

DOMESTIC RELATIONS: UNIFORM INTERSTATE FAMILY SUPPORT ACT.

State tribunal that issues child support order is only body that may modify order so long as obligor, obligee or child remains resident of issuing state, unless all parties consent to modification. Virginia tribunal may modify registered foreign order if obligor, obligee or child no longer resides in issuing state, person seeking modification is nonresident, and Virginia court has jurisdiction over respondent; or child is subject to personal jurisdiction of Virginia tribunal and all parties in issuing tribunal have consented in writing for Virginia tribunal to modify and assume continuing, exclusive jurisdiction over order. If all parties reside in Commonwealth and child does not reside in issuing state, Virginia tribunal has jurisdiction to enforce and modify issuing state's child support order in proceeding to register order.

The Honorable Robert S. Bloxom
Member, House of Delegates
November 29, 1999

You ask under what circumstances a juvenile and domestic relations district court may modify a child support order issued in another state when the support enforcement agency of the issuing state moves the district court for enforcement of the order but does not seek modification of the order.¹

In an attempt to standardize the handling of interstate child support orders, all states have enacted procedures similar to the Uniform Interstate Family Support Act, §§ 20-88.32 through 20-88.82 of the *Code of Virginia* (the "Act"). The purposes of the Act are to ensure both that child support orders issued in one state be enforced in other states and that there be only one controlling child support order between the parties, although the parties may live in different states. To accomplish the enforcement goal, the Act provides that "[a] support order ... issued by a tribunal of another state may be registered in this Commonwealth for enforcement"² and that, upon registration, the support order is enforceable in Virginia in the same manner as support orders issued in Virginia.³ Section 20-88.68(C) provides, however, that "[e]xcept as otherwise provided in [the Act], a tribunal⁴ of this Commonwealth shall recognize and enforce, *but may not modify*, a registered order if the issuing tribunal had jurisdiction." (Emphasis added.) This restriction is consistent with the goal that there be only one controlling child support order between the parties. Thus, registering an order for enforcement does not give the court the authority to modify such order.

Whether a court has the authority to modify an order is determined by reference to the concept of "continuing, exclusive jurisdiction" over a child support order.⁵ It is the intent of the Act that the tribunal that issued the child support order have continuing, exclusive jurisdiction to modify the order unless and until continuing, exclusive jurisdiction is transferred to a tribunal of another state. Section 20-88.39(A) provides:

A tribunal of this Commonwealth issuing a support order consistent with the law of this Commonwealth has continuing, exclusive jurisdiction over a child support order:

1. As long as this Commonwealth remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

2. Until all of the parties who are individuals have filed written consent with a tribunal of this Commonwealth for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

Section 20-88.39(D) provides:

A tribunal of this Commonwealth shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to [the Act].

Under these provisions, a state tribunal that issues a support order is the only body that may modify the order so long as the obligor, obligee or child remains a resident of the issuing state, unless all of the parties consent.

Once a state loses exclusive, continuing jurisdiction over a support order, another state does not automatically acquire exclusive, continuing jurisdiction over the order. Should the issuing state no longer be the residence of either the obligor, obligee or child, a Virginia tribunal would have the authority to modify the child support order only in accordance with the procedure set out in §§ 20-88.74 through 20-88.77:2 for registering and modifying a foreign order in the Commonwealth. Section 20-88.74 requires a party or support enforcement agency seeking to modify a child support order issued in another state to register the order in the Commonwealth. Section 20-88.75 provides that, while a tribunal of the Commonwealth may enforce a foreign order registered for modification, the tribunal may modify the order only if the requirements of § 20-88.76 are met. Section 20-88.76 provides, in part:

A. After a child support order issued in another state has been registered in this Commonwealth, the responding tribunal of this Commonwealth may modify that order only if § 20-88.77.1 does not apply and after notice and hearing it finds that:

1. The following requirements are met:

a. The child, the individual obligee, and the obligor do not reside in the issuing state;

b. A petitioner who is a nonresident of this Commonwealth seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this Commonwealth; or

2. The child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this Commonwealth and all of the individual parties have filed written consents in the issuing tribunal for a tribunal of this Commonwealth to modify the support order and assume continuing, exclusive jurisdiction over the order.

Once a tribunal of the Commonwealth issues an order modifying the child support order, the Commonwealth tribunal has continuing, exclusive jurisdiction over the order.⁶

Under these requirements, a court in the Commonwealth would need to determine first that the obligor, obligee and the child are no longer residents of the issuing jurisdiction and that, accordingly, the issuing jurisdiction no longer has exclusive, continuing jurisdiction over the order. It would then have to determine that the person seeking the modification is not a resident of the Commonwealth.⁷ Finally, it would have to determine that the court has personal jurisdiction over the respondent.⁸ It is my opinion that if these requirements are met, a juvenile and domestic relations district court would have the authority to modify a child support order registered in the Commonwealth.

Section 20-88.76 contains one exception. The requirements of the statute need not be met for a tribunal in the Commonwealth to modify an order issued in another state if § 20-88.77:1 applies. Section 20-88.77:1(A) provides:

If all of the parties who are individuals reside in this Commonwealth and the child does not reside in the issuing state, a tribunal of this Commonwealth has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

Under this procedure, the issuing state has lost continuing, exclusive jurisdiction because neither the obligor, obligee or the child resides in the issuing state. Because both the obligor and obligee reside in the Commonwealth, the possibility that the person seeking modification will choose a favorable forum is no longer a concern.

¹Although you indicate that a support enforcement agency of the issuing state moves the court for enforcement of the order, I assume that one of the individuals subject to the support order seeks modification of the order.

²Section 20-88.66.

³Section 20-88.68(B). The order may be registered by filing the order "in the juvenile and domestic relations district court or with the Division of Child Support Enforcement of the Department of Social Services." Section 20-88.32 (defining "register").

⁴"*Tribunal*" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage[.]" Section 20-88.32.

⁵Section 20-88.39.

⁶See § 20-88.76(D). This is consistent with the intent expressed in § 20-88.39 that only one state have jurisdiction to modify a child support order at any one time, with the issuing state having jurisdiction until jurisdiction is transferred to another state for that state to modify the order. Once the second state modifies the order, the issuing state loses jurisdiction. See *id.*

⁷The purpose of this requirement is obviously to prevent the person seeking modification to choose the local court at the possible disadvantage to the other party.

⁸This requirement contemplates generally that the person seeking modification of the support order will bring the action in the jurisdiction in which the other party resides.