

1998

Larry Joe Boudreaux v. State of Utah : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

IN THE UTAH COURT OF APPEALS

UTAH
JUDICIAL DISTRICT
CLERK

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DOCKET NO. 981787

LARRY JOE BOUDREAUX,

:

Petitioner and Appellant,

:

vs.

:

STATE OF UTAH,

:

Respondent and Appellee.

:

Case Number 981787-CA

Priority Number 3

-----oo0oo-----

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT EXTRADITING THE PETITIONER
BY THE SIXTH JUDICIAL DISTRICT COURT
FOR THE COUNTY OF SANPETE WITHIN THE STATE OF UTAH
THE HONORABLE DAVID L. MOWER PRESIDING

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FILED

APR 12 1999

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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LARRY JOE BOUDREAUX,	:	
Petitioner and Appellant,	:	
vs.	:	Case Number 981787-CA
STATE OF UTAH,	:	Priority Number 3
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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	I
TABLE OF AUTHORITIES.	ii
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW.	1
STANDARD OF REVIEW.	7
DETERMINATIVE STATUTES AND RULES.	1
STATEMENT OF THE CASE	7
STATEMENT OF THE FACTS.	11
SUMMARY OF ARGUMENT	24
ARGUMENT.	31
THE PETITIONER IS ENTITLED TO PRESENT EVIDENCE UPON HIS WRIT OF HABEAS CORPUS AND UNDER UIFSA . .	31
THE EXTRADITION ATTEMPT BY KENTUCKY AND THE PETITION FOR WRIT OF HABEAS CORPUS RES JUDICATA	38
THE DISTRICT COURT HAS EXCLUSIVE JURISDICTION OVER CHILD SUPPORT AND MR. BOUDREAUX'S CHILD SUPPORT HAS BEEN SUCCESSFULLY COLLECTED.	41
MR. BOUDREAUX'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED AND HIS PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE GRANTED.	43
MR. BOUDREAUX SHOULD BE RELEASED FROM INCARCERATION OR ADMITTED TO BAIL.	47
CONCLUSION.	49

TABLE OF AUTHORITIES

Page(s)

CASES

<u>Andrews v. Carver,</u> 789 F. Supp. 659 (D.Utah 1992)	40
<u>Baggs v. Anderson,</u> 528 P.2d 141, 143 (Utah 1974)	42
<u>Bryant v. Turner,</u> 431 P.2d 121 (Utah 1967).	45
<u>Burleigh v. Turner,</u> 38 P.2d 412 (Utah 1964)	39
<u>Cope v. Toronto,</u> 332 P.2d 977 (Utah 1958).	30, 32, 39, 45
<u>Dunn v. Cook,</u> 791 P.2d 873 (Utah 1990).	45
<u>Emig v. Hayward,</u> 703 P.2d 1043 (Utah 1985)	49
<u>Farrow v. Smith,</u> 541 P.2d 1107 (Utah 1975)	32
<u>Gallegos v. Turner,</u> 409 P.2d 386 (Utah 1965).	46
<u>Gibson v. Morris,</u> 646 P.2d 743 (Utah 1982).	32
<u>Larrabee v. Turner,</u> 480 P.2d 134 (Utah 1971).	32
<u>Seeley v. Park,</u> 532 P.2d 684 (Utah 1975).	25, 35
<u>State by and through Utah State Dept. Of Social Services v. SUCEC,</u> 924 P.2d 960, 963 (Utah 1996)	42

<u>State v. Child Support Enforcement,</u> 888 P.2d 960, 963 (Utah App. 1993).	29, 43
<u>Syddall v. Turner,</u> 437 P.2d 194 (Utah 1968).	32
<u>Wright v. Carver,</u> 886 P.2d 58 (Utah 1994)	40

STATUTES AND RULES

Utah Code Annotated, Section 78-12-22	35, 42
Utah Code Annotated, Sections 77-30-1, et seq.	34
Utah Code Annotated, Sections 77-31-1, et seq.	33, 35
Utah Code Annotated, Sections 78-45f-100, et seq.	25, 33, 34, 35, 36, 48

CONSTITUTIONAL AUTHORITY

Fifth Amendment to the U.S. Constitution	29, 50
Eighth Amendment to the U.S. Constitution.	37, 47
Article I, Section 8, of the Utah Constitution	37, 47
Fourteenth Amendment to the U.S. Constitution.	29, 50

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court by Utah Code Ann., § 78-2a-3(2)(f), and by Rules 3 and 4, of the Utah Rules of Appellate Procedure, and Rule 65, of the Utah Rules of Civil Procedure.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The Petitioner and Appellant, LARRY JOE BOUDREAUX, request this Honorable Court consider upon this appeal the issues which follow:

1. Whether the Sixth Judicial District Court should have summarily deprived the Petitioner of his right to present evidence? Preserved at R. 144-146, 148; Tr. p.8 l. 6-7; p. 12, l. 10-15; p.13,l.14-p.14, l.9;p.20, l.14-19;p.21, l.16-p.22, l.25; p. 57,l.1-p.60,l.25; p.75, l.13-16; p.80, l.12-13; p.82, l.10-25.

2. Whether the Petitioner should have been permitted to present evidence upon the unconstitutional restraint upon his liberty and the denials of due process by the State of Kentucky and the State of Utah? Preserved at R.1-13, R. 48-76, R.144-146, 148; Tr. p.8 l. 6-7; p. 12, l. 10-15; p.13,l.14-p.14, l.9;p.20, l.14-19;p.21, l.16-p.22, l.25; p. 57,l.1-p.60,l.25; p.75, l.13-16; p.80, l.12-13; p.82, l.10-25.

3. Whether the Petitioner should have been permitted to present testimony and documentary evidence as to the prior applications for habeas corpus by him and the action of the trial court thereupon? R. 1-47, R. 48-77, R. 148, R. 122-126; R. 143, 148, Tr. p. 85, Tr. p. 100.

4. Whether the Decree of Divorce entered in the Third Judicial District Court for Tooele County is the controlling law of the case? R.1-17, Tr. p. 115.

5. Whether the laws of the State of Utah are the applicable laws of this action, or whether the State of Kentucky is without jurisdiction to extradite Mr. Boudreaux until the trial court renders a decision under UIFSA? R. 238, Tr. p.115.

6. Whether the collection of Mr. Boudreaux's child support by the State of Utah, Office of Recovery Services, bars extradition under UCEA? R. 238, Tr. p.110-130.

7. Whether the warrant and supporting documents submitted by the State of Kentucky are defective? R. 1-13.

8. Whether the State of Kentucky is bound by URESA and UIFSA, and the Petition it filed for the collection of Mr. Boudreaux's child support obligation? Exhibit 3.

9. Whether the assertion of false facts by officials of the State of Kentucky, and the State of Utah deprives Mr. Boudreaux of his right of due process? Tr. p. 78, 88.

10. Whether the State of Kentucky's failure to properly serve Mr. Boudreaux with a Summons and Indictment or Information requiring his appearance in it's court is a denial of his right of due process? Tr. p. 84-88.

11. Whether the State of Utah, Office of Recovery Services has been successful in the collection of child support? R. 1-13, 24, 45, 65-66; Exh. 3, Exh. 4; Tr. pp. 108-119.

12. Whether the two (2), prior grants of writs of habeas corpus are res judicata in this proceeding? R. 9,147, Tr.pp. 89-96, 119-120.

13. Whether the restraint upon Mr. Boudreaux's liberty is unlawful? R.12.

14. Whether the prior dismissals with prejudice of the criminal informations and grants of the two (2), prior writs of habeas corpus based upon identical facts bars subsequent attempts by the State of Kentucky to extradite Mr. Boudreaux? R. 1-47, Tr. pp.89-96, 98.

15. Whether Mr. Boudreaux is entitled to release from incarceration or release upon bail? R. 12; R.238, Tr. pp.22-38.

16. Whether the affidavit of Joel C. Rich, and other documents from the State of Kentucky are defective in that they are not based upon his personal knowledge, are not supported by adequate documentation, have not been authenticated nor made before a magistrate, not duly certified and/or contain false and misleading facts? R. 7-9.

17. Is the Warrant of the Governor of the State of Utah defective and deficient upon its face, and void? R. 1-13, R. 1-47, Tr. pp. 87-89.

18. Did the trial court abuse its discretion by ordering Mr. Boudreaux extradited to the State of Kentucky to stand trial upon a felony criminal charge? R. 182-186, 237.

19. Is the restraint against Mr. Boudreaux's liberty unlawful and illegal, defective and deficient factually and upon its face and therefore void as a matter of law? R.1-46.

20. Should Mr. Boudreaux's Petition for Writ of Habeas Corpus be summarily denied? R.131-148.

21. Should Mr. Boudreaux be permitted to present evidence? R.131-148.

22. Did URESA, and does UIFSA, govern and provide the rights and duties of the demanding state, Kentucky, the asylum state, Utah, and the Petitioner, Mr. Boudreaux? R.131-148.

23. Whether Utah Code Annotated, Section 78-45f-801, applies to this proceeding and how does the UIFSA statute apply? R.131-148.

24. Should Mr. Boudreaux be permitted to present evidence and defenses pursuant to Utah Code Annotated, Section 78-45f-207, 209, 301, 303, 305, 316, 318, 401, 506, 604, 606, 607, 613, and 614? R. 131-148.

25. Is the Utah statute of limitations upon the collection of child support applicable to the proceeding and how is the statute applicable? R. 131-148.

26. Do Utah Code Annotated, Sections 78-45f-207, and 604, provide that the laws of the State of Utah control and govern the nature, extent, amount, and duration of the current payments and other obligations of support and the payment of arrearages under the child support order? R. 131-149.

27. Did the former Sections 77-31-20, through 27, and UIFSA Sections 78-45f-207, 209, 301, 303, 305, 316, 318, 401, 604, 606, 607, and 614 provide the authority, powers and duties of the trial court in this action and what is the trial court entitled to

find? R. 131-149.

28. Are the traditional inquiries of the Emig v. Hayward, precedent expanded when an extradition action is based upon a UIFSA proceeding? R. 131-149.

29. Is the presentation by the Petitioner, Mr. Boudreaux, of evidence and affirmative defenses inconsistent with UCEA, and should the presentation of evidence and defenses be permitted under UIFSA and UCEA? R. 131-149.

30. Are Mr. Boudreaux, the State of Utah and the State of Kentucky bound by the provisions of the order of the United States Bankruptcy Court? Tr. p. 86, Exh. 1, 2(Proof of Claim);

31. Must the State of Utah and the State of Kentucky comply with the provisions of UCEA and UIFSA? R. 1-47.

32. Have the notice, due process and evidentiary requirements of UCEA and UIFSA been met? R. 1-46, 131-149.

33. Should Mr. Boudreaux be awarded his damages, costs and attorney fees? R. 1-46.

34. Should the trial court have made findings of fact and conclusions of law upon Mr. Boudreaux's Petition for Writ of Habeas Corpus? R. 156-174, 156.

35. Should the trial court have made findings of fact and conclusions of law upon UIFSA, Utah Code Annotated, Sections 78-45f-101,et seq.? R. 156-174, 156.

36. Should the trial court have made findings of fact

and conclusions of law upon Mr. Boudreaux's request for release from incarceration, or release upon bail? R. 156-174, 156.

STANDARD OF REVIEW

The standard of review governing the determination of each of the issues presented upon this appeal, because there are no factual disputes and because no particular deference is given to the trial court's rulings on questions of law, is the correction of error standard. Shaw v. Layton Constr. Co., 872 P.2d 1059, 1061 (Utah App. 1994); Broadwater v. Old Republic Sur., 854 P.2d 527, 534 n.3 (Utah 1993); Jeschke v. Willis, 811 P.2d 202, 203 (Utah App. 1991); Gramlich v. Munsey, 838 P.2d 1131, 1132 (Utah 1992); In re Schwenke, 865 P.2d 1350, 1354 (Utah 1993); Jacobsen Inv. Co. v. State Tax Comm'n, 839 P.2d 789, 790 (Utah 1992); State v. Deli, 861 P.2d 431, 433 (Utah 1993); State v. Waite, 803 P.2d 1279, 1282 (Utah App. 1990).

STATEMENT OF THE CASE

On the 14th day of April, 1982, the Third Judicial District Court for Tooele County, within the State of Utah entered its Decree of Divorce dissolving the marriage to his then wife, Melanie Lynn Boudreaux. Paragraph three(3), of the Decree of Divorce ordered Larry Joe Boudreaux to pay child support in the amount of Two Hundred Dollars (\$200.00), per month for his minor child, Jo Lynn Boudreaux. R. 2.

The Defendant in the divorce case, Melanie Lynn

Boudreaux, then took the minor child, Jo Lynn, and moved to the State of Kentucky. In January of 1998, Jo Lynn reached the age of eighteen (18), years. R. 3.

Mr. Boudreaux's child support payment to Melanie Lynn Boudreaux is being and has been collected by the State of Utah, Office of Recovery Services. Admitted into evidence were the Office of Recovery Services for the State of Utah record of collection and payment of child support by Mr. Boudreaux. R. 3.

On the 3rd day of November, 1993, the State of Utah upon the request of the State of Kentucky filed a criminal Information against Mr. Boudreaux alleging that he should be extradited and was a fugitive from justice from Kentucky where he was charged with flagrant non-support, case number 931600149. R. 4.

Mr. Boudreaux was then arrested by the Sheriff of the County of Sanpete within the State of Utah and restrained of his liberty under the authority of and upon said warrant of the State of Kentucky and he was released upon an Undertaking of Bail. R. 5.

On the 2nd day of February, 1994, Mr. Boudreaux filed in the Sixth Judicial District Court for Sanpete County his Petition for Writ of Habeas Corpus asserting an unlawful restraint upon his liberty. R. 5.

