Stemming the Modification of Child-Support Orders by Responding Courts: A Proposal to Amend RURESA's Antisupersession Clause

Jane H. Gorham
University of Michigan Law School

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Before 1950, a custodial parent had no effective mechanism to enforce a child-support order against a non-custodial parent residing in another state.\(^1\) Child-support orders generally were not accorded full faith and credit in foreign jurisdictions because they were modifiable, and therefore were not final judgments.\(^2\) Thus, even if the custodial parent were willing and able to spend the time, money, and energy to bring suit in the state in which the non-custodial parent resided, she\(^3\) could not get relief. Consequently, a parent wishing to avoid child-support obligations could escape the jurisdiction of the court by moving.\(^4\) Not surprisingly, this caused great hardship to custodial parents who counted on child-support payments to support their children. In 1949, the estimated bill for public assistance to families so deserted was $205 million.\(^5\)

In 1950, the National Conference of Commissioners on Uniform State Laws promulgated, and the American Bar Association approved, the Uniform Reciprocal Enforcement of
Support Act (URES A), popularly known as the "Runaway Pappy Act." URES A was amended in 1952, 1958, and adopted in revised form in 1968. The revised version made substantial changes to URES A, and in that form it is known as the Revised Uniform Reciprocal Enforcement of Support Act (RURES A). RURES A provides custodial parents with a civil enforcement mechanism, a civil registration procedure, and a criminal extradition procedure so that they can force a parent who has left the state to comply with child-support orders. The Act won widespread acceptance; each of the fifty states and four territories has adopted it in some form.

7. Elrod, supra note 6, at 57.
9. For a summary of these changes, see id. prefatory note, 9B U.L.A. 382-83.
14. I will refer to both URES A and RURES A as "the Act" when my argument applies to both versions of the uniform law. When there is a reason to refer to a particular version of the Act, I will refer to either URES A, RURES A, or an amended version adopted by a particular state.
More recently, the federal government has stepped in and required states to enact a variety of child-support enforcement measures to improve collection rates. States have cooperated because they have a financial interest in collecting child-support payments owed to welfare recipients. Many of these measures have important interstate applications, which have enhanced or replaced the Act as a means of enforcing child-support orders against obligors residing in other jurisdictions. By bringing resources available only at the federal level to bear upon this problem, as well as using financial power to persuade and permit states to improve their enforcement measures, the federal government has made significant progress toward relieving the burden that unpaid child support places on custodial parents and public-assistance programs.

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19. See infra Part II.

20. The Office of Child Support Enforcement reported that in fiscal year 1987, federal enforcement programs collected $3.9 billion of child support owed—a twenty percent increase over the amount collected in 1986. 12 OCSE REPORT, supra note 17, at 7. Almost $1.4 billion was for families receiving public assistance, while nearly $2.6 billion was collected for nonwelfare families. Id. at 9. Since its inception, the
The Act authorizes a court in the state where the obligated parent has moved to assist in enforcing support obligations. The court in the state where the custodial parent lives (the initiating court) and the court in the state where the absent parent resides (the responding court) cooperate in this effort.\textsuperscript{21} Since federal efforts began facilitating the enforcement of existing child-support orders, the focus in cases brought under the Act has shifted to the problems arising when the second court enters an award for an amount different from the original order. Courts and legislatures have disagreed widely over whether the responding court has the authority to enter an order for a different amount, and if so, what impact that subsequent order has on the original order. The usual result is two concurrent child-support orders, each with presumptive validity.\textsuperscript{22}

This Note examines the practice of using the Act to modify existing child-support orders. Part I explores the question of whether the Act’s enforcement mechanisms were designed to permit the responding court to modify existing support orders. It emphasizes the problems involved with concurrent support orders and modification and describes the range of positions courts have taken to support or oppose allowing responding courts to modify support orders. Part II explores the federal child-support enforcement programs, their interstate applications, and their relationship to the Act’s enforcement mechanisms. The analysis in these parts leads to Part III, which proposes an amendment to the Act to clarify its function. This amendment encourages use of the civil registration procedure where there is a prior support order to avoid inconsistent support orders. It also restricts the ability of responding courts in civil enforcement actions to enter orders for amounts that differ from the original order to prevent the problems of concurrent support orders. This Part of the Note also points out alternative means, such as long-arm statutes and the automatic periodic review of child-support orders by the entering court, that might be utilized more fruitfully to modify support orders.

\textsuperscript{21} For an explanation of the genesis of the two-state suit, see W. BROCKELBANK & F. INFAUSTO, supra note 1, at 4.

