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FAMILY SUPPORT FROM FUGITIVE FATHERS: A PROPOSED AMENDMENT TO MICHIGAN’S LONG ARM STATUTE

Robert L. Nelson*

I. Introduction

During the fiscal year ending June 1969, $10.3 million was spent on aid to 54,000 Michigan families with dependent children. This represents an increase of ten percent in the number of recipient families in Michigan and an increase in cost of nearly sixteen percent over the previous fiscal year. The corresponding national increases over the past year are even greater. A substantial portion of this growing public burden is attributable to fathers who have deserted their families and are not providing their support:

In June 1969, 10.2 million persons [in the United States] received money payments under five public assistance programs—1.1 million more than in June 1968. [Aid to Families With Dependent Children is one of these programs.] The year’s rise was attributable largely to the increase of 949,000 in the number receiving aid to families with dependent children. For that program, only 5,000 of the additional recipients were in families aided because of a parent’s unemployment. Most of the others were in families in which the father was absent.

Approximately two-thirds of those fathers who are absent and

*Mr. Nelson is a member of the staff of Prospectus.


2Id.

3Id. Nationally, the number of recipient families has increased 16.9 percent since June 1968. Since that time, the annual expenditure has increased 22.5 percent.

4Id. Introductory comments.

5R. MUGGE, Aid to Families with Dependent Children: Initial Findings of the 1961 Report on the Characteristics of Recipients, 26 SOC. SEC. BULL. No. 3, 3 at 8 (March 1963)
not supporting their families are married. Of this group, more than one-half have simply deserted the family, or are separated without a court decree. The balance of the absent fathers are divorced or legally separated from their families, deceased, in prison, or absent for other miscellaneous reasons.

In order to assure economic security for abandoned families and to reduce the public cost of family support payments, Michigan has created judicial machinery for obtaining financial relief from husbands who have illegally left their families. In assessing the probability of obtaining payments under the Michigan apparatus, however, it is important to recognize that in many cases the husband's whereabouts is unknown. This fact is crucial because a deserted wife is currently barred from using any remedy that

(Hereinafter cited as 1961 Report). While this figure is taken from a 1961 report, it is believed that nothing has transpired since 1961 to materially change the trend that this report revealed. In any event, the precise figure today is not crucial to the point the author wishes to make.

This article is addressed only to the problem of getting payments from fathers who are married but who are not supporting their wives and/or children. The area of paternity adjudication and the problems of support arising therein are outside the scope of this article. In Michigan, a man has an obligation to provide necessary and proper shelter, food, care, and clothing to his wife and/or minor children under the age of 17. Failure to do so is a felony punishable by imprisonment in the state prison for not more than 3 years, nor less than 1 year, or by imprisonment in the county jail for not more than 1 year and not less than 3 months. Mich. Comp. Laws § 750.161 (1968)

For a discussion of the various support remedies presently available in Michigan, see text of Pt. II infra.

W. Brockelbank, in the Introduction to his book, Interstate Enforcement of Family Support (1960) [hereinafter cited as Brockelbank], cites the Tenth Amendment of the United States Constitution as authority for the proposition that the problem of getting support from absent fathers is the concern of the states and not the federal government. A cogent reason for the same conclusion is that the history of Federal family support bills has not been a happy one. Such proposed legislation has been introduced by numerous congressmen from time to time, but hearings have never been held, nor has the legislation ever been reported out of the House or Senate Committees. Four such bills are presently pending in the House of Representatives, all of which are nearly one year old at this writing, H.R. 750, H.R. 1284, H.R. 7972, H.R. 9942, 91st Cong., 1st Sess. (1969). There are no immediate prospects for action on any of them. If history is any indication, these bills will suffer the same fate as their predecessors, only to be reintroduced pro forma at the opening of the 92nd Congress.

In 75 percent of the cases in the United States in which law enforcement officials were unable to gain support payments from the defendant, the reason was that his whereabouts was unknown. Social Security Administration, U.S. Dep't of Health, Education and Welfare, Support from Absent Fathers of Children Receiving ADC 14 (Public Assistance Report No. 41, 1961)
will impose in personam obligations upon her husband unless he has been personally served with process. This is the rule whether the husband is in Michigan,\textsuperscript{11} or is out of this jurisdiction and the action is brought under the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA).\textsuperscript{12} Because the deserted wife in many cases does not know where her spouse can be found,\textsuperscript{13} personal service is impossible and therefore she may be precluded from bringing an action for her support. The impact of this situation on the public purse is reflected in the increasing welfare costs that society is forced to assume.

It is the purpose of this article to propose and discuss an amendment to Michigan's long arm statute\textsuperscript{14} which will allow the entry of extraterritorial alimony, separate maintenance, or child support decrees when Michigan is the state of the marital domicile and the defendant-spouse cannot be located for personal service of process.\textsuperscript{15} A plaintiff employing the proposed provision

\textsuperscript{11}Mich. Comp. Laws §§ 600.701-775 (1968) prescribes the relationships with Michigan which will provide a basis for personal jurisdiction in this state. The manner of serving process is left to the determination of the Michigan Supreme Court. Pursuant to its rule making powers, the court has promulgated Mich. Gen. Ct. R. 105.1, which provides: "Service of process may be made upon an individual by leaving a summons and a copy of the complaint with the defendant personally." But see , Mich. Gen. Ct. R. 105.8 allowing the court some discretion in determining the manner of service that it may deem sufficient to comply with currently required standards. For the rules governing notice generally, see Mich. Gen. Ct. R. 105-106.

\textsuperscript{12}Mich. Comp. Laws § 780.161 (1968), URESA is discussed and explained in the text accompanying notes 24-34, infra.

\textsuperscript{13}See note 10 supra.

\textsuperscript{14}Mich. Comp. Laws § 600.705 (1968) as set forth in note 15 infra.

