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COMMENTS

SAGGING SUPPORT STATUTE: A CRITICAL ANALYSIS OF THE DISTRICT OF COLUMBIA UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

The enforcement of duties of support¹ became a nationwide problem in the United States in the early part of the twentieth century as the increase in interstate travel facilitated the widespread evasion of support decrees by fleeing obligors.² The National Conference of Commissioners on Uniform

1. Duties of support are undergoing changes in scope and application to the various members of a household. At common law, only fathers were obligated to support legitimate, biological children. Statutes now impose that obligation on both the father and mother and may impose a duty to support adopted or illegitimate children as well. More frequently, courts are imposing upon women the duty of spousal support pursuant to separation or divorce. Similarly, children too may bear a duty to support indigent or infirm parents. Finally, support obligations may run between brothers, sisters, or grandchildren, as recognized duties of support proliferate. See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93 (1951); Note, *The Uniform Reciprocal Enforcement of Support Act*, 13 STAN. L. REV. 901, 904 n.17 (1961).

2. See Commissioners' Prefatory Note to URESA, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 171 (1950) [hereinafter cited as HANDBOOK (1950)], reprinted in 9A UNIFORM LAWS ANNOTATED 751 (1979). The twentieth century upheaval in American population mobility was precipitated in part by the automobile, two world wars, and increased availability of education. Ease in interstate movement resulted in an unprecedented incidence of social migration. As restraints on the interstate movement of defaulting support obligors were removed, the numbers of abandoned support obligees increased. Most state courts, however, were unwilling to honor support duties originating in other jurisdictions. See RESTATEMENT OF CONFLICT OF LAWS § 458 (1934) (no state will directly enforce a duty to support created by the laws of another state). The Commissioners on Uniform State Laws addressed this problem in the original draft of their uniform act:

Each state will enforce its law as before so long as the husband remains in the state, and the new act is meant to improve enforcement where the parties are in different states.

The only extension of the duties of support is the principle stated in Section 4 that the duty shall bind the obligor regardless of the presence of the obligee. The purpose here is to overcome the rule in some states that the duty of support runs only in favor of obligees within the state, and to overcome the indifference of many states which would refuse or neglect to enforce support in favor of out-of-state dependents on the theory often only tacitly admitted, that one state has no interest in helping another state rid itself of the burden of supporting destitute families.

State Laws³ responded by drafting the Uniform Reciprocal Enforcement of Support Act (URESAs),⁴ designed to provide a comparatively simple process for enforcing support awards when the person owing the duty of support⁵ left the state where the person owed the duty of support⁶ was domiciled. Although the effort to develop an interstate enforcement mechanism began in 1909,⁷ it was not until 1950 that a viable draft was presented to state legislatures.⁸ Prior to URESA, an obligee domiciled in state *A*, who sought enforcement of a support order against an obligor domiciled in state *B*, was required by common law to travel to state *B* and

HANDBOOK (1950), *supra* at 172. See generally Note, *supra* note 1, at 901 n.2.

3. See HANDBOOK (1950), *supra* note 2. An excellent exposition of the history of the uniform support law appears in Brockelbank, *supra* note 1, at 93.

4. Four versions of the Uniform Reciprocal Enforcement of Support Act have been drafted by the Commissioners on Uniform State Laws (1950, 1952, 1958, and the Revised Uniform Reciprocal Enforcement of Support Act (1968)) [hereinafter cited as URESA 1950, URESA 1952, URESA 1958, and RURESAs 1968]. The present District of Columbia URESA is essentially the same as URESA 1952, which is set out in the HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 175-80 (1952) [hereinafter cited as HANDBOOK (1952)].

5. Basic terms for use in URESA proceedings include:

- a) *obligee*, the person to whom the duty of support is owed;
- b) *obligor*, the person who owes the duty of support;
- c) *initiating state*, forum where the obligee files a support petition;
- d) *responding state*, forum that has jurisdiction over the obligor. See Fox, *The Uniform Reciprocal Enforcement of Support Act*, 12 FAM. L.Q. 113, 114 (1978); *Ex parte Floyd*, 43 Cal. 2d 379, 273 P.2d 820 (1954) (en banc). The District of Columbia URESA avoids employing the terms *obligor* and *obligee* in favor of *plaintiff* and *defendant* because this terminology is clearer. S. REP. NO. 462, 85th Cong., 1st Sess. 3 (1957) [hereinafter cited as S. REP. NO. 462]. This comment will use *obligee and plaintiff* and *obligor and defendant* interchangeably.

6. Prior to URESA, a fleeing obligor who established domicile in a foreign jurisdiction was generally immune from suit, since a destitute obligee almost certainly lacked the resources to bring a support action in the obligor's forum. See generally Brockelbank, *supra* note 1, at 94; Comment, *Louisiana Adopts Uniform Laws: The Revised Uniform Reciprocal Enforcement of Support Act of 1968*, 24 LOY. L. REV. 53, 53-54 (1978); Note, *Uniform Reciprocal Enforcement of Support Act: A Critical Analysis of Its Current and Future Status*, 17 U. PITT. L. REV. 261, 263 (1956).

7. A 1909 study of nonsupport by the Commissioners on Uniform State Laws culminated in the Uniform Desertion and Non-Support Act in 1910. Adopted in 24 jurisdictions, the 1910 Act provided for support enforcement only through criminal penalties and had no provision for interstate enforcement. See HANDBOOK (1950), *supra* note 2, at 171.

8. By 1950, one state legislature had already taken action on the problem of reciprocal support enforcement. In 1949, New York State adopted the Uniform Support of Dependents Act (USDA). N.Y. DOM. REL. LAW §§ 30-43 (McKinney 1977). Ten states subsequently adopted variations of the USDA, although these statutes were soon replaced with URESA. USDA remains in effect in New York largely because it is compatible with prevailing URESA statutes. See Brockelbank, *supra* note 1, at 95; Note, *supra* note 1, at 901 n.1.

file suit there to enforce the order.⁹ The practical effect was that many abandoned obligees turned to their domiciliary government (state *A*) for support.¹⁰ URESA was intended to ameliorate the harsh impact of this common law rule by permitting enforcement in state *B* of support awards entered in state *A* without requiring the obligee to leave home.¹¹ Within seven years, the Act was adopted by all jurisdictions, including the District of Columbia.¹²

The District of Columbia URESA has remained essentially the same as the 1952 Act, despite several amendments to the model act made by the Commissioners on Uniform State Laws in 1958 and again in 1968.¹³ In its

9. The obligee was required to travel to the obligor's domicile so that personal jurisdiction could be asserted against the obligor. The difficulty of obtaining personal jurisdiction often precluded an indigent obligee from obtaining any recourse against a defaulting obligor. Furthermore, should an obligee have pursued a defaulting party to a foreign jurisdiction, the obligor could have simply traveled to a new forum to escape the suit.

10. The financial burden shouldered by abandoned obligees' states was growing significantly when the first versions of URESA were passed. The states' aggregate support expenses for 900,000 abandoned obligees in 1950 was placed at \$205 million by the Executive Director and Chief Counsel of the National Desertion Bureau. See Brockelbank, *supra* note 1, at 95. Interestingly, there are no figures that indicate the states in which expenses have declined with the adoption of URESA statutes. Cf. Comment, *Nonsupport Actions and the Uniform Reciprocal Enforcement Support Act [sic]*, 46 J. CRIM. L.C. & P.S. 519, 519 (1955) (in 1953, approximately \$605 million was spent on public assistance to 564,000 families throughout the United States).

11. By permitting interstate enforcement of duties of support, URESA accommodates phenomena that have transformed the nature of American society, notably, increased mobility by virtue of technological advances and the creation of broad social welfare programs. It can be postulated that the availability of public assistance produces an atmosphere conducive to the obligor's flight since the state stands ready to act as a substitute provider. URESA, by permitting interstate enforcement of support, is intended to ease the resultant financial burden on the obligee's state governments. Incidentally, however, URESA has affected the functioning of states as independent entities. Under prior law, modifiable support orders for past due judgments were not afforded full faith and credit. See *Sistare v. Sistare*, 218 U.S. 1, 11-18 (1910) (past due judgments in a state are not within the full faith and credit clause when they are modifiable because the right has not vested). Since most jurisdictions hold that URESA awards are modifiable in both the initiating and responding states, these support awards would not, absent URESA, be enforceable because they would not be entitled to full faith and credit. *Lynde v. Lynde*, 181 U.S. 183 (1901) (future alimony award granted by New Jersey court held modifiable and therefore not entitled to full faith and credit in New York). Thus, the Act has altered the freedom of states to disregard decisions involving support made outside their jurisdictional boundaries. See Fox, *supra* note 5, at 130.

12. The URESA for the District of Columbia is set out at D.C. CODE §§ 30-301 to 30-324 (1973) (passed by Congress as Act of July 10, 1957, Pub. L. No. 85-94, 71 Stat. 285 (1957)).

13. The only major modifications concern the name changes made under the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. CODE §§ 11-101 to 11-2504 (1973).

present form, the District of Columbia URESA lacks two significant procedural provisions common to most state URESAs.¹⁴ First, it does not include procedures for ordering payment of arrearages in support actions.¹⁵ Thus, District-resident obligors who default may escape their duty of support from the date payments cease until a District of Columbia court orders resumption, because missed payments cannot be recovered under present District of Columbia law. Second, the District of Columbia URESA ambiguously permits different choices of substantive law when a minor obligee, seeking support until his age of majority, sues an obligor domiciled in the District.¹⁶ Since the age of majority among the states may vary from eighteen to twenty-one years,¹⁷ up to three years of support payments may be ordered or terminated depending upon the choice of law made by the presiding District of Columbia Superior Court judge. To date, the cases considering this issue have yielded inconsistent results: one judge has ordered payments to age twenty-one for an obligee recognized in his domicile as an adult at age eighteen; two other judges have terminated the obligee's support at age eighteen under the same circumstances.¹⁸ Consequently, the ambiguity in the District of Columbia URESA choice of law provision may result in differing support burdens for identically situated obligors present in the District of Columbia who have minor children residing outside the District.

Finally, the District of Columbia URESA essentially embodies the uniform act as drafted in 1952,¹⁹ and therefore does not reflect significant changes in the model act that have been made by the National Conference. Among these changes are amendments to permit recovery of arrearages

14. The amended model act (RURESA 1968) has been adopted by half the states and is set out at 9A UNIFORM LAWS ANNOTATED 647 (1979), and HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 226 (1968) [hereinafter cited as HANDBOOK (1968)]. URESA 1958 is set out at 9A UNIFORM LAWS ANNOTATED 758 (1979), and HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 243 (1958) [hereinafter cited as HANDBOOK (1958)].

15. Arrearages are the past support payments that the obligor has missed. The difficulty in locating a fleeing obligor may permit substantial amounts of time to elapse before a URESA suit can be brought. The result can be significant accumulations of unpaid support for which no statutory remedy is available under the District of Columbia URESA.

16. The age of majority in the District of Columbia remains 21 for child support, but is otherwise 18. *Barnett v. Barnett*, 243 A.2d 51, 53 (D.C. 1968).

17. At least one jurisdiction has set 17 as the age of majority, unless the person is unable to maintain himself and is therefore likely to need public support. IOWA CODE § 252A.2(3) (1971).