On the 4th day of March, 1994, the Sixth Judicial District Court entered it's Findings of Fact and Conclusions of Law which were excepted into evidence. In paragraphs one (1), through

(9), the Court finds that Mr. Boudreaux did not flee the State of Kentucky, that he was and is not a fugitive from justice, that the affidavits supporting the extradition request from Kentucky are false and not true and that child support is being successfully collected by the State of Utah, Office of Recovery Services under the Uniform Recoprical Enforcement of Support Act (URES.A.) R. 5.

On the 4th day of March, 1994, the Sixth Judicial District Court entered it's Order Upon the Petition for Writ of Habeas Corpus. A copy of the Order bearing the Court's filing stamp was excepted into evidence. The trial Court granted Mr. Boudreaux's Petition for Writ of Habeas Corpus and denied and quashed the Governor's Warrant. The Court ordered that the Information filed by the State of Utah alleging that he was a fugutive from justice was dismissed with prejudice. This decision was not appealed by the State of Utah nor the State of Kentucky and is binding thereupon. R.5-6.

On the 1st day of March, 1994, the State of Utah upon the request for extradition of the State of Kentucky filed a second criminal Information against Mr. Boudreaux in the Sixth Judicial District Court alleging again that he was a fugutive from justice standing charged with Flagrant Non-Support in the State of Kentucky, case number 941600173. R. 6.

Mr. Boudreaux again filed his Petition for Writ of Habeas Corpus and a hearing was held thereupon on the 16th day of

November, 1994. On the 6th day of March, 1995, the Sixth Judicial District Court entered it's Order Upon Petition for Writ of Habeas Corpus granting Mr. Boudreaux's petition a second time and quashing, denying and dismissing with prejudice the 1994 Information and Governor's Warrant requested by the State of Kentucky and the State of Utah. The Court, at paragraph five (5), incorporated it's prior Findings of Fact that the affidavits upon which the Kentucky request was based are false and not true. The Court, at paragraph six (6), of the order reserved the amount of his damages, costs and attorney fees incurred by him in the extradition proceedings. The State of Kentucky nor the State of Utah appealed the Findings of Fact and Order and they are binding thereupon. R. 6-7.

On the 5th day of June, 1996, an Indictment, No. 96-CI-00016, was again filed against Mr. Boudreaux a third time in Webster County within the State of Kentucky again charging him with Flagrant Non-Support, a Class D Felony. The Warrant of Arrest of the Webster County Circuit Court asserts that Mr. Boudreaux is a fugutive from justice. Mr. Boudreaux was not notified of the proceeding before the grand jury and was denied his right of due process thereby. The Warrant of Arrest indicates upon it's face that it is not bailable and thus the assumption that Mr. Boudreaux will be permitted bail in the State of Kentucky is rebutted, and denies Mr. Boudreaux of his right to bail. R. 7, 162.

On the 29th day of September, 1998, Mr. Boudeaux filed his third, and present, Verified Petition for Writ of Habeas Corpus and the State did not file an answer to his petition. R.1-46.

On October 30, 1998, the time set for trial of the Petition the trial court summarily dismissed Mr. Boudreaux's petition and refused to permit him to present evidence upon his assertions of the petition and the unconstitutional restraint upon his liberty, and upon his UIFSA defenses. The Findings of Fact, Conclusions of Law and Order were signed by the trial court on November 25, 1998.

On November 25, 1998, the Petitioner, Mr. Boudreaux filed his Notice of Appeal in the Sixth Judicial District Court.

STATEMENT OF THE FACTS

a. Larry Joe Boudreaux, the Petitioner, is a resident of the County of Sanpete within the State of Utah. He is competent to testify if so called, and the facts which he stated in his Petition for Writ of Habeas Corpus are based upon his knowledge and personal observations. R. 2.

b. Larry Joe Boudreaux was born on the 13th day of February, 1960, in Tooele County, Utah, and has since remained a permanent resident of the State of Utah. His residence address is 87 West 600 South, in the City of Mount Pleasant in Sanpete County within the State of Utah. R. 2.

c. Mr. Boudreaux has four (4), minor children who are

in his sole care, custody and control pursuant to an order of the Honorable Louis G. Tervort, of the Sixth Judicial District Court, a wife, Tammy, and two (2), stepchildren and all of whom rely solely upon him for their support, shelter, food and all of the other necessities of life. R. 2.

d. On the 14th day of April, 1982, the Third Judicial District Court for Tooele County, within the State of Utah entered its Decree of Divorce dissolving the marriage to his then wife, Melanie Lynn Boudreaux. Paragraph three(3), of the Decree of Divorce ordered Larry Joe Boudreaux to pay child support in the amount of Two Hundred Dollars (\$200.00), per month for his minor child, Jo Lynn Boudreaux. R. 2.

e. The Defendant in the divorce case, Melanie Lynn Boudreaux, then took the minor child, Jo Lynn, and moved to the State of Kentucky. In January of 1998, Jo Lynn reached the age of eighteen (18), years. R. 3.

f. Mr. Boudreaux's child support payment to Melanie Lynn Boudreaux is being and has been collected by the State of Utah, Office of Recovery Services. Excepted into evidence were the Office of Recovery Services for the State of Utah record of collection and payment of child support by Mr. Boudreaux. R. 3.

g. An Indictment in case number 9-CR-022, was issued against Mr. Boudreaux by a grand jury in the Webster County Circuit Court for the Commonwealth of Kentucky on the 14th day of October,

1993, charging that he committed the crime of Flagrant Non-Support, a class D felony in violation of Kentucky Revised Statutes 530.050. Mr. Boudreaux first received and read this Indictment on the 1st day of February, 1994. R. 3.

h. Mr. Boudreaux was not afforded the opportunity of a hearing nor was he permitted to present evidence before the grand jury in the Webster County Circuit Court and as a result thereof he has been denied the right to due process of law afforded him by the Constitution of the United States of America, the Commonwealth of Kentucky and the State of Utah. R. 3-4.

i. On the 3rd day of November, 1993, the State of Utah upon the request of the State of Kentucky filed a criminal Information against Mr. Boudreaux alleging that he was a fugitive from justice from Kentucky where he was charged with flagrant non-support, case number 931600149. R. 4.

j. On the 17th day of December, 1993, Michael O. Leavitt, the Governor of the State of Utah, issued an extradition Warrant which required the arrest of Mr. Boudreaux. R. 4.

k. Mr. Boudreaux was arrested by the Sheriff of the County of Sanpete within the State of Utah and restrained of his liberty under the authority of said warrant of the State of Kentucky and he was released upon an Undertaking of Bail. R. 5.

l. On the 2nd day of February, 1994, Mr. Boudreaux filed in the Sixth Judicial District Court for Sanpete County his

Petition for Writ of Habeas Corpus asserting an unlawful restraint upon his liberty. R. 5.

m. On the 4th day of March, 1994, the Sixth Judicial District Court entered it's Findings of Fact and Conclusions of Law which were excepted into evidence. In paragraphs one (1), through (9), the Court finds that Mr. Boudreaux did not flee the State of Kentucky, that he was and is not a fugitive from justice, that the affidavits supporting the extradition request from Kentucky are false and not true and that child support is being successfully collected by the State of Utah, Office of Recovery Services under the Uniform Recoprical Enforcement of Support Act (URES.A.) R. 5.

n. On the 4th day of March, 1994, the Sixth Judicial District Court entered it's Order Upon the Petition for Writ of Habeas Corpus. A copy of the Order bearing the Court's filing stamp was admitted into evidence. The trial Court granted Mr. Boudreaux's Petition for Writ of Habeas Corpus and denied and quashed the Governor's Warrant. The Court ordered that the Information filed by the State of Utah alleging that he was a fugitive from justice was dismissed with prejudice. This decision was not appealed by the State of Utah nor the State of Kentucky and is binding thereupon. R.5-6.

o. On the 1st day of March, 1994, the State of Utah upon the request of the State of Kentucky filed a second criminal Information against Mr. Boudreaux in the Sixth Judicial District

Court alleging again that he was a fugitive from justice standing charged with Flagrant Non-Support in the State of Kentucky, case number 941600173. R. 6.

p. Mr. Boudreaux again filed his Petition for Writ of Habeas Corpus and a hearing was held thereupon on the 16th day of November, 1994. On the 6th day of March, 1995, the Sixth Judicial District Court entered it's Order Upon Petition for Writ of Habeas Corpus granting Mr. Boudreaux's petition a second time and quashing, denying and dismissing with prejudice the 1994 Information and Governor's Warrant requested by the State of Kentucky and the State of Utah. The Court, at paragraph five (5), incorporated it's prior Findings of Fact that the affidavits upon which the Kentucky request was based are false and not true. The Court, at paragraph six (6), of the order reserved the amount of his damages, costs and attorney fees incurred by him in the extradition proceedings. The State of Kentucky nor the State of Utah appealed the Findings of Fact and Order and they are binding thereupon. R. 6-7.

q. On the 5th day of June, 1996, an Indictment, No. 96-CI-00016, was again filed against Mr. Boudreaux a third time in Webster County within the State of Kentucky again charging him with Flagrant Non-Support, a Class D Felony. The Warrant of Arrest of the Webster County Circuit Court asserts that Mr. Boudreaux is a fugitive from justice. Mr. Boudreaux was not notified of the

proceeding before the grand jury and was denied his right of due process thereby. The Warrant of Arrest indicates upon it's face that it is not bailable and thus the assumption that Mr. Boudreaux will be permitted bail in the State of Kentucky is rebutted, and denies Mr. Boudreaux of his right to bail. R. 7, 162.

r. The request for extradition by the State of Kentucky, the Indictment and Warrant of Arrest are based upon the Supplemental Affidavit of Prosecuting Attorney, Joel C. Rich. This affidavit is false and the facts stated therein are not true and this Honorable Court has entered it's Findings of Fact and Conclusions of Law finding that said facts are false in two (2), prior habeas corpus proceedings, referred to above. The affidavit is not based upon the personal knowledge and observations of the affiant and contain hearsay, conclusory statements. The assertions are not support by copies of the documents to which the assertions refer as required by the Rules of Evidence. The affidavit has not been authenticated by the Governor nor was the affidavit made before a magistrate as required by Utah Code Section 77-30-3. R. 7-8.

s. This is the third application for a writ of habeas corpus and two (2), prior applications for such a writ for the relief herein sought have been before made to and granted, quashing and dismissing with prejudice the two (2), prior Informations, Warrants of Arrest and requests for extradition by the State of

Kentucky upon identical facts. This present application to extradite Mr. Boudreaux is barred by the doctrines of res judicata, collateral estoppel, the law of the case, and violation of his constitutional rights of due process by the State of Utah and the State of Kentucky. R. 9.

t. The warrant of the Governor of the State of Utah is defective and deficient upon it's face, and void, in that it states that Mr. Boudreaux has taken refuge in the State of Utah. R. 1-13.

u. Mr. Boudreaux has never resided in nor has he ever been, even momentarily, in the State of Kentucky other than to get married to Melanie on the 6th day of July, 1979. Since 1979, he has not resided in, visited or at any time entered within the jurisdictional limits of the State of Kentucky. Thus, Mr. Boudreaux is not taking refuge in Utah as asserted in the governor's warrant, rendering it defective upon it's face. R. 9-10.

v. Mr. Boudreaux has never been a fugitive nor has he fled from the justice of the State of Kentucky and taken refuge within the State of Utah which is falsly asserted in the Governor's Warrant. R.10.

w. The warrant of the Governor of the State of Utah is deffective and deficient upon it's face, and void, in that the affidavit and other supporting documents are not authenticated as asserted in the warrant.

x. Mr. Boudreaux was not afforded the opportunity for a hearing nor to present evidence to the grand jury and thus he was denied his right of due process afforded him under the Constitution of the United States of America, the Constitution of the State of Utah and the Constitution of the State of Kentucky. He was not served with the Indictment nor any summons requiring his appearance at an arraignment in Kentucky. The present restraint upon his liberty by his incarceration in the Sanpete County Jail and the warrants of the State of Kentucky is a denial of his right of due process.

y. Mr. Boudreaux's child support obligation is being collected successfully by the Office of Recovery Services for the State of Utah pursuant to U.C.A. Sections 77-31-1 et seq., as shown by the records of Recovery Services. R. 11-12. Addendum A-E.

z. Mr. Boudreaux respectfully requested the trial Court discharge him from custody and repair and restore to him his liberty which has been unlawfully restrained by granting his Petition for Writ of Habeas Corpus and awarding Mr. Boudreaux his damages, costs and attorney fees. R. 12.

aa. The State of Utah sought to deprive the Petitioner of a hearing upon his Petition for a Writ of Habeas Corpus and have the trial Court deny his petition summarily and transport him to the State of Kentucky to stand trial upon a crime of failure to pay his child support. The State of Utah also sought, by it's Motion

in Limine, to prevent the Petitioner from introducing his evidence.
R. 52-62.

bb. The trial court granted the Motion in Limine and summarily denied the Petition for Writ of Habeas Corpus refusing Larry Joe Boudreaux his right to present evidence upon his petition for writ of habeas corpus and pursuant to UIFSA. R. 238, Tr. p.98.

cc. On the 4th day of March, 1994, the Court ruled that the Petitioner's child support was being collected by the State of Utah through their URESA actions now pending. URESA has been repealed and the Uniform Interstate Family Support Act (UIFSA), Sections 78-45f-100, et seq. was enacted in it's place. R. 1-46.

dd. Utah Code Annotated, Sections 77-31-1 et seq., the Uniform Reciprocal Enforcement of Support Act, governed and provided the rights and duties of the demanding state, Kentucky, the asylum state, Utah, and the Petitioner, Mr. Boudreaux at the time. The replacement statute, UIFSA, now provides the rights and duties of the demanding state, Kentucky, the asylum state, Utah, and the Petitioner, Mr. Boudreaux. UIFSA also provides the authority, powers and duties of the trial court in this proceeding as did the predecessor statute. R.131-149.