\textsuperscript{22} See infra Part I.
I. THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

A. The Mechanics of the Act

The drafters viewed URESA as a supplementary measure to enforce child-support orders that were otherwise unenforceable because the obligated parent had left the jurisdiction of the court that entered the order. The civil enforcement mechanism calls for a cooperative effort between two states. The custodial parent seeking support ("obligee") files a petition in the jurisdiction where she resides; the court there is called the "initiating court." Ultimately a child-support order may be entered in the jurisdiction where the non-custodial parent owing support ("obligor") resides; the court there is known as the "responding court." After a preliminary finding that a support obligation probably is unfulfilled, the initiating court forwards the petition to the responding court. In the proceedings that follow, the obligee is represented by the prosecuting attorney; she need not appear in person. The hearing is generally limited to the issue of support, excluding issues such as property settlements, visitation and custody, or divorce. If the court finds a duty of support arising from statutory, contractual, or common-law obligations, the responding court may enter a support order

25. Id. § 11(b), 9B U.L.A. 440.
26. Id. § 14, 9B U.L.A. 450.
27. Id. § 24, 9B U.L.A. 487-88.
28. Id. § 2(g), 9B U.L.A. 402.
29. Id. § 2(l), 9B U.L.A. 403.
30. Id. § 14, 9B U.L.A. 450.
31. RURES A § 18(b), 9B U.L.A. 461 (1987); see also W. BROCKELBANK & F. INFAUSTO, supra note 1, at 52.
32. The Act clearly contemplates that in most cases the obligee will not be present and that her case will be based exclusively on her petition because it provides that, in certain situations, a continuance may be granted to obtain additional information from her. RURES A § 20, 9B U.L.A. 469 (1987).
33. This is a question of the court's jurisdiction. Many states explicitly deny the responding court jurisdiction to do more than enforce a support order. See, e.g., ALASKA STAT. § 25.25.250 (Supp. 1990); GA. CODE ANN. § 19-11-42(11) (Supp. 1990); ILL. REV. STAT. ch. 110A, para. 296(k)(5) (1989); NEV. REV. STAT § 130.290 (1990).
34. See RURES A § 2(b), (e), 9B U.L.A. 402 (1987).
that it then has the authority to enforce. The responding court can use any available enforcement measure to collect the child support owed, including liens, contempt charges, and bonding procedures.

In contrast with the civil enforcement procedure, which directs the responding court to enter a new child-support order, the civil registration procedure allows the obligee to forward a copy of the original order to the responding court for registration. The responding court treats the order as if it were entered by the responding court and can use any available measures to enforce it. The registered support order is enforced as a foreign money judgment, thus limiting the available defenses to those directed at the order's validity rather than its substantive terms.

These provisions thus ensure that interstate enforcement is possible both in those cases in which a valid order exists and in those in which no valid order yet exists. The Act's registration procedure may be a less confusing means of achieving interstate enforcement when a court has previously entered a support order covering these parties because there is no opportunity for modification until after the order has been registered.

B. The Debate Over Conforming Responding Court Orders to Existing Orders

The modification controversy originates in the language of the Act's antisupersession clause. The URESA antisupersession clause states that "[n]o order of support issued by a court of this state when acting as a responding state shall supersede any other order of support." The RURESA antisupersession clause states that "[a] support order made by a court of this State pursuant to this Act does not nullify . . . a support order

36. See id., 9B U.L.A. 487 ("If the responding court finds a duty of support it may . . . subject the property of the obligor to the order.").
37. Id. § 26, 9B U.L.A. 520.
38. Id. § 39, 9B U.L.A. 543-44.
39. Id. § 40(a), 9B U.L.A. 546.
40. Id. § 40(c), 9B U.L.A. 546.
41. See W. BROCKELBANK & F. INFAUSTO, supra note 1, at 83.
made by a court of any other state . . . unless otherwise specifically provided by the court.\textsuperscript{43} These provisions imply that use of the enforcement measure is appropriate even when there is a preexisting support order. It is unclear, however, whether the court may enter an award for an amount that differs from the prior award. The thrust of the controversy is thus whether the responding court is free to enter an order for an amount different from the amount in the previous order.\textsuperscript{44}

Other language in the Act indicates that the drafters did not expect responding courts to order amounts different from amounts in preexisting support orders. The prefatory note to the 1950 version of URESA states that the drafters intended to supplement enforcement rather than create new duties:

\begin{quote}
The 1950 act attempted to improve and extend by reciprocal legislation the enforcement of duties of support through both the criminal and the civil law. Its provisions are in addition to remedies now existing for the enforcement of duties of support within the state. . . . \textit{[T]he new act is meant to improve enforcement} where the parties are in different states.\textsuperscript{45}
\end{quote}

This statement of intent is echoed and reinforced in the prefatory note to RURESAs:

\begin{quote}
The Act itself \textit{creates no duties of family support} but leaves this to the legislatures of the several states. The Act \textit{is concerned solely with the enforcement of the already existing duties} when the person to whom the duty is owed is in one state and the person owing the duty is in another state . . . .\textsuperscript{46}
\end{quote}

These excerpts indicate that the authors of the Act intended to create an effective mechanism to enforce child-support

\begin{footnotes}
\footnotetext[43]{RURESAs § 31, 9B U.L.A. 531 (1987).}
\footnotetext[44]{This problem arises in cases in which the obligee asks the court to enter an order for “fair” or “reasonable” child support instead of asking for the same amount as the prior order, see, e.g., Wornkey v. Wornkey, 12 Kan. App. 2d 506, 509, 749 P.2d 1045, 1048 (1988); Olson v. Olson, 534 S.W.2d 526, 528 (Mo. Ct. App. 1976), as well as in those in which one of the parents asks the court to modify an existing child-support award because of changed circumstances, see, e.g., Commonwealth ex rel. Ball v. Musiak, 775 S.W.2d 524, 525 (Ky. Ct. App. 1989).}
\footnotetext[45]{URESAs prefatory note to 1950 Act, 9B U.L.A. 556 (1987) (emphasis added).}
\footnotetext[46]{RURESAs prefatory note, 9B U.L.A. 382 (1987) (emphasis added).}
\end{footnotes}
orders between parties living in different states. They also indicate that the drafters did not intend to create any new support obligations under the Act.

