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CHAPTER THIRTEEN
INTERGOVERNMENTAL CHILD SUPPORT CASES

INTRODUCTION

Federal regulations define an intergovernmental IV-D case as "a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services." An intergovernmental case may include a combination of referrals between states, tribes, and countries.[1] Although child support agencies have made great strides in intergovernmental case processing and have a number of new communication tools, collections on intergovernmental cases still fall short of the average case collection.[2]

Enforcement in these cases has been difficult for a long time. In 1992, the U.S. Commission on Interstate Child Support identified the following barriers to collection across state lines:

- Myriad laws – Despite increasing federal mandates, wide variance existed among states with regard to child support laws and procedures; even the "uniform" laws were applied differently from state to state, particularly with respect to arrears (credits because of retroactive modification) and medical support.

- Myriad players – The laws and procedures for in-state cases required many steps and people to successfully establish or enforce child support, allowing cases to get lost in the shuffle.

- Insufficient staff – Long delays and unknown case status were typically a result of understaffed child support offices, lack of focus on out-of-state cases, and lack of support services.

- Inadequate training – In both the public and private sectors, insufficient knowledge of interstate remedies and procedures thwarted the interstate collection of child support.

- Inability to obtain current case information – Because of a lack of timely communication and resources, information necessary for successful child support enforcement was often outdated and useless.

- Inadequacy and incompatibility of automated systems – Even though states were required to have automated statewide systems, states were proceeding at a widely varying pace.

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[1] 45 C.F.R. § 301.1 (2019).
[2] *See* Office of Child Support Enforcement, Preliminary Report FY 2019 (June 23, 2020).

- Problems with service of process – Cooperation between states for effective service of process was deficient.

- Legal barriers – Barriers, such as jurisdiction over parties, continued to plague the child support enforcement community.

- Lack of adequate support from the federal level – State and local child support agencies needed assistance, both in training and technical support, from their federal partners, in addition to adjustments to federal incentives.

Since 1992, much has happened at the federal level, including updated regulations and improved intergovernmental communication processes. Federal and state legislation has helped standardize state laws and improve intergovernmental support enforcement. As a result, today's child support attorney has more tools available for intergovernmental case processing.

HISTORY OF INTERSTATE CHILD SUPPORT

The need to establish and enforce family support across state lines is not new. Ever since improved means of transportation made it easier to travel, there has been separation of families – sometimes due to employment opportunities, sometimes due to abandonment. Many jurisdictions have simplified divorce laws, which has also resulted in more separated families often living in different jurisdictions.

Model State Laws

Historically, the resolution of family issues such as custody and support was governed by state law. In 1910, the National Conference of Commissioners on Uniform State Laws (now referred to as the Uniform Law Commission, ULC) approved the Uniform Desertion and Non-Support Act. This model act made it a criminal offense to fail to support or to desert a wife and children. Unfortunately, the Act was limited in two ways. It only provided criminal penalties. When a person was jailed for nonsupport, the family was left without financial resources. It also lacked interstate remedies; the only option when the noncustodial parent lived out of state was to attempt extradition.

In response to the need for a simple, inexpensive, and consistent interstate process, ULC drafted and approved the Uniform Reciprocal Enforcement of Support Act (URESA) in 1950.[3] URESA provided a uniform process for a custodial parent to use the courts of another state without traveling to that state or becoming subject to the jurisdiction of that state's courts for purposes other than the support proceeding. The URESA action began with the

[3] Unif. Reciprocal Enforcement of Support Act (1950) (amended 1952 and 1958), superseded by the Unif. Interstate Family Support Act (1992).

filing of a petition in the appropriate court of the state where the custodial parent lived. The judge in that initiating state would then review the pleadings to determine whether the allegations indicated that a duty of support existed and whether the state where the petition was being sent (the responding state) appeared to have jurisdiction over the noncustodial parent. After those elements were determined, the initiating court certified the case to the proper court in the responding state. The original version of URESA also contained a provision for criminal enforcement through "rendition" or extradition.

The Act was amended several times – in 1952, 1958, and 1968. The 1968 amendments, which included provisions for paternity establishment, were extensive and became the Revised Uniform Reciprocal Enforcement of Support Act, or RURESA.[4] All states and U.S. territories enacted some form of URESA or similar legislation. Some states, however, modified or omitted certain provisions to comply with their own state laws on procedure and enforcement. The Uniform Act was therefore never truly uniform.[5]

In 1989, ULC reviewed RURESA and determined the need for major revisions. The result was the development of the Uniform Interstate Family Support Act (UIFSA), a new interstate act that supersedes URESA and RURESA.[6] UIFSA applies to both IV-D and non-IV-D cases where the parties reside in different jurisdictions. The most revolutionary aspects of UIFSA are the concepts of one controlling order for prospective support and limitations on modification jurisdiction. ULC amended UIFSA in 1996, 2001, and 2008.[7] The 2001 and 2008 amendments to UIFSA included provisions that specifically address cases involving foreign jurisdictions.

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[4] Revised Unif. Reciprocal Enforcement of Support Act (1968), superseded by Unif. Interstate Family Support Act (1992).

[5] *See* Marilyn Ray Smith, *Child Support at Home and Abroad: Road to The Hague*, 43 Fam. L.Q. 37 (American Bar Association Spring 2009).

[6] Unif. Interstate Family Support Act (1992) (amended 1996, 2001, and 2008).

[7] *See* John J. Sampson, *Uniform Interstate Family Support Act (1996) (with More Unofficial Annotations by John J. Sampson)*, 32 Fam. L.Q. 385 (Summer 1998); John J. Sampson, Reporter, with Barry J. Brooks, *Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations)*, 36 Fam. L.Q. 329 (Fall 2002); John J. Sampson, Reporter, with Barry J. Brooks, *Integrating UIFSA (2008) with the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,* 49 Fam. L.Q. 179 (Summer 2015); Unif. Interstate Family Support Act (2008), https://www.uniformlaws.org/viewdocument/final-act-with-comments-120?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb&tab=librarydocuments (last visited Feb. 7, 2021). *See also* Battle Rankin Robinson, *Integrating an International Convention into State Law: The UIFSA Experience*, 43 Fam. L.Q. 61 (Spring 2009); OCSE-IM-16-02: 2008 Revisions to the Uniform Interstate Family Support Act (June 2, 2016).

As discussed in more detail later, federal law requires states to enact UIFSA (2008) to receive federal funds.[8] All states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have enacted UIFSA (2008).

Federal Legislation

In the early years of the Title IV-D program, there were dramatic increases in the number of public assistance cases. As a result, Congress increasingly became involved in child support. Federal law has improved the establishment and enforcement of support in interstate cases in three ways:

- By mandating enactment of state laws as a condition of receiving federal funds.[9]
- By requiring full faith and credit for child support orders.[10]
- By providing for federal criminal remedies.[11]

In 1984, Congress passed the Child Support Enforcement Amendments of 1984,[12] in part to assist in the processing of interstate cases. The Amendments required states, as a condition of receiving federal funds, to enact and implement certain enforcement techniques, such as interstate wage withholding and expedited processes. The statute also provided for federal income tax refund intercepts for non-assistance IV-D cases, a powerful collection method in the interstate context. The law provided federal funds for demonstration projects on innovative interstate enforcement techniques and federal incentive payments to both the initiating and responding states for interstate collections.

These measures failed to satisfactorily improve child support collections in interstate cases. Congress again tried to improve interstate enforcement with a provision in the Omnibus Budget Reconciliation Act of 1986. The so-called Bradley Amendment[13] required states, as a condition of receiving federal funds, to provide that child support payments must become final judgments on the date they come due, thus eliminating the need to go to court to have arrears reduced to a sum certain judgment. States were also required to give full faith and credit to these judgments. Thus, a tribunal had to enforce existing orders of other states without creating a new order in the forum state or recalculating the amount of support due. The Bradley Amendment also prohibited retroactive modification of

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[8] Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014).
[9] *See* 42 U.S.C. § 666 (2018).
[10] 28 U.S.C. § 1738B (2018).
[11] Child Support Recovery Act of 1992, Pub. L. No. 102-521, 106 Stat. 3403 (codified at 18 U.S.C. § 228(a)(1) (2018)); Deadbeat Parents Punishment Act of 1998, Pub. L. No. 105-187, 112 Stat. 618 (codified at 18 U.S.C. § 228 (2018)).
[12] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.
[13] Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9103, 100 Stat. 1874, 1973 (codified at 42 U.S.C. § 666(a)(9) (2018)).

a child support order before the date a petition for modification was filed and notice given to the nonrequesting party. Retroactive modification had been particularly problematic in interstate cases where the obligee was not present or able to testify about an alleged change in circumstances that the obligor raised during enforcement or registration hearings.

With passage of the Family Support Act of 1988,[14] Congress established the U.S. Commission on Interstate Child Support. Congress directed the 15-member Commission to submit a report containing recommendations for improving the interstate establishment and enforcement of child support orders and for revising URESA. The Commission held hearings and public forums across the country to formulate these recommendations. Its final report to Congress, entitled "Supporting Our Children: A Blueprint for Reform,"[15] contained 120 recommendations. Many of these recommendations provide the basis for today's interstate child support case processing.

Among the Commission's recommendations was one that Congress require states to pass UIFSA as it was approved by the National Conference of Commissioners on Uniform State Laws. Without such a mandate, states were free to enact or ignore the new model act. Not knowing how many states would enact UIFSA, or in what form, Congress passed the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)[16] in July 1994. The federal statute, which does not require enabling state legislation, requires courts and administrative agencies in the United States and its territories to give full faith and credit to any child support order[17] properly issued by another state with personal jurisdiction over the parties and subject matter jurisdiction. Only the standard defenses of fraud, duress, irregularity, and mistake of fact are permitted to contest the enforcement of another state's order. FFCCSOA also limits states' jurisdiction to modify, consistent with UIFSA's rules.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[18] commonly known as welfare reform. PRWORA amended FFCCSOA to add UIFSA's rules regarding determination of the controlling order when there were multiple ongoing support orders. Also included in the child support title was a requirement that states, as a

[14] Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343.
[15] U.S. Commission on Interstate Child Support, Supporting Our Children: A Blueprint for Reform (U.S. Gov't Printing Office: Washington, DC 1992).
[16] Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994) (codified as amended at 28 U.S.C. § 1738B (2018)).
[17] *See In re Cleopatra Cameron Gift Trust*, 931 N.W.2d 244 (S.D. 2019) (An order requiring direct payments from a spendthrift trust was a method of enforcing the noncustodial parent's support obligation under a divorce decree, not a support order entitled to full faith and credit.)
[18] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

condition of receiving federal funds, enact UIFSA, with its 1996 amendments, by January 1, 1998.[19]

In addition to enacting UIFSA, PRWORA required every state, as a condition of receiving federal funds, to grant authority to its child support agency to take certain enforcement actions administratively, without obtaining a judicial order.[20] These actions – income withholding, interception and seizure of lump sum payments, seizure of assets from financial institutions, attachment of retirement funds, and ordering payments on arrears – apply to interstate cases as well as to intrastate cases.

PRWORA also required states to provide that child support liens arise by operation of law when there is an arrearage and that such liens are entitled to full faith and credit in every state. This requirement includes liens placed against bank accounts, stocks, government benefits, lottery winnings, and other real and personal property. States must also cooperate and use high-volume and automated administrative enforcement in interstate cases (AEI). There are additional federal remedies that apply in both interstate and intrastate cases: Administrative Offset, Federal Tax Refund Offset, and Passport Denial.[21]

Federal criminal prosecution is available to enforce interstate support cases. The Child Support Recovery Act (CSRA) of 1992, and the Deadbeat Parents Punishment Act of 1998, which amends CSRA,[22] make it a federal offense to willfully fail to pay support for a child living in another state or nation, if the unpaid amount exceeds $5,000 or remains unpaid for more than one year. The crime is punishable by fine and imprisonment and restitution is required. “Willfulness” has been defined as a knowing and intentional violation of a legal duty and is presumed under the 1998 amendment. Partial payment of support does not negate the criminal intent, but inability to pay does. The 1998 amendments also create a felony offense, where the parent moves to another state or country to evade the support obligation and arrears remain unpaid in excess of two years or exceed $10,000. A federal prosecution under these statutes is based on where the nonpaying parent resides, where the payments are directed, or where the child resides.[23]

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[19] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 321, 110 Stat. 2105, 2221.
[20] 42 U.S.C. § 666(c) (2018).
[21] For further discussion of these enforcement remedies, *see* Chapter Eleven: Enforcement of Support Obligations.
[22] Child Support Recovery Act of 1992, Pub. L. No. 102-521, 106 Stat. 3403 (codified at 18 U.S.C. § 228(a)(1) (2018)); Deadbeat Parents Punishment Act of 1998, Pub. L. No. 105-187, 112 Stat. 618 (codified at 18 U.S.C. § 228 (2018)).
[23] *United States v. Crawford*, 115 F.3d 1397 (8th Cir. 1997). For further discussion of the CSRA and the Deadbeat Parents Punishment Act, *see* Chapter Eleven: Enforcement of Support Obligations.

