

Modification of U.S. Support Orders: How Does Continuing, Exclusive Jurisdiction (CEJ) Apply?¹

All U.S. states have enacted the Uniform Interstate Family Support Act (UIFSA), as approved by the Uniform Law Commission (ULC) in 2008, in order to receive federal funding for their Title IV-D child support programs.² UIFSA 2008 supersedes all prior versions of UIFSA.

UIFSA governs interjurisdictional cases, both IV-D cases handled by a child support agency and non-IV-D cases that are usually handled by a private attorney. UIFSA is built on a “one order” construct. A U.S. tribunal may not enter a current support order where a valid order entitled to recognition already exists. The support order that governs prospective current support is known as the “controlling order.” UIFSA also has clear rules regarding modification jurisdiction. Key to those rules is UIFSA’s concept of continuing, exclusive jurisdiction (CEJ). Although its language slightly differs from UIFSA, the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)³ also focuses on recognition of the controlling order and continuing, exclusive jurisdiction.

CEJ to Modify Spousal Support

FFCCSOA does not address modification of spousal support, but UIFSA does. It provides that a tribunal has CEJ to modify spousal support if it issued the order. Regardless of party moves, only the original issuing tribunal has CEJ to modify the spousal support order.⁴

CEJ to Modify Child Support

Both UIFSA and FFCCSOA have the same definition of CEJ to modify a child support order.

- A tribunal has CEJ to modify a child support order if it issued the controlling order and the individual obligee, obligor, or child(ren) resides in the “issuing state” at the time a party files a modification petition.⁵
- Even if the issuing state is not the residence of the individual obligee, obligor, or child(ren), a tribunal has CEJ to modify a child support order it has issued if the parties have filed consent in a record or in open court that the tribunal may continue to exercise jurisdiction to modify the order.⁶

¹ This document focuses on UIFSA’s rules for modification of support orders issued by U.S. state tribunals and the application of those rules in interstate support proceedings. It does not address tribal court jurisdiction. It does not address jurisdiction to modify foreign support orders, as defined by UIFSA.

² Unif. Interstate Family Support Act (2008), <https://www.uniformlaws.org/viewdocument/final-act-with-comments-120?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb&tab=librarydocuments> (last visited Sept. 17, 2021). The Preventing Sex Trafficking and Strengthening Families Act of 2014 mandated that all states enact UIFSA (2008) as a condition of receiving Title IV-D funds. See Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014), codified at 42 U.S.C. § 666(f).

³ Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994), codified as amended at 28 U.S.C. § 1738B.

⁴ Unif. Interstate Family Support Act § 211 (2008).

⁵ Unif. Interstate Family Support Act § 205(a)(1) (2008); 28 U.S.C. § 1738B(d).

⁶ Unif. Interstate Family Support Act § 205(a)(2) (2008); 28 U.S.C. § 1738B(d).

Impact of CEJ

If a tribunal has CEJ, it is the only tribunal with jurisdiction to modify the support order unless the parties consent in a record with the issuing tribunal that another tribunal meeting certain requirements may modify the order.⁷

Consent to Shift CEJ

The only time a tribunal without CEJ has jurisdiction to modify a child support order of another state is if the parties file consent to shift modification jurisdiction from the CEJ tribunal to that tribunal. UIFSA requires that (1) the parties file their consents in a record in the issuing tribunal; and (2) the tribunal to which they are shifting modification jurisdiction must be in the state where the child resides or a state with personal jurisdiction over at least one of the parties to modify the support order and assume CEJ.⁸

Difference between CEJ and Controlling Order

There is a distinction between “controlling order” and “continuing, exclusive jurisdiction” to modify.

The controlling order is the order that has established a current support obligation with regard to an obligor and the obligor’s child(ren). It is enforceable in any state where the obligor resides or has income or assets. It remains the controlling order even if no individual party or child lives in the issuing state.⁹ The order remains valid and controls the current support obligation unless and until it is modified by a tribunal with jurisdiction pursuant to UIFSA/FFCCSOA rules. In contrast, if the obligor, obligee, and child no longer reside in the state that issued the controlling order, the issuing tribunal lacks CEJ to modify the order unless the parties consent in a record or in open court for the issuing tribunal to retain its jurisdiction to modify the order.