But most courts addressing the issue have concluded that the responding court is entitled to enter a support order for an amount different from that in any previous order. These courts usually assert that they are exercising independent jurisdiction over the new support order and are therefore empowered to make their own assessment of the circumstances relevant to the appropriate amount of child support. This independent assessment often will lead the responding court to enter a support order for an amount different from the original support order. This is particularly true when only the obligor appears before the court in person. In addition, state laws on how child-support obligations are to be calculated differ widely, so that if a responding court is to make a calculation of child support based solely on the law of its jurisdiction it is likely to differ in amount from a child-support order entered by a court in another state.

47. See, e.g., Aimbender v. Aimbender, 344 A.2d 263, 265 (Del. Super. Ct. 1975); DeFeo v. DeFeo, 428 A.2d 26, 28 (Del. Fam. Ct. 1981); Koon v. Boulder County, Dep't of Social Servs., 494 So. 2d 1126, 1129 (Fla. 1986); State v. McKenna, 253 Ga. 6, 8, 315 S.E.2d 885, 888 (1984); see also Reitmayer, Modification of Divorce Support Decrees Under URESA: A Procedural and Substantive Quagmire, 20 NEW ENG. L. REV. 425, 432 (1984-85); Annotation, Construction and Effect of Provision of Uniform Reciprocal Enforcement of Support Act that No Support Order Shall Supersede or Nullify Any Other Order, 31 A.L.R.4th 347, 362 (1984) ("[T]he majority of cases construing the antisupersession provision of the Uniform Reciprocal Enforcement of Support Act have taken the view that the provision does not prevent a responding court from entering a valid child support order effective prospectively which is different from the order entered by the divorce court or by any previous court . . . .").


50. One author lists "a tendency for judges in the obligor's state to favor the obligor because he is the only one physically present in court" as a drawback of the Act. Elrod, supra note 6, at 57.


52. For example, in Gifford, an Illinois divorce court ordered the obligor to pay a percentage of his income, but the responding court in Michigan ordered an amount based on the child's needs and both parents' incomes. 152 Ill. App. 3d at 424-26, 504 N.E.2d at 813-14. For an argument that failure to allow a father's obligation to
In the abstract, it seems that a court exercising independent jurisdiction is entitled to assess independently the appropriate amount of child support owed, regardless of the amount entered in a previous support order. The Act's civil enforcement mechanism requires the court to hold a hearing and enter a child-support order based on its findings. But in the registration procedure the only defenses are those which could be raised against a foreign money judgment. This distinction is important because the civil enforcement mechanism inherently seems to call for a *de novo* review of the circumstances and application of law by the responding court.

But the majority position, allowing responding courts to enter new support orders of different amounts, is not followed unanimously. For example, the Nevada Supreme Court held in *Taylor v. Vilcheck* that the amount of the responding court's new order may never be higher than the amount of the original order. It also held that a responding court may only lower the amount owed if the obligor demonstrates an inability to pay, and on the understanding that this relief will be only temporary. The court based its holding on an amendment to Nevada's version of RURESA which emphasized that an order by a responding court could never modify or supersede an earlier child-support order. On the other hand, when North Dakota's high court held that a responding court could not enter an order for an amount different from the original, the North Dakota legislature amended its law to provide specifically for the entry of orders of differing amounts.

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58. *Id.* at 471, 745 P.2d at 708.
59. *Id.*
60. *Id.* at 470, 745 P.2d at 708 (stating that a responding court can enter a lower amount “where an obligor demonstrates to the responding court that ‘good cause’ exists for a temporary reduction in the amount of support payments due under a prior decree”).
61. *Id.* at 464, 745 P.2d at 704 (citing NEV. REV. STAT. § 130.280 (1987)).
62. *See Craft v. Hertz*, 182 N.W.2d 293, 297 (N.D. 1970) (“[T]he responding state has no alternative but to find a duty of the obligor to furnish support in the amount provided by the foreign decree.”).
C. The Problem of Concurrent Child-Support Orders

Assuming, arguendo, that a responding court is permitted to make an independent assessment and enter a support order for a different amount, the second issue to resolve is what effect that new order has on orders previously entered by other courts. Much of the current debate about the Act focuses on this issue, and courts and legislatures have disagreed widely as to how to resolve it. Consequently, current law on modification and the antisupersession clause is unclear, inconsistent, and confusing.

