



The North Carolina State Bar

### LAMP Menu

[LAMP Home](#)  
[Take - 1 Handouts](#)  
[The Legal Eagle](#)  
[Co-Counsel Bulletins](#)  
[Silent Partners](#)  
[Other Publications / Resources](#)  
[Legal Research](#)  
[Calendar of Meetings/Events](#)  
[Annual CLE Conference](#)

[Back](#)

## CO-COUNSEL BULLETIN

### **ESTABLISHMENT AND ENFORCEMENT OF CHILD SUPPORT**

[This guide was prepared and provided to the State Bar's LAMP Committee by Gerry Robbins of the NC Attorney General's Office]

#### I. Establishment of child support

##### A. G.S. '50-13.4, Child Support Guidelines.

1. Federal law requires that in order for any state to receive public assistance moneys it must establish child support guidelines applicable throughout the state. 42 U.S.C. '667.

2. The application of the child support guidelines results in an amount of child support to be paid by the noncustodial parent which is presumed to be the correct amount. Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

3. Deviation from the child support guidelines may be requested if done in writing no less than 10 days before the hearing. Should either party desire to deviate from the guidelines they must present evidence as to the reasonable needs of the children and the ability of the parties to pay. Id.

4. Generally, child support shall be paid until the minor child reaches age 18 or graduates from high school, whichever is later, but in no event longer than age 20. G.S. '50-13.4(c). But see G.S. 52C-6-604(a) (In the enforcement of interstate cases the law of the issuing state governs the question of how long child support should be paid).

5. The trial court may order that the noncustodial parent have the tax exemptions for children. Cohen v. Cohen, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

#### B. Interstate Establishment

1. Uniform Interstate Family Support Act (UIFSA), 52C-1-100, et seq.

a. The State of North Carolina may issue a child support

### LAMP Contacts Menu

[Committee Members](#)  
[NC Attorneys' Network](#)  
[ABA Family Law Attorneys' Network](#)  
[Military Installation](#)

[State Bar Home Page](#)

order in an interstate case so long as no other child support order has been entered and the individual or entity seeking support resides in another state. G.S. ' 52C4-401.

b. Upon the filing of a petition from another state asking that North Carolina establish child support, the court shall file the petition and notify the petitioner where it was filed. G.S. ' 52C3-305(a).

c. The establishment of child support in an interstate matter here in North Carolina will follow North Carolina procedure and law. In the event that North Carolina is asking another state to establish child support, that state=s procedures and laws shall apply.

2. Uniform Reciprocal Enforcement of Support Act (URESA) -- Some states have not yet enacted UIFSA as required by the Welfare Reform Act. Accordingly, in those states which have not yet passed UIFSA, the petitioner will most likely have to deal with the procedural requirements established in the foreign state.

### C. Retroactive support

1. At the time that the custodial parent brings a claim for child support, a claim for retroactive support or "prior maintenance" may also be alleged. This requests support for the period of time prior to the filing of the complaint. In order to prevail one must demonstrate the amount expended on behalf of the minor child during the time period involved. Warner v. Latimer, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

2. A claim for prior maintenance may only include expenses no more than three years prior to the filing of the complaint. Napowsa v. Langston, 95 N.C. App. 14, 381 S.E.2d 882, cert. denied, 325 N.C. 709, 388 S.E.2d 460 (1989).

## II. Enforcement of Child Support

A. The Full Faith and Credit Clause of the United States Constitution requires that the judgment of the court of one state must be given the same effect in a sister state that it has in the state where it was rendered. @ Fleming v. Fleming, 49 N.C. App. 345, 349, 271 S.E.2d 584 (1980).

1. See also Stephens v. Hamrick 86 N.C. App. 556, 358 S.E.2d 547 (The trial court=s dismissal of a prior South Carolina child support order violated the full faith and credit clause of the United States Constitution even though there was a subsequent North Carolina child support order); and

2. Silvering v. Vito, 107 N.C. App. 270, 419 S.E.2d 360

(1992) (North Carolina was bound through the full faith and credit clause of the United States Constitution to enforce a Florida judgment which arose from a California child support order in which the statute of limitations had run).

