

UIFSA 101

Moderator: Christine Sorenson, Montrose
County Child Support Services, Colorado

Speakers:

Nichole Ocheskey, Wyoming Central Registry
Meg Campbell Haynes, Public Knowledge®

ESTABLISHMENT

Goal of UIFSA – One Current Support Order

- One controlling order for current support
 - Same obligor and child(ren)
- If there is no support order
 - Establish
- If there is a support order
 - Enforce
 - Modify



No New Order

- If existing support order entitled to recognition under UIFSA, tribunal may not establish new order
- Section 401 of UIFSA



Establishment or Modification – Case Scenario #1

- OH issues divorce order – silent on issue of child support
- Obligor lives in NM
- Oblige is in OH and applies for IV-D services, seeking support

How should OH proceed?

- a. Establishment
- b. Modification
- c. Need more information

Establishment or Modification – Case Scenario #1

- OH issues divorce order – silent on issue of child support
- Obligor lives in NM
- Oblige is in OH and applies for IV-D services, seeking support

How should OH proceed?

- a. Establishment**
- b. Modification
- c. Need more information

Establishment or Modification – Case Scenario #2

- CO issues divorce order that awards \$0 support
- Obligor moves to WA
- Obligees apply for IV-D services in CO, seeking support

How should CO proceed?

- a. Establishment
- b. Modification
- c. Need more information

Establishment or Modification – Case Scenario #2

- CO issues divorce order that awards \$0 support
- Obligor moves to WA
- Obligees apply for IV-D services in CO, seeking support

How should CO proceed?

- a. Establishment
- b. Modification**
- c. Need more information

Establishment or Modification – Case Scenario #3

- TX issues divorce order that requires health insurance coverage but does not establish a current support obligation
- Obligor moves to GA
- Obligees apply for IV-D services in TX, seeking support

How should TX proceed?

- a. Establishment
- b. Modification
- c. Need more information

Establishment or Modification – Case Scenario #3

- TX issues divorce order that requires health insurance coverage but does not establish a current support obligation
- Obligor moves to GA
- Obligees apply for IV-D services in TX, seeking support

How should TX proceed?

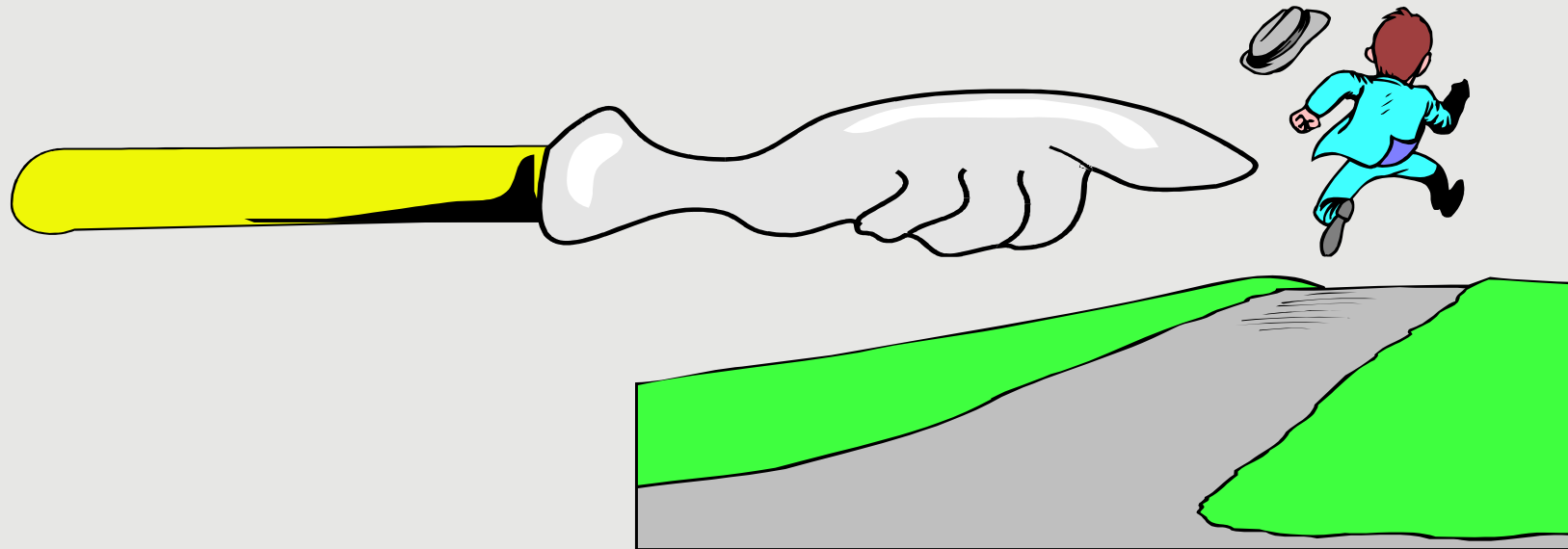
- a. Establishment
- b. Modification**
- c. Need more information

