

WICSEC 2015

FORT WORTH
CITY OF COWBOYS AND CULTURE

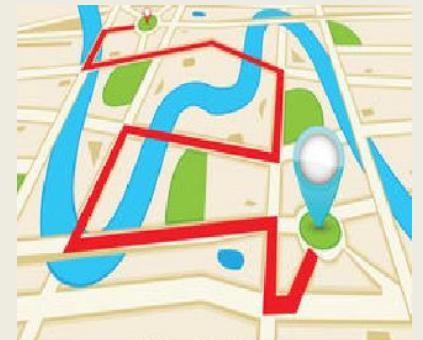
Shaping the Future for Children

U.S. Implementation of the Hague Convention

wicsec
western interstate CHILD SUPPORT enforcement council
Dalworthington

Discussion Topics

- Overview of Treaty Negotiation
- Resources through Permanent Bureau
- Steps to U.S. Ratification
- Resources through OCSE
- UIFSA 2008 and International Cases



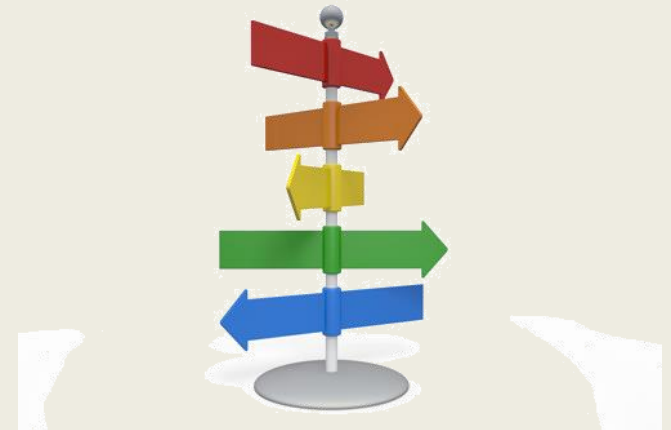
Why a Treaty?

- Other Conventions exist
 - Four prior Hague Conventions
1956, 1958, 1973 (2) and the 1956 New York Convention
on the Recovery Abroad of Maintenance (U.S. not a party
to any treaty)
- Areas of concern
 - Scope
 - Jurisdiction
 - Establishment
 - Costs



Negotiations

- The Process
 - 55 member countries + 15 “observer” countries and NGO’s
 - 5 years of negotiations
 - US signed the Hague Convention on November 23, 2007.
 - Convention came into effect January 1, 2013



Where we are now

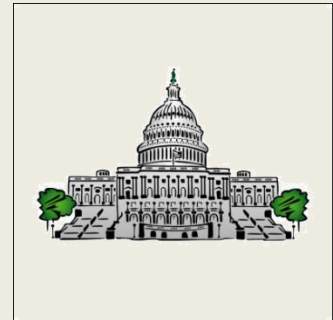
- European Union
- Ukraine
- Bosnia and Herzegovina
- Albania

And up next is....?



Steps to U.S. Ratification

- In 2010 U.S. Senate gave advice and consent to ratify Convention
- In 2014 Congress passed Pub. L. No. 113-183 - the *Preventing Sex Trafficking and Strengthening Families Act*
 - ❖ Requires a state to enact UIFSA 2008 in its next legislative session as a condition of federal Title IV-D funding
 - ❖ UIFSA 2008 – state legislation that will implement the Convention in U.S.



Steps (cont'd)

- Once all states have enacted, President must sign instrument of ratification
- *THEN:* U.S. will be able to deposit its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the depository for the Hague Conference. It will take effect for the United States on the first day of the first month that is not less than three months after the date of deposit.