\textsuperscript{15}The proposed amendment specifically provides for service of process in any manner authorized by the court in accordance with Mich. Gen. Ct. R. 105.8 that is calculated to give the defendant-spouse actual notice of the proceedings and an opportunity to be heard. This provision will be an alternative to the use of Mich. Gen. Ct. R. 105.1, supra note 11, which shall apply in those cases where the residence of the defendant is known or could be ascertained with reasonable diligence.


The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such individual and to enable such courts to render personal judgments against such individual or his representative arising out of the act or acts which create any of the following relationships:
in a divorce action will be able to seek alimony, separate maintenance, or support payments as if the defendant were before the court, and the court will have the authority to grant her the necessary relief. If and when the wife later finds her husband, she will be able to take immediate steps to enforce the order outstanding without having to employ the judicial system a second time to consider essentially the same case presented in the original divorce action. The need for such a provision becomes evident upon a brief review of remedies currently available to a wife deserted by her husband.

II. Remedies Currently Available to the Deserted Wife

A. Michigan Remedies

1. In Personam and In Rem Jurisdiction

Under present Michigan law, a deserted wife is not totally without recourse in seeking support for herself and her family when her husband cannot be found for personal service of pro-

1) The transaction of any business within the state.
2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.
3) The ownership, use, or possession of any real or tangible personal property situated within the state.
4) Contracting to insure any person, property, or risk located within the state at the time of contracting.
5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
6) Acting as a director, manager, trustee, or other officer of any corporation incorporated under the laws of, or having its principal place of business within, the state of Michigan.

16 At the risk of oversimplification, it may be helpful to think of domicil as that place which the layman considers to be his "home". Thus, for example, a person may be temporarily in Ohio for any number of reasons, but nevertheless be domiciled in Michigan for purposes of service of process. The concept of marital domicil is not clear. See Williams v. North Carolina, 325 U.S. 226 (1944). Thirty-three sections of the Restatement of the Law of Conflict of Laws (1934) defined domicil, but none of them expressly define marital domicil. Restatement of the Law of Conflict of Laws, §§ 9-41 (1934). Section 9 states:

... domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or ... because that place is assigned to him by the law.
cess. If the husband is temporarily residing outside Michigan, but is nevertheless domiciled in this State at the time process is served, he is subject to general personal jurisdiction in Michigan courts. This provision applies even if the summons is served on the defendant outside Michigan. If the defendant owns property that is within the State, the circuit courts have the power to attach that property and thereby obtain jurisdiction, notwithstanding that the defendant is not himself subject to personal jurisdiction in Michigan. Attachment is available whether the property is real or personal.

When the defendant has no property subject to the jurisdiction of the Michigan courts, and he is not a domiciliary of Michigan or otherwise subject to general personal jurisdiction here, significant difficulties confront the deserted wife when she attempts to obtain support payments from her wandering spouse. A possible solution to this unhappy circumstance is for the wife to go to the state in which her husband can be found for service of process and begin litigation in that forum. The practicality of this solution, however, is premised upon two assumptions which are in most cases unfounded. First, the plaintiff may not know where her

Comment a to § 9 explains that

... a person may be a 'resident' or an 'inhabitant' or a 'citizen' of a place without being domiciled therein, although such 'residence', 'inhabitancy' or 'citizenship' may be significant for some legal purpose.

Section 27 provides that, with some exceptions, a wife has the same domicil as her husband. It may not be too inaccurate to conclude from these definitions that the state in which the litigants last lived together as husband and wife is the state of the marital domicil.

17Mich. Comp. Laws § 600.701 (1968). The jurisdiction over individuals authorized by this provision results in a binding personal judgment, entitled to full faith and credit in other states, regardless of whether the cause of action arose in Michigan. See Practice Commentary following Mich. Comp. Laws § 600.701 (1968).

18Milliken v. Meyer, 311 U.S. 457 (1940); see also McDonald v. Mabee, 243 U.S. 90 (1917).

19Mich. Comp. Laws § 600.4001 (1968) and Practice Commentary thereafter. For the procedure to be followed in attachment proceedings, see Mich. Gen. Ct. R. 735.


When it is impossible to get personal jurisdiction over the defendant and jurisdiction is predicated solely on Mich. Comp. Laws §§ 600.751 (1968) or Mich. Comp. Laws § 600.755 (1968) governing attachment of personalty and 600.4001, the action is quasi-in-rem and the judgment is enforceable only against the property itself.


husband can be located; thus she is barred from attempting recovery via this method.\textsuperscript{23} Second, even if the wife does know where her husband can be found, she usually will not be able to bear the expense of interstate litigation.\textsuperscript{24} Thus, litigation in the foreign forum appears to offer no real solution to her problem.

\section*{2. URESA}

If the deserted wife knows where her husband is, she may be able to gain some relief from the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA).\textsuperscript{25} This legislation was promulgated in 1950 by the National Conference of Commissioners on Uniform State Laws to help solve the problem created when a husband abandons his family and flees the state to escape his duties of support.\textsuperscript{26} URESA provides for reciprocal enforcement of support orders with any state “in which this or a substantially similar reciprocal law has been enacted.”\textsuperscript{27} URESA, or a law “substantially similar” to it, has been adopted by all fifty states, the Virgin Islands, and Canada.\textsuperscript{28}

The mechanics of the legislation are not complex.\textsuperscript{29} If a resident wife alleges facts to the circuit court\textsuperscript{30} which indicate that her husband owes her a duty of family support,\textsuperscript{31} and further