Although some courts, following the text of RURESA, have held that a responding court can modify a prior order if it does so expressly, many courts have held that a responding court's order has no effect on previous orders entered by courts in other states. For example, in Thompson v. Thompson, a Wyoming divorce court ordered a father to pay $400 per month in child support. Several years later, upon becoming unemployed, the father moved to South Dakota to live with his parents. He then unilaterally reduced the amount of child support he paid. The mother used RURESA to have the Wyoming order enforced in South Dakota. The father asked the court to modify the order, based on his changed circumstances. On appeal, the Supreme Court of South Dakota granted his request, but noted that "[s]uch an order does not modify the out-of-state support order and is prospective in effect only." This holding means that the two child-support orders for different amounts will exist simultaneously; each of


65. See infra notes 81-86 and accompanying text.


68. Id. at 846.

69. Id.

70. Id. at 848.
them will be valid in at least one jurisdiction. In essence, these are concurrent support orders.

Without modification, the status of both the new and the old support orders is unclear. Although the Act provides that payments under one order will be credited against both,\(^{71}\) arrearages will presumably accumulate in the jurisdiction where the higher order was entered if the obligor only pays the lower amount.\(^{72}\) Some courts thus have allowed obligees to recover the difference between the two orders in later actions.\(^{73}\) This can only confuse the obligor as to the extent of his obligation and make risky his reliance on the payments he already has made in one state. The accumulation of arrearages alone also can trigger automatic wage withholding, contempt charges, and other enforcement mechanisms that are detrimental to the obligor,\(^{74}\) so it is crucial that the obligor be able to determine the precise amount of his obligation.\(^{75}\)


\(^{72}\) In Taylor v. Vilcheck, 103 Nev. 462, 745 P.2d 702 (1987), the Supreme Court of Nevada stated that while the responding court could enter an order for less than the original order, the full amount of support ordered by a Kentucky court would "continue to accumulate under that prior order, and appellant [could] seek enforcement of any arrearages due under the Kentucky decree, subject to a credit for any payments made pursuant to the Nevada RURESA order, in an appropriate civil action." Id. at 466, 745 P.2d at 705.

\(^{73}\) See, e.g., Britton v. Floyd, 293 Ark. 397, 400, 738 S.W.2d 408, 410 (1987); Kammerman v. Kammerman, 543 A.2d 794, 795-96, 802 (D.C. 1988). Usually, the responding court will enforce the new order, while the court that granted the divorce or entered the original order is likely to enforce the earlier order. For example, in Britton, the Arkansas Supreme Court held that compliance with a Kansas URESA order which lowered the amount of support due did not prevent arrearages under the original Arkansas support order from accumulating or being enforced because the URESA order could not modify or nullify the original order. 293 Ark. at 400, 738 S.W.2d at 410. And in Kammerman, the District of Columbia Court of Appeals held that compliance with a Maryland divorce decree was not a defense to the enforcement of a District of Columbia URESA support order. 543 A.2d at 794-95; cf. Henry v. Knight, 746 P.2d 1375, 1377-78 (Colo. Ct. App. 1987) (holding that although arrearages under the original Massachusetts divorce order did accrue, Colorado only could enforce arrearages under the Colorado URESA order).

\(^{74}\) For example, in Bjugan v. Bjugan, 710 P.2d 213 (Wyo. 1985), the court garnished the obligor's wages because of accumulated arrearages, despite his compliance with the modified order. Id. at 215. For a discussion of these enforcement mechanisms, see infra notes 116-28.

\(^{75}\) One obligor argued that courts should allow modification only by the rendering jurisdiction "because otherwise there [would] be multiple and perhaps inconsistent orders enforceable against him." Straek v. Straek, 156 Cal. App. 3d 617, 625, 203 Cal. Rptr. 69, 72 (1984). The court answered, "While sympathetic to an obligor placed in this dilemma, our reply is that RURESA contemplates and allows this result." Id.
If the obligor does not comply with either order, the existence of two concurrent support orders can further complicate matters. Courts attempting to enforce the support obligation in any type of later action (under the Act or otherwise) will be forced to choose either one of the prior amounts or an entirely new one. There does not seem to be a principled way to choose if the later order does not nullify the prior order, leaving the prior order enforceable. In addition, under federal legislation, initial child-support orders must be entered under procedures entitling them to full faith and credit. Because both concurrent support orders are presumptively valid, it is difficult to see how the second order can be entered. Although some courts have enforced the responding court's order under these circumstances, other courts have refused to grant full faith and credit to these orders. In one case, a federal district court held that the larger of the two orders will be enforced.

The antisupersession clauses of URESA and RURESA are consistent with the Act's role as a supplementary enforcement mechanism. But concurrent child-support orders are an inevitable result given the way some state courts interpret these clauses. Until the issue of concurrent child-support orders is resolved, obligors will never know the true extent of their child-support obligations, and the treatment of the issue will continue to depend on which state happens to have jurisdiction when obligees seek enforcement under the Act.