Implementation Tasks

- Treaty Transmittal Package
 - ❖ Completion of Country Profile for U.S.
- States' implementation of UIFSA 2008
- OCSE Regulatory and Policy Guidance
 - ❖ **IM-15-01- Uniform Interstate Family Support Act (2008) and Hague Treaty Provisions**

<http://www.acf.hhs.gov/programs/css/resource/uniform-interstate-family-support-act-2008-and-hague-treaty-provisions>

Implementation Tasks (cont'd)

Forms

- OCSE – Intergovernmental Forms Work Group
 - ❖ Federal and state members
 - ❖ Considered comments received in 2013
- 80 Fed. Reg. 46286 (Aug. 4, 2015)
- 60 day comment period
- Three new forms
 - ❖ Transmittal #1 – Acknowledgment
 - ❖ Personal Identifiable Information (PII) Form
 - ❖ Request for Change of Support Payment Location Pursuant to UIFSA Section 319(b)
- Amendments to other forms



Implementation Tasks (cont'd)

- Systems and operational support
 - ❖ Updates to Certification Guide related to intergovernmental cases
 - ❖ Tentative plan for I-Support in U.S.
- Training



OCSE Resources

- Website

<http://www.acf.hhs.gov/programs/css/international>

- Caseworker Guides



Role of the Central Authority

- System of administrative cooperation among countries using network of Central Authorities
- Under Article 10 of the Convention, Central Authorities are the focal point for transmitting and receiving applications for:
 - ❖ Recognition and enforcement of decisions
 - ❖ Establishment of decisions
 - ❖ Modification of decisions
- HHS will delegate most central authority functions to IV-D agencies



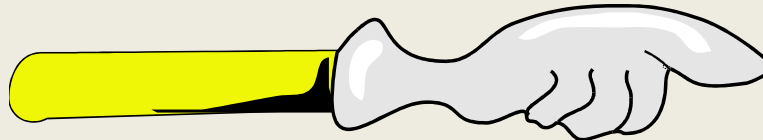
Goals of UIFSA 2008

- Implement the Hague Convention
- Address international cases in general
- Build upon UIFSA 2001



UIFSA 2001 – Changes with Operational Impact on International Cases

- Modification Jurisdiction
 - ❖ Issuing state can modify its order even if no party lives there so long as both parties consent
 - ❖ A U.S. state can modify a foreign order, even if country would have CEJ, if issuing country cannot or will not modify its order
 - ❖ Long arm jurisdiction not applicable



UIFSA 2001 – Changes with Operational Impact on International Cases

- Evidence
 - ❖ New definition for “record” allows electronic transmission of testimony
 - ❖ **Requires** tribunal to allow telephonic or other electronic testimony by non-resident party



UIFSA 2001 – Changes with Operational Impact on International Cases (cont'd)

- Choice of law clarification
 - ❖ Duration and interest governed by law of issuing state or foreign country



UIFSA 2008 – Key Changes

- Separate definitions for state and foreign country
- Definition of foreign country includes many, but not all, foreign nations
 - ❖ Foreign reciprocating country
 - ❖ State reciprocal arrangement
 - ❖ Country with laws substantially similar to UIFSA
 - ❖ Convention country



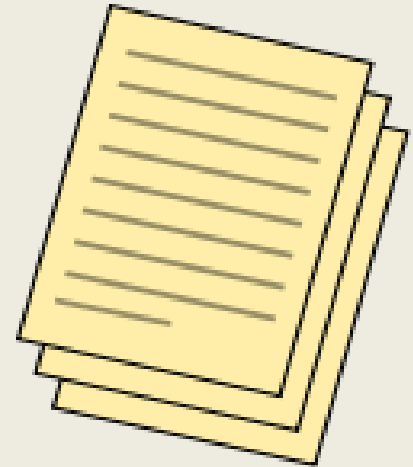
Key Articles for International Cases

- Articles 1 – 6 apply to support proceeding involving
 - ❖ A foreign support order
 - ❖ A foreign tribunal
 - ❖ An obligee, obligor, or child residing in a foreign country
- Articles 1 – 6 **may** be applied by a tribunal recognizing and enforcing a foreign support order based on comity
- Article 7 applies to Convention cases only



Direct Income Withholding

- Direct income withholding available only for support orders issued by a state. No longer requires U.S. employers to honor DIWs from foreign countries.



Modification of U.S. Order

A U.S. tribunal retains jurisdiction to modify an order it has issued if:

- (1) one party resides in another U.S. state (as defined by UIFSA); **AND**
- (2) the other party resides outside the United States

I'm moving!