\textsuperscript{23}This is often the case. See note 10 supra.
\textsuperscript{24}The 1961 study of the characteristics of recipients of aid to families with dependent children, a group with an extremely high rate of “suitcase divorces”, noted that: “The mothers receiving aid to dependent children are concentrated heavily in those occupational groups in which requirements for training and education are at a minimum, remuneration is low, turnover is high, and there is little economic security.” 1961 Report, supra note 5, at 14.
\textsuperscript{25}Mich. Comp. Laws § 780.151 (1968).
\textsuperscript{26}See Brockelbank, supra note 9, at 3; See also Uniform Reciprocal Enforcement of Support Act, Commissioner’s Prefatory Note to 1950 Act, 9C U.L.A. at 3.
\textsuperscript{28}The scope of the enforcement arrangement with Canada is limited to reciprocal enforcement of support orders issuing only from Michigan or Ontario courts. Brockelbank, supra note 9, at 81-83.
\textsuperscript{29}This article is concerned only with the civil enforcement provisions of the Michigan version of URESA. The fact that Michigan URESA does not have separate headings entitled “Civil Enforcement” and “Criminal Enforcement” does not mean that the legislature intended to provide only for criminal enforcement of support. Op. Att’y. Gen. 430(1952-54). The Act, as promulgated by the Conference of Commissioners on Uniform State Laws, was divided into four parts: I. General Provisions; II. Criminal Enforcement; III. Civil Enforcement; IV. Regulation of Foreign Support Orders. Brockelbank, supra note 9 at 7.
\textsuperscript{31}The duty of support imposed by URESA is contained in Mich. Comp. Laws §§ 780.155 and 780.158 (1968).
Family Support

alleges that the courts of a second named state can obtain personal jurisdiction over the defendant, the petitioning state court shall forward the petition to the courts of that state in which the defendant is alleged to reside. It is then incumbent upon the prosecutor in the proper county of the second (responding) state to represent the interest of the out-of-state plaintiff in the ensuing action for alimony, separate maintenance, or child support.

Behind this apparent simplicity, however, lie complications that in many cases substantially reduce the effectiveness of this legislation. The most evident of these problems is that before an action may be brought under URESA, the wife, in effect, must know where her husband can be found for personal service. Even in the unlikely case that the wife has this knowledge, her chances of obtaining a money judgement are not good. A survey of county prosecutors conducted by the author in the Fall of 1969 revealed that in Michigan in 1968, for example, only about sixty percent of the URESA cases filed with the county prosecutors' offices by non-resident plaintiffs were ever pursued. Of those cases that were pursued by the county prosecutors, most resulted in a support order for the out-of-state plaintiff. The enforcement of those orders, however, varied from county to county, ranging from "[enforced] very poorly,..." to "[enforced] in every case,..."

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35 Mich. Comp. Laws § 780.161 (1968) provides, in part:

The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information.

Mich. Comp. Laws § 780.163(a) (1968) contains the provisions for proceeding with the petition if the responding state cannot get jurisdiction over the defendant as alleged in the petition, such as when the defendant is not, in fact, residing in the place alleged.

36 See note 10 supra.
37 Questionnaires were sent to every county prosecutor's office in Michigan, with approximately 2/3 of them responding (26/83) [hereinafter cited as Survey]. While the statistical significance of this survey has not been calculated, this factor is not crucial. The responses that were received were sufficiently similar to indicate a trend which would appear to hold true generally for any county over a period of time.
38 Id. Of the 60% of the cases filed which were pursued, approximately 89% resulted in judgments in favor of plaintiff.
39 Id.
Of the URESA cases that were filed in Michigan but not pursued,\(^{40}\) the reason given in most instances for failure to pursue the case was that the court did not have jurisdiction over the defendant as alleged in the petition. This was usually because the defendant had changed his place of residence between the time the complaint was filed and service of process was attempted.\(^{41}\) Other reasons given for not pursuing the cases were that the plaintiff withdrew the petition or refused to further cooperate with the county prosecutor, and that the prosecutor’s case load demanded that a low priority be given to URESA cases as opposed to criminal matters and other county business.\(^{42}\) These facts point to a significant problem; URESA will be effective only if there is a common attitude among the courts and prosecutors with respect to support orders for non-resident plaintiffs and enforcement of those orders.\(^{43}\) The effectiveness of reciprocal laws depends upon an even-handed enforcement of available remedies by all of the subscribing states. Michigan county prosecutors will understandably lose their enthusiasm for reciprocal legislation if they learn that other states cannot be relied upon to assist them when Michigan is the petitioning rather than the responding state. It is evident that in Michigan, at least, there is a lack of uniformity in the enforcement of URESA orders.\(^{44}\) Thus, even if a URESA case is pursued by the county prosecutor and an order is entered for the out-of-state wife, it is entirely possible that the decree will never be enforced. If Michigan is illustrative of the fate of URESA cases generally, URESA is frequently a waste of the court’s time, attorney’s time, and taxpayer’s money, because no benefit accrues to the impoverished wife and family.

Insofar as a uniform attitude toward out-of-state alimony, separate maintenance, and support orders is crucial to the effective operation of URESA, determination by the foreign forum of the

\(^{40}\)Id. Approximately 40%.

\(^{41}\)Id.

\(^{42}\)Id.


\(^{44}\)Survey, note 37 supra. Enforcement of URESA support orders in Michigan varied widely between the extremes cited in the text accompanying note 37 supra. The extent of enforcement of URESA orders seemed to relate directly to the size of the county and the resources available to each prosecutor’s office, with the smaller counties usually enforcing a smaller percentage of their orders than the larger counties would enforce.
amount of alimony, separate maintenance, or child support that the defendant must pay might create an additional problem for the plaintiff. If the defendant is not flourishing financially in his new environment, the courts of the responding state may be reluctant to enter an order that would place the defendant on their own welfare roles when the benefit of those payments will be going to another state. This possibility may be mitigated by the fact that the legislation is reciprocal and the role of the states as "petitioning" or "responding" is constantly shifting. This fact, however, may not be a sufficient incentive to some courts. Therefore, judicial reluctance to enter an adequate order must also be considered in evaluating present remedies.