18. See notes 94-99 and accompanying text *infra*.

19. When Congress enacted the URESA for the District, some changes were made to ensure government recovery of public funds expended for support. See notes 36-38 and accompanying text *infra*.

and provide an unambiguous choice of substantive law, thereby facilitating URESA application, correcting unfairness in URESA proceedings, and clarifying the drafters' intent. The most important of these amendments, however, may be the registration system provision that permits the responding state to treat the foreign obligee's support petition as if issued in the responding state.²⁰ Taken together, these defects and omissions represent procedural gaps that undermine the District of Columbia URESA's effectiveness as a mechanism for the interstate enforcement of support awards.

I. AN OVERVIEW OF THE DISTRICT OF COLUMBIA URESA

A. Duties of Support

In 1957, the District of Columbia became the last jurisdiction in the nation to enact URESA.²¹ As adopted, the District's Act conforms to all other state URESAs in providing for broad interpretation of the basic term *duty of support*.²² This term of art is intended to encompass all statutory and common law support duties, thereby preserving judicial discretion to find and enforce duties of support.²³ Accordingly, any statutory or common law duties of support, including those arising from support decrees in divorce or separation proceedings, are enforceable under the Act.²⁴

Once a duty of support has been found, most courts, including those in the District of Columbia, continue to impose it — even when wrongdoing

20. The registration process is discussed at notes 58-64 and accompanying text *infra*.

21. See Commissioners' Prefatory Note to URESA, HANDBOOK (1958), reprinted in 9A UNIFORM LAWS ANNOTATED 748 (1979). "[T]he District is the only jurisdiction in the United States in which the act is not in force. . . ." 103 CONG. REC. 10,131 (1957) (remarks of Rep. McMillan prior to House passage of the Act). As the only non-URESAs jurisdiction in the nation, the District had obtained some notoriety as an attractive residence for obligors fleeing from support obligations incurred elsewhere. S. REP. NO. 462, *supra* note 5, at 3 (District labeled "haven for runaway fathers").

22. The definitional section of the District of Columbia URESA is D.C. CODE § 30-302 (1973). The duty of support is defined in § 30-302(e).

23. URESA duties of support should always be interpreted as broadly as possible. "The thrust of the statutory definition of 'duty of support' is plainly intended to encompass any possible support duty created for an obligee in a particular state. . . ." Fox, *supra* note 5, at 116.

24. See D.C. CODE § 30-302(e)(1) (1973). See also *Mehrstein v. Mehrstein*, 245 Cal. App. 2d 646, 54 Cal. Rptr. 65 (1966) (support under URESA includes necessities during marriage, separate maintenance during legal separation, and alimony or child support after divorce); Commonwealth *ex rel. Shaffer v. Shaffer*, 175 Pa. Super. Ct. 100, 103 A.2d 430 (1954) (husband's obligation to support wife is imposed as an incident of marital status); *Yetter v. Commeau*, 84 Wash. 2d 155, 524 P.2d 901 (1974) (en banc) (duty to support child born out of wedlock is imposed by law).

by other parties would seem to militate against the imposition of a continuing duty. For example, in *Edmonds v. Edmonds*, a father's duty to provide reasonable support survived the misconduct of the mother, who voluntarily removed herself and her children from the family's home.²⁵ And, in *Britt v. Britt*,²⁶ the District of Columbia Municipal Court of Appeals²⁷ held that the support duty of a father was similarly unaffected by the wife's denial of visitation rights.²⁸ The courts in the District, and most state courts in the United States, impose the duty of child support, despite a spouse's denial of visitation rights, on the theory that a spouse's acts should not deprive the children of proper support.²⁹ The rule is not uniform, however, as some jurisdictions condition the continuance of support

25. 146 A.2d 774 (D.C. 1958). The *Edmonds* court found a legal obligation of a father to support his children, rejecting a contention that the support duty was only a moral obligation. *Id.* at 775. Moreover, the District of Columbia had generally held that a husband's duty to support his children is not abrogated by his wife's misconduct. *See, e.g., Carey v. Carey*, 8 App. D.C. 528, 531 (1896).

Only one District of Columbia court has held termination of child support a legitimate remedy for a wife's misconduct. In *Adams v. Adams*, 184 A.2d 213 (D.C. 1962), the wife/mother promised the court she would return from Europe with her children within a prescribed time to permit continued visitation by her husband, a District resident. With that assurance, the court permitted her to leave the country. Instead of returning, she and her children became permanent residents of Morocco. The court upheld termination of child support payments on the grounds that the mother had "trifled" with the court. *Id.* at 214. Although *Adams* seemed to modify the *Edmonds* rule against penalizing children for the acts of their parents, *Adams* has since been limited to its circumstances by *Norton v. Norton*, 298 A.2d 514 (D.C. 1972). There, the defendant father, a District resident, was ordered to pay URESA support for his children who had been taken to California by their mother. Although the mother was found to have acted in contempt of court by removing the children from the District, the *Adams* rationale was not applied and support payments were not terminated.

26. 153 A.2d 644 (D.C. 1959).

27. The Municipal Court of Appeals and the District of Columbia Court of General Sessions became, respectively, the District of Columbia Court of Appeals and the District of Columbia Superior Court under the District of Columbia Court Reform and Criminal Procedure Act of 1970. D.C. CODE §§ 11-101 to 11-2504 (1973).

28. 153 A.2d at 646. The *Britt* court in a URESA action also determined that it had the power to award the wife's attorney's fees, even though the district court had, in a separate action, dismissed the wife's claim for support because she had denied her husband visitation rights. *Id.* at 647. The *Britt* court refused to accept the district court's dismissal, citing changed circumstances in that the wife had permitted resumption of visitation, and also citing, and refusing to void, the *Edmonds* rule. *Id.* at 646.

29. *See Smith v. Superior Court*, 68 Cal. App. 3d 457, 137 Cal Rptr. 348 (1977) (child support not terminable merely because one parent violates a court order); *Vecellio v. Vecellio*, 313 So. 2d 61 (Fla. App. 1975) (father's remedy for denial of visitation is to return to initiating state where mother and children reside and adjudicate the matter); *Pifer v. Pifer*, 31 N.C. App. 486, 229 S.E.2d 700 (1976) (judge lacks jurisdiction to condition support payments on visitation privilege and has no authority to permit discontinuance of support payments on finding violation of visitation privileges).

upon proper visitation rights.³⁰

In addition to a general duty of support, the District of Columbia URESA creates a duty of support for illegitimate children, a provision making the District statute distinct from those of other states.³¹ In reality, however, the duty of support for illegitimate children has been subordinated to the support entitlement of legitimate children. In *Mitchell v. Mitchell*,³² and *Jefferson v. Jefferson*,³³ for example, the District of Columbia Municipal Court of Appeals interpreted the Act to give support preference to legitimate children when their rights conflict with the rights of illegitimate children.³⁴ Thus, when one obligor owes a duty of support to both legitimate and illegitimate children, the legitimate children will probably receive a greater share of the support payments.³⁵

Another provision unique to the District's Act includes reimbursement

30. See generally *State ex rel. Arvayo v. Guerrero*, 21 Ariz. App. 173, 517 P.2d 526 (1973) (denial of visitation rights by mother justifies suspending child support payments); *Chandler v. Chandler*, 109 N.H. 477, 256 A.2d 157, 158-59 (1969) (absence of right to visitation does not bar right of support which continues and may be enforced under URESA, but court may reduce support order until visitation rights are respected); *Harvey v. Harvey*, 58 Misc. 2d 917, 297 N.Y.S.2d 320, 323-24 (Sup. Ct. 1969) (wife would be fined, incarcerated, and child support terminated unless she agreed to original visitation stipulations).

URESAs drafters intended that child support not be terminated when visitation rights have been hampered, and that intent is reflected in the Arizona Act. Arizona's URESA statute reads in pertinent part, "[t]he determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court." ARIZ. REV. STAT. ANN. § 12-1672 (Supp. 1979). Nonetheless, the *Arvayo* court held that the entire *duty* of support, not just enforcement of that duty, was terminated by the court's modification of the divorce decree. 21 Ariz. App. at 175, 517 P.2d at 528.

31. D.C. CODE § 30-320 (1973). Originally intended to provide a duty of support for fathers of illegitimate children, § 320 was amended in 1976 to impose the duty upon mothers of illegitimate children as well. D.C. CODE § 30-320 (Supp. 1978). Even where they are not expressly provided for in URESA statutes, other jurisdictions have enforced duties to support illegitimate children. See *Yetter v. Commeau*, 84 Wash. 2d 155, 159, 524 P.2d 901 (1974) (court would recognize a legal duty to support illegitimate children).

32. 257 A.2d 496 (D.C. 1969), *aff'd*, 445 F.2d 722 (D.C. Cir. 1971).

33. 192 A.2d 813 (D.C. 1963).

34. The question of preference toward legitimate children in support cases first arose in the District in *Miner v. Miner*, 192 A.2d 811 (D.C. 1963). Noting that the District of Columbia URESA provided a duty of support for illegitimate children, the *Miner* court adopted the rationale of *McCarthy v. McCarthy*, 197 Misc. 596, 94 N.Y.S.2d 801, 803 (Fam. Ct. 1950), that gave preference to legitimate children because they were the result of the marital relationship and were, therefore, sanctioned by moral considerations. This morality-based preference has not been challenged since its adoption in *Miner*.

35. Rights of illegitimates have enjoyed increasing protection. See *Gomez v. Perez*, 409 U.S. 535 (1973) (Texas law that granted right of support to legitimate children but denied right of support to illegitimate children violative of equal protection clause); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972) (Louisiana law denying workmen's compensation benefits to illegitimate children violative of equal protection); *Stanley v. Illinois*, 405 U.S. 645

of political subdivisions and agencies for the amounts expended in the care of abandoned obligees as a duty of support.³⁶ This provision was absent from the definition of *duty of support* as included in the 1950, 1952, 1958, and 1968 versions of URESA.³⁷ Congress, in passing the URESA statute for the District, intended the federal government's support payments to abandoned obligees in the District to be recoverable, both for financial and political reasons. This provision, therefore, probably made the District of Columbia URESA more palatable to Congress by minimizing the financial burdens on the federal government.³⁸

B. Civil Enforcement

When the District of Columbia is the initiating state in a URESA proceeding — when the abandoned obligee is a District resident — the obligee commences the action by filing a complaint³⁹ setting forth certain pertinent facts.⁴⁰ After assessing the plaintiff-obligee's⁴¹ petition, the District of Co-

(1972) (father of illegitimate children entitled to hearing before children declared wards of state on death of mother).

36. D.C. CODE § 30-302(e)(2) (1973). The District of Columbia URESA is the only URESA statute to so provide.

37. A state reimbursement provision is included in URESA § 8 (1950), URESA § 8 (1952), URESA § 8 (1958), and RURES A § 8 (1968), although in none of these statutes is reimbursement of a political subdivision included in the definition of duty of support.

38. In addition to nationwide federal support programs (Aid to Families with Dependent Children, for example), the federal government's unique governmental role in the District might render the United States responsible for local support burdens that state governments and agencies handle in other jurisdictions. Not surprisingly, the state reimbursement language in the Act "makes it clear that governmental agencies providing support are eligible to bring actions under the act for reimbursement." S. REP. NO. 462, *supra* note 5, at 2-3. The inference can be drawn that political considerations for minimizing the financial burden on the federal government were important motives when Congress passed the District of Columbia URESA.