78. See, e.g., id.
80. The U.S. District Court for the Southern District of Texas held that: The power of a third court to enforce the original child support order appears, at first blush, to conflict with the power of a state court, responding to a URESA petition, to modify the original order. Because the Texas URESA statute, § 21.43, provides for crediting amounts paid under one order to amounts due under the other, the order providing the higher amounts of support payments will always take precedence, and therefore a URESA reduction of support will be rendered void by enforcement of the original order. Sheres v. Engelman, 534 F. Supp. 286, 293 (S.D. Tex. 1982).
D. The Problem of Modification

Some courts, following the text of RURESA, have held that courts can modify previous orders if they do so expressly.\(^{81}\) For example, the Supreme Court of Wyoming held that a court can modify a support order, but not without notice to protect the obligee's due process rights.\(^{62}\) Courts in Arizona\(^{83}\) and Oregon\(^{84}\) also have held that a second order modifies a prior order. The Oregon position was based upon a statutory provision stating that petitioners consent to the court's power to modify the obligation by filing a petition,\(^{85}\) while the Arizona court held that the obligee's petition itself gave the responding court the authority to modify the prior order.\(^{86}\)

This position seems to solve the problem of concurrent support orders, but it raises significant problems of its own. The responding court generally has only the obligor before it in person, and its authority is usually limited to the question of support, excluding such other important issues as custody, visitation, and alimony.\(^{87}\) Although the obligee is legally represented, that representation usually is by an attorney who has never met with her and who has only a limited amount of information about her case.\(^{88}\) If a court modifies a child-support order without notifying the obligee, it raises questions of due process.\(^{89}\) In addition, the procedure is abbreviated

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82. Bjugan, 710 P.2d at 220. Modification of a support order affects a property right, and therefore the court must comply with due process requirements. Id. at 219.
84. State ex rel. Louisiana v. Phillips, 39 Or. App. 325, 327, 591 P.2d 1196, 1197 (1979) (citing OR. REV. STAT. § 110.175 (repealed 1979)).
85. OR. REV. STAT. § 110.175 (1975) (repealed 1979). See also Note, supra note 4, at 419.
86. Ibach, 123 Ariz. at 511, 600 P.2d at 1374. The court found that "while the Colorado court may not have specifically announced that it intended to modify the Arizona support order, the issue of whether to enforce it or to modify it was before the court. The Colorado court, by ordering [the obligor] to pay $75.00 per month, obviously intended to modify the Arizona support decree." Id.
87. See supra note 33 and accompanying text.
88. See supra notes 31-32 and accompanying text.
89. See, e.g., Bjugan v. Bjugan, 710 P.2d 213, 219-20 (Wyo. 1985); see also Reitmayer, supra note 47, at 432.
and may limit the parties' abilities to present their cases.\textsuperscript{90} This process is not equitable, appropriate, or well suited to evaluating changed circumstances or overruling prior orders made in more thorough proceedings. As one court stated, "It is difficult to see how a prosecuting attorney acting on behalf of an absent obligee can fulfill his or her mandate to litigate such a case diligently under these circumstances."\textsuperscript{91} Making a final determination of the amount of child support owed in these circumstances is a troubling proposition.\textsuperscript{92} Moreover, allowing the responding court to modify the order would deter deserving obligees from taking advantage of this enforcement mechanism, designed expressly for them, for fear of having the order permanently lowered or eliminated without their presence or participation.

Modification of a support order in a court that does not have personal jurisdiction over the obligee also may present constitutional jurisdiction problems.\textsuperscript{93} Although some have argued that the obligee consents to the court's jurisdiction by calling upon it to enforce the order,\textsuperscript{94} one can just as easily contend that she really only calls upon the court in the initiating jurisdiction for enforcement assistance. She usually has never been present in the responding court; the district attorney (or his equivalent) has brought suit on her behalf. This is quite different from the case where the obligee herself has come to the court or has asked the court to modify the child-support award. The Supreme Court created protection

\textsuperscript{90} As one author has argued:

\textsuperscript{[I]}f the obligee is seeking an increase in support over a prior divorce support order, . . . it is questionable whether the obligor can present a defense to increased support in the absence of the ability to cross-examine the obligee and in the absence of the ability to examine any of the obligee's documentary evidence. Conversely, if the obligor is seeking a reduction in the amount of support contained in a prior support decree, it is questionable whether the obligee can rebut the case for reduction if she/he is not present at the hearing and has no advance knowledge that a request for reduction will be made by the obligor.

Reitmayer, \textit{supra} note 47, at 432-33.

\textsuperscript{91} Taylor \textit{v.} Vilcheck, 103 Nev. 462, 471-72, 745 P.2d 702, 709 (1987).

\textsuperscript{92} This point led an Illinois court to deny full faith and credit to an order entered by a Michigan court in a RURESA action. The Michigan court had ordered a reduction in support owed without hearing direct testimony from the obligee. \textit{In re Marriage of Gifford}, 152 Ill. App. 3d 422, 431, 504 N.E.2d 812, 818 (1987).

\textsuperscript{93} See Reitmayer, \textit{supra} note 47, at 435-38; Note, \textit{supra} note 4, at 420-21.

