Establishment of Child Support

I. Establishment of Child Support

A. G.S. §50-13.4, Child Support Guidelines

B. Interstate Establishment

C. Prior Maintenance

A. G.S. §50-13.4, Child Support Guidelines

- Federal law- state must establish CS guidelines to receive public assistance moneys
- Results in $ paid by noncustodial parent
- Deviation may be requested in writing no less than 10 days before hearing
- CS paid until minor child reaches 18 or graduates from high school
- Trial court may order that NCP have tax exemptions for children

B. Interstate Establishment

- Uniform Interstate Family Support Act
  - N.C. may issue CS order in interstate case if no other CS order has been entered
  - Upon petition from another state, the court shall file the petition and notify petitioner where it was filed
  - Will follow N.C. procedure and law
- Uniform Reciprocal Enforcement of Support Act (URESA)

C. Prior Maintenance

- At the time a claim for support is made, one may also allege claim for retroactive support
  - must demonstrate amount expended on behalf of minor child during that time period
- A claim for prior maintenance may only include expenses no more than three years prior to the filing of the complaint

II. Enforcement of Child Support

ϖ US Constitution-Full Faith and Credit

ϖ The Full Faith and Credit for Child Support Orders Act (FFCCSOA)

ϖ UIFSA

ϖ Statute of Limitations, G.S. §1-47

ϖ Remedies

ϖ The Bradley Amendment, 42 U.S.C. §666(a)(9)
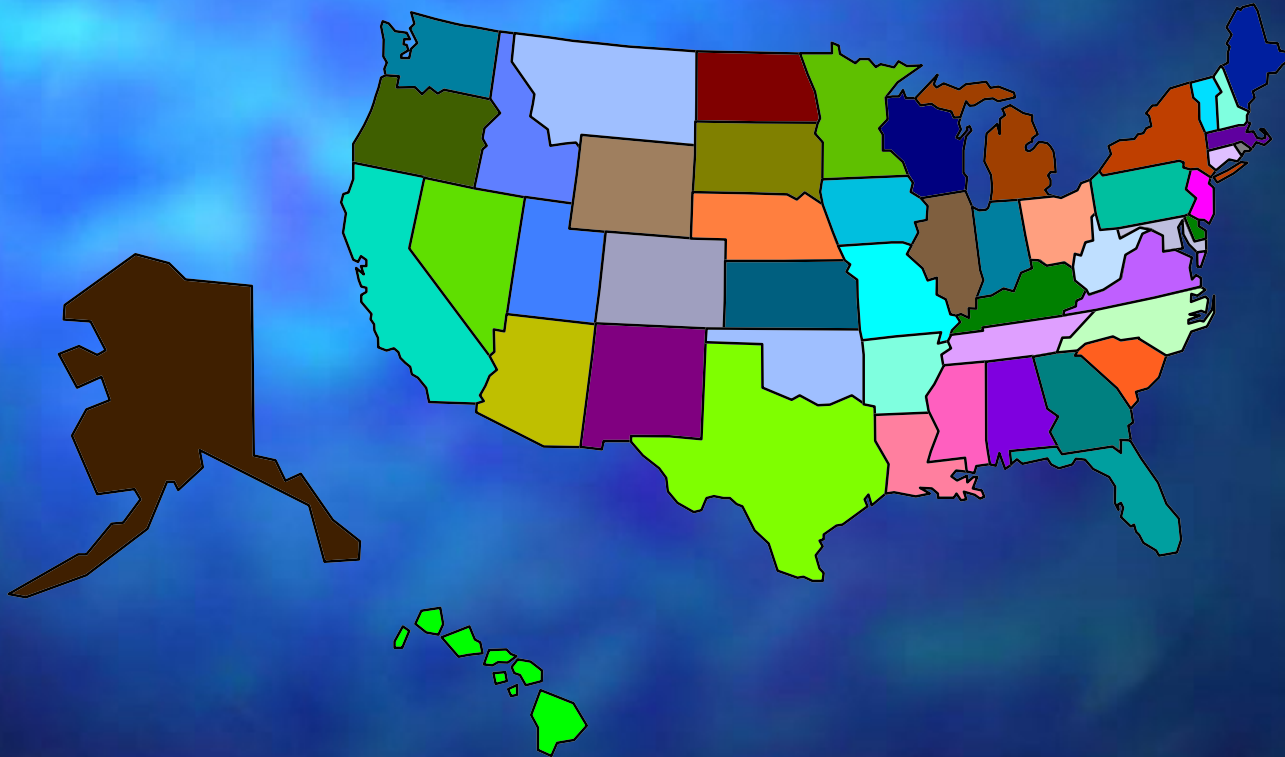
ϖ Others as set forth in G.S. §50-13.4(f)

A. 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"

- N.C. was bound through the above clause to enforce a Florida judgment which arose from a California child support order in which the statute of limitations had run

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

- Requires a state to give full faith and credit to CS orders, judgments, and decrees issued in another state
- Mirrors UIFSA-rendering state must have continuing, exclusive jurisdiction
- Mandates that requirements of FFCCSOA will be met even if they are in conflict with existing state law

C. UIFSA

D. Statute of Limitations, G.S. §1-47

- N.C. recognizes a 10 year statute of limitation of collection of child support
- UIFSA provides that practitioner look at statutes of limitation in both states and use the longer of the two
- Interception of state and federal income tax refunds are not subject to the statute of limitations

E.   Remedies

- Wage withholding is mandatory in all newly established IV-D cases
- Civil and criminal contempt are most common remedies in attempting to enforce child support obligations
- Federal law requires obligor's federal tax refund be intercepted for "catch up"
- Trial court may revoke or suspend driver's license
- Professional, business, or occupational license may be revoked or suspended

F.   The Bradley Amendment

- 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 this amendment, the North Carolina General Assembly passed G.S. §50-13.10

G. Other Remedies as Set Forth in G.S. §50-13.4(f)

- Liens
- Arrest and bail
- Attachment
- Bond
- Receivers
- Any other lawful remedy

III. Modification of Child Support

A. North Carolina Child Support Order

B. CS Orders More than 3 Years Old

C. Interstate Cases

A. North Carolina Child Support Order

- May be modified upon a showing of substantial change of circumstances
- Child Support guidelines used in calculating the new amount of support to be paid

B. Child Support Orders More than 3 Years Old

- CS orders which show a 15% change from previous order constitutes a change of circumstances as a matter of law
- See the North Carolina Child Support Guidelines

C.   Interstate Cases

- Can be modified
- Must comply with both:
  - UIFSA
  - FFCCSOA