39. D.C. CODE § 30-306 (1973). The complaint (also known as the petition or declaration), is filed in most states on pre-printed forms. *See* Fox, *supra* note 5, at 118. A representative complaint is set forth at D.C. CODE ENCYCL. 473 (West Supp. 1978) (form 13). The forms are then filed with the Reciprocal Support Intake Clerk, Office of the Corporation Counsel, Room 4335, District Building, 500 Indiana Avenue, N.W., Washington, D.C. 20001. The original and three copies of the complaint must be submitted, along with a five dollar filing fee. The clerk then sets a date for an *ex parte* hearing. The plaintiff appears for the hearing and answers a series of questions under oath before a judge, who then has the plaintiff sign the testimony.

40. D.C. CODE § 30-307 (1973). The Act enumerates but does not limit the appropriate pertinent facts, including the obligor's name and address, a description of both parties' circumstances, photographs, descriptions of distinguishing marks, fingerprints, aliases, employers, and social security number. *Id.*

41. Any person or agency may bring a complaint on behalf of a minor plaintiff without having been appointed guardian or next friend to the minor. *Id.* § 30-309.

lumbia Corporation Counsel⁴² must find the appearance of a duty of support⁴³ and must determine that the responding state has jurisdiction over the obligor.⁴⁴ The Corporation Counsel then certifies the complaint to the responding state.⁴⁵ After certification, the Corporation Counsel may waive all costs incurred by the plaintiff⁴⁶ and, if there is reason to believe the obligor will flee, may ask the responding state to arrest him.⁴⁷

When the District of Columbia acts as the responding jurisdiction — when the obligor is a District resident — the District of Columbia court must docket the initiating state's certificate⁴⁸ and refer it to the Corporation Counsel.⁴⁹ The Corporation Counsel will act on behalf of the obligee

42. URESA 1950 authorized the district attorney or some state prosecuting official to represent the obligee; the District version substituted the Corporation Counsel. D.C. CODE § 30-308 (1978). For a listing of the various state agencies that handle URESA actions, see Fox, *supra* note 5, at 134-35. Section 30-313 designates the Corporation Counsel as Information Agent; as such, the Corporation Counsel must transmit copies of the Act to the other states and jurisdictions with similar reciprocal laws. The Information Agent must also maintain a registry of courts with URESA jurisdiction in other states. The Corporation Counsel acts as the representative of the plaintiff but has the option to appoint private counsel if no public support burden is thereby incurred or threatened, and never at the District's expense. *Id.* § 30-308.

43. There is some uncertainty as to what constitutes the appearance of a duty of support. One commentator has written:

This review is not a complicated process; indeed, the National Conference commentary on the original URESA points out that the initiating court is simply expected to "look over" the petition to see if the facts show a support obligation. This is akin to a determination whether a complaint in an ordinary civil case states a claim upon which relief can be granted. It is also closely related to a determination of "probable cause" in a criminal court. The court is not expected to go beyond this loose review and is definitely not to render any finding or conclusion as to the obligor's ultimate liability.

Fox, *supra* note 5, at 120.

44. "[T]he court normally determines only that the obligor is likely to be physically present in the responding state." *Id.*

45. Three copies each of the certificate, the complaint, and the District's law are forwarded to the responding state. D.C. CODE § 30-310 (1973). The papers may be sent to the state information agency if the responding court's address is unknown. See Fox, *supra* note 5, at 123.

46. The Act reserves to the District of Columbia the discretion to assess costs and fees. D.C. CODE § 30-311 (1973). The District may waive such costs, however, only if the plaintiff states by affidavit that he or she is unwilling to pay. Additionally, the court may waive costs incurred when a state acts as plaintiff, provided the plaintiff state has similar fee waiver provisions. *Id.*

47. A defendant may flee once he is served with process. See HANDBOOK (1952), *supra* note 4, at 291.

48. D.C. CODE § 30-314(a) (1973). If inaccuracies are present, the court must keep the case pending and return the complaint. *Id.* § 30-314(b).

49. The court may refer the matter to private counsel, although this is rarely done. *Id.* § 30-314(a).

and bring the action for breach of support against the obligor. In its role as responding jurisdiction, the District of Columbia court has authority to order support payments if it finds that a duty of support has been breached.⁵⁰ If support payments are ordered, the court must transmit to the initiating state a certified copy of all orders entered against the defendant⁵¹ and disburse all payments received from the defendant to the obligee or to the court in the initiating state.⁵² If the defendant refuses to make payments ordered by a District of Columbia court in URESA proceedings, the plaintiff and the District of Columbia, as the responding jurisdiction, may resort to any URESA or non-URESAs remedies.⁵³

II. AMENDMENTS ABSENT FROM THE DISTRICT OF COLUMBIA URESA: THE REGISTRATION PROCEDURE AND OTHER PROVISIONS

Because the District of Columbia URESA was modeled after the 1952 draft of the National Commissioners on Uniform State Laws and has not been amended since its enactment in 1957, it lacks major provisions that now appear in nearly every state URESA. In addition, an important provision pertaining to criminal enforcement of support orders⁵⁴ included in most state URESAs was omitted from the District's version of the Act.⁵⁵

50. *Id.* § 30-315. This provision empowers the District to require a bond or cash deposit and preserves the contempt remedies available in any other suit if a defendant violates an order made pursuant to URESA.

51. *Id.* § 30-316.

52. Certified copies of all payments received and disbursed must be made available for transmission where necessary to other states. *Id.* § 30-317.

53. All URESA remedies are additional to, not substitutes for, any other remedies. *Id.* § 30-303. See *Figliozzi v. Figliozzi*, 173 A.2d 904 (D.C. 1961) (D.C. CODE § 16-415 (1951), a non-URESAs statute, used to increase amount of prior URESAs award); *Menetrez v. Menetrez*, 147 A.2d 772 (D.C. 1959) (trial court did not abuse its discretion by increasing URESAs award beyond the amount requested by plaintiff wife and initiating state). Long-arm statutes and other uniform laws may be employed to supplement the URESAs remedies. See Comment, *supra* note 6, at 57. The District of Columbia URESAs further provides that the District may avail itself of the same remedies as the obligor to recover expenses incurred in supporting the obligee. D.C. CODE § 30-305 (1973). Under this provision, the District may recover past costs or continuing costs, as in a situation where an abandoned infant is institutionalized. See note 10 *supra*.

54. See, e.g., OR. REV. STAT. § 110.051 (1977); VA. CODE § 20-88.16 (1975); WIS. STAT. ANN. § 52.10(5) (West Supp. 1979).

55. S. REP. NO. 462, *supra* note 5, at 3, explained the provision's absence from the District's URESAs:

It would not be practical to enact for the District of Columbia provisions such as those in section 5 of the Uniform Reciprocal Enforcement of Support Act for the reason that the District is a Federal jurisdiction where Federal removal procedure is used whenever it is necessary to return to the District a person charged with crime. In any event, it is felt that the new civil remedy provided . . . will to a large

The criminal enforcement rules provide for extradition of the obligor on demand by the initiating state but allow the responding state's governor discretion to deny the demand if the obligor begins complying with the support order.⁵⁶ This provision is intended to deter an obligor from choosing not to comply with an outstanding, reciprocally enforced support order.⁵⁷

Perhaps the most important amendment missing from the District's Act is the registration procedure incorporated by the National Commissioners into the 1958 version of the model act.⁵⁸ The basic purpose of registration is simplification of the URESA process by permitting courts to enforce support orders from other jurisdictions as if they were locally issued.⁵⁹ The defendant may oppose the registration, but he is limited to defenses available in an action on a foreign judgment.⁶⁰ The obligee's jurisdiction, the rendering state,⁶¹ creates the support order and forwards it to the obli-

extent eliminate the necessity for resort to criminal proceedings in cases involving failure to support, where the person owing the duty is out of the District.

56. RURESAs §§ 5-6 (1968); URESAs §§ 5-6 (1958).

57. Problems with the extradition and criminal sanctions were noted early in the history of URESA. Incarceration is counter-productive since a jailed obligor is less likely to be able to support an obligee. Moreover, incarceration may cause the obligor to lose his job, irreparably harm his relation with the obligee, and affect his prospects for future employment. Thus, as a result of incarceration, the cost to the state doubles, for it must now support not only the obligee, but the obligor it has extradited as well. See Brockelbank, *supra* note 1, at 94. One commentator has characterized URESA as a quasi-civil proceeding because the prospect of imprisonment is always present. Comment, *supra* note 6, at 58. In reality, however, these provisions are rarely used.

58. The registration procedure was included as Part IV of URESA 1958. See note 14 *supra*. Dean Fox commented favorably that the registration process obviates what he has labeled the five-step URESA process: 1) identification of the support duty by the obligee; 2) filing the petition; 3) initiating court review and location of the obligor; 4) hearing in the responding court; and 5) issuance of the support order. Fox, *supra* note 5, at 115-30. Less significant improvements include provisions to permit enforcement of all support duties, including arrearages, in addition to present and prospective amounts while exempting the obligee from paying costs; papers can be transferred automatically to the responding jurisdiction if the initiating state has sent them to the wrong jurisdiction; the support order may also be forwarded directly between counties of the responding state; furthermore, the obligor is permitted to present defenses, and the responding state must continue the case if he does so. *Id.* §§ 9, 19, 21 and 24.

The 1968 amendments give the state attorney general the authority to order local prosecutors to enforce vigorously an order to prosecute a URESA case, or the case may be removed and prosecuted at the state level. RURESAs § 12 (1968), *supra* note 14. Machinery for the State Information Agency is improved to aid in locating the obligor. *Id.*

59. See HANDBOOK (1958), *supra* note 14, at 241-42.

60. These defenses include lack of jurisdiction or procedural defects. Fox, *supra* note 5, at 132.

61. RURESAs § 2(k) (1968), *supra* note 14.

gor's jurisdiction, the registering state.⁶² Once the procedures of the Act are met,⁶³ the foreign support order has the same force and effect as if it were entered originally in the responding-registering state.⁶⁴

One particular advantage of the registration process is that registering states need not be concerned with conflicts in the substantive law between the initiating and responding jurisdictions or questions of granting foreign support orders full faith and credit, since the law of the registering state may treat the support order as if locally entered and apply its own law to the whole proceeding. The District of Columbia URESA, however, does not include a registration provision, and, consequently, District of Columbia courts are beset by confusion on questions involving these issues.

III. DETERMINING THE APPLICABLE SUBSTANTIVE LAW IN DISTRICT OF COLUMBIA URESA ACTIONS

When the National Conference of Commissioners on Uniform State Laws drafted the original URESA in 1950, they permitted the obligee to elect whether the law of the responding state or that of the initiating state should apply to the support action.⁶⁵ Under these provisions, the obligee could first determine which state's law was more favorable, then request the responding state to apply that choice.⁶⁶ The election provision,⁶⁷ al-

62. *Id.* § 2(1).

63. Dean Fox has outlined the registration process as follows:

1. The obligee or the rendering court sends the registering court: (a) three certified copies of the support order and any modifications; (b) one copy of the rendering state's URESA; (c) a verified statement by the obligee describing the obligor's location, the obligor's property and naming the other states in which the order is already registered.

2. The registering court files the order in the "Registry of Foreign Support Orders," serves the obligor, docketes the case and notifies the prosecuting attorney.