\textsuperscript{94} See, \textit{e.g.}, \textit{State ex rel.} Louisiana \textit{v.} Phillips, 39 Or. App. 325, 328, 591 P.2d 1196, 1197 (1979).
for absent fathers when it held in *Kulko v. Superior Court*\(^{95}\) that a father allowing his daughter to live in California with her mother did not give the state jurisdiction over the father for child-support matters.\(^{96}\) Granting the responding court jurisdiction over the mother to modify the award based solely upon the fact that the father lives within that court's jurisdiction raises similar concerns, at least in terms of equity and fairness. The Court's opinion in *Kulko* implicitly recognizes that the family law area presents unique constitutional jurisdiction problems.\(^ {97}\) Resolution of such problems must take into account the nature of familial relations and their associated special rights and privileges.

Even when the court purports to nullify the prior support order, at present it is unclear whether that modification will be recognized elsewhere. The confusion and disagreement surrounding this issue has led to such varied interpretations by courts that it is difficult to predict how other courts will react to the modification. In this sense the Act has ceased to be a truly uniform act.

II. THE FEDERAL CHILD-SUPPORT ENFORCEMENT PROGRAM

When URESA was created, it was the only option available for enforcing child-support orders when the obligated parent crossed a state line.\(^ {98}\) But there has been an increasing awareness of the difficulties involved in effectively enforcing child-support orders, and other options have been introduced. Most prominent among these programs is Title IV-D of the Social Security Act, the Federal Child Support Enforcement Act (Title IV-D),\(^ {99}\) which currently provides several different

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95. 436 U.S. 84 (1978).
96. *Id.* at 97-98.
97. The majority wrote:

To make jurisdiction in a case such as this turn on whether appellant bought his daughter her ticket or instead unsuccessfully sought to prevent her departure would impose an unreasonable burden on family relations, and one wholly unjustified by the "quality and nature" of appellant's activities in or relating to the State of California.  
98. See W. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT, at v (1st ed. 1960) (stating that the "[A]ct filled a real social and economic need").
kinds of mechanisms designed to facilitate the interstate enforcement of child-support orders.\textsuperscript{100} Title IV-D was originally prompted by concerns about the rising cost of the Aid to Families with Dependent Children (AFDC) Program—costs attributable in large part to the growing number of children who were not receiving the full support they were entitled to from absent parents (as opposed to those children who were orphaned).\textsuperscript{101} Although fiscally motivated, Congress also recognized a general consensus which the government must promote: parents have an absolute obligation to support their children. Legislators created these serious mechanisms for the enforcement of child-support obligations as a way of strengthening family values.\textsuperscript{102}

Title IV-D requires states to implement a number of child-support enforcement programs under the threat of a reduction in federal funding for AFDC and unemployment compensation if a state does not cooperate.\textsuperscript{103} It provides funding for these programs,\textsuperscript{104} and it also provides additional incentive payments to those states that run their programs efficiently.\textsuperscript{105}

The federal program first requires each state to establish Title IV-D agency offices to assist parents who need to obtain

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\begin{itemize}
\item \textsuperscript{100} See generally Krause, Child Support Reassessed: Limits of Private Responsibility and the Public Interest, 1989 U. ILL. L. REV. 367, 372-77.
\item \textsuperscript{102} A Senate Finance Committee report on this legislation states:
  
  The Committee believes that all children have the right to receive support from their fathers. The Committee bill . . . is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup.

\item \textsuperscript{103} See 42 U.S.C. § 603(h) (1988) (relating to AFDC); id. § 503(e)(3) (relating to unemployment compensation).
\item \textsuperscript{104} Id. § 655.
\item \textsuperscript{105} Id. § 658.
\end{itemize}
or enforce child-support orders. The Title IV-D specifically states that this assistance must be available to all parents, not only those who receive AFDC or other public assistance. The Title IV-D agency office centralizes and facilitates enforcement efforts for AFDC recipients and other parents who request enforcement services and thereby ensures that legal assistance as well as information regarding the various options available for enforcing child-support orders is available to everyone. This can be especially helpful in the interstate context. An obligee can contact the Title IV-D office in her own state to initiate enforcement against an obligor residing in another state. She also knows that an equivalent office in the foreign state will handle her request.

Another important feature of the federal program, useful to anyone wishing to enforce a child-support order, regardless of which enforcement mechanism is chosen, is the parent locator service. Title IV-D created a federal parent locator service and directed states to establish similar state services. By placing the vast information resources of the government at their disposal, these services help parents seeking enforcement of child-support orders to find the obligated absent parent. The Department of Health and Human Services (HHS) can search the records of all federal agencies and departments on behalf of parents. HHS can then pass along information which does not endanger national security to parents who are attempting to enforce child-support orders. HHS can obtain current addresses, employment data, and other information by searching the records of the Social Security Administration, the Internal Revenue Service, the Department of Labor, the Armed Services, the Department of Veterans' Affairs, and other government agencies. Title IV-D also requires states to set up similar programs on the state level and to handle requests from parents who wish to use the

106. Id. § 654(3).
107. Id. § 654(6)(n); see also Dodson & Horowitz, supra note 16, at 3057.
110. Id. § 654(8).
111. Id. § 653(e).
112. Id. § 653(b), (c).
113. See id. § 653(e).
This type of program can help parents get over the first and often largest hurdle encountered in child-support enforcement: finding the obligor. Title IV-D further requires that states enact certain effective enforcement measures. These measures include automatic wage withholding, liens, bonding, state income tax refund intercepts, and provisions for establishing paternity, in addition to programs that function on the national level, such as federal income tax refund intercepts and garnishment of wages, pensions, and benefits of federal employees and members of the armed services.

