In re the Marriage of _____ and _____".

B. The initial pleading in all proceedings under this title shall be denominated a petition. The person filing the petition shall be called the petitioner. A responsive pleading shall be denominated a response. The person filing the responsive pleading shall be called the respondent. Other pleadings shall be denominated as provided in the Rules of Civil Procedure, except as otherwise provided in this section.

C. The petition must be verified as true, by the affidavit of the petitioner.

D. A summons may issue thereon, and shall be served, or publication made, as in other civil cases.

E. Wherever it occurs in this title or in any other title of the Oklahoma Statutes or in any forms or court documents prepared pursuant to the provisions of the Oklahoma Statutes, the term "divorce" shall mean and be deemed to refer to a "dissolution of marriage" unless the context or subject matter otherwise requires.

R.L. 1910, § 4964. Amended by Laws 1973, c. 262, § 6, operative July 1, 1973. Renumbered from Title 12, § 1273 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 2002, c. 400, § 3, eff. Nov. 1, 2002; Laws 2003, c. 302, § 1, emerg. eff. May 28, 2003.

§ 106. Answer May Allege Cause—New Matters Verified by Affidavit.

A. The respondent, in his or her response, may allege a cause for a dissolution of marriage, annulment of the marriage or legal separation against the petitioner, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were the petitioner.

B. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the respondent.

R.L. 1910, § 4965. Renumbered from Title 12, § 1274 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 2002, c. 400, § 3, eff. Nov. 1, 2002; Laws 2003, c. 302, § 2, emerg. eff. May 28, 2003.

§ 107. Repealed by Laws 2002, H.B. 2397, § 10, eff. Nov. 1, 2002.

§ 107.1. Time for Final Order Where Minor Children Involved—Waiver—Educational Program—Exceptions.

A.1. In an action for divorce where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program specified by Section 107.2 of this title.

B. This section shall not apply to divorces filed for any of the following causes:

1. Abandonment for one (1) year;

2. Extreme cruelty;

3. Habitual drunkenness;

4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage; and

6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery;

7. Conviction of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act committed upon a child of either party to the divorce by either party to the divorce; or

8. A child of either party has been adjudicated deprived, pursuant to the Oklahoma Children's Code, as a result of the actions of either party to the divorce and the party has not successfully completed the service and treatment plan required by the court.

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

Added by Laws 1992, c. 243, § 1, eff. Sept. 1, 1992. Amended by Laws 1994, c. 124, § 1, eff. Sept. 1, 1994; Laws 1996, c. 131, § 7, eff. Jan. 1, 1997; Laws 2002, c. 445, § 16, eff. Nov. 1, 2002.

§ 107.2. Court Authority to Mandate Educational Program Concerning the Impact of Separate Parenting and Coparenting, Visitation, Conflict Management, etc.—Adoption of Local Rules.

A. Except as provided in subsection B of this section, in all actions for divorce, separate maintenance, guardianship, paternity, custody or visitation, including modifications or enforcements of a prior court order, where the interest of a child under eighteen (18) years of age is involved, the court may require all adult parties to attend an educational program concerning, as appropriate, the impact of separate parenting and coparenting on children, the implications for visitation and conflict management, development of children, separate financial responsibility for children and such other instruction as deemed necessary by the court. The program shall be educational in nature and not designed for individual therapy.

B. In actions for divorce based upon incompatibility filed on or after November 1, 2014, where the interest of a child under eighteen (18) years of age is involved, the adult parties shall attend, either separately or together, an educational program concerning the impact of divorce on children. The program shall include the following components:

1. Short-term and longitudinal effects of divorce on child well-being;

2. Reconciliation as an optional outcome;

3. Effects of family violence;

4. Potential child behaviors and emotional states during and after divorce including information on how to respond to the child's needs;

5. Communication strategies to reduce conflict and facilitate cooperative coparenting; and

6. Area resources, including but not limited to nonprofit organizations or religious entities available to address issues of substance abuse or other addictions, family violence, behavioral health, individual and couples counseling, and financial planning.

Program attendees shall be required to pay a fee of not less than Ten Dollars ($10.00) and not more than Sixty Dollars ($60.00) to the program provider to offset the costs of the program. The fee may be waived by the court if an attendee uses a qualified program that is provided free of charge. Nothing in this paragraph shall prohibit a third party from paying the fee to the program provider for an attendee. A certificate of completion shall be issued upon satisfying the attendance and fee requirements of the program, and the certificate of completion shall be filed with the court. The program provider shall carry general liability insurance and maintain an accurate accounting of all business transactions and funds received in relation to the program. The program shall be completed prior to the temporary order or within forty-five (45) days of receiving a temporary order. However, and in all events, a final disposition of child custody shall not be granted until the parties complete the program required by this subsection. The court may waive attendance of the program for good cause shown which shall include, but not be limited to, where domestic violence, stalking or harassment as defined by paragraph 2 of subsection I of Section 109 of this title occurred during the marriage.

C. Each judicial district may adopt its own local rules governing the program programs.

D. The Administrative Office of the Courts may enter into a memorandum of understanding with a state entity or other organization in order to compile data including but not limited to the number of actions for divorce that were dismissed after participating in the program, the number of programs that were completed and the number of program participants for each fiscal year. The report shall include data collected from each judicial district. The report shall be published on the Administrative Office of the Courts website and distributed to the Governor, Speaker of the House of Representatives, Minority Leader of the House of Representatives, President Pro Tempore of the Senate and Minority Leader of the Senate.

Added by Laws 1996, c. 131, § 8, eff. Jan. 1, 1997. Amended by Laws 2014, c. 428, § 2, eff. Nov. 1, 2014; Laws 2015, c. 385, § 1, eff. Nov. 1, 2015.

§ 107.3. Proceeding for Disposition of Children.

A.1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, the court may appoint an attorney at law as guardian ad litem upon motion of the court or upon application of any party to appear for and represent the minor children.

2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,

b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. monitor the best interests of the child throughout any judicial proceeding,

d present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court, and

e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

3. Expenses, costs, and attorney fees for the guardian ad litem may be allocated among the parties as determined by the court.

4. The Oklahoma Bar Association shall develop a standard operating manual for guardians ad litem which shall include, but not be limited to, legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. After publication of the manual, all guardians ad litem shall certify to the court in which he or she is appointed as a guardian ad litem that the manual has been read and all provisions contained therein are understood. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual. The Administrative Office of the Courts shall provide public access to the standard operating manual by providing a link to the manual on the Oklahoma State Courts Network (OSCN) website.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" shall have the same meaning as "abuse" or "neglect" defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes or shall mean the child has been adjudicated deprived as a result of the actions or omission of either parent pursuant to the Oklahoma Children's Code; and

2. "Domestic violence" shall have the same meaning as such term is defined by the Protection from Domestic Abuse Act.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;

2. Consider the false allegations in determining custody; and

3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

Added by Laws 1997, c. 403, § 7, eff. Nov. 1, 1997. Amended by Laws 2002, H.B. 2397, § 5, eff. Nov. 1, 2002; Laws 2003, c. 3, § 20, emerg. eff. Mar. 19, 2003 (multiple version repealed by Laws 2003, c. 3, § 21, emerg. eff. Mar. 19, 2003); Laws 2006, c. 136, § 5, eff. Nov. 1, 2006; Laws 2017, c. 16, § 1, eff. Nov. 1, 2017; Laws 2019, c. 417, § 3. eff. Nov. 1, 2019.

§ 107.4. New Law.

A. In a court proceeding concerning child custody or visitation, a motion for an emergency custody hearing shall include an independent report, if available, to include but not be limited to, a police report or a report from the Department of Human Services, that demonstrates that the child is in surroundings which endanger the safety of the child and that if such conditions continue, the child would likely be subject to irreparable harm. If there is no such report, the motion shall include a notarized affidavit from an individual with personal knowledge that the child is in surroundings which endanger the safety of the child and that not granting the motion would likely cause irreparable harm to the child. Upon receipt of the motion for emergency custody with supporting documentation, the court shall have seventy-two (72) hours to conduct a hearing. If the court fails to conduct a hearing within such time, the movant may present such motion to the presiding judge of the judicial district, who shall conduct an emergency custody hearing within twenty-four (24) hours of receipt of the motion.

B. If the court finds that any relevant information provided to the court upon which the court relied to make its emergency custody decision to be false, the court shall assess against the movant all costs, attorney fees, and other expenses incurred as a result of such emergency custody hearing. The movant shall pay all such costs, fees and expenses within thirty (30) days. Failure to make such payment shall be grounds for contempt, punishable by six (6) months in the county jail, a fine not to exceed One Thousand Dollars ($1,000.00), or both such imprisonment and fine.

Added by Laws 2010, c. 350, § 1, eff. Nov. 1, 2010.

§ 108. Equally Wrong Parties—Divorce Granted to Both Parties—Powers of Court When Granting Alimony Without Divorce or Refusing.

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce, but if a divorce is granted in such circumstances, it shall be granted to both parties. In any such case or where the court grants alimony without a divorce or in any case where a divorce is refused, the court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties.

R.L. 1910, § 4966; Laws 1955, p. 142, § 1. Renumbered from Title 12, § 1275 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 109. Best Interest of Child Considered in Awarding Custody or Appointing Guardian—Joint Custody—Plan Arbitration.

A. In awarding the custody of a minor unmarried child or in appointing a general guardian for said child, the court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child.

B. The court, pursuant to the provisions of subsection A of this section, may grant the care, custody, and control of a child to either parent or to the parents jointly.

For the purposes of this section, the terms joint custody and joint care, custody, and control mean the sharing by parents in all or some of the aspects of physical and legal care, custody, and control of their children.

C. If either or both parents have requested joint custody, said parents shall file with the court their plans for the exercise of joint care, custody, and control of their child. The parents of the child may submit a plan jointly, or either parent or both parents may submit separate plans. Any plan shall include but is not limited to provisions detailing the physical living arrangements for the child, child support obligations, medical and dental care for the child, school placement, and visitation rights. A plan shall be accompanied by an affidavit signed by each parent stating that said parent agrees to the plan and will abide by its terms. The plan and affidavit shall be filed with the petition for a divorce or legal separation or after said petition is filed.

D. The court shall issue a final plan for the exercise of joint care, custody, and control of the child or children, based upon the plan submitted by the parents, separate or jointly, with appropriate changes deemed by the court to be in the best interests of the child. The court also may reject a request for joint custody and proceed as if the request for joint custody had not been made.

E. The parents having joint custody of the child may modify the terms of the plan for joint care, custody, and control. The modification to the plan shall be filed with the court and included with the plan. If the court determines the modifications are in the best interests of the child, the court shall approve the modifications.

F. The court also may modify the terms of the plan for joint care, custody, and control upon the request of one parent. The court shall not modify the plan unless the modifications are in the best interests of the child.

G.1. The court may terminate a joint custody decree upon the request of one or both of the parents or whenever the court determines said decree is not in the best interests of the child.

2. Upon termination of a joint custody decree, the court shall proceed and issue a modified decree for the care, custody, and control of the child as if no such joint custody decree had been made.

H. In the event of a dispute between the parents having joint custody of a child as to the interpretation of a provision of said plan, the court may appoint an arbitrator to resolve said dispute. The arbitrator shall be a disinterested person knowledgeable

in domestic relations law and family counseling. The determination of the arbitrator shall be final and binding on the parties to the proceedings until further order of the court.

If a parent refuses to consent to arbitration, the court may terminate the joint custody decree.

I.1. In every proceeding in which there is a dispute as to the custody of a minor child, a determination by the court that domestic violence, stalking, or harassment has occurred raises a rebuttable presumption that sole custody, joint legal or physical custody, or any shared parenting plan with the perpetrator of domestic violence, harassing or stalking behavior is detrimental and not in the best interest of the child, and it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, harassing or stalking behavior.

2. For the purposes of this subsection:

a. "domestic violence" means the threat of the infliction of physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household, including coercive control by a parent involving physical, sexual, psychological, emotional, economic or financial abuse,

b. "stalking" means the willful course of conduct by a parent who repeatedly follows or harasses another person as defined in Section 1173 of Title 21 of the Oklahoma Statutes, and

c. "harassment" means a knowing and willful course or pattern of conduct by a parent directed at another parent which seriously alarms or is a nuisance to the person, and which serves no legitimate purpose including, but not limited to, harassing or obscene telephone calls or conduct that would cause a reasonable person to have a fear of death or bodily injury.

3. If a parent is absent or relocates as a result of an act of domestic violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation.

4. The court shall consider, as a primary factor, the safety and well-being of the child and of the parent who is the victim of domestic violence or stalking behavior, in addition to other facts regarding the best interest of the child.

5. The court shall consider the history of the parent causing physical harm, bodily injury, assault, verbal threats, stalking, or harassing behavior, or the fear of physical harm, bodily injury, or assault to another person, including the minor child, in determining issues regarding custody and visitation.

Added by Laws 1983, c. 269, § 3, operative July 1, 1983. Renumbered from Title 12, § 1275.4 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 2009, c. 307, § 1, eff. Nov. 1, 2009.

§ 109.1. Custody of Child during Separation Without Divorce.

If the parents of a minor unmarried child are separated without being divorced, the judge of the district court, upon application of either parent, may issue any civil process necessary to inquire into the custody of said minor unmarried child. The court may award the custody of said child to either party or both, in accordance with the best interests of the child, for such time and pursuant to such regulations as the case may require. The decision of the judge shall be guided by the rules prescribed in Section 2 of this Act [10 O.S. § 21.1].

R.L. 1910, § 4384. Amended by Laws 1975, c. 352, § 1, emerg. eff. June 12, 1975; Laws 1983, c. 269, § 1, operative July 1, 1983. Renumbered from Title 10, § 21 by Laws 1990, c. 188, § 4, eff. Sept. 1, 1990.

§ 109.2. Determination of Paternity, Custody and Child Support.

A. Except as otherwise provided by Section 7700-607 of Title 10 of the Oklahoma Statutes, in any action concerning the custody of a minor unmarried child or the determination of child support, the court may determine if the parties to the action are the parents of the children. In a paternity action, prior to genetic testing to establish paternity pursuant to the Uniform Parentage Act, the court may award custody to the presumed father if it would be in the best interests of the child. As used in this subsection, "presumed father" means a man who, by operation of law under Section 7700-204 of Title 10 of the Oklahoma Statutes, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

B. If the parties to the action are the parents of the children, the court may determine which party should have custody of said children, may award child support to the parent to whom it awards custody, and may make an appropriate order for payment of costs and attorney fees.

Added by Laws 1976, c. 137, § 1, operative Oct. 1, 1976. Renumbered from Title 12, § 1277.2 by Laws 1994, c. 356, § 35, eff. Sept. 1, 1994. Amended by Laws 1997, c. 403, § 5, eff. Nov. 1, 1997; Laws 2008, c. 99, § 5, eff. Nov. 1, 2008; Laws 2015, c. 133, § 1, eff. Nov. 1, 2015.

§ 109.3. Custody of Child—Evidence of Domestic Abuse—Rebuttable Presumption.

In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of domestic abuse, stalking and/or harassing behavior properly brought before it. If the occurrence of domestic abuse, stalking or harassing behavior is established by a preponderance of the evidence, there shall be a rebuttable presumption that it is not in the best interest of the child to have custody, guardianship, or unsupervised visitation granted to the person against whom domestic abuse, stalking or harassing behavior has been established.

Added by Laws 2006 (2nd Reg. Sess.), c. 284, § 7, emerg. eff. June 7, 2006.

§ 109.4. Visitation Rights of Grandparent of Unmarried Minor.

A.1. Pursuant to the provisions of this section, any grandparent of an unmarried minor child may seek and be granted reasonable visitation rights to the child which visitation rights may be independent of either parent of the child if:

a. the district court deems it to be in the best interest of the child pursuant to subsection ~~D~~ E of this section, and

b. there is a showing of parental unfitness, or the grandparent has rebutted, by clear and convincing evidence, the presumption that the fit parent is acting in the best interests of the child by showing that the child would suffer harm or potential harm without the granting of visitation rights to the grandparent of the child, and

c. the intact nuclear family has been disrupted in that one or more of the following conditions has occurred:

(1) an action for divorce, separate maintenance or annulment involving the grandchild's parents is pending before the court, and the grandparent had a preexisting relationship with the child that predates the filing of the action for divorce, separate maintenance or annulment,

(2) the grandchild's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled,

(3) the grandchild's parent who is a child of the grandparent is deceased, and the grandparent had a preexisting relationship with the child that predates the death of the deceased parent,

(4) except as otherwise provided in subsection C or D of this section, legal custody of the grandchild has been given to a person other than the grandchild's parent, or the grandchild does not reside in the home of a parent of the child,

(5) one of the grandchild's parents has had a felony conviction and been incarcerated in the Department of Corrections and the grandparent had a preexisting relationship with the child that predates the incarceration,

(5) grandparent had custody of the grandchild pursuant to Section 21.3 of this title, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent and the child,

(6) grandparent had custody of the grandchild, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent and the child,

(7) the grandchild's parent has deserted the other parent for more than one (1) year and there exists a strong, continuous grandparental relationship between the grandparent and the child,

(8) except as otherwise provided in subsection D of this section, the grandchild's parents have never been married, are not residing in the same household and there exists a strong, continuous grandparental relationship between the grandparent and the child, or

(9) except as otherwise provided by subsection D of this section, the parental rights of one or both parents of the child have been terminated, and the court determines that there is a strong, continuous relationship between the child and the parent of the person whose parental rights have been terminated.

2. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by order of the district court.

B. Under no circumstances shall any judge grant the right of visitation to any grandparent if the child is a member of an intact nuclear family and both parents of the child object to the granting of visitation.

C. If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any preexisting court-granted grandparental rights belonging to the parents of the deceased natural parent unless the termination of visitation rights is ordered by the court having jurisdiction over the adoption after opportunity to be heard, and the court determines it to be in the best interest of the child.

D.1. If the child has been born out of wedlock and the parental rights of the father of the child have been terminated, the parents of the father of such child shall not have a right of visitation authorized by this section to such child unless:

a. the father of such child has been judicially determined to be the father of the child, and

b. the court determines that a previous grandparental relationship existed between the grandparent and the child.

2. If the child is born out of wedlock and the parental rights of the mother of the child have been terminated, the parents of the mother of such child shall not have a right of visitation authorized by this section to such child unless the court determines that a previous grandparental relationship existed between the grandparent and the child.

3. Except as otherwise provided by this section, the district court shall not grant to any grandparent of an unmarried minor child, visitation rights to that child:

a. subsequent to the final order of adoption of the child; provided however, any subsequent adoption proceedings shall not terminate any prior court-granted grandparental visitation rights unless the termination of visitation rights is ordered by the court after opportunity to be heard and the district court determines it to be in the best interest of the child, or

b. if the child had been placed for adoption prior to attaining six (6) months of age.

E.1. In determining the best interest of the minor child, the court shall consider and, if requested, shall make specific findings of fact related to the following factors:

a. the needs of and importance to the child for a continuing preexisting relationship with the grandparent and the age and reasonable preference of the child pursuant to Section 113 of this title,

b. the willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents,

c. the length, quality and intimacy of the preexisting relationship between the child and the grandparent,

d. the love, affection and emotional ties existing between the parent and child,

e. the motivation and efforts of the grandparent to continue the preexisting relationship with the grandchild,

f. the motivation of parent or parents denying visitation,

g. the mental and physical health of the grandparent or grandparents,

h. the mental and physical health of the child,

i. the mental and physical health of the parent or parents,

j. whether the child is in a permanent, stable, satisfactory family unit and environment,

k. the moral fitness of the parties,

l. the character and behavior of any other person who resides in or frequents the homes of the parties and such person's interactions with the child,

m. the quantity of visitation time requested and the potential adverse impact the visitation will have on the customary activities of the child, and

n. if both parents are dead, the benefit in maintaining the preexisting relationship.

2. For purposes of this subsection:

a. "harm or potential harm" means a showing that without court-ordered visitation by the grandparent, the child's emotional, mental or physical well-being could reasonably or would be jeopardized,

b. "intact nuclear family" means a family consisting of the married father and mother of the child,

c. "parental unfitness" includes, but is not limited to, a showing that a parent of the child or a person residing with the parent:

(1) has a chemical or alcohol dependency, for which treatment has not been sought or for which treatment has been unsuccessful,

(2) has a history of violent behavior or domestic abuse,

(3) has an emotional or mental illness that demonstrably impairs judgment or capacity to recognize reality or to control behavior,

(4) has been shown to have failed to provide the child with proper care, guidance and support to the actual detriment of the child. The provisions of this division include, but are not limited to, parental indifference and parental influence on his or her child or lack thereof that exposes such child to unreasonable risk, or

(5) demonstrates conduct or condition which renders him or her unable or unwilling to give a child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provides nurturing and protection adequate to meet the child's physical, emotional and mental health.

The determination of parental unfitness pursuant to this subparagraph shall not be that which is equivalent for the termination of parental rights, and

d. "preexisting relationship" means occurring or existing prior to the filing of the petition for grandparental visitation.

F.1. The district courts are vested with jurisdiction to issue orders granting grandparental visitation rights and to enforce visitation rights, upon the filing of a verified petition for visitation rights or enforcement thereof. Notice as ordered by the court shall be given to the person or parent having custody of the child. The venue of such action shall be in the court where there is an ongoing proceeding that involves the child, or if there is no ongoing proceeding, in the county of the residence of the child or parent.

2. When a grandparent of a child has been granted visitation rights pursuant to this section and those rights are unreasonably denied or otherwise unreasonably interfered with by any parent of the child, the grandparent may file with the court a motion for enforcement of visitation rights. Upon filing of the motion, the court shall set an initial hearing on the motion. At the initial hearing, the court shall direct mediation and set a hearing on the merits of the motion.

3. After completion of any mediation pursuant to paragraph 2 of this subsection, the mediator shall submit the record of mediation termination and a summary of the parties' agreement, if any, to the court. Upon receipt of the record of mediation termination, the court shall enter an order in accordance with the parties' agreement, if any.

4. Notice of a hearing pursuant to paragraph 2 or 3 of this subsection shall be given to the parties at their last-known address or as otherwise ordered by the court, at least ten (10) days prior to the date set by the court for hearing on the motion. Provided,

the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances.

5. Appearance at any court hearing pursuant to this subsection shall be a waiver of the notice requirements prior to such hearing.

6. If the court finds that visitation rights of the grandparent have been unreasonably denied or otherwise unreasonably interfered with by the parent, the court shall enter an order providing for one or more of the following:

a. a specific visitation schedule,

b. compensating visitation time for the visitation denied or otherwise interfered with, which time may be of the same type as the visitation denied or otherwise interfered with, including but not limited to holiday, weekday, weekend, summer, and may be at the convenience of the grandparent,

c. posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights, or

d. assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation rights against the parent.

7. If the court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the grandparent, the court may assess reasonable attorney fees, mediation costs, and court costs against the grandparent.

G. In addition to any other remedy authorized by this section or otherwise provided by law, any party violating an order of the court made pursuant to this section, upon conviction thereof, shall be guilty of contempt of court.

H. Any transportation costs or other costs arising from any visitation ordered pursuant to this section shall be paid by the grandparent or grandparents requesting such visitation.

I. In any action for grandparental visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

J. For the purposes of this section, the term "grandparent" shall include "great-grandparent".

R.L. 1910, § 4368. Amended by Laws 1971, c. 82, § 1, emerg. eff. April 26, 1971; Laws 1975, c. 185, § 1, emerg. eff. May 23, 1975; Laws 1978, c. 71, § 1; Laws 1981, c. 273, § 1; Laws 1984, c. 82, § 1, emerg. eff. April 4, 1984; Laws 1989, c. 211, § 1, eff. Nov. 1, 1989; Laws 1990, c. 206, § 1, emerg. eff. May 14, 1990; Laws 1996, c. 297, § 20, emerg. eff. June 10, 1996; Laws 1997, c. 389, § 19, eff. Nov. 1, 1997; Laws 1999, c. 383, § 1, eff. Nov. 1, 1999; Laws 2000, c. 246, § 1, eff. Nov. 1, 2000; Laws 2003, c. 268, § 1, eff. Nov. 1, 2003; Laws 2007, c. 102, § 1, emerg. eff. May 7, 2007. Recnumbered from 10 O.S. § 5 by Laws 2009, c. 233, § 197, emerg. eff. May 21, 2009. Amended by Laws 2016, c. 60, § 1, eff. Nov. 1, 2016.

§ 109.5. Presumption of Legal Custody.

When an order has been entered which provides for payment of child support and the legal custodian places physical custody of the child with any person, subject to the provisions of the Oklahoma Children's Code or this title, without obtaining a modification of the order to change legal custody, the placement of the physical custody, by operation of law, shall create a presumption that such person with whom the child was placed has legal physical custody of the child for the purposes of the payment of child support and the obligee shall remit such child support obligation to the person with whom the placement was made.

Added by Laws 1987, c. 230, § 20, eff. Oct. 1, 1987. Renumbered from 10 O.S. § 38 by Laws 1998, c. 415, § 51, emerg. eff. June 11, 1998. Renumbered from 10 O.S. § 7202.3 by Laws 2009, c. 233, § 208, emerg. eff. May 21, 2009. Amended by Laws 2010, c. 358, § 9, emerg. eff. June 7, 2010.

§ 109.6. Certain Information and Records to be Available to Both Custodial and Noncustodial Parent.

Any information or any record relating to a minor child which is available to the custodial parent of the child, upon request, shall also be provided the noncustodial parent of the child. Provided, however, that this right may be restricted by the court, upon application, if such action is deemed necessary in the best interests of the child. For the purpose of this section, "information" and "record" shall include, but not be limited to, information and records kept by the school, physician and medical facility of the minor child.

Added by Laws 1982, c. 99, § 1, eff. Oct. 1, 1982. Renumbered from 10 O.S. § 5.2 by Laws 2009, c. 233, § 198, emerg. eff. May 21, 2009.

§ 110. Orders Concerning Property, Children, Support and Expenses.

A.1. Except as otherwise provided by this subsection, upon the filing of a petition for dissolution of marriage, annulment of marriage or legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section:

a. restraining the parties from transferring, encumbering, concealing, or in any way disposing of, without written consent of the other party or an order of the court, any marital property, except in the usual course of business, for the purpose of retaining an attorney for the case or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect,

b. restraining the parties from:

(1) intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, specifically including, but not limited to, any electronically stored materials, electronic communications, social network data, financial records, and any document that represents or embodies anything of value,

(2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan of from any individual retirement account or Keogh account,

(3) withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or their children,

(4) changing or in any manner altering the beneficiary designation on any life insurance policies on the life of either party or any of their children,

(5) canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons,

(6) opening or diverting mail addressed to the other party, and

(7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party,

c. requiring the parties to maintain all presently existing health, property, life and other insurance which the individual is presently carrying on any member of this family unit, and to cooperate as necessary in the filing and processing of claims. Any employer-provided health insurance currently in existence shall remain in full force and effect for all family members,

d. enjoining both parties from molesting or disturbing the peace of the other party or of the children to the marriage,

e. restraining both parties from disrupting or withdrawing their children from an educational facility and programs where the children historically have been enrolled, or day care,

f. restraining both parties from hiding or secreting their children from the other party,

g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two (2) weeks or less in duration, without the prior written consent of the other party, which shall not be unreasonably withheld, and

h. requiring, unless otherwise agreed upon by the parties in writing, the delivery by each party to the other within thirty (30) days from the earlier of either the date of service of the summons or the filing of an initial pleading by the respondent, the following documents:

(1) the federal and state income tax returns of each party for the past two (2) years and any nonpublic, limited partnership and privately held corporate returns for any entity in which either party has an interest, together with all supporting documentation for the tax returns, including but not limited to W-2 forms, 1099 forms, K-1 forms, Schedule C and Schedule E. If a return is not completed at the time of disclosure, the parties shall provide the documents necessary to prepare the tax return of the party, to include W-2 forms, 1099 forms, K-1 forms, copies of extension requests and estimated tax payments,

(2) two (2) months of the most recent pay stubs from each employer for whom the party worked,

(3) statements for the past six (6) months for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the minor child or children of the parties,

(4) documentation regarding the cost and nature of available health insurance coverage for the benefit of either party or the minor child or children of the parties,

(5) documentation regarding the cost and nature of employment or educationally related child care expenses incurred for the benefit of the minor child or children of the parties, and

(6) documentation regarding all debts in the name of either party individually or jointly, showing the most recent balance due and payment terms.

2. If either party is not in possession of a document required pursuant to subparagraph h of paragraph 1 of this subsection or has not been able to obtain the document in a timely fashion, the party shall state in verified writing, under the penalty of perjury, the specific document which is not available, the reasons the document is not available, and what efforts have been made to obtain the document. As more information becomes available, there is a continuing duty to supplement the disclosures.

3. Nothing in this subsection shall prohibit a party from conducting further discovery pursuant to the Oklahoma Discovery Code.

4.a. The provisions of the automatic temporary injunction shall be printed as an attachment to the summons and the petition and entitled "Automatic Temporary Injunction Notice".

b. The automatic temporary injunction notice shall contain a provision which will allow the parties to waive the automatic temporary injunction. In addition, the provision must state that unless both parties have agreed and have signed their names in the space provided, that the automatic temporary injunction will be effective. Along with the waiver provision, the notice shall contain a check box and space available for the signatures of the parties.

5. The automatic temporary injunction shall become an order of the court upon fulfillment of the requirements of paragraph 1 of this subsection unless and until:

a. the automatic temporary injunction is waived by the parties. Both parties must indicate on the automatic temporary injunction notice in the space provided that the parties have both agreed to waive the automatic temporary injunction. Each party must sign his or her own name on the notice in the space provided, or

b. a party, no later than three (3) days after service on the party, files an objection to the injunction and requests a hearing. Provided, the automatic temporary injunction shall remain in effect until the hearing and a judge orders the injunction removed.

6. The automatic temporary injunction shall be dissolved upon the granting of the dissolution of marriage, final order of legal separation or other final order.

7. Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, and expanded automatic temporary injunction, or modification or revocation, thereto.

8.a. With regard to an automatic temporary injunction, when a petition for dissolution of marriage, annulment of a marriage, or a legal separation is filed and served, a peace officer shall use every reasonable means to enforce the injunction which enjoins both parties from molesting or disturbing the peace of the other party or the children of the marriage against a petitioner or respondent, whenever:

(1) there is exhibited by a respondent or by the petitioner to the peace officer a copy of the petition or summons, with an attached Temporary Injunction Notice, duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and

(2) the peace officer has cause to believe that a violation of the automatic temporary injunction has occurred.

b. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this paragraph if his or her action is in good faith and without malice.

B. After a petition has been filed in an action for dissolution of marriage or legal separation either party may request the court to issue:

1. A temporary order:

a. regarding child custody, support or visitation,

b. regarding spousal maintenance,

c. regarding payment of debt,

d. regarding possession of property,

e. regarding attorney fees, and

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. Provided, for the purposes of this section, no minor child or children temporarily residing in a licensed, certified domestic violence shelter in the state shall be removed by an ex parte order. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

C. Any temporary orders and the automatic temporary injunction, or specified terms thereof, may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders and the automatic temporary injunction terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order of the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.

D. Upon granting a decree of dissolution of marriage, annulment of a marriage, or legal separation, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

E. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the dissolution of marriage action made for the benefit of either party or their respective attorneys.

R.L. 1910, § 4967. Amended by Laws 1965, c. 7, § 1, emerg. eff. Feb. 9, 1965; Laws 1976, c. 256, § 1. Renumbered from Title 12, § 1276 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1991, c. 113, § 4, eff. Sept. 1, 1991; Laws 1992, c. 252, § 1, eff. Sept. 1, 1992.; Laws 1997, c. 403, § 9, eff.

Nov. 1, 1997; Laws 2002, c. 400, § 6, eff. Nov. 1, 2002; Laws 2002, c. 302, § 3, emerg. eff. May 28, 2003; Laws 2010, c. 234, § 1, eff. Nov. 1, 2010; Laws 2011, c. 237, § 1, eff. Nov. 1, 2011.

§ 110.1. Policy for Equal Access to Minor Children by Parents.

It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. The court may consider evidence of the ability of the parents to cooperate on issues related to their minor children, as well as evidence of domestic violence, stalking, or harassment as defined in Section 109 of this title. To effectuate this policy, if requested by a parent, the court may provide substantially equal access to the minor children to both parents at a temporary order or final hearing, unless the court finds that shared parenting would be detrimental to the child. The court shall issue findings of fact and conclusions of law to support its decision after a final hearing on the merits.

Added by Laws 1999, c. 301, § 3, eff. Nov. 1, 1999. Amended by Laws 2001, c. 60, § 1, eff. Nov. 1, 2001; Laws 2009, c. 307, § 2, eff. Nov. 1, 2009; Laws 2021, c. 445, § 1, eff. Nov. 1, 2021.

§ 110.1a. Oklahoma Child Supervised Visitation Program.

A. This section shall be known and may be cited as the "Oklahoma Child Supervised Visitation Program".

B. It is the policy of this state to ensure that the health, safety, and welfare of the child is paramount when supervised visitation is ordered by the court.

C. For purposes of the Oklahoma Child Supervised Visitation Program:

1. "Supervised visitation" means the court-ordered contact between a noncustodial parent and one or more children of such parent in the presence of a third-party person who is responsible for observing and overseeing the visitation in order to provide for the safety of the child and any other parties during the visitation. The court may require supervised visitation when deemed necessary by the court to protect the child or other parties;

2. An "alcohol-dependent person" has the same meaning as such term defined in Section 3-403 of Title 43A of the Oklahoma Statutes;

3. A "drug-dependent person" has the same meaning as such term defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and

4. "Domestic abuse" has the same meaning as such term defined in Section 60.1 of Title 22 of the Oklahoma Statutes.

D.1. The associate district judge in each county within this state may select trained volunteers to provide supervised visitation pursuant to the Oklahoma Child Supervised Visitation Program.

2. The associate district judge of each county may appoint a judicial district supervised visitation team to:

a. identify public and private entities which will be willing to provide location sites for purposes of the Oklahoma Child Supervised Visitation Program,

b. identify individuals who will be willing to serve as third-party persons to observe and oversee court-ordered supervised visitations,

c. establish training requirements for volunteers,

d. identify programs which may be available for the training of the volunteers including, but not limited to, the Department of Human Services, Office of the Attorney General, child advocacy centers, domestic violence groups, and the Department of Mental Health and Substance Abuse Services,

e. develop written protocol for handling supervised visitations so as to provide safety of the child and other parties during the supervised visitation,

f. develop application forms for volunteers applying for the Oklahoma Child Supervised Visitation Program. Information listed on the form shall include, but not be limited to:

(1) name, address and phone number of the volunteer,

(2) place of employment and phone number of the volunteer,

(3) areas of expertise,

(4) listing of professional training in areas including, but not limited to, child abuse, domestic abuse, alcohol or drug abuse, mental illness or conflict management,

(5) consent form specifying release of information, and

(6) professional references, and

g. identify which information of the parties and the child will be confidential and which may be available to others.

3. From recommendations of the team established pursuant to this subsection, the associate district judge in each county within this state may authorize one or more public or private agencies to provide location sites for the Oklahoma Child Supervised Visitation Program. A district judge may require either party requesting supervised visitation of a child to identify a trained third-party volunteer to observe and oversee the visitation. A district court shall not:

a. require any state agency location or state employee to observe and oversee any supervised visitation, or

b. appoint a third party to observe and oversee a supervised visitation who has not received the training as specified by the judicial district supervised visitation team unless agreed to by the parties.

4. A participating public or private agency location site may charge a fee for each visit.

E. The protocol for supervised visitation established by each judicial district supervised visitation team may require that:

1. The location site require each participant who has court-ordered supervised visitation for a child and who is participating in the supervised visitation program to sign a time log upon arrival and departure. The agency location site must have an employee assigned to verify identification of each participant, initial each signature, and record the time of arrival and departure of each person; and

2. The agency location site also contain information on each client case including, but not limited to:

a. a copy of the court order requiring supervised visitation, and

b. name of individuals authorized to pick up or deliver a child to the agency location site for supervised visitation.

F. Each judicial district supervised visitation team may include, but not be limited to:

1. Mental health professionals;
2. Police officers or other law enforcement agents;
3. Medical personnel;
4. Child protective services workers;
5. Child advocacy individuals; and
6. The district attorney or designee.

G. An associate district judge of a county, the judicial district supervised visitation team created pursuant to this section and the Office of the Court Administrator may develop an informational brochure outlining the provisions of the Oklahoma Child Supervised Visitation Program and procedures to be used by volunteers in that judicial district. The brochure may be distributed through the municipal and district court, social service agency centers, county health departments, hospitals, crisis or counseling centers, and community action agencies.

H. Except for acts of dishonesty, willful criminal acts, or gross negligence, no member of the judicial district supervised visitation team or volunteer shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of the duties pursuant to the provisions of this section.

I. The provisions of this section shall not apply to cases subject to the Oklahoma Children's Code and the Oklahoma Juvenile Code.

Added by Laws 2004, c. 415, § 5, eff. Dec, 15, 2004. Amended by Laws 2017, c. 230, § 1, eff. Nov. 1, 2017.

§ 110.2. Court Order to Submit to Blood, Saliva, Urine or Other Test.

In any action in which the custody of or the visitation with a child is a relevant fact and at issue, the court may order the mother, the child or father to submit to blood, saliva, urine or any other test deemed necessary by the court in determining that the custody of or visitation with the child will be in the best interests of the child. If so ordered and any party or child refuses to submit to such tests, the court may enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

Added by Laws 2004, c. 422, § 2, operative July 1, 2004.

§ 111. Indirect Contempt for Disobeying Property Division Orders.

Any order pertaining to the division of property pursuant to a divorce or separate maintenance action, if willfully disobeyed, may be enforced as an indirect contempt of court.

Added by Laws 1982, c. 14, § 1. Renumbered from Title 12, § 1276.2 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1992, c. 252, § 2, eff. Sept. 1, 1992.

§ 111.1. Order to Provide Minimum Visitation for Noncustodial Parent—Violation or Order.

A.1. Any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent shall provide a specified minimum amount of visitation between the noncustodial parent and the child unless the court determines otherwise.

2. Except for good cause shown and when in the best interests of the child, the order shall encourage additional visitations of the noncustodial parent and the child and in addition encourage liberal telephone communications between the noncustodial parent and the child.

3. The court may award visitation by a noncustodial parent who was determined to have committed domestic violence or engaged in stalking behavior as defined in Section 109 of this title, if the court is able to provide for the safety of the child and the parent who is the victim of that domestic violence.

4. In a visitation order, the court shall provide for the safety of the minor child and victim of domestic violence, stalking, or harassment as defined in Section 109 of this title, and subject to the provisions of Section 109 of this title, may:

a. order the exchange of a child to be facilitated by a third party where the parents do not have any contact with each other,

b. order an exchange of a child to occur in a protected setting,

c. order visitation supervised by another person or agency,

d. order the abusive, stalking, or harassing parent to pay a fee to help defray the costs of supervised visitation or other costs of child exchanges, including compensating third parties,

e. order the abusive, stalking, or harassing parent to attend and complete, to the satisfaction of the court, an intervention program for batterers certified by the Office of the Attorney General,

f. prohibit unsupervised or overnight visitation until the abusive, stalking, or harassing parent has successfully completed a specialized program for abusers and the parent has neither threatened nor exhibited violence for a substantial period of time,

g. order the abusive, stalking, or harassing parent to abstain from the possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding visitation,

h. order the abusive, stalking, or harassing parent to complete a danger/lethality assessment by a qualified mental health professional, and

i. impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, stalking, or harassing behavior, or another household member.

5. The court shall not order a victim of domestic violence, stalking, or harassment to be present during child visitation exchange if the victim of domestic violence, stalking, or harassment objects to being present.

6. Visitation shall be terminated if:

a. the abusive, stalking, or harassing parent repeatedly violates the terms and conditions of visitation,

b. the child becomes severely distressed in response to visitation, including the determination by a mental health professional or certified domestic violence specialist that visitation with the abusive, stalking, or harassing parent is causing the child severe distress which is not in the best interest of the child, or

c. there are clear indications that the abusive, stalking, or harassing parent has threatened to either harm or flee with the child, or has threatened to harm the custodial parent.

7. Whether or not visitation is allowed, the court shall order the address of the child and the victim of domestic violence, stalking, or harassing behavior to be kept confidential if requested.

a. The court may order that the victim of domestic violence, stalking, or harassing behavior participate in the address confidentiality program available pursuant to Section 60.14 of Title 22 of the Oklahoma Statutes.

b. The abusive, stalking, or harassing parent may be denied access to the medical and educational records of the child if those records may be used to determine the location of the child.

B.1. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the visitation rights of the noncustodial parent.

2. When a custodial parent refuses to honor the visitation rights of the noncustodial parent, the noncustodial parent shall not fail to pay any ordered child support or alimony.

C.1. Violation of an order providing for the payment of child support or providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent may be prosecuted as indirect civil contempt pursuant to Section 566 of Title 21 of the Oklahoma Statutes or as otherwise deemed appropriate by the court.

2. Any person complying in good faith with the provisions of Section 852.1 of Title 21 of the Oklahoma Statutes, by refusing to allow his or her child to be transported by an intoxicated driver, shall have an affirmative defense to a contempt of court proceeding in a divorce or custody action.

3. Unless good cause is shown for the noncompliance, the prevailing party shall be entitled to recover court costs and attorney fees expended in enforcing the order and any other reasonable costs and expenses incurred in connection with the denied child support or denied visitation as authorized by the court.

Added by Laws 1989, c. 285, § 1, emerg. eff. May 24, 1989. Amended by Laws 1990, c. 171, § 1, operative July 1, 1990. Renumbered from Title 12, § 1276.3 by Laws 1990, c. 171, § 3, operative July 1, 1990 and by Laws 1990, c. 188, § 2, eff. Sept. 1, 1990. Amended by Laws 1999, c. 301. § 1, eff. Nov. 1, 1999; Laws 2000, c. 384. § 4, eff. Nov. 1, 2000; Laws 2009, c. 143, § 3, operative July 1, 2009; Laws 2009, c. 307, § 3, eff. Nov. 1, 2009.

§ 111.1A. Development and Periodic Review of Standard Visitation Schedule and Advisory Guidelines.

A. By January 1, 2005, the Administrative Director of the Courts shall have developed a standard visitation schedule and advisory guidelines which may be used by the district courts of this state as deemed necessary.

B. The standard visitation schedule should include a minimum graduated visitation schedule for children under the age of five (5) years and a minimum graduated visitation schedule for children five (5) years of age through seventeen (17) years of age. In addition, the standard visitation schedule should address:

1. Midweek and weekend time-sharing;
2. Differing geographical residences of the custodian and noncustodian of the child requesting visitation;
3. Holidays, including Friday and Monday holidays;
4. Summer vacation break;
5. Midterm school breaks;
6. Notice requirements and authorized reasons for cancellations of visitation;
7. Transportation and transportation costs, including pick up and return of the child;
8. Religious, school, and extracurricular activities;
9. Grandparent and relative contact;
10. The birthday of the child;
11. Sibling visitation schedules;
12. Special circumstances, including, but not limited to, emergencies; and
13. Any other standards deemed necessary by the Administrative Director of the Courts.

C.1. The Administrative Director of the Courts shall develop advisory guidelines for use by the district courts when parties to any action concerning the custody of a child are unable to mutually agree upon a visitation schedule.

2. The advisory guidelines should include the following considerations at a minimum:

a. a preference for visitation schedules that are mutually agreed upon by both parents over a court-imposed solution,

b. a visitation schedule which should maximize the continuity and stability of the life of the child,

c. special considerations should be given to each parent to make the child available to attend family functions, including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule,

d. a visitation schedule which will not interrupt the regular school hours of the child,

e. a visitation schedule should reasonably accommodate the work schedule of both parents and may increase the visitation time allowed to the noncustodial parent but should not diminish the standardized visitation schedule provided in Section 111.1 of Title 43 of the Oklahoma Statutes,

f. a visitation schedule should reasonably accommodate the distance between the parties and the expense of exercising visitation,

g. each parent should permit and encourage liberal electronic contact during reasonable hours and uncensored mail privileges with the child, and

h. each parent should be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

D. The Administrative Director of the Courts shall:

1. Make the standard visitation schedule and advisory guidelines available to the district courts of this state; and
2. Periodically review and update the guidelines as deemed necessary.

Added by Laws 2004, c. 422, § 1, emerg. eff. July 1, 2004.

§ 111.2. Liability and Remedies Available Where Person Not a Party to a Custody Proceeding Denies Another of Right to Custody or Visitation.

Any person who is not a party to a child custody proceeding, and who intentionally removes, causes the removal of, assists in the removal of, or detains any child under eighteen (18) years of age with intent to deny another person's right to custody of the child or visitation under an existing court order shall be liable in an action at law. Remedies available pursuant to this

section are in addition to any other remedies available by law or equity and may include, but shall not be limited to, the following:

1. Damages for loss of service, society, and companionship;

2. Compensatory damages for reasonable expenses incurred in searching for the missing child or attending court hearings; and

3. The prevailing party in such action shall be awarded reasonable attorney fees.

Added by Laws 1995, c. 219, § 1, eff. Nov. 1, 1995.

§ 111.3. Enforcement of Visitation Rights of Noncustodial Parent.

A. Any order of the court providing for visitation shall contain a provision stating that the custodial parent has a duty to facilitate visitation of a minor child with the noncustodial parent.

B. When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent, in addition to the remedy provided in subsection B of Section 111.1 of this title, the noncustodial parent may file with the court clerk a motion for enforcement of visitation rights. The motion shall be filed on a form provided by the court clerk. Upon filing of the motion, the court shall immediately set a hearing on the motion, which shall be not more than twenty-one (21) days after the filing of the motion.

C. Notice of a hearing pursuant to subsection A of this section shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the court.

D. If the court finds that visitation rights of the noncustodial parent have been unreasonably denied or otherwise interfered with by the custodial parent, the court shall enter an order providing for one or more of the following:

1. A specific visitation schedule;

2. Compensating visitation time for the visitation denied or otherwise interfered with, which time shall be of the same type (e.g. holiday, weekday, weekend, summer) as the visitation denied or otherwise interfered with, and shall be at the convenience of the noncustodial parent;

3. Posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights;

4. Attendance of one or both parents at counseling or educational sessions which focus on the impact of visitation disputes on children;

5. Supervised visitation; or

6. Any other remedy the court considers appropriate, which may include an order which modifies a prior order granting child custody.

E. The prevailing party shall be granted reasonable attorney fees, mediation costs, and court costs.

F. Final disposition of a motion filed pursuant to this section shall take place no later than forty-five (45) days after filing of the motion.

G. The Office of the Court Administrator shall maintain on the OSCN system the form required by subsection A of this section to be used for a motion to enforce visitation rights which shall be in substantially the following form:

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

_____, Petitioner/Plaintiff,

v.

_____, Respondent/Defendant.

Case No. _____

Assigned Judge _____

MOTION FOR ENFORCEMENT OF NON-CUSTODIAL PARENT VISITATION RIGHTS

The undersigned Non-Custodial Parent in the above case moves the Court, pursuant to the provisions of Section 111.3 of Title 43 of the Oklahoma Statutes, to enforce visitation rights which have been unreasonably denied or interfered with by the Custodial Parent.

The Name(s) and Age(s) of the Child(ren) to which my visitation rights have been unreasonably denied are:

_____

Date of Birth: _____

_____

Date of Birth: _____

_____
Date of Birth: _____

The approximate date of my last visit with the Child(ren) was:
_____.

Within the past 12 months, I have visited with the Child(ren) approximately _____ of times of visitation times.

Within the past 12 months, I have been denied requested visitation approximately _____ of times of denied visitation times.

On the attached page, I have stated THE SPECIFIC DETAILS as to how and when my visitation with the Child(ren) was denied.

Signed under penalties of perjury this _____ day of _____, 20_____.

My Signature: _____

My Full Name: _____

My Mailing Address: _____

My Telephone Numbers: _____
_____
_____

Subscribed and sworn to before me this _____ day of _____, 20__.
_____
Notary Public (or Clerk or Judge)

My Commission Expires:
_____

ORDER

The people of the State of Oklahoma, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the enforcement or modification of custody as requested by the movant.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this _____ day of _____, 20__.
_____
Clerk of the Court (or Judge)

A copy of this order must be mailed by certified mail, return receipt requested to the non-moving party and return of service brought to the hearing.

Added by Laws 1998, c. 407, § 42, eff. Nov. 1, 1998. Amended by Laws 2014, c. 411, § 1, Nov. 1, 2014.

§ 111.4. Suspending Visitation With a Reasonable Belief of Abuse or Neglect.

A. A parent who, in good faith and with a reasonable belief supported by fact, determines that the child of that parent is the victim of child abuse or neglect, or suffers from effects of domestic violence, may take necessary actions to protect the child, including refusing to permit visitation.

B. In cases in which there is evidence to substantiate suspected or confirmed child abuse or neglect, visitation shall be suspended.

Added by Laws 2009, c. 307, § 4, eff. Nov. 1, 2009.

§ 112. Care, Custody and Support of Minor Children.

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be submitted to the Central Case Registry as provided for Section 112A of this title with all child support or paternity orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 112.5 of this title and shall consider what appears to be in the best interests of the child.

C.1. When it is in the best interests of a minor unmarried child, the court shall:

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. Notwithstanding any custody determination made pursuant to the Oklahoma Children's Code, when a custodial parent of a child is required to be separated from a child due to military service, a court shall not enter a final order modifying an existing custody order until such time as the custodial parent has completed the term of duty requiring separation. For purposes of this paragraph:

a. In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard, the term "military service" means a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member; and

b. In the case of a parent who is a member of the National Guard, the term "military service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) consecutive days under 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds. "Military service" shall include any period during which a member is absent from duty on account of sickness, wounds, leave or other lawful cause, and

c. the court may enter a temporary custody or visitation order pursuant to the requirements of the Deployed Parents Custody and Visitation Act.

6. In making an order for custody, the court shall require compliance with Section 112.3 of this title.

D.1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Except as otherwise provided by Section 112.1A of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a child is regularly enrolled in and attending high school, as set forth in Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means of high school education, or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school or until the age of twenty (20) years, whichever occurs first. Full-time attendance shall include regularly scheduled breaks from the school year. No hearing or further order is required to extend support pursuant to this subsection after the child reaches the age of eighteen (18) years.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order and before hearing the matter or signing any orders, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services, hereafter referred to as the Department, for the benefit of each child. If public assistance money medical support, or child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes have been provided for the benefit of the child, the Department shall be a necessary party for the adjudication of the debt due to the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication of paternity, child support, and medical insurance coverage for the minor children in accordance with federal regulations. When an action is filed, the petitioner shall give the Department notice of the action according to Section 2004 of Title 12 of the Oklahoma Statutes. The Department shall not be required to intervene in the action to have standing to appear and participate in the action. When the Department is a necessary party to the action, any orders concerning paternity, child support, medical support, or the debt due to the State of Oklahoma shall be approved and signed by the Department.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

R.L. 1910, § 4968. Amended by Laws 1955, p. 142, § 1; Laws 1968, c. 226, § 1; Laws 1969, c. 334, § 1, emerg. eff. May 8, 1969; Laws 1973, c. 188, § 1; Laws 1974, c. 101, § 1, emerg. eff. April 30, 1974; Laws 1979, c. 93, § 1; Laws 1985, c. 297, § 16, eff. Oct. 1, 1985; Laws 1987, c. 230, § 14, eff. Oct. 1, 1987. Renumbered from Title 12, § 1277 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1990, c. 171, § 2, operative July 1, 1990; Laws 1990, c. 309, § 11, eff. Sept. 1, 1990; Laws 1993, c. 307, § 1, emerg. eff. June 7, 1993; Laws 1994, c. 356, § 12, eff. Sept. 1, 1994; Laws 1996, c. 131, § 10, eff. Jan. 1, 1997.; Laws 1997, c. 402, § 10, operative July 1, 1997; Laws 1997, c. 403, § 10, eff. Nov. 1, 1997; Laws 1998, c. 5, § 13, emerg. eff. March 4,1998; Laws 1998, c. 323, § 7, eff. Nov. 1, 1998; Laws 1999, c. 301, § 2, eff. Nov. 1, 1999; Laws 2000, c. 384, § 5, eff. Nov. 1, 2000; Laws 2002, c. 400, § 7, eff. Nov. 1, 2002; Laws 2003, c. 3, § 22, emerg. eff. Mar. 19, 2003 (multiple version repealed by Laws 2003, c. 3, §§ 23, 24, emerg. eff. Mar. 19, 2003); Laws 2006, c. 127, § 1, eff. Nov. 1, 2006; Laws 2007, c. 1, § 23, emerg. eff. Feb. 22, 2007 (multiple version repealed by Laws 2007, c. 1, § 24, emerg. eff. Feb. 22, 2007); Laws 2007, c. 34, § 1, emerg. eff. April, 18, 2007; Laws 2009, c. 234, § 137, emerg. eff. May 21, 2009; Laws 2010, c. 358, § 10, emerg. eff. June 7, 2010; Laws 2011, c. 354, § 1, emerg. eff. May 26, 2011.

§ 112A. Agreement to Obtain Certain Necessary Information.

A.1. The Child Support Enforcement Division of the Department of Human Services shall maintain a central case registry on all Title IV-D cases and all child support orders established or modified in this state after October 1, 1998. Title IV-D cases are cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes.

2. In Title IV-D cases, the case registry shall include, by not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A.

3. In cases in which child support services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes and in which a child support order is established or modified in this state after October 1, 1998, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A, and information from the support order summary form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

B.1. All orders entered after October 31, 2001, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

a. an address of record for service of process in support, visitation and custody actions, and

b. the address of record may be different from the party's or custodian's physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the central case registry within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Department of Human Services. The Department of Human Services may refuse to disclose address and location

information if the Department has reasonable evidence of domestic violence of child abuse and the disclosure of such information could be harmful to a party, custodian or child.

C.1. All parties and custodians ordered to provide an address of record to the central case registry as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address or record provided to the central case registry.

2. Proof of service shall be made by a certificate or mailing from the United States Post Office, or in child support cases where services are being provided under the state child support plan, by a certificate of mailing from the child support representative.

D. The Department of Human Services shall promulgated rules as necessary to implement the provisions of this section.

Added by Laws 1997, c. 402, § 11, operative July 1, 1997. Amended by Laws 2001, c. 407, § 4, emerg. eff. July 1, 2001.

§ 112.1A. Support for Child or Adult Child.

A. In this section:

1. "Adult child" means a child eighteen (18) years of age or older.

2. "Child" means a son or daughter of any age

B.1. The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

a. the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support, and

b. the disability exists, or the cause of the disability is known to exist, on or before the eighteenth birthday of the child.

2. A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support for the child. The court may designate a child who is eighteen (18) years of age or older to receive the support directly.

C.1. A suit provided by this section may be filed only by:

a. a parent of the child or another person having physical custody or guardianship of the child under a court order, or

b. the child if the child:

(1) is eighteen (18) years of age or older,

(2) does not have a mental disability, and

(3) is determined by the court to be capable of managing the child's financial affairs.

2. The parent, the child, if the child is eighteen (18) years of age or older, or other person may not transfer or assign the cause of action to any person, including a governmental or private entity or agency, except for an assignment made to the Title IV-D agency.

D.1. A suit under this section may be filed:

a. regardless of the age of the child, and

b. as an independent cause of action or joined with any other claim or remedy provided by this title.

2. If not court has continuing, exclusive jurisdiction of the child, an action under this section may be filed as an original suit.

3. If there is a court of continuing, exclusive jurisdiction, an action under this section may be filed as a suit for modification pursuant to Section 115 of this title.

E. In determining the amount of support to be paid after a child's eighteenth birthday, the specific terms and conditions of that support, and the rights and duties of both parents with respect to the support of the child, the court shall determine and give special consideration to:

1. Any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;

2. Whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

3. The financial resources available to both parents for the support, care, and supervision of the adult child; and

4. Any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

F. An order provided by this section may contain provisions governing the rights and duties of both parents with respect to the support of the child and may be modified or enforced in the same manner as any other order provided by this title.

Added by Laws 2001, c. 407, § 5, emerg. eff. July 1, 2001.

§ 112.2. Custody, Guardianship, Visitation—Mandatory Considerations.

A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child whether any person seeking custody or who has custody of, guardianship of or visitation with a child:

1. Is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

2. Has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

6. Is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody or guardianship granted to a person who:

1. Is subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

2. Has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

6. Is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person convicted of domestic abuse within the past five (5) years.

C. Custody of, guardianship of, or visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm.

D. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.

E. For purposes of this section:

1. "Alcohol-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;

2. "Domestic abuse" has the same meaning as such term is defined in Section 60.1 of Title 22 of the Oklahoma Statutes;

3. "Drug-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and

4. "Supervised visitation" means a program established pursuant to Section 5 [43 O.S. § 110.1a] of this act.

Added by Laws 1991, c. 113, § 2, eff. Sept. 1, 1991. Amended by Laws 2002, c. 445, § 19, eff. Nov. 1, 2002; Laws 2003, c. 3, § 25, emerg. eff. Mar. 19, 2003 (multiple version repealed by Laws 2003, c. 3, § 26, emerg. eff. Mar. 19, 2003); Laws 2004, c. 415, § 4, emerg. eff. June 4, 2004.

§ 112.2A. Right to Change Child's Residence.

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

R.L. 1910 § 4382. Renumbered from 10 O.S. § 19 by Laws 2009, c. 233., § 202, emerg. eff. May 21, 2009.

§ 112.3. Relocation Notification of Children.

A. As used in this section:

1. "Change of residence address" means a change in the primary residence of an adult;

2. "Child" means a child under the age of eighteen (18) who has not been judicially emancipated;

3. "Person entitled to custody of or visitation with a child" means a person so entitled by virtue of a court order or by an express agreement that is subject to court enforcement;

4. "Principal residence of a child" means:

a. the location designated by a court to be the primary residence of the child,

b. in the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside, or

c. in the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child's parents, a parent, or a person acting as parent for at least six (6) consecutive months and, in the case of a child less than six (6) months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period; and

5. "Relocation" means a change in the principal residence of a child over seventy-five (75) miles from the child's principal residence for a period of sixty (60) days or more, but does not include a temporary absence from the principal residence.