ee. At the time, U.C.A. Section 77-31-5, provided that, "the provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of

the commission of the crime and although he had not fled therefrom." R.131-149.

ff. Like URESA, UIFSA provides at Section 78-45f-801(3), that, "(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom." The provisions for extradition of the Petitioner, Sections 77-30-1, et seq., apply when they are not inconsistent with UIFSA. Thus, the Petitioner, Mr. Boudreaux, pursuant to UIFSA, Sections 78-45f-207, 78-45f-209, 78-45f-301, 78-45f-303, 78-45f-305, 78-45f-316, 78-45f-318, 78-45f-401, 78-45f-506, 78-45f-604, 78-45f-606 and 607, and 78-45f-613 and 614, is permitted to present evidence and defenses to this Honorable Court. R. 131-149.

gg. The former U.C.A. Section 77-31-7, provided that the duties of support of the Petitioner are those of the State of Utah because Mr. Boudreaux was present in Utah during the period for which support is sought. Similarly, UIFSA, at Sections 78-45f-207, and 604, provide that the laws of the State of Utah control and govern the nature, extent, amount, and duration of the current payments and other obligations of support and the payment of arrearages under the order. In Utah the statute of limitations for child support arrearages is eight (8), years, under U.C.A. Section 78-12-22. R. 131-149.

hh. The former, U.C.A. Section 77-31-20, provided that, "The Court shall conduct proceeding under this act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed. R. 131-149.

ii. The former U.C.A. Sections 77-31-20, through 77-31-27, provide for the powers and duties of this Honorable Court in determining support. Again similarly, UIFSA, sections 78-45f-207, 209, 301, 303, 305, 316, 318, 401, 604, 606, 607, and 614, provides the authority, powers and duties of the District Court in this proceeding. The Court is entitled to find the amount Mr. Boudreaux owes in child support, order payment and take other actions to insure the payment of child support including, but not limited to, staying this proceeding. R. 131-149.

jj. The claim of the State of Utah that the Petitioner is not permitted to present evidence is wrong because the UCEA applies only when it is not inconsistent with UIFSA. UIFSA permits the presentation of evidence and affirmative defenses. The Petitioner's sworn statements and attachments to his petition, and the prior Orders and Findings of Fact of the Court, all attached to the Petition for Writ of Habeas Corpus, show that the State of Utah, Office of Recovery Services, has been successful in collecting child support from the Petitioner. R. 131-149.

kk. The State of Kentucky and the State of Utah have made two (2), prior requests for extradition of the Petitioner,

both of which have been denied by this Court. The facts before the District Court are identical as those in the two (2), prior extradition requests, except that the Petitioner has continued to pay his child support regularly since the state's prior attempts to extradite him. Two (2), prior petitions for writ of Habeas Corpus have been granted the Petitioner, Mr. Boudreaux, based upon identical facts and law asserted by all parties to this action. Habeas Corpus is a civil remedy and because this Court has ruled heretofor on the state's requests for extradition the issues are res judicata. This matter has been dismissed with prejudice on two (2), prior occasions as shown by the two (2), Orders and Findings of this Court. The affidavit filed in this case in support of the extradition of the petitioner by the representative of the State of Kentucky contains facts identical to those asserted by Kentucky in the two (2), prior proceedings. The trial Court should have granted the petition based upon URCP 65B(c)(5), because there have been two (2), prior rulings on the legality of this restraint of the Petitioner's liberty. The doctrine of res judicate is applicable to habeas corpus proceedings. The burden is upon the State of Utah and the State of Kentucky to show that their extradition falls outside of the doctrine of res judicata. The petition of Mr. Boudreaux should have been granted summarily. R. 1-46; R. 131-149.

11. Mr. Boudreaux has paid and the State of Utah, Office

of Recovery Services, under URESA and UIFSA, have successfully collected the child support for the child of Mr. Boudreaux who was eighteen (18), years old in January, 1998. This is shown by the records of the Office of Recovery Services which are attached to his petition. Any arrearage is being paid under the jurisdiction of the United States Bankruptcy Court. The Order of the United States Bankruptcy Court for the District of Utah was admitted into evidence. Mr. Boudreaux cannot pay monies outside of the confines of payment ordered in the Bankruptcy Court Order. R. 1-46, 131-149.

mm. The State of Kentucky and the State of Utah must comply with the requirements of both UIFSA and UCEA. They have failed to do so. Mr. Boudreaux has had no notice of enforcement action against him pursuant to UIFSA. The notice and evidentiary requirements of neither UIFSA nor UCEA have been met. The extradition documents submitted by the State of Utah and the State of Kentucky are facially defective and the facts asserted therein are false, as asserted in the Statement of Facts above. R. 131-149.

nn. On September 29, 1998, Mr. Boudreaux filed his Petition for Writ of Habeas Corpus. The State of Utah and the State of Kentucky have failed to timely file an answer to the sworn petition of Mr. Boudreaux. The Petitioner requested that the State's default be entered and that his petition be granted. URCP 65B(c)(6). R.131-149.

oo. Otherwise, the Petitioner requests that he be

permitted to present evidence upon the allegations of his petition, that his Petition for Writ of Habeas Corpus be granted and that the extradition be quashed and again denied with prejudice. R. 1-13.

pp. The Petitioner, Larry Joe Boudreaux, respectfully requested that he be awarded his damages, costs and attorney fees incurred in this action which is meritless and pursued in bad faith. R. 1-13.

SUMMARY OF ARGUMENT

The State of Utah, in the trial court, sought to deprive the Petitioner of a hearing and the presentation of evidence upon his Petition for Writ of Habeas Corpus and have the trial court deny his petition summarily and transport him to the State of Kentucky to stand trial upon a crime of failure to pay his child support. The trial court granted the State of Utah's motion to dismiss the petition without permitting Mr. Boudreaux to present evidence, testimonial and documentary, upon the allegations of his petition wherein he asserted that he was denied due process of law. Mr. Boudreaux should have been permitted to present evidence upon but was not permitted to present evidence that he was not served with nor provided notice of any arraignment in Kentucky, that the affidavits of Joel Rich and Thomas Simpson in support of the rendition were false, and that he had not "taken refuge in the State of Utah," as asserted in the Warrant of the Governor of the State of Utah. Mr. Boudreaux should have been permitted to present

evidence upon but was not permitted by the trial court to present evidence upon the two (2), prior attempts to extradite him by the State of Kentucky upon identical claims and the granting by the trial court of his two (2), prior habeas corpus petitions which blocked both of Kentucky's attempts at extradition.

UIFSA provides at Section 78-45f-801(3), that, "(3) A provision for the extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom." The provisions for extradition of the Petitioner, U.C.A. Sections 77-30-1 et seq., apply when they are not inconsistent with UIFSA. Thus, the Petitioner, Mr. Boudreaux, pursuant to UIFSA, Sections 78-45f-207, 78-45f-209, 78-45f-301, 78-45f-303, 78-45f-305, 78-45f-316, 78-45f-318, 78-45f-401, 78-45f-506, 78-45f-604, 78-45f-606, 78-45f-607, and 78-45f-613 and 78-45f-614, is permitted to present evidence and defenses to the trial court.

UIFSA, at Sections 78-45f-207, and 604, provide that the laws of the State of Utah control the proceeding and govern the nature, extent, amount, and duration of the current payments and other obligations of support and the payment arrearages under the Utah divorce decree. In Utah the statute of limitations for child support arrearages is eight (8), years, under U.C.A. Section 78-12-22. Seeley v. Park, 532 P.2d 684 (Utah 1975).

The order of the trial court summarily dismissing Mr. Boudreaux's Verified Petition for Writ of Habeas Corpus and prohibiting him from presenting his documentary and testimonial evidence must be reversed. The failure of the trial court to permit the Petitioner to present evidence of the denials of his rights of due process under the Fourteenth Amendment, and the other UIFSA evidence he proffered, is itself a denial of Mr. Boudreaux's right of due process. Alternatively, the appellate court should instruct the trial court to make findings of fact based upon the evidence proffered by Mr. Boudreaux and his witnesses inasmuch as the State of Utah did not present any evidence in the proceeding, or at trial, whatsoever.

The State of Kentucky and the State of Utah have made two (2), prior attempts to extradite the Petitioner, Mr. Boudreaux, both of which were denied by the trial court. R. 5-9, 18-22, 23-25, 26-27, 28-30. The facts before the trial court upon the present, and third, attempt to extradite the Petitioner are identical as those in the two (2), prior extradition requests by the State of Kentucky and the State of Utah, except that the Petitioner has continued to pay his child support regularly since the prior attempts to extradite him. R. 7-9. Two (2), prior petitions for Writ of Habeas Corpus have been granted the Petitioner, Mr. Boudreaux, based upon identical facts and law asserted by all parties to this action. Habeas Corpus is a civil remedy and

because the trial court had ruled heretofor on the state's requests for extradition the issues are res judicata. The matter had been dismissed with prejudice on two (2), prior occasions as shown by the two (2), Orders and Findings of the trial court. R. 5-9, 18-22, 23-25, 26-27, 28-30. The State of Kentucky nor the State of Utah presented any evidence whatsoever in the proceeding regarding Mr. Boudreaux's res judicata defense. Tr. 89-98. The trial court took judicial notice of and in case numbers 931600149, 940600581, and 940600636, ruled that the restraint upon the liberty of Mr. Boudreaux was illegal and violated his constitutional right of due process. Tr. p. 119-123. The two prior grants of habeas corpus to Mr. Boudreaux upon the basis of false facts stated in affidavits of Thomas Simpson, his filing of an affidavit in support of the present attempt at extradition, and the prior rulings of the trial court that the State of Utah, Office of Recovery Services has been successfully collecting child support from Mr. Boudreaux, entitle Mr. Boudreaux to assert the defense of res judicata, and to present evidence and affirmative defenses. The Petition of Mr. Boudreaux should have been granted summarily given that the State of Utah and the State of Kentucky failed to file an answer to the petition and failed to present any evidence whatsoever controverting the sworn assertions of Mr. Boudreaux, his documentary evidence and his witnesses (which were proffered and excepted into evidence by the trial court for the purpose of appeal. Tr. pp. 119-123.)

Mr. Boudreaux has paid and the State of Utah, Office of Recovery Services have successfully collected the Utah ordered child support for the child of Mr. Boudreaux who was eighteen (18), years old in January, 1998. This is shown by the records of the Office of Recovery Services which are attached to his sworn petition. R. 31-38. It is also proved by the records of the State of Utah, Office of Recovery Services that were excepted and proffered into evidence at the hearing. Exhibit 4, and Exhibit 2. The State presented no documents, proffered no witnesses and presented no evidence conotverting Mr. Boudreaux's assertion of successful collection of child support.

Payments toward the child support arrearage by Mr. Boudreaux ceased in March, 1998, until October, 1998, when the Office of Recovery Services received a payment \$519.26, from the United States Bankruptcy Court Trustee in Mr. Boudreaux's Chapter 13, case pursuant to the proof of claim of Recovery Services for arrearages. Exhibit 1; Exhibit 2, Proof of Claim; Exhibit 4, p.1, payment for October, 1998. The Chapter 13 plan of Mr. Boudreaux and the Order of the United States Bankruptcy Court provides that the child support arrears will be paid in full by Mr. Boudreaux and the United States Trustee.

Moreover, Kentucky has no jurisdiction over the collection of child support arrearages, criminal or civil, ordered by a Utah Decree of Divorce and collected by the State of Utah,

Office of Recovery Services. The district courts of Utah have exclusive subject matter jurisdiction over the collection of past due child support. State v. Child Support Enforcement, 888 P.2d 960, 963 (Utah App. 1993).

The Fifth Amendment to the Constitution of the United States of America provides, "No person shall be... deprived of life, liberty, or property, without due process of law..."

The Fourteenth Amendment to the Constitution of the United States of America provides, "...nor shall any State deprive any person of life, liberty, or property without due process of law..."

Mr. Boudreaux asserted in his sworn petition the unconstitutional restraint upon his liberty by his arrest and incarceration in the Sanpete County Jail by the rendition request of the State of Kentucky and the actions of the State of Utah. R. 3-13.

He was not notified of any Kentucky grand jury proceedings against him. R. 1-13, R. 184. He was not notified on any arraignment proceeding in Kentucky enabling him to appear before the Kentucky court. R. 1-13, R. 184, R. 111-125, R. 121. The warrant of the Governor of the State of Utah refers to Mr. Boudreaux as having taken refuge in Utah presumably in order to avoid prosecution of a crime in Kentucky. The statement is false. Mr. Boudreaux has always resided and been domiciled in the State of

Utah. R. 1-13. The State of Utah nor the State of Kentucky presented controverting evidence that Mr. Boudreaux was notified of an arraignment, or grand jury proceedings nor that Mr. Boudreaux had taken refuge in the State of Utah.

The failure by the State of Kentucky to notify Mr. Boudreaux of an arraignment proceeding, and the issuance of a no bail warrant for his arrest based upon his failure to appear and the arraignment, and his arrest upon such a warrant, is a violation of his rights of due process guaranteed by the Fifth Amendment and Fourteenth Amendment to the Constitution of the United States of America. Mr. Boudreaux was arrested in Sanpete County on August 24, 1998, and today remains deprived of his liberty in the Sanpete County Jail.

The affidavits of Mr. Thomas Simpson and Mr. Joel Rich which state false facts. R. 1-46. When there is fraud, falsity, bad faith, clear default, or abuse in the performance of a duty a court should interfere in the manner in which an executive authority performs it's duties prescribed by law. Cope v. Toronto, 332 P.2d 977 (Utah 1958).

On December 7, 1998, Mr. Boudreaux requested that the trial court release him from incarceration in the Sanpete County Jail, or otherwise admit him to bail. R. 238, Tr. pp. 21-41. The trial court denied Mr. Boudreaux's release from incarceration and denied his request for bail. R.238, Tr. pp. 39-41.