Title IV-D also requires states to cooperate in enforcing sister-state support orders. For example, income withholding must be available for all income earned by an obligor within the state, regardless of the domicile of the child or the custodial parent. To encourage states to cooperate in this matter, the money collected by the state on behalf of an obligee in another state is included in the total funds collected by the state. This figure is then used to determine whether a state deserves an incentive payment. The application of these enforcement measures to interstate enforcement cases means that the more unwieldy URESA and RURESA procedures will be unnecessary in many situations.

114. Id. § 654(8).
115. See R. Horowitz & H. Davidson, Legal Rights of Children 31 (1984) ("In many cases the absent parent’s whereabouts are unknown; often the absent parent disappears and must be located before support enforcement can begin.").
117. Id. § 666(a)(4).
118. Id. § 666(a)(6).
119. Id. § 666(a)(3).
120. Id. § 666(a)(5).
121. Id. § 664.
122. Id. § 661.
123. Id. § 665.
124. Id. § 654(9)(c).
125. Id. § 666(b)(9).
126. Id. § 658(d).
127. Id.; see supra note 105 and accompanying text.
128. For example, the Florida version of the Act contains the following provision on legislative intent:

Common-law and statutory procedures governing the remedies for the establishment and enforcement of orders of support for children by responsible parents under the Uniform Reciprocal Enforcement of Support Act have not proven sufficiently effective or efficient to cope with the increasing incidence of establishing and collecting child-support obligations when the petitioner and respondent reside in different states. The state, therefore, exercising its police
The Act, in granting responding courts the ability to enter an independent order, was designed to provide a supplementary means of enforcing child-support obligations that would not otherwise be enforceable. It was never intended to allow courts to create child-support obligations, but only to enforce existing ones.\textsuperscript{129} The difficulties courts encounter when attempting to use the Act to modify child-support orders arise simply because the Act was not intended to be a tool for modification.

It therefore makes sense to require that parents who want to modify child-support orders do so in a court that has jurisdiction over all pertinent issues and parties. Incentives already built into the situation will encourage the parties to litigate and settle modification problems rather than avoid compliance. Obligees who want the amount of child support increased have financial interests in litigating this question, and obligors, rather than risk sanctions, will bring suit to lower the amount if they become unable to pay. But this kind of litigation should proceed only in courts having both of the parties before them and hearing all of the facts. The Act is not designed to accomplish this.

One way to resolve this problem is to ensure that at least one court will have jurisdiction over both parties at any one time. One author has suggested increasing the use of narrowly tailored long-arm statutes to bring the obligor to the jurisdiction where the obligee resides.\textsuperscript{130} This suggested solution would bring both parties together before a court that had jurisdiction over the entire matter, while saving the obligee the expense and effort of taking the obligor to court in

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and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by the additional remedies directed to the resources of the responsible parents as mandated by the Florida IV-D program . . . . In order to render resources more immediately available to satisfy child-support orders, it is the legislative intent that the remedies provided herein shall be in addition to, and not in lieu of, existing remedies.

\textbf{FLA. STAT.} § 88.012 (1989).

\textsuperscript{129} \textit{See supra} notes 45-46 and accompanying text.

\textsuperscript{130} \textit{See} Reitmayer, \textit{supra} note 47, at 441-44.
his home state. But there may be jurisdictional difficulties with this solution when the obligee resides in a state with which the obligor has no contacts. A number of states now grant the court in which the divorce or child-support issue was originally litigated continuing jurisdiction over all matters related to it. This solution may not always be convenient for the parties, particularly if the obligee has moved away, but it makes sense to provide the court in which the divorce or child-support issue was originally litigated with the long-arm power to resolve effectively modification controversies.

Some other options would be to require that child-support orders, unlike traditional fixed amount orders, be reviewed periodically or that they be tied more closely to the parents' circumstances. Periodic review would provide an opportunity for modification before the need for litigation arose. Child-support awards tied to circumstances such as the father's salary also would help alleviate these difficulties by reflecting present reality rather than the circumstances at the time of the divorce. Modification usually is sought by the father who wishes to have his obligation reduced because of a severe loss of income or unemployment, or by the mother

131. See Kulko v. Superior Ct., 436 U.S. 84, 91-96 (1978) (holding that California could not assert jurisdiction over a father merely because he permitted his daughter to live in the state); see also Note, Virginia's Domestic Relations Long-Arm Legislation: Does Its Reach Exceed Its Due Process Grasp?, 24 WM. & MARY L. REV. 229, 239-47 (1983) (authored by E. Roy Hawkins) (summarizing Supreme Court doctrine on personal jurisdiction and surveying relevant cases, including Kulko). Reitmayer acknowledges these due process problems and has tried to tailor her proposed long-arm statute to comply with the requirements of Kulko. See Reitmayer, supra note 47, at 443.

132. See, e.g., ILL. REV. STAT. ch. 40, para. 2516 (1989); MASS. GEN. L. ch. 223A, § 3(h) (1988); OKLA. STAT. tit. 43, § 104 (Supp. 1990); TEX. FAM. CODE ANN. § 11.05(a) (Vernon 1986).