Examination of the family support remedies currently available in Michigan reveals that the use of each alternative presents the deserted wife with practical difficulties which she may be unable to surmount. As a result, the wife and children may become public charges, and the "suitcase divorce" is perpetuated. The need for an additional remedy that will facilitate the process of obtaining support payments from fugitive fathers is evident.

B. Remedies Available in Other States

To avoid many of the practical problems that accompany the remedies mentioned above, at least two states, Kansas and Illinois, have enacted statutes which authorize the entry of extraterritorial alimony, separate maintenance, and child support decrees against non-resident defendants. One element common to both statutes is the requirement of personal service of process on the defendant before an in personam decree can be entered. Because these statutes both require that the defendant be personally served before any action for family support can be commenced, it is difficult to imagine what practical advantages have been gained over already existing remedies, particularly URESA. One of the commentators on the Illinois long arm statute asserts the virtue of this provision to be that it allows the

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47 Personal service on the defendant in the case of family desertion is thought to be necessary to comply with due process rights of the Fourteenth Amendment as enunciated by the U.S. Supreme Court. But see discussion in text at pp. 415 ff.
"Plaintiff . . . [to] . . . remain in the forum and obtain a money judgment against the wandering spouse who can be located for personal service of process." This appears merely to duplicate the URESA remedies which were in effect at the time of this addition to the Illinois long arm statute. One of the primary purposes of the URESA legislation is to allow the plaintiff to do precisely that for which the Illinois statute is heralded. If the statutes in Kansas and Illinois cannot more nearly attain this goal than URESA, or if they are not a useful supplement to it, they are a needless addition to the already crowded arena of civil jurisdiction.

The statutes adopted in Kansas and Illinois may have had as their purpose the retention of authority in the respective forums to decide the amount of alimony, separate maintenance, or support for which the non-resident defendant is to be held responsible. This is a salutary goal, but one which may not be easily attained. Because an alimony decree is not a final order as to support payments that have not accrued, it is to that extent not enforceable in a foreign forum under the full faith and credit clause of the United States Constitution. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art. IV, § 1.

The full faith and credit clause will protect alimony payments presently due and owing and not subject to retroactive modification by the rendering court. Future alimony payments, as well as accrued payments subject to retroactive modification, need not be accorded full faith and credit. Sistare v. Sistare, 218 U.S. 1 (1910). Chief Justice White, summarizing the state of the law in Sistare, noted at 16-17, First, that, generally speaking, where a decree is rendered for alimony and is made payable in future in-
will probably be through a comity arrangement which allows the enforcing state to exercise its discretion in deciding which orders it will recognize. If the order entered in the wife's forum offends the "public policy" of the foreign forum, it is likely that the original decree will be modified by the foreign court to comply with what it would have ordered had the action been brought there originally. Thus, while these statutes purport to offer the advantage that the plaintiff's forum can determine what relief the plaintiff shall have, it is largely an empty gesture since the foreign enforcement problems remain undiminished.

There may even be a disadvantage to the plaintiff who chooses to use the long arm statute rather than URESA. Under the former, she will have to hire a private attorney, whereas under the latter the county prosecutor is vested with responsibility for her case. If a private attorney could accomplish more for the wife under the Illinois or Kansas long arm statutes than the prosecutor could accomplish under URESA, the gains might outweigh the added cost of retaining the attorney. However, those statutes give the abandoned wife no remedy beyond that provided by URESA. Therefore, the expense of employing a private attorney is unnecessary. Any plaintiff, regardless of her financial condition, can employ URESA's reciprocal enforcement arrangements, thus avoiding the substantial cost of private litigation.

The above discussion indicates that while a number of family support remedies are available today, none of these remedies will allow a deserted wife to bring an *in personam* action against her husband if she does not know where he can be found for service of process. She may bring an action for her support only after

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*stallments, the right to such installments becomes absolute and vested upon becoming due, and is therefore protected by the Full Faith and Credit Clause, provided no modification of the decree has been made prior to the maturity of the installments. Second, that this general rule, however does not obtain where, by the law of the state in which a judgment for future alimony is rendered, the right to demand and receive such future alimony is discretionary with the court which rendered the decree. (that is, a non-final order).


*MICH. COMP. LAWS § 680.160(a)(1968).*

*The only method of obtaining support available to a wife who cannot give her husband*
her husband has been located and personally served. Because of
the layman's usual confusion as to how to proceed in a legal
action, combined with the inability of the judicial system to re-
spend quickly in many cases, a husband who does temporarily
return home, thereby exposing himself to *in personam* jurisdic-
tion, can easily disappear again before any steps might be taken
against him. Therefore, under a statute providing Michigan courts
with the power to enter a binding *in personam* judgment against
the nomadic husband when he cannot be found for personal
service, the wife will be able to take immediate steps to enforce
the order should the husband subsequently return home or be
found elsewhere.

III. Extending the Long Arm Statute

A. Proposed Amendment to the Michigan Long Arm Statute

If the plaintiff-wife could obtain an order enforceable against
her husband whenever and wherever she may find him, she could
use that order as authority for immediately levying execution
against any assets he might have\(^5\) (for example, the car that he
drove home), or for obtaining a civil arrest,\(^6\) or wage assign-
ment.\(^7\) Thus it will not be necessary to acquire personal jurisdic-
tion over the defendant and to litigate the issue of support prior to
obtaining financial redress at a moment when time is at a pre-
mium. Even if this limited situation were the only one in which

\(^{5}\)See *Mich. Comp. Laws* §§ 552.27 and 552.302. *See also* *Mich. Comp. Laws* § 552.152, which provides:

> When any such decree or order (relating to alimony or support) shall stipulate payments to be made to the
court, and any of such payments shall be in default, the
party prejudiced may make a motion before such court
showing by records in the clerk's or friend of the court's
office, or otherwise, that such default has occurred, and
the court may forthwith issue an attachment to arrest the
party in default and bring him immediately before the
court to answer for such neglect.