If needed, in the very rare situation where there are multiple current support orders governing the same obligor and child, a tribunal determination of the controlling order should only occur once.¹⁰ On the other hand, a tribunal must determine whether it has CEJ to modify an order each time there is a modification request. If it does not have CEJ, it can only modify the order if it has jurisdiction under Sections 609 through 614 of the Act.

⁷ Unif. Interstate Family Support Act § 205(b)(1) (2008).

⁸ Unif. Interstate Family Support Act § 611(a)(2) (2008).

⁹ UIFSA and FFCCSOA contain rules for determining the controlling order where there are multiple support orders governing an obligor and the obligor’s child(ren). These rules were needed as a transition between the multiple order world of prior interstate support acts and UIFSA. However, with the passage of time, multiple current support orders requiring a tribunal to apply these rules should no longer exist.

¹⁰ Unif. Interstate Family Support Act § 207 (2008).

Controlling Order	Continuing Exclusive Jurisdiction
Order that governs current support	Specifically pertains to modification
Remains controlling order even if obligee, obligor, and child have left the issuing state	Relevant when a party wants to modify the controlling order
Can be enforced in the issuing state and in any state where the obligor resides or has income or assets	If a state has CEJ, no other state can modify the child support order absent the consent of the parties
When a tribunal with jurisdiction under UIFSA/FFCCSOA modifies the order, the modified order becomes the new controlling order	
Initial controlling order locks in nonmodifiable terms, based on laws of issuing state	

Order Modified in Violation of CEJ Rules¹¹

An issue over which U.S. courts have disagreed is the effect of an order issued contrary to FFCCSOA's and UIFSA's rules regarding modification jurisdiction. Are such orders void for lack of subject matter jurisdiction, or *res judicata* if they are not timely appealed?

Subject matter jurisdiction is an indispensable element of any judicial proceeding. In the absence of subject matter jurisdiction, a court is without power to hear a case. Unlike personal jurisdiction, parties cannot waive subject matter jurisdiction, nor can they confer it where it otherwise does not exist. A party can raise the lack of subject matter jurisdiction at any time. The lack of subject matter jurisdiction can also be raised by the court. The majority of U.S. courts addressing the issue in UIFSA cases have held that UIFSA's rules about continuing, exclusive jurisdiction govern the subject matter jurisdiction of courts to modify child support orders.¹² As such, an order established contrary to the modification rules of UIFSA and FFCCSOA is void because of a lack of subject matter jurisdiction.¹³

However, some courts have resolved the question of the validity of a subsequent order differently. The minority view is that the modification rules of UIFSA and FFCCSOA do not convey subject matter jurisdiction.¹⁴ These courts hold that a court is vested with subject matter jurisdiction by the state constitution. The legislature may enact statutes, such as UIFSA, which limit a court's exercise of subject matter jurisdiction. However, such legislative enactments affect the court's competency to proceed

¹¹ This section is based on content in *Chapter 13: Intergovernmental Child Support Cases*, Essentials for Attorneys in Child Support Enforcement (Office of Child Support Enforcement, 4th ed. 2021).

¹² See, e.g., *Upson v. Wallace*, 3 A.3d 1148, 1156 (D.C. 2010); *Lamancusa v. Dep't of Revenue*, 250 So. 3d 812 (Fla. Dist. Ct. App. 2018); *Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011); *Lilly v. Lilly*, 250 P.3d 994 (Utah App. 2011).

¹³ See, e.g., *McCarthy v. McCarthy*, 785 So. 2d 1138 (Ala. Civ. App. 2000); *Roberts v. Bedard*, 357 S.W.3d 554 (Ky. Ct. App. 2011); *Harvey v. Harvey*, 303 So. 3d 357 (La. App. 2020); *Otwell v. Otwell*, 56 So.3d 1232 (La. App. 3d Cir. 2011); *Bordelon v. Dehnert*, 770 So. 2d 433 (La. App. 2000), writ denied, 787 So. 2d 995 (La. 2001); *State ex rel. Harnes v. Lawrence*, 538 S.E.2d 223 (N.C. App. 2000); *In re J.R.S.*, No. 10-12-00142-CV, 2013 WL 3846352 (Tex. App. 2013) (mem. op.).