One State or Two State Case?

- When the parents live in two different states, tribes, or countries, you must decide whether to:
 - Work the case without involving the other jurisdiction, or
 - File an interstate/intergovernmental case
- When possible, keep the case in your state.

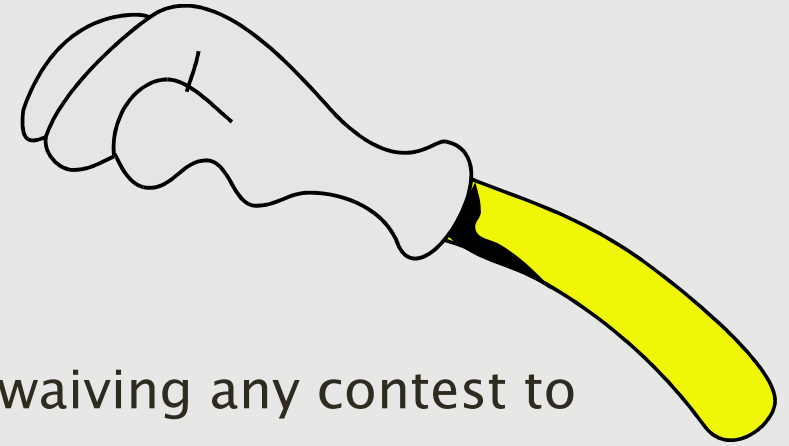
One-State Establishment

- Is long-arm jurisdiction available and appropriate?
- Sufficient contacts to permit a tribunal to assert personal jurisdiction over someone who lives in another state



Long-Arm Establishment – UIFSA Section 201

- NCP submitted to jurisdiction of the state
 - By consent
 - By entering a general appearance
 - By filing a responsive document having the effect of waiving any contest to personal jurisdiction
- NCP lived with the child in the state
- NCP lived in the state and provided prenatal expenses or support for the child

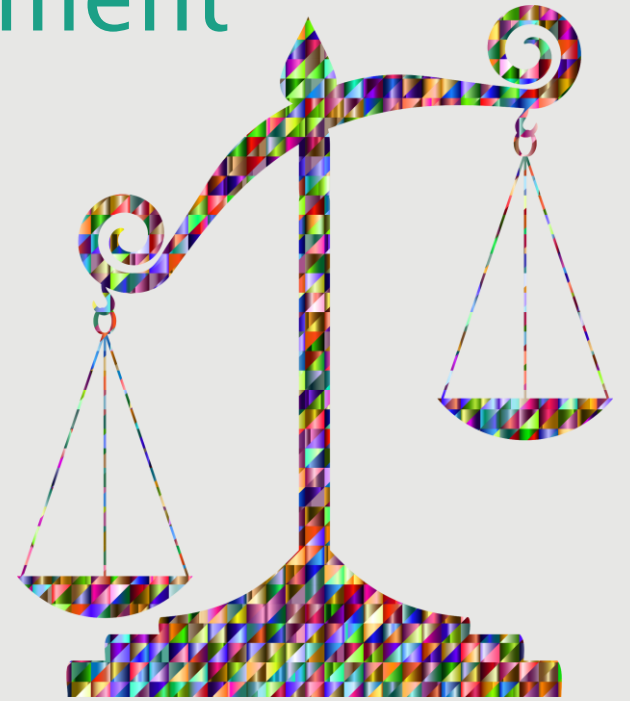


Long-Arm Statute (cont'd)

- Child is living in the state due to directives or acts of NCP
- NCP had sexual intercourse in the state, possibly resulting in conception of the child
- NCP asserted parentage of the child in the [putative father registry] maintained in the state
- There is any other basis for personal jurisdiction consistent with state and U.S. Constitutions