B.1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person entitled to visitation with the child of a proposed relocation of the child's principal residence as required by this section.

2. Except as otherwise provided by this section, an adult entitled to visitation with a child shall notify every other person entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult as required by this section.

C.1. Except as provided by this section, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult must be given:

a. by mail to the last-known address of the person to be notified, and

b. no later than:

(1) the sixtieth day before the date of the intended move or proposed relocation, or

(2) the tenth day after the date that the person knows the information required to be furnished pursuant to this subsection, if the person did not know and could not reasonably have known the information in sufficient time to comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

2. Except as provided by this section, the following information, if available, must be included with the notice of intended relocation of the child or change of primary residence of an adult:

a. the intended new residence, including the specific address, if known,

b. the mailing address, if not the same,

c. the home telephone number, if known,

d. the date of the intended move or proposed relocation,

e. a brief statement of the specific reasons for the proposed relocation of a child, if applicable,

f. a proposal for a revised schedule of visitation with the child, if any, and

g. a warning to the nonrelocating parent that an objection to the relocation must be made within thirty (30) days or the relocation will be permitted.

3. A person required to give notice of a proposed relocation or change of residence address under this subsection has a continuing duty to provide a change in or addition to the information required by this subsection as that information becomes known.

D. After the effective date of this act [Laws 2002, c. 400, eff. Nov. 1. 2002], an order issued by a court directed to a person entitled to custody of or visitation with a child shall include the following or substantially similar terms:

"You, as a party in this action, are ordered to notify every other party to this action in writing of a proposed relocation of the child, change of your primary residence address, and the following information:

1. The intended new residence, including the specific address, if known;

2. The mailing address, if not the same;

3. The home telephone number, if known;

4. The date of the intended move or proposed relocation;

5. A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and

6. A proposal for a revised schedule of visitation with the child, if any.

You are further ordered to give written notice of the proposed relocation or change of residence address on or before the sixtieth day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient time to provide a sixty-day notice, you are ordered to give written notice of the change on or before the tenth day after the date that you know of the change.

Your obligation to furnish this information to every other party continues as long as you, or any other person, by virtue of this order, are entitled to custody of or visitation with a child covered by this order.

Your failure to obey the order of this court to provide every other party with notice of information regarding the proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt of court.

In addition, your failure to notify of a relocation of the child may be taken into account in a modification of custody of, visitation with, possession of or access to the child. Reasonable costs and attorney fees also may be assessed against you if you fail to give the required notice.

If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of notice of the intent of the other party to relocate the residence of the child, relocation is authorized."

E.1. On a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or change of residence of an adult, the court may order that:

a. the specific residence address and telephone number of the child or of the adult and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure,

b. the notice requirements provided by this article be waived to the extent necessary to protect confidentiality and the health, safety or liberty of a person or child, and

c. any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

2. If appropriate, the court may conduct an ex parte hearing pursuant to this subsection.

F.1. The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

a. a factor in making its determination regarding the relocation of a child,

b. a factor in determining whether custody or visitation should be modified,

c. a basis for ordering the return of the child if the relocation has taken place without notice, and

d. sufficient cause to order the person seeking to relocate the child to pay reasonable expenses and attorney fees incurred by the person objecting to the relocation.

2. In addition to the sanctions provided by this subsection, the court may make a finding of contempt if a party violates the notice requirement required by this section and may impose the sanctions authorized for contempt of a court order.

G.1. The person entitled to custody of a child may relocate the principal residence of a child after providing notice as provided by this section unless a parent entitled to notice files a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of the notice.

2. A parent entitled by court order or written agreement to visitation with a child may file a proceeding objecting to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

3. If relocation of the child is proposed, a nonparent entitled by court order or written agreement to visitation with a child may file a proceeding to obtain a revised schedule of visitation, but may not object to the proposed relocation or seek a temporary or permanent order to prevent the relocation.

4. A proceeding filed pursuant to this subsection must be filed within thirty (30) days of receipt of notice of a proposed relocation.

H.1. The court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the court finds:

a. the required notice of a proposed relocation of a child as provided by this section was not provided in a timely manner and the parties have not presented an agreed-upon revised schedule for visitation with the child for the court's approval,

b. the child already has been relocated without notice, agreement of the parties, or court approval, or

c. from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will not approve the relocation of the primary residence of the child.

2. The court may grant a temporary order permitting the relocation of the child pending final hearing if the court:

a. finds that the required notice of a proposed relocation of a child as provided by this section was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child, and

b. finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child.

I. A proposed relocation of a child may be a factor in considering a change of custody.

J.1. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

a. the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life,

b. the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child,

c. the feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties,

d. the child's preference, taking into consideration the age and maturity of the child,

e. whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating person,

f. whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity,

g. the reasons of each person for seeking or opposing the relocation, and

h. any other factor affecting the best interest of the child.

2. The court may not:

a. give undue weight to the temporary relocation as a factor in reaching its final decision, if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued, or

b. consider whether the person seeking relocation of the child has declared that he or she will not relocate if relocation of the child is denied.

K. The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the nonrelocating person to show that the proposed relocation is not in the best interest of the child.

L.1. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing a relocation of the child or objecting to a proposed relocation of a child if it determines that the proposal was made or the objection was filed:

a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,

b. without being warranted by existing law or was based on frivolous argument, or

c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N.1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

a. after the effective date of this act [Laws 2002, c. 400, eff. Nov. 1. 2002], and

b. before the effective date of this act, if the existing custody order or enforceable agreement does not expressly govern the relocation of the child or there is a change in the primary residence address of an adult affected by the order.

2. To the extent that a provision of this section conflicts with an existing custody order or enforceable agreement, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult.

Added by Laws 2002, c. 400, § 8, eff. Nov 1, 2002. Amended by Laws 2008, c. 28, § 1, eff. Nov. 1, 2008.

§ 112.4. Stepparent's Support of Spouse's Children From Prior Marriage.

A stepparent is not required to maintain his or her spouse's children from a prior relationship.

R.L. 1910, § 4378. Amended by Laws 2009, c. 233, § 1, emerg. eff. May 21, 2009. Renumbered from 10 O.S. § 15 by Laws 2009, c. 233, § 200, emerg. eff. May 21, 2009.

§ 112.5. Custody or Guardianship—Order of Preference—Death or Judicial Removal or Parent—Preference of Child—Presumptions Regarding Best Interests of Child.

A. Custody or guardianship of a child may be awarded to:

1. A parent or to both parents jointly;

2. A grandparent;

3. A person who was indicated by the wishes of a deceased parent;

4. A relative of either parent;

5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or

6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless a nonparent proves by clear and convincing evidence that:

1. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the commencement of the custody or guardianship proceeding, the parent has willfully failed, refused, or neglected to contribute to the support of the child:

a. in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to the financial ability of the parent to contribute to the support of the child if no provision for support is entered by a court of competent jurisdiction, or an order of modification subsequent thereto.

For purposes of this paragraph, incidental or token financial contributions shall not be considered in establishing whether a parent has satisfied his or her obligation under subparagraphs a and b of this paragraph; or

2. a. the child has been left in the physical custody of a nonparent by a parent or parents of the child for one (1) year or more, excluding parents on active duty in the military, and

b. the parent or parents have not maintained regular visitation or communication with the child.

For purposes of this paragraph, incidental or token visits or communications shall not be considered in determining whether a parent or parents have regularly maintained visitation or communication.

C. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless the court finds that the parent is affirmatively unfit. There shall be a rebuttable presumption that a parent is affirmatively unfit if the parent:

1. Is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, except as provided in subsection D of this section;

2. Has been convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

6. Is residing with a person who has been convicted of a crime listed in Section 843.5 of Title 21 or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

D. In applying subsection A of this section, a court shall not award custody or guardianship of a child to any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole in a court in any state of any of the following crimes:

1. Sexual abuse or sexual exploitation of a child, Section 843.5 of Title 21 of the Oklahoma Statutes;

2. Child endangerment, if the offense involved sexual abuse of a child, Section 852.1 of Title 21 of the Oklahoma Statutes;

3. Kidnapping, if the offense involved sexual abuse or sexual exploitation of a child, Section 741 of Title 21 of the Oklahoma Statutes;

4. Incest, Section 885 of Title 21 of the Oklahoma Statutes;

5. Forcible sodomy of a child, Section 888 of Title 21 of the Oklahoma Statutes;

6. Child stealing, if the offense involved sexual abuse or sexual exploitation, Section 891 of Title 21 of the Oklahoma Statutes;

7. Procuring minors for participation in child pornography, Section 1021.2 of Title 21 of the Oklahoma Statutes;

8. Consent to participation of minors in child pornography, Section 1021.3 of Title 21 of the Oklahoma Statutes;

9. Facilitating, encouraging, offering or soliciting sexual conduct with a minor by use of technology, Section 1040.13a of Title 21 of the Oklahoma Statutes;

10. Distributing child pornography, Section 1040.13 of Title 21 of the Oklahoma Statutes;

11. Possession, purchase or procurement of child pornography, Section 1024.2 of Title 21 of the Oklahoma Statutes;

12. Aggravated possession of child pornography, Section 1040.12a of Title 21 of the Oklahoma Statutes;

13. Procuring a child under eighteen (18) years of age for prostitution, Section 1087 of Title 21 of the Oklahoma Statutes;

14. Inducing, keeping, detaining or restraining a child under eighteen (18) years of age for prostitution, Section 1088 of Title 21 of the Oklahoma Statutes;

15. First degree rape, Section 1114 of Title 21 of the Oklahoma Statutes;

16. Lewd or indecent proposals or acts to a child under sixteen (16) years of age, Section 1123 of Title 21 of the Oklahoma Statutes; or

17. Solicitation of minors in any crime provided in subsection B of Section 1021 of Title 21 of the Oklahoma Statutes.

E. Subject to subsection F of this section, a custody determination made in accordance with subsections B and C of this section shall not be modified unless the person seeking the modification proves that:

1. Since the making of the order sought to be modified, there has been a permanent, material, and substantial change of conditions that directly affects the best interests of the child; and

2. That as a result of such change of circumstances, the child would be substantially better off with regard to its temporal, mental, and moral welfare if custody were modified.

F. If the custody determination made in accordance with subsections B and C of this section indicates that custody is temporary, the determination may be modified upon a showing that the conditions which led to the custody or guardianship determination no longer exist.

Added by Laws 1983, c. 269, § 2, operative July 1, 1983. Amended by Laws 1988, c. 238, § 5, emerg. eff. June 24, 1988; Laws 1991, c. 113, § 1, eff. Sept. 1, 1991; Laws 1997, c. 386, § 1, emerg. eff. June 10, 1997; Laws 2001, c. 141, § 1, emerg. eff. April 30, 2001; Laws 2002, c. 445, § 1, eff. Nov. 1, 2002; Laws 2003, c. 3, § 3, emerg. eff. March 19, 2003 (multiple version repealed by Laws 2003, c. 3,§ 4, emerg. eff. March 19, 2003); Laws 2004, c. 415, § 2, emerg. eff. June 4, 2004; Laws 2007, c. 94, § 1, eff. Nov. 1, 2007; Laws 2009, c. 233, § 2, emerg. eff. May 21, 2009. Renumbered from 19 O.S. § 21.1 by Laws 2009, c. 233, § 204, emerg. eff. May 21, 2009; Laws 2014, c. 357, § 1, eff. Nov. 1, 2014.

§ 112.6. Payment of Victim's Attorney Fees in Dissolution of Marriage of Custody Proceedings.

In a dissolution of marriage or separate maintenance or custody proceeding, a victim of domestic violence or stalking shall be entitled to reasonable attorney fees and costs after the filing of a petition, upon application and a showing by a preponderance of evidence that the party is currently being stalked or has been stalked or is the victim of domestic abuse. The court shall order that the attorney fees and costs of the victimized party for the proceeding be substantially paid for by the abusing party prior to and after the entry of a final order.

Added by Laws 2009, c. 307, § 5, eff. Nov. 1, 2009.

§ 112.7. Military Deployment as Evidence of Change of Circumstances.

A military deployment shall not be used as evidence of a substantial, material and permanent change of circumstances to warrant a permanent modification of custody.

Added by Laws 2011, c. 354, § 2, emerg. eff. May 26, 2011.

§ 113. Preference of Child Considered in Custody or Visitation Actions.

A. In any action or proceeding in which a court must determine custody or limits to periods of visitation, the child may express a preference as to which of the parents the child wishes to have custody or limits to or periods of visitation.

B. The court shall first determine whether the best interest of the child will be served by allowing the child to express a preference as to which parent should have custody or limits to or periods of with either parent. If the court so finds, then the child may express such preference or give other testimony.

C. There shall be a rebuttable presumption that a child who is twelve (12) years of age or older is of a sufficient age to form an intelligent preference.

D. If the child is of a sufficient age to form an intelligent preference, the court shall consider the expression of preference or other testimony of the child in determining custody or limits to or periods of visitation. Interviewing the child does not diminish the discretion of the court in determining the best interest of the child. The court shall not be bound by the child's choice or wishes and shall take all factors into consideration in awarding custody or limits of or period of visitation.

E. If the child is allowed to express a preference or give testimony, the court may conduct a private interview with the child in chambers without the parents, attorneys or other parties present. However, if the court has appointed a guardian ad litem for the child, the guardian ad litem shall be present with the child in chambers. The parents, attorneys or other parties may provide the court with questions or topics for the court to consider in its interview of the child; however, the court shall not be bound to ask any question presented or explore any topic requested by a parent, attorney or other party.

F. At the request of either party, a record shall be made of any child interview conducted in chambers. If the proceeding is transcribed, the parties shall be entitled to access to the transcript only if a parent or the parents appeal the custody or visitation determination.

Added by Laws 1975, c. 183, § 1. Amended by Laws 1986, c. 196, § 1, eff. Nov. 1, 1986. Renumbered from 12 O.S. § 1277.1 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 2002, c. 373, § 1, emerg. eff. June 4, 2002; Laws 2011, c. 229, § 1, eff Nov. 1, 2011.

§ 114. Interest on Delinquent Child Support and Suit Monies Payment.

Court-ordered past-due child support payments, court-ordered payments of suit monies and judgments for support pursuant to Section 83 of Title 10 of the Oklahoma Statutes and Sections 238.1 and 238.6B of Title 56 of the Oklahoma Statutes shall

draw interest at the rate of two percent (2%) per year. Past-due child support payments accruing after the establishment of the current support order shall draw interest from the date they become delinquent. Lump-sum judgments pursuant to Titles 10 and 56 of the Oklahoma Statutes for support owed prior to the establishment of current support shall draw interest from the first day of the month after the lump-sum judgment is entered. The interest shall be collected in the same manner as the payments upon which the interest accrues.

Added by Laws 1977, c. 15, § 1. Renumbered from Title 12, § 1277.3 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 356, § 13, eff. Sept. 1, 1994; Laws 2012, c. 253, § 2, eff. Nov. 1, 2012; Laws 2016, c. 289, § 1, eff. Nov. 1, 2016.

§ 115. Child Support Orders to Include Provision for Income Assignment—Voluntary Income Assignment.

A. Every order providing for the support of a minor child or a modification of such order, whether issued by a district court or an administrative court, shall contain an immediate income assignment provision if child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, regardless of whether support payments by such parent are in arrears.

B. In all child support cases arising out of an action for divorce, paternity or other proceeding in which services are not being provided under the state child support plan, the district court shall order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. One of the parties demonstrates and the district court finds there is good cause not to require immediate income withholding; or

2. A written agreement is reached between the parties which provides for an alternative arrangement.

C. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the district or administrative court and shall take effect after service on the payor, as required by Section 1171.3 of Title 12 of the Oklahoma Statutes.

Added by Laws 1985, c. 297, § 17, operative Oct. 1, 1985. Renumbered from Title 12, § 1277.4 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 365, § 11, eff. Sept. 1, 1994.; Laws 1997, c. 402, § 12, emerg. eff. July 1, 1997.

§ 116. Security or Bond for Payment of Child Support.

The district or administrative court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the court to ensure the payment of child support.

Added by Laws 1985, c. 297, § 18, operative Oct. 1, 1985. Renumbered from Title 12, § 1277.5 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 365, § 12, eff. Sept. 1, 1994.

§ 117. Modification, Suspension or Termination of Income Assignment Order.

A. Except as otherwise provided by subsection B of this section, the person obligated to pay support or the person entitled to the support may petition the district or administrative court to:

1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

B. If the income assignment has been initiated by the Department of Human Services, the district court shall notify the Department of Human Services prior to the termination, modification, or suspension of the income assignment order.

Added by Laws 1985, c. 297, § 19, operative Oct. 1, 1985. Renumbered from Title 12, § 1277.6 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 365, § 13, eff. Sept. 1, 1994.

§ 118. . Child Support Guidelines.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

B. The Schedule of Basic Child Support Obligations assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation an average amount to cover these expenses for various levels of the parents' combined income and number of children, comprised of housing, food, transportation, basic public educational expenses, clothing, and entertainment.

Amended by Laws 2008, c. 407, § 1, eff. July 1, 2009.

§ 118A. Definitions.

As used in Section 118 et seq. of this title:

1. "Adjusted Gross Income" (AGI) means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

a. adding to the gross income of the parent any Social Security benefit paid to the child on the account of the parent,

b. deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made,

c. deducting from gross income any deductions as set forth for other prior-born or after-born children for whom the parent is legally responsible and is actually supporting, pursuant to Section 118C of this title, and

d. deducting the amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents;

2. "Base child support obligation" means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses;

3. "Current monthly child support obligation" means the base child support obligation and the proportional share of any health care coverage, cash medical support and annualized child care costs;

4. "Custodial person" means a parent or third-party caretaker who has physical custody of a child more than one hundred eighty-two (182) days per year;

5. "Incarceration" means an obligor is in custody on a full-time basis in a local, state or federal correctional facility. Incarceration shall not include probation, parole, work release or any other detention alternative program that allows the obligor to be gainfully employed;

6. "Noncustodial parent" means a parent who has physical custody of a child one hundred eighty-two (182) days per year or less;

7. "Obligor" means the person who is required to make payments under an order for support;

8. "Obligee" or "person entitled" means:

a. a person to whom a support debt or support obligation is owed,

b. the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or

c. a person designated in a support order or as otherwise specified by the court;

9. "Other contributions" means recurring monthly medical expenses and visitation transportation costs that are not included in the current monthly child support obligation;

10. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child;

11. "Parent" means an individual who has a parent-child relationship under the Uniform Parentage Act;

12. "Parenting time adjustment" means an adjustment to the base child support amount based upon parenting time; and

13. "Payor" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.

Added by Laws 2008, c. 407, § 2, eff. July 1, 2009. Amended by Laws 2016, c. 289, § 2, eff. Nov. 1, 2016; Laws 2021, c. 286, § 1, eff. Nov. 1, 2021.

§ 118B. Gross Income, Inclusions and Exclusions—Imputed Income—Income from Self-Employment—Social Security Title II Benefits.

A. As used in Section 118 et seq. of this title:

1. "Gross income" includes earned and passive income from any source, except as excluded in this section;

2. "Earned income" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

a. salaries,

b. wages,

c. tips,

d. commissions,

e. bonuses,

f. severance pay, and

g. military pay, including hostile fire or imminent danger pay, combat pay, family separation pay, or hardship duty location pay; and

3. "Passive income" is defined as all other income and includes, but is not limited to, income from:
a. dividends,
b. pensions,
c. rent,
d. interest income,
e. trust income,
f. support alimony being received from someone other than the other parent in this case,
g. annuities,
h. social security benefits,
i. workers' compensation benefits,
j. unemployment insurance benefits,
k. disability insurance benefits,
l. gifts,
m. prizes,
n. gambling winnings,
o. lottery winnings, and
p. royalties.

B. Income specifically excluded is:
1. Actual child support received for children not before the court;
2. Adoption Assistance subsidy paid by the Department of Human Services;
3. Benefits received from means-tested public assistance programs including, but not limited to:
a. Temporary Assistance for Needy Families (TANF),
b. Supplemental Security Income (SSI),
c. Food Stamps, and
d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;
4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and
5. Payments received by the parent for the care of foster children.

C. Determining Gross Income.
1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:
a. all current monthly gross income described in this section, plus such overtime and supplemental income as the court deems appropriate,
b. the average of the gross monthly income for the time actually employed during the previous year, or
c. gross monthly income imputed as set forth in paragraph 3 of this subsection.

2. If a parent is permanently physically or mentally incapacitated or incarcerated for more than one hundred eighty (180) consecutive days, the child support obligation shall be computed on the basis of current monthly gross income. For purposes of computing gross income of the parents in such circumstances, gross income shall not be imputed as set forth in paragraph 3 of this subsection unless the obligor's incarceration is a result of indirect contempt of court for failure to pay child support, the crime of omission to provide child support or for any offense for which the obligee's dependent child or the obligee was a victim.

3. Imputed income. If evidence of current or average income of a parent is not available or not the most equitable, the court may consider the following factors to impute the parent's monthly gross income:
a. the average wages and hours worked in the parent's particular industry and geographic area and the parent's education, training, work experience and ability to work,
b. wages the parent could earn consistent with the minimum wage rate of not less than twenty-five (25) hours per week,
c. whether a parent has been determined by the court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children or other voluntary action to reduce a parent's income, the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,
d. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

e. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

f. any additional factors deemed relevant to the particular circumstances of the case.

D. Self-employment income.

1. Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. The district or administrative court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

E. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to, per diem or other allowance, company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

F. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit.

If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4.a. Calculation of child support as provided in subsection F of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The court may determine if, under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.

c. The noncustodial parent shall not receive credit for any social security benefits paid directly to the child.

d. Any credit granted by the court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

G. Veterans disability compensation benefits received by a child shall be treated in the same manner as Social Security Title II benefits as provided in subsection F of this section.

Added by Laws 2008, c. 407, § 3, eff. July 1, 2009. Amended by Laws 2021, c. 286, § 2, eff. Nov. 1, 2021.

§ 118C. Deductions for Other Children—Children for Whom Support is Being Determined—Parent-Child Relationship Not Before the Court—Calculation of Deduction.

A. Deductions for other children of either parent who are qualified under this section may be considered by the court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;

2. Who was born prior to or after the child in the case under consideration;

3. Whom the parent is actually supporting; and

4. Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the court finds a parent has a parent-child relationship with a child not before the court, the court may grant a deduction for that child as set forth in subsection D of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

(1) physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and

(2) evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office or from the Internet child support payment history of the Department of Human Services.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified other prior-born or after-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet, the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule. The deduction worksheet shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule.

Added by Laws 2008, c. 407, § 4, eff. July 1, 2009. Amended by Laws 2016, c. 289, § 4, eff. Nov. 1, 2016.

§ 118D. Child Support Obligation.

A. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section 119 of Title 43 of the Oklahoma Statutes shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

C. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

D.1. In cases of split physical custody, where each parent is awarded physical custody of at least one of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement.

2. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation.

E. Child support shall be computed as set forth in subsections A through D of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

G. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income, so long as the payment of such expenses does not significantly reduce the ability of the custodial parent to provide for the basic needs of the child.

H. The social security numbers of both parents and the children who are the subject of a paternity or child support order shall be included in the support order summary form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

I. A completed support order summary form shall be presented to the judge with all paternity and child support orders where the Department of Human Services is not a necessary party pursuant to Section 112 of Title 43 of the Oklahoma Statutes. No such order shall be signed by the judge without presentation of the form.

Added by Laws 2008, c. 407, § 5, eff. July 1, 2009.

§ 118E. Parenting Time Adjustments.

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve-month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by a factor determined by the number of overnights granted to the noncustodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the noncustodial parent is granted:

a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2),

b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75), or

c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).

3. To determine the adjusted child support obligation of each parent, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

4.a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).

b. The share of the adjusted combined child support obligation for each parent shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

c. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars ($0.00).

5. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights. In no event shall the amount of child support ordered to be paid by a parent exceed the amount which would otherwise be ordered if the parent was not eligible for the parenting time adjustment.

E.1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The court may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve (12) months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

Added by Laws 2008, c. 407, § 6, eff. July 1, 2009. Amended by Laws 2015, c. 238, § 1, eff. Nov. 1, 2015.

§ 118F. Medical Support Orders.

A. The court shall enter a medical support order for health care coverage in any case in which an ongoing child support order is entered or modified. Medical support, for the purpose of this section, is defined as health care coverage, cash medical support, or a combination of both. For the purposes of this section:

1. "Health care coverage" includes:
   a. fee for service,
   b. health maintenance organization,
   c. preferred provider organization,
   d. other types of private health insurance,
   e. government medical assistance program or health plan,
   f. Indian Health Services, and
   g. Defense Eligibility Enrollment Reporting System (DEERS).
2. "Cash medical support" means:
   a. an amount ordered to be paid toward the cost of health care coverage provided by a public entity, parent, or by a person other than the parents, or
   b. fixed periodic payments for ongoing medical costs.

B. In entering a temporary order, the court shall order that any health care coverage in effect for the child continue in effect pending the entering of a final order, unless the court finds that the existing health care coverage is not reasonable in cost or is not accessible as defined in subsection D of this section. If there is no health care coverage in effect for the child or if the health care coverage in effect is not available at a reasonable cost or is not accessible, the court shall order health care coverage for the child as provided in this section, unless the court makes a written finding that good cause exists not to enter a temporary medical support order.

C. On entering a final order, the court shall:

1. Make specific orders with respect to the manner in which health care coverage is to be provided for the child; and
2. Require the parent ordered to provide health care coverage for the child as provided under this section to produce evidence to the court's satisfaction that the parent has applied for or secured health care coverage or has otherwise taken necessary action to provide for health care coverage for the child, as ordered by the court.

D. When the court enters a medical support order, the medical support order shall be reasonable in cost and accessible.

1. "Reasonable in cost" means that the pro rata share of the actual premium cost for the child or children paid by the insured does not exceed five percent (5%) of the gross income of the responsible parent. To calculate the actual premium cost of the health insurance, the court shall:
   a. deduct from the total insurance premium the cost of coverage for the parent and any other adults in the household,
   b. divide the remainder by the number of dependent children being covered, and
   c. multiply the amount per child by the number of children in the child support case under consideration.
2. "Accessible health care coverage" means that:
   a. there are available providers appropriate to meet the primary individual health care needs of the children no more than sixty (60) miles one way from the primary residence of the children.
   b. If a parent has available health care coverage which includes an option that would be accessible to the child, but the parent has not currently enrolled in that option, the court may require the parent to change existing coverage to an option that is accessible to the child.
3. If the parties agree or the court finds good cause exists, the court may order health care coverage in excess of the five percent (5%) cost standard or the sixty-mile distance standard.

E. The court shall consider the cost and quality of health care coverage available to the parties. If both parents have health care coverage available, the court shall give priority to the preference of the custodial person, unless it is not in the best interest of the child.

F. Cash medical support.

1. The responsible parent shall be ordered to pay cash medical support when:

a. there is no health care plan available for the child,

b. the only health care plan available for the child is a governmental medical assistance program or health plan, or

c. a party shows reasonable evidence of domestic violence or child abuse, such that an order for health care coverage is inappropriate and the disclosure of information could be harmful to a party, custodian, or child.

2. The cash medical support order shall not exceed the pro rata share of the actual monthly medical expenses paid for the child, or five percent (5%) of the gross monthly income of the obligor, whichever is less.

3.a. In determining the actual monthly medical costs for the child, the court shall determine:

(1) for children who are participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Oklahoma Health Care Authority determining the rates established for the cost of providing medical care through a government medical assistance program or health plan, or

(2) for children who are not participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Department of Human Services determining the average monthly cost of health care for uninsured children.

b. The court may also consider:

(1) proof of past medical expenses incurred by either parent for the child,

(2) the current state of the health of the child, and

(3) any medical conditions of the child that would result in an increased monthly medical cost.

G. An order requiring the payment of cash medical support under subsection F of this section shall allow the obligor to terminate payment of the cash medical support if:

1. Accessible health care coverage for the child becomes available to the obligor at a reasonable cost; and

2. The obligor:

a. enrolls the child in the insurance plan, and

b. provides the obligee and, in a Title IV-D case, the Title IV-D agency, the information required under paragraph 2 of subsection C of this section.

In Title IV-D cases, termination and reinstatement of cash medical support shall be according to rules promulgated by the Department of Human Services.

H.1. The actual health care premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation.

2. If the obligor pays the health care premium, the obligor shall receive credit against the base child support obligation for the allocated share of the health care premium for which the obligee is responsible.

3. If the obligee pays the health care premium, the obligor shall pay the allocated share of the health care premium to the obligee in addition to the base child support obligation.

4. The parent providing the health care coverage shall furnish to the other parent and to the Child Support Enforcement Division of the Department of Human Services, if services are being provided pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. Section 601 et seq., with timely written documentation of any change in the amount of the health care cost premium, carrier, or benefits within thirty (30) days of the date of the change. Upon receiving timely notification of the change of cost, the other parent is responsible for his or her percentage share of the changed cost of the health care coverage.

5. If the court finds that the obligor has underpaid child support due to changes in the cost of health care coverage, the amount of underpayment may be established as a judgment by the court and enforced in the same manner as any other delinquent child support judgment. If the court finds that the obligor has overpaid due to changes in health care coverage cost, the overpayment shall be satisfied:

a. by offset against any past-due child support owed to the obligee, or

b. by adjustment to the future child support amount over a thirty-six-month period, unless the court finds that a thirty-six month period is not in the best interest of the child.

I. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not paid or reimbursed by insurance or included in a cash medical support order pursuant to subsection F of this section shall be allocated in the same proportion as the adjusted gross income of the parents, unless the parents agree to a different allocation of expenses and the court finds such allocation is in the best interest of the child. If reimbursement is required for a health care expense not included in the current monthly child support obligation, the parent who incurs the expense shall provide the other parent with proof of the expense within forty-five (45) days of receiving the Explanation of Benefits from the insurance provider or other proof of the expense if the expense is not covered by insurance. The parent responsible for reimbursement shall pay his or her portion of the expense within forty-five (45) days of receipt of documentation of the expense.

J. In addition to any other sanctions ordered by the court, a parent incurring uninsured dependent health expenses or increased insurance premiums may be denied the right to receive credit or reimbursement for the expense or increased premium if that parent fails to comply with subsections H and I of this section.

K. The parent desiring an adjustment to the ongoing child support order due to a change in the amount of dependent health insurance premium shall initiate a review of the order in accordance with Section 118I of this title.

Added by Laws 2008, c. 407, § 7, eff. July 1, 2009. Amended by Laws 2018, c. 87, § 1, eff. Nov. 1, 2018.

§ 118G. Actual Annualized Child Care Costs.

A. The district or administrative court shall determine the actual annualized child care expenses reasonably necessary to enable either or both parents to:

1. Be employed;

2. Seek employment; or

3. Attend school or training to enhance employment income.

B. When a parent is participating in the Department of Human Services child care subsidy program as provided under Section 230.50 of Title 56 of the Oklahoma Statutes, the Child Care Eligibility/Rates Schedule established by the Department shall be used. The actual child care costs incurred shall be the family share copayment amount indicated on the schedule which shall be allocated and paid monthly in the same proportion as base child support. The Department of Human Services shall promulgate rules, as necessary, to implement the provisions of this section.

C. The actual annualized child care costs incurred for the purposes authorized by this section shall be allocated and added to the base child support order, and shall be part of the final child support order.

D. The district or administrative court shall require the parent incurring child care expenses to notify the obligor within forty-five (45) days of any change in the amount of the child care costs that would affect the annualized child care amount as determined in the order.

E. A parent may be allowed to provide child care incurred during employment, employment search, or while the other parent is attending school or training if the court determines it would lead to a significant reduction in the actual annualized child care cost.

Added by Laws 2008, c. 407, § 8, eff. July 1, 2009. Amended by Laws 2021, c. 286, § 3, eff. Nov. 1, 2021.

§ 118H. Deviation from Child Support Guidelines.

A. No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the obligee in the case under consideration to maintain minimally adequate housing, food, and clothing for the children being supported by the order or to provide other basic necessities, as determined by the court.

B.1. The district or administrative court may deviate from the amount of child support indicated by the child support guidelines if the deviation is in the best interests of the child, and:

2.a. the amount of support so indicated is unjust or inappropriate under the circumstances,

b. the parties are represented by counsel and have agreed to a different disposition, or

c. one party is represented by counsel and the deviation benefits the unrepresented party.

C. If the district or administrative court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action. The findings of fact shall include:

1. The reasons the court deviated from the presumptive amount of child support that would have been paid pursuant to the guidelines,

2. The amount of child support that would have been required under the guidelines if the presumptive amount had not been rebutted, and

3. A finding by the court that states how, in its determination:

a. the best interests of the child who is subject to the support award determination are served by deviation from the presumptive guideline amount, and

b. application of the guidelines would be unjust or inappropriate in the particular case before the tribunal.

D. In instances of extreme economic hardship, deviation from the guidelines may be considered when the court finds the deviation is supported by the evidence and is not detrimental to the best interests of the child before the court.

E. If a parent is residing with a child with extraordinary medical needs not covered by insurance or other special needs, the court must consider all resources available for meeting such needs, including those available from public agencies and other responsible adults.

F. In cases where the child is in the legal custody of the Department of Human Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court may consider a deviation from the presumptive child support order if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent, and the parents need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

G. Extraordinary educational expenses.

1. Extraordinary educational expenses may be added to the presumptive child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, books, fees, and other reasonable and necessary expenses associated with special needs education for a child with a disability under the Individuals with Disabilities Educational Act that are appropriate to the financial abilities of the parent.

2. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.

H. Special expenses.

1. Special expenses incurred for child rearing which can be quantified may be added to the child support obligation as a deviation from the Current Monthly Child Support Obligation. Such expenses include, but are not limited to, private school tuition, camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child, but that are not otherwise required to be used in calculating the child support order as are health insurance premiums and work-related child care costs.

2. Some factors the court may consider in determining whether to deviate for such extraordinary expenses include: a history of expenditure for such activities, the financial ability of the parents to provide such activities, and that the child has exhibited an extraordinary aptitude for the activity.

3. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.

Added by Laws 2008, c. 407, § 9, eff. July 1, 2009.

§ 118I. Child Support Modification.

A.1. Child support orders may be modified upon a material change in circumstances which includes, but is not limited to, an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, incarceration of a parent for a time period of more than one hundred eighty (180) consecutive days, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order. The court shall apply the principles of equity in modifying any child support order due to changes in the circumstances of either party as it relates to the best interests of the children.

2. Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.

3. An order of modification shall be effective on the first day of the month following the date the motion to modify was filed, unless the parties agree to another date or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

B.1. A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

2. All final orders shall state whether past-due support and interest have accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past-due amount shall not bar collection of that amount after entry of the final support order.

C. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

D.1. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.

2. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

3. Requested information may include verification of income, proof and cost of medical insurance of the children, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.

4. Exchange of requested information may occur once a year or less often, by regular mail.

5.a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child support computation form provided for in Section 120 of this title.

b. The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. Either court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines or, if agreed to by the parties, the court may approve a deviation from the child support guidelines as provided in subsection B of Section 118H of this title. If the court approves the modification forms, they shall be filed with the court.

E. After November 1, 2021, there shall be a rebuttable presumption that an obligor who is incarcerated for a period of one hundred eighty (180) or more consecutive days is unable to pay child support.

1. The obligor's child support obligation shall be abated without court action effective the first day of the month following the date of entry into the correctional facility or jail and shall not accrue for the duration of the incarceration unless the presumption is rebutted by a showing of means to pay as provided in Section 118B of this title.

2. Upon release from incarceration, the monthly child support obligation shall revert to the pre-incarceration order amount beginning the first day of the month following a lapse of ninety (90) calendar days after release from incarceration.

3. The abatement of a monthly support obligation under this subsection shall not affect any past-due support that has accrued prior to the abatement of the obligation.

4. If any of the crimes for which the obligor is incarcerated are a result of indirect contempt of court for failure to pay child support, the crime of omission to provide child support or for any offense for which the obligee's dependent child or the obligee was a victim, the abatement shall not be presumed and the child support obligation shall continue to accrue.

Added by Laws 2008, c. 407, § 10, eff. July 1, 2009. Amended by Laws 2016, c. 289, § 4, eff. Nov. 1, 2016; Laws 2021, c. 286, § 4, eff. Nov. 1, 2021.

§ 118.1. Department to Review Child Support Orders—Time and Notice—Disclosure of Financial Status.

A. In all cases in which child support services are being provided under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes, the Department shall conduct reviews of child support orders pursuant to rules promulgated by the Department. If the Department conducts a review and determines that the child support obligation is not in accordance with child support guidelines, the Department shall file a notice of review and intent to modify the child support order, and it shall be served upon the parties in accordance with law. The notice shall be set for hearing before a district or administrative court. The district or administrative court shall review the child support obligation to determine its compliance with the child support guidelines and order modification if appropriate. An order of modification shall be effective upon the date the notice of review and intent to modify the child support order was filed.

B. In any proceeding to establish or modify a support order, each party shall completely disclose his or her financial status.

Added by Laws 1989, c. 362, § 3, eff. Nov. 1, 1989. Renumbered from Title 12, § 1277.7A by Laws 1990, c. 171, § 3, emerg. eff. July 1, 1990, and Laws 1990, c. 188, § 2, eff. Sept. 1, 1990. Amended by Laws 1992, c. 153, § 1, emerg. eff. April 30, 1992; Laws 1994, c. 356, § 24, eff. Sept. 1, 1994.; Laws 1997, c. 402, § 14, emerg. eff. July 1, 1997; Laws 2006, c. 127, § 3, eff. Nov. 1, 2006.

§ 118.2. Employer's Duties Regarding Court or Administrative Order for Health Coverage.

A. When a parent is required by a court or administrative order to provide health coverage which is available through an employer doing business in this state, the employer is required:

1. To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

2. To enroll the child under family coverage and to deduct the employee's cost of the coverage from the employee's wages. The enrollment shall be made upon application to the employer by the child's custodial person, by the state agency administering the Medicaid program or the state agency administering the child support program under Title IV-D of the Social Security Act;

3. Not to disenroll or eliminate coverage of a child unless the employer is provided satisfactory written evidence that:

a. the court order is no longer in effect,

b. the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment, or

c. the employer has eliminated family health coverage for all of its employees;

4. Upon request, to provide complete information to the custodial person, the state agency administering the Medicaid program or the state agency administering the child support program under Title IV-D of the Social Security Act regarding any insurance benefits to which the child is entitled, and any forms, publications, or documents necessary to apply for or to utilize the benefits;

5. Permit the custodial person, the designated agency administering the State Medicaid Program, or the provider with approval, to submit claims for covered services without the approval of the noncustodial parent; and

6. Make payments on claims submitted in accordance with paragraph 5 of this subsection directly to the custodial person, the designated agency administering the State Medicaid Program, or the provider.

B. If child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the Child Support Enforcement Division shall notify the parent's employer to enroll the child in health care coverage available under the employer's plan by sending the employer a National Medical Support Notice issued pursuant to Section 466(a)(19) of the Social Security Act, and Section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974. The employer shall comply with the National Medical Support Notice. The insurer may be fined up to Two Hundred Dollars ($200.00) per month per child for each failure to comply with the requirements of the National Medical

Support Notice. Fines collected shall be remitted to the Child Support Revenue Enhancement Fund created pursuant to Section 225 of Title 56 of the Oklahoma Statutes.

G. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Added by Laws 1994, c. 356, § 15, eff. Sept. 1, 1994. Amended by Laws 1998, c. 323, § 9, eff. October 1, 1998; Laws 2001, c. 407, § 6, emerg. eff. July 1, 2001; Laws 2003, c. 19, § 2, eff. Nov. 1, 2003; Laws 2004, c. 393, § 4, emerg. eff. June 3, 2004.

§ 118.3. Agreement to Obtain Certain Necessary Information.

On or after April 15th of each year, the obligor or obligee may make a written request to the other party for the other party's previous tax year W-2 forms, 1099 form, or other wage and tax information. This request shall be served upon the other party in the same manner prescribed for the service of summons in a civil action, and the original request shall be filed in the court file. The party receiving such a written request shall provide the requesting party a copy of the requested information by certified mail within ten (10) days of receiving the written request. If a motion to modify child support is subsequently filed by the requesting party, and it is shown to the court that the non-moving party failed to comply with this section, the court may award the moving party his or her attorneys fees and costs incurred as a result of the failure to provide requested information.

Added by Laws 1997, c. 403, § 12, emerg. eff. July 1, 1997.

§ 118.4. Assignment of Child Support.

A. Child support or any claim thereto shall not be directly or indirectly assigned, except as provided in subsection B of this section and in subsection C of Section 237 of Title 56 of the Oklahoma Statutes. Any assignment of child support to the Department of Human Services shall have first priority over any prior or subsequent assignment.

B. Child support may be assigned to an attorney for the purpose of providing legal representation in child support proceedings. The assignment shall be consistent with the Oklahoma Rules of Professional Conduct and shall not exceed fifty percent (50%) of the net amount of the child support collected and remitted to the obligee.

Added by Laws 2003, c. 302, § 4, emerg. eff. May 29, 2003. Amended by Laws 2004, c. 407, § 1, emerg. eff. June 3, 2004.

§ 119. Child Support Guideline Schedule.

A. Child support shall be computed in accordance with the following Child Support Guideline Schedule:

SCHEDULE OF BASIC
CHILD SUPPORT OBLIGATIONS

If Combined Monthly Income Total Support Amount is equal to or above	One Child	Two Children	Three Children	Four Children	Five Children	Six Children or More
50	50	50	50	50	50	50
650	50	50	50	88	118	141
700	50	50	101	122	154	176
750	61	107	132	156	198	207
800	94	141	165	190	239	242
850	127	174	199	224	274	276
900	159	207	232	258	308	311
950	192	240	265	291	342	345
1,000	206	272	298	325	375	379
1,050	215	305	332	359	409	414
1,100	224	326	365	392	443	448
1,150	232	338	397	425	476	481
1,200	241	351	415	458	497	515
1,250	249	363	430	475	515	551
1,300	257	375	443	490	531	568
1,350	265	386	457	504	547	585
1,400	273	397	470	519	562	602
1,450	280	408	483	533	578	618
1,500	288	419	496	548	594	635
1,550	296	430	509	562	609	652
1,600	304	442	522	576	625	669

1,650	312	453	535	591	640	685
1,700	319	464	548	605	656	702
1,750	327	475	561	620	672	719
1,800	335	486	574	634	687	735
1,850	343	497	587	648	703	752
1,900	351	509	600	663	718	769
1,950	358	520	613	677	734	785
2,000	366	531	626	691	750	802
2,050	374	542	639	706	765	819
2,100	382	554	652	720	781	835
2,150	390	565	665	735	796	852
2,200	398	576	678	749	812	869
2,250	406	587	691	763	828	886
2,300	414	599	704	778	843	902
2,350	422	610	717	792	859	919
2,400	430	621	730	807	874	936
2,450	437	632	743	821	890	952
2,500	445	643	755	835	905	968
2,550	451	653	768	848	919	984
2,600	458	663	780	862	934	1,000
2,650	465	673	792	875	949	1,015
2,700	472	683	804	888	963	1,030
2,750	477	691	814	900	975	1,043
2,800	483	700	824	911	987	1,056
2,850	489	708	834	922	999	1,069
2,900	494	716	844	933	1,011	1,082
2,950	500	725	854	944	1,023	1,095
3,000	505	733	864	955	1,035	1,107
3,050	511	741	874	966	1,047	1,120
3,100	517	749	884	977	1,059	1,133
3,150	521	756	892	986	1,069	1,143
3,200	525	761	897	992	1,075	1,150
3,250	528	766	903	998	1,081	1,157
3,300	532	771	908	1,003	1,088	1,164
3,350	535	776	913	1,009	1,094	1,170
3,400	539	780	919	1,015	1,100	1,177
3,450	543	785	924	1,021	1,107	1,184
3,500	546	790	929	1,027	1,113	1,191
3,550	550	795	935	1,033	1,119	1,198
3,600	553	800	940	1,039	1,126	1,205
3,650	557	805	945	1,045	1,132	1,211
3,700	560	809	951	1,050	1,139	1,218
3,750	564	814	956	1,056	1,145	1,225
3,800	567	819	961	1,062	1,151	1,232
3,850	571	824	966	1,068	1,158	1,239
3,900	574	828	972	1,074	1,164	1,245
3,950	577	832	977	1,079	1,170	1,252
4,000	580	837	982	1,085	1,176	1,258
4,050	583	841	987	1,090	1,182	1,265
4,100	586	845	992	1,096	1,188	1,271
4,150	589	850	997	1,102	1,194	1,278
4,200	592	854	1,002	1,107	1,200	1,284
4,250	595	859	1,007	1,113	1,206	1,291
4,300	598	863	1,012	1,119	1,213	1,297
4,350	601	867	1,017	1,124	1,219	1,304
4,400	604	872	1,023	1,130	1,225	1,311
4,450	607	876	1,028	1,136	1,231	1,317

4,500	610	880	1,033	1,141	1,237	1,324
4,550	613	885	1,038	1,147	1,243	1,330
4,600	617	890	1,044	1,154	1,250	1,338
4,650	622	897	1,052	1,162	1,260	1,348
4,700	626	903	1,059	1,171	1,269	1,358
4,750	631	910	1,067	1,179	1,278	1,368
4,800	636	916	1,075	1,188	1,287	1,377
4,850	640	923	1,082	1,196	1,296	1,387
4,900	645	930	1,090	1,205	1,306	1,397
4,950	650	936	1,098	1,213	1,315	1,407
5,000	654	943	1,105	1,222	1,324	1,417
5,050	659	950	1,113	1,230	1,333	1,427
5,100	664	956	1,121	1,239	1,343	1,437
5,150	668	963	1,129	1,247	1,352	1,446
5,200	673	969	1,136	1,256	1,361	1,456
5,250	678	976	1,144	1,264	1,370	1,466
5,300	682	982	1,151	1,272	1,379	1,475
5,350	686	987	1,157	1,279	1,386	1,483
5,400	689	992	1,163	1,285	1,393	1,490
5,450	692	997	1,168	1,291	1,400	1,498
5,500	696	1,002	1,174	1,297	1,406	1,505
5,550	699	1,007	1,180	1,304	1,413	1,512
5,600	703	1,012	1,185	1,310	1,420	1,519
5,650	706	1,017	1,191	1,316	1,427	1,527
5,700	709	1,022	1,197	1,322	1,433	1,534
5,750	713	1,027	1,203	1,329	1,441	1,542
5,800	717	1,032	1,209	1,336	1,448	1,550
5,850	721	1,038	1,216	1,343	1,456	1,558
5,900	724	1,043	1,222	1,350	1,464	1,566
5,950	728	1,049	1,228	1,357	1,471	1,574
6,000	732	1,054	1,234	1,364	1,479	1,582
6,050	736	1,060	1,241	1,371	1,487	1,591
6,100	741	1,067	1,249	1,380	1,496	1,601
6,150	746	1,074	1,257	1,389	1,506	1,612
6,200	751	1,081	1,266	1,398	1,516	1,622
6,250	756	1,088	1,274	1,407	1,526	1,633
6,300	761	1,095	1,282	1,417	1,536	1,643
6,350	765	1,102	1,290	1,426	1,545	1,653
6,400	770	1,109	1,298	1,435	1,555	1,664
6,450	775	1,116	1,306	1,444	1,565	1,674
6,500	780	1,123	1,315	1,453	1,575	1,685
6,550	785	1,130	1,323	1,462	1,584	1,695
6,600	790	1,137	1,331	1,471	1,594	1,706
6,650	795	1,144	1,339	1,480	1,604	1,716
6,700	800	1,151	1,347	1,489	1,614	1,727
6,750	805	1,158	1,355	1,498	1,623	1,737
6,800	810	1,165	1,364	1,507	1,633	1,748
6,850	815	1,172	1,372	1,516	1,643	1,758
6,900	819	1,179	1,380	1,525	1,653	1,768
6,950	824	1,186	1,388	1,534	1,663	1,779
7,000	829	1,193	1,396	1,543	1,672	1,789
7,050	834	1,200	1,404	1,552	1,682	1,800
7,100	838	1,206	1,411	1,560	1,691	1,809
7,150	842	1,211	1,418	1,567	1,698	1,817
7,200	846	1,217	1,424	1,574	1,706	1,825
7,250	850	1,222	1,430	1,581	1,713	1,833
7,300	853	1,228	1,437	1,588	1,721	1,842

7,350	857	1,233	1,443	1,595	1,729	1,850
7,400	861	1,238	1,450	1,602	1,736	1,858
7,450	864	1,244	1,456	1,609	1,744	1,866
7,500	868	1,249	1,462	1,616	1,751	1,874
7,550	872	1,254	1,469	1,623	1,759	1,882
7,600	875	1,260	1,475	1,630	1,767	1,890
7,650	879	1,265	1,481	1,637	1,774	1,899
7,700	883	1,270	1,488	1,644	1,782	1,907
7,750	887	1,276	1,494	1,651	1,790	1,915
7,800	890	1,281	1,500	1,658	1,797	1,923
7,850	894	1,287	1,507	1,665	1,805	1,931
7,900	898	1,292	1,513	1,672	1,812	1,939
7,950	901	1,297	1,519	1,679	1,820	1,947
8,000	905	1,303	1,526	1,686	1,828	1,955
8,050	909	1,308	1,532	1,693	1,835	1,964
8,100	912	1,313	1,538	1,700	1,843	1,972
8,150	916	1,319	1,545	1,707	1,850	1,980
8,200	920	1,324	1,551	1,714	1,858	1,988
8,250	924	1,330	1,557	1,721	1,866	1,996
8,300	927	1,335	1,564	1,728	1,873	2,004
8,350	931	1,340	1,570	1,735	1,881	2,012
8,400	935	1,346	1,577	1,742	1,888	2,021
8,450	938	1,351	1,583	1,749	1,896	2,029
8,500	943	1,357	1,590	1,757	1,905	2,038
8,550	949	1,363	1,597	1,765	1,913	2,047
8,600	954	1,369	1,605	1,773	1,922	2,057
8,650	959	1,375	1,612	1,781	1,931	2,066
8,700	964	1,381	1,619	1,789	1,939	2,075
8,750	969	1,387	1,626	1,797	1,948	2,084
8,800	974	1,393	1,633	1,805	1,957	2,093
8,850	979	1,399	1,641	1,813	1,965	2,103
8,900	984	1,405	1,648	1,821	1,974	2,112
8,950	989	1,411	1,655	1,829	1,982	2,121
9,000	995	1,417	1,662	1,837	1,991	2,130
9,050	1,000	1,423	1,669	1,845	2,000	2,140
9,100	1,005	1,429	1,677	1,853	2,008	2,149
9,150	1,010	1,435	1,684	1,861	2,017	2,158
9,200	1,015	1,441	1,691	1,869	2,026	2,167
9,250	1,020	1,447	1,698	1,877	2,034	2,177
9,300	1,025	1,453	1,706	1,885	2,043	2,186
9,350	1,030	1,459	1,713	1,893	2,052	2,195
9,400	1,035	1,465	1,720	1,901	2,060	2,204
9,450	1,040	1,471	1,727	1,909	2,069	2,214
9,500	1,046	1,477	1,734	1,917	2,077	2,223
9,550	1,051	1,483	1,742	1,924	2,086	2,232
9,600	1,056	1,489	1,749	1,932	2,095	2,241
9,650	1,061	1,495	1,756	1,940	2,103	2,251
9,700	1,066	1,501	1,763	1,948	2,112	2,260
9,750	1,071	1,507	1,770	1,956	2,121	2,269
9,800	1,076	1,513	1,778	1,964	2,129	2,278
9,850	1,081	1,519	1,785	1,972	2,138	2,288
9,900	1,086	1,525	1,792	1,980	2,147	2,297
9,950	1,091	1,531	1,799	1,988	2,155	2,306
10,000	1,097	1,537	1,807	1,996	2,164	2,315
10,050	1,102	1,543	1,814	2,004	2,173	2,325
10,100	1,107	1,549	1,821	2,012	2,181	2,334
10,150	1,112	1,555	1,828	2,020	2,190	2,343

10,200	1,117	1,561	1,835	2,028	2,198	2,352
10,250	1,122	1,567	1,843	2,036	2,207	2,362
10,300	1,127	1,574	1,850	2,044	2,216	2,371
10,350	1,132	1,580	1,857	2,052	2,224	2,380
10,400	1,137	1,586	1,864	2,060	2,233	2,389
10,450	1,142	1,592	1,871	2,068	2,242	2,399
10,500	1,148	1,598	1,879	2,076	2,250	2,408
10,550	1,153	1,604	1,886	2,084	2,259	2,417
10,600	1,158	1,610	1,893	2,092	2,268	2,426
10,650	1,163	1,616	1,900	2,100	2,276	2,436
10,700	1,168	1,622	1,907	2,108	2,285	2,445
10,750	1,173	1,628	1,915	2,116	2,293	2,454
10,800	1,178	1,634	1,922	2,124	2,302	2,463
10,850	1,183	1,640	1,929	2,132	2,311	2,473
10,900	1,188	1,646	1,936	2,140	2,319	2,482
10,950	1,193	1,652	1,944	2,148	2,328	2,491
11,000	1,199	1,658	1,951	2,156	2,337	2,500
11,050	1,204	1,664	1,958	2,164	2,345	2,509
11,100	1,209	1,670	1,965	2,172	2,354	2,519
11,150	1,214	1,676	1,972	2,180	2,363	2,528
11,200	1,219	1,682	1,980	2,188	2,371	2,537
11,250	1,221	1,686	1,984	2,193	2,377	2,543
11,300	1,223	1,689	1,898	2,197	2,382	2,549
11,350	1,225	1,693	1,993	2,202	2,387	2,554
11,400	1,227	1,697	1,997	2,207	2,392	2,560
11,450	1,229	1,700	2,001	2,212	2,397	2,565
11,500	1,231	1,704	2,006	2,216	2,403	2,571
11,550	1,233	1,708	2,010	2,221	2,408	2,576
11,600	1,235	1,711	2,014	2,226	2,413	2,582
11,650	1,237	1,715	2,019	2,231	2,418	2,587
11,700	1,239	1,719	2,023	2,235	2,423	2,593
11,750	1,241	1,723	2,027	2,240	2,428	2,598
11,800	1,243	1,726	2,031	2,245	2,433	2,604
11,850	1,245	1,730	2,036	2,249	2,438	2,609
11,900	1,247	1,734	2,040	2,254	2,444	2,615
11,950	1,249	1,737	2,044	2,259	2,449	2,620
12,000	1,251	1,741	2,049	2,264	2,454	2,626
12,050	1,253	1,745	2,053	2,268	2,459	2,631
12,100	1,255	1,748	2,057	2,273	2,464	2,637
12,150	1,257	1,752	2,061	2,278	2,469	2,642
12,200	1,259	1,756	2,066	2,283	2,474	2,648
12,250	1,261	1,759	2,070	2,287	2,479	2,653
12,300	1,263	1,763	2,074	2,292	2,485	2,659
12,350	1,265	1,767	2,079	2,297	2,490	2,664
12,400	1,267	1,770	2,083	2,302	2,495	2,669
12,450	1,270	1,774	2,087	2,306	2,500	2,675
12,500	1,272	1,778	2,091	2,311	2,505	2,680
12,550	1,274	1,781	2,096	2,316	2,510	2,686
12,600	1,276	1,785	2,100	2,320	2,515	2,691
12,650	1,278	1,789	2,104	2,325	2,520	2,697
12,700	1,280	1,792	2,109	2,330	2,526	2,702
12,750	1,282	1,796	2,113	2,335	2,531	2,708
12,800	1,284	1,800	2,117	2,339	2,536	2,713
12,850	1,286	1,803	2,121	2,344	2,541	2,719
12,900	1,288	1,807	2,126	2,349	2,546	2,724
12,950	1,290	1,811	2,130	2,354	2,551	2,730
13,000	1,292	1,814	2,134	2,358	2,556	2,735

13,050	1,294	1,818	2,138	2,363	2,562	2,741
13,100	1,296	1,822	2,143	2,368	2,567	2,746
13,150	1,298	1,825	2,147	2,372	2,572	2,752
13,200	1,300	1,829	2,151	2,377	2,577	2,757
13,250	1,302	1,833	2,156	2,382	2,582	2,763
13,300	1,304	1,836	2,160	2,387	2,587	2,768
13,350	1,306	1,840	2,164	2,391	2,592	2,774
13,400	1,308	1,844	2,168	2,396	2,597	2,779
13,450	1,310	1,847	2,173	2,401	2,603	2,785
13,500	1,312	1,851	2,177	2,406	2,608	2,790
13,550	1,314	1,855	2,181	2,410	2,613	2,796
13,600	1,316	1,858	2,186	2,415	2,618	2,801
13,650	1,318	1,862	2,190	2,420	2,623	2,807
13,700	1,320	1,866	2,194	2,425	2,628	2,812
13,750	1,322	1,869	2,198	2,429	2,633	2,818
13,800	1,324	1,873	2,203	2,434	2,638	2,823
13,850	1,326	1,877	2,207	2,439	2,644	2,829
13,900	1,328	1,880	2,211	2,443	2,649	2,834
13,950	1,330	1,884	2,216	2,448	2,654	2,840
14,000	1,332	1,888	2,220	2,453	2,659	2,845
14,050	1,334	1,891	2,224	2,458	2,664	2,851
14,100	1,336	1,895	2,228	2,462	2,669	2,856
14,150	1,338	1,899	2,233	2,467	2,674	2,862
14,200	1,340	1,902	2,237	2,472	2,679	2,867
14,250	1,342	1,906	2,240	2,477	2,685	2,873
14,300	1,344	1,910	2,246	2,481	2,690	2,878
14,350	1,346	1,913	2,250	2,486	2,695	2,884
14,400	1,348	1,917	2,254	2,491	2,700	2,889
14,450	1,350	1,921	2,258	2,496	2,705	2,894
14,500	1,352	1,924	2,263	2,500	2,710	2,900
14,550	1,354	1,928	2,267	2,505	2,715	2,905
14,600	1,356	1,932	2,271	2,510	2,721	2,911
14,650	1,358	1,935	2,276	2,514	2,726	2,916
14,700	1,360	1,939	2,280	2,519	2,731	2,922
14,750	1,362	1,943	2,284	2,524	2,736	2,927
14,800	1,364	1,946	2,288	2,529	2,741	2,933
14,850	1,366	1,950	2,293	2,533	2,746	2,938
14,900	1,368	1,954	2,297	2,538	2,751	2,944
14,950	1,370	1,957	2,301	2,543	2,756	2,949
15,000	1,372	1,961	2,305	2,548	2,762	2,955

B. If combined gross monthly income exceeds Fifteen Thousand Dollars ($15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars ($15,000.00) and an additional amount determined by the court.