\(^{6}\)Mich. Comp. Laws § 600.6075 and Practice Commentary thereafter.

\(^{7}\)Mich. Comp. Laws § 600.5301 et seq. *See also* *Mich. Comp. Laws* § 552.203 for
assignment of wages for child support.
the proposed amendment would be useful, a worthwhile end would be achieved by providing immediate financial relief to an otherwise impoverished wife, and concommitantly reducing the public welfare load.

In addition to the preceding, however, the proposed amendment will have the broader effect of at least partially eliminating the incentive for husbands to abandon their families for the sole purpose of avoiding their support obligations. The realization that they will be immediately subject to a court order if their whereabouts are ever discovered might well significantly reduce the number of husbands who leave home for this reason. The fact that the proposed amendment presents no unwieldy administrative problems, in contrast to URESA actions, also argues strongly for its adoption. With these considerations in mind, the author proposes the following amendment to the Michigan long arm statute:

MICH. COMP. LAWS § 600.705

Section 705. The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such individual and to enable such courts to render personal judgments against such individual or his representative arising out of the act or acts which create any of the following relationships:

... (7) WITH RESPECT TO ACTIONS FOR DIVORCE, ALIMONY, SEPARATE MAINTENANCE, OR CHILD SUPPORT, THE MAINTENANCE IN

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58. One of the common complaints about URESA revealed by the Survey, supra note 37, was that it required much paperwork to carry out its provisions, often without any satisfactory results. An action under the proposed long arm amendment would reduce the paperwork in one major respect because it would not be a bi-state action. Enforcement of any order entered under this legislation will concededly involve additional "paperwork," but such "paperwork" would become necessary only when the plaintiff was assured of her recovery rather than at the time of the commencement of the action when payments are only a contingency.

59. The proposed amendment is printed in upper case. The existing grounds of jurisdiction under § 600.705 are listed in note 15 supra.
THIS STATE OF A MATRIMONIAL DOMICILE AT THE TIME OF THE CAUSE OF ACTION AROSE.

WITH RESPECT TO THE METHOD OF NOTICE REQUIRED UNDER THIS PROVISION:

A) IF THE RESIDENCE OF THE DEFENDANT IS KNOWN AT THE TIME OF THE COMMENCEMENT OF THE ACTION, OR CAN BE ASCERTAINED WITH REASONABLE DILIGENCE, SERVICE OF PROCESS IN ACCORDANCE WITH GENERAL COURT RULE 105.1 SHALL BE REQUIRED.60

B) IF THE RESIDENCE OF THE DEFENDANT IS NOT KNOWN AT THE TIME OF THE COMMENCEMENT OF THE ACTION, AND CANNOT BE DISCOVERED WITH REASONABLE DILIGENCE, SERVICE OF PROCESS MAY BE MADE IN ACCORDANCE WITH GENERAL COURT RULE 105.861 BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE OF THE DEFENDANT'S PARENTS, IF LIVING, AND BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE(S) OF THE DEFENDANT'S BROTHER(S) AND SISTER(S), IF LIVING, AND BY MAILING A

61 Mich. Gen. Ct. R. 105.8:

The court in which an action has been commenced may, in its discretion, allow service of process to be made in any other manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made upon showing to the court that service cannot reasonably be made in the manner provided under the other rules.

SUMMONS AND A COPY OF THE COMPLAINT TO THE DEFENDANT'S LAST PLACE OF EMPLOYMENT, WHEN ASCERTAINABLE, AND BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE OF ANY OTHER PERSON AS ORDERED BY THE COURT. WHEN SERVICE OF PROCESS BY THE ABOVE METHODS IS NOT POSSIBLE, SERVICE OF PROCESS MAY BE MADE IN ANY OTHER MANNER REASONABLY CALCULATED IN THE OPINION OF THE COURT TO GIVE THE DEFENDANT ACTUAL NOTICE OF THE PROCEEDINGS AND AN OPPORTUNITY TO BE HEARD.

C) WHEN PROCESS IS SERVED IN ACCORDANCE WITH SUBPARAGRAPH (A), THE DEFENDANT SHALL BE LIABLE FOR ALL PAYMENTS DUE UNDER THE ORDER FROM THE DATE OF ENTRY, INCLUDING ARREARAGES. WHEN PROCESS IS SERVED IN ACCORDANCE WITH SUBPARAGRAPH (B), THE DEFENDANT SHALL BE LIABLE ONLY FOR PAYMENTS ACCRUING UNDER THE ORDER AFTER HE HAS RECEIVED ACTUAL NOTICE OF THE ORDER OUTSTANDING. LUMP SUM ALIMONY, SEPARATE MAINTENANCE, OR CHILD SUPPORT ORDERS SHALL NOT BE ENTERED BY THE COURT IF NOTICE IS GIVEN SOLELY UNDER THE PROVISIONS OF SUBPARAGRAPH (B).

Gen. Ct. R. 105.8 shall confer personal jurisdiction over any defendant having any of the contacts with the State prescribed in Mich. Comp. Laws § 600.705. For text of § 600.705 see note 15 supra.
Adoption of this provision would confer on Michigan courts the power to enter a binding *in personam* decree against a non-domiciliary of Michigan who cannot be found for personal service of process and who has no property in the State upon which quasi-in-rem jurisdiction could be predicated. This would be a significant addition to present Michigan family support remedies since the abandoned wife is today most often prevented from bringing an action for support because she does not know where her husband can be found for personal service. Further, since desertion is the "poor man's" divorce, the value of defendant's property subject to attachment in a support proceeding is often insignificant; thus a quasi-in-rem action is usually unsatisfactory. In addition to the advantage that the proposed amendment offers over URESA by not requiring personal service of process before a binding personal decree against defendant can be entered, it will also allow Michigan courts to determine the amount of payments for which the defendant shall be liable. This latter feature will protect the spouse from prejudicial treatment by the courts of another state. Moreover, since enforcement of the orders entered under the amended long arm statute will generally occur when the defendant returns to his home, full faith and credit problems concerning the enforcement of non-final orders will, in most cases, be avoided.