3. Once registered, the order is to be treated as any other support order issued by the registering state and is "subject to the same procedure, defense and proceedings for reopening, vacating or staying."

4. The obligor has twenty days to respond to the notice of registration and is limited, at the hearing, to matters that would be available to him as defenses, "in an action to enforce a foreign money judgment."

Fox, *supra* note 5, at 132 (quoting RURESA (1968), *reprinted at* HANDBOOK (1968), *supra* note 61).

64. *See* Note, *Uniform Reciprocal Legislation to Enforce Familial Duties of Support*, 25 DRAKE L. REV. 206, 213 (1975).

65. The original URESA read,

[d]uties of support enforceable [*sic*] under this law are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee is present when the failure to support commenced, at the election of the obligee.

URESAs § 7 (1950), *reprinted in* HANDBOOK (1950), *supra* note 2, at 177.

66. The election provision unambiguously permitted forum shopping by the plaintiff-

though rejected by most jurisdictions, is still the law in two states⁶⁸ and has never been found unconstitutional.⁶⁹

Shortly after its adoption, the election provision was criticized by Dean Edward Stimson, who proposed a territorial theory of choice of law under URESA. According to Stimson's theory, the applicable law in support proceedings should be the substantive law of the jurisdiction where the obligor is present.⁷⁰ Despite some initial hostility to this proposal,⁷¹ the

obligee. The provision, however, may have been intended to permit the obligee to elect only if the residence of the obligor was unknown. *See* Comment, *Choice of Law: Interstate Enforcement of Duties of Support*, 1965 DUKE L.J. 356, 361 & n.27 (1965).

67. The election provision was incorporated into the original URESA to counter a significant body of authority that prohibited recognition of foreign support judgments. *See, e.g.*, RESTATEMENT OF CONFLICT OF LAWS §§ 457-458 (1934) (no state can impose a statutory duty of support upon any person who was not domiciled in that state or subject to its jurisdiction when the suit was begun). Options available prior to URESA were limited: the obligee could either wait for the obligor to return to the obligee's forum, pursue the obligor in the obligor's forum, or extradite the obligor should the support duty involve criminal sanctions. Comment, *supra* note 66, at 357-58. Since none of these options was particularly effective, the Commissioners opted for the obligee's election provision. A responding state could, however, refuse to apply the initiating state's law for public policy or equal protection reasons. *See* Griffin v. McCoach, 313 U.S. 498, 506 (1941) (public policy can be reason to deny full faith and credit); Department of Mental Hygiene v. Judd, 45 N.J. 46, 50, 211 A.2d 198, 200 (1965) (New Jersey would not enforce reciprocal duty that violated public policy or equal protection).

68. The election provision has been retained in Mississippi. MISS. CODE ANN. § 93-11-15 (1972). In Minnesota, the election is given to the court, not to the obligee. MINN. STAT. ANN. § 518.48 (West 1969).

69. *See* Comment, *supra* note 66, at 356. The election provision was approved as recently as 1966 in Texas, although that state has since adopted the presence test. *See* Bjorgo v. Bjorgo, 402 S.W.2d 143, 148 (Tex. 1966) (not a denial of equal protection to enforce against a Texas resident an obligation of support incurred in another state before residence in Texas was acquired, which cannot under Texas law be imposed upon a Texas resident who has not incurred the obligation elsewhere). *Accord*, Mehrstein v. Mehrstein, 245 Cal. App. 2d 646, 54 Cal. Rptr. 65 (1966) (choice of law by obligee permitted under URESA election provision). Bjorgo disavowed dictum from the earlier case of California v. Copus, 309 S.W.2d 227 (Tex.), cert. denied, 356 U.S. 967 (1958) (Texas Supreme Court held son, a Texas resident, not liable for the support expenses of his mother confined in a California mental institution).

70. Stimson based his conclusions on an analysis of Commonwealth v. Acker, 197 Mass. 91, 93, 83 N.E. 312, 312-13 (1908) (where obligor fails to support his wife and minor child, his neglect of that duty occurs where he resides — not where the obligees reside). Stimson asserted:

The rule that was employed in this case is that, in order to determine whether personal legal rights and duties were created or continue to exist in relations between persons in different states, the applicable law is the law to which the person alleged to be under the duty was subject at the significant time and not the law to which the person claiming the right was subject.

Stimson, *Simplifying the Conflict of Laws: A Bill Proposed for Enactment by the Congress*, 36 A.B.A.J. 1003, 1005 (1950).

71. Professor Albert Ehrenzweig criticized Stimson's analysis for two reasons. First,

election provision was quickly deleted from the model URESA⁷² and was replaced by Stimson's theory, the presence test.⁷³ Judicial interpretations in most jurisdictions reflect adherence to the presence test in both URESA and non-URESAs proceedings.⁷⁴

The choice of law provision in the District of Columbia URESA differs substantially from the presence test as adopted in other state URESA acts.⁷⁵ The District of Columbia statute is actually somewhat similar to the election provisions of the 1950 URESA but does not, however, indicate who is to make the election. Specifically, the section makes enforceable these duties of support: duties imposed by any forums where the obligor was present during the time for which support is sought; duties imposed by the obligee's forum when the failure to support first occurs; or duties imposed by the obligee's forum when the failure to support is ongoing.⁷⁶ District of Columbia courts have usually interpreted this choice of law sec-

Acker was a criminal case while URESA proceedings are usually civil in nature. Second, as a policy matter, the *Acker* holding invites deserters to choose a residence with a law favorable to them. Ehrenzweig, *Interstate Recognition of Support Duties*, 42 CALIF. L. REV. 382, 389 (1954). Stimson's presence theory, however, was ultimately incorporated into URESA.

72. The election provision also permitted an obligee to move to a forum recognizing a new duty of support and sue on the new obligation. Apparently for this reason the Commissioners rejected the election rule, calling it "hurriedly drafted." The word "hurriedly" was later deleted from the HANDBOOK (1952). Ehrenzweig, *supra* note 71, at 388 & n.43.

The Commissioners also wanted to prevent the obligee from being free to choose the most favorable law available. *Id.* at 388 & n.45. "It was never intended that she [the obligee] should have an absolute right to choose the applicable law as her interest might dictate." HANDBOOK (1952), *supra* note 4, at 298.

73. An account of Stimson's territorial analysis and the development of the presence test appears in *Legislation*, 35 U. CIN. L. REV. 168, 170 n.10 (1966).

74. See, e.g., *Yarborough v. Yarborough*, 290 U.S. 202, 211 (1933) (non-URESAs support action) (character and extent of father's obligation, and status of minor, are determined ordinarily not by place of minor's residence but by law of father's domicile); *Engelson v. Mallea*, 180 N.W.2d 127, 131 (Iowa 1970) (law of state where obligor was present during support period sought applies); *Irving v. Ford*, 183 Mass. 448, 451, 67 N.E. 366, 367 (1903) (law of the father's domicile applies to legitimization of his child); *Daly v. Daly*, 39 N.J. Super. 117, 122, 120 A.2d 510, 513, *aff'd*, 21 N.J. 599, 123 A.2d 3 (1956) (duty of support exists under laws of New Jersey even where children reside outside state); *Rolette Co. ex rel. Welfare Bd. v. Eltobgi*, 221 N.W.2d 645, 647 (N.D. 1974) (laws of state where obligor resides determine nature and extent of his obligations).

75. Compare URESA § 7 (1958) with D.C. CODE § 30-304 (1973). Both provisions are quoted in note 76 *infra*.

76. D.C. CODE § 30-304 (1973), reads:

Duties of support enforceable [*sic*] under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The presence test is set forth at RURESAs § 7 (1968), reprinted in HANDBOOK (1968), *supra* note 14, and reads: "Duties of support applicable under this act are those imposed under the

tion as if it stated a presence test. Recently, however, trial courts have split on the appropriate choice of law in determining the age of majority of a dependent obligee when the District is the responding jurisdiction. This division of authority is the product of unclear judicial interpretations of the District of Columbia choice of law provision that have resulted from the basic ambiguity of the Act itself.

A. Early Interpretations of the Choice of Law Provision: Edmonds, Cobbe, and Watson

In *Edmonds v. Edmonds*,⁷⁷ the District of Columbia Municipal Court of Appeals construed the URESA choice of law provision to prescribe a presence test. In *Edmonds*, the plaintiff, taking her two children with her, left her husband while the couple was residing in Virginia. The defendant husband then moved to the District of Columbia, where he was sued by the plaintiff for child support under URESA. The trial court dismissed, finding no support duty under either District of Columbia or Virginia law. The District of Columbia Municipal Court of Appeals reversed, interpreting the URESA choice of law section⁷⁸ as dictating that District of Columbia law must apply,⁷⁹ and ruling that the trial court erred in finding no duty of support under District of Columbia law. Reasonable support for the children was ordered.⁸⁰

In 1960, the District of Columbia Municipal Court of Appeals handed down *Cobbe v. Cobbe*,⁸¹ the most cited — and most ambiguous — local opinion concerning choice of law under the District of Columbia URESA. In *Cobbe*, the sixteen-year-old plaintiff brought a URESA action through her mother, a District resident, as next friend. The daughter had been placed in her father's custody in Florida after the parents were divorced

laws of any state where the obligor was present for the period during which support is sought."

77. 146 A.2d 774 (D.C. 1958).

78. The section was then D.C. CODE § 11-1604 (Supp VI 1951) and it is identical to D.C. CODE § 30-304 (1973).

79. The court based its conclusion solely on the fact that, since leaving Virginia in 1949, the defendant resided continuously in the District of Columbia. 146 A.2d at 775. Unfortunately, the court did not address the other two enforceable support duties it might have recognized under the District of Columbia URESA — those imposed by the obligee's forum at the time the failure to support begins or where the failure to support continues. D.C. CODE § 30-304 (1973). In *Edmonds*, those support duties would have been governed by the laws of Virginia. If the District law did not recognize a support duty, but Virginia law did, the court would have been forced to choose between a support duty present in the initiating state but absent in the responding state.

80. 146 A.2d at 776.

81. 163 A.2d 333 (D.C. 1960).

there.⁸² The daughter's preference, however, was to reside with her mother, which she did and for which she sought support. The trial court in the District considered itself bound by a Florida custody decree that granted custody to the father, reasoning that the decree relieved him of the duty to provide support because the daughter had refused to live in his home. The District of Columbia Court of Appeals reversed, however, holding that changed circumstances warranted redetermination of custody according to the law of the jurisdiction where the child resided.⁸³

The wording of the *Cobbe* opinion is ambiguous, allowing the following readings: regarding choice of law, breach of a duty of support is found by the court of the responding state referring to the substantive law of the *initiating* state; or, breach of a duty of support is found by the court of the responding state referring to the substantive law of the *responding* state.⁸⁴ The *Cobbe* court seems to have meant the latter, because it approved the presence test and because it indicated that its holding would narrow the choices presented in the District of Columbia URESA choice of law section.⁸⁵ Moreover, the court's reliance on *Jackson v. Hall*⁸⁶ clarifies its intent that the presence test apply in the District. In *Jackson*, the Florida Supreme Court strictly limited the initiating forum to determining whether

82. After divorcing her husband, the mother moved with her children to the District. Illness forced her to give custody to her husband in Florida shortly thereafter and a decree to that effect was issued. The daughter resisted this action, however, and was living in the District with her mother at the time the suit was instituted. *Id.* at 334-35.