C. If there are more than six children, the child support shall be that amount computed for six children and an additional amount determined by the court.

Added by Laws 1988, c. 224, § 2, emerg. eff. June 20, 1988. Renumbered from Title 12, § 1277.8 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1999, c. 422, § 3, eff. Nov. 1, 1999; Laws 2000, c. 345, § 3, emerg. eff. June 6, 2000.

§ 119.1. Review of Child Support Guidelines.

A. The child support guidelines and schedule of basic child support obligations shall be reviewed at least once every four (4) years by the Judiciary Committees of the Senate and the House of Representatives to ensure that their application results in the determination of appropriate child support award amounts.

B. In conducting the review required pursuant to subsection A of this section, the Judiciary Committees shall:

1. Obtain from the Title IV-D Child Support Program in the Department of Human Services economic data on the cost of raising a child, labor market data, case data and case analysis. The Department shall promulgate rules as needed to implement the provisions of this paragraph;

2. Provide opportunity for public input from persons including, but not limited to, low-income custodial and noncustodial parents and their representatives; and

3. Publish on the official websites of the Senate and the House of Representatives information related to the review including, but not limited to, the membership of the committees conducting the review, the effective date of the guidelines and the date of the next review.

Added by Laws 1989, c. 362, § 4, eff. Nov. 1, 1989. Renumbered from Title 12, § 1277.8A by Laws 1990, c. 171, § 3, emerg. eff. July 1, 1990. Also renumbered from Title 12, § 1277.8A by Laws 1990, c. 188, § 2, eff. Sept. 1, 1990. Amended by Laws 2021, c. 80, § 1, eff. Nov. 1, 2021.

§ 120. Child Support Computation Form.

A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.

B.1. When services are not being provided under the Department of Human Services State IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented by the judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the judge without presentation of the support order summary form. After the order is signed by the judge, the summary of support form shall be submitted to the Central Case Registry provided for in Section 112A of this title.

2. Standard forms for motions to modify child support and orders modifying child support shall be used by all parents for any agreements submitted to the court for approval as a part of the informal review and adjustment process provided in Section 118 of this title.

3. The forms specified by this subsection shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

Added by Laws 1988, c. 224, § 3, emerg. eff. June 20, 1988. Renumbered from Title 12, § 1277.9 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1993, c. 307, § 3, emerg. eff. June 7, 1993; Laws 1998, c. 323, § 10, eff. October 1, 1998; Laws 1999, c. 422, § 4, eff. Nov. 1, 1999; Laws 2000, c. 345, § 4, emerg. eff. June 6, 2000; Laws 2001, c. 407, § 7, emerg. eff. July 1, 2001; Laws 2002, c. 314, § 4, eff. Nov. 1, 2002; Laws 2006 (2nd Reg. Sess.), c. 127, § 4, eff. Nov. 1, 2006.

Parenting Coordinator Act

§ 120.1. Short Title.

Sections 120.1 through 120.5 of this title shall be known and may be cited as the "Parenting Coordinator Act".

Added by Laws 2001, c. 407, § 8, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 5, emerg. eff. May 29, 2003.

§ 120.2. Definitions.

As used in the Parenting Coordinator Act:

1. "Parenting Coordinator" means an impartial third party qualified pursuant to subsection A of Section 120.6 of this title appointed by the court to assist parties in resolving issues and deciding disputed issues pursuant to the provisions of the Parenting Coordinator Act relating to parenting and other family issues in any action for dissolution of marriage, legal separation, paternity, or guardianship where minor children are involved; and

2. "High-conflict case" means any action for dissolution of marriage, legal separation, paternity, or guardianship where a minor child is involved and the parties demonstrate a pattern of ongoing:

a. litigation,
b. anger and distrust,
c. verbal abuse,
d. physical aggression or threats of physical aggression,
e. difficulty in communicating about and cooperating in the care of their children, or
f. conditions that in the discretion of the court warrant the appointment of a parenting coordinator.

Added by Laws 2001, ch.407, § 9, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 6, emerg. eff. May 29, 2003.

§ 120.3. Court May Upon Its Own Motion Appoint a Parenting Coordinator.

A. In any action for dissolution of marriage, legal separation, paternity, or guardianship where minor children are involved, the court may, upon its own motion, or by motion or agreement of the parties, appoint a parenting coordinator to assist the parties in resolving issues and decide disputed issues pursuant to the provisions of the Parenting Coordinator Act related to parenting or other family issues in the case except as provided in subsection B of this section, and subsection A of Section 120.5 of this title.

B. The court shall not appoint a parenting coordinator if any party objects, unless:

1. The court makes specific findings that the case is a high-conflict case; and

2. The court makes specific findings that the appointment of a parenting coordinator is in the best interest of any minor child in the case.

C.1. The authority of a parenting coordinator shall be specified in the order appointing the parenting coordinator and limited to matters that will aid the parties in:

a. identifying disputed issues,
b. reducing misunderstandings,
c. clarifying priorities,
d. exploring possibilities for compromise,
e. developing methods of collaboration in parenting, and
f. complying with the court's order of custody, visitation, or guardianship.

2. The appointment of a parenting coordinator shall not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

3. The parenting coordinator shall not make any modification to any order, judgment or decree; however, the parenting coordinator may allow the parties to make minor temporary departures from a parenting plan if authorized by the court to do so. The appointment order should specify those matters which the parenting coordinator is authorized to determine. The order shall specify which determinations will be immediately effective and which will require an opportunity for court review prior to taking effect.

D. The parties may limit the decision-making authority of the parenting coordinator to specific issues or areas if the parenting coordinator is being appointed pursuant to agreement of the parties.

E. Meetings between the parenting coordinator and the parties need not follow any specific procedures and the meetings may be informal. All communication between the parties and the parenting coordinator shall not be confidential.

F. Nothing in the Parenting Coordinator Act shall abrogate the custodial or noncustodial parent's rights or any court-ordered visitation give to grandparents or other persons except as specifically addressed in the order appointing the parenting coordinator.

G.1. Except as otherwise provided by this subsection, the court shall reserve the right to remove the parenting coordinator in its own discretion.

2. The court may remove the parenting coordinator upon the request and agreement of both parties. Upon the motion of either party and good cause shown, the court may remove the parenting coordinator.

Added by Laws 2001,c. 407, § 10, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 7, emerg. eff. May 28, 2003.

§ 120.4. Parenting Coordinator Decisions Binding.

A. A report of the decisions and recommendations made by the parenting coordinator shall be filed with the court within twenty (20) days, with copies of the report provided to the parties or their counsel. There shall be no ex parte communication with the court.

B. Any decisions made by the parenting coordinator authorized by the court order and issued pursuant to the provisions of the Parenting Coordinator Act shall be binding on the parties until further order of the court.

C.1. Any party may file with the court and serve on the parenting coordinator and all other parties an objection to the parenting coordinator's report within ten (10) days after the parenting coordinator provides the report to the parties, or within another time as the court may direct.

2. Responses to the objections shall be filed with the court and served on the parenting coordinator and all other parties within ten (10) days after the objection is served.

D. The court shall review any objections to the report and any responses submitted to those objections to the report and shall thereafter enter appropriate orders.

Added by Laws 2001, c. 407, § 11, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 8, emerg. eff. May 28, 2003.

§ 120.5. State Assumes No Financial Responsibility for Paying Parenting Coordinator.

A.1. No parenting coordinator shall be appointed unless the court finds that the parties have the means to pay the fees of the parenting coordinator.

2. This state shall assume no financial responsibility for payment of fees to the parenting coordinator; except that, in cases of hardship, the court, if feasible, may appoint a parenting coordinator to serve on a volunteer basis.

B.1. The fees of the parenting coordinator shall be allocated between the parties with the relative percentages determined pursuant to the child support guidelines.

2. The court may allocate the fees between the parties differently upon a finding of good cause by the court or good cause set forth in the parenting coordinator's report.

Added by Laws 2001, c. 407, § 12, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 9, emerg. eff. May 28, 2003.

§ 120.6. Rules Governing Parenting Coordinator.

A. Each judicial district shall adopt local rules governing the qualifications of a parenting coordinator; provided, however, the qualifications adopted shall not exceed the qualifications established in subsection B of this section.

B. To be qualified as a parenting coordinator, a person shall:

1. Have a master's degree in a mental health or behavioral health field, shall have training and experience in family mediation and shall be a certified mediator under the laws of this state; or

2. Be a licensed mental health professional or licensed attorney practicing in an area related to families.

C. Parenting coordinators who are not licensed attorneys shall not be considered as engaging in the unauthorized practice of law while performing actions within the scope of his or her duties as a parenting coordinator.

Added by Laws 2001, c. 407, § 13, emerg. eff. July 1, 2001. Amended by Laws 2003, c. 302, § 10, emerg. eff. May 28, 2003; Laws 2006, c. 99, § 1, eff. Nov. 1, 2006; Laws 2010, c. 350, § 2, eff. Nov. 1, 2010.

§ 120.7. Appointment of Court Experts—Disclosures—Objections.

A. As used in this section, "court expert" means a parenting coordinator, guardian ad litem, custody evaluator or any other person appointed by the court in a custody or visitation proceeding involving children.

B. Before the court appoints an individual as a court expert, the following disclosures shall be made by the candidate to the parties:

1. A disclosure of any prior relationships with any party, attorney or judge in the pending action;

2. A complete resume disclosing all personal and professional qualifications to serve as a court expert;

3. Any suspensions from practice, reprimands, or other formal punishments resulting from an adjudication of complaints filed against the person with the professional licensing board or other organization authorized to receive complaints regarding the performance of the individual in question; and

4. Any criminal convictions within the past ten (10) years and inclusion on any sexual offender list.

C. A party may file an objection to the appointment of a proposed court expert within fifteen (15) days after the receipt of the disclosures required by subsection B of this section. Upon filing an objection to the proposed court expert, the court shall set the matter for hearing. If requested, the party objecting to the appointment of the proposed court expert shall be entitled to discovery related to the qualifications and appropriateness of the proposed court expert prior to hearing.

D. In any case involving domestic violence, stalking or harassment as defined by paragraph 2 of subsection I of Section 109 of this title, the court expert shall have completed sixteen (16) hours of domestic violence training that includes, but is not limited to, information regarding the danger and lethality of domestic violence, the causes and dynamics of domestic violence, the impact of domestic violence upon victims and children, and the characteristics of a batterer as a parent.

Added by Laws 2010, c. 105, § 1, eff. Aug. 27, 2010. Amended by Laws 2015, c. 385, § 2, eff. Nov. 1, 2015

§ 121. Restoration of Maiden or Former Name—Alimony—Property Division.

A. When a dissolution of marriage is granted, the decree shall restore:

1. To the wife her maiden or former name, if her name was changed as a result of the marriage and if she so desires;

2. To the husband his former name, if his name was changed as a result of the marriage and if he so desires.

B. The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the dissolution of marriage. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between

the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

C. A servicemember's portion of Special Monthly Compensation (SMC) awarded by or from the United States Department of Veterans Affairs for service-connected loss or loss of use of specific organs or extremities shall be separate property, not divisible as a marital asset nor as community property. For purposes of identifying SMC, it is the sole responsibility of the servicemember to prove with competent evidence what amount of his or her disability compensation is SMC.

D. A servicemember's portion of Combat-Related Special Compensation (CRSC) shall be separate property, not divisible as a marital asset nor as community property, if a specific dollar amount of CRSC can be proved by the servicemember as compensation for combat-related loss of limb or loss of bodily function and the CRSC award was applied for and established prior to the date of the filing of the dissolution of marriage action.

E. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a military member either as property solely of the member or as property of the member and the spouse of the member. If a state court determines that the disposable retired or retainer pay of a military member is the sole and separate property of the military member, the court shall submit clear and concise written findings of such determination to be included in the decree or final order. If a state court determines that the disposable retired or retainer pay of a military member is marital property, the court shall submit clear and concise written findings of such determination to be included in the decree or final order and shall award an amount consistent with the rank, pay grade, and time of service of the member at the date of the filing of the petition, unless the court finds a more equitable date due to the economic separation of the parties.

F. Unless otherwise agreed to by the parties, any division of an active duty military member's retirement or retainer pay shall use the following language:

> "The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is ____x____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service."

G. In the case of a member's retiring from reserve duty, unless otherwise agreed by the parties, any division of a reservist's retirement or retainer pay shall use the following language:

> "The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is __X____reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

R.L. 1910, § 4969. Amended by Laws 1975, c. 350, § 1, eff. Oct. 1, 1975; Laws 1976, c. 154, § 1; Laws 1985, c. 39, § 1, emerg. eff. April 19, 1985. Renumbered from Title 12, § 1278 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1992, c. 252, § 3, eff. Sept. 1, 1992; Laws 2006, c. 311, § 5, emerg. eff. June 8, 2006; Laws 2012, c. 261, § 2, emerg. eff. May 15, 2012 (added subsecs. C. and D.); Laws 2012, c. 344, § 1, eff Nov. 1, 2012 (added subsecs. E., F., and G.).

§ 122. Divorce Dissolves Marriage Contract and Bars Property Claims—Exception for Actual Fraud.

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

R.L. 1910, § 4970. Renumbered from Title 12, § 1279 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 123. Unlawful to Marry Within 6 Months from Date of Divorce Decree—Penalty for Remarriage and Cohabitation—Appeal.

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry in this state a person other than the divorced spouse within six (6) months from date of decree of divorce granted in this state, or to cohabit with such other person in this state during said period if the marriage took place in another state; and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person in this state until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this section by such marriage shall be deemed guilty of the felony of bigamy. Any person violating the provisions of this section by such cohabitation shall be deemed guilty of the felony of adultery.

An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

R.L. 1910, § 4971. Amended by Laws 1925, c. 119, p. 166, § 1; Laws 1957, p. 82, § 1; Laws 1969, c. 322, § 1; Laws 1970, c. 5, § 1, eff. Jan. 1, 1971. Renumbered from Title 12, § 1280 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1997, c. 133, § 462, effective date amended to July 1, 1999 by Laws 1998, c. 2 (1st Ex. Sess.), §§ 23-26, emerg. eff. June 19, 1998.

§ 124. Punishment for Bigamy.

Every person convicted of bigamy as such offense is defined in Section 123 of this title shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than three (3) years.

R.L. 1910, § 4972. Renumbered from § 1281 of Title 12 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1997, c. 133, § 463, emerg. eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 336, emerg. eff. July 1, 1999; Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 463 from July 1, 1998 to July 1, 1999.

§ 125. Validation of Judgment Annulling Marriage or Granting Divorce.

A judgment or decree, heretofore rendered by a court having jurisdiction of the parties, annulling a marriage and/or granting a divorce, on the grounds that one of the parties had been previously married and divorced and said divorce decree had not become final, is hereby validated.

Laws 1937, p. 9, § 1. Renumbered from Title 12, § 1281a by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 126. Remarriage as Ground for Annulment.

A marriage wherein one of the parties had not been divorced for six (6) months shall hereafter in this state be ground for annulment of marriage by either party.

Laws 1937, p. 9, § 2. Renumbered from Title 12, § 1281b by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 127. Time When Judgment is Final in Divorce—Appeal.

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of a judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

R.L. 1910, 4973. Amended by Laws 1969, c. 321, § 1, emerg. eff. May 7, 1969. Renumbered from Title 1, § 1282 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 128. Action to Void Marriage Due to Incapacity.

When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void by the district court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

R.L. 1910, § 4974. Renumbered from Title 12, § 1283 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 129. Alimony Without Divorce.

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the district court, for any of the causes for which a divorce may be granted. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

R.L. 1910, § 4975. Renumbered from Title 12, § 1284 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 130. Evidence in Divorce or Alimony Actions.

Upon the trial of an action for a divorce, or for alimony the court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation, and reputation of the marriage of the parties, may be received as evidence of the marriage. But no divorce shall be granted without proof.

R.L. 1910, § 4976. Renumbered from Title 12, § 1285 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 131. Residency in Divorce Action.

A married person who meets the residence requirements prescribed by law for bringing a divorce action in this state may seek a divorce in this state, though the other spouse resides elsewhere.

R.L. 1910, § 4977. Amended by Laws 1975, c. 36, § 1. Renumbered from Title 12, § 1286 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 132. Parties Competent to Testify in Divorce Action.

In any action for divorce hereafter tried, the parties thereto, or either of them, shall be competent to testify in like manner, respecting any fact necessary or proper to be proven, as parties to other civil actions are allowed to testify.

R.L. 1910, § 4978. Renumbered from Title 12, § 1287 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 133. Dissolution of Divorce Decree.

When a decree of divorce has been issued by a district or superior court, said court is hereby authorized to dissolve said decree at any future time, in or out of the term wherein the decree was granted, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the court that neither one has married a third party during the time since the issuance of the decree of divorce.

Laws 1959, p. 81, § 1. Renumbered from Title 12, § 1288 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§ 134. Alimony Payments—Termination—Modification.

A. In any dissolution of marriage decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award. An order for the payment of money pursuant to a dissolution of marriage decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

B. The court shall also provide in the dissolution of marriage decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage. Any modification of alimony payments shall be effective upon the date of the filing of the requested modification.

C. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the dissolution of marriage relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other dissolution of marriage decree modification actions. The court that entered the dissolution of marriage decree shall have jurisdiction over the modification application.

D. Except as otherwise provided in subsection C of this section, the provisions of any dissolution of marriage decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Modification by the court of any dissolution of marriage decree pertaining to the payment of alimony as support, pursuant to the provisions of this subsection, may extend to the terms of the payments and to the total amount awarded; provided however, such modification shall only have prospective application.

E. In no event shall an award of alimony, whether designated for support or for property division, be based on the servicemember's portion of any Special Monthly Compensation (SMC) award from the United States Department of Veterans Affairs.

F. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a military member either as property solely of the member or as property of the member and the spouse of the member. If a state court determines that the disposable retired or retainer pay of a military member is the sole and separate property of the military member, the court shall submit clear and concise written findings of such determination to be included in the decree or final order. If a state court determines that the disposable retired or retainer pay of a military member is marital property, the court shall submit clear and concise written findings of such determination to

be included in the decree or final order and shall award an amount consistent with the rank, pay grade, and time of service of the member at the date of the filing of the petition, unless the court finds a more equitable date due to the economic separation of the parties.

G. Unless otherwise agreed to by the parties, any division of an active duty military member's retirement or retainer pay shall use the following language:

> "The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is ____x____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service."

H. In the case of a member's retiring from reserve duty, unless otherwise agreed by the parties, any division of a reservist's retirement or retainer pay shall use the following language:

> "The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is __X____reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

I. The provisions of subsection D of this section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on dissolution of marriage decrees which become final after June 26, 1981. There shall be a two-year statute of limitations, beginning on the date of the final dissolution of marriage decree, for a party to apply for division of disposable retired or retainer pay.

J. The provisions of subsections C and D of this section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or order for alimony as support, or of a dissolution of marriage decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

K. Notwithstanding any other provision of this section, a court shall not consider disability compensation received by a party from the United States Department of Veterans Affairs for service-related injuries for any purpose. Additionally, the court shall not offset any service-related disability income with other assets of the military member. However, if there is an increase in service-related disability income as a result of the veteran having dependents, that increase may be included in divorce calculations.

Added by Laws 1965, c. 344, § 1. Amended by Laws 1967, c. 328, § 1; Laws 1968, c. 161, § 1, emerg. eff. April 11, 1968; Laws 1976, c. 61, § 1; Laws 1979, c. 278, § 1; Laws 1983, c. 86, § 1, operative Nov. 1, 1983; Laws 1985, c. 188, § 1, eff. Nov. 1, 1985; Laws 1987, c. 130, § 1, emerg. eff. June 3, 1987. Renumbered from Title 12, § 1289 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1991, c. 113, § 5, eff. Sept. 1, 1991; Laws 1992, c. 252, § 4, eff. Sept. 1, 1992; Laws 2008, c. 407, § 11, eff. July 1, 2009: Laws 2012, c. 261, § 3, emerg. eff. May 15, 2012 (added subsec. E. and renumbered subsecs. F., G., and H.); Laws 2012, c. 334, § 2, eff. Nov. 1, 2012 (amended subsec. B and F., added new subsec. G., and renumbered subsec. I and J.); Laws 2017, c. 274, § 1, eff. Nov. 1, 2017 (added subsec. K.).

§ 135. Lien for Child Support Arrearages—Notice and Hearing.

A. An arrearage in payment of child support reduced to an order of the court or administrative order of the Department of Human Services or any past due payment or installment of child support that is a judgment and lien by operation of law may be a lien against the real and personal property of the person ordered to make the support payments.

B. Past due amounts of child support shall become a lien by operation of law upon the real and personal property of the person ordered to make the payments at the time they become past due.

C.1. A judgment or order providing for the payment of current support or an arrearage of child support shall be a lien upon real property owned by the person obligated to pay support or upon any real property which may be acquired by the person prior to the release of the lien. Notice of the lien on real property shall be given by the filing of a statement of judgment pursuant to Section 706 of Title 12 of the Oklahoma Statutes with the county clerk of the county where the property is located.

2. If the child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the amount reflected in the official records of the Centralized Support Registry provided for in Section 413 of this title shall constitute the amount of the lien on the obligor's real property, regardless of the amount reflected in the statement of judgment.

3. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. A child support judgment shall become dormant as a lien upon real property five (5) years from the date the statement of judgment is filed of record with the county clerk unless the judgment lien is extended in accordance with subsection C of Section 759 of Title 12 of the Oklahoma Statutes.

D. A judgment providing for the payment of an arrearage of child support or pursuant to which a past due amount has accrued shall become a lien upon benefits payable as a lump sum received from a workers' judgment providing for the payment of an arrearage of child support or pursuant to which a past due amount has accrued shall become a lien upon benefits payable as a lump sum received from a personal injury, wrongful death or workers' compensation claim of the person ordered to pay the support and shall not be subject to the exemptions from attachment of Section 1 of Title 31 of the Oklahoma Statutes or as otherwise provided by law. The lien shall be effective upon the filing of a notice of lien with the court in which a proceeding for personal injury, wrongful death or workers' compensation has been initiated by or on behalf of the obligor. If a proceeding

has not been initiated, a notice of lien shall be served by mail upon the entity responsible for paying monies to the person ordered to pay support. A court or the entity responsible for satisfying the lien may request a certified copy of the judgment or order be attached to the lien.

E. The provisions of this section shall be available to an agency of another state responsible for implementing the child support enforcement program set forth in Title IV-D, of the Social Security Act seeking to enforce a judgment for child support.

F. The provisions of this section shall not authorize a forced sale of any real property to enforce a lien which is otherwise exempted by state law.

G. A lien shall be released upon the full payment of the amount of the arrearage.

H. The person entitled to support or the Department of Human Services on behalf of its clients and recipients is authorized to enforce the liens created pursuant to this section and to execute releases or partial releases of the liens.

Added by Laws 1985, c. 297, § 20, eff. Oct. 1, 1985. Amended by Laws 1986, c. 176, § 4, emerg. eff. May 15, 1986; Laws 1987, c. 230, § 15, eff. Oct. 1, 1987. Renumbered from Title 12, § 1289.1 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1994, c. 356, § 16, eff. Sept. 1, 1994; Laws 1996, c. 233, § 2, eff. Nov. 1, 1996; Laws 1997, c. 402, § 15, emerg. eff. July 1, 1997; Laws 1998, c. 323, § 11, eff. Oct. 1, 1998; Laws 2000, c. 384, § 6, eff. Nov. 1, 2000; Laws 2001,c. 407, § 14, emerg. eff. July 1, 2001; Laws 2007, c. 201, § 1, eff. Nov. 1, 2007.

§ 136. Payment of Support and Alimony by Mail—Report of Payments as Evidence—Application Fee for Income Assignment.

A. If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the court clerk, then it shall be the duty of the court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee it shall be the duty of the payee to furnish to the court clerk in writing the new address of the payee.

B. A report of child support payments with a certificate of authenticity executed by the court clerk is admissible into evidence in court or in an administrative proceeding as self-authenticated.

C. A fee not to exceed Twenty-five Dollars ($25.00) shall be charged and collected for any post decree application to initiate an income assignment in addition to any other fees authorized by law. The fee shall not be charged or collected for income assignments requested at the time of the filing of the original petition or entered at the time of a divorce decree. The person entitled to support is entitled to collect said fees paid pursuant to this subsection from the person obligated to pay support through civil proceedings.

Added by Laws 1970, c. 60, § 1. Amended by Laws 1985, c. 297, § 21, eff. Oct. 1, 1985. Renumbered from Title 12, § 1290 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1995, c. 219, § 2, eff. Nov. 1, 1995.

§ 137. Past Due Support Payments as Judgment—Arrearage Payment Schedule.

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order of the Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method available under the laws of this state to enforce and collect money judgments; and

2. Be entitled to full faith and credit as a judgment in this state and any other state.

B. A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien upon real property five (5) years from the date it is filed of record with the county clerk in the county where the property is located, unless the judgment lien is extended in accordance with subsection C of Section 759 of Title 12 of the Oklahoma Statutes.

1. Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full.

2. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. After the implementation of the Centralized Support Registry, any amounts determined to be past due by the Department of Human Services may subsequently be enforced by indirect civil contempt proceedings.

C. An arrearage payment schedule set by a court or administrative order shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

Added by Laws 1987, c. 230, § 16, eff. Oct. 1, 1987. Renumbered from Title 12, § 1291 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989. Amended by Laws 1993, c. 307, § 4, emerg. eff. June 7, 1993; Laws 1994, c. 356, § 17, eff. Sept. 1, 1994; Laws 1994, c. 366, § 1, eff. Sept. 1, 1994; Laws 1996, c. 233, § 3, eff. Nov. 1, 1996; Laws 1998, c. 323, § 12, eff. October 1, 1998; Laws 2000, c. 384, § 7, eff. Nov. 1, 2000.

§ 138. Costs in Child Support Enforcement Cases.

Costs incurred in a child support enforcement case in which a party is represented by an office operated by or for the benefit of the Oklahoma Department of Human Services shall be recorded by the court clerk. The reasonable costs may be assessed by the court against the nonprevailing party at the conclusion of the proceedings.

Added by Laws 1994, c. 221, § 2, eff. Sept. 1, 1994.

§ 139. Child Support as a Legal Right—Authority to Revoke or Suspend Licenses for Noncompliance with Child Support Order.

The Legislature finds and declares that child support is a basic legal right of the state's parents and children, that mothers and fathers have a legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and state welfare expenditures. It is therefore the Legislature's intent to encourage payment of child support to decrease overall costs to the state's taxpayers while increasing the amount of financial support collected for the state's children by authorizing the district courts of this state and the Department of Human Services to order the revocation, suspension, nonissuance or nonrenewal of an occupational, professional, business or any recreational license or permit, or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Oklahoma Wildlife Conservation Code, Section 1-101 et seq. of Title 29 of the Oklahoma Statutes, and certificates of title for vessels and motors and other licenses of registration issued pursuant to the Oklahoma Vessel and Motor Registration Act, Section 4001 et seq. of Title 63 of the Oklahoma Statutes, and the driving privilege of or to order probation for a parent who is in noncompliance with an order for support for at least ninety (90) days or failing, after receiving appropriate notice to comply with subpoenas or warrants relating to paternity or child support proceedings.

Added by Laws 1995, c. 354, § 1, eff. Nov. 1, 1995. Amended by Laws 1997, c. 402, § 16, emerg. eff. July 1, 1997.

§ 139.1. Revocation, Suspension, Nonissuance or Nonrenewal of License for Noncompliance With Support Order.

A. As used in this section and Section 6-201.1 of Title 47 of the Oklahoma Statutes:

1. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

2. "Noncompliance with an order for support" means that the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least ninety (90) days or has failed to make full payments pursuant to a court-ordered payment plan for at least ninety (90) days or has failed to obtain or maintain health insurance coverage as required by an order for support for at least ninety (90) days or has failed, after receiving appropriate notice to comply with subpoenas or orders relating to paternity or child support proceedings or has failed to comply with an order to submit to genetic testing to determine paternity;

3. "Order for support" means any judgment or order for the support of dependent children or an order to submit to genetic testing to determine paternity issued by any court of this state or other state or any judgment or order issued in accordance with an administrative procedure established by state law that affords substantial due process and is subject to judicial review;

4. "License" means a license, certificate, registration, permit, approval or other similar document issued by a licensing board granting to an individual a right or privilege to engage in a profession, occupation, or business, or any recreational license or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Oklahoma Wildlife Conservation Code, certificates of title for vessels and motors and other licenses or registrations issued pursuant to the Oklahoma Vessel and Motor Registration Act, or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

5. "Obligor" means the person who is required to make payments or comply with other provisions of an order for support;

6. "Oklahoma Child Support Services (OCSS)" means the state agency designated to administer a statewide plan for child support pursuant to Section 237 of Title 56 of the Oklahoma Statutes;

7. "Person entitled" means:

a. a person to whom a support debt or support obligation is owed,

b. the OCSS or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or

c. a person designated in a support order or as otherwise specified by the court; and

8. "Payment plan" includes, but is not limited to, a plan approved by the court that provides sufficient security to ensure compliance with a support order and/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment on an arrearage and, if applicable, current and future support.

B.1. Except as otherwise provided by this subsection, the district courts of this state are hereby authorized to order the revocation, suspension, nonissuance or nonrenewal of a license or the placement of the obligor on probation who is in noncompliance with an order for support.

2. If the obligor is a licensed attorney, the court may report the matter to the State Bar Association to revoke or suspend the professional license of the obligor or other appropriate action in accordance with the rules of professional conduct and disciplinary proceedings.

3. Pursuant to Section 6-201.1 of Title 47 of the Oklahoma Statutes, the district or administrative courts of this state are hereby authorized to order the revocation or suspension of a driver license of an obligor who is in noncompliance with an order of support.

4. The remedy under this section is in addition to any other enforcement remedy available to the court.

C.1. At any hearing involving the support of a child, if the district court finds evidence presented at the hearing that an obligor is in noncompliance with an order for support and the obligor is licensed by any licensing board, the court, in addition to any other enforcement action available, may suspend or revoke the license of the obligor who is in noncompliance with the order of support or place the obligor on probation pursuant to paragraph 2 of this subsection.

2.a. To be placed on probation, the obligor shall agree to a payment plan to:

(1) make all future child support payments as required by the current order during the period of probation, and

(2) pay the full amount of the arrearage:

(a) by lump sum by a date certain, if the court determines the obligor has the ability, or

(b) by making monthly payments in addition to the monthly child support amount pursuant to Section 137 of this title.

b. The payments required to be made pursuant to this section shall continue until the child support arrearage and interest which was the subject of the license revocation action have been paid in full.

3. If the obligor is placed on probation, the obligor shall be allowed to practice or continue to practice the profession, occupation or business of the obligor, or to operate a motor vehicle. If the court orders probation, the appropriate licensing board shall not be notified and no action is required of that board.

4. Probation shall be conditioned upon full compliance with the order. If the court grants probation, the probationary period shall not exceed three (3) years.

5. If the obligor is placed on probation, the obligee or OCSS may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license. The obligor shall be served with notice of the hearing by regular mail to the obligor's address of record pursuant to Section 112A of this title.

6. If, by the completion of time allotted for the probationary period, the obligor has failed to fully comply with the terms of probation, the licenses of the obligor shall be automatically suspended or revoked without further hearing. If the licenses of the obligor are suspended or revoked, the obligor may thereafter apply for reinstatement in compliance with subsection D or E of this section.

D. When all support due is paid in full and the obligor has complied with all other provisions of the order for support, the obligor, the obligee or OCSS may file a motion with the court for reinstatement of the obligor's licenses or termination of probation and the motion shall be set for hearing. If the court finds the obligor has paid all support due in full and has complied with all other provisions of the order for support, the court shall reinstate the obligor's licenses or terminate the probation.

E.1. An obligor whose licenses have been suspended or revoked may file a motion with the court for reinstatement of the licenses of the obligor prior to payment in full of all support due and the motion shall be set for hearing.

2. The court may reinstate the licenses of the obligor if the obligor has:

a. paid the current child support and the monthly arrearage payments each month for the current month and two (2) months immediately preceding, or paid an amount equivalent to three (3) months of child support and arrearage payments which satisfies the current child support and monthly arrearage payments for the current month and two (2) months immediately preceding,

b. disclosed all information regarding health insurance availability and obtained and maintained health insurance coverage required by an order for support,

c. complied with all subpoenas and orders relating to paternity or child support proceedings,

d. complied with all orders to submit to genetic testing to determine paternity, and

e. disclosed all employment and address information.

3. If the court terminates the order of suspension, revocation, nonissuance or nonrenewal, it shall place the obligor on probation, conditioned upon compliance with any payment plan and the provisions of the order for support.

4. If the obligor fails to comply with the terms of probation, the court may refuse to reinstate the licenses and driving privileges of the obligor unless the obligor makes additional payments in an amount determined by the court to be sufficient to ensure future compliance, and the obligor complies with the other terms set by the court.

F. The obligor shall serve on the custodian or the state a copy of the motion for reinstatement of the licenses of the obligor and notice of hearing pursuant to Section 2005 of Title 12 of the Oklahoma Statutes, or if there is an address of record, by

regular mail to the address of record on file with the central case registry pursuant to Section 112A of this title. When child support services are being provided pursuant to Section 237 of Title 56 of the Oklahoma Statutes, the obligor shall serve a copy of the motion for reinstatement of the licenses of the obligor on OCSS.

G. If the court orders termination of the order of suspension or revocation, the obligor shall send a copy of the order reinstating the licenses of the obligor to the licensing board, the custodian and OCSS when child support services are being provided pursuant to Section 237 of Title 56 of the Oklahoma Statutes.

H. Entry of this order does not limit the ability of the court to issue a new order requiring the licensing board to revoke or suspend the license of the same obligor in the event of another delinquency or failure to comply.

I. Upon receipt of a court order to suspend or revoke the license of an obligor, the licensing board shall comply with the order by:

1. Determining if the licensing board has issued a license to the individual whose name appears on the order for support;
2. Notifying the obligor of the suspension or revocation;
3. Demanding surrender of the license, if required;
4. Entering the suspension or revocation of the license on the appropriate records; and
5. Reporting the suspension or revocation of the license as appropriate.

J. Upon receipt of a court order to not issue or not renew the license of an obligor, the licensing board shall implement by:

1. Determining if the licensing board has received an application for issuance or renewal of a license from the individual whose name appears on the order of support;
2. Notifying the obligor of the nonissuance or nonrenewal; and
3. Entering the nonissuance or nonrenewal of the license as appropriate.

K. An order, issued by the court, directing the licensing board to suspend, revoke, not issue or not renew the license of the obligor shall be processed and implemented by the licensing board without any additional review or hearing and shall continue until the court or appellate court advises the licensing board by order that the suspension, revocation, nonissuance or nonrenewal is terminated.

L. The licensing board has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the court for the suspension, revocation, nonissuance or nonrenewal of a license.

M. In the event of suspension, revocation, nonissuance or nonrenewal of a license, any funds paid by the obligor to the licensing board for costs related to issuance, renewal, or maintenance of a license shall not be refunded to the obligor.

N. A licensing board may charge the obligor a fee to cover the administrative costs incurred by the licensing board to administer the provisions of this section. Fees collected pursuant to this section by a licensing board which has an agency revolving fund shall be deposited in the agency revolving fund for the use by the licensing board to pay the costs of administering this section. Otherwise, the administrative costs shall be deposited in the General Revenue Fund of the state.

O. Each licensing board shall promulgate rules necessary for the implementation and administration of this section.

P. The licensing board is exempt from liability to the obligor for activities conducted in compliance with Section 139 et seq. of this title.

Q. The provisions of this section may be used to revoke or suspend the licenses and driving privileges of the custodian of a child who fails to comply with an order to submit to genetic testing to determine paternity.

R. A final order entered pursuant to this section may be appealed to the Supreme Court of Oklahoma pursuant to Section 990A of Title 12 of the Oklahoma Statutes.

Added by Laws 1995, c. 354, § 2, eff. Nov. 1, 1995. Amended by Laws 1996, c. 97, § 18, eff. Nov. 1, 1996; Laws 1997, c. 402, § 17, emerg. eff. July 1, 1997; Laws 2004, c. 124, § 1, eff. Nov. 1, 2004; Laws 2009, c. 446, § 1, eff. Nov. 1, 2009.; Laws 2014, c. 38, § 1, eff. Nov. 1, 2014.

§ 140. Problem-Solving Court Program.

A. In cases in which child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the benefit of the child, the administrative or district court may order the obligor to participate in the problem-solving court program of the Department of Human Services. The problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court.

B. Participation in the problem-solving court program shall not act as a stay of federally mandated automated enforcement remedies. The child support obligation of the obligor shall not be suspended or abated during participation in the program.

Added by Laws 2008, c. 407, § 15, eff. Nov. 1, 2008.

Deployed Parents Custody and Visitaiton Act

§ 150. Short Title.

Sections 3 through 13 of this act [43 O.S. §§ 150-150.10] shall be known and may be cited as the "Deployed Parents Custody and Visitation Act".

Added by Laws 2011, c. 354, § 3, emerg. eff. May 26, 2011.

§ 150.1. Definitions.

As used in the Deployed Parents Custody and Visitation Act:

1. "Civilian personnel" means direct-hire, permanent civilian employees of the Department of Defense;

2. "Close and substantial relationship" means a relationship in which a bond has been forged between the child and the other person by regular contact or communication;

3. "Custodial responsibility" refers to legal custody, physical custody or visitation rights with respect to a child;

4. "Deploying parent" means a legal parent of a minor child or the legal guardian of a child, who is a member of the United States Armed Forces, civilian personnel or contractor serving in designated combat zones and who is deployed or has been notified of an impending deployment;

5. "Deployment" means the temporary transfer of a servicemember, civilian personnel or contractor serving in designated combat zones in compliance with official orders to another location in support of combat, contingency operation, or natural disaster requiring the use of orders for a period of more than thirty (30) consecutive days, during which family members are not authorized to accompany the servicemember at government expense. Deployment shall include any period during which a servicemember, civilian personnel or contractor serving in designated combat zones is absent from duty on account of sickness, wounds, leave or other lawful cause, and shall also include any transfer pursuant to military orders requiring presence in a foreign country;

6. "Guardian" means a person who has been appointed as a guardian of a minor or incapacitated adult pursuant to the requirements of Title 30 of the Oklahoma Statutes. The term shall include a limited guardian, but shall not include a guardian ad litem;

7. "Nondeploying parent" means a legal parent or guardian who is not deployed and who has a child or ward in common with a deploying parent;

8. "Servicemember" means a member of either:

a. the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or

b. the active or reserve components of the National Guard; and

9. "Visitation" means the right to take a child for a limited period of time to a place other than the habitual residence of the child.

Added by Laws 2011, c. 354, § 4, emerg. eff. May 26, 2011. Amended by Laws 2017, c. 29, § 1, eff. Nov. 1, 2017; Laws 2021, c. 261, § 1, emerg. eff. April 27, 2021.

§ 150.2. Jurisdiction Under Act.

A court of this state may enter an order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act only where the court has jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Sections 551-101 through 551-402 of Title 43 of the Oklahoma Statutes. If a court of this state has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, the deploying parent shall be deemed to reside in this state for the purposes of the UCCJEA during the duration of the deployment. If a court of another state has rendered a temporary order regarding custodial responsibility pursuant to deployment, this court shall deem the deploying parent to reside in the rendering state for the purposes of the UCCJEA during the duration of the deployment. This section does not prohibit the exercise of temporary emergency jurisdiction by a court of this state under the UCCJEA.

Added by Laws 2011, c. 354, § 5, emerg. eff. May 26, 2011.

§ 150.3. Designating a Family Member or Other Person to Exercize Depployed Parent's Visitation Rights.

A. In order to ensure an on going relationship with the child while deployed, pursuant to the Deployed Parents Custody and Visitation Act, upon application to the court by the deploying parent, the court shall designate a family member or another person with a close and substantial relationship to the child to exercise his or her visitation rights, unless the court determines it is not in the best interests of the child.

B. Visitation awarded pursuant to this section derives from the deploying parent's own right to custodial responsibility. Neither this section nor a court order permitting designation shall be deemed to create any separate or permanent rights to visitation.

Added by Laws 2011, c. 354, § 6, emerg. eff. May 26, 2011.

§ 150.4. Notice of Deployment Provided to Nondeploying Parent—Requirements and Procedure.

A. A deploying parent shall provide a copy of the deployment orders to the other parent within ten (10) days of receipt. When the deployment date is less than ten (10) days after receipt of the orders, a copy shall immediately be provided to the other parent.

B. If a valid court order requires that the address or contact information of the nondeploying parent be kept confidential, the notification shall be made to the court only. The court shall notify the nondeploying parent, or counsel for the nondeploying parent, if the deploying parent is prohibited from directly contacting the nondeploying parent.

Added by Laws 2011, c. 354, § 7, emerg. eff. May 26, 2011.

§ 150.5. Application for Request of Expedited Hearing Prior to Deployment.

Following a deploying parent's receiving notice of deployment, either a deploying parent or nondeploying parent may request an expedited hearing to be heard within ten (10) days or prior to deployment, whichever occurs first, on any matter pertaining to custodial or visitation responsibility. The application shall include the date on which the deployment began or begins. If the date of deployment is uncertain, the approximate date shall be included. The court shall grant a request for an expedited hearing if the deploying parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing would be prevented by the deployment or preparation for the deployment. If the deployed or deploying parent is seeking the right to designate a family member to determine visitation, then the name of the family member or another person with a close and substantial relationship to the child shall be stated in the application.

Added by Laws 2011, c. 354, § 8, emerg. eff. May 26, 2011.

§ 150.6. Issuing Temporary Orders—Use of Electronic Means of Communication—Effect and Requirements for Modification of Prior Orders or Agreements Between the Parties.

A. Upon proper motion made pursuant to Section 8 of this act, the court shall enter temporary orders regarding custody, visitation and child support.

B. A deploying parent who is entitled to a stay in civil proceedings pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App., Sections 501 through 596, may elect to proceed while the deploying parent is unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video conferencing, Internet camera, e-mail, telephone, or other reasonable electronic means.

C. Except for the privilege offered to the deployed servicemember in subsection B of this section, the court shall factor the same consideration and conduct the temporary order hearing as provided in Section 112 of Title 43 of the Oklahoma Statutes. Hearings conducted pursuant to this section shall be considered nonevidentiary hearings and the standard rules of evidence shall not apply.

D.1. If a prior judicial custody or visitation order contains provisions for custodial responsibility of the child in the event of deployment, those provisions shall not be modified by the court unless:

a. a subsequent substantial change of circumstances has occurred after the prior judicial custody or visitation order was issued, or

b. a showing that enforcement of the provisions of the prior judicial custody or visitation order would result in substantial harm to the child.

2. If the deploying parent and the nondeploying parent have previously agreed in writing to provisions for the custodial responsibility of the child in the event of deployment, there shall be a rebuttable presumption that the agreement is in the best interest of the child. The presumption may be overcome only if the court makes specific findings of fact establishing that the agreement is not in the best interest of the child.

E. When entering a temporary order for custodial responsibility prior to or during a deployment, the court shall:

1. Identify the nature of the deployment that is the basis for the order;

2. Specify that the order is temporary;

3. Specify the contact between the deploying parent and the child during deployment, including the means by which the deploying parent may remain in communication with the child, such as electronic communication by Internet camera, telephone, e-mail and other available means; and

4. Order liberal contact between the deploying parent and child when the deploying parent is on leave or is otherwise available, consistent with the best interest of the child.

F. In an order granting designation of a family member or another person with a close and substantial relationship to the child to exercise visitation rights pursuant to Section 11 of this act, the court shall:

1. Set out a process to resolve any disputes that may arise between the person receiving visitation and the nondeploying parent;

2. Identify the nature of the deployment that is the basis for the order; and

3. Specify that the order is a temporary order and shall terminate ten (10) days after notice has been provided to the nondeploying parent of the end of the deployment.

G. If the matter before the court concerns a postdissolution modification of custody or visitation, the court shall not modify the previously ordered custody or visitation arrangement until the expiration of the servicemember's deployment, unless the child is at risk of serious irreparable harm.

H. If the court has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, any nondeploying parent or any third party to whom the court has assigned primary custodial responsibility, visitation or limited contact shall notify the court of any change of address until the termination of the temporary order.

Added by Laws 2011, c. 354, § 9, emerg. eff. May 26, 2011.

§ 150.7. Court Authorized to Make Certain Orders.

A. A court that renders an order on custodial responsibility under the Deployed Parents Custody and Visitation Act may, on motion of either party and with appropriate jurisdiction under the Uniform Interstate Family Support Act ("UIFSA"):

1. Enter a temporary order for child support consistent with Oklahoma Child Support Guidelines; and

2. Require the deploying parent to enroll the child to receive military dependent benefits.

B. Any order entered on child support pursuant to this section shall state that such order shall terminate following the child's return to the deploying parent upon conclusion of deployment.

Added by Laws 2011, c. 354, § 10, emerg. eff. May 26, 2011.

§ 150.8. Family Member Visitation—Designation by Deployed Parent—Unusual Travel Costs—Appearance at Hearing—Rebuttable Presumptions—Enforcement of Temporary Order.

A. If the deploying parent moves to designate a family member or another person with a close and substantial relationship with the child to exercise visitation rights, the court shall grant reasonable visitation to a member of the family of the child, including a stepparent or step sibling, with whom the child has a close and substantial relationship as defined in the Deployed Parents Custody and Visitation Act.

B. Any visitation ordered by the court pursuant to this section shall be temporary in nature and shall not exceed or be less than the amount of custodial time granted to the deploying parent under any existing permanent order or agreement between the parents, with the exception that the court may take into account unusual travel time required to transport the child between the nondeploying parent and the family members allowed visitation.

C. The person designated by the deploying parent to exercise visitation shall appear at the temporary order hearing.

D. Rebuttable presumptions for proceedings under the Deployed Parents Custody and Visitation Act:

1. In postdissolution proceedings, there shall be a rebuttable presumption that it is in the best interests of the child for a stepparent to exercise the deployed parent's parental duties;

2. There shall be a rebuttable presumption that if the person designated by the deployed or deploying party meets the requirements of subsection A of this section, then it shall be in the best interest of the child that the person receive visitation; and

3. There shall be a rebuttable presumption that visitation by a family member who has perpetrated domestic violence against a spouse, a child, a domestic living partner, or is otherwise subject to registration requirements of the Sex Offenders Registration Act is not in the best interest of the child.

E. Any temporary order issued under the Deployed Parents Custody and Visitation Act shall be enforced as any other orders relating to the care, custody and control of the child.

Added by Laws 2011, c. 354, § 11, emerg. eff. May 26, 2011.

§ 150.9. Completion of Deployment—Notice and Termination of Temporary Order.

A. The deploying parent shall notify the nondeploying parent of the completion of the deployment. If the deploying parent is unable to locate the nondeploying parent, the deploying parent shall notify the court of the return.

B. A temporary modification order granted in accordance with the Deployed Parents Custody and Visitation Act shall terminate by operation of law ten (10) days after notice has been provided to the nondeploying parent of the completion of deployment and the original terms of the prior custody or visitation order shall be automatically reinstated.

Added by Laws 2011, c. 354, § 12, emerg. eff. May 26, 2011.

§150.10. Penaties—Failure to Comply with Provisions of Act or Court Order—Bad Faith.

If the court finds that a party to a proceeding under the Deployed Parents Custody and Visitation Act has acted in bad faith or otherwise deliberately failed to comply with the terms of the Deployed Parents Custody and Visitation Act or a court order issued under the Deployed Parents Custody and Visitation Act, the court may assess attorney fees and costs against the opposing party and order any other appropriate sanctions.

Added by Laws 2011, c. 354, § 12, emerg. eff. May 26, 2011.

§ 201. Mutual Obligations of Respect, Fidelity and Support.

Husband and wife contract towards each other obligations of mutual respect, fidelity and support.

R.L. 1910, § 3349. Renumbered from Title 32, § 1 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 202. Duty to Support—Husband—Wife.

The husband must support himself and his wife out of the community property or out of his separate property or by his labor. The wife must support the husband when he has not deserted her out of the community property or out of her separate property when he has no community or separate property and he is unable from infirmity to support himself.

R.L. 1910, § 3351. Amended by Laws 1945, p. 121, § 1. Renumbered from Title 32, § 3 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 203. Separate Property—Exclusion from Dwelling Prohibited.

Except as mentioned in the preceding section neither husband nor wife has any interest in the separate property of the other, but neither can be excluded from the other's dwelling.

R.L. 1910, § 3352. Renumbered from Title 32, § 4 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 204. Contracts or Transactions by Husband or Wife.

Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried, subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the title on trusts.

R.L. 1910, § 3353. Renumbered from Title 32, § 5 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 205. Contracts Altering Legal Relations Not Allowed—Exceptions.

A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

R.L. 1910, § 3354. Renumbered from Title 32, § 6 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 206. Mutual Consent as Consideration.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

R.L. 1910, § 3555.

§ 207. Husband and Wife—Joint Tenants, Tenants in Common or Community Property—Separate Property—Inventory and Filing.

A husband and wife may hold property as joint tenants, tenants in common, or as community property. A full and complete inventory of the separate personal property of either spouse may be made out and signed by such spouse, acknowledged or proved in the manner provided by law for the acknowledgment or proof of a grant of real property; and recorded in the office of the county clerk of the county in which the parties reside. The filing of the inventory in the county clerk's office is notice and prima facie evidence of the title of the party filing such inventory.

R.L. 1910, § 3356. Amended by Laws 1945, p. 121, § 2. Renumbered from Title 32, § 8 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 208. Liability for Acts and Debts of the Other Spouse—Curtesy and Dower Not Allowed at Death.

A. Neither husband nor wife, as such, is answerable for the acts of the other.

B. The separate property of the husband is liable for the debts of the husband contracted before or after marriage, but is not liable for the debts of the wife contracted before the marriage.

C. The separate property of the wife is liable for the debts of the wife contracted before or after marriage, but is not liable for the debts of the husband contracted before the marriage.

D. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

R.L. 1910, § 3357. Amended by Laws 1945, p. 122, § 3. Renumbered from Title 32, § 9 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989. Amended by Laws 2000, c. 380, § 6, emerg. eff. June 7, 2000.

§ 209. Repealed by Laws 2000, c. 380, § 8, emerg. eff. June 7, 2000.

§ 209.1 Necessaries Furnished to Either Spouse.

Husband and wife shall be jointly and severally liable for debts incurred on account of necessaries furnished to either spouse unless otherwise provided by law or court order.

Added by Laws 2000, SB 1332, c. 380, § 7, emerg. eff. June 7, 2000.

§ 209.2. Parent's Failure to Supply Necessary Articles for Child.

If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

R.L. 1910, § 4376. Renumbered from 10 O.S. § 13 by Laws 2009, c. 233, § 199, emerg. eff. May 21, 2009.

§ 210. Husband Abandoned by Wife Not Liable for Her Support—Exceptions—Separation by Agreement.

A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

R.L. 1910, § 3359. Renumbered from Title 32, § 11 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 211. Circumstances Where Abandoned Spouse May Manage, Control, Sell, or Encumber Property—Notice.

In case the husband or wife abandons the other and removes from the state, and is absent therefrom for one (1) year, without providing for the maintenance and support of his or her family, or is sentenced to imprisonment either in the county jail or State Penitentiary for the period of one (1) year or more, the district court of the county or judicial subdivision where the husband or wife so abandoned or not imprisoned resides, may, on application by affidavit of such husband or wife, setting forth fully the facts, supported by such other testimony as the court may deem necessary, authorize him or her to manage, control, sell or encumber the property of the said husband or wife for the support and maintenance of the family, and for the purpose of paying debts contracted prior to such abandonment or imprisonment. Notice of such proceedings shall be given the opposite party, and shall be served as summons are served in ordinary actions.

R.L. 1910, § 3360. Renumbered from Title 32, § 12 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 212. Contracts and Encumbrances Binding on Husband and Wife—Liability—Suit and Proceedings Not Abated.

All contracts, sales or encumbrances made by either husband or wife by virtue of the power contemplated and granted by order of the court as provided in the preceding section, shall be binding on both, and during such absence or imprisonment the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued thereon according to statute. No suit or proceedings shall abate or be in any wise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other.

R.L. 1910, § 3361. Renumbered from Title 32, § 13 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 213. Order or Decree Set Aside Pursuant to Preceding Sections—Notice and Service of Summons.

The husband or wife affected by the proceedings contemplated in the two preceding sections may have the order or decree of the court set aside or annulled by affidavit of such party, setting forth fully the facts and supported by such other testimony as the court shall deem proper. Notice of such proceedings to set aside and annul such order must be given the person in whose favor the same was granted, and shall be served as summons are served in ordinary actions. The setting aside of such decree or order shall in no wise affect any act done thereunder.

R.L. 1910, § 3362. Renumbered from Title 32, § 14 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 214. Legal Rights of Married Women.

Woman shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman, which her husband does as a man; and for any injury sustained to her reputation, person, property, character or any natural right, her own medical expenses, and by reason of loss of consortium, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his own name alone.

R.L. 1910, § 3363. Amended by Laws 1973, c. 73, § 1, emerg. eff. April 27, 1973. Renumbered from Title 32, § 15 by Laws 1989, c. 333, § 2, eff. Nov. 1, 1989.

§ 215. Recordable Agreement as to Rights Acquired by Community Property Laws.

Within one (1) year from the effective date of this act, any husband and wife whose property or income was subject to the terms of the act repealed by the foregoing section, may enter into a recordable agreement, specifying the rights acquired by either or each of them under the terms of said act, altering those rights if they so desire, and describing the property affected, and may record the agreement in the office of the county clerk of their residence and in the office of the county clerk of each county where any of the affected property may be located. Should any husband and wife be unable to reach such an agreement, either may file an action in the district court of the county of the residence of either of them for a determination of the rights as acquired under the repealed act, and a certified copy of the judgment may thereupon be recorded in each county in which any of the affected property is located. The failure to make and record such an agreement, or to file such an action within one (1) year and record the judgment in due course thereafter, and in any event within three (3) years from the effective date of this act, shall bar the husband or wife whose title or interest does not appear of record, or who is not separately in possession of the property, from any claim or interest in the property as against third persons acquiring any interest therein. After three (3) years from the effective date of this act, no action or proceeding of any character shall be brought to establish or recover an interest in property based upon the terms of the act repealed, unless the interest has previously been established of record, as hereinabove provided.

Added by Laws 1949, p. 229, § 2. Renumbered from Title 32, § 83 by Laws 1989, c. 333, § 2. eff. Nov. 1, 1989.

§§ 301-344. Repealed by Laws 1994, c. 160, § 52, eff. Sept. 1, 1994.

§§ 401, 402. Repealed by Laws 1993, c. 155, § 4, emerg. eff. July 1, 1993.

Oklahoma Centralized Support Registry Act

§ 410. Short Title.

This act shall be known as the "Oklahoma Centralized Support Registry Act".

Added by Laws 1992, c. 279, § 1, emerg. eff. May 25, 1992.

§§ 411, 412. Repealed by Laws 1995, c. 246, § 6, eff. Nov. 1, 1995.

§ 413. Payments Made Through Registry—Procedure—Change of Address—Service of Process.

A. The Department of Human Resources shall maintain a Centralized Support Registry to receive, allocate and distribute support payments. All child support, spousal support, and related support payments shall be paid through the Registry as follows:

1. In all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes; and
2. In all other cases in which support is being paid by income withholding.

B. When child support enforcement services are being provided under Section 237 of Title 56 of the Oklahoma Statutes, all monies owed for child support shall continue to be paid through the Registry until child support is no longer owed.

C. Any party desiring child support, spousal support, or related support payments to be paid through the Registry may request the court to order the payments to be made through the Registry. Upon such request the court shall order payments to be made through the Registry.

D. The Registry shall maintain the following information on all cases in which support is paid through the Registry. This information shall include, but not be limited to:

1. Names, social security numbers and dates of birth for both parents and the children for whom support is ordered;
2. The amount of periodic support owed under the order;
3. Case identification numbers; and

4. Payment address.

E. In all cases, except those being enforced under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, employers shall provide the Registry with a copy of the notice of income assignment specified in Section 1171.3 of Title 12 and Section 240.2 of Title 56 of the Oklahoma Statutes. Employers, parties, and obligees to an order, upon request, shall provide additional information necessary for the Registry to identify and properly allocate and distribute payments.

F. An obligee, pursuant to a judgment, decree, or order in which payment of support is required by this section to be paid through the Registry or whose support is being paid through the Registry, shall provide information as directed by the Department of Human Services necessary to properly allocate and distribute the payments.

G. All payments made through the Registry shall be allocated and distributed in accordance with Department of Human Services' policy and federal regulations.

H. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Added by Laws 1992, c. 279, § 4, emerg. eff. May 25, 1992. Amended by Laws 1997, c. 402, § 18, emerg. eff. July 1, 1997; Laws 1998, c. 323, § 13, eff. October 1, 1998; Laws 2000, c. 384. § 8, eff. Nov. 1, 2000; Laws 2001, c. 407, § 15, emerg. eff. July 1, 2001; Laws 2002, c. 314, § 5, eff. Nov. 1, 2002.

Oklahoma Child Visitation Registry Act

§ 420. Short Title.

This act shall be known as the "Oklahoma Child Visitation Registry Act".

Added by Laws 1996, c. 131, § 1, eff. Jan. 1, 1997.

§ 421. Agencies to Provide.

The associate district judge in each county within this state may authorize one or more public or private agencies to provide a child visitation registry program. Eligible governmental agencies shall include, but not be limited to, county sheriffs' offices, State Department of Health child guidance centers, social service agencies, and police departments. A participating agency may charge a fee not to exceed Two Dollars ($2.00) per parent, per visit.