¹⁴ See *Ware v. Ware*, 337 S.W.3d 723 (Mo. App. 2011); *Rosas v. Lopez*, 556 S.W.3d 620 (Mo. App. 2018); *In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011); *Cepukenas v. Cepukenas*, 584 N.W.2d 227 (Wis. 1998).

rather than its subject matter jurisdiction. These decisions hold that any modification contrary to FFCCSOA and UIFSA is a mistake of law, rather than a lack of subject matter jurisdiction. If a court enters an incorrect decision, the remedy is to timely appeal the ruling or to file a motion under the appropriate court rule to reopen the decision, as appropriate. If a party fails to timely raise a proper challenge, then the order is entitled to full faith and credit – even if it is based on a misapplication of UIFSA’s rules.

Regardless of the analysis used, only a tribunal can determine the validity of an order.

Modification of U.S. Order When One Party Lives Outside of U.S.

In certain circumstances, UIFSA provides a U.S. forum for modification of a U.S. order even if no party resides in the issuing state. Section 611(f) allows a tribunal to retain jurisdiction to modify an order it has issued so long as:

- One party resides in another state;¹⁵ and
- The other party resides outside the United States.

This modification jurisdiction is based on the issuing tribunal’s continuing jurisdiction over the parties. However, it is not continuing **exclusive** jurisdiction to modify. Therefore, any party seeking modification of the order may also seek modification in any tribunal with personal jurisdiction over the opposing party.¹⁶

Registration to Modify U.S. Order

A party or agency seeking to modify, or to modify and enforce, a child support order issued in another state may register that order in a state with jurisdiction over the parties. There are three circumstances in which the registering tribunal may modify the registered order:

- No CEJ State
The tribunal may modify the order if all of the following requirements are met:
(1) Neither the child, nor the obligee, nor the obligor resides in the issuing state;
(2) The petitioner who is a nonresident of the registering state seeks modification; and
(3) The respondent is subject to the personal jurisdiction of the registering tribunal.¹⁷
- CEJ State But Consent to Shift Modification Jurisdiction
The tribunal may modify the order if all of the following requirements are met:
(1) The registering state is the residence of the child, or an individual party is subject to the personal jurisdiction of the registering state; and
(2) All the individual parties have filed consents in a record in the issuing tribunal for a tribunal in the registering state to modify the support order and assume CEJ.¹⁸
- No CEJ in State and All Parties Live in Same State

¹⁵ UIFSA defines “state” as “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.” Unif. Interstate Family Support Act § 102(26) (2008).

¹⁶ See Official Comment, Unif. Interstate Family Support Act § 611 (2008).

¹⁷ Unif. Interstate Family Support Act § 611(a)(1) (2008).

¹⁸ Unif. Interstate Family Support Act § 611(a)(2) (2008).

The tribunal may modify the order if all of the following requirements are met:

- (1) All the individual parties reside in the registering state; and
- (2) The child does not reside in the issuing state.¹⁹

Impact of Modification

Once an order is modified, it becomes the controlling order, and that tribunal acquires CEJ. The tribunal that issued the original order must recognize the CEJ of the tribunal of the other state.²⁰

Case Scenarios

The following scenarios offer examples of the application of UIFSA to typical fact situations. ERICSA posts case law updates on intergovernmental cases as an additional resource.

Scenario 1 – Continuing, Exclusive Jurisdiction

Tennessee issued a support order in 2014. After the order was issued, both parties moved away from the state. The obligee moved to Louisiana and continues to live there with the child. The obligor moved to Kentucky, but a year ago moved back to Tennessee. The obligor wants a reduction in support. Does any state have CEJ to modify?

Yes, Tennessee has CEJ to modify. It issued the controlling child support order, and the obligor resides there. CEJ is determined based on where the parties reside at the time of the filing of the request for modification.