Even if the defendant is found in another state, the Michigan order may nonetheless be enforced in that state under the full faith and credit clause as to payments already accrued, and in equity, under a comity arrangement, as to future payments. If the Michigan court has entered a lump sum alimony award, the entire amount will be enforceable under the full faith and credit clause.

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62 Even though this provision is an amendment to the Michigan long arm statute, which establishes jurisdiction over non-resident defendants, the efficacy of the order will not be impaired by the fact that the defendant never in fact left Michigan, but simply managed to avoid service of process.

63 See note 10 *supra*.

64 For a discussion of possible prejudicial treatment, see discussion in text *supra* at 406–407.

65 Although the author can offer no authority for the proposition that husbands return to the families which they abandoned, the author's conversations with attorneys and county officials concerned with the problem of family support showed a unanimity of opinion that this statement is valid.

66 See text accompanying note 52 *supra*.

67 Subparagraph (C) of the proposed amendment, *supra*, expressly provides that no lump sum awards shall be made if the defendant was given notice of the action solely under
The authority of a court to enter a binding judgment against a defendant not personally served with process raises significant jurisdictional questions. Whether a court within the state has such power depends upon whether the defendant has had certain minimum contacts with the forum state, and has been extended such notice of the action as is reasonably calculated to give him a chance to appear and defend. It is submitted that the proposed amendment to the Michigan long arm statute does clearly comply with these jurisdictional requirements as they have been explicated by the Supreme Court of the United States.

B. Power to Hear the Case—Minimum Contacts

The permissible scope of state extraterritorial jurisdiction has greatly expanded since the Supreme Court decided *Pennoyer v. Neff* in 1877. Continued adherence to the *Pennoyer* rule that the authority of a court is limited to the geographical boundaries of the state in which it is situated became unrealistic as the American economy assumed an increasingly interstate posture.

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70 Under modern doctrine, the power of a state court to enter a binding judgment against one not served with process within the state depends upon two questions: first, whether he had had certain minimum contacts with the State [cites omitted], and second, whether there has been a reasonable method of notification [cites omitted]. *Gray v. Am. Standard Radiator and Standard Sanitary Corp.*, 22 Ill. 2d 432, 437; 176 N.E. 2d 761, 763 (1961).


7295 U.S. 714 (1877).

73 As technological progress has increased the flow of commerce between the states, the need for jurisdiction over non-residents has undergone a similar increase. At the same time, progress in communication and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the require-
When the Court handed down its decision in International Shoe Co. v. Washington, 74 it introduced needed flexibility into the existing jurisdictional standard. The test established by the court is whether the contacts that the non-resident, non-domiciliary defendant has had with the forum are sufficient to subject the defendant to an action in personam in that forum. 75 The contacts which the absent husband has had with the state of marital domicil clearly meet the minimum contacts requirements set down by the Court in International Shoe and subsequent cases. Some of the factors which the courts consider in determining if "minimum contacts" exist in a given situation include whether the contacts that the defendant has established with the forum are "systematic and continuous" and gave rise to the cause of action, whether the state has a legitimate interest in the proceeding, and whether the defendant will be unnecessarily inconvenienced by having to defend in the forum.

The contacts that the defendant spouse would normally develop while living in a state with his wife and family are "continuous and systematic". This factor is of pivotal importance in determining the sufficiency of the contacts in most cases. 76 Such contacts may include employment in the forum state, payment of taxes,
and utilization of the state's public facilities. Furthermore, an action for support grows directly out of the contacts which the defendant has established in the forum.

It seems undeniable that the state of the matrimonial domicil has a legitimate interest in taking reasonable steps to assure that its citizens will not be rendered poverty stricken by the acts of the defendant-spouse in leaving the state. One measure of this interest is the amount of money spent each year for the support of those families abandoned by the father.\footnote{See text accompanying notes 1, 2, 3 supra, and section I of text.}

The fact that the plaintiff's other remedies may well provide no satisfaction also argues for adoption of this remedy, certainly from a practical point of view.\footnote{See generally sections I and II of text supra, as to the practical problems which accompany alternative remedies. This factor has been deemed important in determining whether the defendant has established minimum contacts with the state. See McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); and see note 73 supra.}

The only consideration that militates against this provision is the possible inconvenience caused the defendant by making him defend an action in the state of the marital domicil which is, for him, a foreign forum.\footnote{The interests of both litigants should be balanced in this decision.}

It would seem therefore that a defendant who has lived in a state with his wife and family has surely established sufficient contact with that state such that its courts can assume personal jurisdiction over him in a manner consistent with the Fourteenth Amendment.

\section*{C. The Requirement of Reasonable Notice}

\subsection*{1. Mullane}

In addition to the requirement that a non-resident defendant judgment granted in a lower Nevada court which accorded full faith and credit to an alimony award contained in a California interlocutory divorce decree entered upon extraterritorial service of process.