Added by Laws 1996, c. 131, § 2, eff. Jan. 1, 1997.

§ 422. Participant Log—Copies of Log and Record—Entries as Proof of Compliance.

A. The child visitation registry program shall include a log for each case participating in the program which must be signed by each parent at the time of arrival and departure. The agency must have an employee assigned to verify identification of each parent or guardian, initial each signature, and record the time of each person's arrival and departure.

B. Copies of a participant's log shall be available for purchase by the participant at the agency's reproduction cost. Copies of the records may be certified by stamp. Each agency shall maintain participants' records for a minimum of three (3) years.

C. Entries in child visitation registry records shall be rebuttable presumptive proof of compliance or noncompliance with court-ordered visitation.

Added by Laws 1996, c. 131, § 3, eff. Jan. 1, 1997.

§ 423. Participation in Child Visitation Registry Program by Court Order or Motion.

The court may order parents to participate in the child visitation registry program either before or after divorce or custody proceedings have become final. The court may order parents to participate in the program on its own motion or upon the motion of either parent.

Added by Laws 1996, c. 131, § 4, eff. Jan. 1, 1997.

§ 424. Office of the Court Administrator to Develop Forms—Contents—Power to Reduce or Cancel Visitation for Habitual Lateness.

A. The Office of the Court Administrator shall develop:

1. A form for use in petitioning the court for inclusion in the child visitation registry which shall be distributed to all court clerk offices; and

2. A form for the court's order requiring participation in the registry. This form shall provide for the following:

a. a requirement that a copy of the order be given to each parent, the child visitation registry agency, and court file,

b. a determination of who is authorized to pick up or deliver a child to the child visitation registry agency. The list may include, but is not limited to, parents, stepparents, and grandparents,

c. a determination of when the participants shall meet to pick up or deliver a child to the child visitation registry agency. This decision shall include specific days of the week and time periods,

d. the date when participation in the program shall begin or end, and

e. a requirement that the participant delivering the child to the registry must wait at the agency and sign out after the participant picking up the child has departed from the agency.

B. If a parent, or other person with custody, is habitually late to pick up or deliver the child or children, the court may, upon proper notice, consider reducing or canceling visitation temporarily or permanently.

Added by Laws 1996, c. 131, § 5, eff. Jan. 1, 1997.

§ 425. Time for Hearing.

The court shall hear applications for inclusion in the child visitation registry within thirty (30) days after service upon the nonapplicant.

Added by Laws 1996, c. 131, § 6, eff. Jan. 1, 1997.

§§ 501-527. Repealed by Laws 1998, c. 407, § 43, eff. Nov. 1, 1998.

Uniform Child Custody Jurisdiction and Enforcement Act

NACCUSL PREFATORY NOTE

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Article 2 of this Act provides clearer standards for which States can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the article harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Article 3 for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

Revision of Uniform Child Custody Jurisdiction Act

The UCCJA was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became "technical enough to delight a medieval property lawyer." HOMER H. CLARK, DOMESTIC RELATIONS § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) (*Obstacles Study*), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the States. The Obstacles Study suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

1. Home state priority. The PKPA prioritizes "home state" jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a "significant connection state" when there is a "home State." Initial custody determinations based on "significant connections" are not entitled to PKPA enforcement unless there is no home State. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in Section 201.

2. Clarification of emergency jurisdiction. There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 204 which addresses these issues.

3. Exclusive continuing jurisdiction for the State that entered the decree. The failure of the UCCJA to clearly enunciate that the decree-granting State retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how

tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. Still other States distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 110, 202, and 206.

4. Specification of what custody proceedings are covered. The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

5. Role of "Best Interests." The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, the State with the closest connections to, and the most evidence regarding, a child should decide that child's custody. The "best interest" language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that "best interests" considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

6. Other Changes. This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

Enforcement Provisions

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the State where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another State. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one State, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In another State, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some States, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many States tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required - one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Article 3 provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another State. This will allow a party to know in advance whether that State will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Article 2 nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all States, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.

Article 1.
General Provisions

§ 551-101. Short Title.

This act may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".

Added by Laws 1998, c. 407, § 1, eff. Nov. 1, 1998.

§ 551-102. Definitions.

In this act:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision;

2. "Child" means an individual who has not attained eighteen (18) years of age;

3. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;

4. "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 of this act;

5. "Commencement" means the filing of the first pleading in a proceeding;

6. "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;

7. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with the parent or person acting as a parent. A period of temporary absence of the parent or person acting as a parent is part of the period;

8. "Initial determination" means the first child custody determination concerning a particular child;

9. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this act;

10. "Issuing state" means the state in which a child custody determination is made;

11. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, including any governmental subdivision, agency, instrumentality, or public corporation, or any other legal or commercial entity;

13. "Person acting as a parent" means a person, other than a parent, who:

a. has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding, and

b. has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

14. "Physical custody" means the physical care and supervision of a child;

15. "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;

16. "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

17. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Added by Laws 1998, c. 407, § 2, eff. Nov. 1, 1998.

NACCUSL Comment

The UCCJA did not contain a definition of "child." The definition here is taken from the PKPA.

The definition of "child-custody determination" now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as "managing conservatorship" or "parenting plan."

The definition of "child-custody proceeding" has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not "custody proceedings" because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody

of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Article 3 enforcement process.

"Commencement" has been included in the definitions as a replacement for the term "pending" found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of "home State" has been reworded slightly. No substantive change is intended from the UCCJA.

The term "issuing State" is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Article 3.

The term "person" has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of "person" is the one that is mandated for all Uniform Acts.

The term "person acting as a parent" has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a "person acting as a parent" under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of "tribe" is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104.

The term "contestant" as has been omitted from this revision. It was defined in the UCCJA § 2(1) as "a person, including a parent, who claims a right to custody or visitation rights with respect to a child." It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined "decree" and "custody decree" has been eliminated as duplicative of the definition of "custody determination."

§ 551-103. Proceedings Governed by Other Law.

This act does not apply to an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Added by Laws 1998, c. 407, § 3, eff. Nov. 1, 1998.

NACCUSL Comment

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most States either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a State adopts the UAA then Section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child's custody. UAA § 3-704. Those custody proceedings would be subject to this Act. *See* Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations*, 30 FAM. L. Q. 345 (1996).

Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: "Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement." For a discussion of the relationship between the UCCJA and the ICPC *see J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All States have procedures which allow the State to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

§ 551-104. Application to Indian Tribes.

A. A child custody proceeding that pertains to an Indian child as defined in the Oklahoma Indian Child Welfare Act, is not subject to this act to the extent that it is governed by the Oklahoma Indian Child Welfare Act.

B. A court of this state shall treat a tribe as if it were a state of the United States for purposes of applying Articles 1 and 2 of this act.

C. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 of this act.

Added by Laws 1998, c. 407, § 4, eff. Nov. 1, 1998.

NACCUSL Comment

This section allows States the discretion to extend the terms of this Act to Indian tribes by removing the brackets. The definition of "tribe" is found at Section 102(16). This Act does not purport to legislate custody jurisdiction for tribal courts. However, a Tribe could adopt this Act as enabling legislation by simply replacing references to "this State" with "this Tribe."

Subsection (a) is not bracketed. If the Indian Child Welfare Act requires that a case be heard in tribal court, then its provisions determine jurisdiction.

§ 551-105. International Application of Act.

A. A court of this state shall treat a foreign country as if it were a state of the United States for purposes of applying Articles 1 and 2 of this act.

B. Except as otherwise provided in subsection C of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 of this act.

C. A court of this state need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

Added by Laws 1998, c. 407, § 5, eff. Nov. 1, 1998.

NACCUSL Comment

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a State of the United States for purposes of applying Articles 1 and 2 of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term "child-custody determination" should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from Section 23 of the UCCJA.

§ 551-106. Effect of Child Custody Determination.

A child custody determination made by a court of this state that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 551-108 of this act or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Added by Laws 1998, c. 407, § 6, eff. Nov. 1, 1998.

NACCUSL Comment

No substantive changes have been made to this section which was Section 12 of the UCCJA.

§ 551-107. Priority.

If a question of existence or exercise of jurisdiction under this act is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the court's calendar and handled expeditiously.

Added by Laws 1998, c. 407, § 7, eff. Nov. 1, 1998.

NACCUSL Comment

No substantive change was made to this section which was Section 24 of the UCCJA. The section is placed toward the beginning of Article 1 to emphasize its importance.

The language change from "case" to "question" is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

§ 551-108. Notice to Persons Outside State.

A. Notice required for the exercise of jurisdiction when a person is outside this state may be given in the manner provided in Section 2004 of Title 12 of the Oklahoma Statutes or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

B. Proof of service may be made in the manner provided in Section 2004 of Title 12 of the Oklahoma Statutes or by the law of the state in which the service is made.

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

Added by Laws 1998, c. 407, § 8, eff. Nov. 1, 1998.

NACCUSL Comment

This section authorizes notice and proof of service to be made by any method allowed by either the State which issues the notice or the State where the notice is received. This eliminates the need to specify the type of notice in the Act and therefore the provisions of Section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either State. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either State would authorize notice to be served by a peace officer, such service could be used under this Act.

Although Section 105 requires foreign countries to be treated as States for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

§ 551-109. Appearance and Limited Immunity.

A. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

B. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

C. The immunity granted by subsection A of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this state.

Added by Laws 1998, c. 407, § 9, eff. Nov. 1, 1998.

NACCUSL Comment

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term "participate" should be read broadly. For example, if jurisdiction is proper under Article 2, a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under Article 2, a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the non-custodial parent moves from the State that decided the custody determination, that parent is still subject to the state's jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. *See* UIFSA § 205. If the non-custodial parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from State A after the determination, with the custodial parent and the child establishing a new home State in State B, and the non-custodial parent moving to State C. The non-custodial parent is not, at this point, subject to the jurisdiction of State B for monetary matters. *See Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into State B to enforce the visitation aspects of the determination, the non-custodial parent is not subject to the jurisdiction of State B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the State for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the non-custodial parent comes into State B to enforce the visitation aspects of the decree, State B cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. *Cf.* UIFSA § 611 (personally serving the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the State.

§ 551-110. Communication Between Courts.

A. A court of this state may communicate with a court in another state concerning a proceeding arising under this act.

B. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Added by Laws 1998, c. 407, § 10, eff. Nov. 1, 1998.

NACCUSL Comment

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under Sections 204, 206, and 306 and strongly suggested in applying Section 207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act

does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

§ 551-111. Taking Testimony in Another State.

A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

B. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Added by Laws 1998, c. 407, § 11, eff. Nov. 1, 1998.

NACCUSL Comment

No substantive changes have been made to subsection (a) which was Section 18 of the UCCJA.

Subsections (b) and (c) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. *See* UIFSA § 316.

§ 551-112. Cooperation Between Courts; Preservation of Records.

A. A court of this state may request the appropriate court of another state to:

1. Hold an evidentiary hearing;
2. Order a person to produce or give evidence pursuant to procedures of that state;
3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
4. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection A of this section.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B of this section may be assessed against the parties according to the laws of this state.

D. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Added by Laws 1998, c. 407, § 12, eff. Nov. 1, 1998.

NACCUSL Comment

This section is the heart of judicial cooperation provision of this Act. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other States and may assist courts of other States.

The provision on the assessment of costs for travel provided in the UCCJA § 19 has been changed. The UCCJA provided that the costs may be assessed against the parties or the State or county. Assessment of costs against a government entity in a case where the government is not involved is inappropriate and therefore that provision has been removed. In addition, if the State is involved as a party, assessment of costs and expenses against the State must be authorized by other law. It should be noted that the term "expenses" means out-of-pocket costs. Overhead costs should not be assessed as expenses.

No other substantive changes have been made. The term "social study" as used in the UCCJA was replaced with the modern term: "custody evaluation." The Act does not take a position on the admissibility of a custody evaluation that was conducted in another State. It merely authorizes a court to seek assistance of, or render assistance to, a court of another State.

This section combines the text of Sections 19-22 of the UCCJA.

Article 2.
Jurisdiction

§ 551-201. Initial Child Custody Jurisdiction.

A. Except as otherwise provided in § 551-204 of this act, a court of this state has jurisdiction to make an initial child custody determination only if:

1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state, but a parent or person acting as a parent continues to live in this state;

2. A court of another state does not have jurisdiction under paragraph 1 of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 19 or 20 of this act, and:

a. the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence, and

b. substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under paragraph 1 or 2 of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 551-207 or 551-208 of this act; or

4. No court of any other state would have jurisdiction under the criteria specified in paragraph 1, 2, or 3 of this subsection.

B. Subsection A of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

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

Added by Laws 1998, c. 407, § 13, eff. Nov. 1, 1998.

NACCUSL Comment

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA § 3. However, there have been a number of changes to the jurisdictional bases.

1. Home State Jurisdiction. The jurisdiction of the home State has been prioritized over other jurisdictional bases. Section 3 of the UCCJA provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a "significant connection" State when there is no home State. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (a)(1) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child's custody or for other reasons and a parent or a person acting as a parent continues to reside in the home State. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed "by a contestant or for other reasons." The scope of the PKPA's provision is theoretically narrower than this Act. However, the phrase "or for other reasons" covers most fact situations where the child is not in the home State and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision is this Act is narrower than the comparable provision in the PKPA. The PKPA's definition of extended home State is more expansive because it applies whenever a "contestant" remains in the home State. That class of individuals has been eliminated in this Act. This Act retains the original UCCJA classification of "parent or person acting as parent" to define who must remain for a State to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if State A's law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered "contestants" under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in State A. However, if State A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered "contestants" and State B where the child acquired a new home State would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The PKPA in § (c)(1) authorizes States to narrow the scope of their jurisdiction.

2. Significant connection jurisdiction. This jurisdictional basis has been amended in four particulars from the UCCJA. First, the "best interest" language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child's parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child's parents or the child and a person acting as a parent.

Third, a significant connection State may assume jurisdiction only when there is no home State or when the home State decides that the significant connection State would be a more appropriate forum under Section 207 or 208. Fourth, the determination of significant connections has been changed to eliminate the language of "present or future care." The jurisdictional determination should be made by determining whether there is sufficient evidence in the State for the court to make an informed custody determination. That evidence might relate to the past as well as to the "present or future."

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Paragraph (a)(3) provides for jurisdiction when all States with jurisdiction under paragraphs (a)(1) and (2) determine that this State is a more appropriate forum. The determination would have to be made by all States with jurisdiction under subsection (a)(1) and (2). Jurisdiction would not exist under this paragraph because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under subsection (a)(2).

Paragraph (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other State would have jurisdiction under subsections (a)(1) through (a)(3).

Subsections (b) and (c) clearly State the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State does not confer jurisdiction to make a custody determination. Subject to Section 204, satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no "workable interstate custody law could be built around [Justice] Burton's plurality opinion. . . . Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207,1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

§ 551-202. Exclusive, Continuing Jurisdiction.

A. Except as otherwise provided in Section 16 of this act, § 551-204 a court of this state which has made a child custody determination consistent with § 551-201 or 551-203 of this act has exclusive, continuing jurisdiction over the determination until:

1. A court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

2. A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

B. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 551-201 of this act.

Added by Laws 1998, c. 407, §14, eff. Nov. 1, 1998.

NACCUSL Comment

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA . Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to the decree State's continuing jurisdiction so long as that State has jurisdiction under its own law and remains the residence of the child or any contestant.

This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law. The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent or a person acting as a parent remains in the original decree State, continuing jurisdiction is lost when neither the child, the child and a parent, nor the child and a person acting as a parent continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State. In other words, even if the child has acquired a new home State, the original decree State retains exclusive, continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of Section 201 are met. If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

The use of the phrase "a court of this State" under subsection (a)(1) makes it clear that the original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.

2. Continuing jurisdiction is lost when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State. The exact language of subparagraph (a)(2) was the subject of considerable debate. Ultimately the Conference settled on the phrase that "a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State" to determine when the exclusive, continuing jurisdiction of a State ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a State in the exercise of its continuing jurisdiction when that "State remains the residence of. . . ." The phrase is also the equivalent of the language "continues to reside" which occurs in UIFSA § 205(a)(1) to determine the exclusive, continuing jurisdiction of the State that made a support order. The phrase "remains the residence of" in the PKPA has been the subject of conflicting case law. It is the intention of this Act that paragraph (a)(2) of this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.

The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.

If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.

The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any "contestant" remains in the original decree State and that State continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person

acting as a parent. The significant connection to the original decree State must relate to the child, the child and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1) recognizes that States may narrow the class of cases that would be subject to exclusive, continuing jurisdiction. However, during the transition from the UCCJA to this Act, some States may continue to base continuing jurisdiction on the continued presence of a contestant, such as a grandparent. The PKPA will require that such decisions be enforced. The problem will disappear as States adopt this Act to replace the UCCJA.

Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 207.

Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the State, the non-custodial parent returns. As subsection (b) provides, once a State has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of Section 201. If another State acquires exclusive continuing jurisdiction under this section, then its orders cannot be modified even if this State has once again become the home State of the child.

In accordance with the majority of UCCJA case law, the State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the principles of Section 207.

§ 551-203. Jurisdiction to Modify Determination.

Except as otherwise provided in § 551-204 of this act, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph 1 or 2 of subsection A of § 551-201 of this act and:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under § 551-202 of this act or that a court of this state would be a more convenient forum under § 551-207 of this act; or

2. A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Added by Laws 1998, c. 407, § 15, eff. Nov. 1, 1998.

NACCUSL Comment

This section complements Section 202 and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this State would be a more convenient forum under Section 207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201.

§ 551-204. Temporary Emergency Jurisdiction.

A. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 551-201 to 551-203 of this act, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 551-201 to 551-203 of this act. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 551-201 to 551-203 of this act, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under §§ 551-201 to 551-203 of this act, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under §§ 551-201 to 551-203 of this act. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

D. A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under §§ 551-201 to 551-203 of this act, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to §§ 551-201 to 551-203 of this act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Added by Laws 1998, c. 407, § 16, eff. Nov. 1, 1998.

NACCUSL Comment

The provisions of this section are an elaboration of what was formerly Section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home State nor significant connection jurisdiction. Second, the duties of

States to recognize, enforce and not modify a custody determination of another State do not take precedence over the need to enter a temporary emergency order to protect the child.

Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order.

Under certain circumstances, however, subsection (b) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a State with jurisdiction under Sections 201-203, an emergency custody determination made under this section becomes a final determination, if it so provides, when the State that issues the order becomes the home State of the child.

Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections 201- 203. Subsection (c) allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 201-203. That time period must be specified in the order. If there is an existing order by a State with jurisdiction under Sections 201-203, that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections 202-203. The court with appropriate jurisdiction also may decide, under the provisions of 207, that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under Section 207.

Any hearing in the State with jurisdiction under Sections 201-203 on the temporary emergency determination is subject to the provisions of Sections 111 and 112. These sections facilitate the presentation of testimony and evidence taken out of State. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the State with jurisdiction under Sections 201-203, these provisions should be used.

Subsection (d) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 201-203. The pleading rules of Section 209 apply fully to determinations made under this section. Therefore, a person seeking a temporary emergency custody determination is required to inform the court pursuant to Section 209(d) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under Sections 201-203 is required under Section 209(a) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Relationship to the PKPA. The definition of emergency has been modified to harmonize it with the PKPA. The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore "neglect" has been eliminated as a basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.

Relationship to Protective Order Proceedings. The UCCJA and the PKPA were enacted long before the advent of state procedures on the use of protective orders to alleviate problems of domestic violence. Issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence. This Act recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse.

In order for a protective order that contains a custody determination to be enforceable in another State it must comply with the provisions of this Act and the PKPA. Although the Violence Against Women's Act (VAWA), 18 U.S.C. § 2265, does provide an independent basis for the granting of full faith and credit to protective orders, it expressly excludes "custody" orders from the definition of "protective order," 22 U.S.C. § 2266.

Many States authorize the issuance of protective orders in an emergency without notice and hearing. This Act does not address the propriety of that procedure. It is left to local law to determine the circumstances under which such an order could be issued, and the type of notice that is required, in a case without an interstate element. However, an order issued after the assumption of temporary emergency jurisdiction is entitled to interstate enforcement and nonmodification under this Act and the PKPA only if there has been notice and a reasonable opportunity to be heard as set out in Section 205. Although VAWA does require that full faith and credit be accorded to ex parte protective orders if notice will be given and there will be a reasonable opportunity to be heard, it does not include a "custody" order within the definition of "protective order."

VAWA does play an important role in determining whether an emergency exists. That Act requires a court to give full faith and credit to a protective order issued in another State if the order is made in accordance with the VAWA. This would include those findings of fact contained in the order. When a court is deciding whether an emergency exists under this section, it may not relitigate the existence of those factual findings.

§ 551-205. Notice; Opportunity to be Heard; Joinder.

A. Before a child custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of § 551-108 of this act must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

B. This act does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

C. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by the law of this state as in child custody proceedings between residents of this state.

Added by Laws 1998, c. 407, § 17, eff. Nov. 1, 1998.

NACCUSL Comment

This section generally continues the notice provisions of the UCCJA. However, it does not attempt to dictate who is entitled to notice. Local rules vary with regard to persons entitled to seek custody of a child. Therefore, this section simply indicates that persons entitled to seek custody should receive notice but leaves the rest of the determination to local law. Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

State laws also vary with regard to whether a court has the power to issue an enforceable temporary custody order without notice and hearing in a case without any interstate element. Such temporary orders may be enforceable, as against due process objections, for a short period of time if issued as a protective order or a temporary restraining order to protect a child from harm. Whether such orders are enforceable locally is beyond the scope of this Act. Subsection (b) clearly provides that the validity of such orders and the enforceability of such orders is governed by the law which authorizes them and not by this Act. An order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard. The PKPA, § 1738A(e), also requires that a custody determination is entitled to full faith and credit only if there has been notice and an opportunity to be heard.

Rules requiring joinder of people with an interest in the custody of and visitation with a child also vary widely throughout the country. The UCCJA has a separate section on joinder of parties which has been eliminated. The issue of who is entitled to intervene and who must be joined in a custody proceeding is to be determined by local state law.

A sentence of the UCCJA § 4 which indicated that persons outside the State were to be given notice and an opportunity to be heard in accordance with the provision of that Act has been eliminated as redundant.

§ 551-206. Simultaneous Proceedings.

A. Except as otherwise provided in Section 16 of this act, § 551-204 a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under § 551-207 of this act.

B. Except as otherwise provided in § 551-204 of this act, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 551-209 of this act. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
2. Enjoin the parties from continuing with the proceeding for enforcement; or
3. Proceed with the modification under conditions it considers appropriate.

Added by Laws 1998, c. 407, § 18, eff. Nov. 1, 1998.

NACCUSL Comment

This section represents the remnants of the simultaneous proceedings provision of the UCCJA § 6. The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved by the prioritization of home state jurisdiction under Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the prohibitions on modification of Section 203. If there is a home State, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with concurrent jurisdiction and, therefore, no simultaneous proceedings. Of course, the home State, as well as the State with exclusive, continuing jurisdiction, could defer to another State under Section 207. However, that decision is left entirely to the home State or the State with exclusive, continuing jurisdiction.

Under this Act, the simultaneous proceedings problem will arise only when there is no home State, no State with exclusive, continuing jurisdiction and more than one significant connection State. For those cases, this section retains the "first in time" rule of the UCCJA. Subsection (b) retains the UCCJA's policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another State.

Subsection (c) concerns the problem of simultaneous proceedings in the State with modification jurisdiction and enforcement proceedings under Article 3. This section authorizes the court with exclusive, continuing jurisdiction to stay the modification proceeding pending the outcome of the enforcement proceeding, to enjoin the parties from continuing with the enforcement proceeding, or to continue the modification proceeding under such conditions as it determines are appropriate. The court may wish to communicate with the enforcement court. However, communication is not mandatory. Although the enforcement State is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a State with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a State with the authority to do so. The concomitant provision addressed to the enforcement court is Section 306 of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term "pending" that was utilized in the UCCJA section on simultaneous proceeding has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term "commencement of the proceeding" as more accurately reflecting the policy behind this section. The latter term is defined in Section 102(5).

§ 551-207. Inconvenient Forum.

A. A court of this state which has jurisdiction under this act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or request of another court.

B. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

2. The length of time the child has resided outside this state;

3. The distance between the court in this state and the court in the state that would assume jurisdiction;

4. The relative financial circumstances of the parties;

5. Any agreement of the parties as to which state should assume jurisdiction;

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

8. The familiarity of the court of each state with the facts and issues in the pending litigation.

C. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

D. A court of this state may decline to exercise its jurisdiction under this act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Added by Laws 1998, c. 407, § 19, eff. Nov. 1, 1998.

NACCUSL Comment

This section retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other State.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse.

In applying subparagraph (3), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of Sections 111 and 112.

In applying subsection (7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two States, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one State has jurisdiction to decide both the custody and support issues, it would be desirable to determine that State to be the most convenient forum. The same is true when children of the same family live in different States. It would be inappropriate to require parents to have custody proceedings in several States when one State could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this State may communicate, in accordance with Section 110, with a court of another State and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from Section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.

Second, UCCJA, § 7(g) which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

§ 551-208. Jurisdiction Declined by Reason of Conduct.

A. Except as otherwise provided in § 551-204 of this act or by another law of this state, if a court of this state has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

2. A court of the state otherwise having jurisdiction under §§ 551-201 to 551-203 of this act determines that this state is a more appropriate forum under §§ 551-207 of this act; or

3. No court of any other state would have jurisdiction under the criteria specified in §§ 551-201 to 551-203 of this act.

B. If a court of this state declines to exercise its jurisdiction pursuant to subsection A of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under §§ 551-201 to 551-203 of this act.

C. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during

the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this act.

Added by Laws 1998, c. 407, § 20, eff. Nov. 1, 1998.

NACCUSL Comment

The "Clean Hands" section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the ban on modification in Section 203. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 201, which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long at the first State exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home State, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court's jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court that would otherwise have jurisdiction under this Act. Similarly, if the court that would have jurisdiction finds that the court of this State is a more appropriate forum, the court may hear the case.

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section in inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section.

Subsection (b) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another State that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

§ 551-209. Information to be Submitted to Court.

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

3. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

B. If the information required by subsection A of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in paragraphs 1 through 3 of subsection A of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Added by Laws 1998, c. 407, § 21, eff. Nov. 1, 1998.

NACCUSL Comment

The pleading requirements from Section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of States have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the State requires their applicability. *See*, *e.g*., California Family Law Code § 3409(a). If a State does not have local law that provides for protecting names and addresses, then subsection (e) or a similar provision should be adopted. Subsection (e) is based on the National Council of Juvenile and Family Court Judge's, Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (a)(2), the term "proceedings" should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

§ 551-210. Appearance of Parties and Child.

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

B. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to § 551-108 of this act include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

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

D. If a party to a child custody proceeding who is outside this state is directed to appear under subsection B of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Added by Laws 1998, c. 407, § 22, eff. Nov. 1, 1998.

NACCUSL Comment

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

Article 3.
Enforcement

§ 551-301. Definitions.

In this article:

1. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

Added by Laws 1998, c. 407, § 23, eff. Nov. 1, 1998.

NACCUSL Comment

For purposes of this article, "petitioner" and "respondent" are defined. The definitions clarify certain aspects of the notice and hearing sections.

§ 551-302. Enforcement Under Hague Convention.

Under this article a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Added by Laws 1998, c. 407, § 24, eff. Nov. 1, 1998.

NACCUSL Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

§ 551-303. Duty to Enforce.

A. A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this act or the determination was made under factual circumstances meeting the jurisdictional standards of this act and the determination has not been modified in accordance with this act.

B. A court of this state may utilize any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Added by Laws 1998, c. 407, § 25, eff. Nov. 1, 1998.

NACCUSL Comment

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification unless the State would have jurisdiction to modify the determination under Article 2.

The remedies provided by this article for the enforcement of a custody determination will normally be used. This article does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

§ 551-304. Temporary Visitation.

A. A court of this state which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:

1. A visitation schedule made by a court of another state; or

2. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

B. If a court of this state makes an order under paragraph 2 of subsection A of this section, it shall specify in the order a period of time that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 of this act. The order remains in effect until an order is obtained from the other court or the time period expires.

Added by Laws 1998, c. 407, § 26, eff. Nov. 1, 1998.

NACCUSL Comment

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for "reasonable and seasonable."

However, a court may not, under subsection (a)(2) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 202 or modification jurisdiction under Section 203. As under Section 204, subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Article 2.

§ 551-305. Registration of Child Custody Determination.

A. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

1. A letter or other document requesting registration;

2. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

3. Except as otherwise provided in § 551-209 of this act, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required by subsection A of this section, the registering court shall:

1. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

2. Serve notice upon the persons named pursuant to paragraph 3 subsection A of this section and provide them with an opportunity to contest the registration in accordance with this section.

C. The notice required by paragraph 2 of subsection B of this section must state that:

1. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

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

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

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

1. The issuing court did not have jurisdiction under Article 2 of this act;

2. The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 of this act; or

3. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of §§ 551-208 of this act, in the proceedings before the court that issued the order for which registration is sought.

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

F. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Added by Laws 1998, c. 407, § 27, eff. Nov. 1, 1998.

NACCUSL Comment

This remainder of this article provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

§ 551-306. Enforcement of Registered Determination.

A. A court of this state may grant any relief normally available under the laws of this state to enforce a registered child custody determination made by a court of another state.

B. A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 of this act, a registered child custody determination of a court of another state.

Added by Laws 1998, c. 407, § 28, eff. Nov. 1, 1998.

NACCUSL Comment

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Article 2.

§ 551-307. Simultaneous Proceedings.

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 of this act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Added by Laws 1998, c. 407, § 29, eff. Nov. 1, 1998.

NACCUSL Comment

The pleading rules of Section 308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under Section 202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202, or with modification jurisdiction under Section 203, could enjoin the parties from continuing with the enforcement proceeding.

§ 551-308. Expedited Enforcement of Child Custody Determination.

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

2. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

3. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

4. The present physical address of the child and the respondent, if known;

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

6. If the child custody determination has been registered and confirmed under § 551-305 of this act, the date and place of registration.

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

D. An order issued under subsection C of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of

fees, costs, and expenses under § 551-312 of this act, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

1. The child custody determination has not been registered and confirmed under § 551-305 of this act and that:

a. the issuing court did not have jurisdiction under Article 2 of this act,

b. the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 of this act, or

c. the respondent was entitled to notice, but notice was not given in accordance with the standards of §§ 551-208 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered and confirmed under § 551-305 of this act, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act.

Added by Laws 1998, c. 407, § 30, eff. Nov. 1, 1998

NACCUSL Comment

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term "next judicial day" in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2. The court is also to order payment of the fees and expenses set out in Section 312. The court may set another hearing to determine whether additional relief available under this state's law should be granted.

If the order has been registered and confirmed in accordance with Section 304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2.

§ 551-309. Service of Petition and Order.

Except as otherwise provided in Section 33 of this act, § 551-311 the petition and order shall be served upon the respondent and any person who has physical custody of the child in the manner provided in Section 2004 of Title 12 of the Oklahoma Statutes.

Added by Laws 1998, c. 407, § 31, eff. Nov. 1, 1998.

NACCUSL Comment

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

§ 551-310. Hearing and Order.

A. Unless the court issues a temporary emergency order pursuant to §§ 51-204 of this act, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

1. The child custody determination has not been registered and confirmed under § 551-305 of this act and that:

a. the issuing court did not have jurisdiction under Article 2 of this act,

b. the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act, or

c. the respondent was entitled to notice, but notice was not given in accordance with the standards of §§ 551-204 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered and confirmed under § 551-305 of this act, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act.

B. The court shall award the fees, costs, and expenses authorized under § 551-312 of this act and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

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

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

Added by Laws 1998, c. 407, § 32, eff. Nov. 1, 1998.

NACCUSL Comment

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Article 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over the custody proceeding under Section 202, or the court that would have jurisdiction to modify the custody determination under Section 203.

The court shall determine at the hearing whether fees should be awarded under Section 312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

§ 551-311. Warrant to Take Physical Custody of Child.

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

B. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection B of § 551-308 of this act.

C. A warrant to take physical custody of a child must:

1. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
2. Direct law enforcement officers to take physical custody of the child immediately; and
3. Provide for the placement of the child pending final relief.

D. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

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

F. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Added by Laws 1998, c. 407, § 33, eff. Nov. 1, 1998.

NACCUSL Comment

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary retraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement

with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

§ 551-312. Costs, Fees, and Expenses.

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

B. The court may not assess fees, costs, or expenses against a state unless authorized by laws other than this act.

Added by Laws 1998, c. 407, § 34, eff. Nov. 1, 1998.

NACCUSL Comment

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to -

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination ... .

The term "prevailing party" is not given a special definition for this Act. Each State will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

§ 551-313. Recognition and Enforcement.

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

Added by Laws 1998, c. 407, § 35, eff. Nov. 1, 1998.

NACCUSL Comment

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

§ 551-314. Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with appellate procedures in other civil cases. Unless the court enters a temporary emergency order under § 551-204 of this act, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Added by Laws 1998, c. 407, § 36, eff. Nov. 1, 1998.

NACCUSL Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 204, there is no reason to stay the enforcement of the order pending appeal.

§ 551-315. Role of District Attorney.

A. In a case arising under this act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the district attorney may take any lawful action, including resorting to a proceeding under this article or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

1. An existing child custody determination;
2. A request to do so from a court in a pending child custody proceeding;
3. A reasonable belief that a criminal statute has been violated; or
4. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

B. A district attorney acting under this section acts on behalf of the court and may not represent any party.

Added by Laws 1998, c. 407, § 37, eff. Nov. 1, 1998.

NACCUSL Comment

Sections 315-317 are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, States may locate the authority described in the section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violated either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. *See Committee on Legal Ethics v. Printz*, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a State from authorizing the prosecutor or other public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a "friend of the court." Its role is to ensure that the custody determination is enforced.

Sections 315-317 are limited to cases covered by this Act, i.e. interstate cases. However, States may, if they wish, extend this part of the Act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

§ 551-316. Role of Law Enforcement.

At the request of a district attorney acting under § 551-315 of this act, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the district attorney with responsibilities under § 551-315 of this act.

Added by Laws 1998, c. 407, § 38, eff. Nov. 1, 1998.

NACCUSL Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

§ 551-317. Costs and Expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the district attorney and law enforcement officer under § 551-315 or 551-316 of this act.

Added by Laws 1998, c. 407, § 39, eff. Nov. 1, 1998.

NACCUSL Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term "direct" indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities' attorneys.

Article 4.

Miscellaneous Provisions

§ 551-401. Application and Construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 1998, c. 407, § 40, eff. Nov. 1, 1998.

§ 551-402. Transitional Provision.

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

Added by Laws 1998, c. 407, § 41, eff. Nov. 1, 1998.

NACCUSL Comment

A child custody proceeding will last throughout the minority of the child. The commencement of a child custody proceeding prior to this Act does not mean that jurisdiction will continued to be governed by prior law. The provisions of this act apply if a motion to modify an existing determination is filed after the enactment of this Act. A motion that is filed prior to enactment may be completed under the rules in effect at the time the motion is filed.

Uniform Interstate Family Support Act

NACCUSL PREFATORY NOTE

I. BACKGROUND INFORMATION

In 1992 the National Conference of Commissioners on Uniform State Laws [hereafter NCCUSL, the Conference, or Uniform Law Commissioners] promulgated the UNIFORM INTERSTATE FAMILY SUPPORT ACT [hereafter UIFSA] as a complete replacement for the two then-existing uniform interstate support acts, the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT [URESA] and its revised version [RURESA]. In 1993 two States, Arkansas and Texas, enacted UIFSA. By the summer of 1996, 35 States had adopted the new Uniform Act. That year was a very eventful one in the history of UIFSA. First, a Drafting Committee was convened in Spring 1996 in response to requests from representatives of employer groups for more specific statutory directions regarding interstate child-support withholding orders. Second, the child-support community (primarily the IV-D programs funded by federal subsidies) requested review of the substantive and procedural provisions. As a result, significant amendments to UIFSA were adopted by the Conference in July, 1996.

The Conference promulgated UIFSA in July, 1996. Less than one month later, the U.S. Congress assured that nationwide acceptance of the amended Act was virtually certain. In the "welfare reform" legislation passed in August 1996, officially known as the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (PRWORA), the enactment of UIFSA, as amended, was mandated as a condition of state eligibility for the federal funding of child support enforcement, as follows:

> Sec. 321. ADOPTION OF UNIFORM STATE LAWS [42 U.S.C. Section 666] is amended by adding at the end the following new subsection:
>
> "(f) Uniform Interstate Family Support Act.—In order to satisfy [42 U.S.C. 654(20)(A)], on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws." P.L. 104-193, Section 321, 110 Stat. 2221.

For a comprehensive history of the events leading up to the replacement of URESA and RURESA by UIFSA, *see* the Prefatory Notes to the 1992 and 1996 versions of the Act found in 9 UNIFORM LAWS ANNOTATED 253, 393 (2000), or John J. Sampson, *Uniform Interstate Family Support Act with Unofficial Annotations*, 27 FAM. L.Q. 91 (1993), and John J. Sampson, *Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note, and Commissioners Comments (with More Unofficial Annotations)*, 32 FAM. L.Q. 385 (1998).

In accordance with the congressional mandate, by 1998 all U.S. jurisdictions had enacted UIFSA. Thus, the several states have had between four and eight years of experience with the various iterations of the Act. Moreover, there has been an extraordinary amount of comprehensive training about the Act by the child support enforcement agencies throughout the nation and associated agencies and organizations of those agencies, e.g.: U.S. Department of Health and Human Services, Office of Child Support Enforcement (OCSE); National Child Support Enforcement Association (NCSEA); Eastern Regional Interstate Child Support Association (ERICSA); and, Western Interstate Child Support Enforcement Council (WICSEC). As a consequence, the provisions of UIFSA are far more familiar to those who must administer it than ever was true of its predecessor acts, URESA and RURESA.

In 2000 the child-support community again requested that the Act be reviewed and amendments suggested as appropriate. In response to this request, the Conference leadership appointed a new Drafting Committee (the earlier Committee had been disbanded). A single meeting in March 2001 led to significant substantive and procedural amendments that ultimately were approved by the Conference at its Annual Meeting in August, 2001. None of the amendments, however, make a fundamental change in the policies and procedures established in UIFSA 1996. The widespread acceptance of UIFSA is due primarily to the fact that representatives of the child support enforcement community mentioned above participated actively in the drafting of each version of the Act, including the amendments of 2001. In sum, although two sets of amendments have been propounded since the initial 1992 version of UIFSA, its basic principles have remained constant.

II. BASIC PRINCIPLES OF UIFSA

A. In General

1. RECIPROCITY NOT REQUIRED BETWEEN STATES. Reciprocal laws, the hallmark of RURESA and URESA, are not required under UIFSA. Although reciprocity became irrelevant in this country with the universal adoption of UIFSA, reciprocity continues to be an issue with regard to the recognition and enforcement of support orders of foreign countries and their political subdivisions, Sections 102(21), 104, 308. Respect and tolerance for the laws of other states and nations in order to facilitate child support enforcement is another prime goal of the Act. The 2001 amendments continue this perspective by explicitly recognizing that tribunals may extend the principle of comity to foreign support orders, Sections 104 and 210.

2. LONG-ARM JURISDICTION. UIFSA contains a broad provision for asserting long-arm jurisdiction to provide a tribunal in the State of residence of the spouse or a child entitled to support with the maximum possible opportunity to secure personal jurisdiction over an absent respondent, Section 201. This converts what otherwise would be a two-state proceeding into a one-state proceeding. When jurisdiction over a nonresident is obtained, the tribunal may obtain evidence, provide for discovery, and elicit testimony through use of the same "information route" provided for two-state proceedings, Sections 210, 316-318. Amendments in 2001 to the basic long-arm provision, Section 201, clarified and strengthened the interrelationship between the assertion of such jurisdiction and the continuing nature of personal jurisdiction for enforcement and modification of a support order, Sections 205 and 206.

B. Establishing a Support Order

1. FAMILY SUPPORT. The Act may be used only for proceedings involving the support of a child or spouse of the support obligor; it does not include enforcement of other duties of support found in the statutes of a few states, such as requiring support of an elderly or disabled parent by an adult child, Sections 101(2),(18).

2. LOCAL LAW. UIFSA provides that the procedures and law of the forum apply, with some significant additions or exceptions:

(a) Certain procedures are prescribed for interstate cases even if they are not consistent with local law, i.e.: the contents of interstate petitions, Sections 311 and 602; the nondisclosure of certain sensitive information, Section 312; authority to award fees and costs including attorney's fees, Section 313; elimination of certain testimonial immunities, Section 314; and, limits on the assertion of nonparentage as a defense to support enforcement, Section 315.

(b) Visitation issues cannot be raised in child support proceedings, Section 305(d).

(c) Special rules for the interstate transmission of evidence and discovery are added to help place the maximum amount of information before the deciding tribunal. These procedures are available in cases in which the tribunal asserts jurisdiction over a nonresident, (Sections 210, 316-318), and may have the effect of amending local law in long-arm cases.

(d) The choice-of-law rule for the interpretation of a registered order is that the law of the issuing State governs the underlying terms of the controlling support order. One important exception exists; if the registering and issuing State have different statutes of limitation for enforcement, the longer time limit applies, Section 604.

3. CONTINUING EXCLUSIVE JURISDICTION AND THE ONE-ORDER SYSTEM. Under URESA and RURESA the majority of support proceedings were de novo. Even when an existing order of one State was "registered" in a second State, the registering State often asserted the right to modify the registered order. This meant that multiple support orders could be in effect in several states. As far as is possible, under UIFSA the principle of continuing, exclusive jurisdiction aims to recognize that only one valid support order may be effective at any one time, Sections 205-207. This principle is carried out in Sections 203-211.

4. PRIVATE ATTORNEYS. UIFSA explicitly authorizes parties to retain private legal counsel in support proceedings, Section 309, as well as to use the services of a state support enforcement agency, Section 307(a). The Act expressly takes no position on whether the support enforcement agency's assistance of a supported family establishes an attorney-client relationship with the applicant, Section 307(c).

5. EFFICIENCY. UIFSA streamlines interstate proceedings as follows:

(a) Proceedings may be initiated by or referred to administrative agencies rather than to courts in those states that use those agencies to establish support orders, Section 101(22).

(b) Under the old system, the process began by requiring a local "initiating tribunal" to make a preliminary (and nonbinding) determination of a duty to support, and then forwarding the documents to a "responding tribunal" for a binding decision. Under UIFSA an individual party or support enforcement agency in the initiating State may file a proceeding directly in a tribunal in the responding State, Section 301. This innovation by UIFSA has proven to be a major contribution to efficient case management. In the unlikely event that some local action is needed, initiation of an interstate case in the initiating State is expressly made ministerial rather than a matter for adjudication or review by a tribunal.

(c) To facilitate efficient interstate establishment, enforcement, and modification of child support orders, forms sanctioned by the federal Office of Child Support Enforcement are available. Although developed in conjunction with the federal IV-D program, private parties and their attorneys who are engaged in an interstate child support case are well advised to use the appropriate forms for transmission of information to the responding State, Section 311(b). The information in those forms is declared to be admissible evidence, Section 316(b).

(d) Authority is provided for the transmission of information and documents through electronic and other modern means of communication, Section 316(e).

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

(f) Tribunals are required to cooperate in the discovery process for use in a tribunal in another State, Section 318.

(g) A tribunal and a support enforcement agency providing services to a supported family must keep the parties informed about all important developments in a case, Sections 305 and 307.

(h) A registered support order is confirmed and immediately enforceable unless the respondent files an objection in a record within a fixed period of time, almost invariably the 20 days suggested originally, Sections 603 and 607.

6. INTERSTATE PARENTAGE. UIFSA authorizes establishment of parentage in an interstate proceeding, even if not coupled with a proceeding to establish support, Section 701.

C. Enforcing a Support Order

1. DIRECT ENFORCEMENT. UIFSA provides two direct enforcement procedures that do not require assistance from a tribunal. First, a notice may be sent directly to the obligor's employer in another State, Section 501, which triggers income withholding by that employer without the necessity of a hearing unless the employee objects. The Act details the procedure to be followed by the employer in response to an interstate request for direct income withholding, Sections 502-506. Additionally, the Act provides for direct administrative enforcement by the support enforcement agency of the obligor's State, Section 507.

2. REGISTRATION. Enforcement of a support order of another State or nation involving a tribunal of the forum State begins with the registration of the existing support order in a tribunal of the responding State, Sections 601-604. However, the registered order continues to be the order of the issuing State, Sections 605-608. The role of the responding State is limited to enforcing that order except in the very limited circumstances under which modification is permitted, *infra*.

D. Modifying a Support Order

1. REGISTRATION. The first step for a party (whether obligor or obligee) requesting a tribunal of another State to modify an existing child support order is to follow the identical procedure for registration as when enforcement is sought. All modification requests are subject to strict rules, *infra*, although different sequences are allowable: i.e., registration for enforcement and a later request for modification; or, a request for contemporaneous modification and enforcement.

2. MODIFICATION STATUTORILY RESTRICTED. Under UIFSA, the only tribunal that can modify a support order is one having continuing, exclusive jurisdiction over the support issue. As an initial matter, this is the tribunal that first acquires personal and subject matter jurisdiction over the parties and the

support obligation. If modification of the order by the issuing tribunal is no longer appropriate, another tribunal may become vested with the continuing, exclusive jurisdiction necessary to modify the order. Primarily this occurs when neither the individual parties nor the child reside in the issuing State, or when the parties agree in a record that another tribunal may assume modification jurisdiction. Only then may another tribunal with personal jurisdiction over the parties assume continuing, exclusive jurisdiction and have jurisdiction to modify the order, Sections 205, 206, 603(c), 609-612. Further, except for modification by agreement, Section 205 and 207, or when the parties have all moved to the same new State, Section 613, the party petitioning for modification must be a nonresident of the responding State and must submit himself or herself to the forum State, which must have personal jurisdiction over the respondent, Section 611. The vast majority of the time this is the State in which the respondent resides. A colloquial short-hand summary of the principle is that ordinarily the movant for modification of a child support order "must play an away game."

A 2001 amendment adds that even if the parties and child have moved from the issuing State they may agree that the tribunal that issued the controlling order will continue to exercise its continuing, exclusive jurisdiction, Section 205. This recognizes the fact that it may be preferable for the parties to return to a tribunal familiar with the issues rather than to be required to fully inform another tribunal of all the facts and issues that have been previously litigated. This exception may be particularly appropriate if both child-support and spousal-support are involved in the same case; under this Act, jurisdiction to modify the spousal support order is exclusively reserved to the issuing tribunal, regardless of where the parties reside.

Section 613 makes an obvious exception to the nonresident petitioner rule: if the child no longer resides in the issuing State and the parties have moved from the issuing State and by coincidence or design currently reside in the same State, that State has jurisdiction to modify the existing order and assume continuing, exclusive jurisdiction over the child support order.

Section 614 places the duty on the party obtaining a modification to provide notice of the new order to all interested tribunals, and grants the tribunal authority to sanction a party who fails to perform this duty of notice.

To facilitate modification across international borders, another exception to the nonresident petitioner rule was added in 1996 for child support orders issued by foreign jurisdictions. The amendments of 2001 recodified this procedure in a wholly new provision. Section 615 expands on the right of a tribunal of one of the several states to modify a child support order of a foreign country or political subdivision if that jurisdiction is prevented from modifying its order under its local law and the modification would be consistent with standards of due process.

NACCUSL Comment

The Uniform Interstate Family Support Act Amendments (2008)

A Summary

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders by: setting basic jurisdictional standards for state courts; determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding; establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions; and providing rules for modifying or refusing to modify another state's child support order.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("the Convention"). This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. In July 2008, the Uniform Law Commission amended UIFSA to incorporate changes required by the Convention. In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. The 2008 UIFSA amendments serve as the implementing language for the Convention throughout the states. Importantly, enacting the UIFSA amendments will improve the enforcement of American child support orders abroad and will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

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

In September 2014, Congress passed federal implementing legislation for the Convention. Importantly, the new law (the Preventing Sex Trafficking and Strengthening Families Act) requires that the 2008 UIFSA amendments be enacted in every jurisdiction as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments during the 2015 legislative session may result in a state's loss of this important federal funding.

Article 1.
General Provisions

§ 601-100. Repealed by Laws 2015, c. 104, § 67, eff. Nov. 1, 2015.

§ 601-101. Short Title.

This act may be cited as the "Uniform Interstate Family Support Act".

Added by Laws 1994, c. 160, § 2, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360. § 1, eff. September 1, 1997; Laws 2004 (Reg. Sess.), c. 367, § 1, eff. Nov. 1, 2004; Laws 2015, c. 104, § 1, eff. Nov. 1, 2015.

§ 601-102. Definitions.

In this act:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country;

3. "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007;

4. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support;

5. "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

a. which has been declared under the law of the United States to be a foreign reciprocating country,

b. which has established a reciprocal arrangement for child support with this state as provided in Section 601-308 of this title,

c. which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this act, or

d. in which the Convention is in force with respect to the United States;

6. "Foreign support order" means a support order of a foreign tribunal;

7. "Foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention;

8. "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period;

9. "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

10. "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by the income-withholding law of this state, to withhold support from the income of the obligor;

11. "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country;

12. "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child;

13. "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child;

14. "Issuing tribunal" means the tribunal that issues a support order or a judgment determining parentage of a child;

15. "Law" includes decisional and statutory law and rules and regulations having the force of law;

16. "Obligee" means:

a. an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued,

b. a foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support,

c. an individual seeking a judgment determining parentage of the individual's child, or

d. a person that is a creditor in a proceeding under Article 7;

17. "Obligor" means an individual or the estate of a decedent that:

a. owes or is alleged to owe a duty of support,

b. is alleged but has not been adjudicated to be a parent of a child,

c. is liable under a support order, or

d. is a debtor in a proceeding under Article 7;

18. "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country;

19. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

20. "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;

21. "Register" means to record or file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country;

22. "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered;

23. "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country;

24. "Responding tribunal" means the authorized tribunal in a responding state or foreign country;

25. "Spousal support order" means a support order for a spouse or former spouse of the obligor;

26. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe;

27. "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

a. seek enforcement of support orders or laws relating to the duty of support,

b. seek establishment or modification of child support,

c. request determination of parentage of a child,

d. attempt to locate obligors or their assets, or

e. request determination of the controlling child support order;

28. "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief; and

29. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child.

Added by Laws 1994, c. 160, § 2, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 1, eff. Sept. 1, 1997; Laws 2004, c. 367, § 1, eff. Nov. 1, 2004; Laws 2015, c. 104, § 2, eff. Nov. 1, 2015; Laws 2016, c. 148, § 1, eff. Nov. 1, 2016.

NACCUSL Comment

The terms defined in UIFSA receive a major makeover in the now-realized expectation that the Convention will enter into force in the United States at a future time. Six definitions of terms are completely new, sixteen existing definitions are amended to a greater or lesser degree, seven definitions remain basically untouched albeit six of these are renumbered, and one term is deleted because it no longer appears in the act.

Many crucial definitions continue to be left to local law. For example, the definitions provided by subsections (1) "child," and (2) "child-support order," refer to "the age of majority" without further elaboration. The exact age at which a child becomes an adult for different purposes is a matter for the law of each state or foreign country as is the age at which a parent's duty to furnish child support terminates. Similarly, a wide variety of other terms of art are implicitly left to state law. The new Convention provides a more explicit definition of "child" that is entirely consistent with the laws of all states.

There is a divergence of opinion among the several states regarding the appropriate age for termination of child support. The overwhelming number of states set ages 18 (legal adulthood for most purposes), or 19, or one of those two ages and high-school graduation, whichever comes later. Relatively few states have retained the formerly popular age of 21. And, some states extend the support obligation past age 21 if the person to be supported is engaged in higher education. Allegedly some support enforcement agencies and some tribunals have been reluctant to enforce an ongoing child support obligation past age 21, but under UIFSA it is the law of the issuing state or foreign country that makes the determination of the appropriate age for termination of support from an obligor. Because the order has been established with personal jurisdiction over the parties, it is fully enforceable under the terms of the act.

Under the terms of the Convention, the standard obligation of a responding tribunal to enforce a child-support order is for a person "under the age of 21 years." See Convention art. 2. Scope. However, a contracting nation may make a reservation to limit enforcement of a child-support order to "persons who have not attained the age of 18 years." Id. This possibility will not affect this act domestically because the United States does not intend to make such a reservation. Currently states will enforce another jurisdiction's order even if such an order could not have been obtained in the responding state because the child was over 18. There is no requirement to establish an order for a child over the age of 18 if that cannot be done under the local jurisdiction's law.

Subsection (3) "Convention," identifies the Hague Maintenance Convention, the basis on which UIFSA (2008) was drafted. The text of the Convention may be accessed on the website of the Hague Convention on Private International Law, www.hcch.net/index. As noted above, the Convention was the result of negotiations involving more than 70 foreign nations or, in some instances political subdivisions of a foreign nation, conducted in a series of meetings from May 2003 to November 2007.

Subsection (4) "Duty of support," means the legal obligation to provide support, whether or not that duty has been the subject of an order by a tribunal. This broad definition includes both prospective and retrospective obligations to the extent they are imposed by the relevant state law.

The definitions in subsections (5) "foreign country," (6) "foreign support order," and (7) "foreign tribunal," are all new to UIFSA, and must be read in conjunction with the prior and the new definition of "state," now in subsection (26). Formerly, under certain circumstances a foreign country or political subdivision was declared to be a "state." Defining a foreign country or a political subdivision thereof, e.g., a 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 (RURESA). That fiction created confusion because a foreign support order is not entitled to full faith and credit. Indeed, such orders of the sister states of the United States were only relatively recently accorded that treatment after congressional action in 1994 with the advent of the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28. U.S.C. § 1738 B. Thus, constitutional analysis is not required for enforcement of foreign support orders; only state statutory issues are involved.

The term "foreign judgment" is used only once in UIFSA (1996) and (2001) in a context that clearly intends to mean "from a sister state." If an international construction is intended, the text in UIFSA (2001) is uniformly "foreign country or political subdivision." The new definitions in UIFSA (2008) are fine-tuned to avoid ambiguity in order to ensure that "foreign" is used strictly to identify international proceedings and orders.

Subsection (5) requires additional careful reading; under the act "foreign country" by no means includes all foreign nations. See Section 102(5)(A)-(D). Countries identified by three of the four subdivisions are reasonably ascertainable. The list of reciprocating countries that have negotiated an executive

agreement with the United States as described in subdivision (5)(A), known as bilateral agreements, is found on the website of the federal Office of Child Support Enforcement (OCSE) at http://www. acf.hhs.gov/programs/cse/international/index.html.

The countries described in Section 102(5)(B) have entered into an agreement with the forum state, which presumptively is known to officials of that state. A combined list of all such agreements of all states is not readily available.

Countries subject to Section 102(5)(C) theoretically could require individualized determinations on a case-by-case basis. An alternative might be for each state to create an efficient method for identifying foreign countries whose laws are "substantially similar" to UIFSA. On the other hand, the "substantially similar" test to measure the laws of foreign nations has been around since 1968 without eliciting much controversy.

In the future, assuming that there will be a number of countries with the Convention in force with the United States under Section 102(5)(D), the list of those countries will be well publicized.

Finally, there are very many foreign nations that do not, and will not, fit any of the definitions of "foreign country" established in the act. At present, there are 192 member states in the United Nations. Recognition and enforcement of support orders from nations that do not meet the definition of "foreign country" may be enforceable under the doctrine of comity. *See* Section 104.

Subsections (6) "foreign support order," (7) "foreign tribunal," and (12) "issuing foreign country" set down parallel tracks for a foreign support order, foreign tribunal, and foreign issuing country throughout the act.

Subsection (17) "obligor," and subsection (16) "obligee," are denominated in the Convention as "debtor" and "creditor." The terms inherently contain the legal obligation to pay or receive support, and implicitly refer to the individuals with a duty to support a child. "Obligor" includes an individual who is alleged to owe a duty of support as well as a person whose obligation has previously been determined. The one-order system of UIFSA can succeed only if the respective obligations of support are adjusted as the physical possession of a child changes between parents or involves a third-party caretaker. This must be accomplished in the context of modification, and not by the creation of multiple orders attempting to reflect each changing custody scenario. Obviously this issue is of concern not only to interstate and international child-support orders, but applies to intrastate orders as well.

Subsection (18) "outside this state," requires careful reading. This phrase is used in the act when the application of the provision is to be as broad as possible. Rather than limit the application of certain provisions of the act to other states, foreign countries as defined in subsection (5), or even countries whose orders are entitled to comity under Section 104, all nations and political subdivisions are truly "outside this state." For example, that term is found in Sections 316 through 18, which allow a tribunal of this state to accept information or assistance from everywhere in the world (in the court's discretion as to its effect).

The definitions in subsections (23) "responding state," and (24) "responding tribunal," accommodate the direct filing of a petition under UIFSA without the intervention of an initiating tribunal. Both definitions acknowledge the possibility that there may be a responding state and a responding tribunal in a situation where there is no initiating tribunal. Under current practice, the initial application for services most often will be generated by a support enforcement agency or a central authority of a foreign country and sent to the appropriate support enforcement agency in the responding state.

As discussed above in connection with subsections (5) through (7), the amended definition in subsection (26) "state," eliminates the legal fiction that a foreign country can be a state of the United States, and clarifies and implements the purpose of the act to enforce an international support order under state law. In UIFSA (2008), the term clearly is intended to refer only to a state of the United States or to other designated political entities subject to federal law.

The vast bulk of child support establishment, enforcement, and modification in the United States is performed by the state Title IV-D agencies. See Part IV-D, Social Security Act, 42 U.S.C. § 651 et seq. Subsection (27) "support enforcement agency," includes not only those entities, but also any other state or local governmental entities, or private agencies acting under contract with such agencies, charged with establishing or enforcing child support. A private agency falls within the definition of a support enforcement agency only as an outsource of a Title IV-D agency or specifically identified as such under Section 103.

Subsection (28) "support order" is another definition that requires more careful reading than might be immediately clear. Virtually every financial aspect of a support order regarding child support or spousal support is covered. Throughout the act "support order" means both "child support" and "spousal support." "Child support" is used when the provision applies only to support for a child. The single provision applicable solely to spousal support is Section 211. Other forms of support that might be classified as "family support," are not dealt with by UIFSA.