B. The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. ' 1738B.

1. The FFCCSOA requires a state to give full faith and credit to the child support orders, judgments, and decrees issued in another state. Kelly v. Otte, 123 N.C. App. 585, 474 S.E.2d 131, disc. rev. denied, 345 N.C. 180, 479 S.E.2d 204 (1996).

2. The FFCCSOA mirrors UIFSA in that in order to properly modify another state=s child support order, the rendering state must have continuing, exclusive jurisdiction. 28 U.S.C. ' 1738B(e). Additionally, there must be a resolution of which order, in the event of more than one order having been entered, is the controlling order. 28 U.S.C. ' 1738B(f).

3. The Supremacy Clause of the United States Constitution mandates that the requirements of the FFCCSOA will be met even if they are in conflict with existing state law. Kelly v. Otte.

C. UIFSA

D. Statute of Limitations, G.S. ' 447.

1. North Carolina recognizes a ten year statute of limitation on the collection of child support. G.S. ' 447.

2. In interstate cases the obligee may have longer than the ten year statute of limitation found in North Carolina law, because UIFSA provides that the practitioner is to look at the statutes of limitation in both the issuing state and the responding state and use the longer of the two statutes of limitation. G.S. ' 5206-604(b).

3. The interception of state and federal income tax refunds are not subject to the statute of limitations because the intercept is conducted through an administrative proceeding, not an action in the general courts of justice.

E. Remedies

1. Wage withholding is mandatory in all newly established IV-D cases. The obligor=s wages are subject to withholding in the trial court=s discretion in non-IV-D cases and upon the request of the obligor or upon the obligor falling thirty days behind in the payment of his child support obligation. G.S. ' 110136.3.

2. Civil and criminal contempt are two of the most common remedies available to the obligee in attempting to enforce a child support obligation. See G.S. 5A-11, et seq.

3. Federal law requires that upon the meeting of certain minimum thresholds that an obligor=s federal income tax refund be intercepted in order to assist the obligor in Acatching up@ with his obligation. 42 U.S.C. ' 664; 45 C.F.R. ' 303.72. In addition, federal law requires every state to have a state law allowing for the interception of an individual=s state income tax refund in the event that the obligor is delinquent in the payment of his child support. See Davis v. Department of Human Resources, 349 N.C. 208, 505 S.E.2d 77 (1998).

4. The trial court may revoke or suspend an individual=s driver=s license or any hunting, fishing, or trapping license or refuse to register his automobile upon his being 90 days or more behind in the payment of his child support obligation. G.S. ' 110142.2; see also G.S. ' 5013.12 (In non-IV-D cases the time period is 30 days).

5. In IV-D cases, an individual=s professional, business, or occupational license may be administratively revoked or suspended in the event that the noncustodial parent falls 90 days or more behind in the payment of his child support. G.S. ' 110142.1.

F. The Bradley Amendment [42 U.S.C. ' 666(a)(9)] requires all states to enact laws providing that child support payments are vested when they become due and prohibiting the retroactive modification of arrearages for past-due child support. In response to the Bradley Amendment the North Carolina General Assembly passed G.S. ' 5013.10.

G. Others as set forth in G.S. ' 5013.4(f).

### III. Modification of Child Support

A. A North Carolina child support order may be modified upon a showing of a substantial change of circumstances and once such a showing is made, then the child support guidelines are used in calculating the

new amount of child support to be paid. G.S. ' 5013.7; McGee v. McGee, 118 N.C. App. 19, 453 S.E.2d 531 (1995).

B. Child support orders which are more than three years old and, which when recalculated using the current child support guidelines, show a 15% change from previous order constitutes a change of circumstances as a matter of law. North Carolina Child Support Guidelines; Garrison, Director, Pitt County Department of Social Services ex rel. Williams v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996).

C. Interstate cases may only be modified by complying with UIFSA and the FFCCSOA.