ARGUMENT

THE PETITIONER IS ENTITLED TO PRESENT EVIDENCE UPON HIS PETITION FOR WRIT OF HABEAS CORPUS AND UIFSA

The State of Utah, in the trial court, sought to deprive the Petitioner of a hearing and the presentation of evidence upon his Petition for Writ of Habeas Corpus and have the trial court deny his petition summarily and transport him to the State of Kentucky to stand trial upon a crime of failure to pay his child support. The trial court granted the State of Utah's motion to dismiss the petition without permitting Mr. Boudreaux to present evidence, testimony and documentary, upon the allegations of his petition wherein he asserted that he was denied due process of law. Mr. Boudreaux should have been permitted to present evidence upon but was not permitted to present evidence that he was not served with nor provided notice of any arraignment in Kentucky, that the affidavits of Joel Rich and Thomas Simpson in support of the rendition were false, and that he had not "taken refuge in the State of Utah," as asserted in the Warrant of the Governor of the State of Utah. Mr. Boudreaux should have been permitted to present evidence upon but was not permitted by the trial court to present evidence upon the two (2), prior attempts to extradite him by the State of Kentucky upon identical claims and the granting by the trial court of his two (2), prior habeas corpus petitions which blocked both of Kentucky's attempts at extradition. A person

incarcerated in Utah may use the habeas corpus remedy to challenge the effect in Utah of a detainer or rendition request filed by another state and a proposed transfer of custody thereto. Gibson v. Morris, 646 P.2d 743 (Utah 1982). In such a habeas corpus proceeding the burden of proof is upon the petitioner. Syddall v. Turner, 437 P.2d 194 (Utah 1968). In a trial upon a petition for writ of habeas corpus the burden is upon the petitioner to present evidence that he is wrongfully incarcerated. Farrow v. Smith, 541 p.2d 1107 (Utah 1975); Larrabee v. Turner, 480 P.2d 134 (Utah 1971). When there is fraud, falsity, bad faith or abuse in the performance of duty by a state official the courts will interfere in the manner in which an executive department performs it's duties prescribed by law. Cope v. Toronto, 332 P.2d 977 (Utah 1958). The Petitioner, Larry Joe Boudreaux, in his sworn Petition for Writ of Habeas Corpus asserted that the affidavits in support of the request for extradition were false and asserted false fact. R. 7-9. Mr. Boudreaux asserted the prior findings of the trial court in the two (2), prior habeas corpus proceedings that the facts asserted by the officials of the State of Kentucky were false. R. 7-9, 23-25, 26-27, 28-30. In order to meet his evidentiary burden at trial upon his Petition for Writ of Habeas Corpus, Mr. Boudreaux should have been permitted by the trial court to present his documentary evidence and the testimony of his witnesses. Larrabee, *id.* Farrow, *id.* Tr. p.8 l. 6-7; p. 12, l. 10-15; p.13,l.14-p.14, l.9;p.20,

1.14-19;p.21, 1.16-p.22, 1.25; p. 57,1.1-p.60,1.25; p.75, 1.13-16; p.80, 1.12-13; p.82, 1.10-25.

On the 4th day of March, 1994, the trial court made it's findings of fact and ruled that the Petitioner's child support was being collected by the State of Utah through it's URESA actions then pending and that each of the affidavits upon which the Governor's Warrant was issued are defective and false and the facts stated in said affidavits are not true. R. 23-25. URESA has been repealed and the Uniform Interstate Family Support Act (UIFSA), U.C.A. Sections 78-45f-100, et seq., was enacted in it's place.

Utah Code Annotated, Sections 77-31-1 et seq., the Uniform Reciprocal Enforcement of Support Act, governed and provided the rights and duties of the demanding state, Kentucky, the asylum state, Utah, and the Petitioner, Mr. Boudreaux at the time of the two (2), prior extradition attempts and habeas corpus proceedings. The replacement statute, UIFSA, now provides the rights and duties of the demanding state, Kentucky, the asylum state, Utah, and the Petitioner, Mr. Boudreaux. UIFSA also provides the authority, powers and duties of the trial court in this proceeding as did the predecessor statute.

At the time of the State of Kentucky's two (2), prior attempts to extradite the Petitioner, and Mr. Boudreaux's two (2), previous proceedings upon his Petitions for Writs of Habeas Corpus, Utah Code Annotated, Section 77-31-5, provided that, "the

provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom."

Like the former URESA, UIFSA provides at Section 78-45f-801(3), that, "(3) A provision for the extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom." The provisions for extradition of the Petitioner, U.C.A. Sections 77-30-1 et seq., apply when they are not inconsistent with UIFSA. Thus, the Petitioner, Mr. Boudreaux, pursuant to UIFSA, Sections 78-45f-207, 78-45f-209, 78-45f-301, 78-45f-303, 78-45f-305, 78-45f-316, 78-45f-318, 78-45f-401, 78-45f-506, 78-45f-604, 78-45f-606, 78-45f-607, and 78-45f-613 and 78-45f-614, is permitted to present evidence and defenses to the trial court.

The former U.C.A. Section 77-31-7, provided that the duties of support of the Petitioner are those required by the State of Utah because Mr. Boudreaux was present in Utah during the period for which support is sought. Similarly, UIFSA, at Sections 78-45f-207, and 604, provide that the laws of the State of Utah control the proceeding and govern the nature, extent, amount, and duration of the current payments and other obligations of support and the

payment arrearages under the Utah divorce decree. In Utah the statute of limitations for child support arrearages is eight (8), years, under U.C.A. Section 78-12-22. Seeley v. Park, 532 P.2d 684 (Utah 1975). The Decree of Divorce which ordered the payment of child support by the Petitioner was issued by the Third Judicial District Court for Tooele County within the State of Utah. The State of Utah, through it's Office of Recovery Services has been collecting Mr. Boudreaux's child support on behalf of the State of Kentucky at the request of Kentucky by it's Interstate Child Support Enforcement Transmittal dated September 24, 1991, wherein Kentucky asserted a total child support arrearage of \$3,784.00, as of August 1, 1991. Exhibit 2.

The former, U.C.A. Section 77-31-20, provided that, "The Court shall conduct a proceeding under this act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed. The claimant was Kentucky and the trial court permitted the presentation of testimony and documentary evidence in the two (2), prior proceedings and entered Findings of Fact thereupon. R. 1-46.

The former U.C.A. Sections 77-31-20, through 77-31-27, provided for the powers and duties of the trial court in determining child support issues and facts. Again similarly, UIFSA, sections 78-45f-207, 209, 301, 303, 305, 316, 318, 401, 604, 606, 607, 607, and 614, provide the authority, powers and duties of

the trial court in this proceeding. The trial court was entitled to find the amount Mr. Boudreaux owes in child support., order payment and take other actions to insure the payment of child support including, but not limited to, staying the proceeding.

The claim of the State of Utah that the Petitioner is not permitted to present evidence is wrong because the UCEA applies only when it is not inconsistent with UIFSA. U.C.A. Section 78-45f-801(3). UIFSA permits the presentation of evidence and affirmative defenses. The Petitioner's sworn statements in his Verified Petition for Writ of Habeas Corpus, together with the attachments thereto, the records of the Office of Recovery Services of the State of Utah, the prior orders and Findings of Fact of the trial court in the prior habeas corpus proceeding all show that the Office of Recovery Services has been successful in collecting child support from the Petitioner, Mr. Boudreaux.

It must be noted here that the State of Utah presented no documentary nor testimonial evidence at the trial upon the Petition for Writ of Habeas Corpus, nor did the State proffer any evidence which would controvert the evidence proffered and sworn statements by Mr. Boudreaux.

The trial court granted the State of Utah's motion to dismiss Mr. Boudreaux's Petition for Writ of Habeas Corpus, and deny the writ summarily, without allowing the Petitioner to present evidence in support of the petition. Tr. p. 98. The trial court,

after dismissing the petition for writ of habeas corpus, allowed the submission of documentary evidence and the testimony of Mr. Boudreaux's witnesses for the sole purpose of protecting the record for appeal. Tr. pp. 98-100. Mr. Boudreaux proffered his own testimony (Tr. pp. 100-102), the testimony of his bankruptcy counsel, Mr. Enderton, (Tr. pp. 102-108), the testimony of Mr. Glen Frandsen of the State of Utah, Office of Recovery Services, and the testimony of Assistant Attorney General for Recovery Services, Lance Dean. (Tr. pp. 108-119.) The trial court also, upon the exception of the Petitioner, permitted the admission of Petitioner's Exhibits 1-5, into the record (Tr. p. 122), and took judicial notice of the two (2), prior extradition attempts by the State of Kentucky and the two (2), prior habeas corpus proceedings before the trial court, case numbers 931600149, 940600636, 941600173, 941600581, and 981600111. (Tr. pp. 119-121.)

The order of the trial court summarily dismissing Mr. Boudreaux's Verified Petition for Writ of Habeas Corpus and prohibiting him from presenting his documentary and testimonial evidence must be reversed. The failure of the trial court to permit the Petitioner to present evidence of the denials of his rights of due process under the Fourteenth Amendment, and the other UIFSA evidence he proffered, is itself a denial of Mr. Boudreaux's right of due process. Alternatively, the appellate court should instruct the trial court to make findings of fact based upon the

evidence proffered by Mr. Boudreaux and his witnesses inasmuch as the State of Utah did not present any evidence in the proceeding, or at trial, whatsoever.

**THE EXTRADITION ATTEMPT BY KENTUCKY AND
THE PETITION FOR WRIT OF HABEAS CORPUS ARE RES JUDICATA**

The State of Kentucky and the State of Utah have made two (2), prior attempts to extradite the Petitioner, Mr. Boudreaux, both of which were denied by the trial court. R. 5-9, 18-22, 23-25, 26-27, 28-30. The facts before the trial court upon the present, and third, attempt to extradite the Petitioner are identical as those in the two (2), prior extradition requests by the State of Kentucky and the State of Utah, except that the Petitioner has continued to pay his child support regularly since the prior attempts to extradite him. R. 7-9. Two (2), prior petitions for Writ of Habeas Corpus have been granted the Petitioner, Mr. Boudreaux, based upon identical facts and law asserted by all parties to this action. Habeas Corpus is a civil remedy and because the trial court had ruled heretofore on the state's requests for extradition the issues are res judicata. The matter had been dismissed with prejudice on two (2), prior occasions as shown by the two (2), Orders and Findings of the trial court. R. 5-9, 18-22, 23-25, 26-27, 28-30.

Utah and Kentucky assert that their present extradition attempt is not res judicata because in the two (2), prior applications for extradition, Mr. Boudreaux was identified as a

fugitive from justice having taken refuge in the State of Utah, and in the present extradition attempt he is identified as a non-fugitive having taken refuge in the State of Utah. The change of a single word in the application by the State of Kentucky and the State of Utah do not prohibit application of the equitable defense of res judicata. The facts of the present attempt at extradition are the same as the facts of the two (2), prior attempts at extradition of Mr. Boudreaux. The trial court previously ruled and made findings of fact that, "Each of the affidavits upon which the Governor's Warrant was issued are defective and false and the facts stated therein are not true." R. 24, paragraph 8. Substantively, the factual claims of the State of Kentucky in the present attempt at extradition are identical to the facts of the prior attempts at extradition. Mr. Boudreaux asserted in his sworn petition that the facts asserted in the affidavits supporting rendition are false and supported his claim with the records of the Office of Recovery Services. R. 1-46. The State of Kentucky, when it requested interstate child support enforcement, Exhibit 2, asserted child support arrearages of \$3,784.00 as of August 1, 1991, directly controverting the factual assertion of the affidavits supporting the present request for extradition. Exhibit 2.

The doctrine of res judicate is applicable to habeas corpus proceedings and should have been applied here by the trial court, or at least considered. Burleigh v. Turner, 38 P.2d 412

(Utha 1964); Wright v. Carver, 886 P.2d 58 (Utah 1994); Andrews v. Carver, 789 F. Supp. 659 (D.Utah 1992). The burden is upon the State of Utah and the State of Kentucky to show that their present extradition attempt and Mr. Boudreaux's present Verified Petition for Writ of Habeas Corpus falls outside of the doctrine of res judicata. The State of Kentucky nor the State of Utah presented any evidence whatsoever in the proceeding regarding Mr. Boudreaux's res judicata defense. Tr. 89-98. The doctrine of res judicata in habeas corpus proceedings does not only work to the benefit of the state. The application of the equitable doctrine of res judicata should apply equitably and to the benefit and detriment of all of the parties to this action. If the issues have been previously determined by the trial court in two (2), prior proceedings then the Petitioner should have the benefit of the application of the doctrine of res judicata in subsequent cases involving unlawful restraints upon his liberty. Tr. 89-96. The trial court took judicial notice of and in case numbers 931600149, 940600581, and 940600636, ruled that the restraint upon the liberty of Mr. Boudreaux was illegal and violated his constitutional right of due process. Tr. p. 119-123. The two prior grants of habeas corpus to Mr. Boudreaux upon the basis of false facts stated in affidavits of Thomas Simpson, his filing of an affidavit in support of the present attempt at extradition, and the prior rulings of the trial court that the State of Utah, Office of Recovery Services has been

successfully collecting child support from Mr. Boudreaux, entitle Mr. Boudreaux to assert the defense of res judicata, and to present evidence and affirmative defenses. The Petition of Mr. Boudreaux should have been granted summarily given that the State of Utah and the State of Kentucky failed to file an answer to the petition and failed to present any evidence whatsoever controverting the sworn assertions of Mr. Boudreaux, his documentary evidence and his witnesses (which were proffered and excepted into evidence by the trial court for the purpose of appeal. Tr. pp. 119-123.) The present extradition attempt by the State of Kentucky is unsupported and in light of the prior proceedings, frivolous.