Subsection (29) "tribunal," takes into account that a number of states have delegated various aspects of child-support establishment and enforcement to quasi-judicial bodies and administrative agencies. The term accounts for the breadth of state variations in dealing with support orders. This usage is standard in the child-support enforcement community; private practitioners who, only rarely, are involved in such cases may still find the term unfamiliar.

§ 601-103. State Tribunal and Support Enforement Agency.

A. The district court and the Department of Human Services are the tribunals of this state.

B. The Department of Human Services, Child Support Services, is the support enforcement agency of this state.

Added by Laws 1994, c. 160, § 3, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 3, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (a) provides for the identification of the tribunal or tribunals to be charged with the application of this act.

Subsection (b) performs the same function for the support enforcement agency or agencies. By its terms it indicates the legislature may designate more than one entity as authorized to enforce a support order, including a private agency. To clarify, federal law and regulations require that each state designate a "single and separate organizational unit" as the state agency that is charged with administration of the state plan and is authorized, and funded under Title IV-D of the Social Security Act. Known throughout the United States as the as the "IV-D agency," it may delegate any of its functions to another state or local agency or may purchase services from any person or private agency. The IV-D agency, however, retains responsibility for ensuring compliance with the Title IV-D state plan. Moreover, by virtue of the receipt of a federal subsidy, the agency is subject to federal regulations. The legislature may also decide to provide services unrelated to, or not funded by the Title IV-D system. For example, the state legislature could identify (and fund) a private agency authorized to enforce a spousal-support order not involving child support, or could fund a public defender system to provide counsel for indigent defendants in IV-D cases.

§ 601-104. Remedies Cummulative.

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

B. This act does not:

1. Provide the exclusive method of establishing or enforcing a support order under the laws of this state; or

2. Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this act.

Added by Laws 1994, c. 160, § 4, eff. Sept. 1, 1994. Amended by Laws 2004 (Reg. Sess.), c. 367, § 2, eff. Nov. 1, 2004 ; Laws 2015, c. 104, § 4, eff. Nov. 1, 2015.

NACCUSL Comment

The existence of procedures for interstate establishment, enforcement, or modification of support or a determination of parentage in UIFSA does not preclude the application of the general law of the forum. Even if the parents live in different states, for example, a petitioner may decide to file an original proceeding for child support (and most likely for other relief as well) directly in the state of residence of the respondent and proceed under that forum's generally applicable support law. In so doing, the out-of-state petitioner submits to the personal jurisdiction of the forum and, for the most part, is unaffected by UIFSA. Once a child-support order has been issued, this option is no longer available to interstate parties. Under UIFSA, a state may not permit a party to proceed to obtain a second support order; rather, in further litigation the tribunal must apply the act's provisions for enforcement of an existing order and limit modification to the strict standards of UIFSA.

This section facilitates the recognition and enforcement of a support order from a nation state that is entitled to have its orders recognized by comity, but is not a "foreign country" under Section 102(5). The insertion of the term "foreign support order" to replace "support order of a foreign country or political subdivision" in subsection (a) helps clarify application of "comity" for support enforcement cases. In UIFSA, four types of nation states are defined as "foreign countries": (1) Convention countries; (2) countries with bilateral agreements with the federal government; (3) countries with bilateral agreements with particular states; and (4) countries with similar support laws. However, orders of countries that do not fall within this definition may nevertheless be enforced under "comity". Applying comity to enforce a support order of a tribunal of another nation state intends courtesy and good will, and extends due regard for the legislative, executive, and judicial acts of another nation which is not a "foreign country" as defined in Section 102.

Although the determination by the United States Department of State that a foreign nation is a reciprocating country is binding on all states, recognition of a support order through comity is dependent on the law of each state. The reference to "remedies under other law" is intended to recognize the principle of comity as developed in the forum state by statutory or common law, rather than to create a substantive right independent of that law.

Subsection (b)(1) gives notice that UIFSA is not the only means for establishing or enforcing a support order with an interstate aspect. A potential child-support obligee may voluntarily submit to the jurisdiction of another state to seek the full range of desired relief under the law of that state using intrastate procedures, rather than resorting to the interstate procedure provided by UIFSA. A nonresident married parent may choose to file a proceeding in the forum state for dissolution of the marriage, including property division and spousal support, and in conjunction seek an order regarding child custody and visitation and child support. A parent may submit to the jurisdiction of another state for a determination of parentage and child support. A support order resulting from each of these scenarios implicates UIFSA. Invariably the issuing tribunal will have continuing, exclusive jurisdiction over its controlling child support or spousal-support order as provided by Sections 205, 207, and 211, infra, with all of the attendant application of the act to those orders. Likewise, the order or judgment of another state can be enforced without the necessity of registration under UIFSA by resort to other post-judgment enforcement remedies, such as lien, levy, execution, and filing claims in probate or bankruptcy actions.

On the other hand, subsection (b)(2) makes clear that jurisdiction to establish child custody and visitation orders is distinct from jurisdiction for child-support orders. For the former, jurisdiction generally rests on the child's connection with the state rather than personal jurisdiction over the respondent. See UCCJEA § 201; May v. Anderson, 345 U.S. 528 (1953) (Frankfurter, J., concurring). Under the Supreme Court's case law, jurisdiction to establish a child-support order requires personal jurisdiction over the respondent. See Kulko v. Superior Court, 436 U.S. 84 (1978). If the child-support order is sought under the authority of UIFSA, the most important aspect of this rule is that a child-support obligee utilizing the provisions of UIFSA to establish child support across state lines submits to jurisdiction for child support only, and does not submit to the jurisdiction of the responding state with regard to child custody or visitation.

§ 601-105. Application of Act to Resident of Foreign Country and Foreign Support Order.

A. A tribunal of this state shall apply Articles 1 through 6 of this title and, as applicable, Article 7 of this title, to a support proceeding involving:

1. A foreign support order;

2. A foreign tribunal; or

3. An obligee, obligor or child residing in a foreign country.

B. A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6 of this title.

C. Article 7 of this title applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6, Article 7 controls.

Added by Laws 2015, c. 104, § 5, eff. Nov. 1, 2015.

NACCUSL Comment

Four distinct entities are defined as a "foreign country" with tribunals that enter a "foreign support order." See Section 102(5). With regard to the three types of proceedings identified in subsection (a), all of the provisions in this act in Articles 1 through 6 apply.

Note, however, that under subsection (c), only one of these, a country "in which the Convention is in force with respect to the United States," see Section 102 (5)(D), will be subject to Article 7 as well as Articles 1 through 6. Thus, a support order from one of these countries may require special attention. After the Convention comes into force in the United States, a body of case law may develop if it becomes necessary to resolve unanticipated differences between this act and the Convention. As this extensive commentary and the many cross reference to provisions of the Convention indicate, significant efforts have been made to avoid any such conflicts.

Under subsection (b) a tribunal of this state may apply principles of comity if appropriate to recognize a support order from a foreign nation state that does not fit the definition of a "foreign country," see Section 102(5)(A)-(D), supra.

Subsection (c) resolves that if terms of the Convention and the terms of this act, including Article 7, are in conflict, the provision of the Convention controls. With regard to the other three statutory definitions of a "foreign country," all the terms, this act in articles 1 through 6 control. After the Convention comes into force in the United States, a body of case law may develop to resolve unanticipated differences between this act and the Convention.

Article 2.
Jurisdiction

§ 601-201. Basis for Personal Jurisdiction Over Nonresident.

A. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with summons within this state;

2. The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in this state;

4. The individual resided in this state and provided prenatal expenses or support for the child;

5. The child resides in this state as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

7. The individual asserted parentage of a child in the putative father registry maintained in this state by the Oklahoma Department of Human Services; or

8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

B. The bases of personal jurisdiction set forth in subsection A of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 601-611 of this title are met, or, in the case of a foreign support order, unless the requirements of Section 601-615 are met.

Added by Laws 1994, c. 160, § 5, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 3, eff. Nov. 1, 2004; Laws 2015, c. 104, § 6, eff. Nov. 1, 2015; Laws 2016, c. 148, § 2, eff. Nov. 1, 2016.

NACCUSL Comment

General Jurisdictional Principle: Sections 201 and 202 contain what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. Read together, subsections (a) and (b) provide the basic jurisdictional rules established by the act for interstate application of a support order, and are designed to be as broad as is constitutionally permissible. To sustain enforceability of a family support order in the United States the tribunal must be able to assert personal jurisdiction over the parties. *See Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948), *and Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S. Ct. 1360, 1 L. Ed. 2d 1456 (1957) (spousal support); *Kulko v. Superior Court*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) (child support).

Long-arm Provisions: Inclusion of this long-arm provision in this interstate act is justified because residents of two separate states are involved in the litigation, both of whom must be subject to the personal jurisdiction of the forum. Thus, the case has a clear interstate aspect, despite the fact that the substantive and procedural law of the forum state is applicable to a lawsuit in what is a one-state case. This rationale is sufficient to invoke additional UIFSA provisions in an otherwise intrastate proceeding. See Sections 202, 316, and 318, as pertaining to special rules of evidence and discovery for UIFSA cases. The intent is to ensure that every enacting state has a long-arm statute that is as broad as constitutionally permitted.

In situations in which the long-arm statute can be satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the long-arm statute to obtain personal jurisdiction over the respondent, or, (2) initiate a two-state proceeding under the succeeding provisions of UIFSA seeking to establish a support order in the respondent's state of residence. Of course, a third option is also available that does not implicate UIFSA; a petitioner may initiate a proceeding in the respondent's state of residence by filing a proceeding to settle all issues between the parties in a single proceeding.

Under RURESA, multiple support orders affecting the same parties were commonplace. UIFSA created a structure designed to provide for only one support order at a time. The new one-order regime is facilitated and combined with a broad assertion of personal jurisdiction under this long-arm provision. The frequency of a two-state procedure involving the participation of tribunals in both states has been substantially reduced by the introduction of this long-arm statute.

Subsection by subsection analyses: Subsections (1) through (8) are derived from a variety of sources, including the Uniform Parentage Act (1973) § 8, Texas Family Code § 102.011, and New York Family Court Act § 154.

Subsection (1) codifies the holding of *Burnham v. Superior Court*, 495 U.S. 604 (1990), which reaffirms the constitutional validity of asserting personal jurisdiction based on personal service within a state.

Subsection (2) expresses the principle that a nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering or entering an appearance. However, the power to assert jurisdiction over an issue involving child support under the act does not necessarily extend the tribunal's jurisdiction to other matters. As noted above, family law is rife with instances of bifurcated jurisdiction. For example, a tribunal may have jurisdiction to establish a child-support order based on personal jurisdiction over the obligor under Section 201, but lack jurisdiction over child custody, which is a matter of status adjudication usually based on the home state of the child.

Subsections (3) through (6) identify specific fact situations justifying the assertion of long-arm jurisdiction over a nonresident. Each provides an appropriate affiliating nexus for such an assertion, when judged on a case-by-case basis with an eye on procedural and substantive due process. Further, each subsection

does contain a possibility that an overly literal construction of the terms of the statute will overreach due process. For example, subsection (3) provides that long-arm jurisdiction to establish a support order may be asserted if "the individual resided with the child in this state." The typical scenario contemplated by the statute is that the parties lived as a family unit in the forum state, separated, and one of the parents subsequently moved to another state while the other parent and the child continued to reside in the forum. No time frame is stated for filing a proceeding; this is based on the fact that the absent parent has a support obligation that extends for at least the minority of the child (and longer in some states).

On the other hand, suppose that the two parents and their child lived in State A for many years and then decided to move the family to State B to seek better employment opportunities. Those opportunities did not materialize and, after several weeks or a few months of frustration with the situation, one of the parents returned with the child to State A. Under these facts, a tribunal of State A may conclude it has long-arm jurisdiction to establish the support obligation of the absent parent. But, suppose that the family's sojourn in State B lasted for many years, and then one parent unilaterally decides to return to State A. It is reasonable to expect that a tribunal will conclude that assertion of personal jurisdiction over the absent parent immediately after the return based on subsection (3) would offend due process. Note the provisions of UIFSA are available to the returning parent to establish child support in State B, and that state will have long-arm jurisdiction to establish support binding on the moving parent under Section 201. *See also* Section 204 for the resolution of simultaneous proceedings provided by the act.

The factual situations catalogued in the first seven subsections are appropriate and constitutionally acceptable grounds upon which to exercise personal jurisdiction over an individual. Subsection (7) is bracketed because not all states maintain putative father registries.

Finally, subsection (8) tracks the broad, catch-all provisions found in many state statutes, including CAL. CIV. PROC. CODE § 410.10 (1973), and TEX. FAMILY CODE § 102.011. Note, however, that the California provision, standing alone, was found to be inadequate to sustain a child-support order under the facts presented in *Kulko v. Superior Court*, 436 U.S. 84 (1978).

Limit on Asserting Long-arm Jurisdiction to Modify Child-Support Order: Subsection (b) elaborates on the principle by providing that modification of an existing child-support order goes beyond the usual rules of personal jurisdiction over the parties. Amended in UIFSA (2001), subsection (b) makes clear long-arm personal jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to a responding tribunal of the state of residence of the petitioner for that tribunal to modify an existing child-support order. See the extended commentaries to Sections 609 through 616. The limitations on modification of a child-support order provided by Section 611 must be observed irrespective of the existence of personal jurisdiction over the parties.

For tribunals of the United States, these sections integrate the concepts of personal jurisdiction and its progeny, continuing jurisdiction, and controlling orders. Note that the long-arm provisions of UIFSA (1992) were originally written with only domestic cases in mind. If the tribunal of a state has personal jurisdiction over an individual residing in another state (or, by implication, a foreign country), the application of local law is entitled to recognition and enforcement. *See* Full Faith and Credit for Child Support Orders Act, a.k.a. FFCCSOA, 28 U.S.C. § 1738B. Integrating this federal law based on the Constitution with the statutory rule of subject matter jurisdiction for modification of an existing child-support order is a major accomplishment of UIFSA. Obviously, the federal act is applicable to a child-support order issued by a state tribunal, but is not applicable to a foreign support order. Nor does FFCCSOA in any way affect a foreign country, which will apply its local law of recognition, enforcement, and modification to a child-support order originating from a state of the United States. When the Convention enters into force, the integration of UIFSA and the law of some foreign countries will be international in scope. At that time the jurisdictional rules of all concerned become significantly more complex. See Section 708. Nonetheless, it seems likely the complexity will be more theoretical than actually troublesome.

Applicability of Long-Arm Jurisdiction to Spousal Support: Although this long-arm statute applies to a spousal-support order, almost all of the specific provisions of this section relate to a child-support order or a determination of parentage. This derives from the fact that the focus of UIFSA is primarily on child support. Only subsections (1), (2), and (8) are applicable to an action for spousal support asserting long-arm jurisdiction over a nonresident. The first two subsections are wholly noncontroversial insofar as an assertion of personal jurisdiction is concerned. Moreover, as a practical matter, an assertion of personal jurisdiction under UIFSA will almost always also yield jurisdiction over all matters to be decided between the spouses, including division of property on divorce. Thus, the most obvious possible basis for asserting long-arm jurisdiction over spousal support, i.e., "last matrimonial domicile," is not included in Section 201 to avoid the potential problem of another instance of bifurcated jurisdiction. This restraint avoids a situation in which UIFSA would arguably grant long-arm jurisdiction for a spousal-support order when the forum state has no correlative statute for property division in divorce.

Potential Application of Long-arm Jurisdiction to Foreign Support Order: If the facts of a case warrant, whether in an interstate or an international context, a state tribunal shall apply long-arm jurisdiction to establish a support order without regard to the physical location or residence of a party outside the United States. Interestingly, under certain fact situations involving a request to recognize and enforce or modify a foreign support order, a state tribunal may be called upon to determine the applicability of long-arm jurisdiction under UIFSA to the facts of the case in order to decide the enforceability of the foreign support order.

For example, a challenge to a request for enforcement of a foreign support order may be made by a respondent based on an allegation that the foreign issuing tribunal lacked personal jurisdiction over the respondent. A respondent may acknowledge that the obligee or the child resides in France, and that a French tribunal issued a support order. But, in the Kulko decision the Court accepted the respondent's allegation that under the state law then available there was no nexus between himself and California and therefore no personal jurisdiction over him as required by the opinion. From the perspective of the French tribunal under the facts above, an asserted lack of personal jurisdiction is of no consequence. Under the law of France, like the law of virtually all other foreign nations, the child-based jurisdiction stemming from the residence of the obligee or child is sufficient to sustain a child-support order against the noncustodial parent.

But, meshing the world-wide system of child-based jurisdiction with the U.S. requirement of in personam jurisdiction presented an easily resolved challenge to the drafters of the new Hague Maintenance Convention.

Thus, under the Convention, a state tribunal may be called upon to determine whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201. The foregoing fact situation illustrates that it is for the state tribunal to determine if the order of the French tribunal would have complied with UIFSA Section 201 on the facts of the case. If so, the foreign support order is entitled to recognition and enforcement. For example, the facts of the case may show that the father lived with the child in France, supported the mother or child in France, or perhaps was responsible for, or agreed to the movement of the child to France.

On the other hand, if the issuing French tribunal would have lacked personal jurisdiction over the respondent if Section 201 had been applicable, the support order cannot be enforced because there was no nexus between France and the respondent. The United States will make a reservation to Convention article 20, declining to recognize or enforce a foreign support order on child-based jurisdiction founded solely on the location or residence of the obligee or the child in the foreign country.

Interestingly, if the responding state tribunal finds the French tribunal lacked personal jurisdiction over the respondent, additional action may be taken. In a Convention case, the responding state tribunal may establish a child-support order if it has personal jurisdiction over the respondent without requesting a separate application for establishment of a new order.

Related to Convention: art. 2. Scope; art. 19. Scope of the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under internal law; art. 62. Reservations.

§ 601-202. 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 601-205, 601-206, and 601-211 of this title.

Added by Laws 1994, c. 160, § 6, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 4, eff. Nov. 1, 2004; Laws 2015, c. 104, § 7, eff. Nov. 1, 2015.

NACCUSL Comment

It is a useful legal truism after a tribunal of a state issues a support order binding on the parties, which must be based on personal jurisdiction by virtue of *Kulko v. Superior Court*, 436 U.S. 84 (1978) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957), jurisdiction in personam continues for the duration of the support obligation absent the statutorily specified reasons to terminate the order. The rule established by UIFSA is that the personal jurisdiction necessary to sustain enforcement or modification of an order of child support or spousal support persists as long as the order is in force and effect, even as to arrears, see Sections 205-207, 211, infra. This is true irrespective of the context in which the support order arose, e.g., divorce, UIFSA support establishment, parentage establishment, modification of prior controlling order, etc. Insofar as a child-support order is concerned, depending on specific factual circumstances a distinction is made between retaining continuing, exclusive jurisdiction to modify an order and having continuing jurisdiction to enforce an order, see Sections 205 and 206, *infra*. Authority to modify a spousal-support order is permanently reserved to the issuing tribunal, Section 211, *infra*.

§ 601-203. Initiating and Responding Tribunal of State.

Under this act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country.

Added by Laws 1994, c. 160, § 7, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 8, eff. Nov. 1, 2015.

NACCUSL Comment

This section identifies the two roles a tribunal of the forum may serve: acting as either an initiating or a responding tribunal. *See* Sections 304 and 305 for the duties and powers of the tribunal in each of these capacities. Under UIFSA, a tribunal may serve as a responding tribunal even when there is no initiating tribunal. This accommodates the direct filing of a proceeding in a responding tribunal by a nonresident of the forum, whether residing in a state or anywhere else in the world. Note, however, that the section does not deal with whether an initiating tribunal of a state may forward a proceeding to a tribunal in a foreign country, which may be left to the individual support enforcement agency.

§ 601-204. Simultaneous Proceedings.

A. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

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

2. The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

3. If relevant, this state is the home state of the child.

B. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or foreign country if:

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

2. The contesting party timely challenges the exercise of jurisdiction in this state; and

3. If relevant, the other state or a foreign country is the home state of the child.

Added by Laws 1994, c. 160, § 8, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 9, eff. Nov. 1, 2015; Laws 2016, c. 148, § 3, eff. Nov. 1, 2016.

NACCUSL Comment

Under the one-order system established by UIFSA, it was necessary to provide a procedure to eliminate the multiple orders so common under RURESA and URESA. This requires cooperation between, and deference by, state tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in another state or foreign country concerning the same child. Depending on the circumstances, one of the two tribunals considering the same support obligation should decide to defer to the other. The inclusion of a foreign country in this investigation facilitates the goal of a "one-order world" for a support obligation.

UIFSA (1992) took a significant departure from the approach adopted by the UCCJA (1986) ("first filing"), by choosing the "home state of the child" as the primary factual basis for resolving competing jurisdictional disputes. Not coincidentally, this had previously been the choice for resolving jurisdiction conflicts of the federal Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738A (1980). Given the pre-emptive nature of the PKPA, and the possibility that custody and support will both be involved in some cases, the PKPA/UIFSA choice for resolving disputes between competing jurisdictional assertions was followed in 1997 by the decision of NCCUSL to replace the UCCJA with the UCCJEA. If the child has no home state, however, "first filing" will control.

§ 601-205. 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 that 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 the Act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Added by Laws 1994, c. 160, § 9, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 2, eff. Sept. 1, 1997; Laws 2004, c. 367, § 5, eff. Nov. 1, 2004; Laws 2015, c. 104, § 10, eff. Nov. 1, 2015; Laws 2016, c. 148, § 4, eff. Nov. 1, 2016.

NACCUSL Comment

This section is perhaps the most crucial provision in UIFSA. Consistent with the precedent of the federal PARENTAL KIDNAPPING PREVENTION ACT, 28 U.S.C. § 1738A, except in very narrowly defined circumstances the issuing tribunal retains continuing, exclusive jurisdiction over a child-support order, commonly known as CEJ. First introduced by UIFSA in 1992, this principle is in force and widely accepted in all states. Indeed CEJ is fundamental to the principle of one-child-support-order-at-a-time.

As long as one of the individual parties or the child continues to reside in the issuing state, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its child-support order—which in practical terms means that it may modify its order. The statute takes an even-handed approach. The identity of the party remaining in the issuing state—obligor or obligee—does not matter. Indeed, if the individual parties have left the issuing state but the child remains behind, CEJ remains with the issuing tribunal. Even if the parties and the child no longer reside in the issuing state, the support order continues in existence and is fully enforceable unless and until a modification takes place in accordance with the requirements of Article 6, infra. Note, however, that the CEJ of the issuing tribunal over a spousal-support order is permanent, *see* Section 211, *infra*.

Subsection (a)(1) states the basic rule, and subsection (a)(2) states an exception to that rule. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether the parties and the child have left the state, is explicitly stated to be at the time of filing a proceeding to modify the child-support order. Second, the term in subsection (a)(1) "is the residence" makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone at one time had left the issuing state. If the order is not modified during this time of mutual absence, a return to reside in the issuing state by a party or child immediately identifies the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another state may not forfeit a claim of residence in the issuing state. Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.

From the beginning of the implementation of the CEJ principle, questions have been raised about why a tribunal may not modify its own order if the parties agree that it should do so even after the parties have left the state. The move of the parties and the child from the state may have been of a very short distance and, although the parties no longer reside in the issuing state, they may prefer to continue to have the child-support order be governed by the same issuing tribunal because they continue to have a strong affiliation with it. For example, the child-support order may have been issued by a tribunal of Washington, D.C. Subsequently the obligee and child have moved to Virginia, the obligor now resides in Maryland, and perhaps one or both parties continue to be employed in Washington. Subsection (a)(2) authorizes retention of CEJ by the issuing state when the parties reasonably may prefer to continue to deal with the issuing tribunal even though the state is "not the residence" of the parties or child as an exception to the general rules of CEJ for modifications of a support order.

The other side of the coin follows logically. Just as subsection (a) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also identifies how jurisdiction to modify may be lost. That is, if all the relevant persons—the obligor, the individual obligee, and the child—have permanently left the issuing state, absent an agreement the issuing tribunal no longer has an appropriate nexus with the parties or child to justify the exercise of jurisdiction to modify its child-support order. Further, the issuing tribunal will have no current evidence readily available to it about the factual circumstances of anyone involved, and the taxpayers of that state will have no reason to expend public funds on the process. Note, however, that the original order of the issuing tribunal remains valid and enforceable. That order is in effect not only in the issuing state, but also in those states in which the order has been registered. The order also may be registered and enforced in additional states even after the issuing tribunal has lost its power to modify its order, see Sections 601-604, infra. In sum, the original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612, *infra*.

Subsection (b)(1) explicitly provides that the parties may agree in a record that the issuing tribunal should relinquish its continuing, exclusive jurisdiction to modify so that a tribunal in another state may assume CEJ to modify the child-support order. It is believed that such consent seldom occurs because of the almost universal desire of each party to prefer his or her local tribunal. The principle that the parties should be allowed to agree upon an alternate forum if they so choose also extends to a situation in which all the parties and the child have left the issuing state and are in agreement that a tribunal of the state in which only the movant resides shall assume modification jurisdiction, *see* Section 611.

Although subsections (a) and (b) identify the methods for the retention and the loss of continuing, exclusive jurisdiction by the issuing tribunal, this section does not confer jurisdiction to modify on another tribunal. Modification requires that a tribunal have personal jurisdiction over the parties and meet other criteria as provided in Sections 609 through 615, *infra*.

Related to Convention: art. 18. Limit on proceedings.

§ 601-206. Continuing Jurisdiction to Enforce Child-Support Order.

A. A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

1. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

2. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Added by Laws 1994, c. 160, § 10, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 3, eff. Sept. 1, 1997; Laws 2004, c. 367, § 6, eff. Nov. 1, 2004; Laws 2015, c. 104, § 11, eff. Nov. 1, 2015; Laws 2016, c. 148, § 5, eff. Nov. 1, 2016.

NACCUSL Comment

This section is the correlative of the continuing, exclusive jurisdiction described in the preceding section. It makes the relatively subtle distinction between the CEJ "to modify a support order" established in Section 205 and the "continuing jurisdiction to enforce" established in this section. A keystone of UIFSA is that the power to enforce the order of the issuing tribunal is not "exclusive" with that tribunal. Rather, on request one or more responding tribunals may also exercise authority to enforce the order of the issuing tribunal. Secondly, under the one-order-at-a-time system, the validity and enforceability of the controlling order continues unabated until it is fully complied with, unless it is replaced by a modified order issued in accordance with the standards established by Sections 609-616. That is, even if the individual parties and the child no longer reside in the issuing state, the controlling order remains in effect and may be enforced by the issuing tribunal or any responding tribunal without regard to the fact that the potential for its modification and replacement exists.

Subsection (a) authorizes the issuing tribunal to initiate a request for enforcement of its order by a tribunal of another state if its order is controlling, see Section 207, or to request reconciliation of the arrears and interest due on its order if another order is controlling.

Subsection (b) reiterates that the issuing tribunal has jurisdiction to serve as a responding tribunal to enforce its own order at the request of another tribunal.

Related to Convention: art. 19. Scope of the Chapter.

The 2001 amendments moved the second sentence in Subsection (b) to Section 210, *infra*, and moved Subsection (c) to Section 211, *infra*.

§ 601-207. Determination of Controlling Child-Support Order.

A. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

B. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act, and two or more child support orders have been issued by tribunals of this state or another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

1. If only one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the order of that tribunal controls;

2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this act:

   a. an order issued by a tribunal in the current home state of the child controls, or

   b. if an order has not been issued in the current home state of the child, the order most recently issued controls; and

3. If none of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the tribunal of this state shall issue a child support order, which controls.

C. If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state ~~to~~ having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection B of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6 of this title, or may be filed as a separate proceeding.

D. A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under subsection A, B, or C of this section has continuing jurisdiction to the extent provided in Section 601-205 or 601-206 of this title.

F. A tribunal of this state that determines by order which is the controlling order under paragraph 1 or 2 of subsection B or subsection C of this section, or that issues a new controlling order under paragraph 3 of subsection B of this section, 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 601-209 of this title.

G. Within thirty (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.

Added by Laws 1994, c. 160, § 11, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 4, eff. Sept. 1, 1997; Laws 2004, c. 367, § 7, eff. Nov. 1, 2004; Laws 2015, c. 104, § 12, eff. Nov. 12, 2015.

NACCUSL Comment

In addition to the introduction of the concepts of one-order and continuing, exclusive jurisdiction in Section 205, another dramatic founding principle of UIFSA was to establish a system whereby the multiple orders created by URESA and RURESA could be reconciled in the transition from a world with multiple child-support orders to a one-order-at-a-time world. This principle introduced by Section 207 was subsequently incorporated into the requirements of 28 USC 1738B, Full Faith and Credit for Child Support Orders, a.k.a. FFCCSOA.

The combination of FFCCSOA becoming effective on October 20, 1994 and the adoption of UIFSA (1996) being mandated for all states by January 1, 1998, has made this section almost never used. The existence of multiple, valid orders for ongoing support have all but disappeared.

Sections 209-210, and especially Section 207, are designed to span the gulf between the one-order system created by UIFSA and the multiple-order system previously in place under RURESA and URESA. These transitional procedures necessarily must provide for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. Although FFCCSOA was effective October 20, 1994 and all U.S. jurisdictions enacted UIFSA by 1998, considerable time is required to pass before its one-order system could be completely in place. For example, multiple 21-year child-support orders issued for an infant in 1996 and 1997 would, by their terms, not end the conflict until the first expires 2017—absent resolution of the conflict by a tribunal under this section. Nonetheless, at least on the appellate level, the problem of multiple orders is fast disappearing. This section provides a relatively simple procedure to identify a single viable order that will be entitled to prospective enforcement in every state.

Subsection (a) declares that if only one child-support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continue to reside in the issuing state.

Subsection (b) establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child. A tribunal requested to sort out the multiple orders and determine which one will be prospectively controlling of future payments must have personal jurisdiction over the litigants in order to ensure that its decision is binding on all concerned. For UIFSA to function, one order must be denominated as the controlling order, and its issuing tribunal must be recognized as having continuing, exclusive jurisdiction. In choosing among existing multiple orders, none of which can be distinguished as being in conflict with the principles of UIFSA, subsection (b)(1) gives first priority to an order issued by the only tribunal that is entitled to continuing, exclusive jurisdiction under the terms of UIFSA, i.e., an individual party or the child continues to reside in that state and no other state meets this criterion. If two or more tribunals would have continuing, exclusive jurisdiction under the act, subsection (b)(2) first looks to the tribunal of the child's current home state. If that tribunal has not issued a support order, subsection (b)(2) looks next to the order most recently issued. Finally, subsection (b)(3) provides that if none of the existing multiple orders are entitled to be denominated as the controlling order because none of the preceding priorities apply, the forum tribunal is directed to issue a new order, given that it has personal jurisdiction over the obligor and obligee. The new order becomes the controlling order, establishes the continuing, exclusive jurisdiction of the tribunal, and fixes the support obligation and its nonmodifiable aspects, primarily duration of support, see Sections 604 and 611(c), infra. The rationale for creating a new order to replace existing multiple orders is that there is no valid reason to prefer the terms of any one of the multiple orders over another in the absence of a fact situation described in subsections (b)(1) or (b)(2).

As originally promulgated, UIFSA did not come to grips with whether existing multiple orders issued by different states might be entitled to full faith and credit without regard to the determination of the controlling order under the act. The drafters took the position that state law, however uniform, could not interfere with the ultimate interpretation of a constitutional directive. Fortunately, this question has almost certainly been mooted by the 1996 amendment to 28 U.S.C. § 1738B, Full Faith and Credit for Child Support Orders. Congress incorporated the multiple order recognition provisions of Section 207 of UIFSA into FFCCSOA virtually word for word in the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996. Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2221.

It is not altogether clear whether the terms of UIFSA apply to a strictly intrastate case; that is, a situation in which multiple child-support orders have been issued by multiple tribunals of a single state and the parties and the child continue to reside in that state. This is not an uncommon situation, often traceable to the intrastate applicability of RURESA. A literal reading of the statutory language suggests the section applies. Further, FFCCSOA does not make a distinction regarding the tribunals that issued multiple orders. If multiple orders have been issued by different tribunals in the home state of the child, most likely the most recent will be recognized as the controlling order, notwithstanding the fact that UIFSA Section 207 (b)(2)(B), and FFCCSOA 42 U.S.C. § 1738B(f)(3), literally do not apply. At the very least, this section, together with FFCCSOA, provide a template for resolving such conflicts.

Subsection (c) clarifies that any party or a support enforcement agency may request a tribunal of the forum state to identify the controlling order. That party is directed to fully inform the tribunal of all existing child-support orders.

Subsection (d) seeks to assure the tribunal is furnished with all the information needed to make a proper determination of the controlling order, as well as the information needed to make a calculation of the consolidated arrears. The party or support enforcement agency requesting the determination of controlling order and determination of consolidated arrears is also required to notify all other parties and entities who may have an interest in either of those determinations. Those with such an interest most likely are support agencies and the obligee.

Subsection (e) provides that the determination of the controlling order under this section has the effect of establishing the tribunal with continuing, exclusive jurisdiction; only the order of that tribunal is entitled to prospective enforcement by a sister state.

Subsection (f) directs the forum tribunal to identify the details upon which it makes its determination of the controlling order. In addition, the tribunal is also directed to state specifically the amount of the prospective support, and to reconcile and consolidate the arrears and interest due on all of the multiple orders to the extent possible.

The party obtaining the determination is directed by subsection (g) to notify all interested tribunals of the decision after the fact. Although tribunals need not be given original notice of the proceeding, all tribunals that have contributed an order to the determination must be informed regarding which order was determined to be controlling, and should also be informed of the consolidated arrears and interest so that the extent of possible subsequent enforcement will be known with regard to each of the orders. The act does not deal with the resolution of potential conflicting claims regarding arrears; this is left to case-by-case decisions or to federal regulation.

Section 207 presumes that the parties are accorded notice and opportunity to be heard by the tribunal. It also presumes that the tribunal will be fully informed about all existing orders when it is requested to determine which one of the existing multiple child-support orders is to be accorded prospective enforcement. If this does not occur and one or more existing orders is not considered by the tribunal, the finality of its decision is likely to turn on principles of estoppel on a case-by-case basis.

Finally, subsection (h), affirms the concept that when a fully informed tribunal makes a determination of the controlling order for prospective enforcement, or renders a judgment for the amount of the consolidated arrears, the decision is entitled to full faith and credit.

§ 601-208. Child-Support Orders for Two or More Obligees.

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 obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Added by Laws 1994, c. 160, § 12, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 8, eff. Nov. 1, 2004; Laws 2015, c. 104, § 13, eff. Nov. 1, 2015.

NACCUSL Comment

This section is concerned with those multiple orders that involve two or more families of the same obligor. Although all such orders are entitled to enforcement, practical difficulties frequently exist. For example, full enforcement of each of the multiple orders may exceed the maximum allowed for income withholding. The federal statute, 42 U.S.C. § 666(b)(1), requires that to be eligible for the federal funding for enforcement, states must provide a ceiling for child-support withholding expressed in a percentage that may not exceed the federal law limitations on wage garnishment, Consumer Credit Protection Act of 1968, 15 U.S.C. § 1673(b). In order to allocate resources between competing families, UIFSA refers to state law. The basic principle is that one or more support orders for an out-of-state family of the obligor, and one or more orders for an in-state family, are of equal dignity. In allocating payments to different obligees, every child-support order should be treated as if it had been issued by a tribunal of the forum state, that is, preferential treatment for a local family over an out-of-state family is prohibited by local law. The addition of a foreign support order to the formula supplied by this section should assure that all children will have equal ability to obtain their share of child support.

§ 601-209. Credits for Payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state or a foreign country.

Added by Laws 1994, c. 160, § 13, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 9, eff. Nov. 1, 2004; Laws 2015, c. 104, § 14, eff. Nov. 1, 2015; Laws 2016, c. 148, § 6, eff. Nov. 1, 2016.

NACCUSL Comment

The issuing tribunal is ultimately responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources. Until that scheme is fully in place, however, it will be necessary to continue to mandate pro tanto credit for actual payments made against all existing orders. The addition to include a foreign support order in the calculation should assure all payments of support are properly credited. This section does not attempt to impact the way support paid in an individual case is apportioned or distributed between the obligee and one or more states asserting a claim to the monies.

§ 601-210. Application of Act to Nonresident Subject to Personal Jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Interstate Family Support Act [43 O.S. § 601-101 et seq.], under other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state pursuant to Section 601-316 of this title, communicate with a tribunal outside this state pursuant to Section 601-317 of this title, and obtain discovery through a tribunal outside this state pursuant to Section 601-318 of this title. In all other respects, Articles 3 through 6 of this title do not apply and the tribunal shall apply the procedural and substantive law of this state.

Added by Laws 2004, c. 367, § 10, eff. Nov. 1, 2004. Amended by Laws 2015, c. 104, § 15, eff. Nov. 1, 2015; Laws 2016, c. 148, § 7, eff. Nov. 1, 2016.

NACCUSL Comment

Assertion of long-arm jurisdiction over a nonresident results in a one-state proceeding without regard to the fact that one of the parties resides in a different state or in a foreign country. On obtaining personal jurisdiction the tribunal must apply the law of the forum. Once personal jurisdiction has been asserted over a nonresident, the issuing tribunal retains continuing, exclusive jurisdiction (CEJ) to modify, and continuing jurisdiction to enforce a support order in accordance with the provisions of the act. Of course, it is far more common for a support order to be issued in conjunction with a divorce or determination of parentage in which both the obligor and obligee are residents of the forum than to be issued as a result of an assertion of long-arm jurisdiction. Note that either the petitioner or the respondent may be the nonresident party (either of whom may be the obligor or the obligee). Also note that absent this provision, the ordinary intrastate substantive and procedural law of the forum would apply to either fact situation without reference to the fact that one of the parties is a nonresident. Thus, CEJ applies whether the matter at hand involves establishment of an original support order or enforcement or modification of an existing order. In any event, if one of the parties resides outside the forum state, the nonresident may avail himself or herself of the special evidentiary and discovery provisions provided by UIFSA.

This section makes clear that the special rules of evidence and procedure identified in Sections 316, 317, and 318 are applicable in a case involving a nonresident of the forum state. Section 316 facilitates decision-making when a party or a child resides "outside this state" by providing special rules to recognize the impediments to presenting evidence caused by nonresident status. Note the terminology has the broadest possible application, i.e., worldwide. The improved interstate and international exchange of information enables the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum state. The same considerations account for authorizing interstate and international communications between tribunals as per Section 317. Finally, the discovery procedures of Section 318 are made applicable in a one-state proceeding when another tribunal may assist in that process.

Of course, "may assist" is entirely at the discretion of the other tribunal. Note, a foreign tribunal may be completely unfamiliar with discovery procedures as known in the United States.

Generally, however, the ordinary substantive and procedural law of the forum state applies in a one-state proceeding. In sum, the parties and the tribunal in a one-state case may utilize those procedures that contribute to economy, efficiency, and fair play.

Related to Convention: art. 20. Bases for recognition and enforcement.

§ 601-211. Continuing, Exclusive Jurisdiction to Modify Spousal Support Order.

A. A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

B. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or a foreign country.

C. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

1. An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or
2. A responding tribunal to enforce or modify its own spousal support order.

Added by Laws 2004, c. 367, § 11, eff. Nov. 1, 2004. Amended by Laws 2015, c. 104, § 16, eff. Nov. 1, 2015.

NACCUSL Comment

The amendment to subsection (b) ensures that the restriction on modification of an out-of-state spousal-support order extends to a foreign order. At the same time, subsection (b) provides that the question of continuing, exclusive jurisdiction be resolved under the law of the issuing tribunal. Thus, if a foreign spousal- support order were subject to modification in another country by the law of the issuing tribunal, this section would permit modification in a tribunal of this state.

Related to Convention: art. 2. Scope.

Article 3.
Civil Provisions of General Application

NACCUSL Introductory Comment

This article adds a wide variety of procedural provisions to existing statutory and procedural rules for civil cases. If there is a conflict between those provisions found for other litigation and UIFSA rules set forth in this article, obviously UIFSA rules prevail. For example, it is unlikely that a state will have a provision for testimony by telephone or audiovisual means in a final hearing. Section 316 of this act creates such a right for an out-of-state individual. Revisions in this article shift the perspective slightly to accommodate the inclusion of a foreign support order in the equation. Many, but not all, of the provisions in this article are based upon the fact that a party does not "reside in this state." Application of these provisions is not solely based on whether the absent party resides in "another state," as formerly was the case. Rather, three distinct formulations are employed depending on the intended application of the provisions: "residing in a state;" "residing in . . . a foreign country;" or "residing outside this state." The third alternative is intentionally the broadest because it includes persons residing anywhere and is not limited to persons residing in a "foreign country" as defined in Section 102.

§ 601-301. Proceedings Under Act.

A. Except as otherwise provided in this act, this article applies to all proceedings under this act.

B. An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

Added by Laws 1994, c. 160, § 14, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 12, eff. Nov. 1, 2004; Laws 2015, c. 104, § 17, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (a) mandates application of the general provisions of this article to all UIFSA proceedings, including those affecting a foreign support order.

The statement in subsection (b) is axiomatic that the tribunal in which a petition is filed for establishment or enforcement of a support order, or for modification of a child-support order, must be able to assert personal jurisdiction over the respondent. It is also axiomatic that an individual petitioner requesting affirmative relief under this act submits to the personal jurisdiction of the tribunal. Subsection (b) also continues reference to the basic two-state procedure long employed by the former reciprocal acts to establish a support order in the interstate context, but expands it to recognize foreign countries. Direct filing of a petition in a state tribunal by an individual or a support enforcement agency without reference to an initiating tribunal in another state was introduced by UIFSA (1992). UIFSA (2008) extends the direct filing capability to foreign countries as well.

Although the filing of a petition in an initiating tribunal to be forwarded to a responding tribunal is still recognized as an available procedure, the direct filing procedure has proven to be one of the most significant improvements in efficient interstate case management. The promulgation and use of the federally mandated, or substantially conforming, forms, Section 311(b), further serves to eliminate any role for the initiating tribunal. Incidentally, the Convention contains approved forms for use in Convention cases processed through a Central Authority.

Related to Convention: art. 2. Scope; art. 10. Available applications; art. 19. Scope of the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under internal law; art. 33. Non-discrimination; art. 34. Enforcement measures; art.37. Direct requests to competent authorities; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3).

§ 601-302. Proceeding by Minor Parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Added by Laws 1994, c. 160, § 15, eff. Sept. 1, 1994.

NACCUSL Comment

A minor parent may maintain a proceeding under UIFSA without the appointment of a guardian ad litem, even if the law of the forum jurisdiction requires a guardian for an in-state case. If a guardian or legal representative has been appointed, he or she may act on behalf of the minor's child in seeking support.

§ 601-303. Application of Law of State.

Except as otherwise provided in this act, a responding tribunal of this state shall:

1. Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

2. Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

Added by Laws 1994, c. 160, § 16, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 13, eff. Nov. 1, 2004.

NACCUSL Comment

Historically states have insisted that forum law be applied to support cases whenever possible. This continues to be a key principle of UIFSA. In general, a responding tribunal has the same powers in a proceeding involving parties in a case with interstate or international effect as it has in an intrastate case. This inevitably means that the act is not self-contained; rather, it is supplemented by the forum's statutes and procedures governing support orders. To insure the efficient processing of the huge number of interstate support cases, it is vital that decision makers apply familiar rules of law to the maximum degree possible. This must be accomplished in a manner consistent with the overriding principle of UIFSA that enforcement is of the issuing tribunal's order, and that the responding state does not make the order its own as a condition of enforcing it.

§ 601-304. Duties of Initiating Tribunal.

A. Upon the filing of a petition authorized under this act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

1. To the responding tribunal or appropriate support enforcement agency in the responding state; or

2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

Added by Laws 1994, c. 160, § 17, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 5, eff. Sept. 1, 1997; Laws 2004, c. 367, § 14, eff. Nov. 1, 2004; Laws 2015, c. 104, § 18, eff. Nov. 1, 2015; Laws 2016, c. 148, § 8, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) was designed primarily to facilitate interstate enforcement between UIFSA states and URESA and RURESA states, with some applicability to cases involving foreign jurisdictions. Since 1998, by which time UIFSA had been enacted nationwide, the procedure described has gradually become an anachronism. Note, however, that the last RURESA child-support order may not expire until 2017 or 2018. *See* Prefatory Note.

Subsection (b), however, retains its utility with regard to a support order of a foreign nation. Supplying documentation required by a foreign jurisdiction, which is not otherwise required by UIFSA procedure, is appropriate in the international context. For example, a venerable process in British Commonwealth countries is known as provisional and confirming orders. A "provisional order" is a statement of the nonbinding amount of support being requested by a Canadian tribunal for establishment of a support order by a state responding tribunal. A state responding tribunal will receive information about the amount of support provisionally calculated by a tribunal in Canada. It needs to be borne in mind that a request to establish support from a Canadian tribunal will be accomplished in accordance with the law of the responding state. Thus, the Canadian provisional order is informative, but not binding on the responding tribunal. An order issued by the responding tribunal, whether for the amount suggested in the provisional order or another amount based on the local law of the responding tribunal, is known as a confirming order. Similarly, the initiating state's tribunal, knowing that a provisional order will be required by the Canadian tribunal, is directed to cooperate and provide a statement of the amount of support being provisionally requested.

The initiating tribunal of this state also has a duty to identify the amount of foreign currency equivalent to its request to the Canadian tribunal and a corresponding duty for a responding tribunal to convert the foreign currency into dollars if the foreign initiating tribunal has not done so, Section 305(f). The reference to "the applicable official or market exchange rate" takes into account the present practices of international money markets. A few countries continue to maintain an official exchange rate for their currency. The vast majority of countries recognize the fact that the value of their currency is subject to daily market fluctuations that are reported on the financial pages of many daily newspapers. Thus, in the example described above, a request for a specific amount of support in U.S. dollars, which is to be translated into Canadian dollars on a specific date, will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.

Related to Convention: art. 31. Decisions produced by the combined effect of provisional and confirmation orders.

§ 601-305. Powers and Duties of Responding Tribunal.

A. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection B of Section 601-301 of this title, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

B. A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

1. Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

3. Order income withholding;

4. Determine the amount of any arrearages, and specify a method of payment;

5. Enforce orders by civil or criminal contempt, or both;

6. Set aside property for satisfaction of the support order;

7. Place liens and order execution on the obligor's property;

8. Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

9. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

10. Order the obligor to seek appropriate employment by specified methods;

11. Award reasonable attorney's fees and other fees and costs; and

12. Grant any other available remedy.

C. A responding tribunal of this state shall include in a support order issued under this act, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of this state may not condition the payment of a support order issued pursuant to the Uniform Interstate Family Support Act upon compliance by a party with provisions for visitation.

E. If a responding tribunal of this state issues an order under this act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Added by Laws 1994, c. 160, § 18, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 6, eff. Sept. 1, 1997; Laws 2004, c. 367, § 15, eff. Nov. 1, 2004; Laws 2015, c. 104, § 19, eff. Nov. 1, 2015.

NACCUSL Comment

This section establishes a wide variety of duties for a responding tribunal. It contains: ministerial functions, subsection (a); judicial functions, subsection (b); and, substantive rules applicable to interstate cases, subsections (c)-(e). Because a responding tribunal may be an administrative agency rather than a court, the act explicitly states that a tribunal is not granted powers that it does not otherwise possess under state law. For example, authority to enforce a support order by contempt generally is limited to courts.

Subsection (a) directs the filing of the documents received without regard to whether an initiating tribunal in another state was involved in forwarding the documentation. It also directs that the individual or entity requesting the filing be notified, but leaves the means of that notification to local law. The advent of a variety of swifter, and perhaps even more reliable, forms of notice in the modern era justifies the deletion of a particular form of notice. For example, many states now authorize notice by telephone facsimile (FAX), or by an express delivery service, and many legal documents are transmitted by electronic mail (email).

Subsection (b) lists duties that, if possessed under state law in connection with intrastate cases, are extended to the responding tribunal in UIFSA cases. Thus, each subdivision

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purposefully avoids mention of substantive rules. For example, subsection (b)(7) does not identify the type, nature, or priority of liens that may be issued under UIFSA. As is generally true under the act, those details will be determined by applicable state law concerning support enforcement remedies of local orders.

Subsection (c) clarifies that the details of calculating the child-support order are to be included along with the order. Local law generally requires that variation from the child support guidelines must be explained, see 42 U.S.C. § 667; this requirement is extended to interstate cases.

Subsection (d) states that an interstate support order may not be conditioned on compliance with a visitation order. While this may be at variance with state law governing intrastate cases, under a UIFSA proceeding the petitioner generally is not present before the tribunal. This distinction justifies prohibiting visitation issues from being litigated in the context of a support proceeding. All states have enacted some version of either the UCCJA or the UCCJEA providing for resolution of visitation issues in interstate cases.

Subsection (e) introduces the policy determination that the petitioner, the respondent, and the initiating tribunal, if any, shall be kept informed about actions taken by the responding tribunal.

Subsection (f) is designed to facilitate enforcement of a foreign support order. Note that the language directing a conversion to a monetary equivalence in dollars is intended to make clear the equivalence is not a modification of the original order to an absolute dollar figure; rather, satisfaction of the obligation is to be determined by the order-issuing tribunal based on the present dollar value of the currency in which the order is denominated.

Related to Convention: art. 19. Scope of the Chapter; art. 34. Enforcement measures; art. 35. Transfer of funds; art. 43. Recovery of costs.

§ 601-306. Inappropriate Tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

Added by Laws 1994, c. 160, § 19, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 7, eff. Sept. 1, 1997; Laws 2004, c. 367, § 15, eff. Nov. 1, 2004; Laws 2004, c. 367, § 16, eff. Nov. 1, 2004.

NACCUSL Comment

If a [petition] or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the [petitioner] where and when the pleading was sent. A tribunal receiving UIFSA documents in error is to forward the original documents to their proper destination without undue delay. This section was originally intended to apply both to initiating and responding tribunals receiving such documents, but the practical elimination of the role of initiating tribunals under modern practice now limits the notice requirement to the petitioner, i.e., the individual party or support enforcement agency, that filed (or misfiled) the document directly. For example, if a tribunal is inappropriately designated as the responding tribunal, it shall forward the petition to the appropriate responding tribunal wherever located, if known, and notify the petitioner of its action. Such a procedure is much to be preferred to returning the documents to the petitioner to begin the process anew.

Cooperation of this sort will facilitate the ultimate goals of the act. Although by its terms this section applies only to a tribunal of this state, it can be anticipated that the support enforcement agency will also assist in transferring documents to the appropriate tribunal. Note the section does not contemplate that a state tribunal will forward documents to a tribunal in a foreign country.

§ 601-307. Duties of Support Enforcement Agency.

A. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

B. A support enforcement agency of this state that is providing services to the petitioner shall:

1. Take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

2. Request an appropriate tribunal to set a date, time, and place for a hearing;

3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

4. Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

5. Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

1. To ensure that the order to be registered is the controlling order; or

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

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

E. A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to Section 601-319 of this title.

F. The Uniform Interstate Family Support Act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Added by Laws 1994, c. 160, § 20, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 8, eff. Sept. 1, 1997; Laws 2004, c. 367, § 17, eff. Nov. 1, 2004; Laws 2015, c. 104, § 20, eff. Nov. 1, 2015; Laws 2016, c. 148, § 9, eff. Nov. 1, 2016.

NACCUSL Comment

Federal legislation signed on Sept. 29, 2014 (P.L. 113-183) authorizes states to enact Alternative A or Alternative B of subsection (a). The focus of subsection (a) is on providing services to a petitioner. Either the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child-support order, enforcement or review and adjustment of an existing child-support order, or a modification of that order (upward or downward). Note that the section does not distinguish between child support and spousal support for purposes of providing services. Note also, the services available may differ significantly; for example, modification of spousal support is limited to the issuing tribunal. See Section 205(f).

Alternative A continues the longstanding rule that this state's support enforcement agency shall provide services upon request to a petitioner seeking relief under this act. Under Alternative B, the support agency may exercise discretion to provide or not provide assistance to an applicant: (1) from a reciprocating country or Convention country who does not apply through the Central Authority of his or her own country, but rather applies directly to the support enforcement agency; and (2) residing overseas in a country other than a reciprocating country or Convention country. The lack of services, of course, may impact the means by which an individual is able to obtain assistance in pursuing an action in the appropriate tribunal.

Subsection (b) responds to the past complaints of many petitioners that they were not properly kept informed about the progress of their requests for services.

Subsection (c) is a procedural clarification reflecting actual practice of the support agencies developed after years of experience with the act. It imposes a duty on all support enforcement agencies to facilitate the UIFSA one-order world by actively searching for cases with multiple orders and obtaining a determination of the controlling order as expeditiously as possible. This agency duty correlates to new Subsection 602(d) regarding the registration process and cases with multiple orders.

Subsection (d) imposes a duty of currency conversion on a support enforcement agency similar to that imposed on an initiating tribunal in Section 304(b).

Read in conjunction with Section 319, subsection (e) requires the state support enforcement agency to facilitate redirection of the stream of child support in order that payments be more efficiently received by the obligee.

Subsection (f) explicitly states that UIFSA neither creates nor rejects the establishment of an attorney-client or fiduciary relationship between the support enforcement agency and a petitioner receiving services from that agency. This once-highly controversial issue is left to otherwise applicable state law, which generally has concluded that attorneys employed by a state support enforcement agency do not form an attorney-client relationship with either the parties or the child as the ultimate obligee.

Related to Convention: art. 35. Transfer of funds.

§ 601-308. Duty of Attorney General.

A. If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may order the agency to perform its duties under this act or may provide those services directly to the individual.

B. The Attorney General may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

Added by Laws 1994, c. 160, § 21, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 18, eff. Nov. 1, 2004; Laws 2015, c. 104, § 21, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (b) makes clear that a state has a variety of options in determining the international scope of its IV-D support enforcement program. Of course, a federal declaration that a foreign jurisdiction is a reciprocating country or political subdivision is controlling. *See* Section 102(5)(A). However, each state may designate an official with authority to make a statewide, binding determination recognizing a foreign country, foreign nation state, or political subdivision as having a reciprocal arrangement with that state. *See* Section 102(5)(B).

§ 601-309. Private Counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this act.

Added by Laws 1994, c. 160, § 22, eff. Sept. 1, 1994.

NACCUSL Comment

The right of a party to retain private counsel in a proceeding brought under UIFSA is explicitly recognized. The failure to clearly recognize that power under the prior uniform acts led to confusion and inconsistent decisions. The Convention implicitly recognizes that the right to employ an attorney is to be available in every Convention country, but does not explicitly mention retaining private counsel. A "competent authority" in Convention terminology is equivalent to a tribunal.

Related to Convention: art. 37. Direct requests to competent authorities.

§ 601-310. Duties of Child-Support Enforcement Division of the Department of Human Services as State Information Agency.

A. The Child Support Enforcement Division of the Department of Human Services is the state information agency under this act.

B. The state information agency shall:

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

2. Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

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

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

Added by Laws 1994, c. 160, § 23, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 19, eff. Nov. 1, 2004; Laws 2015, c. 104, § 22, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (a) identifies the state information agency.

Subsection (b) details the duties of that agency insofar as interstate proceedings are concerned. Subsection (b)(4) does not provide independent access to the information sources or to the governmental documents listed. Because states have different requirements and limitations concerning such access based on differing views of the privacy interests of individual citizens, the agency is directed to use all lawful means under the relevant state law to obtain and disseminate information.

§ 601-311. Pleadings and Accompanying Documents.

A. In a proceeding under the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under Section 601-312 of this title, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Added by Laws 1994, c. 160, § 24, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 20, eff. Nov. 1, 2004; Laws 2015, c. 104, § 23, eff. Nov. 1, 2015; Laws 2016, c. 148, § 10, eff. Nov. 1, 2016.

NACCUSL Comment

This section establishes the basic requirements for drafting and filing interstate pleadings. Subsection (a) should be read in conjunction with Section 312, which provides for the confidentiality of certain information if disclosure is likely to result in harm to a party or a child. The goal of this section is to improve efficiency of the process by attaching all known support orders to the petition, coupled with the elimination of the requirement that such copies be certified. If a dispute arises over the authenticity of a purported order, the tribunal must, of necessity, sort out conflicting claims at that time. Another improvement is the deletion of the requirement for verified pleadings originated in URESA and carried forward in the original version of UIFSA. Note, however, that a request for registration of a foreign support order for which the Convention is in force is subject to Section 706. This is due to the fact that the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention articles 11 and 25.

Subsection (b) provides authorization for the use of the federally authorized forms to be used in interstate cases in connection with the IV-D child-support enforcement program and mandates substantial compliance with those forms. Although the use of other forms is not prohibited, standardized documents have resulted in substantial improvement in the efficient processing of UIFSA proceedings. The Convention also contains annexed forms for international use.

Related to Convention: art. 10. Available applications; art. 11. Application contents; art. 12. Transmission, receipt and processing of applications and cases through Central Authorities; art. 25. Documents; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3).

§ 601-312. Nondisclosure of Information in Exceptional Circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Added by Laws 1994, c. 160, § 25, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 21, eff. Nov. 1, 2004; Laws 2015, c. 104, § 24, eff. Nov. 1, 2015.

NACCUSL Comment

UIFSA (1992) recognized that enforcement of child support across state lines might have an unintended consequence of putting a party or child at risk if domestic violence was involved in the past. This section is a substantial revision of the statutory formulation originally developed in UIFSA (1992). It conforms to the comparable provision in the Uniform Child Custody Jurisdiction and Enforcement Act Section 209. Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since interstate enforcement of support originated. This section authorizes confidentiality in instances where there is a risk of domestic violence or child abduction. Section 712, infra, incorporates language from the Convention to restrict dissemination of personal jurisdiction to protect victims of domestic violence.

Although local law generally governs the conduct of the forum tribunal, state law may not provide for maintaining secrecy about the exact whereabouts of a litigant or other information ordinarily required to be disclosed under state law, i.e., Social Security number of the parties or the child. If so, this section creates a confidentiality provision that is particularly appropriate in light of the intractable problems associated with interstate parental kidnapping, see the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A.