83. *Id.* at 335-37.

84. The *Cobbe* opinion reads:

The duty of our courts, when the District of Columbia is the initiating jurisdiction, is to ascertain if "the defendant owes a duty of support" in the sense of there being an obligor-obligee relationship like that of husband-wife or parent-child. Thereafter, the applicable law to determine defendant's liability for the breach of *that* duty is governed by the law of the responding state.

Id. at 336 (emphasis added) (footnotes omitted).

The crucial word *that*, by referring back to the duty found in the initiating state, can transform both the meaning of the paragraph and of *Cobbe*. The *Cobbe* court did not mean that the responding state was to apply the law of the initiating state. To the contrary, the court approved Florida's use of the presence test, stating: "Florida has said the law of the responding jurisdiction will be used to determine the duty of support, and it is to be applied by the courts of that state as they interpret it. We think this view commends itself both in logic and in practicability." *Id.* at 337.

85. The *Cobbe* court stated that, in its view, the presence test "limits the choices available to the obligee under Code 1951, § 11-1604 (Supp. VIII) [D.C. CODE § 30-304 (1973)], but we think it represents the prevailing thought in the country today." 163 A.2d at 336. In fact, the obligee had no choices, since the statute did not provide for an obligee's election. The *Cobbe* court may have been referring to the three choice of law provisions found in the District of Columbia URESA, *supra* note 76, and may have been presuming that the District of Columbia court would make the choice of law for the obligee.

86. 97 So. 2d 1 (Fla. 1957).

the petition of the obligee, on its face, indicates the appearance of a duty of support.⁸⁷ Ultimate findings as to a duty of support and liability for the breach of that duty were ruled the exclusive province of the responding jurisdiction's courts and law.⁸⁸ Nonetheless, the *Cobbe* decision, and in particular, one ambiguously phrased sentence,⁸⁹ have been interpreted by trial courts to require application of the initiating state's substantive law, the opposite of the presence test.⁹⁰

In the last major District case interpreting choice of law under URESA, the District of Columbia Court of Appeals decided once more in favor of the presence test. In *Watson v. Dreadin*,⁹¹ the plaintiff (grandmother), a Florida resident, sought funds from her daughter, a District resident, to pay for support of the daughter's child. The District of Columbia appellate court awarded the support, refused to adjudicate the question of valid custody, and held the URESA statute constitutional as applied.⁹² *Watson* reduced the function of the initiating court to merely acknowledging a prima facie showing of a duty of support. Under *Watson*, the responding court using its own substantive law must decide whether in fact there is a duty of support, whether it has been breached, and what support should be granted.⁹³ Because *Watson* applies the law of the District in a case where the District is the responding jurisdiction, it represents further judicial approval of the presence test for determination of choice of law in District of Columbia URESA proceedings.

B. Division in the District of Columbia Trial Courts: Conflicting Application of the Choice of Law Provision

While the *Edwards*, *Cobbe*, and *Watson* decisions in effect adopted the presence test, they have been relied upon by District of Columbia trial courts to reach different conclusions. The *Cobbe* decision, in particular, has yielded disparate results by virtue of varying interpretations of its language. In *Hall v. Hall*,⁹⁴ for example, the obligor, a District resident,

87. *Id.* at 3. The initiating court's review of the petition need only be a cursory examination to determine whether the appearance of a duty of support is indicated. See note 43 *supra*.

88. 97 So. 2d at 3.

89. See note 84 *supra* (placement of the word "that" can alter court's meaning).

90. An erroneous reading of *Cobbe* may lead to the conclusion that a responding jurisdiction, in ascertaining whether there has been a violation of support law, must confine its inquiry to the statutory and judicial law of the initiating state, and must limit or expand its support order to satisfy the duty of support as defined by the initiating state.

91. 309 A.2d 493 (D.C. 1973).

92. *Id.* at 496.

93. *Id.* at 495.

94. No. RS7-68 (D.C. Super. Ct. 1978).

sought termination of a URESA support order on the grounds that his two dependent children, California residents, had reached eighteen, the age of majority in that state. The District of Columbia Corporation Counsel argued for the obligees that support must continue until the children reach twenty-one, the age of majority in the District.⁹⁵ Judge John F. Doyle resolved the case in favor of the obligees, holding that the responding state's support law determines the age at which a child is no longer entitled to receive child support. The court cited *Cobbe* and the first enumerated support duty under the statute⁹⁶ as its authority.

The opposite result was reached in *Neal v. Gibson*,⁹⁷ where the plaintiff sued her ex-husband, a District resident, for support of their eighteen-year-old daughter, a North Carolina resident. The defendant argued that since under North Carolina law his daughter had attained her majority, he owed no support duty. Judge Norma Holloway Johnson, citing *Cobbe* and *Watson*, held that the responding jurisdiction must determine, under the support law of the initiating state, whether in fact there is a duty of support.⁹⁸ Since the North Carolina age of majority is eighteen, she reasoned, no such duty existed under the law of the initiating state. Accordingly, she dismissed plaintiff's suit.⁹⁹

In a third District of Columbia case, *Goodwin v. Goodwin*,¹⁰⁰ the court addressed a similar situation and reached the same conclusion as in *Neal v. Gibson*, but based that conclusion on different reasoning. In *Goodwin*, the parties, husband and wife, had resided in Kentucky and had obtained a divorce there. The husband then moved to the District, where the District of Columbia Superior Court ordered him to pay child support pursuant to the wife's Kentucky URESA petition. When the parties' youngest child reached eighteen, the age of majority in Kentucky, the husband petitioned to terminate the support obligation. Judge Samuel B. Block, noting the conflicting results of *Neal* and *Hall*, terminated the support payments, basing his decision in part on *Cobbe*,¹⁰¹ and in part on a non-URESAs

95. *Barnett v. Barnett*, 243 A.2d 51, 53 (D.C. 1968).

96. D.C. CODE § 30-304 (1973) (duties of support of any state in which the defendant was present during the period for which support is sought are enforceable).

97. No. RS622-75R (D.C. Super. Ct. 1977).

98. Judge Johnson relied upon the paragraph in the *Cobbe* opinion that ambiguously defines the functions of the initiating and responding jurisdictions when determining a duty of support. See No. RS622-75R, at 1-2 (D.C. Super. Ct. 1977) (citing *Cobbe*, 163 A.2d at 336, note 84 *supra*).

99. The suit was dismissed without prejudice to permit North Carolina to review the complaint, and, if a support duty were found, to permit refiling in the District. No. RS622-75R, at 2 (D.C. Super. Ct. 1977).

100. No. RS592-74R (D.C. Super Ct. 1979).

101. The *Goodwin* court cited the paragraph in *Cobbe* containing the ambiguous choice

sion, *Alves v. Alves*.¹⁰² Additionally, the *Goodwin* court found support for its decision in two other factors. First, it stated that "no additional role" would be served in aiding sister states to enforce support duties by extending the duty of support beyond that recognized in the initiating state.¹⁰³ Second, the court declined to "expand the reach of the statute" to encompass support duties for children recognized as adults in their home states.¹⁰⁴

of law language, see note 84, *supra*, and applied an interesting interpretation whereby the responding state establishes the obligor's support obligation after the initiating state has determined the dependent's status as a minor or adult. *Goodwin, supra* note 100, at 3. The initiating state's determination of majority or minority, however, was originally intended to involve only a cursory review to establish the appearance of a duty of support. Kentucky law describes the process as a determination of whether "the complaint sets forth facts from which it may be determined that the defendant owes a duty of support." KY. REV. STAT. § 407.210 (Supp. 1978) (emphasis added). See note 43 *supra*. The actual determination of all legal issues in URESA cases, with or without the presence test, is made by the court of the responding jurisdiction.

102. The *Goodwin* court's reliance on *Alves v. Alves*, 346 A.2d 736 (D.C. 1975), provides little clarification for URESA choice of law questions. *Alves* is a non-URESAs decision, involving the determination of the effect of a Maryland separation agreement that called for support until the dependent children's age of majority. The husband/obligor had sought to terminate those payments when his children reached eighteen, Maryland having by then changed its age of majority from twenty-one to eighteen. Because the *Alves* court was interpreting a separation agreement that was entered into in Maryland but not incorporated into the District divorce decree, definition of the agreement's terms depended upon the intent of the parties. Because intent was determined under Maryland law, because the mother and children resided in Maryland, and because Maryland, in *Monticello v. Monticello*, 271 Md. 168, 315 A.2d 520, *cert. denied*, 419 U.S. 880 (1974), had determined that the lowered age of majority was prospective only, the parties were held to have intended child support be paid until the age of twenty-one. Moreover, reliance on *Alves* was intended to provide the *Goodwin* court with authority to do what it was already empowered to do under the District of Columbia URESA: look to the law of the state where "the dependent was present when the failure to support commenced or . . . continues." D.C. CODE § 30-304 (1973).

103. *Goodwin, supra* note 100, at 4. The *Goodwin* court has indicated a major weakness in the presence test. Since the purpose of URESA was in part to alleviate support burdens that fell to states when obligors deserted, there is nothing to be gained by enforcing duties beyond those recognized in the initiating state. Presumably, the initiating state has recognized duties of support sufficient to protect it from increased public support burdens. Nevertheless, the presence test was meant to apply to support duties as they exist in the responding state, whether or not they exceed those recognized in the initiating state. Since the presence test has been endorsed in *Cobbe*, see note 84 and accompanying text *supra*, the *Goodwin* court has taken issue not only with the presence test, but also with prior law in the District.

104. *Goodwin supra* note 100, at 4. Enforcement of support duties for children who have reached their majority in their home state would not expand the scope of the District of Columbia URESA for two reasons. First, application of the District law is already provided for by statute. D.C. CODE § 30-304 (1973) (first choice of law listed). Second, since prior law in the District recognized the presence test as the preferred approach, application of the presence test in *Goodwin* would not have been an expansion. See notes 77-93 accompanying text *supra*.

Neal, *Goodwin*, and *Hall* represent the conflict of interpretation that exists among District of Columbia trial courts regarding choices of law under the District of Columbia URESA statute. None of the results in these three cases is patently incorrect, considering the ambiguous state of URESA law in the District. Nevertheless, to assure uniform application of the District of Columbia URESA, the disparity between *Neal*, *Goodwin*, and *Hall* must be resolved.

C. Resolution of the Choice of Law Problem

The presence test, which applies the law of the obligor's forum in URESA proceedings, has been adopted by the majority of jurisdictions in the United States.¹⁰⁵ Accordingly, obligors are held to whatever duties of support exist in the responding state. This approach is most consistent with the choice of law theories approved by the United States Supreme Court in *Yarborough v. Yarborough*,¹⁰⁶ where the Court's reasoning approximates the presence test in pre-URESAs litigation.¹⁰⁷ Although decisions in several extraordinary cases have deviated for either equitable or public policy reasons,¹⁰⁸ courts construing the URESA statute's presence

105. See note 12 *supra*. Almost every jurisdiction has included the presence test in its URESA statute. See, e.g., ALA. CODE § 30-4-84 (1975); ALASKA STAT. § 25.25.060 (1977); CAL. CIV. PRO. CODE § 1670 (West 1972); COLO. REV. STAT. ANN. § 14-5-108 (1973); CONN. GEN. STAT. § 46b-184 (1979); DEL. CODE ANN. tit. 13 § 620 (1974); FLA. STAT. ANN. § 88.081 (1964); GA. CODE § 99-9907(a) (1975); HAW. REV. STAT. § 576-21 (1976); IDAHO CODE § 7-1054 (1947); IND. CODE § 31-2-1-7 (1979); IOWA CODE § 252A.3(1) (1975); KAN. STAT. ANN. § 23-457 (1964); KY. REV. STAT. § 407.150 (1970); MD. ANN. CODE art. 89c § 7 (1957); N.C. Gen. Stat. § 52A-8 (1976); TEX. FAM. CODE ANN. tit. 2, § 21.21 (Vernon 1975); W. VA. CODE § 48-9-7 (1976).