THE DISTRICT COURT HAS EXCLUSIVE JURISDICTION OVER CHILD SUPPORT AND MR. BOUDREAUX'S CHILD SUPPORT HAS BEEN SUCCESSFULLY COLLECTED

Mr. Boudreaux has paid and the State of Utah, Office of Recovery Services have successfully collected the Utah ordered child support for the child of Mr. Boudreaux who was eighteen (18), years old in January, 1998. This is shown by the records of the Office of Recovery Services which are attached to his sworn petition. R. 31-38. It is also proved by the records of the State of Utah, Office of Recovery Services that were excepted and proffered into evidence at the hearing. Exhibit 4, and Exhibit 2. The State presented no documents, proffered no witnesses and presented no evidence conrotverting Mr. Boudreaux's assertion of successful collection of child support.

The Recovery Services records show that Mr. Boudreaux paid his ongoing child support, and often paid his ongoing obligation together with substantial contributions toward his child support arrearages. Exhibit 4. His ongoing obligation ceased in January, 1998.

Payments toward the child support arrearage by Mr. Boudreaux ceased in March, 1998, until October, 1998, when the Office of Recovery Services received a payment \$519.26, from the United States Bankruptcy Court Trustee in Mr. Boudreaux's Chapter 13, case pursuant to the proof of claim of Recovery Services for arrearages. Exhibit 1; Exhibit 2, Proof of Claim; Exhibit 4, p.1, payment for October, 1998. The Chapter 13 plan of Mr. Boudreaux and the Order of the United States Bankruptcy Court provides that the child support arrears will be paid in full by Mr. Boudreaux and the United States Trustee. One Hundred percent (100%), payment of Mr. Boudreaux's Utah ordered child support obligation, including arrearages, is successful collection of his child support. Generally, debts are subject to discharge in a bankruptcy proceeding but an exception exists when the debt is child support arrearages. Baggs v. Anderson, 528 P.2d 141,143 (Utah 1974); State by and through Utah State Dept. Of Social Services v. SUCEC, 924 P.2d 882 (Utah 1996).

Moreover, Kentucky has no jurisdiction over the collection of child support arrearages, criminal or civil, ordered

by a Utah Decree of Divorce and collected by the State of Utah, Office of Recovery Services. The district courts of Utah have exclusive subject matter jurisdiction over the collection of past due child support. State v. Child Support Enforcement, 888 P.2d 960, 963 (Utah App. 1993).

The trial court should have permitted Mr. Boudreaux to present evidence upon the issue of successful collection of child support pursuant to UIFSA. The trial court should have found based upon the sworn statements and proffered evidence of Mr. Boudreaux that Office of Recovery Services for the State of Utah is successfully collecting child support from Mr. Boudreaux. This Honorable Court should instruct the trial court to enter findings of fact supporting the conclusion that Mr. Boudreaux's child support is being successfully collected. The State of Utah, representing the State of Kentucky, presented no evidence upon the issues. Mr. Boudreaux's Verified Petition for Writ of Habeas Corpus should be granted and the State of Kentucky should be prohibited from further attempts to extradite him.

**MR. BOUDREAUX'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED
AND HIS PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE GRANTED**

The Fifth Amendment to the Constitution of the United States of America provides, "No person shall be... deprived of life, liberty, or property, without due process of law..."

The Fourteenth Amendment to the Constitution of the

United States of America provides, "...nor shall any State deprive any person of life, liberty, or property without due process of law..."

Mr. Boudreaux asserted in his sworn petition the unconsitiutional restraint upon his liberty by his arrest and incarceration in the Sanpete County Jail by the rendition request of the State of Kentucky and the actions of the State of Utah. R. 3-13.

He was not notified of any Kentucky grand jury proceedings against him. R. 1-13, R. 184. He was not notified on any arraignment proceeding in Kentucky enabling him to appear before the Kentucky court. R. 1-13, R. 184, R. 111-125, R. 121. The warrant of the Governor of the State of Utah refers to Mr. Boudreaux as having taken refuge in Utah presumably in order to avoid prosecution of a crime in Kentucky. The statement is false. Mr. Boudreaux has always resided and been domociled in the State of Utah. R. 1-13. The State of Utah nor the State of Kentucky presented controverting evidence that Mr. Boudreaux was notified of an arraignment, or grand jury proceedings nor that Mr. Boudreaux had taken refuge in the State of Utah.

The State of Kentucky claims in their criminal proceeding that Mr. Boudreaux is a fugitive and that he failed to appear for an arraignment before that court. Warrant of Arrest, Exhibit 5, p.7. The warrant asserts that Mr. Boudreaux may give no bail or

bond. Exhibit 5, p.7. The failure by the State of Kentucky to notify Mr. Boudreaux of an arraignment proceeding, and the issuance of a no bail warrant for his arrest based upon his failure to appear and the arraignment, and his arrest upon such a warrant, is a violation of his rights of due process guaranteed by the Fifth Amendment and Fourteenth Amendment to the Constitution of the United States of America. Mr. Boudreaux was arrested in Sanpete County on August 24, 1998, and today remains deprived of his liberty in the Sanpete County Jail.

Another basis by which the State of Kentucky has unconstitutionally deprived Mr. Boudreaux of his liberty and right of due process are the affidavits of Mr. Thomas Simpson and Mr. Joel Rich which state false facts. R. 1-46. When there is fraud, falsity, bad faith, clear default, or abuse in the performance of a duty a court should interfere in the manner in which an executive authority performs it's duties prescribed by law. Cope v. Toronto, 332 P.2d 977 (Utah 1958). Habeas corpus is used to protect anyone, including Mr. Boudreaux, who is restrained of his liberty where there exists no jurisdiction or authority, or where the requirement of the law have been so ignored or distorted that the party is substantially and effectively denied what is included in the term due process of law, or where some other circumstance exists which would make it wholly unconscionable not to consider the matter. Bryant v. Turner, 431 P.2d 121 (Utah 1967); Dunn v. Cook, 791 P.2d

873 (Utah 1990); Gallegos v. Turner, 409 P.2d 386 (Utah 1965). The statement of false facts in conclusory, unsupported affidavits which do not meet the minimum requirements for affidavits made upon personal knowledge (the affidavits contain no attestations of personal knowledge and are clearly hearsay) in the State of Utah, deprives Mr. Boudreaux of his constitutional rights of due process.

The State of Kentucky chose not to give Mr. Boudreaux notification of its arraignment hearing and then, based upon his failure to appear for that arraignment issue a warrant for his arrest which prohibits bail because he failed to appear. Exhibit 5. R. 238, Tr. p. 22. The State of Kentucky chose to support its request for rendition of Mr. Boudreaux by the conclusory and evidentiarily insufficient, unsupported affidavits stating false facts of its public officials Mr. Thomas Simpson and Mr. Joel Rich. The State of Kentucky is bound by the affidavits when it supports an extradition request by them. The affidavits state false facts, as they did in the two (2), prior extradition attempts. The State of Kentucky has violated the constitutionally guaranteed rights of due process and liberty which should be enjoyed by Mr. Boudreaux.

The State of Utah and the State of Kentucky presented no evidence that the affidavits of Kentucky's public officials, Mr. Simpson and Mr. Rich, were supported and not false.

Mr. Boudreaux has been restrained from his liberty by

incarceration in the Sanpete County Jail upon the unlawful insistence of the State of Kentucky and the State of Utah since August, 1998. He remains incarcerated today, the trial court having denied him bail, or release from incarceration. This Honorable Court should immediately and summarily grant Mr. Boudreaux's petition for writ of habeas corpus and instruct the trial court to release Mr. Boudreaux from jail.

**MR. BOUDREAUX SHOULD BE RELEASED FROM
INCARCERATION OR ADMITTED TO BAIL**

On December 7, 1998, Mr. Boudreaux requested that the trial court release him from incarceration in the Sanpete County Jail, or otherwise admit him to bail. R. 238, Tr. pp. 21-41. The trial court denied Mr. Boudreaux's release from incarceration in the Sanpete County Jail, and denied his request for bail. R.238, Tr. pp. 39-41.

The Eighth Amendment to the Constitution of the United States of America provides, "Excessive bail shall not be required..."

Article I, Section 8, of the Constitution of Utah provides, "(1) All persons charged with a crime shall be bailable except: . . . (c) except persons charged with any other crime,... if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would

constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail."

UIFSA, U.C.A. Section 78-45f-801(3), provides that, "(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom." The provisions for extradition of the Petitioner apply when they are not inconsistent with UIFSA.

Mr. Boudreaux was admitted to bail after his arrest and incarceration in the first attempt by Kentucky to extradite him after the issuance of the Utah Governor's Warrant and appeared before the trial court at every hearing. His petition for writ of habeas corpus was granted. R. 1-28, R. 238, Tr. pp. 21-41.

Mr. Boudreaux was released upon his own recognizance the second time he was arrested and jailed upon a warrant from Kentucky and after the issuance of the Utah Governor's Warrant. R. 1-28, R. 238, Tr. pp. 21-41.

Mr. Boudreaux poses no risk of danger to the community nor a substantial risk to any other person in the community. He is not a risk of flight. He has appeared at each hearing in each of the three (3), habeas corpus proceedings, including those two (2), prior proceeding when he was admitted to bail. The State of Utah

has filed no criminal information against Mr. Boudreaux.

The trial court ruled that even though Mr. Boudreaux was bailable factually, the release from incarceration, and upon bail was prohibited by Emig v. Hayward, 703 P.2d 1043 (Utah 1985). R. 238, Tr. p. 41, Tr. pp. 21-41, 36-38.


Mr. Boudreaux is entitled to release from incarceration, or bail. To deprive him of release, and bail, violates the provisions of the Utah Constitution Article I, Section 8, the Eighth Amendment to the United States Constitution, and the provisions of UIFSA, which provides the powers and duties of the trial court and the rights of Mr. Boudreaux, the State of Kentucky and the State of Utah. The denial of bail to Mr. Boudreaux is inconsistent with the rendition provision, and the powers and authority provisions of UIFSA. He should have been permitted bail pending the trial of his petition for writ of habeas corpus, and pending the review by this Honorable Court. Mr. Boudreaux should be immediately released from incarceration, or admitted to bail.

CONCLUSION

Mr. Boudreaux's sworn Petition for Writ of Habeas Corpus should be granted because he has been denied his constitutional right of due process. He should have been permitted by the trial court to present evidence, testimony of witnesses and documentary evidence. The habeas corpus remedy is res judicata because of the two prior grants of habeas corpus by the trial court upon identical

facts. Mr. Boudreaux's child support is being successfully collected by the State of Utah, Office of Recovery Services. Mr. Boudreaux should be released from incarceration, or admitted to bail, and his petition should be granted.

RESPECTFULLY SUBMITTED this 9th day of April, 1999.



ANDREW B. BERRY, JR.,
Attorney for Appellant,
Larry Joe Boudreaux

CERTIFICATE OF MAILING AND SERVICE

I hereby certify that on this 9th day of April, 1999, I mailed, postage prepaid and by first class mail, two (2), true and correct copies of the foregoing ~~Brief Of~~ Appellant to Mark E. Burns, Assistant Attorney General, Attorney for Appellee, at 160 East 300 South, #600, Post Office Box 140841, Salt Lake City, Utah 84114.

ADDENDUM

- A. Findings of Fact, Conclusions of Law, Judgment and Order
- B. Notice of Appeal
- C. Utah Decree of Divorce, dated April 14, 1982
- D. Findings of Fact and Order Upon Petition for Writ of Habeas Corpus, March 4, 1994
- E. Order Upon Petition for Writ of Habeas Corpus, March 6, 1995
- F. U.C.A. 78-45f-100 et seq., UIFSA

ROSS C. BLACKHAM #0357
Sanpete County Attorney
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Manti, Utah 84642
Telephone: (435) 835-6381
Facsimile: (435) 835-6383

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IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR SANPETE COUNTY
STATE OF UTAH

LARRY JOE BOUDREAUX,)	
)	
Petitioner,)	
)	FINDINGS OF FACT AND
vs.)	CONCLUSIONS OF LAW
)	
STATE OF UTAH,)	
)	Case No. 980600302
Respondent.)	Assigned Judge: David L. Mower

The Petitioner's Petition for a Writ of Habeas Corpus and Respondent's Motion to Dismiss having come before the Court for hearing on October 30, 1998. The Petitioner, Larry Joe Boudreaux was personally present in Court and represented by his attorney, Andrew W. Berry, Jr.. The Respondent was represented by Ross C. Blackham, Sanpete County Attorney. The Court having examined the documents submitted into evidence by stipulation of the parties and having heard oral arguments thereon, now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) On August 5, 1998, Governor Paul E. Patten of the State of Kentucky executed a demand to the Governor of Utah to surrender to Kentucky Larry Joe Boudreaux a.k.a. Larry Boudreaux, Larry J. Boudreaux and Larry Joe Bordreaux alleging that the person to be surrendered had committed the crime of flagrant non-support, committed while outside the State of Kentucky which resulted in the commission of a crime within the State of Kentucky.

2) Governor Patten also sent with the extradition demand an Indictment dated June 5th, 1996, charging Larry Boudreaux in Webster County, Kentucky with Flagrant Non-Support, a Class D Felony and a Warrant of Arrest for Larry Boudreaux dated January 15, 1997. Governor Patten certified these two documents to be authentic in accordance with the laws of the State of Kentucky, as well as all other documents submitted in aid of the demand.

3) That Paul E. Patten is the Governor of the State of Kentucky and the executive authority of the State of Kentucky.

4) On August 24, 1998, as a result of the demand from Kentucky Governor Patten, Governor Michael O. Leavitt of the State of Utah issued his Governor's Warrant for Larry Joe Boudreaux, a.k.a. Larry Boudreaux, Larry J. Boudreaux, Larry Joe Bordreaux .