Related to Convention: art. 38. Protection of personal data; art. 39. Confidentiality; art. 40. Non-disclosure of information.

§ 601-313. Costs and Fees.

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

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

Added by Laws 1994, c. 160, § 26, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 22, eff. Nov. 1, 2004; Laws 2015, c. 104, § 25, eff. Nov. 1, 2015; Laws 2016, c. 148, § 11, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) permits either party, i.e., as petitioner, to file without payment of a filing fee or other costs. This provision dates back to UIFSA (1992) when the term "unfunded mandate" was basically unknown.

Subsection (b), however, provides that only the support obligor may be assessed the authorized costs and fees by a tribunal. Federal law permits a state support enforcement agency to charge limited fees and to recover administrative costs from applicants for Title IV-D services, but many states have opted not to do so, or only to seek recovery from the obligor.

Subsection (c) provides a sanction to deal with a frivolous contest regarding compliance with an interstate withholding order, registration of a support order, or comparable delaying tactics regarding an appropriate enforcement remedy.

Related to Convention: art. 14. Effective access to procedures; art. 43. Recovery of costs.

§ 601-314. Limited Immunity of Petitioner.

A. Participation by a petitioner in a proceeding under the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under the Uniform Interstate Family Support Act.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under the Uniform Interstate Family Support Act committed by a party while physically present in this state to participate in the proceeding.

Added by Laws 1994, c. 160, § 27, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 23, eff. Nov. 1, 2004; Laws 2016, c. 148, § 12, eff. Nov. 1, 2016.

NACCUSL Comment

Under subsection (a), direct or indirect participation in a UIFSA proceeding does not subject a petitioner to an assertion of personal jurisdiction over the petitioner by the forum state in other litigation between the parties. The primary object of this prohibition is to preclude joining disputes over child custody and visitation with the establishment, enforcement, or modification of child support. This prohibition strengthens the ban on visitation litigation established in Section 305(d). A petition for affirmative relief under UIFSA limits the jurisdiction of the tribunal to the boundaries of the support proceeding. In sum, proceedings under UIFSA are not suitable vehicles for the relitigation of all of the issues arising out of a foreign divorce or custody case. Only enforcement or modification of the support portion of such decrees or orders are relevant. Other issues, such as custody and visitation, or matters relating to other aspect of the divorce decree, are collateral and have no place in a UIFSA proceeding.

Subsection (b) grants a litigant a variety of limited immunity from service of process during the time that party is physically present in a state for a UIFSA proceeding. The immunity provided is in no way comparable to diplomatic immunity, however, which should be clear from reading subsection (c) in conjunction with the other subsections.

Subsection (c) does not extend immunity to civil litigation unrelated to the support proceeding which stems from contemporaneous acts committed by a party while present in the state for the support litigation. For example, a petitioner involved in an automobile accident or a contract dispute over the cost of lodging while present in the state does not have immunity from a civil suit on those issues.

§ 601-315. Nonparentage as Defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this act.

Added by Laws 1994, c. 160, § 28, eff. Sept. 1, 1994.

NACCUSL Comment

Arguably this section does no more than restate the basic principle of res judicata. However, there is a great variety of state law regarding presumptions of parentage and available defenses after a prior determination of parentage. As long as a proceeding is brought in an appropriate forum, this section is intended neither to discourage nor encourage collateral attacks in situations in which the law of another jurisdiction is at significant odds with local law. If a collateral attack on a parentage decree is permissible under the law of the issuing jurisdiction, such a proceeding must be pursued in that forum and not in a UIFSA proceeding.

This section mandates that a parentage decree rendered by another tribunal "pursuant to law" is not subject to collateral attack in a UIFSA proceeding. Of course, an attack on an alleged final order based on a fundamental constitutional defect in the parentage decree is permissible in the forum state. For example, a responding tribunal may find that another tribunal acted unconstitutionally by denying a party due process due to a failure of notice and opportunity to be heard or a lack of personal jurisdiction over a party who did not answer or appear. Insofar as the latter ground is concerned, the universal enactment of the long-arm statute asserting personal jurisdiction over a respondent if the child "may have been conceived" in the forum state may greatly reduce successful attacks on a parentage determination. See Section 201(a)(6).

Similarly, the law of the issuing state or foreign country may provide for a determination of parentage based on certain specific acts of the obligor, such as voluntarily acknowledging parentage as a substitute for a decree. UIFSA also is neutral regarding a collateral attack on such a parentage determination filed in the issuing tribunal. In the meantime, however, the responding tribunal must give effect to such an act of acknowledgment of parentage if it is recognized as determinative in the issuing state or foreign country. The consistent theme is that a collateral attack on a parentage determination cannot be made in a UIFSA proceeding other than on fundamental due-process grounds.

§ 601-316. Special Rules of Evidence and Procedure.

A. The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

E. Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

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

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

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

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

J. A voluntary acknowledgement of paternity, certified as a true copy, is admissible to establish parentage of the child.

Added by Laws 1994, c. 160, § 29, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 24, eff. Nov. 1, 2004; Laws 2015, c. 104, § 26, eff. Nov. 1, 2015; Laws 2016, c. 148, § 13, eff. Nov. 1, 2016.

NACCUSL Comment

Note that the special rules of evidence and procedure are applicable to a party or witness "residing outside this state," substituting for "residing in another state." This is the broadest application possible because the utility of these special rules is not limited to parties in other states, or in foreign countries, as defined in the act, but extends to an individual residing anywhere. This extremely broad application of the special rules is to facilitate the processing of a support order in this state or elsewhere. This section combines many time-tested procedures with innovative methods for gathering evidence in interstate cases.

Subsection (a) ensures that a nonresident petitioner or a nonresident respondent may fully participate in a proceeding under the act without being required to appear personally.

Subsection (b) recognizes the pervasive effect of the federal forms promulgated by the Office of Child Support Enforcement, which replace the necessity of swearing to a document "under oath" with the simpler requirement that the document be provided "under penalty of perjury," as has long been required by federal income tax Form 1040.

Subsections (b) through (f) provide special rules of evidence designed to take into account the virtually unique nature of the interstate proceedings under this act. These subsections provide exceptions to the otherwise guiding principle of UIFSA, i.e., local procedural and substantive law should apply. Because the out-of-state party, and that party's witnesses, necessarily do not ordinarily appear in person at the hearing, deviation from the ordinary rules of evidence is justified in order to assure that the tribunal will have available to it the maximum amount of information on which to base its decision. The intent throughout these subsections is to eliminate by statute as many potential hearsay problems as possible in interstate litigation, with the goal of providing each party with the means to present evidence, even if not physically present.

Subsection (d) provides a simplified means for proving health-care expenses related to the birth of a child. Because ordinarily the amount of these charges is not in dispute, this is designed to obviate the cost of having health-care providers appear in person or of obtaining affidavits of business records from each provider.

Subsections (e) and (f) encourage tribunals and litigants to take advantage of modern methods of communication in interstate support litigation; most dramatically, the out-of-state party is authorized to testify by the full panoply of audio and audiovisual technologies currently available for direct personal communication and to supply documents by fax, email, or direct transfer between computers or other electronic devices. One of the most useful applications of these subsections is to provide an enforcing tribunal with up-to-date information concerning the amount of arrears.

Subsection (f) unambiguously mandates that telephone or audiovisual testimony in depositions and hearings must be allowed. It anticipates that every courtroom is equipped with a speakerphone. In a day when laptop computers often come equipped with a video camera, live testimony from a remote location is not only possible, but almost as reliable as if the testimony was given in person. No doubt a demeanor is better judged in person than by viewing a video screen, but the latter is certainly preferable to only a disembodied voice.

Subsection (g) codifies the rule in effect in many states that in civil litigation an adverse inference may be drawn from a litigant's silence—that restriction of the Fifth Amendment does not apply. A related analogy is that a refusal to submit to genetic testing may be admitted into evidence and a trier of fact may resolve the question of parentage against the refusing party on the basis of an inference that the results of the test would have been unfavorable to the interest of that party.

Subsection (j), new in 2001, complies with the federally mandated procedure that every state must honor the "acknowledgment of paternity" validly made in another state.

Related to Convention: art. 13. Means of communication; art. 14. Effective access to procedures; art. 29. Physical presence of the child or the applicant not required.

§ 601-317. Communication Between Tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail or other means, to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

Added by Laws 1994, c. 160, § 30, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 25, eff. Nov. 1, 2004; Laws 2015, c. 104, § 27, eff. Nov. 1, 2015; Laws 2016, c. 148, § 14, eff. Nov. 1, 2016.

NACCUSL Comment

This section explicitly authorizes a state tribunal to communicate with a tribunal of another state, foreign country, or in a foreign nation state not defined as a foreign country. It was derived from UCCJA § 110 authorizing such communications to facilitate a fully informed decision. The amendment in UIFSA (2008) not only expands the authorization to worldwide scope, i.e., "outside this state," but specifically adds email to the select modes of communication. Broad cooperation by tribunals is strongly encouraged in order to expedite establishment and enforcement of a support order. American judges are very familiar with this procedure. It remains to be seen whether overseas communication between judges will be received with similar cooperation.

§ 601-318. Assistance with Discovery.

A tribunal of this state may:

1. Request a tribunal outside this state to assist in obtaining discovery; and

2. Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

Added by Laws 1994, c. 160, § 31, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 28, eff. Nov. 1, 2015.

NACCUSL Comment

This section takes a logical step to facilitate interstate and international cooperation by enlisting the power of the forum to assist a tribunal of another state or country with the discovery process. The grant of authority is quite broad, enabling the tribunal of the enacting state to fashion its remedies to facilitate discovery consistent with local practice.

§ 601-319. 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 tribunal of another state or a foreign country 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 of this section 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.

Added by Laws 1994, c. 160, § 32, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 26, eff. Nov. 1, 2004; Laws 2015, c. 104, § 29, eff. Nov. 1, 2015.

NACCUSL Comment

The first sentence of subsection (a) is truly hortatory in nature, although its principle is implemented insofar as support enforcement agencies are required by federal regulations promulgated by the Office of Child Support Enforcement (OCSE). The second sentence confirms the duty of the agency or tribunal to furnish payment information in interstate or international cases.

As an exception to the usual provisions in Article 3, subsections (b) and (c) are applicable only to interstate cases. The procedure described was inspired by the Office of Child Support Enforcement (OCSE), U.S. Department of Health and Human Services, and is designed to speed up receipt of support payments. Support enforcement agencies are directed to cooperate in the efficient and expeditious collection and transfer of child support from obligor to obligee. Over two-thirds of all child support payments currently are made through direct income withholding actions, whereby an out-of-state IV-D agency sends direct notice to an employer in the obligor's state to withhold funds to satisfy the support obligation. Nonetheless, this section remains viable for those situation in

which the direct withholding encounters a glitch. Further, there are ongoing problems in states not having income withholding payments go to the state disbursement unit. This section is intended to solve the problem by directing the payments to the most logical disbursement unit, i.e., the state with continuing exclusive jurisdiction.

Article 4.
Establishment of Support Order or Determination of Parentage

NACCUSL Introductory Comment

A fundamental principle of U.S. jurisprudence is that our courts are open to litigants with a valid cause of action. This article makes clear this principle applies to support actions, whether initiated by a resident of the United States or of a foreign nation.

§ 601-401. Establishment of Support Order.

A. If a support order entitled to recognition under this act has not been issued, a responding tribunal of this state, with personal jurisdiction over the parties, may issue a support order if:

1. The individual seeking the order resides outside this state; or
2. The support enforcement agency seeking the order is located outside this state.

B. The tribunal may issue a temporary child support order if 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 Section 1-311.3 of Title 63 of the Oklahoma Statutes;
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.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 601-305 of this title.

Added by Laws 1994, c. 160, § 33, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 27, eff. Nov. 1, 2004; Laws 2015, c. 104, § 30, eff. Nov. 1, 2015.

NACCUSL Comment

This section authorizes a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is "outside this state," i.e., anywhere else in the world. UIFSA does not permit such orders to be issued when another support order entitled to recognition exists, thereby prohibiting a second tribunal from establishing another support order and the accompanying continuing, exclusive jurisdiction over the matter. See Sections 205 and 206.

Related to Convention: art. 11. Application contents; art. 14. Effective access to procedures; art. 15. Free legal assistance for child support applications; art. 16. Declaration to permit use of child-centered means test; art. 17. Applications not qualifying under 15 or 16; art. 20. Bases for recognition and enforcement; art. 25. Documents; art. 27. Findings of fact; art. 28. No review of the merits; art. 37. Direct requests to competent authorities; art. 56. Transitional provisions.

§ 601-402. Proceeding to Determine Parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this act or a law or procedure substantially similar to this act.

Added by Laws 2015, c. 104, § 31, eff. Nov. 1, 2015.

NACCUSL Comment

This article authorizes a "pure" parentage action in the interstate context, i.e., an action not joined with a claim for support. The mother, an alleged father of a child, or a support enforcement agency may bring such an action. Typically an action to determine parentage across a state line or international border will also seek to establish a support order. *See* Section 401. An action to establish parentage under UIFSA is to be treated identically to such an action brought in the responding state.

In a departure from the rest of this act, in UIFSA (2001) the term "tribunal" was replaced by "court" in this section. The several states have a variety of combinations of judicial or administrative entities that are authorized to establish, enforce, and modify a child-support order. Because the Uniform Parentage Act (UPA) (2000) § 104 restricts parentage determinations to "a court," see UPA (2000) § 104, the drafters took the view that only a judicial officer should determine parentage as a matter of public policy. This conclusion was in error insofar as some states are concerned and is reversed in this iteration of the act.

Related to Convention: art. 2. Scope; art. 6. Specific functions of Central Authorities; art. 10. Available applications.

Article 5.

Enforcement of Support Order Without Registration

NACCUSL Introductory Comment

This article governs direct filing of an income withholding order from one state to an employer in another state. Except as provided in Section 507, the provisions of this article only apply to an interstate case and do not apply to an income-withholding order from a foreign country. While U.S. employers routinely enforce sister state income-withholding orders, enforcement of the wide variety of possible foreign support orders would provide too many complexities and challenges to justify requiring an employer to interpret and enforce an ostensible foreign income-withholding order. Indeed, income-withholding orders from a foreign country are quite rare at this time, although instances of that enforcement remedy probably will increase in the future.

§ 601-501. Employer's Receipt of Income-Withholding Orders Issued of Another State.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Added by Laws 1994, c. 160, § 34, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 9, eff. Sept. 1, 1997; Laws 2004, c. 367, § 28, eff. Nov. 1, 2004; Laws 2015, c. 104, § 32, eff. Nov. 1, 2015.

NACCUSL Comment

In 1984 Congress mandated that all states adopt procedures for enforcing income-withholding orders of sister states. Direct recognition by the out-of-state obligor's employer of a withholding order issued by another state long was sought by support enforcement associations and other advocacy groups. UIFSA (1992) recognized such a procedure. This article was extensively amended in 1996, but was the subject only of clarifying amendments in 2001.

Section 501 is deliberately written in the passive voice; the act does not restrict those who may send an income-withholding order across state lines. Although the sender will ordinarily be a child support enforcement agency or the obligee, the obligor or any other person may supply an employer with the income-withholding order. "Sending a copy" of a withholding order to an employer is clearly distinguishable from "service" of that order on the same employer. Service of an order necessarily intends to invoke a tribunal's authority over an employer doing business in the state. Thus, for there to be valid "service" of a withholding order on an employer in a state, the tribunal must have authority to bind the employer. In most cases, this requires the assertion of the authority of a local responding tribunal in a "registration for enforcement" proceeding. In short, the formality of "service" defeats the whole purpose of direct income withholding across state lines.

The process contemplated in this article is direct "notification" of an employer in another state of a withholding order without the involvement of initiating or responding tribunals. Therefore, receipt of a copy of a withholding order by facsimile, regular first class mail, registered or certified mail, or any other type of direct notice is sufficient to provide the requisite notice to trigger direct income withholding in the absence of a contest by the employee-obligor. This process is now widely used by not only child support enforcement agencies, but also by private collection agencies or private attorneys acting on behalf of obligees.

Except as provided in Section 507, Administrative Enforcement of Orders, none of the sections in Article 5 are intended to apply to foreign support orders. While it is appropriate for U.S. employers to enforce sister state income-withholding orders routinely, enforcement of the wide variety of possible foreign support orders provides too many complexities and challenges to require an employer to interpret and enforce ostensible foreign income-withholding orders.

§ 601-502. Employer's Compliance with Income-Withholding Order of Another State.

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

B. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

C. Except as otherwise provided in subsection D of this section and Section 601-503 of this title, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

1. The duration and amount of periodic payments of current child support, stated as a sum certain;
2. The person designated to receive payments and the address to which the payments are to be forwarded;
3. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sum certain; and
5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

D. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income-withholding order;
2. The maximum amount permitted to be withheld from the obligor's income; and
3. The times within which the employer must implement the withholding order and forward the child support payment.

Added by Laws 1994, c. 160, § 35, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 10, eff. Sept. 1, 1997; Laws 2004, c. 367, § 29, eff. Nov. 1, 2004.

NACCUSL Comment

In 1996 major employers and national payroll associations urged NCCUSL to supply more detail regarding the rights and duties of an employer on receipt of an income-withholding order from another state. The Conference obliged with amendments to UIFSA establishing a series of steps for employers to follow.

When an employer receives an income withholding order from another state, the first step is to notify the employee that an income withholding order has been received naming the employee as the obligor of child support, and that income withholding will begin within the time frame specified by local law. In

other words, the employer will initially proceed just as if the withholding order had been received from a tribunal of the employer's state. It is the responsibility of the employee to take whatever protective measures are necessary to prevent the withholding if the employee asserts a defense as provided in Section 506, infra.

At this point neither an initiating nor a responding tribunal is directly involved. The withholding order may have been forwarded by the obligee, the obligee's attorney, or the out-of-state IV-D agency. In fact, there is no prohibition against anyone sending a valid copy of an income-withholding order, even a stranger to the litigation, such as the child's grandparent. Subsection (a) does not specify the method for sending this relatively informal notice for direct income withholding, but rather makes the assumption that the employer's communication to the employee regarding receipt of the order will cause an employee-obligor to act to prevent a wrongful invasion of his or her income if it is not owed as current child support or arrears.

Subsection (b) directs an employer of the enacting state to recognize a withholding order of a sister state, subject to the employee's right to contest the validity of the order or its enforcement. Prior to the promulgation of UIFSA, agencies in several states adopted a procedure of sending direct withholding requests to out-of-state employers. A contemporaneous study by the federal General Accounting Office reported that employers in a second state routinely recognized withholding orders of sister states despite an apparent lack of statutory authority to do so. UIFSA marked the first official sanction of this practice. Subsection (b) does not define "regular on its face," but the term should be liberally construed, see U.S. v. Morton, 467 U.S. 822 (1984) ("legal process regular on its face"). The rules governing intrastate procedure and defenses for withholding orders will apply to interstate orders.

Subsection (c) answered employers' complaints that insufficient direction for action was given by the original UIFSA. Prior to the 1996 amendments an employer was merely told to "distribute the funds as directed in the withholding order." This section clarifies the terms of the out-of-state order with which the employer must strictly comply. As a general principle, an employer is directed to comply with the specific terms contained in the order, but there are exceptions. Moreover, many income-withholding orders received at that time did not provide the detail necessary for the employer to comply with every directive. Since then, however, the long-anticipated federal forms were promulgated throughout 1997 and 1998, with periodic updates to the present time. Most recently, the text of income withholding orders for child support is fast conforming to a nationwide norm. To the extent that an order is silent, the employer is not required to respond to unstated demands of the issuing tribunal. Formerly, employers often were so concerned about ambiguous or incomplete orders that they telephoned child support enforcement agencies in other states to attempt to understand and comply with unstated terms. Employers should not be expected to become investigators or shoulder the responsibility of learning the law of 50 states.

Subsection (c)(1) directs that the amount and duration of periodic payments of current child support must be stated in a sum certain in order to elicit compliance. The amount of current support and duration of the support obligation are fixed by the controlling order and should be stated in the withholding order so that the employer is informed of the date on which the withholding is anticipated to terminate. The "sum certain" requirement is crucial to facilitating the employer's compliance. For example, an order for a "percentage of the obligor's net income," does not satisfy this requirement and is not entitled to compliance from an employer receiving an interstate income-withholding order.

Subsection (c)(2) states the obvious: information necessary for compliance must be clearly stated. For example, the destination of the payments must correspond to the destination originally designated or subsequently authorized by the issuing tribunal, such as by the redirection of payments pursuant to Section 319, supra.

Subsection (c)(3) provides that medical support for the child must be stated either by a periodic cash payment or, alternatively, by an order directing the employee-obligor to provide health insurance coverage from his employment. In the absence of an order for payment of a sum certain, issuance of an order for medical support as child support is required to ensure the employer enrolls the obligor's child for coverage if medical insurance is available through the obligor's employment. Failure to enroll the child should elicit, at the least, registration of an order for enforcement in the responding state, to be implemented by an order of a tribunal directing either the employee or the employer to comply to furnish insurance coverage for the child. If the employer is so directed by a medical support order, enrollment of the child in the health care plan at the employee-obligor's expense is not dependent on the obligor's consent, any more than withholding a sum certain from the obligor's income is subject to a veto. It is up to the employee-obligor to assert any defense to prevent the employer from abiding by the medical support order.

Subsection (c)(4) identifies certain costs and fees incurred in conjunction with the support enforcement that may be added to the withholding order.

Subsection (c)(5) requires that the amount of periodic payments for arrears and interest on arrears also must be stated as a sum certain. If the one-order system is to function properly, the issuing tribunal ultimately must be responsible to account for payments and maintain the record of arrears and interest rate on arrears. Full compliance with the support order will only be achieved when the issuing tribunal determines that the obligation no longer exists. The amount of periodic payments for arrears is also fixed by the controlling order unless the law of the issuing state or the state where the order is being enforced provides a procedure for redetermination of the amount.

Subsection (d) identifies those narrow provisions in which the law of the employee's work state applies, rather than the law of the issuing state. A large employer will almost certainly have a number of employees subject to income-withholding orders. From the employer's perspective, the procedural requirements for compliance should be uniform for all of those employees. Certain issues should be matters for the law of the employee's work state, such as the employer's fee for processing, the maximum amount to be withheld, and the time in which to comply. The latter necessarily includes the frequency with which income withholding must occur. This is also consistent with regard to the tax consideration imposed by choice of law considerations. The only element in the list of local laws identified in subsection (d) which stirred any controversy whatsoever was the fact that the maximum amount permitted to be withheld is to be subject to the law of the employee's work state. Demands of equal treatment for all obligees, plus the practical concern that large employers require uniform computer programming mandate this solution.

§ 601-503. Employer's Compkiance with Two or More Income-Withholding Orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

Added by Laws 1997, c. 360, § 11, eff. Sept. 1, 1997. Amended by Laws 2004, c. 367, § 30, eff. Nov. 1, 2004; Laws 2015, c. 104, § 33, eff. Nov. 1, 2015.

NACCUSL Comment

Consistent with the act's general problem-solving approach, the employer is directed to deal with multiple income orders for multiple families in the same manner as required by local law for orders of the forum state.

In addition to income withholding orders issued by tribunals of other states, state support enforcement agencies may also issue income withholding orders to enforce foreign child-support orders.

§ 601-504. Immunity from Civil Liability.

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

Added by Laws 1997, c. 360, § 12, eff. Sept. 1, 1997. Amended by Laws 2015, c. 104, § 34, eff. Nov. 1, 2015.

NACCUSL Comment

Because employer cooperation is a key element in interstate child support enforcement, it is sound policy to state explicitly that an employer who complies with an income-withholding order from another state is immune from civil liability.

§ 601-505. Penalties for Noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Added by Laws 1997, c. 360, § 13, eff. Sept. 1, 1997. Amended by Laws 2016, c. 148, § 15, eff. Nov. 1, 2016.

NACCUSL Comment

Only an employer who willfully fails to comply with an interstate order will be subject to enforcement procedures. Local law is the appropriate source for the applicable sanctions and other remedies available under state law.

§ 601-506. Contest by Obligor.

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6 of this title, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

B. The obligor shall give notice of the contest to:

1. A support enforcement agency providing services to the obligee;
2. Each employer that has directly received an income-withholding order relating to the obligor; and
3. The person designated to receive payments in the income-withholding order or if no person is designated, to the obligee.

Added by Laws 1997, c. 360, § 14, eff. Sept. 1, 1997. Amended by Laws 2004, c. 367, § 31, eff. Nov. 1, 2004; Laws 2015, c. 104, § 35, eff. Nov. 1, 2015.

NACCUSL Comment

This section incorporates into the interstate context the local law regarding defenses an employee-obligor may raise to an income-withholding order. Generally, states have accepted the IV-D requirement that the only viable defense is a mistake of fact, 42 U.S.C. § 666(b)(4)(A). This apparently includes errors in the amount of current support owed, in the amount of accrued arrearage, or mistaken identity of the alleged obligor. Other grounds are excluded, such as inappropriate amount of support ordered, changed financial circumstances of the obligor, or lack of visitation. H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983). The latter claims must be pursued in a separate proceeding in the appropriate state, not in a UIFSA proceeding.

This procedure is based on the assumption that valid defenses to income withholding for child support are few and far between. Experience has shown that in relatively few cases does an employee-obligor have a complete defense, e.g., the child has died, another contingency ending the support has occurred, the order has been superseded, or there is a case of mistaken identity and the employee is not the obligor. An employee's complaint that "The child support is too high" must be ignored.

As noted frequently above, instances of multiple orders have become increasingly rare over the past two decades plus. Situations do arise, however, in which an employer has received multiple withholding notices regarding the obligor-employee and the same obligee. The notices may even allege conflicting amounts due, especially for payments on arrears. Additionally, many employees claim to have only learned of default orders when the withholding notice is delivered to the employer. This claim often is based on an assertion that the order being enforced through income withholding was entered without personal jurisdiction over the obligor-employee. A variety of similar fundamental defenses may be asserted, such as mistaken identity, full payment, another order controlling, etc.

Subsection (a) provides for a simple, efficient, and cost-effective method for an employee-alleged obligor to assert a defense. For example, if the existence of a support obligation is acknowledged but the details are at issue, the obligor may register the underlying "controlling" support order with a local tribunal and seek temporary protection pending resolution of the contest. This may be accomplished pro se, employment of private counsel, or by a request for services from the child support enforcement agency of the responding state. Some states provide administrative procedures for challenging the income withholding that may provide quicker resolution of a dispute than a judicially-based registration and hearing process. In the absence of expeditious action by the employee to assert a defense and contest the direct filing of a notice for withholding, however, the employer must begin income withholding in a timely fashion.

Another issue the employee-obligor may raise is that the withholding order received by the employer is not based on the controlling child-support order issued by the tribunal with continuing, exclusive jurisdiction, *see* Section 207, *supra*. Such a claim does not constitute a defense to the obligation of child support, but does put at issue the identity of the order to which the employer must respond.

The one order system initiated by UIFSA effectively has eliminated the multiple-order system of RURESA, which primarily involved multiple orders by different courts for the same child. At present most "duplicate income withholding orders" involve one state seeking state assigned arrears and another state also seeking arrears, and possibly ongoing support as well. Clearly the employer is in no position to make a decision on how to proceed to resolve such conflicting claims. When multiple orders involve the same employee-obligor and child, or multiple children (including those with other mothers), as a practical matter resort to a responding tribunal to resolve the resulting dispute almost certainly will be necessary.

§ 601-507. Administrative Enforcement of Orders.

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

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

Added by Laws 1997, c. 360, § 15, eff. Sept. 1, 1997. Amended by Laws 2004, c. 367, § 32, eff. Nov. 1, 2004; Laws 2015, c. 104, § 36, eff. Nov. 1, 2015.

NACCUSL Comment

Sections 501 through 506 are posited on the belief that U.S. employers ought not be burdened with enforcement of foreign income-withholding orders received directly from overseas. This view is inapplicable if a support enforcement agency is involved. The procedural safeguards built into the Title IV-D system of processing requests between Central Authorities provide reasonable assurance that the income withholding order to be enforced is genuine.

This section authorizes summary enforcement of an interstate or foreign child-support order through the administrative means available for intrastate orders if the agency deems it "appropriate" to do so. Under subsection (a), an interested party in another state or foreign country, which necessarily includes a private attorney or a support enforcement agency, may forward a support order or income-withholding order to a support enforcement agency of the responding state. The term "responding state" in this context does not necessarily contemplate resort to a tribunal as an initial step.

Subsection (b) directs the support enforcement agency in the responding state to consider and, if appropriate, to use that state's regular administrative procedures to process an out-of-state order. Thus, a local employer accustomed to dealing with the local agency need not change its procedure to comply with an out-of-state order. Similarly, the administrative agency is authorized to apply its ordinary rules equally to both intrastate and interstate orders. For example, if the administrative hearing procedure must be exhausted for an intrastate order before a contesting party may seek relief in a tribunal, the same rule applies to an interstate order received for administrative enforcement. This subsection also makes it clear that filing liens or submitting claims in legal actions do not require the initial registration of the order.

Article 6.
Enforcement and Modification of Support Order After Registration

NACCUSL Introductory Comment

Sections 601 through 604 establish the basic procedure for the registration of a support order from another state or a foreign support order. Under RURESA when a tribunal of a responding state was requested to register and enforce an existing child-support order, the common practice was to ignore the request; rather, a separate proceeding would be initiated for the establishment of a new support order. This practice was specifically rejected by UIFSA; this practice under RURESA created the multiple support-order system that UIFSA was specifically designed to eliminate. Under Sections 205 through 207 the one-order system allows only one existing order to be enforced prospectively.

Sections 605 through 608 provide the procedure for the nonregistering party to contest registration of an order, either because the order is allegedly invalid, superseded, or no longer in effect, or because the enforcement remedy being sought is opposed by the nonregistering party. Other enforcement remedies may be available without resort to the UIFSA process under the law of the responding state. *See* Section 104.

The registration and enforcement provisions in Sections 601 through 608 are consistent with the "recognition and enforcement" provisions of the Convention. The terms of this article and Article 7 suffice to direct international support orders into the proper channels.

Part 1.
Registration for Enforcement of Support Order

§ 601-601. Registration of Order for Enforcement.

A support order or an income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

Added by Laws 1994, c. 160, § 36, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 37, eff. Nov. 1, 2015.

NACCUSL Comment

Registration of an order in a tribunal of the responding state is the first step to enforce a support order from another state or foreign country. If a prior support order has been validly issued by a tribunal with continuing, exclusive jurisdiction, see Section 205, such an order is to be prospectively enforced against the obligor in the absence of narrow, strictly defined fact situations in which an existing order may be modified. *See* Sections 609 through 614. Until and unless that order is modified, however, it remains an order of the issuing tribunal and is fully enforceable in the responding state.

Although registration that is not accompanied by a request for the affirmative relief of enforcement is not prohibited, the act does not contemplate registration as serving a purpose in itself. In that regard, registration is a process, and the failure to register does not deprive an otherwise appropriate forum of subject matter jurisdiction. Note that either or both a state support order or a state income-withholding order may be registered. However, although a foreign support order also may be registered, this section does not contemplate recognition of a foreign income-withholding order.

Related to Convention: art. 23. Procedure on an application for recognition and enforcement; art. 26. Procedure on an application for recognition.

§ 601-602. Procedure to Register Order for Enforcement.

A. Except as otherwise provided in Section 601-706 of this title, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

1. A letter of transmittal to the tribunal requesting registration and enforcement;

2. Two copies, including one certified copy, of the order to be registered, including any modification of the order;

3. A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

4. The name of the obligor and, if known:

a. the obligor's address and social security number,

b. the name and address of the obligor's employer and any other source of income of the obligor, and

c. a description and the location of property of the obligor in this state not exempt from execution; and

5. Except as otherwise provided in Section 601-312 of this title, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted~~:~~**.**

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

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

D. If two or more orders are in effect, the person requesting registration shall:

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

2. Specify the order alleged to be the controlling order, if any; and

3. Specify the amount of consolidated arrears, if any.

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

Added by Laws 1994, c. 160, § 37, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 33, eff. Nov. 1, 2004; Laws 2015, c. 104, § 38, eff. Nov. 1, 2015; Laws 2016, c. 148, § 16, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) outlines the mechanics for registration of an interstate or foreign support order. Substantial compliance with the requirements is expected. The procedure for registration and enforcement set forth in this section is basically unchanged for a foreign support order; indeed, all of Sections 601 through 608 apply. The requirement that the order be "issued by a tribunal" has been subtly modified. Although the vast majority of enforceable support orders will be from a tribunal, in relatively rare instances an enforceable "foreign support order" from a Convention country will not have been issued by a tribunal, *see e.g.*, Section 710, *infra*. Note, however, that a request for registration of a foreign support order for which the Convention is in force is subject to Section 706. This is because the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention art. 11 and 25.

Millions of interstate domestic cases have been, and will continue to be, processed under the procedure specified in this section. It has been estimated that only approximately one-tenth of one percent (0.1%) of the Title IV-D caseload involve a foreign support order. Thus, the documentation specified by this section is the same for interstate and non-Convention foreign support orders. A support order from a Convention country is covered by the separate list of specifications in Section 706 to accommodate the differences between this act and the Convention. Because child-support enforcement agencies have successfully dealt with foreign support orders with increasing frequency during the UIFSA era, this may well prove to be a distinction without much difference.

Subsection (b) confirms that the support order being registered is not converted into an order of the responding state; rather, it continues to be an order of the tribunal of the issuing state or foreign country.

Subsection (c) warns that if a particular enforcement remedy must be specifically sought under local law, the same rules of procedure and substantive law apply to an interstate or international case. For example, if license suspension or revocation is sought as a remedy for alleged noncompliance with an order, the substantive and procedural rules of the responding state apply. Whether the range of application of the remedy in the responding state is wider or narrower than that available in the issuing state or foreign country is irrelevant. The responding tribunal will apply the familiar law of its state, and is neither expected nor authorized to consider the enforcement laws of the issuing state or foreign country. In short, the responding tribunal follows the identical path for enforcing the order of a tribunal of another state or foreign country as it would when enforcing an order of the responding state. The authorization of a later filing to comply with local law contemplates that interstate or international pleadings may be liberally amended to conform to local practice.

Subsections (d) and (e) amplify the procedures to be followed when two or more child-support orders exist and registration for enforcement is sought. In such instances, the requester is directed to furnish the tribunal with sufficient information and documentation so that the tribunal may make a determination of the controlling order for prospective support and of the amount of consolidated arrears and interest accrued under all valid orders. See Section 207.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

§ 601-603. Effect of Registration for Enforcement.

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

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

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

Added by Laws 1994, c. 160, § 38, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 39, eff. Nov. 1, 2015.

NACCUSL Comment

Initially the text of the registration procedure under UIFSA (1992) was nearly identical to that set forth in RURESA. But, the intent of UIFSA registration was always radically different. Under UIFSA, registration of a support order of State A continues to be an order of that state, which is to be enforced by a tribunal of State B. The ordinary rules of evidence and procedure of State B apply to hearings, except as local law may be supplemented or specifically superseded by other local law, i.e., UIFSA. The purpose of the registration procedure in sections 601 through 604 is that the order being registered remains a State A order until modified.

First, note that subsection (a) is phrased in the passive voice; "A support order . . . is registered when the order is filed in the registering tribunal . . . ." This drafting is deliberate. By indirection, in effect UIFSA provides that either the obligor, the obligee, or a support enforcement agency, may register a support order of another state or a foreign support order. In fact, even a stranger to the litigation, for example a grandparent or an employer of an alleged obligor, may register a support order. Presumptively, the order registered is the valid, controlling order. If not, the act depends on the respondent to contest the registration. See Sections 605 through 608.

Subsection (b) provides that a support order of another state or a foreign support order is to be enforced and satisfied in the same manner as if it had been issued by a tribunal of the registering state. Conceptually, the responding tribunal is enforcing the order of a tribunal of another state or a foreign support order, not its own order.

Subsection (c) mandates enforcement of the registered order, but forbids modification unless the terms of Sections 609 through 614 are met. Under UIFSA there will be only one order in existence at any one time. That order is enforceable in a responding state irrespective of whether the order may be modified. In most instances, a child-support order will be subject to the continuing, exclusive jurisdiction of the issuing tribunal. Sometimes the issuing tribunal will not be able to exercise its authority to modify the order because neither the child nor the parties reside in the issuing state. Nonetheless, the order may be registered and is fully enforceable in a responding state until the potential for modification actually occurs in accordance with the strict terms for such a proceeding. *See* Section 611. Thus, the registering tribunal always must bear in mind that the enforcement procedures taken, whether to enforce current support or to assist collecting current and future arrears and interest, are made on behalf of the issuing tribunal, and are not a modification of the controlling order.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

§ 601-604. Choice of Law.

A. Except as otherwise provided in subsection D of this section, the law of the issuing state or a foreign country governs:

1. The nature, extent, amount, and duration of current payments under a registered support order;
2. The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and
3. The existence and satisfaction of other obligations under the support order.

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

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

D. After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

Added by Laws 1994, c. 160, § 39, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 34, eff. Nov. 1, 2004; Laws 2015, c. 104, § 40, eff. Nov. 1, 2015; Laws 2016, c. 148, § 17, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) is intended to clarify the wide range of subjects that are governed by the choice-of-law rules established in this section. The task is to identify those aspects of the case for which local law is inapplicable. A basic principle of UIFSA is that throughout the process the controlling order remains the order of the tribunal of the issuing state or foreign country until a valid modification. The responding tribunal only assists in the enforcement of that order. Absent a loss of continuing, exclusive jurisdiction by the issuing tribunal and a subsequent modification of the order, the order never becomes an order of a responding tribunal.

Subsection (a) first identifies those aspects of the initial child-support order that are governed by the term's original decision and the function of the issuing tribunal. First and foremost, ultimate responsibility for enforcement and final resolution of the obligor's compliance with all aspects of the support order belongs to the issuing tribunal. Thus, calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is also the duty of the issuing tribunal.

In UIFSA (1992) the decision was made by NCCUSL that the duration of child support should be fixed by the initial controlling child-support order. See Section 611(c). This policy decision was somewhat controversial at the time, especially given the general rule that "local law controls." But, case law regarding issues created by movement from one state with one duration to a state with another policy was hopelessly muddled, so a solution was sought. Then, as now, the policies of states on this subject varied greatly: today, a few states continue to set the once most-common age of 21 as the cut-off date; some continue the obligation past 21, dependent on enrollment in higher education (often with limited time specified); at the other end of the spectrum, some states end the obligation of child support at age 18; in others at 19; and, most popularly, at one or the other of either age 18 or 19, plus graduation from high school, whichever is later.

Under subsection (a), if the initial issuing tribunal sets the age for termination of child support at 18, a responding state must recognize and enforce that child-support order. If the responding state sets its child support to age 21, the responding tribunal may not apply that time duration to require additional support to that age. The converse is also true. If the controlling order of another state ends the support obligation at 21, the responding tribunal in a state with 18 as the maximum duration for child support must enforce the controlling order until age 21. The dissent on this policy decision in UIFSA has abated over time. Interestingly, the Convention establishes age 21 as the hallmark. At the same time, under Convention art. 2(2), a country may reserve the right to limit the application of the Convention with regard to child support to persons who have not reached the age of 18. The United States does not intend to make such a reservation.

Similarly, subsection (a) directs that the law of the issuing state or foreign country governs the answer to questions such as whether a payment made for the benefit of a child, such as a Social Security benefit for a child of a disabled obligor, should be credited against the obligor's child support obligation. In sum, on these subjects the consistent rule is that a controlling order from State A is enforced in State B (and State C as well).

Note that as soon as a general proposition is identified, an exception may well be presented. Subsection (b) contains a choice-of-law provision that often diverges from other local law. In situations in which the statutes of limitation differ from state to state, the statute with the longer term is to be applied. In interstate cases, arrearages often will have accumulated over a considerable period of time before enforcement is perfected. The rationale for this exception to the general rule of "local law applies" is that the obligor should not gain an undue benefit from his or her choice of residence if the forum state, as the obligor's state of residence, has a shorter statute of limitations for arrearages than does the controlling order state. On the other side of the coin, i.e., if the forum has a longer statute of limitations, the obligor will be treated in an identical manner as all other obligors in that state. This choice of limitations also applies to the time period after the accrual of the arrears in which to bring an enforcement action.

Subsection (c) mandates that local law controls with regard to enforcement procedures. For example, if the issuing state or foreign country has enacted a wide variety of license suspension or revocation statutes, while the responding state has a much narrower list of licenses subject to suspension or revocation, local law prevails.

Subsection (d) may initially appear only to express a truism—the law of the issuing state is superior with regard to the terms of the support order. The last clause in the sentence, however, contains an important clarifying provision; that is, the law of the issuing state or foreign country is to be applied to the consolidated arrears, most particularly to the interest to be charged prospectively, even if the support orders of other states contributed a portion to those arrears. In sum, the local tribunal applies its own familiar procedures to enforce a support order, but it is clearly enforcing an order of a tribunal of another state and not an order of the forum.

Related to Convention: art. 2. Scope; art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

Part 2.
Contest of Validity or Enforcement

§ 601-605. Notice of Registration of Order.

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

B. A notice must inform the nonregistering party:

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

2. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice unless the registered order is under Section 601-707;

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

4. Of the amount of any alleged arrearages.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

1. Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

2. Notify the nonregistering party of the right to a determination of which is the controlling order;

3. State that the procedures provided in subsection B of this section apply to the determination of which is the controlling order; and

4. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

Added by Laws 1994, c. 160, § 40, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 16, eff. Sept. 1, 1997; Laws 2004, c. 367, § 35, eff. Nov. 1, 2004; Laws 2015, c. 104, § 41, eff. Nov. 1, 2015; Laws 2016, c. 148, § 18, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) requires the registering tribunal to provide notice to the nonregistering party of the effect of registration. After such notice is given, absent a successful contest by the nonregistering party, the order will be confirmed and future contest will be precluded. The notice contemplates far more than merely announcing an intent to initiate enforcement of an existing support order. The registered order or orders and other relevant documents and information must accompany the notice, including details about the alleged arrears.

Subsection (b) provides the nonregistering party with a wealth of information about the proceeding, including that: (1) the order is immediately enforceable; (2) a hearing must be requested within a relatively short time; (3) failure to contest "will result" in a confirmation of the order (roughly the equivalent of a default judgment); and (4) the amount of arrears, if any. Initially subsection (b) made the suggestion, via brackets, that [20] days be the time within which a request for a hearing to contest the support order be made. The rationale for this relatively short period was that the matter had already been litigated, and the obligor had already had the requisite "day in court," and was allegedly in default of a known order. Moreover, advocates of child-support enforcement stressed the necessity of quick resolution of an instance of nonsupport.

On the other hand, the Convention requires notice of hearing to be within a fixed time of 30 days, and further a fixed time of 60 days if the respondent resides in a foreign country. See Convention art. 23(6). This difference between UIFSA and the Convention is accommodated in Section 707. The time frame for notice of registration for an interstate support order and a foreign support order not subject to the Convention will be established by local law.

Subsection (c) is the correlative to Section 602 regarding the notice to be given to the nonregistering party if determination of a controlling order must be made because of the existence of two or more child-support orders. The petitioner requesting this affirmative relief is directed to identify the order alleged to be controlling under Section 207.

Subsection (d) states the obvious; i.e., the obligor's employer also must be notified if income is to be withheld. Often this will not be necessary if the employer has already been notified by the responding state's enforcement agency via the administrative process established in Section 507.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement.

§ 601-606. Procedure to Contest Validity or Enforcement of Registered Order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by Section 601-605 of this title. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered support order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 601-607 of this title.

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

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

Added by Laws 1994, c. 160, § 41, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 17, eff. Sept. 1, 1997; Laws 2015, c. 104, § 42, eff. Nov. 1, 2015; Laws 2016, c. 148, § 19, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) directs the "nonregistering party" to contest the registration of an interstate support order or a foreign support order not subject to the Convention within a short period of time or forfeit the opportunity to contest. As noted in Section 605, that time frame is extended for cases subject to the Convention.

Notice of registration is the first step for enforcement or modification of another state's child-support order. Once the nonregistering party is put on notice of the registration, if an error allegedly has been made, the second step is crucial. The nonregistering party is required to assert any existing defense to the alleged controlling order, or forfeit the opportunity to contest the allegations. Note that either the obligor or the obligee may have objections to the registered order, although in the vast majority of cases the obligor is the nonregistering party.

On the other hand, there is a possibility that in multiple-order situations either party may register the order most favorable to that party rather than register the likely controlling order, thus triggering a contest. Deliberately furnishing misinformation regarding the controlling order doubtless constitutes chicanery, which is contrary to Section 605(c). When a support enforcement agency requests registration, Section 307(c) requires reasonable efforts to ensure registration of the proper controlling order. Nonetheless, there may be an honest difference of opinion as to which order controls. The nonregistering obligor has a significant stake in assuring that both the order and the arrears are correctly stated.

Under UIFSA a contest of the fundamental provisions of the registered order is not permitted in the responding state. The nonregistering party must return to the issuing state or foreign country to prosecute such a contest (only as the law of that state or foreign country permits). This approach is akin to the prohibition found in Section 315 against asserting a nonparentage defense in a UIFSA proceeding. There is no attempt by UIFSA to preclude a collateral attack on the support order from being litigated in the appropriate forum.

Subsection (b) precludes an untimely contest of a registered support order.

Subsection (c) directs that a hearing be scheduled when the nonregistering party contests some aspect of the registration.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 26. Procedure on an application for recognition.

§ 601-607. Contest of Registration or Enforcement.

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

1. The issuing tribunal lacked personal jurisdiction over the contesting party;
2. The order was obtained by fraud;
3. The order has been vacated, suspended, or modified by a later order;
4. The issuing tribunal has stayed the order pending appeal;
5. There is a defense under the law of this state to the remedy sought;
6. Full or partial payment has been made; or
7. The statute of limitation under Section 601-604 of this title precludes enforcement of some or all of the alleged arrearages; or
8. The alleged controlling order is not the controlling order.

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

C. If the contesting party does not establish a defense under subsection A of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

Added by Laws 1994, c. 160, § 42, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 36, eff. Nov. 1, 2004; Laws 2015, c. 104, § 43, eff. Nov. 1, 2015; Laws 2016, c. 148, § 20, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) places the burden on the nonregistering party to assert narrowly defined defenses to registration of a support order. The first of the listed defenses, lack of personal jurisdiction over the nonregistering party in the original proceeding, is undoubtedly the most widely discussed topic. It appears that at the appellate level, several of the other listed defenses are more commonly asserted. The decision in *Kulko v. Superior Court*, 436 U.S. 84 (1978) was somewhat controversial when delivered, and has remained so, at least in the international context. As a practical matter, however, the requirement that a support order be based on personal jurisdiction over both parties—but primarily the obligor—is a well-established fixture in the jurisprudence of the United States; relatively few appellate cases on this subject have been reported.

A nonregistering obligor may assert a wide variety of listed defenses, such as "payment" or "the obligation has terminated," in response to allegations of noncompliance with the registered order. There is no defense, however, to registration of a valid foreign support order. The nonregistering party also may contest the allegedly controlling order because its terms have been modified. Or, the defense may be based on the existence of a different controlling order. See Section 207. Presumably this defense must be substantiated by registration of the alleged controlling order to be effective.

While subsection (a)(6) is couched in terms that imply the defense to the amount of alleged arrears can only be that they are less, the converse is also available. For example, if the registering party is the obligor and asserts an amount of arrears that the obligee believes is too low, as the nonregistering party the obligee must contest to preclude confirmation of the alleged amount.

In the absence of a valid defense, if the obligor is found to be liable for current support, the registering tribunal must enter an order to enforce that obligation. Additional proof of arrearages must also result in enforcement under the Bradley Amendment, 42 U.S.C. Section 666(a)(10), which requires all states to treat child-support payments as final judgments as they come due (or lose federal funding). Therefore, federal law precludes arrearages from being subject to retroactive modification. Future modification of a child support order from another state is governed by Sections 609-614, and Sections 615-616 regulate modification of foreign child support orders.

Subsection (c) provides that failure to contest a registered order successfully requires the tribunal to confirm the validity of the registered order.

Related to Convention: art. 26. Procedure on an application for recognition.

§ 601-608. Confirmed Order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Added by Laws 1994, c. 160, § 43, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 44, eff. Nov. 1, 2015.

NACCUSL Comment

If, after notice, the nonregistering party fails to contest, the registered support order is confirmed by operation of law and no further action by a responding tribunal is necessary. Although the statute is not explicit on the subject, it seems likely in the absence of a contest both the registering and nonregistering party would be estopped from subsequently collaterally attacking the confirmed order, whether on the basis that "the wrong order was registered" or otherwise.

If contested, a registered support order must be confirmed by the responding tribunal if, after a hearing, the defenses authorized in Section 607 are rejected. Thus, either scenario precludes the nonregistering party from raising any issue that could have been asserted in a hearing. Confirmation of a support order, whether by action or as the result of inaction, validates both the terms of the order and the asserted arrearages.

Related to Convention: art. 22. Grounds for refusing recognition and enforcement; art. 26. Procedure on an application for recognition.

Part 3.
Registration and Modification of Child-Support Order

NACCUSL Introductory Comment

Authority to modify a child-support order of another state depends on the interaction of these sections with the continuing, exclusive jurisdiction of the issuing tribunal. See Sections 205 through 206. This also might involve the determination of the controlling order in a situation involving multiple child-support orders. These concepts are not present in the international context. See Sections 615, 616, and 711. Thus, modification of a support order from a foreign country other than a Convention country is not governed by Sections 609-614, but is subject to Sections 615-616, infra.

Sections 609 through 614 apply only to modification of an interstate child-support order. Most of the act applies to "a support order," which includes both child-support and spousal support. Both categories are generally subject to interstate enforcement under UIFSA. But, as a practical matter, the actual process of that enforcement is quite different. Child support is enforced almost exclusively by governmentally sponsored Title IV-D agencies, which also may enforce spousal support if it is included in the same order. In some states, local funds are appropriated for enforcement of spousal support as well. Only occasionally will a private attorney be involved in a child-support case, but spousal support not issued in conjunction with a child-support order generally requires representation pro se or by private counsel. More importantly, a tribunal of a responding state may enforce spousal support, but it does not have authority to modify a spousal-support order of another state or foreign country unless the law of that jurisdiction does not assert continuing, exclusive jurisdiction over its order. *See* Section 211.

§ 601-609. Procedure to Register Child-Support Order of Another State for Modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 601-601 through 601-608 of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Added by Laws 1994, c. 160, § 44, eff. Sept. 1, 1994. Amended by Laws 2015, c. 104, § 45, eff. Nov. 1, 2015.

NACCUSL Comment

Sections 609 through 614 deal with situations in which it is permissible for a registering state to modify the existing child-support order of another state. The first step for modification of another state's child-support order is registration in the responding tribunal under Sections 601 to 604. In some situations, this may also involve identification of the controlling order. A petitioner wishing to register a support order of another state for purposes of modification must conform to the general requirements for pleadings in Section 311, and follow the procedure for registration set forth in Section 602. If the tribunal has the requisite personal jurisdiction over the parties and may assume subject matter jurisdiction as provided in Sections 611 or 613, modification may be sought independently, in conjunction with registration and enforcement, or at a later date after the order has been registered and enforced if circumstances have changed.

§ 601-610. Effecto of Registration for Modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 601-611 or 601-613 have been met.

Added by Laws 1994, c. 160, § 45, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 37, eff. Nov. 1, 2004; Laws 2015, c. 104, § 46, eff. Nov. 1, 2015.

NACCUSL Comment

An order issued in another state registered for purposes of modification may be enforced in the same manner as an order registered for purposes of enforcement. But, the power of the forum tribunal to modify a child-support order of another tribunal is limited by the specific factual preconditions set forth in Sections 611 and 613.

§ 601-611. Modification of Child-Support Order of Another State.

A. If Section 601-613 of this title does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing ~~it~~, the tribunal finds that:

1. The following requirements are met:
   a. neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state,
   b. a petitioner who is a nonresident of this state seeks modification, and
   c. the respondent is subject to the personal jurisdiction of the tribunal of this state; or
2. This state is the residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

C. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under Section 601-207 of this title establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by such order precludes imposition of a further obligation of support by a tribunal of this state.

E. On issuance of an order by a tribunal of this state modifying a child support order issued in another state, ~~a~~ the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding subsections (a) through (e) and subsection B of Section 601- 201 of this title, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

1. One party resides in another state; and

2. The other party resides outside the United States.

Added by Laws 1994, c. 160, § 46, eff. Sept. 1, 1994. Amended by Laws 1997, c. 360, § 18, eff. Sept. 1, 1997; Laws 2004, c. 367, § 38, eff. Nov. 1, 2004; Laws 2015, c. 104, § 47, eff. Nov. 1, 2015; Laws 2016, c. 148, § 21, eff. Nov. 1, 2016.

NACCUSL Comment

The Play-away Rule. As long as the issuing tribunal has continuing, exclusive jurisdiction over its child-support order, a responding tribunal is precluded from modifying the controlling order. See Sections 205 through 207. UIFSA (1992) made critical choices regarding modification of an existing child-support order. First, the "one-order" rule was to be paramount. Second, the issuing tribunal had continuing, exclusive jurisdiction to modify its order as long as a party or the child continued to reside in the issuing state. The original order remained in force as the controlling order until modified by another tribunal. Third, a separate procedure was created for modification of an existing child-support order when all parties and the child moved from the issuing state and acquired new residences. The key was that the movant seeking modification be "a nonresident of this state." The deciding factor, determined after extended debate, centered on curbing or eliminating the undesirable effect of "ambush or tag" jurisdiction, e.g., the likelihood that the parties would vie to strike first to obtain a home-town advantage. Although constitutional under Burnham v. Superior Court, 495 U.S. 604 (1990), such lawsuits would discourage continued contact between the child and the obligor, or between the parties for fear of a lawsuit in a distant forum. Thus, the goal was to avoid the situation in which modification would be available in a forum having personal jurisdiction over both parties based solely on the ground that service of process was made in the would-be forum state.

Under subsection (a)(1), before a responding tribunal may modify the existing controlling order, three specific criteria must be satisfied. First, the individual parties and the child must no longer reside in the issuing state. Second, the party seeking modification, usually the obligee, must register the order as a nonresident of the forum. That forum is almost always the state of residence of the other party, usually the obligor. A colloquial (but easily understood) description is that the nonresident movant for modification must "play an away game on the other party's home field." Third, the forum must have personal jurisdiction over the parties. By registering the support order, the movant submits to the personal jurisdiction of the forum through seeking affirmative relief. On rare occasion, personal jurisdiction over the respondent may be supplied by long-arm jurisdiction. See Section 201.

The underlying policies of this procedure contemplate that the issuing tribunal no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order, nor information readily available to it to do so. The play-away rule achieves rough justice between the parties in the majority of cases by preventing ambush in a local tribunal. Moreover, it takes into account the factual realities of the situation. In the overwhelming majority of cases the movant is the obligee who is receiving legal assistance in the issuing and responding states from Title IV-D support enforcement agencies. Further, evidence about the obligor's ability to pay child support and enforcement of the support order is best accomplished in the obligor's state of residence.

Fairness requires that an obligee seeking to modify the existing child-support order in the state of residence of the obligor will not be subject to a cross-motion to modify custody merely because the issuing tribunal has lost its continuing, exclusive jurisdiction over the support order. The same restriction applies to an obligor who moves to modify the support order in a state other than that of his or her residence.

There are exceptions to the play-away rule. Under subsection (a)(2), the parties may agree that a particular forum may serve to modify the order, even if the issuing tribunal has continuing, exclusive jurisdiction. Subsection (a)(2) also applies if the individual parties agree to submit the modification issue to a tribunal in the petitioner's state of residence. Implicit in this shift of jurisdiction is that the agreed tribunal has subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that the other party submits to the personal jurisdiction of that forum. UIFSA does not contemplate that parties may agree to confer jurisdiction on a tribunal without a nexus to the parties or the child.

Proof that neither individual party nor the child continues to reside in the issuing state is made directly in the responding tribunal. No purpose is served by requiring the movant to return to the original issuing tribunal for a hearing to elicit confirmation of fact that none of the relevant persons still lives in the issuing state. Thus, the issuing tribunal is not called upon to transfer or surrender its continuing, exclusive jurisdiction or otherwise participate in the process, nor does it have discretion to refuse to yield jurisdiction.

There is a distinction between the processes involved under subsection (a). Once the requirements of subsection (a)(1) are met for assumption of jurisdiction, the responding tribunal acts on the modification and then notifies the issuing tribunal that the prior controlling order has been replaced by a new controlling order. In contrast, for another tribunal to assume modification jurisdiction by agreement under subsection (a)(2), the individual parties first must agree in a record to modification in the responding tribunal and file the record with the issuing tribunal. Thereafter they may proceed in the responding tribunal.

A similar exception is found in Section 205(a)(2), which enables the parties to agree in a record of the original issuing tribunal that it may retain jurisdiction over the order even if all parties have left that state. Note that such an agreement can be incorporated in the initial order of the issuing tribunal.

Section 613 also is an exception to subsection (a)(1): it supplants the play-away rule if all parties have left the original issuing state and now reside in the same state, whether by chance or design.

Subsection (b) provides that when a responding tribunal assumes modification jurisdiction because the issuing tribunal has lost continuing, exclusive jurisdiction, the proceedings will generally follow local law with regard to modification of a child-support order, except as provided in subsections (c) and (d).

Duration of the Child Support Obligation. Prior to 1993 American case law was thoroughly in chaos over modification of the duration of a child-support obligation when an obligor or obligee moved from one state to another state and the states had different ages for the duration of child support. The existing duration usually was ignored by the issuance of a new order applying local law, which elicited a variety of appellate court opinions. UIFSA (1992) determined that a uniform rule should be proposed, to wit, duration of the child-support obligation would be fixed by the initial controlling order. Subsection (c) provides the original time frame for support is not modifiable unless the law of the issuing state provides for its modification. After UIFSA (1996) was universally enacted, some tribunals sought to subvert this policy by holding that completion of the obligation to support a child through age 18 established by a now-completed controlling order did not preclude the imposition of a new obligation to support the child through age 21, or beyond.