Advantages of Long-Arm Establishment

- Saves time – no need to involve another agency
- Your state's law applies
 - Support guidelines
 - Duration of support
- Your state has CEJ to modify as long as a party or child lives in the state
- Enforcement stays within your control



Limitations of Long-Arm Establishment

- Might have trouble locating NCP or serving process
 - Will a limited services request help?
- Might need agency where NCP lives or has assets to use their enforcement remedies



Two-State Case: Initiating

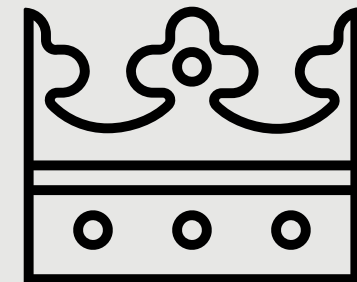
- 45 CFR 303.7(c)
- Initiating process includes:
 - Verifying party's location
 - Completing all UIFSA required paperwork
 - Forwarding the documents to the Central Registry of the responding state
 - Timely responding to requests from responding jurisdiction for additional information

Two-State Case: Responding

- 45 CFR 303.7(b) and (d)
- Responding process includes:
 - Acknowledging the request
 - Providing necessary services as it would in an intrastate IV-D case
 - Establishing paternity and support, if requested
 - Enforcing the support order
 - Modifying the order, if requested and tribunal has modification jurisdiction
 - Providing updates to the initiating state

Continuing Exclusive Jurisdiction (CEJ)

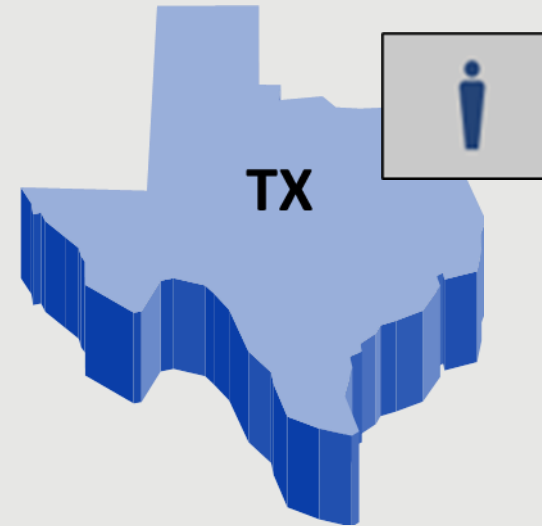
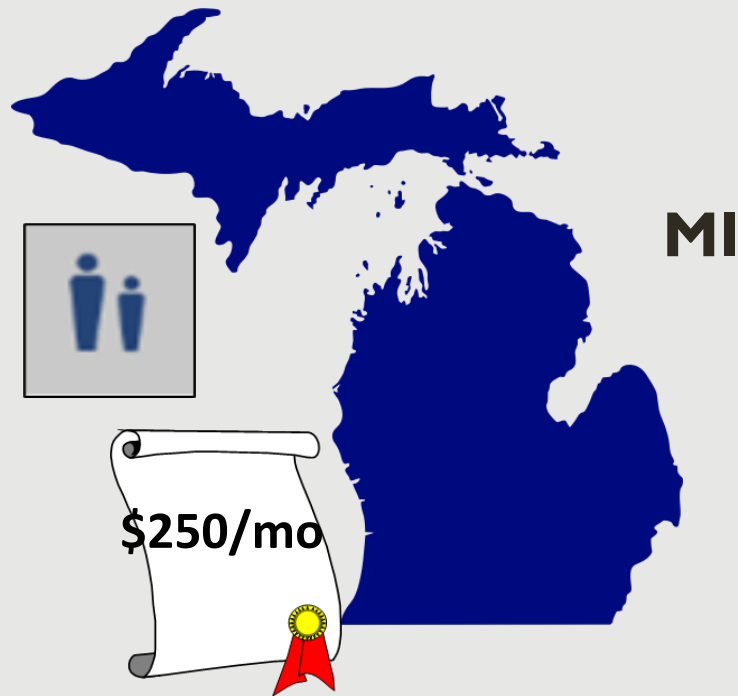
- Specifically pertains to modification
- Relevant only when a party wants to modify the controlling order
- If a state has CEJ, no other state can modify the child support order absent the consent of the parties



CEJ CROWN!