In 2014 Congress passed the Preventing Sex Trafficking and Strengthening Families Act (hereinafter the Strengthening Families Act).[24] The Act contained a number of important intergovernmental child support provisions. It:

- Directs the Secretary of HHS to use legal authority to ensure the U.S. compliance with any multilateral child support convention to which the United States is a party.

- Amends 42 U.S.C. § 653(c) to add a Central Authority for child support enforcement in a foreign reciprocating country or a foreign treaty country as an authorized person for purposes under 42 U.S.C. § 659a(c)(2).

- Provides a state option to require individuals in foreign countries to apply for child support services through their country's appropriate Central Authority and, if the individual resides in a foreign country that is not a foreign reciprocating country or a foreign treaty country, provides the option for the state to accept or reject the individual's application for services.

- Amends 42 U.S.C. § 659a to include references for a foreign reciprocating country, a foreign treaty country, and the 2007 Family Maintenance Convention.

- Amends 42 U.S.C. § 664(a)(2)(A) to extend eligibility for federal tax refund offset to collections made pursuant to applications from foreign reciprocating countries and foreign treaty countries.

- Requires states to enact UIFSA (2008) as a condition of receiving federal funds.

- Amends FFCCSOA to conform to UIFSA (2008).

- Extends the Federal Parent Locator Service (FPLS) to tribal child support agencies.

- Requires electronic processing of income withholding orders.

- Requires the Secretary of HHS to develop data exchange standards for interstate communications.

Federal Regulations

In 1988, OCSE issued regulations designed to expedite interstate IV-D cases. These regulations directed that states establish central registries for receiving, tracking, and monitoring interstate cases; encouraged the use of long-

[24] Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014).

arm jurisdiction where available and appropriate; required responding states to meet specific timeframes in handling requests from an initiating state; and required states to treat local and interstate cases equally.

In 2010, OCSE issued a new rule for intergovernmental child support. This rule revised federal regulations for establishing and enforcing intergovernmental support obligations in Title IV-D cases. [25] It:

- Expands interstate case processing requirements to apply to case processing in all intergovernmental cases, including tribal and international cases.

- Addresses state processing of interstate and intrastate cases, tribal IV-D cases under section 455 of the Social Security Act, and international cases under sections 454(32) and 459A of the Social Security Act.

- Clarifies roles and responsibilities of initiating and responding state IV-D agencies. For example, the final rule requires the initiating state child support agency to notify the responding state agency at least annually, and upon request in an individual case, of any interest charges on overdue support under an initiating state order that the responding state is enforcing; and requires the responding state child support agency to pay the cost of genetic testing.

- Clarifies what jurisdiction has responsibility for determining the controlling order where multiple support orders exist.

- Requires cooperation with certain limited services requests.

- Recognizes and incorporates electronic communication advancements.

- Adds two case closure criteria when the responding state IV-D agency may close a case. One criterion allows the responding agency to close a case when "the initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11)." The other new criterion allows the responding agency to close a case if "[t]he initiating agency has notified the responding State that its intergovernmental services are no longer needed."

In 2016, OCSE published the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule ("Final Rule").[26] It amends 45 C.F.R. § 303.7 by:

[25] 75 Fed. Reg. 38,612 (Jul. 2, 2010); 45 C.F.R. §§ 301.1, 302.36, and 303.7 (2019).
[26] Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93,492 (Dec. 20, 2016).

- Adding paragraph (f),‘‘Imposition and reporting of annual $25 fee in interstate cases,’’ to provide that the Title IV–D agency in the initiating state must impose and report the annual $25 fee in accordance with 45 C.F.R. § 302.33(e);[27] and

- Making a conforming technical change in subsection (c)(10) to add § 302.38 to the list of regulatory sections cited related to the initiating state IV–D responsibilities to distribute and disburse any support collections received.

The Final Rule also amends the case closure regulation at 45 C.F.R. § 303.11, including several provisions affecting intergovernmental cases. It makes a technical change to paragraph (b)(10). As amended, the paragraph allows case closure when the noncustodial parent “is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and there is no Federal or State treaty or reciprocity with the country.” The Final Rule renumbers the case closure criteria related to when the responding state IV-D agency may close a case. Finally, the Final Rule adds a criterion to permit a state agency flexibility to close a case if the state has transferred the case to a tribal IV-D agency, regardless of whether there is a state assignment of arrears, so long as the state follows certain required procedures.[28]

Federal Treaty

On August 30, 2016, President Obama signed the instrument of ratification for the 2007 Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance.[29] The Convention contains numerous groundbreaking provisions that, for the first time on a global scale, establish uniform, simple, fast, and inexpensive procedures for the processing of international child support. Shortly thereafter the United States deposited its instrument of ratification with the Netherlands. The treaty went into force for the United States on January 1, 2017.

Other Federal Initiatives

In 1985, the federal Office of Child Support Enforcement (OCSE) formed a work group to develop standardized forms for use in interstate cases. The goal was to simplify recordkeeping and the transmission of URESA cases, enhance communication between states, improve the efficiency in processing interstate

[27] This provision was added in the final rule related to the Deficit Reduction Act of 2005 (73 Fed. Reg. 74,898 (Dec. 9, 2008), but it had been inadvertently omitted in the final intergovernmental child support regulation, published in 75 Fed. Reg. 38,612 (Jul. 2, 2010).
[28] 45 C.F.R. § 303.11(b)(21) (2019).
[29] For the text of the Hague Child Support Convention, see https://www.hcch.net/en/instruments/conventions/full-text/?cid=131.

cases and, ultimately, increase interstate collections. In 1997, OCSE developed new forms for use in UIFSA cases. Over the years, these intergovernmental forms have been updated.[30] Federal regulations require state child support agencies to use these federally approved forms in intergovernmental cases, unless a country has provided alternative forms included in an OCSE country-specific caseworker's guide.[31] In Convention support cases, OCSE requires agencies to use the Convention forms unless a Convention country has identified different forms it wants a Central Authority to use.[32] Additionally, OCSE has developed an OMB-approved Income Withholding for Support Order/Notice Form,[33] Administrative Subpoena form,[34] and Notice of Child Support Lien form.[35]

Section 311(b) of UIFSA requires that UIFSA pleadings and accompanying documents conform substantially with the requirements imposed by the forms that federal law require for use in Title IV-D cases. This requirement applies to cases initiated by private attorneys as well as by child support agencies.

THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

Overview

From 1950 until 1998, URESA was the primary mechanism for the interstate litigation of child support. Both URESA and its 1968 revision were considered revolutionary when they were adopted, but their shortcomings became apparent. They failed to reflect important changes in child support collection – the subsequent passage of Title IV-D of the Social Security Act in 1975, which authorized OCSE and the federal/state child support program; and

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[30] The current OMB-approved intergovernmental forms, issued Oct. 1, 2020, are available at https://www.acf.hhs.gov/css/form/intergovernmental-child-support-enforcement-forms.
[31] *See* 45 C.F.R. § 303.7(a)(4) (2019).
[32] *See* https://www.acf.hhs.gov/css/form/hague-child-support-convention-forms.
[33] OCSE disseminated the current OMB-approved income withholding for support form on Oct. 1, 2020. *See* https://www.acf.hhs.gov/css/form/income-withholding-support-iwo-form-instructions-sample. It must be used in interstate, intrastate, and tribal cases.
[34] OCSE originally developed the Administrative Subpoena, which was effective October 28, 1997. It disseminated the current OMB-approved administrative subpoena form and instructions on July 26, 2018. The Administrative Subpoena is the federal form that the state child support programs must use in interstate cases. A state may elect to use this form in intrastate cases. The child support agency can administratively issue this form to subpoena financial or other information needed to establish, modify, or enforce a child support order. *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0152_subpoena.pdf.
[35] OCSE originally developed the Notice of Lien, which was effective October 28, 1997. It disseminated the current OMB-approved Notice of Lien form and instructions on July 26, 2018. State child support agencies must use the Notice of Lien form in interstate cases. They may also use the form to impose liens in intrastate cases. An obligee or an obligee's attorney may also use the form to enforce a non-IV-D order. This form may be used to assert liens on assets discovered through the Financial Institution Data Match process. *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0152_subpoena.pdf.

vast technological strides, such as the use of computers and databases to obtain information. Recognizing the need to keep up with child support innovations, ULC approved the Uniform Interstate Family Support Act (UIFSA) in 1992. In July 1996, ULC adopted amendments to the original act to clarify some provisions and resolve some omissions.[36] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required states, as a condition of receiving federal funds, to enact UIFSA (1996).[37]

ULC approved additional amendments to the Act in August 2001.[38] These amendments did not change the core concepts of UIFSA of a controlling order and continuing, exclusive jurisdiction to modify. Rather, they largely clarified implementation issues that had arisen under UIFSA (1996), especially regarding determination of the controlling order and jurisdiction to modify. The 2001 amendments also addressed international cases in greater detail than UIFSA (1996). States wanting to enact UIFSA (2001) had to apply to OCSE for a federal waiver from the PRWORA requirement to enact UIFSA (1996).[39]

From June 2003 through November 2007, more than 70 countries met in The Hague, Netherlands, to develop a new Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter referred to as the Hague Child Support Convention).[40] In order for UIFSA to be the implementing legislation for the Hague Child Support Convention in the United States, ULC met in 2008 to draft amendments to UIFSA that would satisfy requirements under the Convention.[41] The drafting committee developed a new Section 105 that provides a road map for application of the Act to international cases. It developed a new Article 7 that would apply after the United States ratified the Hague Child Support Convention and only apply to support proceedings under the Convention. The drafting committee also amended a few other provisions of UIFSA, largely to address international cases in general.

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[36] Unif. Interstate Family Support Act (1996). *See Uniform Interstate Family Support Act (1996) (with More Unofficial Annotations by John J. Sampson), supra* note 7.
[37] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 321, 110 Stat. 2105, 2221.
[38] Unif. Interstate Family Support Act (2001). *See* John J. Sampson, Reporter, with Barry J. Brooks, *Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations)*, *supra* note 7.
[39] *See* OCSE-AT-07-06: Revised Instructions for Requesting an Exemption from the Mandatory Laws and Procedures in Section 466 (2007) (Aug. 24, 2007).
[40] The text of the Convention is accessible at https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support.
[41] *See* Unif. Interstate Family Support Act (2008), https://www.uniformlaws.org/viewdocument/final-act-with-comments-120?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb&tab=librarydocuments. *See also* Battle Rankin Robinson, *Integrating an International Convention into State Law: The UIFSA Experience*, 43 Fam. L.Q. 61 (Spring 2009).

In 2014, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act.[42] It required a state to enact UIFSA (2008) as a condition of receiving federal funds.[43] As a result, every state has enacted UIFSA (2008) and met federal requirements that the enactment be *verbatim*. This chapter addresses key topics of UIFSA (2008).[44]

Terminology and Definitions

Support order. Under UIFSA, a "support order" means "a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care,[45] arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief."[46]

Petitioner. UIFSA uses the term "petitioner" to refer to the moving party. Either a custodial parent or noncustodial parent can be a petitioner under UIFSA. Examples of when a noncustodial parent might be a petitioner are actions to establish parentage or to seek a downward adjustment in the support obligation. While the custodial parent may be the petitioner in the original pleadings, the noncustodial parent may become the petitioner in a subsequent action requesting relief.

Tribunal. UIFSA recognizes the role of the support enforcement agency. It also recognizes the fact that many jurisdictions have created administrative entities to handle child support matters. Whereas URESA used a court-to-court process, UIFSA has a much broader scope. UIFSA uses the term "tribunal," which means "a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child."[47] The Act requires a state to designate the tribunal in that state.[48] Many states limit the definition of tribunal to the court. Other states, however, define tribunal to include both the court and the administrative child support agency.

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[42] Pub. L. No. 113-183, 128 Stat. 1919 (2014).
[43] Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014).
[44] For an overview of UIFSA (2008), *see* Office of Child Support Enforcement, 2008 Revisions to the Uniform Interstate Family Support Act (June 2, 2016). Because every state has enacted UIFSA (2008), the chapter will simply refer to UIFSA unless the date of the version is significant.
[45] *Finch v. Rudolph*, No. 345515, 2019 Mich. App. LEXIS 2600 (Mich. App. May 28, 2019) (health care provision of a shared parenting decree is a child support order subject to UIFSA because it is a court order for the benefit of a child that provides for "health care." Therefore, the defendant may seek to register and enforce under UIFSA that part of the shared parenting decree.)
[46] Unif. Interstate Family Support Act § 102(28) (2008).
[47] Unif. Interstate Family Support Act § 102(29) (2008).
[48] *See* Unif. Interstate Family Support Act § 103 (2008).