106. 290 U.S. 202 (1933) (law of obligor's domicile controls). *But see* 290 U.S. at 227 (recognition should be afforded to the interest of the obligee's state to secure the adequate protection of helpless citizens and prospective citizens) (Stone, J., dissenting).

107. Both before and after *Yarborough*, state courts in non-URESAs proceedings had determined support obligations under the law of the obligor's domicile. See, e.g., *Elkind v. Byck*, 68 Cal. 2d 453, 439 P.2d 316, 67 Cal. Rptr. 404 (1968) (Georgia divorce decree modifiable as to child support under *Yarborough* rationale where obligor resides in California); *Blythe v. Ayres*, 96 Cal. 532, 31 P. 915 (1892) (laws of father's domicile determine legitimation of child). See also *Irving v. Ford*, 183 Mass. 448, 67 N.E. 366 (1903); *Berkley v. Berkeley*, 246 S.W.2d 804 (Mo. 1952).

108. In *Vincenza v. Vincenza*, 197 Misc. 1027, 98 N.Y.S. 2d 470 (Dom. Rel. Ct. 1950), a father, domiciled in New York, sought support from his adult children whom he had abandoned during their minority and who now lived in New Jersey. The New York court, noting that a New Jersey statute exempted abandoned children from a duty to support their parents, refused to certify the petition, exercising its discretion to dismiss the case. 197 Misc. at 1035, 98 N.Y.S.2d at 479. Similarly, in *Department of Mental Hygiene v. Judd*, 45 N.J. 46, 211 A.2d 198 (1965), California had certified a petition for support against a parent in New Jersey, seeking payments for a child institutionalized in California. California law would not have permitted recovery against a parent domiciled in California. The New Jersey Supreme Court held that even if New Jersey recognized a duty to maintain an adult child, it

test have overwhelmingly applied the law of the obligor's domicile in determining support duties.¹⁰⁹

Most District of Columbia courts have relied on the presence test to resolve all choice of law questions arising under the District of Columbia URESA.¹¹⁰ The result reached in *Hall v. Hall*,¹¹¹ where support payments were continued to age twenty-one despite the obligee's majority at eighteen in California, comports with the presence test. *Edmonds, Cobbe, and Watson* support the *Hall* result even though it is conceivable that an obligor might choose to reside in the most favorable jurisdiction to him, *i.e.*, the jurisdiction with the lowest age of majority.

The *Cobbe* court may have recognized the statute's potential for confusion and may have sought to prevent inconsistent application of the law by approving the presence test.¹¹² It was not entirely successful, however, because the language of the opinion is unclear and because the statute not only states a presence test,¹¹³ but also sets forth additional choice of law tests requiring District of Columbia courts to make an election before applying any state's law.¹¹⁴ In *Hall*, the choice of law applied was that of the District and the statutory clause cited made enforceable "the laws of any State in which the defendant was present during the period for which support is sought."¹¹⁵ In *Neal*, the court looked to the law of North Carolina, and the applicable statutory clause that was not, but could have been, cited made enforceable "the laws of any State . . . in which the dependent was present when the failure to support commenced or where the failure to

would not enforce that duty because to do so would violate public policy and the state's equal protection clause.

109. In *Engelson v. Mallea*, the court stated, "Iowa law within and without the uniform support act governs respondent's duty to support, and the *duty to support* includes the duration of that duty." 180 N.W.2d 127, 133 (Iowa 1970). See also *Wheeler v. Wheeler*, 196 Kan. 697, 702, 414 P.2d 1, 3 (1966) (law of responding state controls); *Bing v. Bing*, 86 N.J. Super. 246, 252, 206 A.2d 606, 609 (1965) (substantive law of the responding state governs); *Childers v. Childers*, 19 N.C. App. 220, 224-25, 198 S.E.2d 485, 488 (1973) (law of state where obligor found governs); *New Jersey v. Morales*, 35 Ohio App. 2d 56, 63, 299 N.E.2d 920, 924 (1973) (construing OHIO REV. CODE ANN. § 3115.03-3115.06 (page 1953), the court concluded that Ohio [obligor's] law with regard to what constitutes the duty to support minor children of the parties must be applied).

110. See notes 80-98 and accompanying text *supra*.

111. No. RS7-68 (D.C. Super Ct. 1978).

112. The *Cobbe* court indicated that application of the presence test would actually limit the choices available under the District of Columbia URESA, calling that result logical and practical. See note 85 and accompanying text *supra*.

113. D.C. CODE § 30-304 (1973) (reprinted at note 76 *supra*).

114. The *Goodwin* court noted the possibility of confusion inherent in the establishment of conflicting choices of law: "This potential application of the law of three separate forums has led to antinomious results in the District of Columbia trial courts." *Supra* note 100, at 2.

115. No. RS7-68, at 2-3 (D.C. Super. Ct. 1978).

support continues."¹¹⁶ The latter statutory provision likewise could have been relied upon as the sole authority for the *Goodwin* decision.¹¹⁷

The District of Columbia URESA, therefore, still retains an election provision, a feature that was included in the original URESA model act and was later eliminated in nearly every other jurisdiction.¹¹⁸ District of Columbia courts, however, not the obligee as in the original URESA, must actually make a choice of law election under the three-prong choice of law section.¹¹⁹ Without a uniform guide to such elections, the results in the District of Columbia Superior Court can remain inconsistent. To avoid uncertainty, one choice of law should be made in circumstances similar to those presented in *Neal*, *Goodwin*, and *Hall*.

Notwithstanding the inclusion of the presence test in most URESA statutes, the "home forum" test as applied in *Neal* and *Goodwin* comports with basic notions of fundamental fairness and should be applied in the District. The *Neal* and *Goodwin* courts, by compelling support only until the minor's home forum acknowledges his majority, have merely made unavailable the protections of the laws of a jurisdiction with which he may never have had contact. Additionally, since his domicile will recognize him as an adult at age eighteen, the *Neal* and *Goodwin* decisions do not deprive the minor of any right available to him in his home forum.

Dicta in at least one decision provide support for the result in *Neal* and *Goodwin*. In *Burney v. Vance*,¹²⁰ the parties, husband and wife, were divorced in Kentucky, where the age of majority is eighteen. The wife and child subsequently domiciled in Florida, where the age of majority is

116. In looking to North Carolina law, the *Neal* court chose to dismiss the complaint, suggesting that the initiating state, North Carolina, review the complaint to see whether under North Carolina law a duty of support still existed. *Neal v. Gibson*, No. RS622-75, at 2 (D.C. Super Ct. 1977). Since 18 is the age of majority in that state, the petition could never be referred back to the District because the petitioner could never make the required *prima facie* showing of a duty of support to the North Carolina court.

117. The *Goodwin* court might simply have stated the existence of the choices in D.C. CODE § 30-304 (1973), and then applied, for equitable reasons, the second listed choice.

118. The legislative history of the District of Columbia URESA is silent as to the reason three choices of law are set out without a provision for court or obligee election. Perhaps Congress, in its concern that obligor's be subject to the maximum possible support obligation, simply decided to lump together all the choices present in the original URESA, believing that the statute would thereby cover every conceivable contingency. See S. REP. NO. 462, *supra* note 5; H.R. REP. NO. 525, 85th Cong., 1st Sess. (1957).

119. Since application of all three tests would usually result in conflicting choices of law, at least in the age of majority situation, the court must choose which one to apply. To date, however, no District of Columbia court has recognized that this section requires an election. Acknowledging the necessity for an election would alleviate some of the ambiguity inherent in the District of Columbia URESA choice of law decisions.

120. 17 Ohio Misc. 307, 246 N.E.2d 371 (C.P. Clermont Cty. 1969).

twenty-one; the husband began residing in Ohio, where the age of majority is also twenty-one. The Ohio court in *Burney* ordered child support to age twenty-one, noting that if the age of majority in Florida and Ohio had differed, the court would have been inclined to rule the law of the child's domicile controlling.¹²¹

Should the District of Columbia Court of Appeals consider this choice of law issue, it could decide that, when the District as the responding jurisdiction has laws that differ from those of the initiating state in URESA age of majority cases, the substantive law of the initiating state — the home forum test — should apply. This result would comport with the approach suggested twenty years ago by Professor Albert Ehrenzweig,¹²² would create uniformity in superior court decisions, and would present the fairest result: dependents would be entitled to support only until their home forum recognizes them as adults. This approach would be statutorily permissible given the choices available under the District of Columbia URESA.¹²³ Furthermore, the District of Columbia could also apply the second aspect of Ehrenzweig's formula, essentially a protection against forum shopping, by refusing to recognize the initiating state's age of majority if it could be shown that the dependent moved solely to gain legal and financial advantage.¹²⁴

By adopting an approach that differs radically from the traditional presence test, the District of Columbia could become a URESA innovator. The home forum test would, however, implicitly overrule *Cobbe, Watson*, and *Edmonds*, prior cases that sought to apply a strict presence test. Despite this departure from prior law, the result in *Neal* and *Goodwin*, be-

121. *Id.* at 373-74 (court stated that, if such a distinction had been necessary, its inclination would have been to rule that the law of the state where the child resided would be determinative). The *Burney* court noted its decision was made "with the full knowledge that a mother could move from state to state and keep the support in force where it would originally be barred." *Id.*

122. Prof. Ehrenzweig suggested giving control to the law of the obligee's state in determining the duty of support. Ehrenzweig, *Interstate Recognition of Support Duties*, 42 CALIF. L. REV. 382, 390 (1954). The Ehrenzweig approach avoids the situation in which an obligee who is under 21 and legally a minor is denied support by a responding state whose age of majority is 18. Similarly, the approach also avoids permitting an obligee who is emancipated in the initiating state at age 18 from collecting support for an additional three years merely because the obligor lives in a jurisdiction where the age of majority is 21.

123. A District of Columbia Court of Appeals decision, or the District of Columbia Council should it decide to amend the URESA statute, could state that the last two choices of law under D.C. CODE § 30-304 (1973) must always apply in *Neal*, *Hall*, and *Goodwin* situations.

124. If the laws of the obligee's forum are more favorable to the obligee than the laws of the obligor's forum, the court would apply a good faith test to see whether the obligee moved there solely to obtain greater benefits. Ehrenzweig, *supra* note 122.

cause of its fundamental fairness, is more desirable than that of *Hall* and would reflect favorably on the application of URESA in the District.