CEJ Definition – UIFSA Section 205)a)(1)

- CEJ = controlling order + NCP, individual CP, or child lives in issuing state
- Residence at time of modification request is what matters



CEJ – Case Scenario #1

- Obligees live in UT with child
- Obligor lives in ID where support order issued
- Obligor wants reduction in support

What state has CEJ to modify order?

- a. Utah
- b. Idaho
- c. No state has CEJ

CEJ – Case Scenario #1

- Obligee lives in UT with child
- Obligor lives in ID where support order issued
- Obligor wants reduction in support

What state has CEJ to modify order?

- a. Utah
- b. Idaho**
- c. No state has CEJ

CEJ Definition – UIFSA Section 205(a)(2)

- CEJ = controlling order + consent to retain CEJ
- The issuing tribunal may modify even if no party or child lives there, if:
 - The parties consent in a record or in open court for the tribunal to continue to exercise jurisdiction to modify its order.

DC order
CP moves to MD
NCP moves to VA
Parties want DC to
retain jurisdiction



CEJ – Case Scenario #2

- Obligee and children live in IL
- Obligor lives in NJ
- Order issued in FL

Can obligee seek modification in FL?

- a. Yes, because FL is issuing state
- b. No, because no party lives there
- c. Yes, if both parties consent for FL to retain jurisdiction to modify its order

CEJ – Case Scenario #2

- Obligee and children live in IL
- Obligor lives in NJ
- Order issued in FL

Can obligee seek modification in FL?

- a. Yes, because FL is issuing state
- b. No, because no party lives there
- c. **Yes, if both parties consent for FL to retain jurisdiction to modify its order**

Shift of CEJ Based on Consent

- Only state with CEJ can modify the controlling order unless:
 - All parties file consent in a record with the issuing tribunal that a tribunal of another state may modify the order and assume CEJ; and
 - The other state must have jurisdiction over at least one of the parties or be the state where the child resides
- Section 205(b)



Registration for Modification – CEJ State

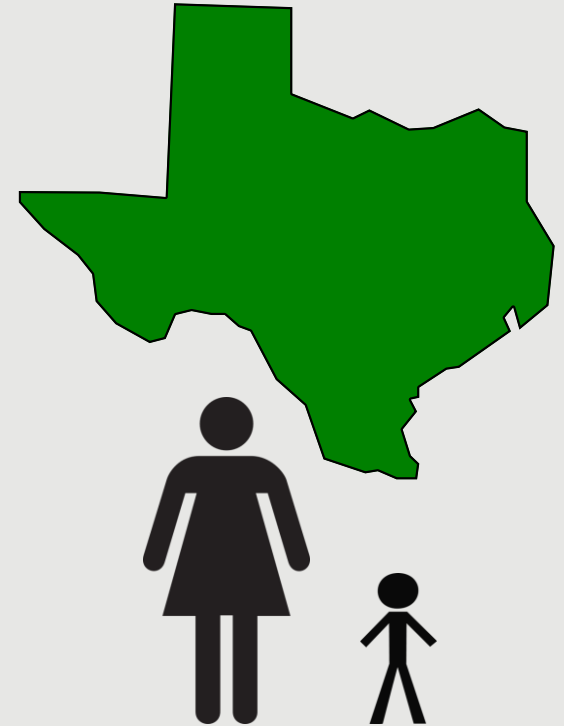


- If there is a CEJ state, another state can register and modify the order only if:
 - It is the state where the child resides or it has personal jurisdiction over one of the parties; and
 - All the parties have filed consents in a record in the issuing tribunal for the registering tribunal to modify the support order and assume CEJ
- Section 611(a)(2)

Example of Jurisdiction under Section 611(a)(2)



Parties file consent in
FL tribunal for TX
tribunal to modify order
and assume CEJ



Registration for Modification – No CEJ State

- If no state has CEJ and parties live in different states:
 - Sections 609 – 611
- If no state has CEJ and all parties live in the same state:
 - Section 613

Registration for Modification – Section 611(a)(1)

- Tribunal must find all requirements are met:
 - (A) There is no CEJ state;
 - (B) The petitioner is a nonresident of the state in which modification is sought; and
 - (C) The respondent is subject to the personal jurisdiction of the registering tribunal.
- Known as “play away”