State. Originally, the term "state" had a broad meaning in UIFSA, including in its definition both Indian tribes 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 in this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act."[49] UIFSA (2008) distinguishes between foreign countries and states. UIFSA (2008) defines a "state" as "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe."[50] There is a separate definition for "foreign country" that includes many, but not all, foreign nations.[51]

Child's home state. UIFSA also incorporates the concept of a child's "home state," new to child support litigation, using the definition found in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)[52] and the Parental Kidnapping Prevention Act (PKPA).[53] It is defined as

> the state or foreign country 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 a [petition] or comparable pleading for support and, if a child is less than six months old, the state or foreign country 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.[54]

Continuing, exclusive jurisdiction to modify. To achieve a one-order world, UIFSA introduces the concept of continuing, exclusive jurisdiction (CEJ) to modify an order. A tribunal has CEJ to modify an order if it issued the order and is the residence of the individual obligee, obligor, or child.[55] Even if the state is not the residence of the individual obligee, obligor, or child, the tribunal has CEJ to modify the order if the parties consent in a record or in open court that the tribunal may continue to exercise jurisdiction to modify the order.[56]

Controlling order. UIFSA also introduces the concept of "controlling order," which is the support order that governs prospective enforcement of

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[49] Unif. Interstate Family Support Act § 101(19) (1996), renumbered as § 102(21) in 2001.
[50] Unif. Interstate Family Support Act § 102(26) (2008).
[51] *See* Unif. Interstate Family Support Act § 102(5) (2008). International cases are discussed in more detail later in this chapter.
[52] Unif. Child Custody Jurisdiction and Enforcement Act (1997), https://www.uniformlaws.org/viewdocument/final-act-with-comments-111?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d&tab=librarydocuments.
[53] 28 U.S.C. § 1738A (2018).
[54] Unif. Interstate Family Support Act § 102(8) (2008).
[55] Unif. Interstate Family Support Act § 205(a)(1) (2008). This chapter has a later section that discusses continuing, exclusive jurisdiction to modify.
[56] Unif. Interstate Family Support Act § 205(a)(2) (2008).

current support.[57] When UIFSA was first drafted in 1990, there were multiple support orders that courts had issued in URESA/RURESA proceedings. Because of the multiple support orders, a crucial step to achieve a one-order world was the determination of the controlling order. With the passage of time and enactment of FFCCSOA, it is very rare that a tribunal must determine the controlling order because children under orders issued before the enactment of FFCCSOA will have "aged out."

Outside this state. This phrase refers to a location in another state or a country other than the United States, regardless of whether the country meets UIFSA's definition of "foreign country."

Reciprocity. It is important to note that UIFSA has largely eliminated the reciprocity requirement of URESA. Tribal support orders must be enforced under UIFSA even if a tribe has not enacted support laws substantially similar to UIFSA. The only area in which reciprocity remains relevant is in international support cases.[58]

Role of Support Enforcement Agency

Under UIFSA, the services that a support enforcement agency must provide include the following actions:[59]

- Take all steps necessary to enable a tribunal to obtain jurisdiction over the respondent.
- Request the tribunal to set a time, date, and place for a hearing.
- Make a reasonable effort to obtain all relevant information, including information as to the income and property of the parties.
- Send appropriate notices and correspondence received from the responding state to the petitioner in a timely manner.
- Notify the petitioner if jurisdiction cannot be obtained over the respondent.[60]

If the support enforcement agency is requesting registration of a child support order for enforcement or modification, it must make reasonable efforts to ensure that the order to be registered is the controlling order.[61] A support enforcement agency requesting registration of a support order, arrears, or

[57] Unif. Interstate Family Support Act § 207 (2008). This chapter has a later section that discusses determination of the controlling order.
[58] *See* Unif. Interstate Family Support Act § 102(5) (2008).
[59] A Title IV-D agency must also adhere to federal regulations governing intergovernmental cases. *See* 45 C.F.R. § 303.7 (2019).
[60] Unif. Interstate Family Support Act § 307(b) (2008).
[61] Unif. Interstate Family Support Act § 307(c) (2008).

judgment stated in a foreign currency must convert the amount into the equivalent U.S. dollars.[62] Finally, a support enforcement agency must issue or request a tribunal in the state to issue a child support order and an income withholding order that redirect support payments to the support disbursement unit in the state where the obligee is receiving child support services, if so requested by a support enforcement agency of another state pursuant to Section 319 of UIFSA.[63]

The Act expressly states that it 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.[64]

Private Attorneys

UIFSA explicitly authorizes individuals to employ private counsel to represent them in UIFSA proceedings.[65]

Evidentiary Provisions

Interjurisdictional cases present unique challenges for completing discovery, submitting information, and presenting testimony by the parties. UIFSA has specific provisions for transmitting and admitting evidence, as well as provisions for obtaining assistance from another state or country. The provisions in Sections 316,[66] 317,[67] and 318[68] are applicable in long-arm proceedings as well as in UIFSA's two-state proceedings. They are also available to a nonresident party in a child support action heard by a tribunal with CEJ.[69]

The majority of UIFSA's evidentiary proceedings are in Section 316:

- The physical presence of an individual nonresident party is not required for establishing, enforcing, or modifying a support order or determining parentage.[70]

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[62] *See* Unif. Interstate Family Support Act § 307(d) (2008).
[63] *See* Unif. Interstate Family Support Act §§ 307(e) and 319 (2008). State law will determine whether the support enforcement agency has administrative authority to issue the child support order and income withholding order changing the payment location or whether a tribunal must issue such orders.
[64] Unif. Interstate Family Support Act § 307(f) (2008).
[65] Unif. Interstate Family Support Act § 309 (2008).
[66] Unif. Interstate Family Support Act § 316 (2008).
[67] Unif. Interstate Family Support Act § 317 (2008).
[68] Unif. Interstate Family Support Act § 318 (2008).
[69] *See* Unif. Interstate Family Support Act § 210 (2008).
[70] Unif. Interstate Family Support Act § 316(a) (2008). *See Arnell v. Arnell,* 416 S.W.3d 188 (Tex. App. Dallas 2013) (UIFSA provides that the physical presence of the nonresident party is not required so the court rejected father's claim that his constitutional right to confront and cross-examine witnesses had been violated. In fact, the father had testified by telephone).

- An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference therein, are admissible in evidence in another state, so long as they are given under penalty of perjury by a party or witness residing outside the state and would not otherwise be excluded under the hearsay rule if given in person.[71] According to the Official Comment, this is a simpler standard than "under oath" and is similar to what is required by the federal income tax form 1040.[72]

- A copy of the child support payment record certified to be a true copy by the custodian of the records is admissible as evidence of whether payments were made and what is due and owing.[73]

- Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, when furnished to the adverse party at least ten days before trial, are admissible as evidence of the amount of the charges and that the charges were reasonable, necessary, and customary.[74]

- A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of a child.[75]

- Documents to be used as evidence that are transmitted from one state to another by telephone, telecopier, or other means that do not provide an original cannot be excluded because of the means of transmission.[76]

- A tribunal must permit a party or witness residing outside the state to give testimony by telephone, audiovisual, or other electronic means at a location designated by the tribunal.[77]

Child support attorneys should help ensure the child support agency and tribunals in their jurisdiction have appropriate procedures and equipment to

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[71] Unif. Interstate Family Support Act § 316(b) (2008). *See Gyger v. Clement*, 846 S.E.2d 496 (N.C. 2020) (for an international party in a child support action, the party's signature on the affidavit under penalty of perjury suffices. No notarization is required under UIFSA.).
[72] See Comment, Unif. Interstate Family Support Act § 316(b) (2008).
[73] Unif. Interstate Family Support Act § 316(c) (2008).
[74] Unif. Interstate Family Support Act § 316(d) (2008).
[75] Unif. Interstate Family Support Act § 316(j) (2008).
[76] Unif. Interstate Family Support Act § 316(e) (2008).
[77] Unif. Interstate Family Support Act § 316(f) (2008). *See People ex rel. S.C.,* 2020 COA 95, No. 19CA1277, 2020 Colo. App. LEXIS 1106 (June 11, 2020) (the magistrate in a paternity action was not authorized to "close" the case based on mother's refusal to testify in person. She had offered to testify by telephone, but that offer was refused by the magistrate on the sole ground that she had outstanding arrest warrants. The state codification of UIFSA Section 316 required the magistrate to accept mother's testimony by telephone or other electronic means, regardless of whether she had outstanding warrants in Colorado).

facilitate the provision of testimony from outside the state. For instance, the West Virginia legislature gave the state Supreme Court rulemaking authority to implement telephone hearings.[78] The child support attorney may need to inform parties or the initiating child support agency of any statutory or court rule requirements regarding advance notice of a request for a telephone or electronic hearing. Child support attorneys must also ensure that if they participate in telephone or electronic hearings, they comply with ethical requirements concerning authorization to practice law in a state.[79]

UIFSA also addresses communications between tribunals. For example, Section 317 authorizes tribunals to communicate, in writing, by phone, or other means to obtain information about another state's or country's laws, the legal effect of a judgment, decree, or order, and the status of a proceeding in the state or country. A tribunal in a state can also call on a tribunal outside the state to provide assistance in obtaining discovery or in compelling a person to respond to a discovery order.[80]

The special rules found in Sections 316, 317, and 318 apply in any support action where the tribunal has personal jurisdiction over a nonresident.[81] This includes a long-arm proceeding or a proceeding where the tribunal retains CEJ to modify, although other provisions of UIFSA do not apply. In such proceedings, a tribunal cannot require the nonresident party's physical presence in the proceeding and must accept evidence via telephone, telecopier, and similar means that do not provide an original record.[82]

Risk of Harm

There are important privacy safeguards in UIFSA to ensure that a family does not have to choose between financial support and safety. In certain circumstances, the Act permits address and/or identifying information of a child or party to be withheld from pleadings or other documents filed in connection with the proceeding.[83] No order is required to claim protection. Section 312 is consistent with section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act. It provides:

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[78] W. Va. Rules of Practice and Procedure for Family Court, Rule 18 Telephonic and videoconference hearings. *See also, e.g.*, 2020 California Rules of Court, Rule 3.670 Telephone appearance, Rule 5.324 Telephone appearance in Title IV-D hearings and conferences, and Rule 5.9 Appearance by telephone; N.Y. Uniform Rules for the Family Court, Section 205.44 Testimony by telephone, audio-visual or other electronic means in child support and paternity cases. Child support attorneys may also contact the National Center for State Courts and the National Council of Juvenile and Family Court Judges for research, protocols, and guidance.
[79] For further discussion on ethical considerations, see Chapter Four: Ethical and Regulatory Requirements Governing Attorneys in the Child Support Program.
[80] Unif. Interstate Family Support Act § 318 (2008).
[81] *See* Unif. Interstate Family Support Act § 210 (2008).
[82] *See* Comment to Unif. Interstate Family Support Act § 210 (2008).
[83] Unif. Interstate Family Support Act § 312 (2008).

> If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.[84]

Although separate, it is important to note that UIFSA's nondisclosure safeguards work in tandem with the family violence protections developed for the Federal Parent Locator Service (FPLS) and state data systems.[85] Thus, tribunals should develop procedures to ensure that the existence of a UIFSA nondisclosure order is properly conveyed within the state so that the party or child also receives the benefit of these other state and federal protection mechanisms.

Choice of Law

For most UIFSA proceedings, the law of the forum state (the state hearing the action) applies. There are, however, some additions or exceptions:

- Certain procedures are required in UIFSA cases, even if they are not consistent with those applicable to intrastate cases, e.g., the contents of a UIFSA pleading,[86] nondisclosure of information to prevent placing a party or child at risk,[87] the authority to award attorney's fees and costs when the tribunal determines that a hearing was requested primarily for delay,[88] the limited immunity from service of process that the UIFSA petitioner receives while participating in a proceeding under UIFSA,[89] and the prohibition against the use of nonparentage as a defense to an action if parentage has been previously determined.[90]

- A responding tribunal may not condition the payment of support upon compliance with visitation provisions of an order.[91]

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[84] Unif. Interstate Family Support Act § 312 (2008).
[85] *See* Office of Child Support Enforcement, The Role of the Family Violence Indicator: Safely Pursuing Child Support (Oct. 11, 2011). *See also* OCSE-IM-19-06: Model Procedures for Domestic Violence Cases (Aug. 21, 2019). For more general information on safely pursuing child support in cases of domestic violence, *see* Chapter Sixteen: Domestic Violence and Child Support.
[86] Unif. Interstate Family Support Act § 311 (2008).
[87] Unif. Interstate Family Support Act § 312 (2008).
[88] Unif. Interstate Family Support Act § 313(c) (2008).
[89] Unif. Interstate Family Support Act § 314 (2008).
[90] Unif. Interstate Family Support Act § 315 (2008).
[91] Unif. Interstate Family Support Act § 305(d) (2008).