IV. SUPPORT ARREARAGES: NON-RECOVERABLE UNDER THE DISTRICT OF COLUMBIA URESA

A second troublesome aspect of the District of Columbia URESA concerns arrearages. Arrearages are the accumulated amounts of support that become overdue when an obligor ceases making support payments. Although the District's URESA statute does not contain provisions specifically authorizing the collection of arrearages, District of Columbia courts have nonetheless ordered payment of arrearages under URESA and have collected and disbursed such payments. For example, in *Howze v. Howze*,¹²⁵ the appellee, a Michigan resident, sued her ex-husband, a District resident, for child support arrearages that accumulated under a Michigan divorce decree. The Domestic Relations Branch of the District of Columbia Municipal Court of Appeals entered a money judgment for over two thousand dollars in arrearages and ordered continuing support, pursuant to appellee's URESA petition. The appellant then challenged a concomitant District of Columbia court order extending support payments through his daughter's eighteenth birthday and asked for a refund of any overpayments he might have made. The District of Columbia Court of Appeals denied his motion and ordered any overpayments to be applied to the outstanding arrearages.¹²⁶

Similarly, in *Barnett v. Barnett*,¹²⁷ the District of Columbia Court of Appeals permitted a ten dollar reduction of appellant obligor's monthly URESA support payments on a showing of changed financial circumstances but ordered him nonetheless to pay an additional five dollars each month to discharge accumulated arrearages.¹²⁸ No underlying authority, either statutory or common law, is cited in *Barnett* as support for ordering payment of arrearages.

Recently, however, the District of Columbia Court of Appeals ruled that arrearages cannot be recovered under the District of Columbia URESA statute. In *Schlecht v. Schlecht*,¹²⁹ the parties were divorced in Colorado in August, 1971, and the wife obtained custody of the children. In December, 1971, alimony was awarded in a separate decree, a valid procedure

125. 225 A.2d 477 (D.C. 1967).

126. *Id.* at 479.

127. 243 A.2d 51 (D.C. 1968).

128. *Id.* at 52.

129. 387 A.2d 575 (D.C. 1978).

under Colorado law.¹³⁰ The parties moved separately to Maryland, where the Circuit Court for Anne Arundel County adopted the Colorado alimony decree. The husband then moved to the District of Columbia and ceased making support payments. In October of 1974, the wife filed a URESA petition in Maryland, alleging that her former husband had not paid support for over ten months and was consequently five thousand dollars in arrears. The Maryland URESA petition was transmitted to the District of Columbia Superior Court where the court determined it had no jurisdiction to act on the Maryland decree.

The basis for the trial court's decision was threefold. First, it cited as authority *Gamble v. Gamble*,¹³¹ a case that precluded granting full faith and credit to modifiable support orders entered outside the District. Second, the trial court noted that the Colorado support order was entered some four months after the divorce was granted. Without acknowledging the validity of this procedure in Colorado, the District of Columbia court ruled the support order invalid. Under the court's reasoning, the Maryland court had merely adopted an invalid Colorado decree that was accordingly outside the jurisdiction of the District of Columbia court. Third, the trial court ruled that the District of Columbia had no power to order payment of arrearages under URESA.

The court of appeals disagreed with two of the trial court's rationales. It held that, since *Gamble* did not preclude enforcement of the Maryland order,¹³² and since the Colorado decree was validly entered under Colorado law, and therefore valid as adopted in Maryland, the District of Columbia court had jurisdiction. Accordingly, the court ordered the obligor to make support payments commencing from the date the URESA petition was filed in Maryland. The court of appeals agreed, however, that the District of Columbia URESA does not permit recovery of arrearages.¹³³

130. *Id.* at 578.

131. 258 A.2d 261 (D.C. 1969). In *Gamble*, the District of Columbia Court of Appeals held a Maryland alimony and child support decree not entitled to full faith and credit since it was subject to retroactive modification or cancellation. The *Gamble* decision comports with *Sistare*, *supra* note 11 (past due judgments in a state are not entitled to full faith and credit if modifiable), but is a non-URESAs decision, which the *Schlecht* trial court did not take into account.

132. 387 A.2d at 578.

133. Since 10 months had elapsed between cessation of the support payments and the filing of the URESA petition, an aggregate of \$5,000 in arrearages had accumulated, none of which was recoverable. *Id.* The court commented:

As to arrearages in the husband's alimony and child support payments at the time the wife filed her URESA petition, we note that the 1968 Model Act for URESA expressly provides that a duty of support "includes the duty to pay arrearages." The District of Columbia has never adopted this 1968 revision, however,

Judge Stanley S. Harris, dissenting in part, criticized the court's arrearages decision on three grounds, calling it inconsistent with the statutory scheme of URESA, beneficial to a defaulting obligor, and likely to encourage otherwise avoidable litigation.¹³⁴

The *Schlecht* opinion is at odds with the basic motives behind the URESA statute and has unnecessarily curbed judicial enforcement of support orders in the District of Columbia. Arrearages could have been held recoverable by the *Schlecht* court under several theories.

When the National Commissioners on Uniform State Laws drafted the first URESA statute in 1950, they intended that obligors be liable for any accumulated and unpaid support fees and that such sums be recoverable under the Act.¹³⁵ The Commissioners relied on broad language in the URESA statute to provide a basis for recovery of arrearages, particularly the phrases "any duty of support"¹³⁶ and "all duties of support"¹³⁷ as they appeared in the definitional sections and the enforcement sections of the

and we find nothing in this jurisdiction's definition of the "duty of support" encompassing arrearages. Accordingly, we are unable to extend the reach URESA until the legislature takes action.

Id. at 578-79.

134. *Id.* at 581.

135. The Prefatory Notes to the 1950 and 1952 URESA acts do not contain any express reference to recovery of arrearages in URESA proceedings. See HANDBOOK (1952), *supra* note 4, at 291-95; HANDBOOK (1950), *supra* note 2, at 171. Courts construing URESA statutes based on the 1950 and 1952 drafts would consequently find no guidance as to recoverability of accrued support deficits. As a result, many courts that construed URESA refused to order payment of arrearages. See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, REPORT TO THE COMMITTEE ON THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT 4 (1958) (cited in Kelso, *Reciprocal Enforcement of Support: 1958 Dimensions*, 43 MINN. L. REV. 875 (1959)).

136. The 1950 URESA provided that a *duty of support* included "any duty of support imposed or imposable by law, or by court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial [legal] separation, separate maintenance or otherwise." URESA § 2(6) 1950, *reprinted in* HANDBOOK (1950), *supra* note 2, at 175. The phrase *any duty of support* was intended to provide the basis for courts to award payments for arrearages. See REPORT TO THE COMMITTEE ON THE URESA, *supra* note 135.

137. URESA § 9 (1950), *reprinted in* HANDBOOK (1950), *supra* note 2, at 177, stated: "All duties of support are enforceable by action . . . irrespective of the relationship between the obligor and the obligee." One of the Act's drafters, William J. Brockelbank, has indicated that section nine was intended to provide for recovery of arrearages, emphasizing the importance of the word *all*.

[Section nine] was included . . . with emphasis on the word "all" to provide that all duties shall be enforceable regardless of their source. This was intended to include all common law duties of support and all statutory duties of support, duties growing out of judgments or decrees for alimony or child support, both as to amounts in arrears and as to amounts owed currently or in the future. . . . The broad coverage of these provisions has been explained at every meeting of the In-

1950 and 1952 URESA. Nonetheless, courts construing URESA, although committed to broad and liberal interpretation of the statute,¹³⁸ were, like the *Schlecht* court, reticent to permit recovery of arrearages under the Act.¹³⁹ Consequently, the Commissioners added section nine to the 1958 model act, explicitly providing for recoupment of arrearages¹⁴⁰ and reasserting their intent that arrearages be recoverable even under the earlier drafts.¹⁴¹ The *Schlecht* court, however, interpreted the addition of explicit

terstate Conference on Reciprocal Support; and in its news letter and reports, the Council of State Governments has been diligent in urging it.

Despite this fact, there has been a tendency to use the Act only for the recovery of current support. Lawyers wanting to collect back alimony for their clients have been missing the boat.

W. BROCKELBANK & F. INFAUSTO, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 38-39 (2d ed. 1971). The District of Columbia URESA's corresponding section is not, however, worded exactly the same: "Proceedings to enforce duties of support initiated by the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant." D.C. CODE § 30-306 (1973). Although the word "all" is not present in § 30-306, the District of Columbia URESA nonetheless shares the broad definition of duty of support with the model act, consistent with its drafters' intent that arrearages be recoverable.

138. The Commissioners' faith in the broad construction of the URESA was not entirely unfounded; many courts have recognized the necessity to broadly construe the statute. *Kline v. Kline*, 542 S.W.2d 499, 500 (Ark. 1976) (URESAs should be liberally construed); *Banks v. McMorris*, 47 Cal. App. 3d 723, 728, 121 Cal. Rptr. 185, 189 (1975) (URESAs is a remedial statute to be liberally construed); *Olson v. Olson*, 534 S.W.2d 526, 529 (Mo. App. 1976) (resolve all reasonable doubts in favor of the URESAs statute); *Daly v. Daly*, 21 N.J. 599, 123 A.2d 3, 6 (1956) (effort to render URESAs operable consistent with intent of the legislation should be made); *Yetter v. Commeau*, 84 Wash. 2d 155, 524 P.2d 901, 903 (1974) (humanitarian purposes of the act should be considered when interpreting URESAs). The *Schlecht* court also noted approvingly that URESAs's purpose is to permit expeditious interstate enforcement of support orders, with a minimum of expense. 387 A.2d at 577 n.8 (quoting *Watson v. Dreadin*, 309 A.2d at 496).

139. By 1958, it was becoming a concern of the Commissioners that arrearages were not being included in URESAs support awards: "[E]xperience has shown that many courts have interpreted the act to include only actions for current support. This has been true despite constant efforts of the Council of State Governments and the chairman of your committee to call attention to the broad definition of Section 2(f)." REPORT TO THE COMMITTEE ON URESAs, *supra* note 135, at 4.

140. Section 9 the amended 1958 URESAs reads as follows: "All duties of support, including arrearages, are enforceable [*sic*] by action irrespective of the relationship between the obligor and the obligee." URESAs (1958), *supra* note 14.

141. The Commissioners' Prefatory Note to the 1958 Act indicates, "Section 9 makes clear that under the act not only current support, but also arrearages may be recovered." HANDBOOK (1958), *supra* note 14, at 241. By 1968, the Commissioners had finally included recovery of arrearages in the definition of *duty of support*. Section 2(b) reads: "'Duty of Support' means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to any action for divorce, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid." RURESAs § 2(b) (1968), *supra* note 14.

language authorizing recovery of arrearages under URESA as the inclusion of a new statutory feature instead of clarification of a procedure the drafters intended to be available from the statute's inception.¹⁴² In the absence of such explicit authorization, the court concluded it was powerless to grant relief for the recovery of arrearages.¹⁴³ In so concluding, the *Schlecht* court overlooked prior District of Columbia law in which courts had held arrearages recoverable and had issued orders to that effect.