Mr. and Mrs. Mizner lived in California as husband and wife for 18 years, after which they separated. Mr. Mizner subsequently moved to Nevada. Fifteen months after he had left the State, Mrs. Mizner filed suit for divorce in California. Pursuant to CALIF. CODE OF CIV. PRO. §§ 412, 413, and 417, she was awarded an interlocutory decree of divorce and $300 monthly alimony. The Nevada court accorded full faith and credit to this alimony order. It was of the opinion that the activities necessary to the maintenance of a marital domicil were sufficient to satisfy the minimum contacts test and held that California did not violate the substantive due process requirements of the Fourteenth Amendment by ordering Mr. Mizner to pay alimony to his wife. See notes 1, 2, 3 supra, and section I of text.
have certain minimum contacts with the forum state, due process also requires that the defendant be notified of the proceedings in a manner reasonably calculated under all the circumstances to give him a chance to appear and defend.\textsuperscript{80} If the defendant is not personally served, the least the plaintiff is required to do is to use that method of service most likely to apprise him of the pendency of the action.\textsuperscript{81}

In 1950, the U.S. Supreme Court decided \textit{Mullane v. Central Hanover and Trust Co.},\textsuperscript{82} in which the above-stated due process notice rule was applied. In discussing the constitutionality of published notice, the Court suggested a flexible test aimed at balancing the individual interests which the Fourteenth Amend-

\textsuperscript{80} An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all of the circumstances to apprise the parties of the pendency of the action and afford them an opportunity to present their objections.” \textit{Mullane v. Cent. Hanover Bank and Trust Co.}, 339 U.S. 306, 314 (1950); \textit{See also} \textit{Milliken v. Meyer}, 311 U.S. 457 (1940) in which the rule was formulated; \textit{International Shoe Co. v. Washington}, 326 U.S. 310 (1945).

\textsuperscript{81} \textit{Schroeder v. City of N.Y.}, 371 U.S. 208 (1962). \textit{Schroeder} involved the attempted acquisition by the City of New York of the right to divert water from a stream that flowed through Mrs. Schroeder’s land. The City had not attempted personal service upon Mrs. Schroeder in the original action in spite of the fact that her name and address were readily available in the public records. The Supreme Court held that substituted service in those circumstances was unconstitutional. The Court stated that:

The general rule that emerges from these cases is that notice by publication is not enough with respect to a person whose name and address are known or easily ascertainable and whose legally protected interests are directly affected by the measures in question. \textit{See also}, \textit{Walker v. City of Hutchinson}, 352 U.S. 112 (1956). This case concerned the condemnation of Walker’s land by the City of Hutchinson while Walker was out of the state. Notice of the condemnation proceeding was given by publication in the official city paper of Hutchinson. The Court held that the method of service authorized by the statute was not sufficient to satisfy the Fourteenth Amendment.

\ldots In \textit{Mullane} we pointed out many of the infirmities of [notice by publication] and emphasized the advantage of some kind of personal notice to interested parties. In the present case there seem to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant’s name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value.

\textsuperscript{82} 339 U.S. 306 (1950). \textit{Mullane} involved the final settlement of a common trust fund, the beneficiaries of which were not all known to the administrators of the trust. The central issue was whether published notice of the final adjudication of the trust assets afforded all of the beneficiaries due process as required by the Fourteenth Amendment.
Family Support

ment seeks to protect with the interest of the state in promoting the welfare of its own citizens.\textsuperscript{83} Applying that test, the \textit{Mullane} court decided that personal notice was required as to those known present beneficiaries with a known place of residence. Service by publication was deemed sufficient, however, for those beneficiaries whose addresses were unknown and those whose interests were merely contingent.\textsuperscript{84} The \textit{Mullane} test allows the courts to assess all factors involved in each case and to then determine the reasonableness of the manner of the service of process.

2. \textit{Mullane} and the Proposed Amendment

Substituted service such as was allowed in \textit{Mullane} is peculiarly appropriate in actions for alimony, separate maintenance, and child support when the husband has illegally left his family and cannot be located for personal service of process. The use of a proper form of substituted service in such cases falls within the scope of the due process notice requirements for a number of reasons. First, the defendant does not have to rely solely upon service of process to inform him that an action for alimony or child support is being brought by his wife. Most people would presumably acknowledge that a married man has undertaken some obligation of support for his wife and family. Whether this is recognized as a legal obligation rather than merely a moral obligation is immaterial. A husband’s recognition of the fact that he has

\textsuperscript{83}The Court has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet. 339 U.S. at 314.

\textsuperscript{84}339 U.S. at 319. Notwithstanding that the \textit{Mullane} court used broad language to sustain the constitutionality of published notice on the facts then before it, it should be pointed out that alimony, separate maintenance, and support cases differ from \textit{Mullane} in two important respects. First, in \textit{Mullane} the court was concerned only with the question of cutting off absentee defendant’s potential claims to the common trust fund, whereas in the alimony context, substituted service will be used in a proceeding to impose affirmative obligations on the absent defendant. Second, in \textit{Mullane} the interests of the parties who were given actual notice of the proceeding were sufficiently similar to the interests of those persons who were not given actual notice, so that it was not unreasonable to assume that the interests of all the parties would be adequately protected. To the extent that these differences between \textit{Mullane} and the support cases are troublesome, it can be answered that the wife’s need for support, coupled with the state’s interest in facilitating the proceedings, the deserting husband’s culpability, and the procedural safeguards afforded the defendant overcome these distinctions.
wrongfully abandoned that obligation affords him a certain natural notice of the possibility that some action for support may be brought against him. This presumption of natural notice is reinforced by the fact that absconding husbands frequently go to great lengths to avoid being located by their wives. It would appear that the fugitive husband is hiding, not because he is unaware of his familial support obligation, but because he is fully aware of that obligation and is intentionally avoiding his acknowledged financial responsibility. This element distinguishes support actions from those in which defendant is being sued on a contract or tort claim. In the alimony, separate maintenance, and support cases, notice to the defendant is inherent in his own conduct which alone results in an actionable claim on behalf of the wife.

Second, the reliability of ex parte evidence in an action for alimony, separate maintenance, or child support further distinguishes such cases from many other legal actions. In order to be entitled to alimony, a resident wife merely has to allege that she is married, that her husband has deserted her without good and sufficient cause, and that he has refused and neglected to support her. In most cases, substantiation of the necessary allegations is a matter of public record, such as marriage licenses and welfare data. In those instances where public records cannot attest to the validity of the wife’s allegations of desertion and need, those assertions will usually admit of accurate evaluation by a disinterested observer. The Office of the Friend of the Court often fills this role and contributes to an objective support order even when ex parte evidence is all that is available. In many

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85For a good discussion of natural notice as it relates to due process with respect to informal probate proceedings under the Uniform Probate Code, see Manlin and Martens, “Informal Proceedings Under the Uniform Probate Code: Notice and Due Process”, 3 PROSPECTUS 39, 55-58 (1969).