- Special rules for the transmission and receipt of evidence from outside the state and for discovery ensure that the decision maker has as much information as possible to make a just decision.[92]

- UIFSA specifies choice of law rules in certain types of proceedings.

  – Section 502(d) lists the rules that an employer must follow with regard to direct withholding.

  – Section 604 sets forth choice of law rules that apply in a registration proceeding.

    - It provides that the law of the state or foreign country that issued the controlling order governs the nature, extent, amount, and duration of the current support payments and other obligations under the order.[93]

    - The statute of limitations is that of the issuing state or foreign country or the state in which the UIFSA proceedings are taking place, whichever is longest.[94] This ensures that orders can be enforced for the longest time possible.

    - The law of the issuing state or foreign country governs the computation of arrearages and accrual of interest on the arrearages under the registered support order.

      If the order was registered for modification and the registering tribunal modifies the order, the modified order becomes the new controlling order in the case. At that point, it will be the law of the state that modified the order that prospectively applies to interest on the arrears under the prior order as well as to arrears under the modified order.[95]

      Because statewide systems are not programmed with the interest rates of each state or foreign country, which may change over time, presumably the state or foreign country that issued the controlling order will periodically let a registering or

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[92] Unif. Interstate Family Support Act § 316 and § 318 (2008).
[93] *See Hays v. Hays*, 49 N.E.3d 1030 (Ind. Ct. App. 2016) (The calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is the duty of the issuing tribunal. Awarding credit to the father for payments made directly to third parties was not tantamount to retroactively modifying support arrears. Therefore, even though all parties had left the issuing state and the state lacked jurisdiction to modify its order, it had continuing jurisdiction to determine the arrearage under its order).
[94] Unif. Interstate Family Support Act § 604(b) (2008). *See Jackmore v. Jackmore*, 71 So. 3d 912 (Fla. 1st DCA 2011).
[95] *See* OCSE-AT-20-14: Updated Interstate Child Support Policy, "Choice of Law," at 6–7, and "Modification," at 17 (Nov. 18, 2020).

> responding state know how much interest has accrued. Federal regulations at 45 C.F.R. § 303.7(c)(7) require the initiating jurisdiction to: "Notify the responding agency at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating State order being enforced in the responding jurisdiction."

- UIFSA addresses duration of support. In a proceeding to modify an order of another state, Section 611 provides that the law of the issuing state governs nonmodifiable terms.[96] Section 611(c) expressly provides that a tribunal may not modify the "duration of the obligation of support" if the law of the issuing state does not allow its modification.[97] Section 611(d) also makes it clear that the law of the state that issued the order initially determined to be controlling governs the duration of the obligation of support.[98] Child support attorneys should pay close attention to the words "initial controlling order" in Section 611(d). In multiple order cases, it is not the first order issued that establishes duration; it is the order determined to be controlling that locks in duration. Thereafter, the initial controlling order may be modified, but the duration will remain the same.[99] Section 611(d) also expressly states that "[t]he obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support."[100] According to the official Comment to subsection (d), when it was added in 2001:

  > From its original promulgation, UIFSA determined that the duration of [sic] child-support obligation should be fixed by the controlling order. … If the language was insufficiently specific before 2001, the amendments should make this decision absolutely clear. … Some courts have sought to subvert this policy by holding that completion of the obligation to support a child through age 18 established by the now-completed controlling

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[96] *See Lamancusa v. Dep't of Revenue,* 250 So. 3d 812 (Fla. Dist. Ct. App. 2018) (UIFSA provision regarding duration of support is a choice of law rule, not one of subject matter jurisdiction).

[97] Unif. Interstate Family Support Act § 611(c) (2008). *See Thornton v. Thornton*, 247 P.3d 1180 (Okla. 2011). *See also In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011) (an award of postsecondary educational support is a change of duration. In this case, the registering tribunal was not allowed to order such support because the duration of support was not modifiable under the issuing state's law absent circumstances that were not present in the case).

[98] *See, e g., Freddo v. Freddo,* 983 N.E.2d 1216 (Mass. App. 2013), *appeal denied*, 987 N.E.2d 596 (Mass. 2013); *In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011).

[99] *See Studer v. Studer*, 131 A.3d 240 (Conn. 2016) (where Florida order was registered in Connecticut and subsequently modified, Connecticut trial court properly applied Florida law – not Connecticut law – in determining that a noncustodial father's child support obligation should continue indefinitely for his adult autistic child).

[100] Unif. Interstate Family Support Act § 611(d) (2008).

> order does not preclude the imposition of a new obligation thereafter to support the child through age 21 or even to age 23 if the child is enrolled in higher education. Subsection (d) is designed to eliminate these attempts to create multiple, albeit successive, support obligations.[101]

Notice Requirements

UIFSA includes many notice requirements. Most have specific timeframes for compliance. These notice requirements are further evidence of the efforts to streamline and facilitate interstate case processing.[102]

MAIN UIFSA PRINCIPLES

The ultimate goal of UIFSA is the efficient processing of interstate cases. One of the major barriers to interstate collection of child support was the multiple-order world under URESA. There are three components within UIFSA to ensure a one-order world.

Prohibition against *De Novo* Orders

URESA expressly provided that a URESA order did not nullify, and was not nullified by, any other support order.[103] As a result, courts often issued *de novo* support orders that existed independently from any other support order involving the same parties and child(ren). Often these *de novo* support orders were for a different support amount. The drafters of UIFSA were determined to end this practice. Under UIFSA, if there is a support order entitled to recognition under the Act, a tribunal cannot establish a new support order.[104]

Continuing, Exclusive Jurisdiction to Modify

Section 205 is one of the most crucial provisions of UIFSA. It introduces the term “continuing, exclusive jurisdiction” (CEJ), an important concept to UIFSA’s one-order world. There are two circumstances in which a tribunal that has issued a support order has CEJ to modify that order. The first circumstance is when the issuing tribunal is the residence of the individual obligee, obligor, or child for whose benefit the support order is issued.[105] It is the residence of the parties at the time of the filing of the request for modification that determines

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[101] *See* Comment, Unif. Interstate Family Support Act § 611 (2001).
[102] *See* Exhibit 13-2: UIFSA Notice Requirements.
[103] Revised Unif. Reciprocal Enforcement of Support Act § 31 (1968), 9B U.L.A. 531 (1987).
[104] Unif. Interstate Family Support Act § 401(a) (2008).
[105] Unif. Interstate Family Support Act § 205(a)(1) (2008). *See, e.g.*, *In re J.R.S.*, No. 10-12-00142-CV, 2013 WL 3846352 (Tex. App. July 25, 2013).

whether CEJ exists.[106] Therefore, should a party or child who had previously left the issuing state return to the state prior to modification and assumption of CEJ by another state, the issuing state will still have CEJ.[107] As the official Comment notes:

> In 2001 a significant, albeit subtle amendment was made to Subsection (a)(1). The intent was not to make a substantive change, but rather to clarify the original intent of the Drafting Committee. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether all parties and child have left the State, is explicitly stated to be at the time of filing a proceeding to modify the child support order. Second, substitution of the term "is the residence" for the term "remains the residence" makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify.[108]

The second circumstance in which the issuing jurisdiction has CEJ is based on consent. Pursuant to Section 205(a)(2), a tribunal has CEJ to modify a controlling order – even if the state is not the residence of the obligor, the individual obligee, or the child – if the parties "consent in a record or in open court" that the tribunal may continue to exercise jurisdiction to modify its order.[109] This subsection was added in 2001 in response to questions about why parties could not modify an order in the state that issued the order, even if no one lived in that state, if everyone was agreeable to that state's exercise of modification jurisdiction. The most common examples are where the parties want the same state to have jurisdiction over both spousal and child support or where the parties have moved just across the state line and continue to have a strong affiliation with the issuing state, perhaps through employment.[110] See Exhibit 13-3 for a flowchart illustrating UIFSA's rules regarding modification jurisdiction of a state order.

An issuing tribunal lacks CEJ when all of the individual parties and child(ren) move away unless, pursuant to Section 205(a)(2), they consent for the issuing tribunal to retain jurisdiction to modify its order. A tribunal may also lose CEJ when the individual parties file a consent with the issuing tribunal that a tribunal of another

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[106] Unif. Interstate Family Support Act § 205(a)(1) (2008). *See also State ex rel. Brandish v. Ketzel*, 275 P.3d 923 (Kan. App. 2012).
[107] *See Baars v. Freeman*, 708 S.E.2d 273 (Ga. 2011) (fact that mother and child lived for a period of time in Holland did not divest the Georgia court of continuing, exclusive jurisdiction).
[108] Comment, Unif. Interstate Family Support Act § 205 (2008).
[109] *See In re Marriage of Haugh*, 170 Cal. Rptr. 3d 683 (2014) (consent for issuing state to retain jurisdiction to modify must be in writing).
[110] Note that Section 611(f) also authorizes an issuing tribunal to retain jurisdiction to modify its order if one party resides in another state and the other party resides outside of the United States.

state that has jurisdiction over at least one of the parties or that is located in the child's state of residence may modify the order and assume CEJ.[111]

Usually, it will be clear cut regarding what is a modification requiring continuing, exclusive jurisdiction. However, at least one court had to decide whether a "clarification" was, in fact, a modification. In a case involving a Nevada support order, the Nevada supreme court concluded that a clarification that the obligor's payment be recalculated each year to a sum certain was actually a modification. Because none of the parties nor their children resided in Nevada, the court concluded that the trial court in Nevada lacked CEJ to make such a modification.[112] Another case involved a support order registered for enforcement. Subsequently, the registering court issued a contempt order requiring the noncustodial parent to pay less than the full amount of the support order to avoid incarceration. The custodial parent argued that the trial court's order was an impermissible modification of the foreign order. Both the Indiana Court of Appeals and Supreme Court held that the trial court's contempt orders were valid enforcement mechanisms that did not modify the noncustodial parent's support obligation; although the obligor could avoid incarceration by reduced payments, arrearages would continue to accrue in accordance with the registered order.[113]

Because a cost-of-living adjustment (COLA) is an automatic, self-executing adjustment to the support amount, application of the COLA is not a modification by the tribunal that requires compliance with UIFSA Section 205 Continuing, Exclusive Jurisdiction to Modify Child-Support Order or Section 611 Modification of Child-Support Order of Another State.[114]

Determination of Controlling Order

Because of URESA, cases that predated 1994 (the year FFCCSOA was enacted) often contained multiple support orders.[115] UIFSA contains rules for a tribunal to apply in determining which existing support order will control current

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[111] Unif. Interstate Family Support Act § 205 (2008). Section 205(b)(1) requires a consent in the record. It also requires that the state assuming modification jurisdiction be a state that has jurisdiction over at least one of the parties or is the residence of the child. *See Ross v. Ross,* 805 S.E.2d 7 (Ga. 2017) (Georgia trial court lacked subject matter jurisdiction to modify Connecticut child support order where issuing court had CEJ because husband was still a resident of the state and neither party had provided written consent for a Georgia tribunal to exercise jurisdiction over the matter).

[112] *Vaile v. Porsboll*, 268 P.3d 1272 (Nev. 2012) (under the decree's terms it was possible for the father's monthly support obligation to change from year to year. By setting his monthly support payment at a fixed monthly amount, the district court substantively altered the parties' rights, such that the district court modified, rather than clarified, the support obligation).

[113] See *Hamilton v. Hamilton*, 914 N.E.2d 747 (Ind. 2009).

[114] For more information about cost-of-living adjustments, *see* Chapter Ten: Modification of Child Support Obligations.

[115] With the enactment of FFCCSOA, effective October 1994, tribunals should not have issued *de novo* support orders when there was already a support order entitled to recognition between the parties.

support prospectively.[116] This process is called the Determination of Controlling Order (DCO).

- If only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

- If there are two or more child support orders with regard to the same obligor and same child, a tribunal of the state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules to determine which order controls and must be recognized:

  - If only one of the tribunals would have continuing, exclusive jurisdiction, the order of that tribunal controls.

  - If more than one of the tribunals would have continuing, exclusive jurisdiction:

    - The order issued by a tribunal in the current home state of the child controls.