Subsection (d) prohibits imposition of multiple, albeit successive, support obligations. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 through 614. But, the duration of the child support obligation remains constant, even though other aspects of the original order may be changed.

Sometimes a domestic-violence protective order includes a provision for child support that will be in force for a specific time. The duration of the protective order often is less than the general law of the state for duration of the child-support obligation. Under these facts the general law of the issuing state regarding duration controls a subsequent child-support order.

Subsection (e) provides that on modification the new child-support order becomes the controlling order to be recognized by all UIFSA states. Good practice mandates that the responding tribunal should explicitly state in its order that it is assuming responsibility for the controlling child-support order. Neither the parties nor other tribunals should be required to speculate about the effect of the action.

International Effect. Prohibiting modification based on the play-away principle in the international context is problematic. The issue arises because the United States is wedded to personal jurisdiction over the individual parties at a state level, rather than the child-based, national jurisdiction found virtually everywhere else. For example, a foreign country typically regards a support order to be of the country, not an order from a political subdivision, e.g., an order from Germany. In some important instances, however, a foreign support order is indeed made in a political subdivision, e.g., a support order from a Canadian province. Although consideration was given to labeling a support order issued in a state to be an order of the United States, conforming modification of child support to the general principles of state law through UIFSA is the only practical choice.

Subsection (f) creates a necessary exception to the play-away concept when the parties and the child no longer reside in the issuing state and one party resides outside the United States. The play-away principle makes sense when the tribunals involved have identical laws regarding continuing, exclusive jurisdiction to modify a child-support order. See Sections 205 through 207. If one party resides in a foreign country, a pure play-away rule would deny modification in a forum subject to UIFSA rules to the party or child who has moved from the issuing state, but continues to reside in the United States. This result does not occur under Convention art.18, which places restrictions on modification of a support order in another Convention country if the obligee remains in the issuing Convention country. That article does not mention an effect when only the obligor remains in the issuing country, perhaps because the Convention makes clear that under a child-based system modification jurisdiction will follow the obligee and the child.

Subsection (f) identifies the tribunal that issued the controlling order as the logical choice for an available forum in which UIFSA will apply. This exception to the play-away rule provides assured personal jurisdiction over the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to modify its order. Of course, the party residing outside the United States has the option to pursue a modification in the state where the other party or child currently reside.

In sum, under this section personal service on either the custodial or noncustodial party found within the state borders, by itself, does not yield jurisdiction to modify. A party seeking to exercise rights of visitation, delivering or picking-up the child for such visitation, or engaging in unrelated business activity in the state, will not be involuntarily subjected to protracted litigation in an inconvenient forum. The play-away rule avoids the possible chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have. The vast majority of disputes about whether a tribunal has jurisdiction will be eliminated. Moreover, submission by the petitioner to the state of residence of the respondent obviates this issue. Finally, because there is an existing order, the primary focus will shift to enforcement, thereby curtailing unnecessary modification efforts.

UIFSA Relationship to UCCJEA. Jurisdiction for modification of child support under subsections (a)(1) and (a)(2) is distinct from modification of custody under the federal Parental Kidnapping Prevention Act (PKPA), 42 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) §§ 201-202. These acts provide that the court of exclusive, continuing jurisdiction may "decline jurisdiction." Declining jurisdiction, thereby creating a potential vacuum, is not authorized under UIFSA. Once a controlling child-support order is established under UIFSA, at all times thereafter there is an existing order in effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article.

UIFSA and UCCJEA seek a world in which there is but one order at a time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts is that the basic jurisdictional nexus of each is founded on different considerations. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the "home state" of the child; personal jurisdiction to bind a party to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree state does not reestablish continuing, exclusive jurisdiction under the UCCJEA. See UCCJEA § 202. Under similar facts UIFSA grants the issuing tribunal continuing, exclusive jurisdiction to modify its child-support order if, at the time the proceeding is filed, the issuing tribunal "is the residence" of one of the individual parties or the child. See Section 205.

Related to Convention: art. 18. Limit on proceedings.

§ 601-612. Recognition of Order Modified in Another State.

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

1. May enforce its order that was modified only as to arrears and interest accruing before the modification;
2. May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and
3. Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Added by Laws 1994, c. 160, § 47, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 39, eff. Nov. 1, 2004.

NACCUSL Comment

A key aspect of UIFSA is the deference to the controlling child-support order of a sister state demanded from a tribunal of the forum state. This applies not just to the original order, but also to a modified child-support order issued by a second state under the standards established by Sections 611and 613. For the act to function properly, the original issuing tribunal must recognize and accept the modified order as controlling, and must regard its prior order as prospectively inoperative. Because the UIFSA system is based on an interlocking series of state laws, it is fundamental that a modifying tribunal of one state lacks the authority to direct the original issuing tribunal to release its continuing, exclusive jurisdiction. That result is accomplished through the enactment of UIFSA by all states, which empowers a modifying tribunal to assume continuing, exclusive jurisdiction from the original issuing tribunal and requires an issuing tribunal to recognize such an assumption of jurisdiction. This explains why the U.S. Congress took the extraordinary measure in PRWORA of mandating universal passage of UIFSA (1996), as amended. See Prefatory Note.

The original issuing tribunal retains authority post-modification to take remedial enforcement action directly connected to its now-modified order.

§ 601-613. Jurisdiction to Modify Child-Support Order of Another State When Individual Parties Reside in this State.

A. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

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

Added by Laws 1997, c. 360, § 19, eff. Sept. 1, 1997. Amended by Laws 2004, c. 367, § 40, eff. Nov. 1, 2004; Laws 2015, c. 104, § 48, eff. Nov. 1, 2015; Laws 2016, c. 148, § 22, eff. Nov. 1, 2016.

NACCUSL Comment

It is not unusual for the parties and the child subject to a child-support order to no longer reside in the issuing state, and for the individual parties to have moved to the same new state. The result is that the child-support order remains enforceable, but the issuing tribunal no longer has continuing, exclusive jurisdiction to modify its order. A tribunal of the state of mutual residence of the individual parties has jurisdiction to modify the child-support order and assume continuing, exclusive jurisdiction. Although the individual parties must reside in the forum state, there is no requirement that the child must also reside in the forum state (although the child must have moved from the issuing state).

Finally, because modification of the child-support order when all parties reside in the forum is essentially an intrastate matter, subsection (b) withdraws authority to apply most of the substantive and procedural provisions of UIFSA, i.e., those found in the act other than in Articles 1, 2, and 6. Note the duration of the support obligation is a nonmodifiable aspect of the original controlling order, see Section 611(c)-(d).

§ 601-614. Notice to Issuing Tribunal of Modification.

Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and 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 modified order of the new tribunal having continuing, exclusive jurisdiction.

Added by Laws 1997, c. 360, § 20, eff. Sept. 1, 1997. Amended by Laws 2015, c. 104, § 49, eff. Nov. 1, 2015.

NACCUSL Comment

For the act to function properly, the prevailing party in a proceeding that modifies a controlling order must inform the original issuing tribunal about its loss of continuing, exclusive jurisdiction over its child-support order. Thereafter, the original tribunal may not modify, or review and adjust, the amount of child support. Notice to the issuing tribunal and other affected tribunals that the continuing, exclusive jurisdiction of the former controlling order has been modified is crucial to avoid the confusion and chaos of the multiple-order system UIFSA replaced.

The new issuing tribunal has authority to impose sanctions on a party who fails to comply with the requirement to give notice of a modification to all interested tribunals. Note, however, that failure to notify a displaced tribunal of the modification of its order does not affect the validity of the modified order.

Part 4.
Registration and Modification of Foreign Child-Support Order

§ 601-615. Jurisdiction to Modify Child-Support Order of Foreign Country.

A. Except as otherwise provided in Section 601-711 of this title, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to Section 601-611 of this title has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

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

Added by Laws 2004, c. 367, § 41, eff. Nov. 1, 2004. Amended by Laws 2015, c. 104, § 50, eff. Nov. 1, 2015; Laws 2016, c. 148, § 23, eff. Nov. 1, 2016.

NACCUSL Comment

Subsection (a) provides that a state tribunal may modify a foreign child-support order, other than a Convention order, when the foreign issuing tribunal lacks or refuses to exercise jurisdiction to modify its order. The standard example cited for the necessity of this special rule involved the conundrum posed when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal in order to sustain a modification of child support. In that circumstance, the foreign issuing tribunal is unable to exercise jurisdiction to modify under its law. Ordinarily, under Section 611 the responding state tribunal is not authorized to issue a new order, in effect modifying the foreign support order, because the child or the obligee continues to reside in the issuing country. To remedy the perceived inequity in such a fact situation, this section provides an exception to the rule of Section 611. If both parties are subject to the personal jurisdiction of a state by the obligee's submission and the obligor's residence, or other grounds under Section 201, the responding state tribunal may modify the foreign child-support order. Modification of a Convention order is governed by Section 711.

The ability of a state tribunal to modify when the foreign country refuses to exercise its jurisdiction should be invoked with circumspection, as there may be a cogent reason for such refusal. Note, Section 317 empowers tribunals to communicate regarding this issue, rather than rely upon representations of one or more of the parties.

Subsection (b) states that if a new order is issued under subsection (a), it becomes the UIFSA controlling order insofar as other states are concerned. Obviously this act cannot dictate the same result to the issuing foreign tribunal, although it seems highly likely that either through child-based jurisdiction or an action filed by the obligee recognition by the foreign tribunal will occur.

Related to Convention: art. 18. Limit on proceedings.

§ 601-616. Procedure to Register Child-Support Order of Foreign Country for Modification.

A party or support enforcement agency seeking to modify or to modify and enforce a foreign child support order not under the Convention may register that order in this state under Sections 601-601 through 601-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

Added by Laws 2015, c. 104, § 51, eff. Nov. 1, 2015.

NACCUSL Comment

The procedure for registration and enforcement set forth in Sections 601 through 608 is applicable to a child-support order from a non-Convention country. This section provides coverage for modification in that situation. Presumptively, the general law of the state regarding modification of a child-support order will apply because, by their terms, Sections 609 through 614 apply only to modification of a child-support order by a state tribunal. The rationale is that modification is available because the foreign order is not founded on the UIFSA principles of continuing, exclusive jurisdiction and a controlling order. See Sections 205 through 207.

Article 7.
Support Proceeding Under Convention

NACCUSL Introductory Comment

This article contains provisions adapted from the Convention that could not be readily integrated into the existing body of Articles 1 through 6. For the most part, extending the coverage of UIFSA (2008) to foreign countries was a satisfactory solution to merge the appropriate Convention terms into this act. In understanding this process, it must be clearly stated that the terms of the Convention are not substantive law.

The Convention is a multilateral treaty which binds the United States and the other Convention countries to assure compliance. As such, it will be the law of the land; but the treaty is not self-executing. *See, Medellin v. Texas*, 552 U.S. 491, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008). Thus, the ultimate enforcement of the treaty in the United States is dependent on the key implementing federal law and the enactment of both federal and state legislation which provide the mechanism for enforcing the requirements of the Convention. This act is predicated on the principle that the enactment of UIFSA (2008) in all States and federal jurisdictions will effectively implement the Convention through state law by amending Articles 1 through 6, plus the addition of this article. The treaty, in essence, establishes the framework for a system of international cooperation by emulating the interstate effect of UIFSA for international cases, especially those affected by the Convention.

In relatively few instances, the provisions of the Convention are sufficiently specific that a choice was made between amending UIFSA accordingly, with a disproportionate effect on all support orders enforced under state law, or accommodating potential conflicts by creating a separate article to apply only to Convention support orders. The choice was to draft this article as state law to minimize disruption to interstate support orders, which constitute the vast majority of orders processed under UIFSA. Note that this act is the substantive and procedural state law for: (1) responding to an application for establishment, recognition and enforcement, or modification of a Convention support order; and, (2) initiating an application to a Convention country for similar action.

The four Hague maintenance conventions that preceded the 2007 Convention, and the three prior versions of UIFSA, have common goals. The distinctions between the jurisdictional rules in the common-law tradition in the United States, and the civil law systems in most of the countries that were parties to the earlier maintenance conventions, were obstacles to participation of the United States in any of the multilateral maintenance treaties. As the world has grown smaller and globalization has become the order of the day, reconciling the differences has become more and more important. Understanding the necessity for accommodation has made the task easier. This is not to say easy, as evidenced by the fact that the formal negotiations leading to the final text of the Convention spanned from May, 2003, to November, 2007.

The United States signed the Convention on November 23, 2007 and the Senate gave its advice and consent to ratification in 2010. Enabling federal legislation was enacted on September 29, 2014 which requires all states to enact UIFSA (2008) by the end of 2015. At that point the United States will deposit its instrument of ratification and the Convention will enter into force in the United States.

UIFSA (2008) and the 2007 Convention have far more in common than did former uniform acts and maintenance conventions, and, in fact, many provisions of the Convention are modeled on UIFSA principles. The negotiations demonstrated that it is possible to draft an international convention, which incorporates core UIFSA principles into a system for the establishment and enforcement of child support and spousal-support orders across international borders, and creates an efficient, economical, and expeditious procedure to accomplish these goals. Matters in common, however, go far beyond identical goals. The negotiations provided an opportunity for an extended interchange of ideas about how to adapt legal mechanisms to facilitate child support enforcement between otherwise disparate legal systems.

International cross-border enforcement has been far more important in Western Europe, and more recently, throughout the countries of the European Union than has been the case in the United States. On the other hand, experience with establishment and enforcement of interstate child-support orders in the United States has been building since 1950, and accelerated rapidly with enactment of Title IV-D of the Social Security Act in 1975. Clearly, the issues are far easier to deal with nationally because of the common language, currency, and legal system, and, since 1996, with the Title IV-D requirement that all states enact the same version of UIFSA. In fact, since the advent of UIFSA and Title IV-D, millions of interstate cases have been processed through the child support enforcement system and thousands of support orders from other countries have also been registered and enforced in the United States because UIFSA treated such orders as if they had been entered by one of the states. In the future, in Convention countries, this country's orders will be entitled to similar treatment. The entry into force of the Convention is designed to further improve the process and will most certainly lead in a few years to a substantial increase in international cases, both incoming and outgoing.

To create UIFSA (2008), it was necessary to integrate the texts of UIFSA (2001) and the Convention. This did not present a significant drafting challenge for the most part. By far the most common amendment in Articles 1 through 6 is to substitute "state or foreign country" for the term "state." These simple amendments expanded a majority of this act to cover foreign support orders. In this article statutory directions are given to "a tribunal of this state," and also to a "governmental entity, individual petitioner, support enforcement agency, or a party."

§ 601-701. Definitions.

In this article:

1. "Application" means a request under the Convention by an obligee or obligor or on behalf of a child made through a central authority for assistance from another central authority;

2. "Central authority" means the entity designated by the United States or a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title to perform the functions specified in the Convention;

3. "Convention support order" means a support order of a tribunal of a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title;

4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States;

5. "Foreign central authority" means the entity designated by a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title to perform the functions specified in the Convention;

6. "Foreign support agreement":

a. means an agreement for support in a record that:

(1) is enforceable as a support order in the country of origin,

(2) has been:

(a) formally drawn up or registered as an authentic instrument by a foreign tribunal, or

(b) authenticated by or concluded, registered or filed with a foreign tribunal,

(3) may be reviewed and modified by a foreign tribunal, and

b. includes a maintenance arrangement or authentic instrument under the convention; and

7. "United States central authority" means the Secretary of the United States Department of Health and Human Services.

Added by Laws 1994, c. 160, § 48, eff. Sept. 1, 1994. Amended by Laws 1995, c. 273, § 2, emerg. eff. May 25, 1995; Laws 2004, c. 367, § 42, eff. Nov. 1, 2004; Laws 2015, c. 104, § 52, eff. Nov. 1, 2015; Laws 2016, c. 148, § 24, eff. Nov. 1, 2016.

NACCUSL Comment

A readily apparent difference between UIFSA (2008) and the Convention is the perceived need for definitions in the former, and the very limited number of definitions in the latter. This act contains twenty-nine definitions in Section 102, and an additional seven for this article. In contrast, the Convention contains only seven official definitions. Some of these are synonyms for definitions in UIFSA, i.e., "creditor and debtor" for "obligor and obligee," and "agreement in writing" for "record."

Subsection (1), "application" refers to the process for an individual obligor or obligee to request assistance from a central authority under the Convention.

Subsections (2) and (5) identify the governmental entities, i.e., central authority, in each contracting country or political subdivisions thereof, that will function as the operating agencies to facilitate contacts between Convention countries. The Convention is a treaty between the countries in which it is in force thus creating mutual obligations. The duties assigned in the Convention to the central authority of each country will be performed according to the choice of each country. It is crucial to recognize that in the United States it will be the Title IV-D agency of each state that will be designated by the U.S. central authority to perform most of the functions specified in the Convention. It appears likely that in many foreign countries the central authority will serve in the role of a clearinghouse, rather than as the operative enforcement entity, while some countries may assign all central authority functions to one agency.

Subsection (3), "Convention support order" narrows the term "foreign support order," as employed in Articles 1 through 6. The provisions in those articles also apply to Convention support orders, but when this act is not congruent with the Convention, support orders under the Convention are subject to this article. This article has no application to a support order from a non-Convention foreign country, as defined in Section 102(5)(A) and (B) or a support order entitled to comity, Section 102(5)(C), except to the extent that a Convention country may request enforcement of a non-Convention support order that has been recognized in the United States under some other procedure, see Section 704.

Subsection (4) integrates the "direct request" authorized by the Convention with the provisions for filing a petition in Articles 1 through 6.

The definition in the Convention for "maintenance arrangement" has been rephrased in Subsection (6), and must be read together with Section 710 to understand the process authorized in the Convention.

Convention source: art. 3. Definitions; art. 30. Maintenance arrangements.

Related to Convention: art. 4. Designation of Central Authorities; art. 37. Direct requests to competent authorities.

§ 601-702. Applicability.

This article applies only to a support proceeding under the convention. In such a proceeding, if a provision of this article is inconsistent with Articles 1 through 6, this article controls.

Added by Laws 2015, c. 104, § 53, eff. Nov. 1, 2015.

NACCUSL Comment

The first sentence definitively states that this article applies only to a proceeding involving a Convention country, as defined in Section 102(5)(D). This article does not generally apply to a support order from a non-Convention foreign country as defined in Section 102(5)(A) and (B) or to a support order entitled to comity. The second sentence resolves a situation in which there is a conflict between a section in this article and a provision in Articles 1 through 6, in which case this article controls.

§ 601-703. Relationship of Department of Human Services to United States Central Authority.

The Department of Human Services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

Added by Laws 2015, c. 104, § 54, eff. Nov. 1, 2015.

NACCUSL Comment

The Secretary of Health and Human Services has designated the state Title IV-D child support agencies as the governmental entities that will carry out many of the central authority's functions under the Convention. Each state determines which public office or administrative agency will perform the Title IV-D services for child support enforcement. Because the federal government provides a significant subsidy for this effort, the actions of the agency must comply with federal statutes and regulations and the state legislature must enact certain mandatory laws. The relationship is symbiotic in that states choose to participate in the Title IV-D program, and do so by following their own state procedures and legislative enactments that recognize and authorize the state officer or agency to function under these conditions.

Related to Convention: ch. II. Administrative co-operation, arts. 4-8; ch. III. Applications through central authorities, arts. 9-17.

§ 601-704. Initiation by Department of Human Services of Support Proceeding Under Convention.

A. In a support proceeding under this article, the Oklahoma Department of Human Services of this state shall:

1. Transmit and receive applications; and

2. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

B. The following support proceedings are available to an obligee under the Convention:

1. Recognition or recognition and enforcement of a foreign support order;

2. Enforcement of a support order issued or recognized in this state;

3. Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

4. Establishment of a support order if recognition of a foreign support order is refused under 4 or 9 of subsection B of Section 601-708 of this title;

5. Modification of a support order of a tribunal of this state; and

6. Modification of a support order of a tribunal of another state or a foreign country.

C. The following support proceedings are available under the convention to an obligor against which there is an existing support order:

1. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

2. Modification of a support order of a tribunal of this state; and

3. Modification of a support order of a tribunal of another state or a foreign country.

D. A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

Added by Laws 2015, c. 104, § 55, eff. Nov. 1, 2015. Amended by Laws 2016, c. 148, § 25, eff. Nov. 1, 2016.

NACCUSL Comment

This section is designed to enable lawyers and non-lawyers to better understand proceedings under the Convention, which itself is written in terminology unfamiliar to legal proceedings in the United States.

Subsection (a) lists the rights and duties of a support enforcement agency.

Subsection (b) lists what rights and duties are available to an obligee, whether the proceeding is inbound from a Convention country or outbound to a Convention country.

In contrast to the general rule in UIFSA, which attempts to maintain something of parity between the obligor and obligee, subsection (c) limits the rights and duties available to an obligor under the Convention. This reflects the equal treatment ideal espoused by UIFSA in Articles 1 through 6, and the pro-obligee philosophy of the Convention. In actual practice, the results may not be that different. Recall that until replaced by UIFSA, an informal subtitle given to URESA by its leading proponents was "The Runaway Pappy Act."

Subsection (d) tracks Convention art. 14 (5).

Convention source: art. 6. Specific functions of Central Authorities; art. 10. Available applications; art. 14. Effective access to procedures.

Related to Convention: ch. II. Administrative co-operation, arts. 4-7; ch. III. Applications through central authorities, arts. 9-17.

§ 601-705. Direct Request.

A. A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

B. A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, Sections 601-706 through 601-713 of this title apply.

C. In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

1. A security, bond or deposit is not required to guarantee the payment of costs and expenses; and

2. An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

D. A petitioner filing a direct request is not entitled to assistance from the Oklahoma Department of Human Services

E. This article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

Added by Laws 2015, c. 104, § 56, eff. Nov. 1, 2015. Amended by Laws 2016, c. 148, § 26, eff. Nov. 1, 2016.

NACCUSL Comment

Given the long history of open courts in the United States, this section may seem axiomatic, redundant, or unnecessary. In fact, because this principle has not always been universal, it is important to recognize that the Convention confirms that an individual residing in a Convention country may file a petition directly in a tribunal of another Convention country without requesting the assistance of a central authority or a support enforcement agency. Given the variety of legal systems that may be involved under the Convention, this freedom of choice is explicitly protected. A person residing in a Convention county, whether a citizen or a noncitizen of the United States, may apply to a tribunal in the United States for establishment, recognition, and enforcement of a child-support order for enforcement of a spousal support order, for recognition and enforcement of a foreign support agreement, and in some situations, for modification of an existing support order. Of course, the freedom of an individual to petition for relief in a tribunal says nothing about the nature of legal representation, if any, implicit in the right of access to a tribunal, is that representation may be pro se or by private counsel. See Section 309.

Subsection (a) provides that an individual party may file a proceeding directly in a tribunal, thus submitting to the jurisdiction of the tribunal and to state law. The object of the proceeding may be establishment of a support order, determination of parentage of a child, or modification of an existing support order.

Subsection (b) recognizes that an individual party may file a proceeding in a tribunal requesting recognition and enforcement of a Convention support order, or a foreign support agreement as defined in Section 710. The party thereby chooses not to seek the services of a central authority or support enforcement agency. Nonetheless, the individual will be affected indirectly by the terms of the Convention because the proceeding is subject to Sections 706 through 713, which are drawn from the Convention. This effect applies to an individual residing in a Convention country and to an individual residing elsewhere who is seeking to enforce a Convention support order.

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Subsection (c) contains two provisions drawn from the Convention specifically applicable to a petition for recognition and enforcement of a Convention support order. First, a guarantee of payment of costs may not be required. Second, if the individual has benefited from free legal assistance in a Convention country, that individual is entitled to free legal assistance if it is available in similar circumstances under the law of the responding state.

Under subsection (d) an individual party who files a direct request regarding a Convention support order in a tribunal is not entitled to assistance from the governmental entity, i.e. the support enforcement agency.

Subsection (e) echoes Article 52 of the Convention. An individual party who files a petition in a tribunal may take advantage of any "simplified, more expeditious procedures" which may be available in the requested state, so long as they are "compatible with the protection offered to the parties under articles 23 and 24" of the Convention.

Convention source: art. 14. Effective access to procedures; art. 17. Applications not qualifying under Article 15 or Article 16; art. 37. Direct requests to competent authorities; art.52, Most effective rule.

Related to Convention: ch. II. Administrative co-operation, arts.4-8; ch. III. Applications through central authorities, arts. 9-17; art. 20. Bases for recognition and enforcement; art. 25. Documents; art. 27. Findings of fact; art. 28. No review of the merits; art. 37. Direct requests to competent authorities; art. 56. Transitional provisions.

§ 601-706. Registration of a Convention Support Order.

A. Except as otherwise provided in this article, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in Article 6.

B. Notwithstanding Sections 601-311 and subparagraph a of Section 601-602 of Title 43 of the Oklahoma Statutes, a request for registration of a Convention support order must be accompanied by:

1. A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

2. A record stating that the support order is enforceable in the issuing country;

3. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

4. A record showing the amount of arrears, if any, and the date the amount was calculated;

5. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

6. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

C. A request for registration of a convention support order may seek recognition and partial enforcement of the order.

D. A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under Section 601-707 of Title 43 of the Oklahoma Statutes only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

E. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

Added by Laws 2015, c. 104, § 57, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (a) integrates the Convention support order into the registration for enforcement procedure set forth in Sections 601 through 608. A state support enforcement agency and a tribunal will use basically the same procedures for a Convention order under this article as would be used in a non-Convention proceeding.

From inception, UIFSA contained detailed provisions for substantive procedures for interstate child-support orders. To facilitate expedited processing, detailed statutory instructions have encouraged uniformity of legal documents. The Convention follows this precedent. The list of documents to be provided, however, is somewhat different than the documents described in Sections 311 and 602. In order to ensure that a document satisfying the requirements of the Convention will be accepted by a support enforcement agency or tribunal, subsection (a) identifies the documents required to accompany an application under the Convention.

Several of the required documents may be unfamiliar in the United States, e.g., the authority to provide an abstract or an extract of an order rather than the complete text of an order under paragraph (b)(1); the requirement for a statement of enforceability of the order under paragraph (b)(2); proof that the respondent had proper notice of the proceedings and an opportunity to be heard if the respondent did not appear and was not represented under (b)(3); and proof that the applicant received free legal assistance in the issuing country under paragraph (b)(6).

Subsection (c) provides that a petitioner may request only partial enforcement of a support order, see Section 709. infra, which speaks to partial enforcement by a tribunal.

Subsections (d) and (e) authorize action by a tribunal available under the Convention that may not be available under other state law. Subsection (d) permits the tribunal to vacate registration, acting on its own motion, under certain exceptional circumstances, and subsection (e) requires that notice be promptly provided of any such order vacating registration. Such ex officio review, if used to refuse recognition of an order, is in tension with the core UIFSA policy of requiring recognition. In any event, the subsections are not a vehicle for a review of the merits of the decision. An example would be useful here, but there is none in the Explanatory Report to the Convention, just the negative reference that a country could not use this to enforce a policy against ordering support for a child born out of wedlock. http://www.hcch.net/upload/expl38.pdf. Perhaps an example could be that the court might reject an application to establish support from a biological parent whose rights had been terminated and the child was subsequently adopted.

Convention source: art. 25. Documents; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement.

§ 601-707. Contest of Registered Convention Support Order.

A. Except as otherwise provided in this article, Sections 601-605 through 601-608 of Title 43 of the Oklahoma Statutes apply to a contest of a registered convention support order.

B. A party contesting a registered convention support order shall file a contest not later than thirty (30) days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty (60) days after notice of the registration.

C. If the nonregistering party fails to contest the registered convention support order by the time specified in subsection B of this section, the order is enforceable.

D. A contest of a registered convention support order may be based only on grounds set forth in Section 601-708 of Title 43 of the Oklahoma Statutes. The contesting party bears the burden of proof.

E. In a contest of a registered convention support order, a tribunal of this state:

1. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

2. May not review the merits of the order.

F. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

G. A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

Added by Laws 2015, c. 104, § 58, eff. Nov. 1, 2015.

NACCUSL Comment

Subsection (a) states the general rule that a contest of a registration is generally governed by Sections 605 through 608, supra. Subsection (b), however, establishes separate, longer time frames to contest the registration of a Convention support order than for filing a contest as established in Section 605. If notice of contest is to be given in the United States, the time difference is relatively modest, i.e., 30 days instead of 20. A more significant difference is created for out-of-country notice, i.e., 60 days instead of 20. Arguably this takes into account that providing notice to a party in a foreign country may take longer than ordinarily expected. In any event, the longer time frames are specifically required in connection with a Convention order. Note that while the principle may always be true that notice to a party situated in a foreign country may take longer, the additional times for notice apply only to an order subject to the Convention.

Subsections (c)-(g) transform Convention language into UIFSA terminology. Subsection (g), which prohibits a stay in enforcement pending a challenge or appeal except in exceptional circumstances, is another substantive provision required by the Convention. It does not apply in non-Convention cases, in which domestic law determines whether a stay of enforcement should be granted pending an appeal or other challenge.

Convention source: art. 23. Procedure on an application for recognition and enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

§ 601-708. Recognition and Enforcement of Registered Convention Support Order.

A. Except as otherwise provided in subsection B of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

B. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

1. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

2. The issuing tribunal lacked personal jurisdiction consistent with Section 601-201 of this title;

3. The order is not enforceable in the issuing country;

4. The order was obtained by fraud in connection with a matter of procedure;

5. A record transmitted in accordance with Section 601-706 of this title lacks authenticity or integrity;

6. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

7. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under the Uniform Interstate Family Support Act in this state;

8. Payment, to the extent alleged arrears have been paid in whole or in part;

9. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

a. if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard, or

b. if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal, or

10. The order was made in violation of Section 601-711 of this title.

C. If a tribunal of this state does not recognize a convention support order under paragraphs 2, 4 or 9 of subsection B of this section:

1. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

2. The Oklahoma Department of Human Services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under Section 601-704 of this title.

Added by Laws 2015, c. 104, § 59, eff. Nov. 1, 2015. Amended by Laws 2016, c. 148, § 27, eff. Nov. 1, 2016.

NACCUSL Comment

Enforceability; the general rule, with exceptions. Subsection (a) states the general proposition that if a child-support order is issued by a tribunal in a Convention country, except as otherwise provided in subsection (b), the order shall be recognized and enforced. In domestic cases UIFSA requires recognition of child-support order of a sister state, 28 U.S.C.A. § 1738B, Full Faith and Credit for Child Support Orders Act (FFCCSOA). Receipt of a child-support order from a sister state is routinely processed and enforced. Critical examination of the sister state order for defects is not called for; it is the responsibility of the respondent to assert any defenses available. Moreover, experience has shown that child-support orders are generally valid, for relatively modest amounts, and seldom subject to claims of fraud. The most common defect is one of mistake, rather than deliberate misconduct.

Subsection (b) combines provisions from four separate articles in the Convention. These articles provide an extensive number of specific reasons for a tribunal or support enforcement agency of one Convention country to refuse to recognize a child-support order from another Convention country. For this act to be consistent with the Convention, it is necessary to identify the potential defects of a support order from a Convention country in which a defendant might raise a challenge based on lack of jurisdiction, due process, or enforceability of an order for arrearages. The majority of these defects arguably are self-explanatory, and almost all are subject to factual dispute to be resolved by the tribunal, to wit: (b)(1) "manifestly incompatible" with public policy, including violation of minimum standards of due process; (b)(2) issued without personal jurisdiction over the individual party (discussed at length below); (b)(3) unenforceable in the issuing country; (b)(4) obtained by fraud in connection with a matter of procedure; (b)(5) the record lacks authenticity or integrity, e.g., forged; (b)(6) a prior proceeding is pending; (b)(7) a more recent support order is controlling; (b)(8) full or partial payment; (b)(9)(A),(B), no appearance, notice, or opportunity to be heard (discussed below); and, (b)(10) exceeds limitations and restraints on modification. As with domestic cases, the norm will be to recognize and enforce a foreign order absent a challenge by the respondent.

Three provisions most likely to trigger a tribunal to refuse to recognize and enforce a foreign support order require more attention, i.e., subsections (b)(2), (4) and (9)(A), (B).

Of particular note, subsection (c) applies to a refusal to recognize and enforce a Convention order under any of these grounds. From the perspective of the United States, subsection (b)(2) is likely to be the primary reason for a tribunal to refuse to recognize and enforce a registered Convention support order. Key to its participation in the negotiations leading to the Convention, the United States insisted that a support order may be refused recognition by a tribunal if the issuing foreign tribunal lacked personal jurisdiction over the respondent. The facts underlying the Convention support order must be measured by a tribunal as consistent with the long-arm jurisdictional provisions of UIFSA. See Sections 201-202. A potential problem occurs only if a Convention support order cannot be enforced by a tribunal because there was no appropriate nexus between the foreign country and the respondent,

Subsection (c) provides that any of the reasons enumerated for not recognizing and enforcing a registered Convention support order, i.e., (b)(2), (4) and (9), will trigger the obligation of the tribunal not to dismiss the proceeding before allowing a reasonable time for a party to seek the establishment of a new child-support order. Moreover, if the Title IV-D support enforcement agency is involved, it must "take all appropriate measures to request a child-support order;" i.e., file a petition seeking to establish an initial child-support order by the tribunal. In that case, the tribunal shall treat the request for recognition and enforcement as a petition for establishment of a new order.

Two systems; direct and indirect jurisdiction. In drafting the Convention, the subject of the requisite jurisdiction to issue a support order generated considerable discussion. The choice divided itself into two distinct categories; rules of direct and indirect jurisdiction. Direct jurisdiction provides explicit bases on which a tribunal is vested with the power to assert its authority and enter a support order. See Section 201.

The UIFSA long-arm provisions are paradigm rules of direct jurisdiction. Section 201 identifies the bases on which a tribunal may assert personal jurisdiction over a nonresident individual, obligor or obligee, without regard to the current residence of the individual or child. As discussed in the comment to Section 201, supra, these long-arm jurisdictional rules for child support and spousal support orders were fashioned case-by-case by the Supreme Court, *see Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L.Ed. 1561 (1948); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S. Ct. 1360, 1 L.Ed.2d 1456 (1957) (spousal support); *Kulko v. Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) (child support).

An initial difficulty arose because some authorities from foreign countries expressed concern about the UIFSA long-arm statute. This was especially true regarding Section 201(a)(1), i.e., service of legal process that creates personal jurisdiction, sometimes called "tag or ambush jurisdiction." Some experts in civil law countries regard the claim that jurisdiction can be acquired merely by serving documents on an individual passing through, with no fundamental ties to the jurisdiction, as "exorbitant," and fundamentally unfair. Another provision eliciting criticism was Section 201(a)(6), which literally reads that an allegation of engaging in sexual intercourse in the state that "may have" resulted in conception will suffice to support a basis for issuing a child support-order.

Similarly, rules of jurisdiction recognized by civil law countries are contrary to the principles that apply to proceedings in the United States. The fact that residence of a child or an obligee in a forum is sufficient basis in most foreign countries to support a child-support order, even though the obligor has no personal nexus with the forum, is generally viewed as wholly inconsistent with notions of due process in the United States. Assuming the obligor has never been physically present in the forum and has not participated in any of the acts described in Section 201, an assertion of jurisdiction to establish a support order based solely on the residence of the obligee or child in that forum is widely regarded in the United States as unconstitutional.

The Convention adopts a rule of indirect jurisdiction which requires a tribunal to register and enforce the order of another tribunal if certain basic jurisdictional requirements have been satisfied. The Convention does not actually prescribe the bases on which the tribunal may assert jurisdiction, as UIFSA does in Section 201. Most commonly, in countries other than the United States if a child is a "habitual resident" of a country, a support order of a tribunal of that country will be recognized in another country. As a practical matter, although "habitual residence" of the obligee provides no basis for assertion of personal jurisdiction over the obligor in the United States, the home tribunal is almost always the preferred forum if the obligee has any basis under Section 201 to obtain long-arm jurisdiction over a non-resident obligor. That is, the actual custodian of the child is almost always the person who seeks to establish and enforce child support and, if possible, chooses to bring a proceeding in the state of residence of the obligee and the child. A tribunal that recognizes "habitual residence" as a basis for indirect jurisdiction would, accordingly, register and enforce an order from a tribunal in the "habitual residence" of the obligee or child without concern about whether the obligor has a nexus with that tribunal. Thus, most foreign concerns about the tenuous reaches of long-arm jurisdiction in the United States are obviated in practice.

The Convention eschews rules of direct jurisdiction, choosing instead to rely on half-a-dozen indirect rules of jurisdiction, "habitual residence" of any of the parties (respondent, creditor or child) being the most common. The focus of the Convention is to identify the bases on which a tribunal of one Convention country will be required to recognize the assertion of jurisdiction by a tribunal of another Convention country. When the Convention is in force in both countries, a support order issued by a tribunal of Country A will be enforced by a tribunal of Country B, provided that the order is enforceable in Country A, plus the host of other possible considerations discussed above. There are a limited number of exceptions, or "reservations," to such rules permitted under the Convention, which give rise to additional procedures noted below. Once recognition is accorded to a support order, the normal procedures available to enforce the order come into play. The routes to arrive at enforcement by way of direct or indirect jurisdiction are different, but the destination is the same.

Virtually 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 often regarded abroad as idiosyncratic. Nonetheless, the new Convention requires recognition of U.S. orders based on long-arm jurisdiction asserted over the obligor, a.k.a. "debtor" if the forum state is also the state of residence of the obligee, a.k.a. "creditor." From the perspective of a foreign tribunal, such an order should be considered valid, if only for creditor- or child-based jurisdictional reasons. The fact that the state tribunal requires a personal nexus between the parties and the tribunal is irrelevant to the foreign tribunal.

These distinct views of appropriate jurisdiction presented a genuine issue for resolution. The United States delegation took the position that, as a matter of constitutional law, its tribunals could not recognize and enforce creditor- or child-based support orders under certain factual circumstances accepted in other countries as providing appropriate jurisdiction. The conclusion of the delegation was that this approach conflicts with the *Kulko* decision, supra. The potential lack of nexus with the obligor, if jurisdiction was based solely on the "habitual residence" of the obligee, would present an impenetrable barrier to participation in the Convention by the United States.

Fairly early on in the Convention negotiations, a consensus developed that these different systems of jurisdiction could be accommodated. On the U.S. side, a challenge to a foreign child-support order will be rejected if the factual circumstances are sufficient to support an assertion of long-arm jurisdiction in the foreign tribunal. Rather obviously, the foreign tribunal need not, and almost certainly will not, consider whether there is a factual basis for establishing personal jurisdiction over the absent obligor based upon "minimum contacts" with the forum. This is not a part of the jurisprudence of the foreign tribunal. If a challenge to a support order is raised by the obligor when the order is sought for enforcement in a United States tribunal, however, that tribunal shall undertake a determination of whether the jurisdictional bases of Section 201 would have been applicable if that issue had been raised in the foreign tribunal. If so, the order is enforceable in this country, notwithstanding that the foreign tribunal based its decision on jurisdiction on the fact that the child or the obligee resided in that forum. *See* Convention art. 20(1)(c)-(d).

Asserting long-arm jurisdiction to establish a support order by a tribunal in a proceeding under UIFSA will be unaffected by the entry into force of the Convention. This will be true irrespective of whether the nonresident respondent resides in another state or in a foreign country, or even resides in a non-Convention foreign nation.

The term "habitually resident" is used in a number of private international law conventions, including the 2007 Maintenance Convention. The term is not defined in any of them. Rather, in common law countries its meaning is determined on a case-by-case basis by the practice and case law of each country. In the United States and elsewhere there is no consistent interpretation of the term by the courts considering it in the context of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The negotiators of the Convention from the United States made it clear that case law on the meaning of "habitually resident" in the child abduction context should not automatically be applied to child support cases. That is because the effect of the use of "habitual residence" in the 1980 Child Abduction Convention is intended to restrict the ability of a person to obtain a new custody order shortly after arriving in another country. In fact, one of the objects of the 1980 Convention is to limit the ability of a parent unhappy with the custody order of one court to "forum shop" by moving to another country and seeking a new order. In the 2007 Maintenance Convention, the object is to make it easier for an obligee to recover child support in an international case, not to restrict the ability of an obligee to apply for that support.

Due process under the Convention. Subsection (b) (9)(A) applies to a failure to give a party prior notice of the proceedings and an opportunity to be heard, which is the classic denial of due process in a proceeding in the United States.

Subsection (b)(9)(B) will be unfamiliar to practitioners in this country and requires some explanation. This provision recognizes the legitimacy of, and provides a method for challenge of, a support order which may be routinely entered in some administrative systems in an ex parte proceeding. The support order is issued without prior notice to the obligor or opportunity to be heard. The due process opportunity is provided after the ex parte decision. This system is currently in use in administrative proceedings in Australia and New Zealand. Because the respondent will not have participated in the original proceeding, the post facto due process allows the obligor an opportunity to challenge the decision on fact or law.

Convention source: art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

Related to Convention: art. 11. Application contents.

§ 601-709. Partial Enforcement.

If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

Added by Laws 2015, c. 104, § 60, eff. Nov. 1, 2015.

NACCUSL Comment

This section transforms Convention language into UIFSA terminology. If a responding tribunal is unable to enforce the entirety of a Convention support order, it shall enforce a severable part of the order. For example, a mother of a child may have another woman as her registered partner in a Convention country. If a support order provides support for both the mother and child support for the child, that part of the order awarding support to the mother from the registered partner may not be enforceable in some states. Nonetheless, a tribunal is obligated to recognize and enforce that part of the order for support of the child. The second sentence authorizes the mother to request enforcement only of the child support portion, see also Section 706 (c), supra.

Convention source: art. 21. Severability and partial recognition and enforcement.

Related to Convention: art. 20. Bases for recognition and enforcement.

§ 601-710. Foreign Support Agreement.

A. Except as otherwise provided in subsections C and D of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

B. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

1. A complete text of the foreign support agreement; and

2. A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

C. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

D. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

1. Recognition and enforcement of the agreement is manifestly incompatible with public policy;

2. The agreement was obtained by fraud or falsification;

3. The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state or a foreign country if the support order is entitled to recognition and enforcement under this act in this state; or

4. The record submitted under subsection B of this section lacks authenticity or integrity.

E. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Added by Laws 2015, c. 104, § 61, eff. Nov. 1, 2015.

NACCUSL Comment

Section 701(6) provides an extensive definition of a "foreign support agreement," which is UIFSA terminology to make more readily understandable for U.S. bench and bar a process that is denominated as a "maintenance arrangement" in the Convention. Subsection (a) requires a state tribunal to recognize and enforce a foreign support agreement if the terms of this section are met. Most crucially, such an agreement must be accompanied by a document stating that the foreign support agreement is as enforceable as a support order would be in the country of origin.

This section basically translates into common parlance the procedure identified in Convention art. 30, which was the result of a very extended discussions about "authentic instruments and private agreements" during the negotiations on the Convention. In many countries, such an agreement is unknown insofar as enforcement by a tribunal is concerned. In the United States, a purely private agreement is treated as a form of contract, rather than as an order of a tribunal. Under the Convention, however, a foreign support agreement meeting the standards established in this section, and as defined in Section 701(6), is entitled to enforcement by the tribunal. Advantages for enforcement of child support binding on the parties in the country of origin stem from the inclusion of a foreign support agreement because there is a growing tendency internationally to promote amicable solutions and avoid contentious procedures. In view of the movement towards alternative methods of dispute resolution in the United States, this mechanism provides for recognition and enforcement of a dispute resolution system in some of the likely Convention countries. The absence of this provision would have been a loss for the Convention, and limited its usefulness for support agreements, particularly in the Scandinavian countries. Although the possibility of a reservation is available, the United States has not indicated that it intends to make such a reservation.

To reiterate, the key to enforcement is that the foreign support agreement must be "enforceable as a decision" in the foreign country of its origin (quoting the Convention). If such an agreement is enforceable only as a contract, it will not fall within the scope of this section. Another key provision is that under subsection (e) the enforcement proceeding will be suspended if the respondent challenges the underlying agreement in a tribunal that has jurisdiction to hear challenges to the agreement.

Convention source: art. 3. Definitions; art. 30. Maintenance arrangements.

§ 601-711. Modification of Convention Child-Support Order.

A. A tribunal of this state may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

1. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

2. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

B. If a tribunal of this state does not modify a convention child support order because the order is not recognized in this state, subsection C of Section 601-708 of Title 43 of the Oklahoma Statutes applies.

Added by Laws 2015, c. 104, § 62, eff. Nov. 1, 2015.

NACCUSL Comment

One goal of the Convention was to limit the number of multiple foreign orders with respect to the same parties to the extent possible. But, given differing laws and jurisdictional bases, consensus on limiting modification was reached only on the fact patterns presented by Section 711(a).

First, this section transforms Convention language into UIFSA terminology. The restriction identified on modification of a child-support order in subsection (a) strikes a familiar note. Similar to Section 611, *supra*, a restriction is placed on modification of a support order if the obligee remains in the issuing Convention country. Subsection (a)(1) provides an exception if, by failure to object, the obligee submits to the jurisdiction of another tribunal. Subsection (a)(2) is similar to Section 615, *supra*. From the perspective of the obligee, the restriction has virtually the same effect as found in Sections 205 and 611. That is, in effect the issuing foreign tribunal has a form of continuing, exclusive jurisdiction that it maintains over modification of the order so long as the obligee remains a resident of the country. The difference is that the protection against modification is accorded only to the obligee, and not to the obligor. Thus, under the Convention the obligee may be free to seek a modification in another forum notwithstanding the fact that the obligor remains in the issuing country but the obligee moves to another country, with the implicit requirement that the issuing foreign tribunal must have personal jurisdiction over the obligor to sustain the enforcement of modification by a state tribunal.

Subsection (b) requires a state tribunal to issue a new child-support order if the Convention order was founded on child-based jurisdiction, the foreign tribunal lacked personal jurisdiction over the obligor, and there is a request to establish an order in accordance with Section 708.

Convention source: art. 18. Limit on proceedings; art. 21. Severability and partial recognition and enforcement.

Related to Convention: art. 18. Limit on proceedings; art. 20. Bases for recognition and enforcement.

§ 601-712. Personal Information; Limit on Use.

Personal information gathered or transmitted under this article may be used only for the purposes for which it was gathered or transmitted.

Added by Laws 2015, c. 104, § 63, eff. Nov. 1, 2015.

NACCUSL Comment

This section is an almost word-for-word tracking of the Convention provision, rephrased in UIFSA terminology. This single sentence is illustrative of the different drafting rules for a uniform act and an international treaty. Although certainly not always adhered to, cardinal rules for drafting a uniform act include writing in the active voice, identifying the intended actor, and specifying the consequences for failure to follow the directive or ignore the proscription. Convention provisions, such as this one, are generally written in passive voice, the actor is not identified, and no penalty is specified for noncompliance. Insofar as the admirable goals of the provision are concerned, ambiguity in the statute, or an exception to the rule, must be resolved case-by-case.

Confidentiality is highly prized in the United States in many circumstances, e.g., the attorney-client privilege is protected to the maximum extent possible. Under other circumstances, the opposite is true, e.g., records of litigation are generally available, and a judicial decision is ordinarily in open court or public record. Neither goal is absolute. Section 312, *supra*, adds another exception, i.e., nondisclosure of information is sometimes required to protect the health, safety, or liberty of a party or a child. In a case in which there is a risk of domestic violence or parental kidnapping, nondisclosure may be crucial.

The anticipated breadth of application of this provision is to constrain individuals and entities subject to a Convention support order. Protection of personal information in this computerized world is increasingly important, whatever the medium or means of communication. Both the sender and recipient of personal information transmitted electronically are expected to take appropriate measures vis-à-vis their service providers to meet the requirements of this section. The exact meaning of the statutory phrase "for the purpose for which it was gathered or transmitted" will necessarily remain ambiguous until elaborated by statute, caselaw, or regulation.

Convention source: art. 38. Protection of personal data.

§ 601-713. Record in Original Language; English Translation.

A record filed with a tribunal of this state under this article must be in the original language and, if not in English, must be accompanied by an English translation.

Added by Laws 2015, c. 104, § 64, eff. Nov. 1, 2015.

NACCUSL Comment

The United States will declare that English is the official language for transmittals to this country. Further, the United States will make a reservation objecting to the use of French, the other official language of the Convention, as a default translation. Of course, the original order may be in French. The cost of translation is borne by the issuing state or Convention country.

Convention source: art. 44. Language requirements; art. 62. Reservations; art. 63. *Declarations*.

Related to Convention: art. 45. Means and costs of translation.

§ 601-714. Recodified as 43 O.S. § 601-902 by Laws 2016, c. 148, c. 28, eff. Nov. 1, 2016.

Article 8.
Interstate Rendition

§ 601-801. Grounds for Rendition.

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

B. The Governor of this state may:

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

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

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

Added by Laws 1994, c. 160, § 49, eff. Sept. 1, 1994.

NACCUSL Comment

This section has not been amended substantively since 1968. Virtually no controversy has been generated regarding this procedure. Arguably application of subsection (c) is problematic in situations in which the obligor neither was present in the demanding state at the time of the commission of the crime nor fled from the demanding state. The possibility that an individual may commit a crime in a state without ever being physically present there has elicited considerable discussion and some case law. *See* L. BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM," 329-335 (1986) (discussing minimum contacts theory for criminal jurisdiction); Rotenberg, *Extraterritorial Legislative Jurisdiction and the State Criminal Law*, 38 TEX. L. REV. 763, 784-87 (1960) (due process requires that the behavior of the defendant must be predictably subject to state's criminal jurisdiction); *cf. Ex parte Boetscher*, 812 S.W.2d 600 (Tex. Crim. App. 1991) (Equal Protection Clause limits disparate treatment of nonresident defendants); *In re King*, 3 Cal.3d 226, 90 Cal. Rptr. 15, 474 P.2d 983 (1970), *cert. denied* 403 U.S. 931 (enhanced offense for nonresidents impacts constitutional right to travel).

§ 601-802. Conditions of Rendition.

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

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

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

Added by Laws 1994, c. 160, § 50, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 43, eff. Nov. 1, 2004.

NACCUSL Comment

This section has not undergone significant change since 1968. Interstate rendition remains the last resort for support enforcement, in part because a governor may exercise considerable discretion in deciding whether to honor a demand for rendition of an obligor.

Article 9.
Miscellaneous Provisions

§ 601-901. Application and Construction of Act.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 1994, c. 160, § 51, eff. Sept. 1, 1994. Amended by Laws 2004, c. 367, § 44, eff. Nov. 1, 2004.

§ 601-902. Transitional Provision.

This act applies to proceedings begun on or after November 1, 2015, to establish a support order or determine parentage of a child or to register, recognize, enforce or modify a prior support order, determination or agreement whenever issued or entered.

Added by Laws 2015, c. 104, § 65, eff. Nov. 1, 2015. Recodified by Laws 2016, c. 148, § 28, eff. Nov. 1, 2016.

§ 601-903. Invalidation.

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Added by Laws 2015, c. 104, § 66, eff. Nov. 1, 2015.

Domestic Relations Recodification Committee

§§ 700.1-700.6. Repealed by Law 1999, c. 59, § 3, emerg. eff. July 1, 1999.

Title 47.
Motor Vehicles

Chapter 6.
Driver Licenses

Article 2.
Cancellation, Suspension, or Revocation of Licenses

§ 6-201.1. Additional Requirements to Hold Driver's License.

A. In addition to other qualifications and conditions established by law, the driving privilege of an individual is subject to the requirements of this section.

B. Upon receipt of an order from a court or from the Department of Human Services, Office of Administrative Hearings: Child Support, hereinafter referred to as "OAH", that a person obligated to pay child support who owns or operates a motor vehicle is not in compliance with an order for support, the Commissioner of Public Safety shall revoke the person's driving privilege.

C.1. Whenever a court or the OAH finds that a person is not in compliance with an order of child support, the court or the OAH, as applicable, shall require the person to surrender to it the driver license held by the person and shall forward to the Department of Public Safety an order to revoke the driving privilege of the person, together with any driver license surrendered to the court or OAH. The Department of Public Safety shall prescribe, prepare and distribute a Notification of Revocation form to be used by the courts and the OAH when an order has been entered revoking a person's driving privileges for noncompliance with an order for support.

2. In addition to the Department of Public Safety, the court or the OAH, as applicable, shall send a copy of the Notification of Revocation to the person obligated to pay child support by first class, postage prepaid mail. The Notification shall:

a. include the name, address, date of birth, physical description and, if known, the driver license number of the person,

b. require the Department to revoke the driving privilege of the person required to pay child support,

c. require the Department to not reinstate the person's driving privilege until:

(1) the court or the OAH issues a release that states such person is in compliance with the order of support or until a court or the OAH otherwise authorizes reinstatement of the person's driving privilege, and

(2) the person has paid to the Department the fees required by Section 6-212 of this title and has met all other statutory requirements for reinstatement of the person's driving privilege;

d. specify the reason and statutory ground for the revocation and the effective date of the revocation;

e. inform the person that in order to apply for reinstatement of the person's driving privilege, the person must obtain a release from the OAH or the court, as applicable; and

f. inform the person that final orders of the OAH may be appealed to the district court pursuant to Section 240.3 of Title 56 of the Oklahoma Statutes and final orders of the district court may be appealed to the Supreme Court of Oklahoma pursuant to Section 990A of Title 12 of the Oklahoma Statutes.

D. Upon receipt of the Notification of Revocation from a court or the OAH, as applicable, that a person obligated to pay child support is not in compliance with an order of support, the Department shall, in addition to any other authority to withdraw driving privileges, revoke the driving privilege of the person named in the Notification without hearing.

E.1. The court or the OAH shall furnish a release to the Department whenever a person, whose driving privilege has been revoked pursuant to this section, has established and is complying with a payment plan, as determined by the court or the OAH. Upon receipt of such release, the Department shall reinstate the driving privileges of the person, if the person is otherwise eligible, pursuant to Section 6-212 of this title;

2. Should the person default on the payment plan, the court or OAH may resubmit the notice of noncompliance as provided for in this section. The court or the OAH shall furnish a release to the Department whenever the person is once again complying with the payment plan, as determined by the court or the OAH. Upon receipt of such release, the Department shall reinstate the driving privileges of the person, if the person is otherwise eligible, pursuant to Section 6-212 of this title; and

3. A person whose driving privilege has been revoked for noncompliance due to defaulting on a payment plan, pursuant to paragraph 2 of this subsection, shall be required to meet all statutory requirements for reinstatement of driving privileges, including, but not limited to, the payment of processing and reinstatement fees, as provided for in Section 6-212 of this title.

F. If the court or the OAH, as applicable, is unable to secure the surrender to it of the driver license held by the person found to be in noncompliance with an order of support, the Department, upon revoking the driving privilege of the person, shall require that the driver license held by the person be surrendered to the Department. Upon reinstatement of the person's driving privileges, as provided for by law, the person's valid and lawful driver license shall be returned to the person by the Department if the person is otherwise eligible.

Added by Laws 1995, c. 354, § 11, eff. Nov. 1, 1995. Amended by Laws 1999, c. 229, § 2, eff. Nov. 1, 1999; Laws 2003, c. 392, § 13, emerg. eff. July 1, 2003; Laws 2004, c. 124, § 2, eff. Nov. 1, 2004.

Title 76.
Torts

§ 1.1. Neither Parent of Child Answerable for Other's Acts.

Neither parent or child is answerable, as such, for the act of the other, except as otherwise specifically provided by law.

R.L. 1910 § 4383. Amended by Laws 2000, c. 382, § 10, emerg. eff. June 7, 2000. Renumbered from 10 O.S. § 20 by Laws 2009, c. 233, § 203, emerg. eff. May 21, 2009.

§ 8.1. Alienation of Affections or Seduction—Civil Action—Abolition.

From and after the effective date of this act, the alienation of the affections of a spouse of sound mind and legal age or seduction of any person of sound mind and legal age is hereby abolished as a civil cause of action in this state.

Added by Laws 1976, ch. 164, § 2, eff. Oct. 1, 1976.

Selected Federal Statutes as amended through 115th Congress, 1st Session (2017), Public Law 115-39.

United States Code

Title 1.
General Provisions

Chapter 1.
Rules of Construction

Defense of Marriage Act

§ 7. Definition of "marriage" and "spouse"

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

(Added Pub. L. 104–199, § 3(a), Sept. 21, 1996, 110 Stat. 2419.)

Title 18.
Crimes and Criminal Procedure

Part I.
Crimes

Chapter 11A.
Child Support

Child Support Recovery Act

§ 228. Failure to pay legal child support obligations

(a) Offense.—Any person who—

(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000;

(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000; or

(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000;

shall be punished as provided in subsection (c).

(b) Presumption.—The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(c) Punishment.—The punishment for an offense under this section is—

(1) in the case of a first offense under subsection (a)(1), a fine under this title, imprisonment for not more than 6 months, or both; and

(2) in the case of an offense under paragraph (2) or (3) of subsection (a), or a second or subsequent offense under subsection (a)(1), a fine under this title, imprisonment for not more than 2 years, or both.

(d) Mandatory Restitution.—Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

(e) Venue.—With respect to an offense under this section, an action may be inquired of and prosecuted in a district court of the United States for—

(1) the district in which the child who is the subject of the support obligation involved resided during a period during which a person described in subsection (a) (referred to in this subsection as an "obliger") failed to meet that support obligation;

(2) the district in which the obliger resided during a period described in paragraph (1); or

(3) any other district with jurisdiction otherwise provided for by law.

(f) Definitions.—As used in this section—

(1) the term "Indian tribe" has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a);

(2) the term "State" includes any State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(3) the term "support obligation" means any amount determined under a court order or an order of an administrative process pursuant to the law of a State or of an Indian tribe to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living.

(Added Pub. L. 102–521, § 2(a), Oct. 25, 1992, 106 Stat. 3403; amended Pub. L. 104–294, title VI, § 607(l), Oct. 11, 1996, 110 Stat. 3512; Pub. L. 105–187, § 2, June 24, 1998, 112 Stat. 618.)