86The concept of natural notice is inapplicable to many legal actions. For example, in an ex parte tort or contract action it is impossible for the court to determine at the outset if the plaintiff’s allegations are bona fide. The action may be spurious or well-founded. The likelihood that the claim is frivolous is substantial enough, however, that the courts should not presume the defendant has any reason to suspect that an action is being brought against him. It is obvious that a person cannot have natural notice of a legal action stemming from actions which he never in fact committed. This is dissimilar to the desertion case, in which the fact of abandonment is objectively ascertainable, and the husband creates the cause of action by his conduct alone.

87Ex parte evidence is evidence introduced on behalf of one party only in a proceeding in which the other party does not have an opportunity to present conflicting evidence.

88MICH. COMP. LAWS §§ 552.251-253 (1968).

89MICH. COMP. LAWS § 552.30 (1968).
Michigan counties, the amount of support recommended by the Friend of the Court is determinative, notwithstanding the pleas and demands of the husband and wife. Thus, even though the husband will not be present at the support hearing, his interests ordinarily will be protected to some degree. This feature distinguishes support proceedings from those actions in which the evidentiary facts are not objectively ascertainable, and where a damage figure is not easily determined.

In evaluating the fundamental fairness of the notice provisions of the proposed amendment, it must be recognized that if only substituted service of process has been used to notify the absent husband of the proceeding, the order will not be effective against him until the date on which he received actual notice of its entry. Thus, arrearages will not accrue during that period in which the husband had no knowledge of the order outstanding.

Another procedural safeguard afforded the husband served with substituted service is that he, as a matter of right under Michigan law, may have the order reopened at any time within one year of the date of entry of the final order. If the one year limit has expired, the defendant may nevertheless petition the court to reopen the order for "good cause".

Finally, the strong interest that the State has in promoting the welfare of its residents must be considered and balanced against the interests of the individual defendant. In the last analysis, the validity of any form of substituted service is to be judged according to whether it is reasonably calculated to give the defendant an

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90 Conversation with Washtenaw County Friend of the Court.
91 See proposed amendment, supra, subparagraph (C). Proving the date on which the defendant received actual notice of the order outstanding may present a difficulty. Of course, if the plaintiff discovers the defendant's residence, she may send him a copy of the order by certified mail. The returned receipt will provide adequate proof of the date on which the defendant received a copy of the order, and, presumably, actual notice thereof. If the defendant is given a copy of the order in another state, an affidavit submitted by the person who delivered the copy should also suffice to establish the date of actual notice. If the plaintiff cannot prove receipt of actual notice in either of the above ways, she will have to satisfy her burden of proof at the trial if the question is ever put in issue by her husband. When the date of actual notice is established, the careful practitioner should ask the court to recite that date in the order itself so that no problem concerning the effective date of the order will arise if it is enforced out of Michigan.
93 Gen. Ct. R. 528.3.
94 See notes 1, 2, 3 supra.
95 See text accompanying note 83 supra.
opportunity to appear and be heard. It can hardly be said to offend traditional notions of justice to subject a husband who has illegally abandoned his family to an in personam proceeding when his wife has employed all the avenues left open by her husband to inform him of the pendency of the action. Those obstacles which prevent personal service of process stem solely from the illegal actions of the husband, hence he should be estopped from using a situation of his own making to invalidate service of process when his wife has in good faith attempted to give him actual notice of the suit. Natural notice, combined with substituted service in a form designed to maximize the possibility that defendant will receive actual notice, and the other aforementioned procedural safeguards, insure that the proposed amendment conforms to Fourteenth Amendment due process requirements.

V. Conclusion

The proposed amendment to the Michigan long arm statute will help reduce the substantial public cost presently attributable to support of abandoned families. Its adoption would give Michigan courts the power to enter a binding decree against a non-domiciliary who cannot be found for personal service of process. When the defendant can be located for service, the statute will offer an alternative to URESA if the plaintiff thinks that URESA would be less effective. Additionally, the statute will close the loophole now existing when the defendant is not a domiciliary of Michigan, has no property in the jurisdiction, and cannot be located for service under existing Michigan court rules or URESA. The provision is designed to supplement, not supplant, existing support remedies.

The amendment gives Michigan courts authority to assume jurisdiction over the defendant, and provides adequate notice to him of the impending action. The concept of minimum contacts is not new, and service of process can be made under generally accepted court rules with which practicing Michigan attorneys are thoroughly familiar. This latter feature, as well as the fact that the statute does not require reliance upon a second state to litigate to obtain a support order, facilitates administration of the provision.

96Note 80 supra.
An order entered under the amended long arm statute will be enforceable whenever the defendant is located. Notwithstanding that this provision will allow entry of an order against a non-resident defendant upon some form of substituted service, adequate safeguards exist to afford him the due process notice guaranteed by the Fourteenth Amendment.

This provision will also serve the interests of judicial economy in two ways. First, the court that heard the original divorce action will not have to hear the same proofs in a second action for alimony if the wife acquires personal jurisdiction over the defendant. The court can dispose of both the issues of divorce and alimony or support in one action. Of course, the court will have to take subsequent action to enforce the order. Such action will be necessary, however, only when there are immediate prospects of obtaining financial relief for the wife and removing her from the welfare roles. The assurance that the court will have to involve itself a second time only when some benefit will accrue to the plaintiff and the state must override the additional judicial energy expended.

Finally, unlike an action under URESA, only one court will be involved in the proceeding. Thus, burdensome correspondence and other administrative paperwork will be avoided.