Services by Support Enforcement Agency

- State legislature may choose between 2 alternatives
 - ❖ **Must**, upon request, provide services to all petitioners
 - ❖ **Must**, upon request, provide services to a petitioner residing in a state or requesting services thru a Central Authority (Hague or bi-lat case) AND **may**, upon request, provide services to an individual petitioner not residing in a state (all other foreign cases)

Article 7 - Definitions

- Application
- Central authority
- Foreign support agreement



Registration of a Foreign Support Order

- Procedure for non-Hague foreign support orders
 - ❖ UIFSA 2001 registration procedures
- Procedure for Hague foreign support orders
 - ❖ New Article 7 registration procedures
 - ❖ Major differences
 - Documents
 - Time frames
 - Defenses



Required Documents

Non-Hague Foreign Support Orders	Hague Foreign Support Orders
Transmittal Letter	Transmittal letter
2 copies of order, including 1 certified copy	Complete text of order (or abstract by issuing tribunal)
Sworn or certified statement of arrears	Record: order enforceable in issuing country
Certain obligor & obligee information	Record attesting to due process (if default order)
Name/address of person to whom support payments should be sent (if applicable)	Record: arrears and automatic adjustment of support
Request for DCO if appropriate	Record of receipt of free legal assistance in issuing country (if necessary)

Time Frame to Contest

- Non-Hague foreign support order
 - ❖ Within [20] days after notice of registration
- Hague foreign support order
 - ❖ Not later than 30 days after notice of registration
 - ❖ Not later than 60 days after notice if contesting party does not reside in US



Defenses to Recognition & Enforcement of Hague Convention Order Include

- Recognition and enforcement of order is **manifestly incompatible with public policy**, incl. failure of issuing tribunal to observe minimum standards of due process
- Issuing tribunal **lacked personal jurisdiction** consistent with Sec. 201
- Order is **not enforceable** in issuing country
- If default order, there was **lack of due process** re: notice & opportunity to be heard



Non-Recognition of Hague Order

- If a tribunal does not recognize a Hague order because:
 - ❖ Lack of personal jurisdiction
 - ❖ Procedural fraud
 - ❖ Pending proceeding between same parties that was filed first
 - ❖ Default order and lack of due process
- THEN . . .



Non-Recognition of Hague Order (cont'd)

- The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order
- **And** the [governmental entity] must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received through the Central Authority system.



What about Canada?

- The United States is Canada's largest international partner
- Much discussion,,,, much analysis,,,,
- Will have to implement at the provincial and territorial level – without the benefit of UIFSA-type uniform legislation or funding
- To the extent possible – we would prefer declarations and reservations be the same for each P/T



Until then....

- Timetable will be decided at Provincial /Territorial level
- Our work continues
 - Cases will flow using the existing processes until then
- Expect provinces and territories to join the Convention at different times



Currency Conversion

- Hague Convention does not alter existing currency conversion practices
- Key principle – the order isn't paid in full until it is paid in full in currency of the country where it was issued
- Currency conversion for enforcement purposes does not modify the order



The paperwork

- New Forms

- Two Mandatory Forms

- Transmittal Form
 - Acknowledgement Form

- Recommended Forms

- Recognition and Enforcement

- Enforcement

- Establishment

- Modification

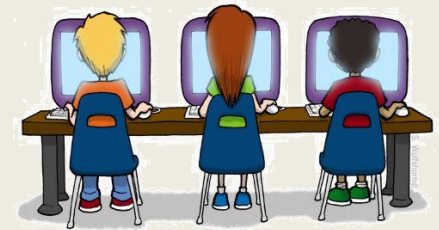
- Key elements

- Easily translated
 - No signature required



ISupport

- International project to develop a case management / secure communications system
- Will allow documents to be created in one language, sent securely through encrypted data “tunnel” to another country
- Will then be generated in language of receiving country
- US is participating in design and testing



Questions

- Margaret Campbell Haynes
mhaynes@csfmail.org
- Anne Miller
anne.miller@acf.hhs.gov
- Hannah Roots
hroots@fmep.ag.gov.bc.ca