In *Howze v. Howze*¹⁴⁴ and *Barnett v. Barnett*,¹⁴⁵ arrearages had been the object of URESA orders in the District of Columbia. Both cases could have provided the basis for judicial recognition by the *Schlecht* court that arrearages are recoverable under the District of Columbia Act. The *Schlecht* court, however, ignored both *Howze* and *Barnett* in reaching its decision because it felt that expansion of the URESA statute was a legislative task.¹⁴⁶ In view of the stated intent of the National Commissioners on Uniform State Laws that arrearages be recoverable under the broadly defined duty of support provision,¹⁴⁷ the *Schlecht* court would not have been legislating had it recognized the authority to enforce payment of arrearages under URESA, despite the lack of specific authorizing language in the statute itself.¹⁴⁸

Moreover, interpretations from other jurisdictions support the view that arrearages are recoverable without specific language to that effect in the statute. For example, in *Coumans v. Albaugh*,¹⁴⁹ the New Jersey Superior Court considered a URESA suit brought against a New Jersey resident by his former wife, a Michigan resident. At issue was a substantial amount of accumulated arrearages and present child support that had been ordered by Missouri courts pursuant to a divorce decree entered in that state. The New Jersey court declined to order arrearages because no showing had been made that the order was not modifiable under Missouri law.¹⁵⁰

142. See notes 136 & 137 *supra*.

143. See note 119 *supra*.

144. 225 A.2d 477 (D.C. 1967).

145. 243 A.2d 51 (D.C. 1968).

146. *Howze* is mentioned by the majority as an example of an alternative remedy, a money judgment, for collecting arrearages. The fact that the money judgment in *Howze* was awarded in a URESA proceeding is not mentioned. *Id.* at 577 n.7. *Barnett* is not discussed at all.

147. See notes 136 & 137 *supra*.

148. Judge Harris considered the absence of specific statutory authorization to be no bar to recovery of arrearages. *Schlecht*, 387 A.2d at 581 (Harris, J., concurring in part and dissenting in part).

149. 36 N.J. Super. 308, 115 A.2d 641 (1955).

150. The New Jersey court indicated that if the order were subject to modification or revocation in Missouri, "it should not be enforced here either under the full faith and credit

Nonetheless, the court concluded that if the order were final¹⁵¹ and the Missouri court fixed and determined arrearages, New Jersey would take appropriate action and order payment.¹⁵² The *Coumans* decision is particularly relevant because it was made under the 1952 amended URESA, the version most similar to that adopted by the District of Columbia,¹⁵³ and because the court would have permitted the recovery of arrearages without explicit authorizing language in the statute.¹⁵⁴

Furthermore, the *Schlecht* court could have relied on its traditional equitable powers to enforce an order for arrearages under URESA. Although courts in many jurisdictions will not apply such equitable remedies in proceedings to enforce foreign support orders,¹⁵⁵ the 1950 and later ver-

clause, or, as a matter of comity." *Id.* at 313, 115 A.2d at 643. This view is consistent with several U.S. Supreme Court decisions. See *Barber v. Barber*, 323 U.S. 77, 80 (1944) (non-modifiable arrearages award entitled to full faith and credit); *Sistare v. Sistare*, 218 U.S. 1, 11-18 (1909) (modifiable past due judgments are not entitled to full faith and credit). See also *Lynde v. Lynde*, 181 U.S. 183 (1919) (past alimony award entitled to full faith and credit if not modifiable).

151. The *Coumans* court might have chosen to escape the *Sistare* ban on full and credit for modifiable awards by invoking the doctrine of comity, whereby a court grants the decision of a sister state the same force as its own:

Comity is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging litigation of the same question.

Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 488 (1900). In the mid-1950's, comity seemed to be resurging as a remedy in interstate support cases. Equitable enforcement, based on comity and public policy, was used to counter the national problem of deserted dependents. Comment, *supra* note 10, at 520 n.7. Comity would not be excluded in the District under URESA and the court's equitable powers. D.C. CODE § 30-303 (1973) (any other remedies may be applied in URESA proceedings).

152. 115 A.2d at 643. The New Jersey court indicated that another state's order would usually dictate the extent of the support granted in New Jersey, citing principles of comity and the basic purposes of URESA. *Id.* at 642.

153. The present New Jersey URESA contains explicit authorization for the recovery of arrearages. N.J. REV. STAT. § 2A:4-30.1 to 2A:4-30.23 (1958).

154. An interesting variation on the arrearages question has developed under the Florida URESA. The Florida act does not provide for recovery of arrearages when Florida acts as the responding state. FLA. STAT. § 88.011 to 88.371 (1978). The general duties of Florida as the initiating state, outlined in the statute, *id.* § 88.141, are supplemented by Fla. Op. Att'y Gen. 077-77 (1977), indicating that Florida, as the responding state, may order the recovery of arrearages. Accordingly, Florida courts have permitted recovery of arrearages under the Act when the amount of accumulated arrearages is not subject to modification. See *Courtney v. Warner*, 290 So. 2d 101, 105 (Fla. Dist. Ct. App. 1974) (judgment for arrearages may be recovered under URESA, unless law of state where decree issued is modifiable as to accrued installments); *Villano v. Harper*, 248 So. 2d 205, 206 (Fla. Dist. Ct. App. 1971) (Florida indulges in rebuttable presumption that courts of sister states have no authority to alter final decrees as to any past due installments for child support).

155. See *Kelso*, *supra* note 135, at 878 & n.27 (1959) (many decisions do not permit the

sions of URESA do permit the use of equitable remedies to enforce support obligations.¹⁵⁶ In *McCabe v. McCabe*,¹⁵⁷ the Maryland Court of Appeals held that Maryland courts could use their equitable powers to enforce a Nevada alimony decree as to both accrued alimony and accruable alimony, and could use the same equitable powers to enforce a foreign decree as they would use to enforce a Maryland decree.¹⁵⁸ The *Schlecht* court could have enforced recovery of arrearages by exercising its equitable powers or by simply recognizing the doctrine of comity, even though the District of Columbia URESA is silent on arrearages.¹⁵⁹

Additionally, the majority opinion in *Schlecht* is internally inconsistent on the question of arrearages since it does permit recovery of sums accumulating after the URESA petition has been filed.¹⁶⁰ The court does not explain why filing the claim causes only subsequent payments to become collectible. The practical effect of this aspect of the decision will be to encourage nonpayment and to increase litigation. For example, an obli-

use of equitable remedies for enforcement of sister state decrees and will not locally establish such decrees to be thereafter enforced as local judgments). The state of Florida will permit the use of equitable powers by the court for the recovery of prospective payments. *Sackler v. Sackler*, 47 So. 2d 292, 295 (Fla. Dist. Ct. App. 1950) (under principles of comity and public policy, future installments of support are enforceable by equitable remedies). It would appear that Florida courts should have the power in equity to enforce recovery of arrearages, since Florida recognizes as a rebuttable presumption that sister states may not modify final decrees as to past due support and that such decrees should be entitled to full faith and credit. *See Villano v. Harper*, 248 So. 2d at 206; *Boyer v. Andrews*, 143 Fla. 42, 196 So. 825, 829 (1940).

156. Compare URESA § 26 (1958) (court has the power when acting as responding jurisdiction to subject obligor to such items and conditions as the court may deem proper to assure compliance with orders) with D.C. CODE § 30-315 (1973) (pursuant to finding support, the court may order defendant to pay such amounts under terms and conditions the court deems proper). *See also* Kelso, *supra* note 135, at 880 (1950 URESA and its successors correct *procedural gap* by permitting use of equitable remedies).

157. 210 Md. 308, 123 A.2d 447 (1956).

158. "[I]f the wife in this case [were] . . . residing in another state and proceeding under the Uniform Reciprocal Enforcement of Support Act against her husband who was in this State, the husband could be made to obey orders to support by sanctions available to equity." 210 Md. at 315, 123 A.2d at 451. *See also* *Abb v. Crossfield*, 23 Md. App. 232, 237, 326 A.2d 234, 238 (1974) (court in URESA action has at its disposal whatever equitable powers are necessary to effectuate the Act); *Pennsylvania ex rel. Warren v. Warren*, 204 Md. 467, 472, 105 A.2d 488, 490 (1954) (court held in URESA action that support and maintenance of dependents in civil action is cognizable in equity).

159. An interesting argument could be made for the recovery of arrearages if the District of Columbia URESA had the provision for registration of foreign support orders. Under the registration system, the responding state may treat foreign support orders as if originally entered in the responding state. The arrearages would then be a debt under the responding state's law, and it would also have personal jurisdiction over the obligor. *See* Kelso, *supra* note 135, at 883.

160. *Schlecht*, 387 A.2d at 578.

gor in the District of Columbia may now default on support payments, knowing that any sums accumulating before the obligee decides to file a URESA petition will not be enforceable in the URESA proceeding.

Consequently, a non-District obligee will be well advised to file a URESA petition as soon as any payment is overdue from a District-resident obligor in order to minimize the amount of arrearages that are uncollectible under the *Schlecht* ruling. The alternative for the obligee is not promising and may involve a non-URESAs foreign money judgment at home, plus a trip to the District to have it enforced.¹⁶¹ A further repercussion may be that judges will accommodate *Schlecht* by increasing the amount they award for present and prospective support to compensate obligees for accumulated arrearages they have been unable to collect under the District of Columbia URESA.

V. CONCLUSION

The Uniform Reciprocal Enforcement of Support Act in the District of Columbia was adopted to permit efficient collection of interstate support payments from defaulting obligors. Enacted over twenty years ago to shed the District's reputation as a "haven for runaway fathers,"¹⁶² the District of Columbia URESA has not accomplished its stated purpose. Two major deficiencies demand immediate action. Additionally, an updating of the Act to include improvements made in the amended model acts would greatly enhance the operation of URESA in the District. First, in view of the *Schlecht* decision that prevents the collection of arrearages in URESA proceedings, the District of Columbia Council should adopt specific language to make clear that the duty to pay arrearages is a duty of support. The amended model act provides such language. The District of Columbia should not allow obligors within its jurisdiction to escape legitimate support obligations by using the current URESA statute as the vehicle of their avoidance. Second, since District of Columbia courts have adopted divergent approaches to the choice of law to be made under URESA, the District of Columbia Council or the District of Columbia Court of Appeals should clearly delineate what substantive law applies to matters such as the age of majority of a minor receiving support. Arbitrary enforcement of the duty of support according to the District's support law reflects poorly on the District and on its courts, and it permits inequitable awards

161. Judge Harris outlined a possible result in which the obligee would be required to "flit" from another forum to the District to enforce a foreign money judgment. *Id.* at 581 n.5 (Harris, J., concurring in part and dissenting in part). Such a result is contrary to the basic concept of URESA that an obligee not be required to leave his home state.

162. S. REP. NO. 462, *supra* note 5, at 3.

and possible manipulation of the URESA process. To permit the most equitable choice of law when an obligee's age of majority is in question and to alleviate the present confusion, District of Columbia Courts should apply a home forum test, limiting support duties to those recognized in the initiating state.

Finally, the District should enact the other improvements of URESA 1958 and URESA 1968, further facilitating the process of support collection in the District of Columbia. Persons owed a duty of support in the District would benefit from the adoption of a registration system to simplify and expedite enforcement of support obligations. Furthermore, the District itself would benefit from a registration system since URESA enforcement would become less of a financial burden.

Although the District of Columbia URESA has provided some assistance to persons seeking to enforce support duties across state lines, its deficiencies now threaten to frustrate the basic purposes of the Act. The URESA statute in the District of Columbia has become an inadequate mechanism for efficient enforcement of duties of support. Accordingly, the District of Columbia Council should amend the law to comport with both fundamental fairness and the purposes that URESA was intended to serve.

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