    - If there is no order issued by a tribunal in in the child's home state, the most recently issued order controls.

  - If none of the tribunals would have continuing, exclusive jurisdiction, the tribunal of the forum state shall issue a child-support order, which controls.

A request for a DCO may be made in the context of a registration for enforcement or registration for modification proceeding, as well as in the context of a "stand-alone" proceeding where there are multiple orders and one of the parties seeks a DCO.[117] Any party can request a DCO, whether that party is an individual or a support enforcement agency. In fact, Section 307(c) requires the support enforcement agency to seek a determination of controlling order where appropriate. A tribunal must have personal jurisdiction over both the obligor and the individual obligee to make a binding determination of controlling order.[118] Federal regulations require the initiating state child support agency to decide in which state a determination of controlling order and reconciliation of arrears may be made.[119]

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[116] *See* Unif. Interstate Family Support Act § 207 (2008).
[117] *See* Unif. Interstate Family Support Act § 207(c) (2008).
[118] *See* Unif. Interstate Family Support Act § 207(c) (2008). *See Clark v. Clark,* 918 N.W.2d 336 (Neb. App. 2018).
[119] 45 C.F.R. § 303.7(c)(2) (2019).

UIFSA also addresses the findings that a tribunal should make in its determination of controlling order:

> (f) A tribunal of this state that determines by order which is the controlling order under subsection (b)(1) or (2) or (c), or that issues a new controlling order under subsection (b)(3), shall state in that order:
>
> (1) the basis upon which the tribunal made its determination;
> (2) the amount of prospective support, if any; and
> (3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.[120]

By 2020 there should rarely be the need to determine the controlling order because the children in older, multiple order cases that predate FFCCSOA will no longer be considered dependents under state law. If all children have emancipated, there is no need to determine the controlling order for prospective support.[121] As a matter of fact, there is no controlling order because there is no prospective enforcement. However, it may still be necessary for a tribunal to determine arrears under the prior orders. And in determining arrears, the tribunal may be asked to determine the controlling order. Determination of the controlling order was the issue before the court in *Clark v. Clark*, 918 N.W.2d 336 (Neb. App. 2018). The obligor had two child support orders issued in different states; the child was now an adult. The obligor asked the court to determine which of the two child support orders was controlling so that he could "take care of the arrearages and 'move on' with his life." On appeal, the court concluded that the trial court had subject matter jurisdiction to determine which child support order was controlling. In remanding the case, it noted that if the trial court felt it lacked necessary evidence to make a determination between competing cases in differing jurisdictions, it could communicate with a tribunal outside the state under UIFSA Section 317 and request a tribunal to assist in obtaining discovery under UIFSA Section 318.

Controlling Order vs. Continuing, Exclusive Jurisdiction

There is a distinction between "controlling order" and "continuing, exclusive jurisdiction" to modify. If there is only one support order, that is the controlling order. It is enforceable in any state where the obligor is located or has income or assets. It remains the controlling order even if no individual party or child lives in the state.[122] However, if the obligor, obligee, and child have left the

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[120] Unif. Interstate Family Support Act § 207(f) (2008).
[121] *See New Hanover Co. v. Kilbourne,* 578 S.E.2d 610 (N.C. App. 2003).
[122] *See, e.g., Lattimore* v. *Lattimore*, 991 So. 2d 239 (Ala. Civ. App. 2008); *Douglas v. Brittlebank-Douglas*, 45 P.3d 368 (Haw. Ct. App. 2002); *Zaabel v. Konetski*, 807 N.E. 2d 372 (Ill. 2004); *Lunceford v. Lunceford*, 204 S.W.3d 699 (Mo. Ct. App. 2006); *Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011); *Commonwealth ex rel. Kenitzer v. Richter*, 475 S.E.2d 817 (Va. Ct. App. 1996).

state that issued the controlling order, the issuing state lacks CEJ to modify the order unless the parties consent for the issuing state to retain jurisdiction to modify the order.[123] Determination of the controlling order should only occur once in a multiple order case. On the other hand, a tribunal must determine whether it has CEJ to modify an order each time there is a modification request.

PARENTAGE AND SUPPORT ESTABLISHMENT UNDER UIFSA

The central point in UIFSA is the "one order in time" concept. The general rule is that a tribunal can issue a parentage or child support order only if no support order entitled to recognition as a controlling order already exists.[124]

Thus, the initial inquiry for the child support attorney should be whether there is an existing order entitled to recognition. There are several ways to discover existing orders. The primary means is through an effective client interview. Because UIFSA requires a petitioner to include any existing order with the pleadings when seeking to establish a parentage or support order,[125] the child support agency should ask the custodial parent to disclose and provide copies of any existing support orders. The respondent also has an opportunity to bring omitted orders to the tribunal's attention in responsive pleadings. Another method is through the Federal Case Registry (FCR).[126] One component of the FCR data is an order indicator, which identifies whether a support order exists for a particular child. If there is a support order entitled to recognition under UIFSA, no other tribunal can establish a *de novo* order.

If parentage has been determined under an order, the child support attorney should argue against any relitigation of that issue. Even if the tribunal no longer has CEJ, its order remains a valid determination of parentage and the issue should be considered *res judicata*. Pursuant to Section 315 of UIFSA, a party may not plead nonparentage as a defense if the party's parentage has been previously determined by or pursuant to law.[127]

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[123] *See, e.g., Jurado v. Brashear*, 782 So. 2d 575 (La. 2001); *Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011); *Earls v. Mendoza*, 2011 Tenn. App. LEXIS 430, No. W2010-01878-COA-R3-CV, 2011 WL 3481007 (Tenn. Ct. App. Aug. 10, 2011) (trial court lacked subject matter jurisdiction to modify its order because no one resided in the issuing state and the narrow exception based on "consent in a record or in open court" did not apply. However, it retained jurisdiction to enforce the order).
[124] Unif. Interstate Family Support Act § 401(a) (2008). If there already is a valid order, it must be recognized as controlling under § 207(a). Then, the appropriate action is either to enforce or modify it.
[125] Unif. Interstate Family Support Act § 311(a) (2008).
[126] 42 U.S.C. § 653(h) (2018). Federal regulations require the initiating child support agency to determine whether there is one or more support orders in effect by using the federal and state case registries, state records, information provided by the recipient of child support services, and other relevant information sources. *See* 45 C.F.R. § 303.7(c)(1) (2019).
[127] *See, e.g.*, *Dep't of Human Res. v. Mitchell*, 12 A.3d 179 (Md. Ct. Spec. App. 2011) (under New York law, the divorce decree did not merely raise a presumption of paternity but instead

Standing

UIFSA authorizes a stand-alone parentage action.[128] According to the official Comment to Section 402, either the mother or a man alleging himself to be the father of a child can initiate a parentage action. If the case is being initiated by a child support agency, an action to determine parentage will also seek establishment of a support order.[129]

Jurisdiction

For a tribunal to establish parentage and/or a support order, it must have personal jurisdiction over the parties.[130] A tribunal can assert personal jurisdiction over a nonresident respondent by means of UIFSA's long-arm provisions.[131] In a two-state UIFSA action, the petitioner in the initiating state seeks establishment of parentage and/or a support order in a responding state with personal jurisdiction over the respondent.[132]

Long-arm proceeding. When a person commits certain acts within a state, the state can exercise jurisdiction over the person, even though the person is not a resident of the state. The state can reach out its "long arm" to require the person to resolve issues related to that person's acts in the state. State law specifies which acts will subject an individual to the state's jurisdiction. Historically, most states had long-arm statutes that were applicable to child support cases.[133] UIFSA includes expansive long-arm provisions for establishing parentage and support that are now available in every state.[134] These provisions incorporate essentially every constitutionally permissible basis of obtaining authority over an out-of-state party:

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constituted a determination of the father's paternity. Under UIFSA, the father was therefore barred from raising nonparentage as a defense).

[128] Unif. Interstate Family Support Act § 402 (2008).

[129] *See* 81 Fed. Reg. 93,492, 93,494 (Dec. 20, 2016).

[130] *Kulko v. Superior Court of California*, 436 U.S. 84 (1978); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

[131] Unif. Interstate Family Support Act § 201 (2008).

[132] Unif. Interstate Family Support Act § 401 (2008).

[133] *See* Elizabeth Weinberg, *Obtaining Personal Jurisdiction Over a Nonresident from Within One's Own State,* in Margaret C. Haynes, ed., Interstate Child Support Remedies (U.S. Dep't of Health & Human Services, 1989).

[134] Unif. Interstate Family Support Act § 201 (2008).

- The individual is personally served with the appropriate citation, summons, or notice within the forum state;[135]

- The individual submits to the jurisdiction of the forum state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;[136]

- The individual resided with the child in the forum state;

- The individual resided in the forum state, and provided prenatal expenses or support for the child;

- The child resides in the state as a result of the acts or directives of the individual;[137]

- The individual engaged in sexual intercourse in the forum state, and the child may have been conceived by that act of intercourse;[138]

- The individual asserted parentage in the [putative father registry] maintained by the appropriate agency in the forum state;[139] or

- There is another basis consistent with the constitutions of the forum state and the United States for the exercise of personal jurisdiction.[140]

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[135] Section 201(a)(1) codifies the holding in *Burnham v. Superior Court,* 495 U.S. 604 (1990).
[136] *See, e.g., Child Support Enforcement Agency v. A.P.*, 309 P.3d 973 (Haw. Ct. App. 2013) (where father appeared at the hearing telephonically and asked for genetic testing, he had submitted to the court's jurisdiction).
[137] *See, e.g., McGlothen v. Superior Court*, 175 Cal. Rptr. 129, 121 Cal. 3d 106 (1981); *In re Marriage of Malwitz*, 99 P3d. 56 (Colo. Ct. App. 2004); *Miles v. Perroncel*, 598 So. 2d 662 (La. Ct. App. 1992); *Ford v. Durham*, 624 S.W.2d 737 (Tex. Ct. App. 1981); *Bergdoll v. Whitley*, 598 S.W.2d 932 (Tex. Civ. App. 1980); *Franklin v. Virginia Dep't of Social Servs.*, 497 S.E.2d 881 (Va. App. 1998). *See also McNabb ex. rel. Foshee v. McNabb*, 65 P.3d 1068 (Kan. App. 2003) (allegations of abuse were not enough to be construed as directives or acts).
[138] *See, e.g., Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. Ct. App. 1996). *See also DeWitt v. Lechuga*, 393 S.W.3d 113 (Mo. Ct. App. 2013) (where mother and father reside in Missouri, and child was conceived and born in Missouri but lives in California, Missouri has subject jurisdiction over paternity establishment and support under UIFSA but lacks jurisdiction over custody or parenting time issues). *See also C.L. v. W.S.*, 968 A.2d 211 (N.J. App. Div. 2011) (under a similar long arm provision within the Uniform Parentage Act, the court held that it did not violate due process to find personal jurisdiction where alleged father had sexual intercourse in New Jersey in 1986 that resulted in conception of now adult child with cerebral palsy. His substantial contacts with New Jersey during his engagement to the plaintiff, including his purposeful availment of the privilege of engaging in sexual activities within New Jersey, meant that "he should reasonably [have] anticipate[d] being hailed into court [in New Jersey] to respond to a claim for a declaration of paternity and support if those activities resulted in the conception of a child.").
[139] *See, e.g., Shirley D. v. Carl D.,* 224 A.D.2d 60, 648 N.Y.S.2d 650 (1996).
[140] *See, e.g., Kulko v. Superior Court of California*, 436 U.S. 84 (1978); *Ex Parte W.C.R.*, 98 So. 3d 1144 (Ala. Civ. App. 2012) (mother failed to prove any constitutional basis for jurisdiction); *McCubbin v. Seay,* 749 So. 2d 1127 (Miss. Ct. App. 1999) (mere presence of child insufficient

Note that personal jurisdiction over a nonresident respondent is subject to challenge. The respondent may argue that the facts of the case do not satisfy one of UIFSA's long-arm bases. If the respondent challenges the tribunal's exercise of personal jurisdiction, the child support attorney should be familiar with the facts of the case and how the respondent's actions satisfy both UIFSA and due process. While it might be possible to assert long-arm jurisdiction over the respondent, the petitioner can choose to use UIFSA's two-state procedures if more appropriate.[141]

Two-state proceeding. If long-arm jurisdiction is not available or appropriate, a petitioner can use the two-state process under UIFSA to seek a determination of parentage and/or a support order in a state with personal jurisdiction over the respondent.[142] This will usually be the state where the respondent resides.

Long-Arm, One-State Establishment Proceeding

Role of child support agency. If the child support agency providing services to a petitioner determines that the noncustodial parent is in another jurisdiction, it must decide whether it is appropriate to use its one-state remedies to establish parentage and/or establish a support order. If it decides to establish parentage and/or support using the long-arm provisions of UIFSA, the agency will work with the child support attorney to file the appropriate pleadings in the appropriate tribunal. The respondent must receive notice of the proceeding.