134. Some states already calculate child-support awards this way. Under this system, usually known as the Wisconsin method or the taxation method of calculating awards, a statute establishes a percentage of the absent parent's net income as the amount of support owed the child. The support award therefore self-adjusts as the parent's income changes. See CHILD SUPPORT ENFORCEMENT, supra note 101, at 72-74.

who wants it increased because she perceives that the father is able to pay more at the current time. States could preempt most modification problems by changing the manner in which courts award and calculate child support at the outset.

The Act's registration procedure also is available to enforce existing child-support orders. In cases where there is a valid preexisting order, this procedure could alleviate the confusion surrounding the necessity of an independent assessment by the responding court. Rather than initiate a new proceeding in the responding court, the obligee may instead register the original support order from the divorce court with the responding court. After the support order is registered, the court will treat it as if the responding court itself had entered the order originally. Presumably this means that the responding court could then modify the order if its standards for modification were met, for example, by adequate proof of changed circumstances.

Because the Act's registration procedure allows for enforcement of existing child-support orders, states should reserve the civil enforcement procedure for those cases in which there is no existing enforceable support order, as in interstate paternity suits. This would ensure that a proper remedy or enforcement mechanism was available to families in all situations, while preventing the confusion which arises from concurrent child-support orders. It also would be more consistent with the Act's role as a supplementary enforcement remedy, limiting the use of the more complicated and independent mechanism for cases in which it is actually necessary. In conjunction with other available enforcement mechanisms like those mandated by Title IV-D, this approach would provide an adequate remedy to obligees.

136. See, e.g., Straek v. Straek, 156 Cal. App. 3d 617, 621, 203 Cal. Rptr. 69, 70 (1984); Koon v. Boulder County, Dep't of Social Servs., 494 So. 2d 1126, 1127 (Fla. 1986).

137. See supra notes 38-41 and accompanying text. The standard for exercising jurisdiction over the obligor is also lower in registration cases. See, e.g., Gingold v. Gingold, 161 Cal. App. 3d 1177, 1182, 208 Cal. Rptr. 123, 125 (1984).


The Act should therefore be amended to eliminate the provision that permits the responding courts to modify existing child-support orders. Modification of child-support orders generally requires proof of changed circumstances. This determination requires assessments that should be made only when both parties are before the court and all the relevant factors can be considered. The abbreviated procedure provided by the Act is an unsuitable method to accomplish this goal. Attempts to employ it in this manner are a misuse of the statute. One court recently stated it thus:

[I]t is doubtful that the legislature ever envisioned that RURESA should place upon the already overburdened prosecuting attorneys of this state the additional obligation of litigating the complex questions involved where an absent obligee seeks an increase in a prior support award on the basis of changed circumstances. Such cases, if they are to be adequately litigated and decided, require a thorough review of the facts and circumstances giving rise to the initial decree, as well as an extensive investigation and documentation of the alleged changes in those facts and circumstances. The sparse records and limited factual predicates upon which suits are initiated in summary RURESA proceedings often do not afford the prosecuting attorney an adequate evidentiary basis from which he or she can meet the requisite affirmative burden of proof.140

The Act plays an important and effective role as a supplementary enforcement measure. When courts use it to modify prior orders, however, it simply creates too many other problems to be valuable as a routine remedy. We need to recognize the Act's proper function and find other viable means to modify child-support orders. In so doing, it is important to consider the context in which the Act evolved and the other enforcement measures that are now available.

It is for these reasons that I propose that the text of the RURESA antisupersession clause be amended as follows:

PROPOSED AMENDMENT TO THE ANTISUPERSESSION CLAUSE

Action under this section is to be taken only when civil registration is not available as a remedy or is not feasible or has failed to provide an adequate remedy. Should action be taken under this section in a case in which there is an existing child-support order, a support order made by a court of this State pursuant to this Act does not nullify and is not nullified by any other support order entered by a court in this or any other state. The amount of the prior order shall presumptively be the proper amount for any order entered in an action under this section. Any modification of the amount shall meet the evidentiary and other standards for modification of a domestic support order. Amounts paid for a particular period pursuant to any support order entered by any court in any state shall be credited against the amounts accruing or accrued for the same period under any support order made by a court of this state.

The changes I suggest are intended to clarify the important role which the Act can play in the enforcement of child-support obligations, while eliminating areas of uncertainty which lead to disagreement. The effect of this amendment is to limit the use of the civil enforcement mechanism to those cases in which civil registration is not available as a remedy, primarily those in which there is no enforceable preexisting support order. In any case under the civil enforcement mechanism in which there is a prior order of support, the amount of that prior order would presumptively be the proper amount for the responding court's order. Deviation from that amount would be permitted only if the party requesting modification met the burden of proof of changed circumstances, which would generally require more evidence than is available in a typical RURESA action. This would, however, leave the option of

modification open to those who can meet the burden. The result of this amendment would be to reduce courts' opportunities to enter concurrent child-support orders and to clarify the obligations created by the orders of responding courts in RURESA actions.