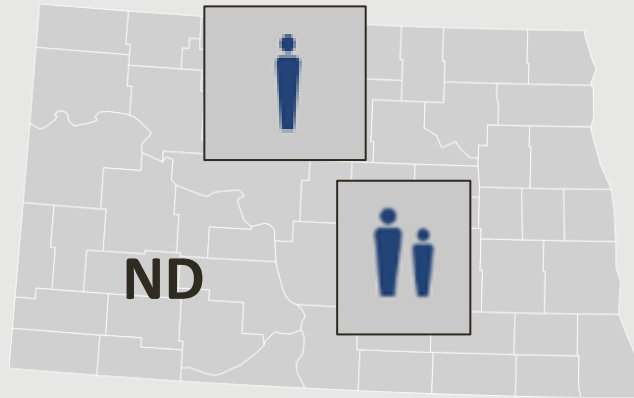
Example of Jurisdiction under Section 611(a)(1)



Registration for Modification – Section 613

- Tribunal must find all requirements are met:
 - (A) All individual parties reside in registering state; and
 - (B) Child does not reside in issuing state.
- A tribunal exercising jurisdiction under this section must apply Articles 1, 2, and 6 of UIFSA, and the procedural and substantive law of the registering state to the proceeding for modification.
- UIFSA Articles 3, 4, 5, 7, and 8 do not apply

Example of Jurisdiction under Section 613



Which State's Laws Apply?

Order Issuing State

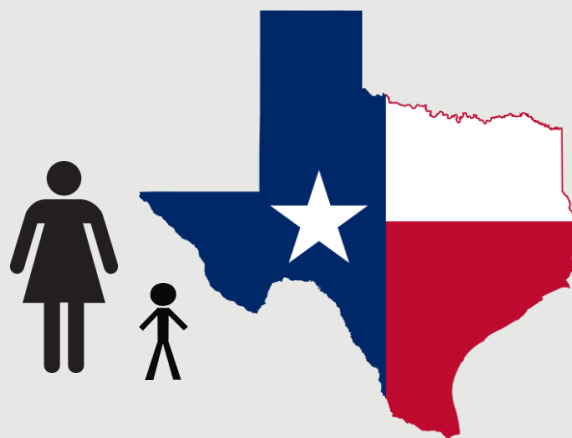
- Calculation of arrears prior to modification, including interest rate
- Nonmodifiable terms, which usually includes duration
- If obligor has fulfilled support duty under law of issuing state, modifying state can't impose a new support duty

State Modifying the Order

- Grounds for modification
- Support guidelines
- Interest rate on arrears after order is modified (arrears under prior order and any prospective arrears under modified order). See OCSE-AT-20-14

Issuing Tribunal Retains Modification Jurisdiction – International Case but U.S. Order

- A U.S. tribunal retains jurisdiction to modify an order it has issued if:
 - One party resides in another U.S. state (as defined by UIFSA); and
 - The other party resides outside the U.S.
- Not exclusive modification jurisdiction
- UIFSA § 611(f)



Modification of Foreign Support Orders

- If Convention order:
 - Register for modification under Article 7 of UIFSA
- If non-Convention foreign support order:
 - Register for modification under Article 6 of UIFSA
 - Note Section 615
- A U.S. tribunal can modify a foreign support order, even if that country would have CEJ, if
 - Issuing country cannot or will not modify its order and
 - U.S. tribunal has personal jurisdiction over the parties



Resources – UIFSA

- UIFSA 2008: Model Act version of UIFSA 2008 with comments, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=951958bf-6e09-0d8e-820f-cde7a095a0e7&forceDialog=0>
- OCSE-AT-20-14: Updated Interstate Child Support Policy
- OCSE-AT-19-08: OMB-Approved Standard Intergovernmental Child Support Enforcement Forms — December 2019
- OCSE-PIQ-20-01: Using the Intergovernmental Forms for Case Processing
- OCSE Intergovernmental Forms Matrix, https://www.acf.hhs.gov/sites/default/files/documents/ocse/intergovernmental_forms_matrix.pdf
- Essentials for Attorneys in Child Support Enforcement, 4th Ed. (July 2021), Chapter 13: Intergovernmental Child Support Cases, <https://www.acf.hhs.gov/css/training-technical-assistance/essentials-attorneys-child-support-enforcement>

For more information, contact:

Chris Sorenson

csorenson@montrosecounty.net

Nichole Ocheskey

nichole.ocheskey@wyo.gov

Meg Campbell Haynes

mhaynes@pubknow.com