Choice of law. In a long-arm, intrastate establishment proceeding, the procedural and substantive law of that state applies, including its requirements for service of process and its support guidelines.[143]

Application of UIFSA. If a tribunal is exercising personal jurisdiction over a nonresident, the tribunal may receive evidence from outside the state pursuant to Section 316, communicate with a tribunal outside the state pursuant to Section 317,

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basis for personal jurisdiction); *Katz v. Katz*, 707 A.2d 1353 (N.J. Super. 1998); *Isaacson v. Fenton*, 1998 Tenn. App. LEXIS 513, C/A NO. 03A01-9804-JV-00119, 1998 WL4296S4 (Tenn. Ct. App. July 30, 1998) (an alleged obligor's one 10-day visit in the forum state is not sufficient contact between the nonresident and the forum state to satisfy due process requirements for assertion of long-arm jurisdiction).

[141] Some responding state child support agencies return petitions asserting that the initiating state failed to assert long-arm jurisdiction over the respondent in available situations. This is not permissible under UIFSA or federal regulations. The child support agency in the responding state is not allowed to second-guess the remedy selected by the petitioner. *See* OCSE-AT-20-14: Updated Interstate Child Support Policy, "Establishment of Parentage and Support," at 8 (Nov. 18, 2020).

[142] Unif. Interstate Family Support Act § 301 (2008). *See In re Peck*, 82 Wash. App. 809, 920 P.2d 236 (1996) (where a Washington court cannot obtain personal jurisdiction over a nonresident respondent, UIFSA provides an alternate mechanism for establishing, enforcing, or modifying a support order).

[143] Unif. Interstate Family Support Act § 210 (2008).

and obtain discovery through a tribunal outside the state pursuant to Section 318. In all other respects, Articles 3 through 6 of UIFSA do not apply.[144]

Two-State Establishment Proceeding

Filing the action. UIFSA permits a petitioner to file the UIFSA petition directly in a tribunal of another state or foreign country with jurisdiction over the respondent.[145] A parallel provision requires the responding tribunal to act on any direct filing received.[146] This direct filing procedure is the process most often used.

Alternatively, UIFSA provides that a petitioner may file a petition in an initiating tribunal for forwarding to a responding tribunal with personal jurisdiction over the respondent.[147] Although available, this process is rarely used.

Initiating agency. In a Title IV-D intergovernmental case, federal regulations outline a number of responsibilities for the initiating child support agency.[148] If the agency determines that the noncustodial parent is in another jurisdiction and it is not appropriate to use a one-state remedy, it must forward intergovernmental pleadings to the "appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action if one-state remedies are not appropriate."[149] The responding state agency must then take appropriate action on the petition, which may include filing the petition with a tribunal with personal jurisdiction over the respondent.[150] For central registry address information, check the federal Intergovernmental Reference Guide (IRG): Policy Profiles and Contacts.[151]

Pleadings. If a party is seeking to establish parentage or establish a support order, UIFSA requires the party to file a petition.[152] Unless subject to an order for nondisclosure,[153] the petition must include, to the extent known, the parties' names, residential addresses, and Social Security numbers, as well as the name, sex, residential address, Social Security number, and date of birth of

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[144] *Id*.
[145] Unif. Interstate Family Support Act § 301(b) (2008). *See In re Peck*, 920 P.2d 236 (Wash. App. 1996) (where a Washington court cannot obtain personal jurisdiction over a nonresident respondent, UIFSA provides an alternate mechanism for establishing, enforcing, or modifying a support order).
[146] Unif. Interstate Family Support Act § 305(a) (2008).
[147] *Id*.
[148] 45 C.F.R. § 303.7(c) (2019).
[149] *See* 45 C.F.R. § 303.7(c)(4)(ii) (2019).
[150] 45 C.F.R. § 303.7 (2019).
[151] The IRG is available online through the OCSE website, https://www.acf.hhs.gov/css/contact-information/intergovernmental-reference-guide-irg.
[152] Unif. Interstate Family Support Act § 311(a) (2008).
[153] Unif. Interstate Family Support Act § 312 (2008).

each child for whom support is sought.[154] The petition must specify the relief sought.[155]

The petition and accompanying documents must conform substantially with the requirements that federal law sets for cases filed by a support enforcement agency.[156] OCSE has developed a forms matrix that identifies federal forms that should be forwarded in various intergovernmental actions.[157] For the initial establishment of a support order, the child support agency should send the following documents to the responding agency: Child Support Enforcement Transmittal # 1— Initial Request, Uniform Support Petition, General Testimony, Child Support Agency Confidential Information Form, and Personal Information Form for UIFSA § 311. If the petitioner is also seeking parentage establishment, the Declaration in Support of Parentage should also be completed.[158]

There is no requirement that the petitioner verify the petition. However, in order for an affidavit, a document substantially complying with the federally mandated forms, or a document incorporated by reference in any of them to be admissible in evidence, it must be given under penalty of perjury.[159] Where appropriate, the federal intergovernmental forms contain language indicating that, under penalty of perjury, all information and facts stated in the document are true to the best of the signatory's knowledge and belief. Note that an attorney's signature on the Uniform Support Petition is not necessary.[160]

Responding agency. The child support agency in the responding state must establish a central registry for receiving incoming intergovernmental IV-D cases. After reviewing the submitted documentation for completeness, the central registry must acknowledge receipt and identify any missing information. However, it must continue to process the case, including forwarding the case to the appropriate local agency for any action that can be taken pending a response from the initiating child support agency.[161]

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[154] Unif. Interstate Family Support Act § 311(a) (2008). Although UIFSA itself does not mandate particular forms, it does give evidentiary weight to pleadings and supporting documents that substantially comply with federal forms. Unif. Interstate Family Support Act § 316(b) (2008).
[155] Unif. Interstate Family Support Act § 311(b) (2008).
[156] Unif. Interstate Family Support Act § 311(b) (2008).
[157] *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/intergovernmental_forms_matrix.pdf.
[158] The federal intergovernmental forms and instructions are available on OCSE's website at https://www.acf.hhs.gov/css/policy-guidance/omb-approved-standard-intergovernmental-child-support-enforcement-forms. The forms are also accessible through the statewide child support system.
[159] *See* Unif. Interstate Family Support Act § 316(b) (2008).
[160] For responses to the most frequently asked questions regarding use of the intergovernmental forms in establishment cases, *see* OCSE-PIQ-20-01: Using the Intergovernmental Forms for Case Processing (Feb. 13, 2020). *See* the section herein on International Support Cases for a discussion of use of the federal forms in cases from foreign countries.
[161] *See* 45 C.F.R. § 303.7(b) (2019).

Federal regulations outline a number of responsibilities for the responding child support agency.[162] The agency cannot second guess a decision by the initiating agency not to use one-state remedies available under its law. Attorneys for the responding child support agency may want to help the agency develop a checklist to assist caseworkers in their review of documentation to ensure that all needed documents have been received from the initiating agency prior to any proceeding before a responding tribunal. For example, in a parentage establishment case, the attorney can tell the agency whether the tribunal typically requires a copy of the child's birth certificate as evidence. The responding agency must provide the same services it would in an intrastate IV-D case, including legal assistance.

Choice of law. In a two-state proceeding, UIFSA specifically directs the responding tribunal to apply its own procedural and substantive law, including its child support guidelines.[163]

Responding tribunal. Generally, a responding tribunal will hear and decide an interjurisdictional parentage or child support case just as it would any intrastate case.[164] Therefore, although UIFSA offers special rules of evidence and procedure to assist in securing information from parties and other tribunals,[165] the tribunal's duties do not differ much from the role it would play in a local matter.

Notwithstanding local law or procedures, a responding tribunal must:

- Include in the support order, or accompanying documents, a copy of the calculations on which the child support order is based;[166]
- Not condition the support obligation on compliance with a visitation order;[167] and
- Apply UIFSA's evidentiary provisions and not require the petitioner's presence. [168]

The child support attorney should request that the tribunal make specific findings in its order regarding the bases for jurisdiction over the respondent and the method of service. Such findings make it more likely that the orders will be upheld on review.

[162] *See* 45 C.F.R. § 303.7(d) (2019).
[163] Unif. Interstate Family Support Act § 303 (2008).
[164] Unif. Interstate Family Support Act § 305(b) (2008).
[165] Unif. Interstate Family Support Act §§ 316 – 318 (2008).
[166] Unif. Interstate Family Support Act § 305(c) (2008).
[167] Unif. Interstate Family Support Act § 305(d) (2008).
[168] Unif. Interstate Family Support Act §§ 316 and 318 (2008).

The responding tribunal must send copies of its order to the petitioner, the respondent, and the initiating tribunal, if there was one.[169] Also, the tribunal will have to follow its state procedure for entry of the order into the State Case Registry (SCR) maintained by the state IV-D agency.[170] This action makes relevant information about the order and the parties available for enforcement purposes within the state and nationwide once the SCR data is forwarded to the Federal Case Registry.

Nonparentage as a Defense

UIFSA precludes a party from raising nonparentage in a UIFSA proceeding when parentage already has been determined by or pursuant to law.[171] That means that the child support attorney in the responding jurisdiction will need to research the law of another state or foreign country if the respondent raises a challenge. For example, does a divorce decree requiring the respondent to pay support constitute a presumption of parentage or a determination of parentage?[172] PRWORA required states to enact specific laws and procedures related to paternity establishment as a condition of federal funding.[173] Several of the provisions are relevant in deciding whether there has been a determination of parentage "by or pursuant to law," as required by UIFSA. For example, states must have laws and procedures providing the following:

- A voluntary acknowledgment constitutes a legal finding of paternity, unless withdrawn within a 60-day rescission period;
- Tribunals must give full faith and credit to paternity acknowledgments properly executed in another state; and
- A state cannot require judicial or administrative proceedings to ratify an unchallenged acknowledgment of paternity.[174]

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[169] Unif. Interstate Family Support Act, § 305(e) (2008).
[170] *See* Chapter Five: Location of Case Participants and Their Assets for information about the State Case Registry.
[171] Unif. Interstate Family Support Act § 315 (2008).
[172] *See Dep't of Human Res. v. Mitchell*, 12 A.3d 179 (Md. Ct. Spec. App. 2011) (when an order is registered for modification, it is not the law of the registering tribunal that applies to whether nonparentage may be raised as a defense. It is still the law of the state that issued the registered order. To ignore the issuing state's parentage determination would "frustrate the purpose of UIFSA and the system of interstate cooperation and respect that the uniform law represents.").
[173] Note that the PRWORA acknowledgment provisions are not limited to children born to unmarried parents. They also extend to children born during a marriage. Some commentators, however, voice concern that a potential conflict exists for a child born as a result of an extramarital relationship. In 42 U.S.C. § 666(a)(5)(C)(iv), states are required to give full faith and credit to paternity acknowledgments. Yet, in 42 U.S.C. § 666(a)(11), states are mandated to give full faith and credit to paternity determinations, including those that arise by operation of law; in some states that would include children born during marriage.
[174] 42 U.S.C. § 666(a)(5) (2018). The parents' completion of a voluntary paternity acknowledgment creates a conclusive finding of paternity unless either signatory rescinds his or

Where there was a prior order of support with a paternity determination, or a paternity determination made pursuant to a divorce proceeding, and no challenge to the determination was made for children born during the marriage, courts have held that the obligor cannot seek genetic testing in the responding tribunal.[175]

Challenging a decree on constitutional due process grounds is always permissible.[176] The tribunal also might be asked to decide whether a UIFSA petitioner, including the child support agency or child, is bound by a prior parentage determination in an action to which it was not a party.[177]

Temporary Support Order

UIFSA Section 401 authorizes a tribunal to issue a temporary support order in certain circumstances. The bases for a temporary support order are consistent with those under the Uniform Parentage Act.[178]

Simultaneous Proceedings

Because UIFSA permits either parent or a support enforcement agency to file an action, there might be instances in which proceedings are filed at roughly the same time in different states. UIFSA sets out clear instructions for when a tribunal can and cannot exercise jurisdiction if there is an action pending elsewhere.

Under UIFSA, a tribunal can exercise jurisdiction to establish an order only when:

- The pleading in the forum state was filed before expiration of the time allowed in the other state or foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or foreign country;

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her acknowledgment "within the earlier of 60 days or the date of an administrative or judicial proceeding to establish a support order in which the signatory is a party." Either party can rescind during this period. Beyond that time, a contest must be pursued in a state tribunal, and must be based on fraud, duress, or material mistake of fact. The person challenging the acknowledgment has the burden of proof, and the tribunal cannot stay a signatory's support obligation during the contest.