Chapter 55.
Kidnapping

§ 1204. International parental kidnapping

(a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

(b) As used in this section—

(1) the term "child" means a person who has not attained the age of 16 years; and

(2) the term "parental rights", with respect to a child, means the right to physical custody of the child—

(A) whether joint or sole (and includes visiting rights); and

(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

(c) It shall be an affirmative defense under this section that—

(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;

(2) the defendant was fleeing an incidence or pattern of domestic violence; or

(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

(Added Pub. L. 103–173, § 2(a), Dec. 2, 1993, 107 Stat. 1998; amended Pub. L. 108–21, title I, § 107, Apr. 30, 2003, 117 Stat. 655.)

Chapter 110A.
Domestic Violence and Stalking

Interstate Domestic Violence Act

§ 2261. Interstate domestic violence

(a) Offenses.—

(1) Travel or conduct of offender.—A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim.—A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties.—A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year, or both fined and imprisoned.

(Added Pub. L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1926, and amended Pub. L. 104-201, Div. A, Title X, § 1069(b)(1), (2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 106-386, Div. B, Title I, § 1107(a), Oct. 28, 2000, 114 Stat. 1497; Pub. L. 109-162, Title I, §§ 114(b), 116(a), 117(a), Jan. 5, 2006, 119 Stat. 2988, 2989; Pub. L. 113-4, title I, §107(a), Mar. 7, 2013, 127 Stat. 77.)

§ 2261A. Interstate stalking

Whoever—

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that—

(A) places that person in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) an immediate family member (as defined in section 115) of that person;

(iii) a spouse or intimate partner of that person; or

(iv) the pet, service animal, emotional support animal, or horse of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—

(A) places that person in reasonable fear of the death of or serious bodily injury to a person, a pet, a service animal, an emotional support animal, or a horse described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.

(Added Pub. L. 104–201, div. A, title X, § 1069(a), Sept. 23, 1996, 110 Stat. 2655; amended Pub. L. 106–386, div. B, title I, § 1107(b)(1), Oct. 28, 2000, 114 Stat. 1498; Pub. L. 109–162, title I, § 114(a), Jan. 5, 2006, 119 Stat. 2987; Pub. L. 113–4, title I, § 107(b), Mar. 7, 2013, 127 Stat. 77; Pub. L. 115–334, title XII, § 12502(a)(1), Dec. 20, 2018, 132 Stat. 4982.)

§ 2262. Interstate violation of protection order

(a) Offenses.—

(1) Travel or conduct of offender.—

A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal,emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim.—

A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.—A person who violates this section shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, including any case in which the offense is committed against a pet, service animal, emotional support animal, or horse,

or both fined and imprisoned.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1927; amended Pub. L. 104–201, div. A, title X, § 1069(b)(2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 104–294, title VI, § 605(d), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 106–386, div. B, title I, § 1107(c), Oct. 28, 2000, 114 Stat. 1498; Pub. L. 109–162, title I, § 117(b), Jan. 5, 2006, 119 Stat. 2989; Pub. L. 113–4, title I, § 107(c), Mar. 7, 2013, 127 Stat. 78; Pub. L. 115–334, title XII, § 12502(a)(2), Dec. 20, 2018, 132 Stat. 4982.)

§ 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928.)

§ 2264. Restitution

(a) In General.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and Nature of Order.—

(1) Directions.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.—For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.—

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim Defined.—For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928; amended Pub. L. 104–132, title II, § 205(d), Apr. 24, 1996, 110 Stat. 1231.)

§ 2265. Full faith and credit given to protection orders

(a) Full faith and credit.—Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory[1] as if it were the order of the enforcing State or tribe.

(b) Protection order.—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or counter petition.—A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and registration.—

(1) Notification.—A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.—Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on Internet publication of registration information.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction[2] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal Court Jurisdiction.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

(Added Pub. L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1930, and amended Pub. L. 106-386, Div. B, Title I, § 1101(b)(4), Oct. 28, 2000, 114 Stat. 1493; Pub. L. 109-162, Title I, § 106(a) to (c), Jan. 5, 2006, 119 Stat. 2981, 2982; Pub. L. 109-271, § 2(n), Aug. 12, 2006, 120 Stat. 754; Pub. L. 113-4, title I, § 905, Mar. 7, 2013, 127 Stat. 124.)

[1] So in original. Probably should not be capitalized.

§ 2265A. Repeat offenders

(a) Maximum term of imprisonment.—The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition.—For purposes of this section—

(1) the term "prior domestic violence or stalking offense" means a conviction for an offense—

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State or tribal law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term "State" means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(Added Pub. L. 109-162, Title I, § 115, Jan. 5, 2006, 119 Stat. 2988; Pub. L. 113-4, title I, § 906(c), Mar. 7, 2013, 127 Stat. 125.)

§ 2266. Definitions

In this chapter:

(1) Bodily injury.—

The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) Course of conduct.—

The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) Enter or leave Indian country.—

The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) Indian country.—

The term "Indian country" has the meaning stated in section 1151 of this title.

(5) Protection order.—The term "protection order" includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(6) Serious bodily injury.—

The term "serious bodily injury" has the meaning stated in section 2119(2).

(7) Spouse or intimate partner.—The term "spouse or intimate partner" includes—

(A) for purposes of—

(i) sections other than 2261A—

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A—

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) State.—

The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce.—

The term "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner.—

The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of—

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(11) Pet.—

The term "pet" means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal that is kept for pleasure rather than for commercial purposes.

(12) Emotional support animal.—

The term "emotional support animal" means an animal that is covered by the exclusion specified in section 5.303 of title 24, Code of Federal Regulations (or a successor regulation), and that is not a service animal.

(13) Service animal.—

The term "service animal" has the meaning given the term in section 36.104 of title 28, Code of Federal Regulations (or a successor regulation).

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1931; amended Pub. L. 106–386, div. B, title I, § 1107(d), Oct. 28, 2000, 114 Stat. 1499; Pub. L. 109–162, title I, §§ 106(d), 116(b), Jan. 5, 2006, 119 Stat. 2982, 2988; Pub. L. 109–271, § 2(c), (i), Aug. 12, 2006, 120 Stat. 752; Pub. L. 115–334, title XII, § 12502(a)(4), Dec. 20, 2018, 132 Stat. 4983.)

Title 22.
Foreign Relations and Intercourse

Chapter 97.
International Child Abduction and Remedies

§ 9001. Findings and declarations.

(a) Findings. The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations. The Congress makes the following declarations:

(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes—

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

(Pub. L. 100–300, § 2, Apr. 29, 1988, 102 Stat. 437.)

§ 9002. Definitions

For the purposes of this chapter—

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 653 of title 42;

(4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term "person" includes any individual, institution, or other legal entity or body;

(6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term "rights of access" means visitation rights;

(8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 9006(a) of this title.

(Pub.L. 100-300, § 3, Apr. 29, 1988, 102 Stat. 437.)

§ 9003. Judicial remedies

(a) Jurisdiction of the courts. The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions. Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice. Notice of an action brought under subsection (b) of this section shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case. The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention.

(e) Burdens of proof.

(1) A petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence—

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing—

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of the Convention. For purposes of any action brought under this chapter—

(1) the term "authorities", as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms "wrongful removal or retention" and "wrongfully removed or retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term "commencement of proceedings", as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit. Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under the Convention not exclusive. The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

(Pub.L. 100-300, § 4, Apr. 29, 1988, 102 Stat. 438.)

§ 9004. Provisional remedies

(a) Authority of courts. In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 9003(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition.

(b) Limitation on authority. No court exercising jurisdiction of an action brought under section 9003(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

(Pub.L. 100-300, § 5, Apr. 29, 1988, 102 Stat. 439.)

§ 9005. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 9003 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

(Pub.L. 100-300, § 6, Apr. 29, 1988, 102 Stat. 439.)

§ 9006. United States Central Authority

(a) Designation. The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions. The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority. The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service. The United States Central Authority may, to the extent authorized by the Social Security Act [42 U.S.C. § 301 et seq.], obtain information from the Parent Locator Service.

(e) Grant authority. The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(f) Limited Liability of Private Entities Acting Under the Direction of the United States Central Authority.

(1) Limitation on liability. Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this Act, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

(2) Exception for intentional, reckless, or other misconduct. The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this Act.

(3) Exception for ordinary business activities. The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

(Pub. L. 100-300, § 7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105-277, div. G, title XXII, § 2213, Oct. 21, 1998, 112 Stat. 2681-812; Pub. L. 108-370, § 2, Oct 25, 2004, 118 Stat. 1750.)

§ 9007. Costs and fees

(a) Administrative costs. No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) Costs incurred in civil actions.

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 9003 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 9003 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

(Pub.L. 100-300, § 8, Apr. 29, 1988, 102 Stat. 440.)

§ 9008. Collection, maintenance, and dissemination of information

(a) In general. In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c) of this section, receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority—

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

(b) Requests for information. Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Responsibility of government entities. Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a) of this section, the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which—

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of Title 13; shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a) of this section.

(d) Information available from Parent Locator Service. To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) of this section can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) Recordkeeping. The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

(Pub.L. 100-300, § 9, Apr. 29, 1988, 102 Stat. 440.)

§ 9009. Office of Children's Issues

(a) Director requirements. The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred to as the ''Office'') with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

(b) Case officer staffing. Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

(c) Embassy contact. The Secretary of State shall designate in each United States diplomatic mission an employee who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

(d) Reports to parents

(1) In general. Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

(2) Exception. The requirement in paragraph (1) shall not apply in a case of an abducted child if -

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided

(Pub. L. 106-113, div. B, § 1000(a)(7) (div. A, title II, § 201), Nov. 29, 1999, 113 Stat. 1536, 1501A-419.)

§ 9010. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of title 5 for employees of agencies

(Pub. L. 100-300, § 10, Apr. 29, 1988, 102 Stat. 441.)

§ 9011. Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this chapter

(Pub. L. 100-300, § 12, Apr. 29, 1988, 102 Stat. 442.)

Title 25.
Indians

Chapter 21.
Indian Child Welfare

Indian Child Welfare Act

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub.L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub.L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub.L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.)

Subchapter I.
Child Custody Proceedings

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes. The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub.L. 95-608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after

receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child. No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Pub.L. 95-608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.)

§ 1913. Parental rights, voluntary termination

(a) Consent; record; certification matters; invalid consents. Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent. Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations. After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(Pub.L. 95-608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.)

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(Pub.L. 95-608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences. In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences. Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable. The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability. A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Pub.L. 95-608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child. Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure. Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Pub.L. 95-608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Pub.L. 95-608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary. Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession.

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval. If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected. Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub.L. 95-608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage. States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected. Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Pub.L. 95-608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(Pub.L. 95-608, title I, § 110, Nov. 8, 1978, 92 Stat. 3075.)

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(Pub.L. 95-608, title I, § 111, Nov. 8, 1978, 92 Stat. 3075.)

§ 1922. Emergency removal or placement of child; termination appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this

subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Pub.L. 95-608, title I, § 112, Nov. 8, 1978, 92 Stat. 3075.)

§ 1923. Effective date.

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Pub.L. 95-608, title I, § 113, Nov. 8, 1978, 92 Stat. 3075.)

Title 28.
Judiciary and Judicial Proceedings

Part V.
Procedure

Chapter 115.
Evidence, Documentary

The Parental Kidnapping Prevention Act

1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term -

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if -

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State

(i) is the home State of the child on the date of the commencement of the proceeding, or

(ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and

(ii) it is in the best interest of the child that a court of such State assume jurisdiction because

(I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and

(II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and

(i) the child has been abandoned, or

(ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and

(ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if -

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

(Added Pub. L. 96-611, § 8(a), Dec. 28, 1980, 94 Stat. 3569 amended Pub. L. 105-374, § 1, Nov. 12, 1998, 112 Stat. 3383 Pub. L. 106-386, div. B, title III, §1303(d), Oct. 28, 2000, 114 Stat. 1512.)

§ 1738B. Full faith and credit for child support orders

(a) General Rule.—The appropriate authorities of each State—

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions.—In this section:

"child" means—

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"child's State" means the State in which a child resides.

"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

"child support order"—

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes—

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

"contestant" means—

(A) a person (including a parent) who—

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of Child Support Orders.—A child support order made by a court of a State is made consistently with this section if—

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing Jurisdiction.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant or the parties have consented in a record or open court that the tribunal of the State may continue to exercise jurisdiction to modify its order, unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority To Modify Orders.—A court of a State may modify a child support order issued by a court of another State if—

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)

(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of Child Support Orders.—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of Modified Orders.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of Law.—

(1) In general.—In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order.—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for Modification.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

(Added Pub. L. 103–383, § 3(a), Oct. 20, 1994, 108 Stat. 4064; amended Pub. L. 104–193, title III, § 322, Aug. 22, 1996, 110 Stat. 2221; Pub. L. 105–33, title V, § 5554, Aug. 5, 1997, 111 Stat. 636; Pub. L. 113-183, Sept. 29, 2014, 128 Stat. 1944.)

Defense of Marriage Act

§ 1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

(Added Pub. L. 104–199, § 2(a), Sept. 21, 1996, 110 Stat. 2419.)

Title 29.
Labor

Chapter 18.
Employee Retirement Income Security Program

Subchapter 1.
Protection of Employee Benefit Rights

Subtitle B.
Regulatory Provisions

Part 6 .
Continuation Coverage and Additional Standards for Group Health Plans

§ 1161. Plans must provide continuation coverage to certain individuals

(a) In general

The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying
event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) of this section shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.

(Pub. L. 93–406, title I, § 601, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 227; amended Pub. L. 101–239, title VII, §§ 7862(c)(1)(B), 7891 (a)(1), Dec. 19, 1989, 103 Stat. 2432, 2445.)

§ 1162. Continuation coverage

For purposes of section 1161 of this title, the term "continuation coverage" means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours.—In the case of a qualifying event described in section 1163(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events.—If a qualifying event (other than a qualifying event described in section 1163(6) of this title) occurs during the 18 months after the date of a qualifying event described in section 1163(2) of this title, the date which is 36 months after the date of the qualifying event described in section 1163(2) of this title.

(iii) Special rule for certain bankruptcy proceedings.—In the case of a qualifying event described in section 1163(6) of this title (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 1167(3)(C)(iii) of this title), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events.—In the case of a qualifying event not described in section 1163(2) or 1163(6) of this title, the date which is 36 months after the date of the qualifying event.

(v) Special rule for pbgc recipients.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV, notwithstanding clause (i) or (ii), the date of the death of the

covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(vi) Special rule for TAA-eligible individuals.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who is (as of the date that the period of coverage would, but for this clause or clause (vii), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 605(b)(4)(B)), the period of coverage shall not terminate by reason of clause (i) or (ii), as the case may be, before the later of the date specified in such clause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(vii) Medicare entitlement followed by qualifying event.—In the case of a qualifying event described in section 1163(2) of this title that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

(viii) Special rule for disability.—In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part, any reference in clause (i) or (ii) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 1166(3) of this title before the end of such 18 months.

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or Medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of this subtitle, or title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.]), or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title, entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this part, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to "102 percent" is deemed a reference to "150 percent" for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(Pub. L. 93–406, title I, § 602, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 228; amended Pub. L. 99–509, title IX, § 9501(b)(1)(B), (2)(B), Oct. 21, 1986, 100 Stat. 2076, 2077; Pub. L. 99–514, title XVIII, § 1895(d)(1)(B), (2)(B), (3)(B), (4)(B), Oct. 22, 1986, 100 Stat. 2936–2938; Pub. L. 101–239, title VI, § 6703(a), (b), title VII, §§ 7862(c)(3)(B), (4)(A), (5)(B), 7871 (c), Dec. 19, 1989, 103 Stat. 2296, 2432, 2433, 2435; Pub. L. 104–188, title I, § 1704(g)(1)(B), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 104–191, title IV, § 421(b)(1), Aug. 21, 1996, 110 Stat. 2088; Pub. L. 111-5, Div. B, title I, § 1899F,

Feb. 17, 2009, 123 Stat. 428; Pub. L. 111-344, title I, § 116, Dec. 29, 2010, 124 Stat. 3615; Pub. L. 112-140, title II, § 243(a)(1), (2), Oct. 21, 2011, 125 Stat. 420.)

§ 1163. Qualifying event

For purposes of this part, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(6) A proceeding in a case under title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 1167(3)(C) of this title within one year before or after the date of commencement of the proceeding.

(Pub. L. 93–406, title I, § 603, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229; amended Pub. L. 99–509, title IX, § 9501(a)(2), Oct. 21, 1986, 100 Stat. 2076.)

§ 1164. Applicable premium

For purposes of this part—

(1) In general

The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If an administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

An administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(Pub. L. 93–406, title I, § 604, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229.)

§ 1165. Election

(a) In general

For purposes of this part—

(1) Election period

The term "election period" means the period which—

(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(B) is of at least 60 days' duration, and

(C) ends not earlier than 60 days after the later of—

(i) the date described in subparagraph (A), or

(ii) in the case of any qualified beneficiary who receives notice under section 1166(4) of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 1167(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(b) Temporary extension of COBRA election period for certain individuals

(1) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a) of this section, such individual may elect continuation coverage under this part during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(2) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(3) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

(A) beginning on the date of the TAA-related loss of coverage, and

(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 1181(c)(2) of this title, section 300gg(c)(2) of title 42, and section 9801(c)(2) of title 26.

(4) Definitions

For purposes of this subsection:

(A) Nonelecting TAA-eligible individual

The term "nonelecting TAA-eligible individual" means a TAA-eligible individual who—

(i) has a TAA-related loss of coverage; and

(ii) did not elect continuation coverage under this part during the TAA-related election period.

(B) TAA-eligible individual

The term "TAA-eligible individual" means—

(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of title 26), and

(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(C) TAA-related election period

The term "TAA-related election period" means, with respect to a TAA-related loss of coverage, the 60-day election period under this part which is a direct consequence of such loss.

(D) TAA-related loss of coverage

The term "TAA-related loss of coverage" means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(Pub. L. 93–406, title I, § 605, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99–514, title XVIII, § 1895(d)(5)(B), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 107–210, div. A, title II, § 203(e)(1), Aug. 6, 2002, 116 Stat. 969.)

§ 1166. Notice requirements

(a) In general

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 1163 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 1163 of this title where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event, of such beneficiary's rights under this subsection.

(b) Alternative means of compliance with requirements for notification of multiemployer plans by employers

The requirements of subsection (a)(2) of this section shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 1163 of this title if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.

(c) Rules relating to notification of qualified beneficiaries by plan administrator

For purposes of subsection (a)(4) of this section, any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(Pub. L. 93–406, title I, § 606, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99–509, title IX, § 9501(d)(2), Oct. 21, 1986, 100 Stat. 2077; Pub. L. 99–514, title XVIII, § 1895(d)(6)(B), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 101–239, title VI, § 6703(c), title VII, § 7891(d)(1)(A), Dec. 19, 1989, 103 Stat. 2296, 2445; Pub. L. 104–191, title IV, § 421(b)(2), Aug. 21, 1996, 110 Stat. 2088.)

§ 1167. Definitions and special rules

For purposes of this part—

(1) Group health plan

The term "group health plan" means an employee welfare benefit plan providing medical care (as defined in section 213(d) of title 26) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of title 26). Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of [title 26] the Internal Revenue Code of 1986).

(2) Covered employee

The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26).

(3) Qualified beneficiary

(A) In general

The term "qualified beneficiary" means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this part.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in section 1163(2) of this title, the term "qualified beneficiary" includes the covered employee.

(C) Special rule for retirees and widows

In the case of a qualifying event described in section 1163(6) of this title, the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the employee, or

(iii) as the surviving spouse of the covered employee.

(4) Employer

Subsection (n) (relating to leased employees) and subsection (t) (relating to application of controlled group rules to certain employee benefits) of section 414 of title 26 shall apply for purposes of this part in the same manner and to the same extent as such subsections apply for purposes of section 106 of title 26. Any regulations prescribed by the Secretary pursuant to the preceding sentence shall be consistent and coextensive with any regulations prescribed for similar purposes by the Secretary of the Treasury (or such Secretary's delegate) under such subsections.

(5) Optional extension of required periods

A group health plan shall not be treated as failing to meet the requirements of this part solely because the plan provides both—

(A) that the period of extended coverage referred to in section 1162(2) of this title commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under section 1166(a)(2) of this title commences with the date of the loss of coverage.

(Pub. L. 93–406, title I, § 607, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 231; amended Pub. L. 99–509, title IX, § 9501(c)(2), Oct. 21, 1986, 100 Stat. 2077; Pub. L. 99–514, title XVIII, § 1895(d)(8), (9)(A), Oct. 22, 1986, 100 Stat. 2940; Pub. L. 100–647, title III, § 3011(b)(6), Nov. 10, 1988, 102 Stat. 3625; Pub. L. 101–239, title VII, §§ 7862(c)(2)(A), (6)(A), 7891 (a)(1), (d)(2)(B)(i), Dec. 19, 1989, 103 Stat. 2432, 2433, 2445, 2446; Pub. L. 104–191, title III, § 321(d)(2), title IV, § 421(b)(3), Aug. 21, 1996, 110 Stat. 2058, 2088; Pub. L. 114–255, div. C, title XVIII, § 18001(b)(2), Dec. 13, 2016, 130 Stat. 1344.)

§ 1168. Regulations

The Secretary may prescribe regulations to carry out the provisions of this part.

(Pub. L. 93–406, title I, § 608, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 231.)

§ 1169. Additional standards for group health plans

(a) Group health plan coverage pursuant to medical child support orders

(1) In general

Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order. A qualified medical child support order with respect to any participant or beneficiary shall be deemed to apply to each group health plan which has received such order, from which the participant or beneficiary is eligible to receive benefits, and with respect to which the requirements of paragraph (4) are met.

(2) Definitions

For purposes of this subsection—

(A) Qualified medical child support order

The term "qualified medical child support order" means a medical child support order—

(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

(B) Medical child support order

The term "medical child support order" means any judgment, decree, or order (including approval of a settlement agreement) which—

(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

(ii) is made pursuant to a law relating to medical child support described in section 1908 of the Social Security Act [42 U.S.C. 1396g–1] (as added by section 13822 [As in original. Probably should be section 13623] of the Omnibus Budget Reconciliation Act of 1993) with respect to a group health plan,

if such judgment, decree, or order

(I) is issued by a court of competent jurisdiction or

(II) is issued through an administrative process established under State law and has the force and effect of law under applicable State law. For purposes of this subparagraph, an administrative notice which is issued pursuant to an administrative

process referred to in subclause (II) of the preceding sentence and which has the effect of an order described in clause (i) or (ii) of the preceding sentence shall be treated as such an order.

(C) Alternate recipient

The term "alternate recipient" means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

(D) Child

The term "child" includes any child adopted by, or placed for adoption with, a participant of a group health plan.

(3) Information to be included in qualified order

A medical child support order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of a State or a political subdivision thereof may be substituted for the mailing address of any such alternate recipient,

(B) a reasonable description of the type of coverage to be provided to each such alternate recipient, or the manner in which such type of coverage is to be determined, and

(C) the period to which such order applies.

(4) Restriction on new types or forms of benefits

A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act [42 U.S.C. 1396g–1] (as added by section 13822 [As in original. Probably should be section 13623] of the Omnibus Budget Reconciliation Act of 1993).

(5) Procedural requirements

(A) Timely notifications and determinations

In the case of any medical child support order received by a group health plan—

(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

(B) Establishment of procedures for determining qualified status of orders

Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures—

(i) shall be in writing,

(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

(C) National Medical Support Notice deemed to be a qualified medical child support order

(i) In general If the plan administrator of a group health plan which is maintained by the employer of a noncustodial parent of a child or to which such an employer contributes receives an appropriately completed National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 in the case of such child, and the Notice meets the requirements of paragraphs (3) and (4), the Notice shall be deemed to be a qualified medical child support order in the case of such child.

(ii) Enrollment of child in plan In any case in which an appropriately completed National Medical Support Notice is issued in the case of a child of a participant under a group health plan who is a noncustodial parent of the child, and the Notice is deemed under clause (i) to be a qualified medical child support order, the plan administrator, within 40 business days after the date of the Notice, shall—

(I) notify the State agency issuing the Notice with respect to such child whether coverage of the child is available under the terms of the plan and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent (or by the official of a State or political subdivision thereof substituted for the name of such child pursuant to paragraph (3)(A)) to effectuate the coverage; and

(II) provide to the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage.

(iii) Rule of construction[.] Nothing in this subparagraph shall be construed as requiring a group health plan, upon receipt of a National Medical Support Notice, to provide benefits under the plan (or eligibility for such benefits) in addition to benefits (or eligibility for benefits) provided under the terms of the plan as of immediately before receipt of such Notice.

(6) Actions taken by fiduciaries

If a plan fiduciary acts in accordance with part 4 of this subtitle in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

(7) Treatment of alternate recipients

(A) Treatment as beneficiary generally

A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this chapter.

(B) Treatment as participant for purposes of reporting and disclosure requirements

A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1 of this subtitle.

(8) Direct provision of benefits provided to alternate recipients

Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

(9) Payment to State official treated as satisfaction of plan's obligation to make payment to alternate recipient

Payment of benefits by a group health plan to an official of a State or a political subdivision thereof whose name and address have been substituted for the address of an alternate recipient in a qualified medical child support order, pursuant to paragraph (3)(A), shall be treated, for purposes of this subchapter, as payment of benefits to the alternate recipient.

(b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for Medicaid benefits

(1) Compliance by plans with assignment of rights

A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] pursuant to section 1912(a)(1)(A) of such Act [42 U.S.C. 1396k(a)(1)(A)] (as in effect on August 10, 1993).

(2) Enrollment and provision of benefits without regard to Medicaid eligibility

A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical assistance under a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] will not be taken into account.

(3) Acquisition by States of rights of third parties

A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

(c) Group health plan coverage of dependent children in cases of adoption

(1) Coverage effective upon placement for adoption

In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

(2) Restrictions based on preexisting conditions at time of placement for adoption prohibited

A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) Definitions

For purposes of this subsection—

(A) Child

The term "child" means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

(B) Placement for adoption

The term "placement", or being "placed", for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(d) Continued coverage of costs of a pediatric vaccine under group health plans

A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [42 U.S.C. 1396s(h)(6)] as amended by section 13830 [As in original. Probably should be section 13631] of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

(e) Regulations

Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.

(Pub. L. 93–406, title I, § 609, as added Pub. L. 103–66, title IV, § 4301(a), Aug. 10, 1993, 107 Stat. 371; amended Pub. L. 104–193, title III, § 381(a), Aug. 22, 1996, 110 Stat. 2257; Pub. L. 105–33, title V, §§ 5611(a), (b), 5612 (a), 5613 (a), (b), Aug. 5, 1997, 111 Stat. 647, 648; Pub. L. 105–200, title IV, § 401(d), (h)(2)(A)(iii), (B), (3)(A), July 16, 1998, 112 Stat. 662, 668.)

Title 42.
The Public Health & Welfare

Chapter 7.
Social Security

Subchapter XIX.
Grants to States for Medical Assistance Programs

§ 1396g-1. Required laws relating to medical child support

(a) In general

The laws relating to medical child support, which a State is required to have in effect under section 1396a(a)(60) of this title, are as follows:

(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

(A) the child was born out of wedlock,

(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

(C) the child does not reside with the parent or in the insurer's service area.

(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless—

(i) the employer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 1673(b) of title 15), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this subchapter,

(B) has received payment from a third party for the costs of such services to such child, but

(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services, to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this subchapter, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(b) "Insurer" defined

For purposes of this section, the term "insurer" includes a group health plan, as defined in section 1167(1) of title 29, a health maintenance organization, and an entity offering a service benefit plan.

(Aug. 14, 1935, ch. 531, title XIX, § 1908A, formerly § 1908, as added Pub. L. 103–66, title XIII, § 13623(b), Aug. 10, 1993, 107 Stat. 633, renumbered § 1908A, Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(y)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398.)

Chapter 121.
International Child Abduction Remedies Act

Prevention of Child Abduction Partnership Act

§ 11601. Transferred to 22 U.S.C § 9001.

§ 11602. Transferred to 22 U.S.C § 9002.

§ 11603. Transferred to 22 U.S.C § 9003.

§ 11604. Transferred to 22 U.S.C § 9004.

§ 11605. Transferred to 22 U.S.C § 9005.

§ 11606. Transferred to 22 U.S.C § 9006.

§ 11607. Transferred to 22 U.S.C § 9007.

§ 11608. Transferred to 22 U.S.C § 9008.

§ 11608a. Transferred to 22 U.S.C § 9009.

§ 11609. Transferred to 22 U.S.C § 9010.

§ 11610. Transferred to 22 U.S.C § 9011.

Hague Conventions and Protocol

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

(*Concluded 25 October 1980*)

The States signatory to the present Convention.

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody.

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions—

Chapter I—Scope of the Convention

Article 1

The objects of the present Convention are—

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where—

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) If at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention—

(a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.

(b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Chapter II—Central Authorities

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States. States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

Chapter III—Return of Children

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative

decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

Chapter IV—Rights of Access

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V—General Provisions

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

Chapter VI—Final Clauses

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

Convention of 19 October 1996
on
Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measure for the Protection of Children

(*Concluded 19 October 1996*)

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions -

Chapter I—Scope of the Convention

Article 1

(1) The objects of the present Convention are -

a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

b) to determine which law is to be applied by such authorities in exercising their jurisdiction;

c) to determine the law applicable to parental responsibility;

d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;

e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

The measures referred to in Article 1 may deal in particular with -

a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;

b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;

c) guardianship, curatorship and analogous institutions;

d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;

f) the supervision by a public authority of the care of a child by any person having charge of the child;

g) the administration, conservation or disposal of the child's property.

Article 4

The Convention does not apply to -

a) the establishment or contesting of a parent-child relationship;

b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

c) the name and forenames of the child;

d) emancipation;

e) maintenance obligations;

f) trusts or succession;

g) social security;

h) public measures of a general nature in matters of education or health;

i) measures taken as a result of penal offences committed by children;

j) decisions on the right of asylum and on immigration.

Chapter II—Jurisdiction

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

(2) The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

a) a State of which the child is a national,

b) a State in which property of the child is located,

c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

d) a State with which the child has a substantial connection.

(3) The authorities concerned may proceed to an exchange of views.

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

(2) The authorities concerned may proceed to an exchange of views.

(3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10

(1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

(2) The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 12

(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 13

(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

(2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

Chapter III—Applicable Law

Article 15

(1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

(2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

(3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Article 19

(1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

(2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

(1) In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

(2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

Chapter IV—Recognition and Enforcement

Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused -

a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f) if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Chapter V—Co-operation

Article 29

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

(2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to -

a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

a) provide a report on the situation of the child;

b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

(1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

(2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

(1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

(2) The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

(3) An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

(4) Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

(1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

(2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Chapter VI—General Provisions

Article 40

(1) The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

(2) The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

(3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

(1) The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

(2) The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units -

(1) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

(2) any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

(3) any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

(4) any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

(5) any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

(6) any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

(7) any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

(8) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

(9) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

(10) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply -

a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply -

a) if there are rules in force in such a State identifying which among such laws applies, that law applies;

b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

(1) This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

(3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

(4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

(1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

(2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

(1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

(2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

(1) A Contracting State may, in accordance with Article 60,

a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

(2) The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

Chapter VII—Final Clauses

Article 57

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

(1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

(2) Thereafter the Convention shall enter into force -

a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following -

a) the signatures, ratifications, acceptances and approvals referred to in Article 57;

b) the accessions and objections raised to accessions referred to in Article 58;

c) the date on which the Convention enters into force in accordance with Article 61;

d) the declarations referred to in Articles 34, paragraph 2, and 59;

e) the agreements referred to in Article 39;

f) the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;

g) the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

Convention of 23 November2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

(*Concluded 23 November 2007*)

The States signatory to the present Convention,

Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,

Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,

Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,

Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,

Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,

- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,

- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and

- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions -

Chapter I—Object, Scope and Definitions

Article 1
Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by -

a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;

b) making available applications for the establishment of maintenance decisions;

c) providing for the recognition and enforcement of maintenance decisions; and

d) requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2
Scope

(1) This Convention shall apply -

a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;

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) Any 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 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the 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.

(4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.

Article 3
Definitions

For the purposes of this Convention -

a) "creditor" means an individual to whom maintenance is owed or is alleged to be owed;

b) "debtor" means an individual who owes or who is alleged to owe maintenance;

c*)* "legal assistance" means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;

d) "agreement in writing" means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;

e) "maintenance arrangement" means an agreement in writing relating to the payment of maintenance which -

i) has been formally drawn up or registered as an authentic instrument by a competent authority; or

ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;

f) "vulnerable person" means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

Chapter II—Administrative Co-operation

Article 4
Designation of Central Authorities

(1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

(3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 5
General functions of Central Authorities

Central Authorities shall -

a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;

b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

Article 6

Specific Functions of Central Authorities

(1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall -

a) transmit and receive such applications;

b) initiate or facilitate the institution of proceedings in respect of such applications.

(2) In relation to such applications they shall take all appropriate measures -

a) where the circumstances require, to provide or facilitate the provision of legal assistance;

b) to help locate the debtor or the creditor;

c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;

d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;

e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;

f) to facilitate the collection and expeditious transfer of maintenance payments;

g) to facilitate the obtaining of documentary or other evidence;

h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;

i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;

j) to facilitate service of documents.

(3) The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.

(4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

Article 7
Requests for Specific Measures

(1) A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) *b), c), g), h), i)* and *j)* when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated.

(2) A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

Article 8
Central Authority Costs

(1) Each Central Authority shall bear its own costs in applying this Convention.

(2) Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.

(3) The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

Chapter III—Applications through Central Authorities

Article 9
Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

Article 10
Available Applications

(1) The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention -

a) recognition or recognition and enforcement of a decision;

b) enforcement of a decision made or recognised in the requested State;

c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;

d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22 *b)* or *e)*;

e) modification of a decision made in the requested State;

f) modification of a decision made in a State other than the requested State.

(2) The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision -

a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;

b) modification of a decision made in the requested State;

c) modification of a decision made in a State other than the requested State.

(3) Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 *c)* to *f)* and 2 *b)* and *c)* shall be subject to the jurisdictional rules applicable in the requested State.

Article 11
Application Contents

(1) All applications under Article 10 shall as a minimum include -

a) a statement of the nature of the application or applications;

b) the name and contact details, including the address and date of birth of the applicant;

c) the name and, if known, address and date of birth of the respondent;

d) the name and date of birth of any person for whom maintenance is sought;

e) the grounds upon which the application is based;

f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;

g) save in an application under Article 10(1) a) and (2) a), any information or document specified by declaration in accordance with Article 63 by the requested State;

h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.

(2) As appropriate, and to the extent known, the application shall in addition in particular include -

a) the financial circumstances of the creditor;

b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;

c) any other information that may assist with the location of the respondent.

(3) The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) a) and (2) a), the application shall be accompanied only by the documents listed in Article 25.

(4) An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

Article 12
Transmission, Receipt and Processing of Applications and Cases through Central Authorities

(1) The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.

(2) The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1) *a), b)* and *d)* and (3) *b)* and 30(3).

(3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

(4) Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

(5) Requesting and requested Central Authorities shall keep each other informed of -

a) the person or unit responsible for a particular case;

b) the progress of the case,

and shall provide timely responses to enquiries.

(6) Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

(7) Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

(8) A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.

(9) The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

Article 13
Means of Communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

Article 14
Effective Access to Procedures

(1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.

(2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.

(3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.

(4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

(5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15
Free Legal Assistance for Child Support Applications

(1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

(2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) *a)* and *b)* and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

Article 16
Declaration to Permit Use of Child-Centred Means Test

(1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) a) and b) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

(2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.

(3) An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

(4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

Article 17
Applications Not Qualifying Under Article 15 or Article 16

In the case of all applications under this Convention other than those under Article 15 or Article 16 -

a) the provision of free legal assistance may be made subject to a means or a merits test;

b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

Chapter IV—Restrictions on Bringing Proceedings

Article 18
Limit on proceedings

(1) Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.

(2) Paragraph 1 shall not apply -

a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;

b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or

d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

Chapter V—Recognition and Enforcement

Article 19
Scope of the Chapter

(1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term "decision" also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

(2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.

(3) For the purpose of paragraph 1, "administrative authority" means a public body whose decisions, under the law of the State where it is established -

a) may be made the subject of an appeal to or review by a judicial authority; and

b) have a similar force and effect to a decision of a judicial authority on the same matter.

(4) This Chapter also applies to maintenance arrangements in accordance with Article 30.

(5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

Article 20
Bases for Recognition and Enforcement

(1) A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if -

a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;

b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;

d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;

e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or

f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

(2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 *c), e)* or *f).*

(3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.

(4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) *b).*

(5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 *c), e)* or *f)* shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.

(6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

Article 21
Severability and Partial Recognition and Enforcement

(1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.

(2) Partial recognition or enforcement of a decision can always be applied for.

Article 22
Grounds for Refusing Recognition and Enforcement

Recognition and enforcement of a decision may be refused if -

a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed;

b) the decision was obtained by fraud in connection with a matter of procedure;

c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;

d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;

e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin-

i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or

f) the decision was made in violation of Article 18.

Article 23
Procedure on an Application for Recognition and Enforcement

(1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.

(2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either -

a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or

b) if it is the competent authority take such steps itself.

(3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.

(4) A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.

(5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.

(6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

(7) A challenge or appeal may be founded only on the following -

a) the grounds for refusing recognition and enforcement set out in Article 22;

b) the bases for recognition and enforcement under Article 20;

c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) *a), b)* or *d)* or (3) *b)*.

(8) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

(9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.

(10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 24
Alternative Procedure on an Application for Recognition and Enforcement

(1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.

(2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either -

a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or

b) if it is the competent authority, take such a decision itself.

(3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.

(4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 *a)*, *c)* and *d)* of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) *c)* if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.

(5) A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

(6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25
Documents

(1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following -

a) a complete text of the decision;

b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;

c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;

d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;

e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;

f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.

(2) Upon a challenge or appeal under Article 23(7) *c)* or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly -

a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;

b) by the applicant, where the request has been made directly to a competent authority of the State addressed.

(3) A Contracting State may specify in accordance with Article 57 -

a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;

b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or

c) that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26
Procedure on an Application for Recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27
Findings of Fact

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28
No Review of the Merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29
Physical Presence of the Child or the Applicant Not Required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30
Maintenance Arrangements

(1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.

(2) For the purpose of Article 10(1) *a)* and *b)* and (2) *a)*, the term "decision" includes a maintenance arrangement.

(3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following -

a) a complete text of the maintenance arrangement; and

b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.

(4) Recognition and enforcement of a maintenance arrangement may be refused if -

a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;

b) the maintenance arrangement was obtained by fraud or falsification;

c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

(5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that -

a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 *a)*;

b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following -

i) the grounds for refusing recognition and enforcement set out in paragraph 4;

ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;

c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 *a)* of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.

(6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

(7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.

(8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31
Decisions Produced by the Combined Effect of Provisional and Confirmation Orders

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State ("the confirming State") confirming the provisional order -

a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;

b) the requirements of Article 22 *e)* shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;

c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and

d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

Chapter VI—Enforcement by the State Addressed

Article 32
Enforcement Under Internal Law

(1) Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.

(2) Enforcement shall be prompt.

(3) In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.

(4) Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.

(5) Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33
Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34
Enforcement Measures

(1) Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

(2) Such measures may include -

a) wage withholding;

b) garnishment from bank accounts and other sources;

c) deductions from social security payments;

d) lien on or forced sale of property;

e) tax refund withholding;

f) withholding or attachment of pension benefits;

g) credit bureau reporting;

h) denial, suspension or revocation of various licenses (for example, driving licenses);

i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

Article 35
Transfer of Funds

(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

Chapter VII—Public Bodies

Article 36
Public Bodies as Applicants

(1) For the purposes of applications for recognition and enforcement under Article 10(1) *a)* and *b)* and cases covered by Article 20(4), "creditor" includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

(2) The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

(3) A public body may seek recognition or claim enforcement of -

a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;

b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.

(4) The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor.

Chapter VIII—General Provisions

Article 37
Direct Requests to Competent Authorities

(1) The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seise directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.

(2) Articles 14(5) and 17 *b)* and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.

(3) For the purpose of paragraph 2, Article 2(1) *a)* shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

Article 38
Protection of Personal Data

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 39
Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

Article 40
Non-disclosure of Information

(1) An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person.

(2) A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.

(3) Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

Article 41
No legalisation

No legalisation or similar formality may be required in the context of this Convention.

Article 42
Power of Attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 43
Recovery of Costs

(1) Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.

(2) A State may recover costs from an unsuccessful party.

(3) For the purposes of an application under Article 10(1) *b)* to recover costs from an unsuccessful party in accordance with paragraph 2, the term "creditor" in Article 10(1) shall include a State.

(4) This Article shall be without prejudice to Article 8.

Article 44
Language Requirements

(1) Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.

(2) A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.

(3) Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

Article 45
Means and Costs of Translation

(1) In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation into an official language of the requested State.

(2) The cost of translation arising from the application of paragraph 1 shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

(3) Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

Article 46
Non-unified Legal Systems—Interpretation

(1) In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units -

a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

b) any reference to a decision established, recognised, recognised and enforced, enforced or modified in that State shall be construed as referring, where appropriate, to a decision established, recognised, recognised and enforced, enforced or modified in the relevant territorial unit;

c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;

d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;

e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in the relevant territorial unit;

f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;

g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit;

h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit;

i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;

j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit.

(2) This Article shall not apply to a Regional Economic Integration Organisation.

Article 47
Non-unified Legal Systems—Substantive Rules

(1) A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

(2) A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

(3) This Article shall not apply to a Regional Economic Integration Organisation.

Article 48
Co-ordination with Prior Hague Maintenance Conventions

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children in so far as their scope of application as between such States coincides with the scope of application of this Convention.

Article 49

Co-ordination with the 1956 New York Convention

In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

Article 50
Relationship with Prior Hague Conventions on Service of Documents and Taking of Evidence

This Convention does not affect the Hague Convention of 1 March 1954 on civil procedure, the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

Article 51
Co-ordination of Instruments and Supplementary Agreements

(1) This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention.

(2) Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

(3) Paragraphs 1 and 2 shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned.

(4) This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention.

Article 52
Most Effective Rule

(1) This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for -

a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 *f)* of the Convention;

b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;

c) more beneficial legal assistance than that provided for under Articles 14 to 17; or

d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.

(2) This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 *a)* to *c).* However, as regards simplified, more expeditious procedures referred to in paragraph 1 *b),* they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal.

Article 53
Uniform Interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 54
Review of Practical Operation of the Convention

(1) The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention and to encourage the development of good practices under the Convention.

(2) For the purpose of such review, Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

Article 55
Amendment of Forms

(1) The forms annexed to this Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.

(2) Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.

(3) During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

Article 56
Transitional Provisions

(1) The Convention shall apply in every case where -

a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;

b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.

(2) With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recognition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.

(3) The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

Article 57
Provision of Information Concerning Laws, Procedures and Services

(1) A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with -

a) a description of its laws and procedures concerning maintenance obligations;

b) a description of the measures it will take to meet the obligations under Article 6;

c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;

d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;

e) any specification referred to in Article 25(1) *b)* and (3).

(2) Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law.

(3) Information shall be kept up to date by the Contracting States.

Chapter IX—Final Provisions

Article 58
Signature, Ratification and Accession

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twenty-First Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

(3) Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1).

(4) The instrument of accession shall be deposited with the depositary.

(5) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the 12 months after the date of the notification referred to in Article 65. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59
Regional Economic Integration Organisations

(1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention.

(2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

(3) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation.

(4) For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3.

(5) Any reference to a "Contracting State" or "State" in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 3, any reference to a "Contracting State" or "State" in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate.

Article 60
Entry into Force

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance or approval referred to in Article 58.

(2) Thereafter the Convention shall enter into force -

a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval;

b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);

c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 61
Declarations with Respect to Non-unified Legal Systems

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare in accordance with Article 63 that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.

(4) This Article shall not apply to a Regional Economic Integration Organisation.

Article 62
Reservations

(1) Any Contracting State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in paragraph 2.

(4) Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2).

Article 63
Declarations

(1) Declarations referred to in Articles 2(3), 11(1) *g)*, 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

(2) Declarations, modifications and withdrawals shall be notified to the depositary.

(3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

(4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

Article 64
Denunciation

(1) A Contracting State to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a multi-unit State to which the Convention applies.

(2) The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 65

Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following -

a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59;

b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59;

c) the date on which the Convention enters into force in accordance with Article 60;

d) the declarations referred to in Articles 2(3), 11(1) *g)*, 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1);

e) the agreements referred to in Article 51(2);

f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2);

g) the denunciations referred to in Article 64.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 23rd day of November 2007, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.

ANNEX 1

Transmittal Form Under Article 12(2)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.

1. Requesting Central Authority	2. Contact person in requesting State
a. Address	a. Address (if different)
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Reference number	e. Language(s)

3. Requested Central Authority .....

Address .....
.....

4. Particulars of the applicant

a. Family name(s): .....
b. Given name(s): .....
c. Date of birth: .....(dd/mm/yyyy)

or

a. Name of the public body: .....
.....

5. Particulars of the person(s) for whom maintenance is sought or payable

a. ☐ The person is the same as the applicant named in point 4

b. i. Family name(s): .....
Given name(s): .....
Date of birth: .....(dd/mm/yyyy)

ii. Family ame(s): .....
Given name(s): .....

Date of birth: .....(dd/mm/yyyy)

iii. Family name(s): …….....
Given name(s): …….....
Date of birth: .....(dd/mm/yyyy)

6. Particulars of the debtor
a. ☐ The person is the same as the applicant named in point 4

b. Family name(s): …….....
c. Given name(s): …….....
d. Date of birth: …….....(dd/mm/yyyy)

7. This transmittal form concerns and is accompanied by an application under:

☐ Article 10(1) *a)*
☐ Article 10(1) *b)*
☐ Article 10(1) *c)*
☐ Article 10(1) *d)*
☐ Article 10(1) *e)*
☐ Article 10(1) *f)*
☐ Article 10(2) *a)*
☐ Article 10(2) *b)*
☐ Article 10(2) *c)*

8. The following documents are appended to the application:

a. For the purpose of an application under Article 10(1) *a)* and:

In accordance with Article 25:

☐ Complete text of the decision (Art. 25(1) a))
☐ Abstract or extract of the decision drawn up by the competent authority of the State of origin (Art. 25(3) b)) (if applicable)
☐ Document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements (Art. 25(1) b)) or if Article 25(3) c) is applicable
☐ If the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law (Art. 25(1) c))
☐ Where necessary, a document showing the amount of any arrears and the date such amount was calculated (Art. 25(1) d))
☐ Where necessary, a document providing the information necessary to make appropriate calculations in case of a decision providing for automatic adjustment by indexation (Art. 25(1) e))
☐ Where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin (Art. 25(1) f))

In accordance with Article 30(3):

☐ Complete text of the maintenance arrangement (Art. 30(3) *a)*)
☐ A document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin (Art. 30(3) *b)*)
☐ Any other documents accompanying the application (*e.g.*, if required, a document for the purpose of Art. 36(4)):

.....
.....

b. For the purpose of an application under Article 10(1) *b), c), d), e), f)* and (2) *a), b)* or *c),* the following number of supporting documents (excluding the transmittal form and the application itself) in accordance with Article 11(3):

☐ Article 10(1) *b)* .....
☐ Article 10(1) *c)* .....
☐ Article 10(1) *d)* .....
☐ Article 10(1) *e)* .....
☐ Article 10(1) *f)* .....
☐ Article 10(2) *a)* .....
☐ Article 10(2) *b)* .....
☐ Article 10(2) *c)* .....

Name: .....(in block letters) Date: .....
Authorised representative of the Central Authority (dd/mm/yyyy)

ANNEX 2

Acknowledgement Form Under Article 12(3)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

☐ *A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.*

1. Requesting Central Authority	2. Contact person in requesting State
a. Address	a. Address (if different)
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Reference number	e. Language(s)

3. Requesting Central Authority .....
Contact person …….

Address .....
.....

4. The requested Central Authority acknowledges receipt on ..... (dd/mm/yyyy) of the transmittal form from the requesting Central Authority (reference number .....; dated ..... (dd/mm/yyyy)) concerning the following application under:

☐ Article 10(1) *a)*
☐ Article 10(1) *b*
☐ Article 10(1) *c)*
☐ Article 10(1) *d)*
☐ Article 10(1) *e)*
☐ Article 10(1) *f)*
☐ Article 10(2) *a)*
☐ Article 10(2) *b)*
☐ Article 10(2) *c)*

Family name(s) of applicant: …….....

Family name(s) of the person(s) for whom
maintenance is sought or payable: .....
.....
.....

Family name(s) of debtor: .....

5. Initial steps taken by the requested Central Authority:

☐ The file is complete and is under consideration

☐ See attached status of application report
☐ Status of application report will follow

☐ Please provide the following additional information and / or documentation:
.....
.....

☐ The requested Central Authority refuses to process this application as it is manifest that the requirements of the Convention are not fulfilled (Art. 12(8)). The reasons:

☐ are set out in an attached document
☐ will be set out in a document to follow

The requested Central Authority requests that the requesting Central Authority inform it of any change in the status of the application.

Name: .....(in block letters) Date: .....
Authorised representative of the Central Authority (dd/mm/yyyy)

Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

(*Concluded 23 November 2007*)

The States signatory to this Protocol,

Desiring to establish common provisions concerning the law applicable to maintenance obligations,

Wishing to modernise the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children and the *Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations*,

Wishing to develop general rules on applicable law that may supplement the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*,

Have resolved to conclude a Protocol for this purpose and have agreed upon the following provisions –

Article 1
Scope

(1) This Protocol shall determine the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child regardless of the marital status of the parents.

(2) Decisions rendered in application of this Protocol shall be without prejudice to the existence of any of the relationships referred to in paragraph 1.

Article 2
Universal Application

This Protocol applies even if the applicable law is that of a non-Contracting State.

Article 3
General Rule on Applicable Law

(1) Maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise.

(2) In the case of a change in the habitual residence of the creditor, the law of the State of the new habitual residence shall apply as from the moment when the change occurs.

Article 4
Special Rules Favouring Certain Creditors

(1) The following provisions shall apply in the case of maintenance obligations of -

a) parents towards their children;

b) persons, other than parents, towards persons who have not attained the age of 21 years, except for obligations arising out of the relationships referred to in Article 5; and

c) children towards their parents.

(2) If the creditor is unable, by virtue of the law referred to in Article 3, to obtain maintenance from the debtor, the law of the forum shall apply.

(3) Notwithstanding Article 3, if the creditor has seised the competent authority of the State where the debtor has his habitual residence, the law of the forum shall apply. However, if the creditor is unable, by virtue of this law, to obtain maintenance from the debtor, the law of the State of the habitual residence of the creditor shall apply.

(4) If the creditor is unable, by virtue of the laws referred to in Article 3 and paragraphs 2 and 3 of this Article, to obtain maintenance from the debtor, the law of the State of their common nationality, if there is one, shall apply.

Article 5
Special Rule with Respect to Spouses and Ex-spouses

In the case of a maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled, Article 3 shall not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State shall apply.

Article 6
Special Rule on Defence

In the case of maintenance obligations other than those arising from a parent-child relationship towards a child and those referred to in Article 5, the debtor may contest a claim from the creditor on the ground that there is no such obligation under both the law of the State of the habitual residence of the debtor and the law of the State of the common nationality of the parties, if there is one.

Article 7
Designation of the Law Applicable for the Purpose of a Particular Proceeding

(1) Notwithstanding Articles 3 to 6, the maintenance creditor and debtor for the purpose only of a particular proceeding in a given State may expressly designate the law of that State as applicable to a maintenance obligation.

(2) A designation made before the institution of such proceedings shall be in an agreement, signed by both parties, in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference.

Article 8
Designation of the Applicable Law

(1) Notwithstanding Articles 3 to 6, the maintenance creditor and debtor may at any time designate one of the following laws as applicable to a maintenance obligation -

a) the law of any State of which either party is a national at the time of the designation;

b) the law of the State of the habitual residence of either party at the time of designation;

c) the law designated by the parties as applicable, or the law in fact applied, to their property regime;

d) the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.

(2) Such agreement shall be in writing or recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference, and shall be signed by both parties.

(3) Paragraph 1 shall not apply to maintenance obligations in respect of a person under the age of 18 years or of an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interest.

(4) Notwithstanding the law designated by the parties in accordance with paragraph 1, the question of whether the creditor can renounce his or her right to maintenance shall be determined by the law of the State of the habitual residence of the creditor at the time of the designation.

(5) Unless at the time of the designation the parties were fully informed and aware of the consequences of their designation, the law designated by the parties shall not apply where the application of that law would lead to manifestly unfair or unreasonable consequences for any of the parties.

Article 9
"Domicile" Instead of "Nationality"

A State which has the concept of "domicile" as a connecting factor in family matters may inform the Permanent Bureau of the Hague Conference on Private International Law that, for the purpose of cases which come before its authorities, the word "nationality" in Articles 4 and 6 is replaced by "domicile" as defined in that State.

Article 10
Public Bodies

The right of a public body to seek reimbursement of a benefit provided to the creditor in place of maintenance shall be governed by the law to which that body is subject.

Article 11
Scope of the Applicable Law

The law applicable to the maintenance obligation shall determine *inter alia* -

a) whether, to what extent and from whom the creditor may claim maintenance;

b) the extent to which the creditor may claim retroactive maintenance;

c) the basis for calculation of the amount of maintenance, and indexation;

d) who is entitled to institute maintenance proceedings, except for issues relating to procedural capacity and representation in the proceedings;

e) prescription or limitation periods;

f) the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor in place of maintenance.

Article 12
Exclusion of *Renvoi*

In the Protocol, the term "law" means the law in force in a State other than its choice of law rules.

Article 13
Public Policy

The application of the law determined under the Protocol may be refused only to the extent that its effects would be manifestly contrary to the public policy of the forum.

Article 14
Determining the Amount of Maintenance

Even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor as well as any compensation which the creditor was awarded in place of periodical maintenance payments shall be taken into account in determining the amount of maintenance.

Article 15
Non-application of the Protocol to Internal Conflicts

(1) A Contracting State in which different systems of law or sets of rules of law apply to maintenance obligations shall not be bound to apply the rules of the Protocol to conflicts solely between such different systems or sets of rules of law.

(2) This Article shall not apply to a Regional Economic Integration Organisation.

Article 16

Non-unified Legal Systems—Territorial

(1) In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Protocol apply in different territorial units -

a) any reference to the law of a State shall be construed as referring, where appropriate, to the law in force in the relevant territorial unit;

b) any reference to competent authorities or public bodies of that State shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;

c) any reference to habitual residence in that State shall be construed as referring, where appropriate, to habitual residence in the relevant territorial unit;

d) any reference to the State of which two persons have a common nationality shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the maintenance obligation is most closely connected;

e) any reference to the State of which a person is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the person has the closest connection.

(2) For the purpose of identifying the applicable law under the Protocol in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Protocol, the following rules apply -

a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b) in the absence of such rules, the law of the relevant territorial unit as defined in paragraph 1 applies.

(3) This Article shall not apply to a Regional Economic Integration Organisation.

Article 17
Non-unified Legal Systems—Inter-personal Conflicts

For the purpose of identifying the applicable law under the Protocol in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Protocol, any reference to the law of such State shall be construed as referring to the legal system determined by the rules in force in that State.

Article 18
Co-ordination with Prior Hague Maintenance Conventions

As between the Contracting States, this Protocol replaces the *Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations* and the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children.

Article 19
Co-ordination with Other Instruments

(1) This Protocol does not affect any other international instrument to which Contracting States are or become Parties and which contains provisions on matters governed by the Protocol, unless a contrary declaration is made by the States Parties to such instrument.

(2) Paragraph 1 also applies to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 20
Uniform Interpretation

In the interpretation of this Protocol, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 21

Review of the Practical Operation of the Protocol

(1) The Secretary General of the Hague Conference on Private International Law shall as necessary convene a Special Commission in order to review the practical operation of the Protocol.

(2) For the purpose of such review Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of case law concerning the application of the Protocol.

Article 22
Transitional Provisions

This Protocol shall not apply to maintenance claimed in a Contracting State relating to a period prior to its entry into force in that State.

Article 23
Signature, ratification and accession

(1) This Protocol is open for signature by all States.

(2) This Protocol is subject to ratification, acceptance or approval by the signatory States.

(3) This Protocol is open for accession by all States.

(4) Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Protocol.

Article 24
Regional Economic Integration Organisations

(1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by the Protocol may equally sign, accept, approve or accede to the Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Protocol.

(2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by the Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

(3) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare, in accordance with Article 28, that it exercises competence over all the matters governed by the Protocol and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by the Protocol by virtue of the signature, acceptance, approval or accession of the Organisation.

(4) For the purposes of the entry into force of the Protocol, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration under paragraph 3.

(5) Any reference to a "Contracting State" or "State" in the Protocol applies equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation under paragraph 3, any reference to a "Contracting State" or "State" in the Protocol applies equally to the relevant Member States of the Organisation, where appropriate.

Article 25
Entry into Force

(1) The Protocol shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 23.

(2) Thereafter the Protocol shall enter into force -

a) for each State or each Regional Economic Integration Organisation referred to in Article 24 subsequently ratifying, accepting or approving the Protocol or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which the Protocol has been extended in accordance with Article 26, on the first day of the month following the expiration of three months after notification of the declaration referred to in that Article.

Article 26
Declarations with Respect to Non-unified Legal Systems

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare in accordance with Article 28 that the Protocol shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Protocol applies.

(3) If a State makes no declaration under this Article, the Protocol is to extend to all territorial units of that State.

(4) This Article shall not apply to a Regional Economic Integration Organisation.

Article 27
Reservations

No reservations may be made to this Protocol.

Article 28
Declarations

(1) Declarations referred to in Articles 24(3) and 26(1) may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

(2) Declarations, modifications and withdrawals shall be notified to the depositary.

(3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Protocol for the State concerned.

(4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

Article 29
Denunciation

(1) A Contracting State to this Protocol may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a State with a non-unified legal system to which the Protocol applies.

(2) The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 30
Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 23 and 24 of the following -

a) the signatures and ratifications, acceptances, approvals and accessions referred to in Articles 23 and 24;

b) the date on which this Protocol enters into force in accordance with Article 25;

c) the declarations referred to in Articles 24(3) and 26(1);

d) the denunciations referred to in Article 29.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at The Hague, on the 23rd day of November 2007, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.