5) On the 31st, day of August, 1998, Police Officers from Mt. Pleasant City Police Department arrested the Petitioner based on Governor Leavitt's Warrant.

6) That the person arrested and in Court on the date of this hearing is one and the same Larry Joe Boudreaux demanded by the State of Kentucky.

7) The documents submitted by Kentucky and Governor Leavitt's Warrant all appear on their face to be in order. The phrase in Governor Leavitt's Warrant that the accused has "taken refuge in the State of Utah" is not a reference to the accused being a fugitive from the State of Kentucky but a reference to him being present in the State of Utah.

8) The Petitioner did not have notice of the Grand Jury proceedings in Kentucky.

9) The Petitioner did not receive notice of arraignment proceedings in Kentucky.

10) Petitioner is charged with a crime under the laws of the demanding State, to wit: Kentucky, and a charging document has been issued.

11) The State of Kentucky is seeking the Petitioner as a person who has committed an act in the State of Utah which results in a crime in the State of Kentucky even though the Petitioner was not in the State of Kentucky at the time of the commission of the crime and has not fled therefrom.

12) The State of Kentucky has made a prior attempt to extradite Mr. Boudreaux and that the Governor of Utah has issued two prior Governor's Warrants for Mr. Boudreaux. A different issue is present in the present case from the prior attempt to extradite Mr. Boudreaux and that is whether or not the Petitioner may be surrendered as a non fugitive.

CONCLUSIONS OF LAW

- 1) The demand made by the State of Kentucky for the Petitioner as a non-fugitive is legally sufficient and authorized under §77-30-6, Utah Code Annotated.
- 2) The requirements of §77-30-3, Utah Code Annotated, for the extradition of the Petitioner have been satisfied.
- 3) *Res judicata* is not a bar to the present proceedings.
- 4) The Respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus should be granted.

DATED this 25 day of November, 1998.



BY THE COURT:

DAVID L. MOWER
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I have mailed a true and correct copy of the above and foregoing FINDINGS OF FACTS AND CONCLUSIONS OF LAW to the petitioner's attorney, Andrew W. Berry, Jr. at P.O. Box 600, Moroni, Utah 84646, postage prepaid this 6th day of November, 1998.


Secretary

ROSS C. BLACKHAM #0357
Sanpete County Attorney
Sanpete County Courthouse
160 North Main
Manti, Utah 84642
Telephone: (435) 835-6381
Facsimile: (435) 835-6383

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IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR SANPETE COUNTY
STATE OF UTAH

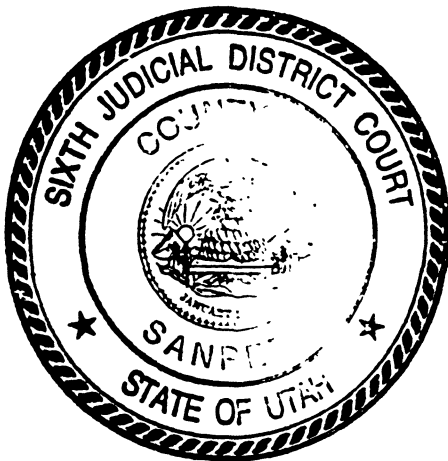
LARRY JOE BOUDREAUX,)	
Petitioner,)	
vs.)	JUDGEMENT AND ORDER
STATE OF UTAH,)	
Respondent.)	Case No. 980600302 Assigned Judge: David L. Mower

The Petitioner's Petition for a Writ of Habeas Corpus and Respondent's Motion to Dismiss having come before the Court for hearing on October 30, 1998. The Petitioner, Larry Joe Boudreaux was personally present in Court and represented by his attorney, Andrew W. Berry, Jr.. The Respondent was represented by Ross C. Blackham, Sanpete County Attorney. The Court having entered Findings of Fact and Conclusions of Law,

NOW, THEREFORE, THE COURT ORDERS, JUDGES AND DECREES that the Respondent's Motion to Dismiss Petitioner's Writ of Habeas Corpus is granted.

The Petitioner shall be remanded to the custody of duly authorized agents from the State of Kentucky.

DATED this 7th day of November, 1998.



BY THE COURT:

DAVID L. MOWER
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I have mailed a true and correct copy of the above and foregoing JUDGEMENT AND ORDER to the petitioner's attorney, Andrew W. Berry, Jr. at P.O. Box 600, Moroni, Utah 84646, postage prepaid this 6th day of November, 1998.


Secretary

ANDREW B. BERRY, JR. USB #0309
Attorney for Larry Joe Boudreaux
62 West Main Street
Post Office Box 600
Moroni, Utah 84646-0600
Telephone: 801 436-8200

Dnelson

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY

STATE OF UTAH

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LARRY JOE BOUDREAUX,

Petitioner,

vs.

STATE OF UTAH,

Respondent.

NOTICE OF APPEAL

Case Number 980600302

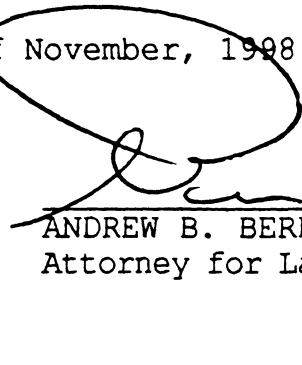
Assigned to:

Honorable David L. Mower

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The Petitioner, LARRY JOE BOUDREAUX, hereby appeals to the Utah Supreme Court the Findings of Fact, Conclusions of Law and Order of the Sixth Judicial District Court for Sanpete County within the State of Utah entered on the 25th day of November, 1998, the Honorable David L. Mower, presiding.

DATED this 25th day of November, 1998.

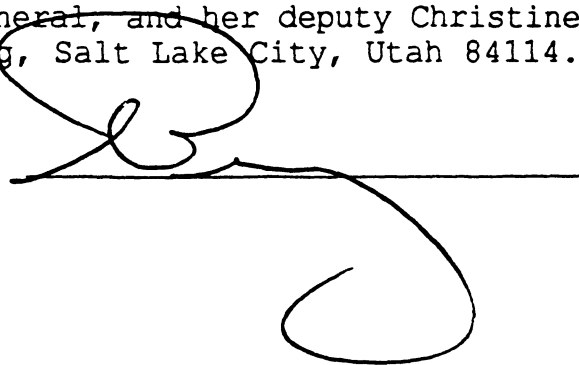


ANDREW B. BERRY, JR.

Attorney for Larry Joe Boudreaux

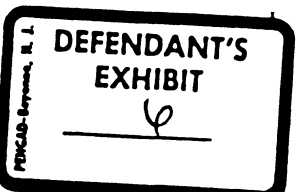
CERTIFICATE OF SERVICE AND MAILING

I hereby certify that on this 25th day of November, 1998, I served upon and mailed, postage prepaid and by first class mail, a true and correct copy of the foregoing Notice of Appeal, to Mr. Ross C. Blackham, the Sanpete County Attorney, at the Sanpete County Courthouse, 160 North Main Street, Manti, Utah 84642, and to the Jan Graham, the Utah Attorney General, and her deputy Christine Soltis, at 236 State Capitol Building, Salt Lake City, Utah 84114.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a large, sweeping loop that extends downwards and to the right.

FILED

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DOUGLAS F. WHITE
Attorney for Plaintiff
Prudential Plaza
185 North Main, Suite B-1
Tooele, Utah 84074
Telephone: 882-2272

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

LARRY JOE BOUDREAUX,)	
)	
Plaintiff,)	DECREE OF DIVORCE
)	
VS.)	
)	
MELANIE LYNN BOUDREAUX,)	Civil No. 81-0772
)	
Defendant.)	

This matter having come on regularly on the 22nd day of March, 1982, before the Honorable Ernest F. Baldwin, Jr., Judge, the plaintiff appearing in person and being represented by his counsel, Douglas F. White, Esquire, and the defendant having duly executed her Appearance and Waiver, and the Court having entered the default of the defendant herein, and the Court having received evidence, including the testimony of the plaintiff, and the case having been submitted to the Court for its determination and decision and more than ninety (90) days having elapsed since the filing of said Complaint, and the Court having inquired into the legal sufficiency of the evidence so adduced, NOW THEREFORE, and upon motion of plaintiff's counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff be and he is hereby awarded a Decree of Divorce from the defendant, upon the grounds of mental cruelty and that the marriage between plaintiff and defendant is

.

This matter having come on regularly on the 22nd day of March, 1982, before the Honorable Ernest F. Baldwin, Jr., Judge, the plaintiff appearing in person and being represented by his counsel, Douglas F. White, Esquire, and the defendant having duly executed her Appearance and Waiver, and the Court having entered the default of the defendant herein, and the Court having received evidence, including the testimony of the plaintiff, and the case having been submitted to the Court for its determination and decision and more than ninety (90) days having elapsed since the filing of said Complaint, and the Court having inquired into the legal sufficiency of the evidence so adduced, NOW THEREFORE, and upon motion of plaintiff's counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff be and he is hereby awarded a Decree of Divorce from the defendant, upon the grounds of mental cruelty and that the marriage between plaintiff and defendant is hereby dissolved and the parties are hereby freed and absolutely released from the bonds of matrimony and all of the obligations thereof, provided that this Decree shall not become final and absolute until the expiration of three (3) months from its entry, at which time this Decree shall become final and absolute without any further or other action of the parties.

2. Awarding the care, custody and control of the minor child of the parties to defendant, who as her mother is a fit and proper person to have said custody, care and control awarded to her, subject to plaintiff's right of visitation at all reasonable times and places.

3. Plaintiff is hereby ordered to pay to defendant as and for support of the minor child the sum of \$200.00 per month.

4. That during the marriage of the parties defendant has treated plaintiff cruelly causing him great mental distress and suffering until he is unable to continue the marriage relationship, to-wit: the parties fought and argued continually to the point that they were unable to continue the marriage relationship.

5. Ordering plaintiff to assume and pay the debts and obligations of the parties incurred to the time of separation.

6. Ordering plaintiff to maintain health and accident insurance for the benefit of the parties' minor child, where available at his place of employment.

7. Ordering plaintiff to obtain a policy of life insurance at \$10,000.00 on his person and make the minor child of the parties the beneficiary thereof.

8. Ordering the plaintiff to pay for all attorney's fees and costs of court incurred in this action for himself and the defendant.

9. Awarding plaintiff and defendant as their sole and separate property that property which they now have in their possession, whatever it might be.

DATED this 14 day of April, 1982.

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relationship, to-wit: the parties had, and they

to the point that they were unable to continue the marriage relationship.

5. Ordering plaintiff to assume and pay the debts and obligations of the parties incurred to the time of separation.

6. Ordering plaintiff to maintain health and accident insurance for the benefit of the parties' minor child, where available at his place of employment.

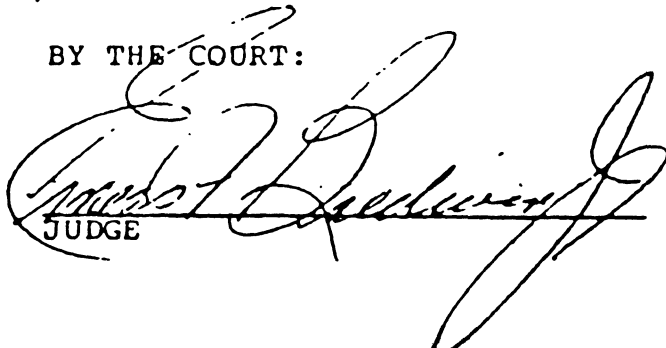
7. Ordering plaintiff to obtain a policy of life insurance at \$10,000.00 on his person and make the minor child of the parties the beneficiary thereof.

8. Ordering the plaintiff to pay for all attorney's fees and costs of court incurred in this action for himself and the defendant.

9. Awarding plaintiff and defendant as their sole and separate property that property which they now have in their possession, whatever it might be.

DATED this 14 day of April, 1982.

BY THE COURT:


JUDGE

ANDREW B. BERRY, JR. 0309
Attorney for Petitioner
62 West Main Street
P.O. Box 600
Moroni, Utah 84646-0600
Telephone: 801 436-8200

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY

STATE OF UTAH
-----00000-----

LARRY JOE BODREAUX, : FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Petitioner, :

vs. : Case No. 9316C0149
& 940600581

STATE OF UTAH, :

Respondant. : Assigned to:
Honorable Don V. Tibbs

:
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This matter came on for a regularly scheduled evidentiary hearing upon the Petition of Larry J. Boudreaux for a Writ of Habeas Corpus on the 2nd day of February, 1994, before the Honorable Don V. Tibbs, Sixth Judicial District Court Judge. The Petitioner, Larry Joe Boudreaux, was present and represented by his counsel, Andrew B. Berry, Jr., and the State of Utah was present and represented by it's counsel, Ross C. Blackham, Sanpete County Attorney. The parties presented the testimony of witnesses. THE COURT, upon the testimony of the witnesses, the stipulation of the parties, the pleadings on file herein and good cause appearing therefore, hereby makes and enters the following:

FINDINGS OF FACT

1. On the 16th day December, 1993, the State of Kentucky submitted it's application for a Governor's Warrant to the State of

Utah.

2. On the 17th day of December, 1993, the Governor of the State of Utah, Michael O. Leavitt, issued his warrant for the arrest of the Petitioner, Larry Joe Boudreaux.

3. The Governor's Warrant asserts that the Petitioner stands charged with the crime of Flagrant Nonsupport and asserts that the Petitioner committed said crime in the County of Sanpete within the State of Kentucky.

4. The Governor's Warrant asserts that the Petitioner fled from the justice of the State of Kentucky and has taken refuge in the State of Utah.

5. The Petitioner did not flee the State of Kentucky.

6. The Petitioner is not a fugitive from justice.

7. The Governor's Warrant issued by the Governor Michael O. Leavitt of the State of Utah is defective.

8. Each of the affidavits upon which the Governor's Warrant was issued are defective and false and the facts stated in said affidavits are not true.