[175] *See, e.g.*, *State v. Hanson*, 725 So. 2d 514 (La. Ct. App. 1998); *Dep't of Human Res. v. Mitchell*, 12 A.3d 179 (Md. Ct. Spec. App. 2011); *Beyer v. Metze*, 482 S.E.2d 789 (S.C. 1997).

[176] *See, e.g., South Carolina Dep't of Social Servs. v. Bess*, 489 S.E.2d 671 (S.C. 1997).

[177] For a more detailed discussion of these issues, see the Comments to the Uniform Parentage Act (2017). The Revised UPA may be found on the ULC website at https://www.uniformlaws.org/ (last visited Feb. 6, 2021).

[178] Unif. Interstate Family Support Act § 401(b) (2008). For a discussion of the UPA 2017, see Chapter Nine: Establishment of Parentage.

- The contesting party timely challenges the exercise of jurisdiction in the other state or foreign country; and

- If relevant, the forum state is the child's home state.[179]

According to the official Comment, this section "requires cooperation between, and deference by, state tribunals to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in another state or foreign country concerning the same child."[180]

ESTABLISHMENT VERSUS MODIFICATION

The federal Full Faith and Credit for Child Support Orders Act[181] has an expansive definition of "modification." Modification means "a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order."[182] As discussed below, some modifications are permissible under UIFSA; others are not. One issue that has arisen is whether certain tribunal actions are considered establishment or enforcement actions or whether they are considered modifications.

Order Silent on Support

There is case law holding that a paternity order that is silent with regard to support does not constitute a child support order under UIFSA.[183] Therefore, the appropriate action would be an establishment action. If there is a divorce decree that is silent on the issue of support, the consensus among child support practitioners is that a subsequent action seeking a support order is considered an establishment action.[184]

$0 Support Order

If there is a support order for $0, the consensus among child support practitioners is that any increase in the support amount is considered a modification. Some attorneys will do additional research if the order contains

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[179] Unif. Interstate Family Support Act § 204(a) (2008). Although similar to the Uniform Child Custody Jurisdiction Act (UCCJA), UIFSA selects a priority scheme based on "child's home state" (the Parental Kidnapping Prevention Act model) over the premise of "first filed" (the UCCJA election). The latter tiebreaker is used if neither action was filed in the child's home state.
[180] *See* Comment to Unif. Interstate Family Support Act § 204(a) (2008).
[181] 28 U.S.C. § 1738B (2018).
[182] *Id*.
[183] *See Ronny M. v. Nanette H.*, 303 P.3d 392 (Alaska 2013).
[184] *See, e.g., Office of Attorney Gen. v. Long*, 401 S.W.3d 911 (Tex. App. 2013).

language such as “until such time as the respondent is before the court” or other language that suggests a lack of personal jurisdiction over the respondent.

Suspended Order

If there is a support order that has been suspended, case law supports the view that reinstatement of the order is considered a modification.[185]

Issue of Support Reserved

Where the issue of support is reserved, there appears to be no consensus regarding whether such an order is considered a support order. Some tribunals will want to know the basis for the reservation and whether the issuing tribunal had personal jurisdiction over the respondent. Although UIFSA does not provide specific guidance in this situation, the Act does direct the forum tribunal to use the issuing state’s law to ascertain the nature of a support order.[186] Thus, it appears that the existence of an order in these situations that is entitled to recognition under UIFSA may vary by state.

Addition of Medical Support

If a support order does not address health care, any addition of a provision requiring health insurance coverage or reimbursement of medical expenses is considered a modification of the support order.

Temporary Support Order

UIFSA clearly provides that a temporary support order, issued *ex parte* or pending resolution of a jurisdictional conflict, does not create CEJ in the issuing tribunal. Thus, in those instances, it will be necessary to establish a support order rather than modify the temporary order.[187]

However, a temporary support order, which is not issued *ex parte* or pending resolution of a jurisdictional issue, meets UIFSA’s definition of an enforceable support order[188] As such, a tribunal cannot modify the order unless it has CEJ.[189]

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[185] *See Logan v. Gray*, 1997 WL 295706 (Del. Fam. Ct., Feb. 10, 1997) (where there is a divorce decree that is subsequently amended to suspend the support obligation, any subsequent action to order a support amount should be through a modification action, not an establishment action).
[186] Unif. Interstate Family Support Act § 604(a) (2008).
[187] Unif. Interstate Family Support Act § 205(e) (2008).
[188] *See* Unif. Interstate Family Support Act § 102(28) (2008).
[189] *See Johnson v. Bradshaw*, 86 A.3d 760 (NJ. Super. 2014) (the court held that entering an order, as requested by the petitioner, would be a modification of the 2011 temporary support order and not a continuation of the 2011 hearing. Because neither defendant, plaintiff, nor the child lives in New Jersey, the court no longer has continuing, exclusive jurisdiction to modify the child support order). *See also Roper v. Roper,* 594 S.W.3d 211 (Ky. App. 2019) (entry of a final child support order, following a court’s temporary order, is considered a modification. Although no

MODIFICATION OF U.S. ORDERS UNDER UIFSA

Along with the state's legal criteria for when it is appropriate to modify an order, the child support attorney must understand the role that UIFSA plays in the modification of orders. Its provisions set forth who can seek modification of a support order issued by a state or foreign country and where the modification should take place. This section discusses modification of a U.S. support order; a later section discusses modification of a foreign support order.

Standing

Pursuant to UIFSA, a petitioner can be the obligee or the obligor.[190] Therefore, UIFSA's modification provisions can be used to seek downward adjustments as well as increases in support.

Jurisdiction

To modify a support order, the tribunal must have personal jurisdiction as well as subject matter jurisdiction. There is a flowchart outlining UIFSA's modification rules in Exhibit 13-3. The child support attorney should keep in mind that the bases for custody jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and jurisdiction to modify child support under UIFSA and FFCCSOA are different.[191]

Continuing, exclusive jurisdiction to modify a child support order. The cornerstone of both UIFSA and FFCCSOA is continuing, exclusive jurisdiction (CEJ). As noted earlier, Section 205(a)(1) provides that a tribunal that has issued a controlling order under UIFSA has CEJ to modify the order as long as the state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued. The residence of the parties at the time of the filing of the request for modification determines whether CEJ exists.[192] Section 205(a)(2) provides that even if a state is not the residence of the obligor, individual obligee, or child, the issuing tribunal has CEJ to modify its order if the parties consent in a record or in open court that the tribunal may continue to exercise jurisdiction to modify its order. The most common examples of when

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party continued to reside in the state, UIFSA allows a court to continue exercising jurisdiction if the "parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.")

[190] Unif. Interstate Family Support Act § 301 (2008).

[191] *See* Comment to Unif. Interstate Family Support Act § 611 (2008). *See, e.g., DeWitt v. Lechuga*, 393 S.W.3d 113 (Mo. Ct. App. 2013); *Crenshaw v. Williams*, 710 S.E.2d 227 (N.C. App. 2011); *Lesem v. Mouradain,* 445 S.W.3d 366 (Tex. App. 2013). *See also Abu-Dalbouh v. Abu-Dalbouh,* 547 N.W.2d 700 (Minn. Ct. App. 1996) (the jurisdictional bases specified in the UCCJA and UIFSA differ. Minnesota had jurisdiction to decide custody concerning all of the parties' children, but it only had jurisdiction to order child support for the parties' oldest child, who was conceived in Minnesota and had been domiciled with the father there. None of UIFSA's jurisdictional bases applied to the two younger children who had been conceived overseas.)

[192] Unif. Interstate Family Support Act § 205(a)(1) (2008).

parties may consent to the issuing state's retaining modification jurisdiction, even when no one lives there, are where the parties want the same state to have jurisdiction over both spousal and child support or where the parties have moved just across the state line and continue to have a strong affiliation with the issuing state, perhaps through employment. If a tribunal has CEJ, it cannot decline jurisdiction to modify based on forum *non conveniens*.[193]

In the rare event there is more than one support order, a tribunal must first determine the controlling order. The tribunal that issued the controlling order is the tribunal with exclusive jurisdiction to modify.

Consent to shift modification jurisdiction. The individual parties may consent to shift modification jurisdiction from the CEJ tribunal to a tribunal in another jurisdiction. UIFSA requires that they file their consents in a record in the issuing tribunal for a tribunal in the state where the child resides or a state with personal jurisdiction over the parties to modify the support order and assume CEJ.[194] According to the Comment to Section 611:

> Subsection (a)(2), which authorizes the parties to terminate the continuing, exclusive jurisdiction of the issuing State by agreement, is based on several implicit assumptions. First, the subsection applies even if the issuing tribunal has continuing, exclusive jurisdiction because one of the parties or the child continues to reside in that State. ... Also implicit in a shift of jurisdiction over the child-support order is that the agreed-upon tribunal must have subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that the other party submits to the personal jurisdiction of that forum. In short, UIFSA does not contemplate that absent parties can agree to confer jurisdiction on a tribunal without a nexus to the parties or the child.[195]

Most courts have interpreted the consent requirement to be an express consent.[196] Courts have disagreed on whether a stipulation in a divorce decree

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[193] *See Lesem v. Mouradain,* 445 S.W.3d 366 (Tex. App. 2013) (UIFSA, unlike UCCJEA, provides no mechanism for a tribunal to decline to exercise its CEJ and transfer its jurisdiction to modify support to another state tribunal); *Rosen v. Lantis*, 938 P.2d 729 (N.M. 1997) (where a tribunal had issued the only support order and had continuing, exclusive jurisdiction, UIFSA does not allow the court to transfer the case to another state on the basis of forum *non conveniens* simply because the other state has jurisdiction over custody).

[194] Unif. Interstate Family Support Act § 205(b)(1); § 611(a)(2) (2008). *See, e.g., Lombardi v. Van Deusen***,** 938 N.E.2d 219 (Ind. Ct. App. 2010).

[195] Comment to Unif. Interstate Family Support Act § 611 (2008).

[196] *See, e.g., Stone v. Davis*, 148 Cal. App. 4th 596, 55 Cal. Rptr. 3d 833 (2007) (parties' actions in filing matters in Alabama did not constitute the required consent that must be filed in the issuing tribunal of California to shift CEJ to modify support. It is not enough that the parties be "on notice." "This interpretation ignores the statute's clear language and renders the requirement of filing a written consent in the issuing court superfluous."); *Earls v. Mendoza*, 2011 Tenn. App. LEXIS 430, No. W2010–01878–COA–R3–CV, 2011 WL 3481007 (Tenn. Ct. App. Aug. 10, 2011) (silent acquiescence is not the equivalent of consent in a record or in open court for the trial court

constitutes a consent to shift CEJ to modify support.[197] As discussed later, there is an exception to the consent requirement in international cases.[198]

Issuing tribunal lacks continuing, exclusive jurisdiction. If no one resides in the state that issued the controlling child support order and the parties have not consented for the tribunal to continue to exercise jurisdiction to modify its order, then the party seeking modification must register the support order in a state – other than the petitioner's state – that has jurisdiction over the respondent;[199] usually that means registering the support order in the state where the respondent lives. This approach is referred to as "playing away."[200] There are two exceptions to the "play away" rule in the context of registration:

- The parties consent for a state with personal jurisdiction over one of the parties or the state where the child resides to assume modification jurisdiction.[201]

- All of the parties reside in the registering state and the child does not reside in the issuing state.[202]

Long-arm jurisdiction to modify. The long-arm bases for jurisdiction found in Section 201(a) cannot be used to establish a basis for modification. Section 201(a) applies only to parentage, support establishment, and enforcement proceedings.[203] Section 201(b) emphasizes that a tribunal may not apply the long-arm provisions of Section 201, or any other law of the forum, as a way to avoid the limitations of Section 611. The limitations on the exercise of subject matter jurisdiction provided by Sections 611 and 615 must be observed irrespective of the existence of personal jurisdiction over the parties.[204] Long-arm personal jurisdiction over the respondent, standing alone, is not sufficient to grant

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to exercise jurisdiction to modify). See also *Goodman v. Craig*, No. 2009-CA-001565-ME, 2010 WL 2428745 (Ky. Ct. App. 2010) (where case was transferred from issuing state and second state modified the support order, prior to enactment of UIFSA, written consent to transfer CEJ was not a prerequisite).

[197] *Compare Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011) (parties' stipulation in an agreement that all matters ancillary to the divorce would be litigated in Rhode Island did not constitute a consent by the parties to shift child support modification jurisdiction to Rhode Island) *with Kendall v Kendall*, 340 S.W.3d 483 (Tex. App. 2011) (written stipulation in New York divorce decree that future disputes be resolved in Texas reflects parties' intent to consent to transfer CEJ to new forum).