Scenario 2 – Consent to Shift CEJ

California issued an order in 2015 establishing joint legal custody and requiring the obligor to pay \$200/month child support. In 2017 the trial court granted the obligee permission to move to Alabama with the child. The obligor continues to live in California.

The obligor filed a petition in Alabama seeking increased visitation. The obligee filed a counterclaim seeking increased support, as allowed by Alabama rules.

In 2019, the Alabama court modified visitation. As to child support, the Alabama court ordered all payments be made through its clerk's office and ordered child support to remain \$200 per month as previously ordered by the California court.

In 2021, the obligee filed a petition in California seeking to modify the 2015 child support order. The obligor responded, arguing that in the Alabama proceedings, the Alabama court took jurisdiction of all child support matters with its 2019 order. Both parties had participated in the Alabama proceeding. Therefore, argued the respondent, Alabama now has continuing, exclusive jurisdiction to modify child support. The obligor's attorney argued that the parties' actions in filing matters in Alabama put each on notice that they consented to Alabama's gaining continuing, exclusive jurisdiction.

¹⁹ Unif. Interstate Family Support Act § 613 (2008).

²⁰ Unif. Interstate Family Support Act § 205(c) (2008).

How should the California court rule on the question of jurisdiction to modify?

Section 205 of UIFSA is clear. As long as an individual party or child resides in the state that issued the order, the issuing tribunal has exclusive, continuing jurisdiction over the child support order. That continuing, exclusive jurisdiction exists unless all parties consent otherwise in a record filed in the issuing court. No such consent in a record was filed with the issuing tribunal in California. The parties' actions in filing matters in Alabama did not constitute the required consent in a record that must be filed in the issuing tribunal of California to shift CEJ to modify support. California has CEJ to modify its 2015 support order.

Scenario 3 – Continuing Jurisdiction to Modify U.S. Order where One Party Resides Outside U.S.

A tribunal in Texas issued a child support order. The obligor now lives in British Columbia, Canada. The obligee and child live in New York. The obligor wants to modify the Texas order. The obligor files a modification action in Texas. The obligee's attorney responds that Texas lacks CEJ to modify its order. The attorney further argues that because Texas does not have CEJ, the obligor must register the order for modification in New York, where the obligee resides.

Must the obligor register the Texas order in New York, where the obligee resides?

No. It is true that under these facts Texas does not have CEJ. Neither the obligee, the obligor, nor the child resides there; and the parties have not consented in open court or in a record for Texas to retain its jurisdiction to modify. However, Section 611(f) provides that the issuing U.S. tribunal retains jurisdiction to modify an order it issued if one party resides in another state, and the other party resides outside the United States. In this fact pattern, the obligee resides in another state (New York) and the obligor resides outside the United States (British Columbia). Therefore, Texas retains jurisdiction to modify its order. The obligor properly filed for modification in Texas.

Because Section 611(f) does not create an exclusive jurisdiction to modify, the obligor could have registered the Texas order for modification in New York, which has personal jurisdiction over the obligee. However, that is an option. There is no requirement in this fact pattern that the obligor pursue a modification in the state where the obligee currently resides.

Scenario 4 – Registration for Modification and Enforcement

Arkansas issued a support order when the child was 10. The obligee and child now reside in Missouri. The obligor resides in Georgia. The obligee lost her job recently. Due to her reduced income and increased expenses for the child who is now a teenager, the obligee seeks an increase in support. She registers the Arkansas support order in Missouri for modification and serves the obligor with notice of the registration when he is in Missouri on a business trip. The obligor argues that Missouri does not have jurisdiction under UIFSA to modify the Arkansas support order.

Does the Missouri tribunal have jurisdiction under UIFSA to modify the order?

No. Under Section 611(a)(1) of UIFSA, the following requirements must be met:

- (1) Neither the child, nor the individual obligee, nor the obligor resides in the issuing state;
- (2) The petitioner **who is a nonresident of the registering state** seeks modification; and

(3) The respondent is subject to the personal jurisdiction of the tribunal of the registering state.

Although the court has personal jurisdiction over the noncustodial parent because he was served while present in Missouri, the court lacks jurisdiction to modify the order because the petitioner who registered the order and sought modification was not a nonresident of Missouri.