9. The Department of Human Services, Office of Recovery Services for the State of Utah and their counterpart in the State of Nevada have been collecting child support from the Petitioner through their URESA actions now pending.

CONCLUSIONS OF LAW

1. The Petition for Writ of Habeas Corpus presented by the Petitioner, Larry Joe Boudreaux, should be granted and the Governor's Warrant for the arrest of the Petitioner is defective upon its face and void and should be denied and quashed; and

2. URESA actions by the State of Utah and the State of Nevada have been successful in collecting child support from the Petitioner.

3. The Petitioner did not flee the State of Kentucky.

4. The Petitioner is not a fugitive from justice.

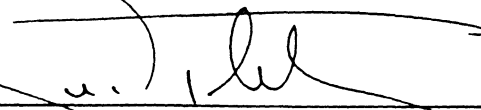
5. The Governor's Warrant issued by the Governor Michael O. Leavitt of the State of Utah is defective and void and should be quashed.

6. Each of the affidavits upon which the Governor's Warrant was issued are defective and false and the facts stated in said affidavits are not true.

7. The Information filed by the State of Utah, case number, 931600149, alleging that the Petitioner is a fugitive from justice should be dismissed with prejudice.

DATED this 4th day of March, 1994.

BY THE COURT:


HONORABLE DON V. TIBBS,
Sixth Judicial District Court

CERTIFICATE OF SERVICE AND MAILING

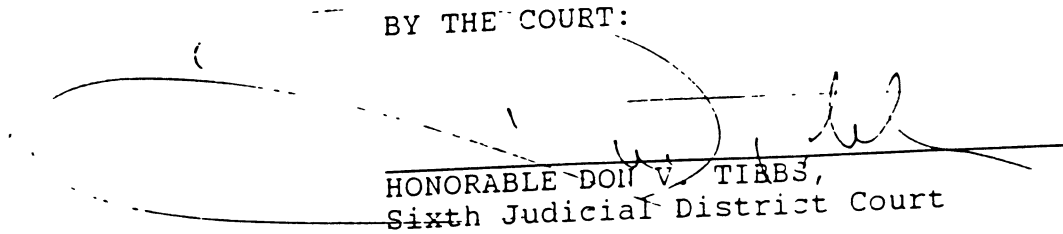
I hereby certify that on this 2nd day of March, 1994, I served upon and mailed, postage prepaid and by first class mail, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to Mr. Ross C. Blackham, the Sanpete County Attorney, at the Sanpete County Courthouse, 160 North Main Street, Manti, Utah 84642.

Warrant for the arrest of the Petitioner is denied and quashed; and

2. The Information filed by the State of Utah, case number, 931600149, alleging that the Petitioner is a fugitive from justice is dismissed with prejudice.

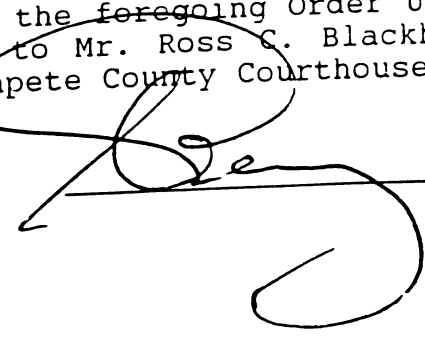
DATED this 4th day of March, 1994.

BY THE COURT:


HONORABLE DON V. TIBBS,
Sixth Judicial District Court

CERTIFICATE OF SERVICE AND MAILING

I hereby certify that on this 2nd day of March, 1994, I served upon and mailed, postage prepaid and by first class mail, a true and correct copy of the foregoing Order Upon the Petition for Writ of Habeas Corpus to Mr. Ross C. Blackham, the Sanpete County Attorney, at the Sanpete County Courthouse, 160 North Main Street, Manti, Utah 84642.



FILED
SANPETE COUNTY, UTAH

95 MAR - 6 - AM 2 26

KRISTINE F. CHRISTIANSEN
CLERK

BY C. Hansen DEPUTY

ANDREW B. BERRY, JR. 0309
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62 West Main Street
Post Office Box 600
Moroni, Utah 84646-0600
Telephone: 801 436-8200

IN THE SIXTH JUDICIAL DISTRICT COURT FOR SANPETE COUNTY

	STATE OF UTAH	
	-----oo0oo-----	
	:	
LARRY JOE BOUDREAUX,	:	ORDER UPON PETITION
	:	FOR WRIT OF HABEAS CORPUS
Petitioner,	:	
	:	
vs.	:	Case No. 931600149
	:	(consolidated with
STATE OF UTAH,	:	case nos. 940600636
	:	940600581
Respondant.	:	941600173
	-----oo0oo-----	

This matter came on for a regularly scheduled hearing upon the Petition for Writ of Habeas Corpus of Larry Joe Boudreaux on the 16th day of November, 1994, before the Honorable Don V. Tibbs, Sixth Judicial District Court Judge. The Petitioner, Larry Joe Boudreaux, was present and represented by his counsel, Andrew B. Berry, Jr., and the State of Utah was present and represented by it's counsel, Ross C. Blackham, Sanpete County Attorney. The parties entered into stipulations upon the record. THE COURT, upon the stipulations of the parties, the pleadings on file herein and good cause appearing therefore, hereby

ORDERS, ADJUDGES AND DECREES:

1. The stipulation of the parties is approved and adopted by the Court;

2. The Petitioner is the Larry Joe Boudreaux named in the Governor's Warrant dated the 31st day of March, 1994, and the State of Kentucky initially claimed approximately Twenty-four Thousand Dollars (\$24,000.00), in child support arrearages. The Petitioner has paid another Four Thousand Six Hundred Dollars (\$4,600.00), which has been collected by the State of Utah since the last evidentiary hearing upon this matter and during the period from February, 1994, through November 16, 1994;

3. This action is consolidated with case numbers 940600581, 941600173, and 940600636, and the case number shall hereafter be 931600149;

4. This ruling is based upon the evidence presented and the Court's prior rulings in case numbers 931600149, and 940600581, and the findings of fact made therein. The underlying warrant documents (upon which the ~~present~~ warrant is based), transcript and evidence presented in those proceedings have been consolidated herein;

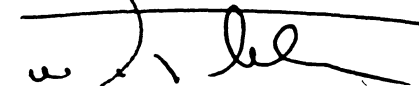
5. The previously entered Findings of Fact, Conclusions of Law and Order Upon Petition for Writ of Habeas Corpus shall stand and remain in effect and said findings, conclusions and orders are incorporated as though fully set forth herein;

6. The trial court reserves the right to determine the amount to award the Petitioner for his damages, costs and attorney fees incurred by him in these proceedings which have been consolidated following the ~~appeal~~ which the State of Utah asserts it will take from this order; and

7. The Petition for Writ of Habeas Corpus of Larry Joe Boudreaux is granted. The Governor's Warrant and the Criminal Information issued by the State of Utah thereupon is again quashed, denied and dismissed with prejudice.

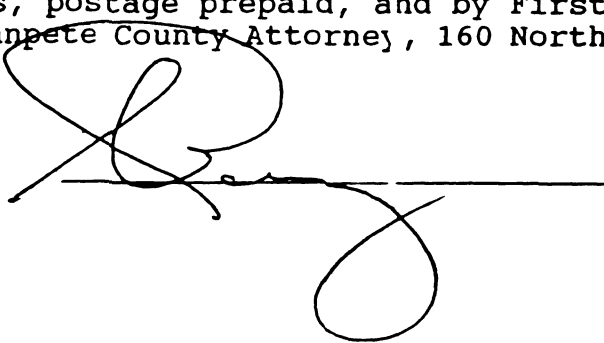
DATED this 3rd day of March, 1995.

BY THE COURT:


Sixth Judicial District Court
Retired - Judge

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of March, 1995, I mailed a true and correct copy of the foregoing Order Upon Petition for Writ of Habeas Corpus, postage prepaid, and by First Class Mail, to Ross C. Blackham, Sanpete County Attorney, 160 North Main Street, Manti, Utah, 84642.



78-45c-24. Priority on court calendar.

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act the case shall be given calendar priority and handled expeditiously. 1990

78-45c-25. Notices — Orders to appear — Manner of service.

1) Whenever the terms of this act impose a duty upon the court to notify a party or court of a particular fact or action, such notification may be accomplished by the clerk of the court to a party to the action upon order of the court.

2) Orders of the court for parties or persons to appear before the court in accordance with the terms of this act shall include legal and sufficient service of process in accordance with the Utah Rules of Civil Procedure unless otherwise ordered for good cause shown. 1990

78-45c-26. Short title.

This act may be cited as the "Utah Uniform Child Custody Jurisdiction Act." 1990

CHAPTER 45d**CHILD SUPPORT COLLECTION [REPEALED]****78-45d-1 to 78-45d-13. Repealed.**

1988

CHAPTER 45e**VOLUNTARY DECLARATION OF PATERNITY****Section**

- 8-45e-1. Chapter title.
- 8-45e-2. Voluntary declaration of paternity.
- 8-45e-3. Requirements for filing.
- 8-45e-4. Rescission of the declaration.

8-45e-1. Chapter title.

This act is known as the "Voluntary Declaration of Paternity Act" 1994

8-45e-2. Voluntary declaration of paternity.

(1) (a) A voluntary declaration of paternity filed in compliance with this chapter establishes a father-child relationship identical to the relationship established when a child is born to persons married to each other.

(b) When a voluntary declaration of paternity is filed, the liabilities of the father include, but are not limited to, the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(c) When a father voluntarily declares paternity, his liability for past amounts due is limited to a period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

(2) When a voluntary declaration of paternity is filed it shall be recognized as a basis for a child support order without any further requirement or proceeding regarding the establishment of paternity.

(3) The voluntary declaration of paternity may be completed and signed any time after the birth of the child. A voluntary declaration of paternity may not be executed or filed after consent to or relinquishment for adoption has been signed.

(4) The voluntary declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked so as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a certificate may

reflect the amended information and the date of amendment only.

(5) The voluntary declaration of paternity shall be in the form prescribed by the state registrar of vital statistics and shall be accompanied with an explanation of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(6) The social security number of any person who is subject to a voluntary declaration of paternity shall be placed in the records relating to the matter. 1997

78-45e-3. Requirements for filing.

A voluntary declaration of paternity may not be filed with the state registrar unless the declaration:

- (1) is signed by the birth mother and biological father, and by the legal guardian or a parent of a biological father who is under 18 years of age, in the presence of two witnesses who are not related by blood or marriage; and
- (2) the mother and alleged father have been given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration. 1998

78-45e-4. Rescission of the declaration.

(1) A signed voluntary declaration of paternity is a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

- (a) 60 days of signing; or
- (b) the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(2) (a) After the period referred to in Subsection (1), a signed voluntary declaration of paternity may be challenged in court only on the grounds of fraud, duress, or material mistake of fact, with the burden of proof on the challenger.

(b) The legal responsibilities, including child support, of any signatory arising from the declaration may not be suspended during a challenge under Subsection (2)(a), except for good cause shown.

(3) In determining whether to rescind the declaration the court has the same authority and obligation with regard to genetic testing as is provided in Section 78-45a-7.

(4) A child support order based on the voluntary declaration of paternity remains in effect during the pendency of any proceeding under this section, and until a final order of the court rescinding the voluntary declaration.

(5) If the declaration is rescinded, the declarant father may not recover any child support he provided for the child before entry of the order of rescission. 1997

CHAPTER 45f**UNIFORM INTERSTATE FAMILY SUPPORT ACT****Part 1****General Provisions**

Section	Title.
78-45f-100.	Definitions.
78-45f-101.	Tribunal of state.
78-45f-102.	Remedies cumulative.
78-45f-103.	

Part 2**Jurisdiction**

78-45f-201.	Bases for jurisdiction over nonresident.
78-45f-202.	Procedure when exercising jurisdiction over nonresident.

Section

- 78-45f-203. Initiating and responding tribunal of state.
- 78-45f-204. Simultaneous proceedings in another state.
- 78-45f-205. Continuing, exclusive jurisdiction.
- 78-45f-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.
- 78-45f-207. Recognition of controlling child support order.
- 78-45f-208. Multiple child support orders for two or more obligees.
- 78-45f-209. Credit for payments.

Part 3**Civil Provisions of General Application**

- 78-45f-301. Proceedings under chapter.
- 78-45f-302. Action by minor parent.
- 78-45f-303. Application of law of state.
- 78-45f-304. Duties of initiating tribunal.
- 78-45f-305. Duties and powers of responding tribunal.
- 78-45f-306. Inappropriate tribunal.
- 78-45f-307. Duties of support enforcement agency.
- 78-45f-308. Duty of attorney general.
- 78-45f-309. Private counsel.
- 78-45f-310. Duties of state information agency.
- 78-45f-311. Pleadings and accompanying documents.
- 78-45f-312. Nondisclosure of information in exceptional circumstances.
- 78-45f-313. Costs and fees.
- 78-45f-314. Limited immunity of petitioner.
- 78-45f-315. Nonparentage as defense.
- 78-45f-316. Special rules of evidence and procedure.
- 78-45f-317. Communications between tribunals.
- 78-45f-318. Assistance with discovery.
- 78-45f-319. Receipt and disbursement of payments.

Part 4**Establishment of Support Order**

- 78-45f-401. Petition to establish support order.

Part 5**Enforcement of Order of Another State Without Registration**

- 78-45f-501. Employer's receipt of income-withholding order of another state.
- 78-45f-502. Employer's compliance with income withholding of another state.
- 78-45f-503. Compliance with multiple income withholding orders.
- 78-45f-504. Immunity from civil liability.
- 78-45f-505. Penalties for noncompliance.
- 78-45f-506. Contest by obligor.
- 78-45f-507. Administrative enforcement of orders.

Part 6**Enforcement and Modification of Support Order After Registration**

- 78-45f-601. Registration of order for enforcement.
- 78-45f-602. Procedure to register order for enforcement.
- 78-45f-603. Effect of registration for enforcement.
- 78-45f-604. Choice of law.
- 78-45f-605. Notice of registration of order.
- 78-45f-606. Procedure to contest validity or enforcement of registered order.
- 78-45f-607. Contest of registration or enforcement.
- 78-45f-608. Confirmed order.

Section

- 78-45f-609. Procedure to register child support order another state for modification.
- 78-45f-610. Effect of registration for modification.
- 78-45f-611. Modification of child support order of another state.
- 78-45f-612. Recognition of order modified in another state.
- 78-45f-613. Jurisdiction to modify child support order another state when individual parties reside in this state.
- 78-45f-614. Notice to issuing tribunal of modification.

Part 7**Determination of Parentage**

- 78-45f-701. Proceeding to determine parentage.

Part 8**Interstate Rendition**

- 78-45f-801. Grounds for rendition.
- 78-45f-802. Conditions of rendition.

Part 9**Miscellaneous Provisions**

- 78-45f-901. Uniformity of application and construction

PART 1**GENERAL PROVISIONS****78-45f-100. Title.**

This chapter is known as the "Uniform Interstate Family Support Act."

78-45f-101. Definitions.

In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or notice directed to an obligor's employer directing the employer to withhold support from the income of the obligor in accordance with Title 62A, Chapter 11, Part 4 or Part 5.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the

Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent who:

(a) owes or is alleged to owe a duty of support;

(b) is alleged but has not been adjudicated to be a parent of a child; or

(c) is liable under a support order.

(14) "Register" means to file a support order or judgment determining parentage in the district court.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe and a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

(a) enforcement of support orders or laws relating to the duty of support;

(b) establishment or modification of child support;

(c) determination of parentage; or

(d) to locate obligors or their assets.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. 1997

78-45f-102. Tribunal of state.

The district court and the Department of Human Services are the tribunals of this state. 1997

78-45f-103. Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law. 1997

PART 2

JURISDICTION

78-45f-201. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage in the putative father registry maintained in this state by the state registrar of vital records in the Department of Health pursuant to Title 78, Chapter 30, Adoption; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction. 1997

78-45f-202. Procedure when exercising jurisdiction over nonresident.

A tribunal of this state exercising personal jurisdiction over a nonresident under Section 78-45f-201 may apply Section 78-45f-316 to receive evidence from another state, and Section 78-45-318 to obtain discovery through a tribunal of another state. In all other respects, Parts 3, 4, 5, 6, and 7 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter. 1997

78-45f-203. Initiating and responding tribunal of state.

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. 1997

78-45f-204. Simultaneous proceedings in another state.

(1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition is filed after a petition or comparable pleading is filed in another state only:

(a) if the petition in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) if the contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition is filed before a petition or comparable pleading is filed in another state:

(a) if the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) if the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state is the home state of the child.

1997

78-45f-205. Continuing, exclusive jurisdiction.

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

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(4) A tribunal of this state 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 this chapter.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

1997

78-45f-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.

(1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply Section 78-45f-316 to receive evidence from another state and Section 78-45f-318 to obtain discovery through a tribunal of another state.

(3) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

1997

78-45f-207. Recognition of controlling child support order.

(1) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(2) If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(b) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(c) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(3) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under Subsection (2). The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(4) The tribunal that issued the controlling order under Subsection (1), (2), or (3) is the tribunal that has continuing, exclusive jurisdiction under Section 78-45f-205.

(5) A tribunal of this state which determines by order the identity of the controlling order under Subsection (2)(a) or (b) or which issues a new controlling order under Subsection (2)(c) shall state in that order the basis upon which the tribunal made its determination.

(6) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

1997

78-45f-208. Multiple child support orders for two or more obligees.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

1997

78-45f-209. Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

1997

PART 3

CIVIL PROVISIONS OF GENERAL APPLICATION

78-45f-301. Proceedings under chapter.

(1) Except as otherwise provided in this chapter, this part applies to all proceedings under this chapter.

(2) This chapter provides for the following proceedings:

- (a) establishment of an order for spousal support or child support pursuant to Part 4;
- (b) enforcement of a support order and income-withholding order of another state without registration pursuant to Part 5;
- (c) registration of an order for spousal support or child support of another state for enforcement pursuant to Part 6;
- (d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to Sections 78-45f-203, 78-45f-204, 78-45f-205, and 78-45f-206;
- (e) registration of an order for child support of another state for modification pursuant to Part 6;
- (f) determination of parentage pursuant to Part 7; and
- (g) assertion of jurisdiction over nonresidents pursuant to Sections 78-45f-201 and 78-45f-202.

(3) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

1997

78-45f-302. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

1997

78-45f-303. Application of law of state.

Except as otherwise provided by this chapter, a responding tribunal of this state shall:

- (1) apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
- (2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

1997

78-45f-304. Duties of initiating tribunal.

(1) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

- (a) to the responding tribunal or appropriate support enforcement agency in the responding state; or
- (b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide the other documents necessary to satisfy the requirements of the responding state.

1997

78-45f-305. Duties and powers of responding tribunal.

(1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or

directly pursuant to Subsection 78-45f-301(2)(c), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

- (a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (c) order income withholding;
- (d) determine the amount of any arrearages and specify a method of payment;
- (e) enforce orders by civil or criminal contempt, or both;
- (f) set aside property for satisfaction of the support order;
- (g) place liens and order execution on the obligor's property;
- (h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (i) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
- (j) order the obligor to seek appropriate employment by specified methods;
- (k) award reasonable attorneys' fees and other fees and costs; and
- (l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

1997

78-45f-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

1997

78-45f-307. Duties of support enforcement agency.

(1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support enforcement agency that is providing services to the petitioner as appropriate shall:

- (a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
- (b) request an appropriate tribunal to set a date, time, and place for a hearing;
- (c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (d) within ten days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
- (e) within ten days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communica-

tion from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency. 1997

78-45f-308. Duty of attorney general.

If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual. 1997

78-45f-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter. 1997

78-45f-310. Duties of state information agency.

(1) The Office of Recovery Services is the state information agency under this chapter.

(2) The state information agency shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of tribunals and support enforcement agencies received from other states;

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by law, those relating to real property, vital records, law enforcement, taxation, motor vehicles, driver's licenses, and Social Security number. 1997

78-45f-311. Pleadings and accompanying documents.

(1) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under Section 78-45f-312, the petition or accompanying documents must provide, so far as known, the name, residential address, and Social Security numbers of the obligor and the obligee, and the name, sex, residential address, Social Security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. 1997

78-45f-312. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unrea-

sonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. 1997

78-45f-313. Costs and fees.

(1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Part 6 a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. 1997

78-45f-314. Limited immunity of petitioner.

(1) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding. 1997

78-45f-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter. 1997

78-45f-316. Special rules of evidence and procedure.

(1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, or document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be

excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter. 1997

78-45f-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state. 1997

78-45f-318. Assistance with discovery.

A tribunal of this state may:

- (1) request a tribunal of another state to assist in obtaining discovery; and
- (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state. 1997

78-45f-319. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received. 1997

PART 4

ESTABLISHMENT OF SUPPORT ORDER

78-45f-401. Petition to establish support order.

(1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

- (a) the individual seeking the order resides in another state; or
- (b) the support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

- (a) the respondent has signed a verified statement acknowledging parentage;
- (b) the respondent has been determined by or pursuant to law to be the parent; or
- (c) there is other clear and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 78-45f-305. 1997

PART 5

ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

78-45f-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under Title 62A, Chapter 11, Part 4, Income Withholding, without first filing a petition or comparable pleading or registering the order with a tribunal of this state. 1997

78-45f-502. Employer's compliance with income withholding of another state.

(1) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(2) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(3) Except as otherwise provided in Subsection (4) and Section 78-45f-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

- (a) the duration and amount of periodic payments of current child support, stated as a sum certain;
- (b) the person or agency designated to receive payments and the address to which the payments are to be forwarded;
- (c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
- (d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
- (e) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

- (a) the employer's fee for processing an income withholding order;
- (b) the maximum amount permitted to be withheld from the obligor's income; and
- (c) the times within which the employer must implement the withholding order and forward the child support payment. 1997

78-45f-503. Compliance with multiple income withholding orders.

If an obligor's employer receives multiple income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for the withholding and allocating income withheld for multiple child support obligees. 1997

78-45f-504. Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with this part is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income. 1997

78-45f-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income withholding order issued by another state and received for

enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state. 1997

78-45f-506. Contest by obligor.

(1) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 78-45f-604 applies to the contest.

(2) The obligor shall give notice of the contest to:

(a) a support enforcement agency providing services to the obligee;

(b) each employer that has directly received an income withholding order; and

(c) the person or agency designated to receive payments in the income withholding order or if no person or agency is designated, to the obligee. 1997

78-45f-507. Administrative enforcement of orders.

(1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter. 1997

PART 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

78-45f-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement. 1997

78-45f-602. Procedure to register order for enforcement.

(1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

(a) a letter of transmittal to the tribunal requesting registration and enforcement;

(b) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(d) the name of the obligor and, if known:

(i) the obligor's address and Social Security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(e) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment,

together with one copy of the documents and information, regardless of their form.

(3) A petition seeking a remedy that must be affirmatively sought under law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought. 1997

78-45f-603. Effect of registration for enforcement.

(1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this part, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. 1997

78-45f-604. Choice of law.

(1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies. 1997

78-45f-605. Notice of registration of order.

(1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Title 62A, Chapter 11, Part 4, Income Withholding. 1997

78-45f-606. Procedure to contest validity or enforcement of registered order.

(1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to this section.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. 1997

78-45f-607. Contest of registration or enforcement.

(1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (a) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (b) the order was obtained by fraud;
- (c) the order has been vacated, suspended, or modified by a later order;
- (d) the issuing tribunal has stayed the order pending appeal;
- (e) there is a defense under the law of this state to the remedy sought;
- (f) full or partial payment has been made; or
- (g) the statute of limitation under Section 78-45f-604 precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under Subsection (1), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under Subsection (1) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order. 1997

78-45f-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. 1997

78-45f-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 78-45f-601, 78-45f-602, 78-45f-603, and 78-45f-604 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. 1997

78-45f-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of Section 78-45f-611 have been met. 1997

78-45f-611. Modification of child support order of another state.

(1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if Section 78-45f-613 does not apply and after notice and hearing it finds that:

- (a) the following requirements are met:
 - (i) the child, the individual obligee, and the obligor do not reside in the issuing state;
 - (ii) a petitioner who is a nonresident of this state seeks modification; and
 - (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or
- (b) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if

the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under Section 78-45f-207 establishes the aspects of the support order which are nonmodifiable.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction. 1997

78-45f-612. Recognition of order modified in another state.

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- (1) enforce the order that was modified only as to amounts accruing before the modification;
- (2) enforce only nonmodifiable aspects of that order;
- (3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement. 1997

78-45f-613. Jurisdiction to modify child support order of another state when individual parties reside in this state.

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

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Parts 1 and 2, this part, and the procedural and substantive law of this state to the proceeding for enforcement of modification. Parts 3, 4, 5, 7, and 8 do not apply. 1997

78-45f-614. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction. 1997

PART 7

DETERMINATION OF PARENTAGE

78-45f-701. Proceeding to determine parentage.

(1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chap-

ter or a law substantially similar to this chapter or the Uniform Reciprocal Enforcement of Support Act, to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply Title 78, Chapter 45a, Uniform Act on Paternity, and the rules of this state on choice of law.

1997

PART 8

INTERSTATE RENDITION

78-45f-901. Grounds for rendition.

(1) For purposes of this part, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

1997

78-45f-902. Conditions of rendition.

(1) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter or the Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

1997

PART 9

MISCELLANEOUS PROVISIONS

78-45f-901. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

1997

PART V

JURORS

CHAPTER 46

GENERAL PROVISIONS

Section	
78-46-1.	Short title.
78-46-2.	Jurors selected from random cross section — Opportunity and obligation to serve.
78-46-3.	Discrimination prohibited.
78-46-4.	Definitions.
78-46-5.	Trial by jury.
78-46-6.	Repealed.
78-46-7.	Persons competent to serve as jurors — persons not competent to serve as jurors.
78-46-8.	Determination on juror qualification.
78-46-9.	Repealed.
78-46-10.	Master jury list — Inclusive — Review — Renewal — Public examination.
78-46-11.	Repealed.
78-46-12.	Qualified jury list — Term of availability — Juror qualification form — Content — Completion — Penalties for failure to complete or misrepresentation — Joint jury list for court authorized.
78-46-13.	Repealed.
78-46-14.	Qualified prospective jurors not exempt from jury service.
78-46-15.	Excuse from jury service.
78-46-16.	Jury not selected in conformity with chapter — Procedure to challenge — Relief available — Exclusive remedy.
78-46-17.	Preservation of records.
78-46-18.	Repealed.
78-46-19.	Limitations on jury service.
78-46-20.	Penalties for failure to appear or complete jury service.
78-46-21.	Employer not to discharge or threaten employee for jury service — Criminal penalty — Civil action by employee.
78-46-22, 78-46-23.	Repealed.

78-46-1. Short title.

This act shall be known and may be cited as the "Jury Selection and Service Act."

1979

78-46-2. Jurors selected from random cross section — Opportunity and obligation to serve.

It is the policy of this state that persons selected for jury service be selected at random from a fair cross section of the population of the county, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for service and have the obligation to serve when summoned for that purpose.

1993

78-46-3. Discrimination prohibited.

A citizen shall not be excluded or exempt from jury service on account of race, color, religion, sex, national origin, age, occupation, disability, or economic status.

1992

78-46-4. Definitions.

(1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.

(2) "Court" means trial courts.

(3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with power to present and indict a person for a public offense or to try a question of fact.