[198] Unif. Interstate Family Support Act § 615 (2008). *See* the discussion on international cases, herein, for more information.

[199] *See* Unif. Interstate Family Support Act § 611(a)(1) (2008).

[200] Unif. Interstate Family Support Act § 611 (2008). See also the official Comment to this section.

[201] *See* Unif. Interstate Family Support Act § 611(a)(2) (2008). This subsection allows a state to modify a registered support order of another state if the registering state is the residence of the child, or if it has personal jurisdiction over one of the parties, and both parties have filed consents in the issuing tribunal for the state to modify the support order and assume CEJ.

[202] Unif. Interstate Family Support Act § 613 (2008).

[203] Unif. Interstate Family Support Act § 201(a) (2008).

[204] Unif. Interstate Family Support Act § 201(b) (2008). See also the official Comment for this section.

subject matter jurisdiction to a tribunal of the state of residence of the petitioner who is seeking a modification.[205]

Multiple orders but no tribunal with continuing, exclusive jurisdiction. In the rare event there is more than one support order, but no tribunal can claim CEJ, the responding jurisdiction with jurisdiction over the respondent must establish a new order that will become the controlling order in the case.[206]

Modification of spousal support. The CEJ rules requiring residence of an individual party or child only apply to modification of child support orders. UIFSA has a separate provision governing modification of spousal support orders.[207] Only the original issuing tribunal has CEJ to modify the spousal support order.[208] Sometimes spousal support (alimony) and child support are combined in an undifferentiated amount. Two cases that addressed this issue held that UIFSA's limitation on spousal support modification applied to the entire order amount, thereby prohibiting the tribunal from modifying child support.[209]

Pleadings

In an intergovernmental case, if the petitioner is seeking modification in the issuing state because it has CEJ, the child support agency will send Interstate Child Support Enforcement Transmittal #1— Initial Request and ask the responding state to modify, or modify and enforce, its own order. The Intergovernmental Forms Matrix also requires the child support agency to send the following documents to the responding agency: Uniform Support Petition, General Testimony, Child Support Agency Confidential Information Form, and Personal Information Form for UIFSA § 311.[210] If a child support attorney is assisting in the completion of the petition, the attorney should ensure that the petition contains an allegation of the specific circumstances that have changed,

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[205] *See* the official Comment to Unif. Interstate Family Support Act § 201(b) (2008). *See also Mattes v. Mattes,* 60 So. 3d 887 (Ala. Civ. App. 2010) (although the court had personal jurisdiction over the noncustodial parent because he was served while present in Alabama, the court lacked subject matter jurisdiction to modify the order because the petitioner who had registered the order was not a nonresident); *Roberts v. Bedard,* 357 S.W. 3d 554 (Ky. Ct. App. 2011); *LeTellier v. LeTellier*, 40 S.W.3d 490 (Tenn. 2001), *reversing* 1999 WL 732487 (Tenn. App. 1999).

[206] Unif. Interstate Family Support Act § 207 (2008).

[207] Unif. Interstate Family Support Act § 211 (2008).

[208] *See Midyett v. Midyett*, 2013 Ark. App. 597 (2013) (the tribunal that issued the alimony order retained continuing, exclusive jurisdiction to modify it, regardless of the location of the parties). *See also Olson v. Olson*, FSTFA104018452S, 2020 Conn. Super. LEXIS 386 (Feb. 21, 2020) (Connecticut trial court lacked jurisdiction under UIFSA to modify spousal support of order issued by the United Kingdom that had been recognized in Connecticut under comity.)

[209] *See Hibbitts v. Hibbitts*, 749 A.2d 975 (Pa. Super. Ct. 2000); *State ex rel. Kirby v. Jacoby*, 975 P.2d 939 (Utah Ct. App. 1999).

[210] *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/intergovernmental_forms_matrix.pdf.

not simply a broad allegation. Note that an attorney's signature on the Uniform Support Petition is not necessary.[211]

If the petitioner is registering an order for modification in a second state, UIFSA Section 311, Pleadings and Accompanying Documents, requires a petition. Section 602 of UIFSA lists the additional required documents for registration. See the discussion that follows.

Registration for Modification of a State Support Order

UIFSA Section 609, Procedure to Register Child-Support Order of Another State for Modification, allows a party or support enforcement agency to register a support order issued by one state in a second state for the purpose of modification.

Jurisdiction. There are three circumstances in which a tribunal may modify an order issued by another state, which has been registered in the tribunal's state for modification. It is appropriate for a child support attorney to help the agency train caseworkers on these jurisdiction provisions to ensure the caseworkers forward a petition seeking registration for modification to the appropriate forum.

Jurisdiction to modify another state's order when parties live in the same state. Section 613 of UIFSA provides that if all of the individual parties reside in the same state and the child does not reside in the issuing state, the state where the parties reside has jurisdiction to modify the order once a party registers the order for modification.[212]

A tribunal exercising jurisdiction pursuant to Section 613 must apply the UIFSA provision in Articles 1, 2, and 6, as well as the procedural and substantive law of the state. However, Articles 3, 4, 5, 7, and 8 of UIFSA do not apply.[213]

Jurisdiction to modify another state's order when parties live in different states. UIFSA Section 611, Modification of Child-Support Order of Another State, addresses how a tribunal obtains authority to modify another state's child support order when Section 613 does not apply. Pursuant to Section 611(a)(1), if a party or support enforcement agency has registered an order for modification,

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[211] For responses to the most frequently asked questions regarding use of the intergovernmental forms in establishment cases, *see* OCSE-PIQ-20-01: Using the Intergovernmental Forms for Case Processing (Feb. 13, 2020). *See* the section herein on International Support Cases for a discussion of use of the federal forms in cases from foreign countries.

[212] *See Pahnke v. Pahnke*, 88 A.3d 432 (Vt. 2014) (tribunal had jurisdiction to modify when the issuing state no longer had CEJ and the parties resided in the registering state. Father's subsequent move out of state did not nullify the basis for jurisdiction). *See also Hart v. Hart*, 836 S.E.2d 244 (N.C. App. 2019).

[213] Unif. Interstate Family Support Act § 613(b) (2008).

the registering tribunal may modify the other state's order if the tribunal finds that the following three prerequisites are each met:

- Neither the child, the individual obligee, nor the obligor reside in the issuing state (if one of them did reside in that state, it would have CEJ for modification);
- The petitioner is a nonresident of the state in which modification is sought; and
- The registering tribunal has personal jurisdiction over the respondent.[214]

The child support attorney should pay close attention to the nonresidency requirement. In a number of reported decisions, the petitioner had attempted to register another state's order in the state where the petitioner resides and then modify the order. Often, the attempt was made in the context of also modifying custody terms of the order. Courts have made it clear that a petitioner may register an order in his or her own state for the purpose of modifying custody terms, but that such registration is not proper for the purpose of modifying child support terms.[215]

In addition, Section 611(a)(2) allows a tribunal to modify another state's order and assume CEJ when:

- The registering state is the residence of the child or an individual party who is subject to the personal jurisdiction of the registering tribunal; and
- All of the individual parties have filed consents in a record in the issuing tribunal for a tribunal of the registering state to modify the support order and assume CEJ.[216]

Documents required for registration of a state order. UIFSA Section 602, Procedure to Register Order for Enforcement, requires all of the following documents:

[214] *See Mattes v. Mattes*, 60 So. 3d 887 (Ala. Civ. App. 2010); *Patterson v. Patterson*, 20 So. 3d 65 (Miss. Ct. App. 2009) (court lacked subject matter jurisdiction to modify the order where, contrary to UIFSA's requirements, the petitioner registered the order in her own state of residence); *Crenshaw v. Williams*, 710 S.E.2d 227 (N.C. App 2011); *Gooss v. Gooss*, 951 N.W.2d 247 (N.D. 2020).
[215] *See, e.g., Crenshaw v. Williams*, 710 S.E.2d 227 (N.C. App. 2011).
[216] Unif. Interstate Family Support Act § 611(a)(2) (2008).

- A letter of transmittal requesting registration and modification.[217]

  A petitioner may use the federal Letter of Transmittal Requesting Registration[218] to seek registration for enforcement, registration for enforcement of arrears only, registration for modification, or registration for modification and enforcement.

- A petition or comparable pleading alleging the grounds for modification.[219]

  The federal Uniform Support Petition[220] may be used to request modification of a support order. There is a second section of the Petition that provides the grounds supporting the remedy sought in Section I. Included are checkboxes related to the timeframe since the order's last review or modification and to a change of circumstances since entry of the last order. There is space to explain any changed circumstances. It is advisable to include testimony and supporting documents regarding the basis for the changed circumstances, such as a change in income or increased medical expenses.

  Instructions to the Petition direct the petitioner to also attach the Personal Information Form for UIFSA § 311.[221]

- Two copies (of which one is certified) of the support order(s) to be registered, including any modification of the order.[222]

  If there has already been a determination of controlling order, the petitioner should register that order for modification. In the rare event there are multiple support orders and there has not been a determination of controlling order, UIFSA requires the petitioner to include a copy of every support order asserted to be in effect so that a tribunal can determine the controlling order.[223] The Act also requires the petitioner to specify the order alleged to be the controlling order and the amount of consolidated arrears, if any.[224]

- A sworn statement by the person requesting registration or a certified statement by the custodial of the records showing the amount of any arrears.

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[217] Unif. Interstate Family Support Act § 602(a) (2008).
[218] https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_r.pdf.
[219] Unif. Interstate Family Support Act § 609 (2008).
[220] https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_u.pdf.
[221] https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_pi.pdf.
[222] Unif. Interstate Family Support Act § 602(a) (2008).
[223] Unif. Interstate Family Support Act § 602(d) (2008).
[224] *Id*.

- The name of the obligor and, if known, the obligor's address and Social Security number, the obligor's employer name and address, any other source of income of the obligor, a description and the location of property of the obligor in the registering state not exempt from execution.

- Unless exceptional circumstances exist under UIFSA Section 312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.[225]

Completion of the federal Letter of Transmittal Requesting Registration provides the information required by UIFSA Section 602. According to instructions accompanying the federal Letter of Transmittal Requesting Registration, there must be a completed form for each registered support order. The child support attorney should advise caseworkers of the importance of an accurate completion of the Letter of Transmittal Requesting Registration. Tribunals have dismissed cases where there was no arrearage alleged, as required by the Act.[226] However, the absence of a transmittal letter is not fatal so long as the required information is provided.[227]

Some courts have held that a tribunal lacks subject matter jurisdiction to modify another state's order if the order is not registered in the state pursuant to Section 602.[228] In contrast, other courts have held that the registration requirements are procedural in nature. Therefore, a failure to meet all the statutory requirements does not deprive the court of subject matter jurisdiction.[229]

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[225] Unif. Interstate Family Support Act § 602(a)(2008).

[226] *See, e.g., In re Chapman*, 973 S.W.2d 346 (Tex. Ct. App. 1998) (the documentary requirements spelled out under UIFSA's registration provisions are mandatory. Petitioner's failure to submit a sworn statement or a certified statement by the custodian of the records showing the amount of any arrearage was a deficiency that should have resulted in the order not being registered).

[227] *See L.V. v. I.H.*, 123 So. 3d 954 (Ala. Civ. App. 2013).

[228] *See, e.g., Lamb v. Lamb,* 707 N.W.2d 423 (Neb. App. 2005) (the failure to register the Wyoming order precluded the trial court from having subject matter jurisdiction to modify the order. The appellate court also noted that the failure to properly register the order was only one reason for the lack of jurisdiction. The trial court also had no jurisdiction to modify the order because the petitioner was a resident of Nebraska and there was no consent of all the parties for Nebraska to modify the Wyoming order); *Auclair v. Bolderson,* 6 A.D.3d 892, 775 N.Y.S.2d 121 (N.Y. App. Div. 2004) (a Missouri noncustodial parent filed a petition in New York, where the custodial parent lived, for contempt of custody terms of a Florida order, and the custodial parent cross claimed to modify support terms of the order. The New York appellate court concluded that the failure to prove registration of the Florida order prevented the New York court from obtaining subject matter jurisdiction. The appellate court additionally noted the lack of consent to modify, which UIFSA requires because the custodial parent was a resident of New York).

[229] *See, e.g., Kendall v. Kendall,* 340 S.W.3d 483 (Tex. App. 2011) (where the parties had actual notice of the proceedings, expressly invoked the jurisdiction of the Texas court, and stipulated in the initial New York divorce judgment that further proceedings would take place in Texas, the fact that the petitioner did not meet all of the specific procedural registration requirements did not deprive the court of subject matter jurisdiction).

Registration procedure. On receipt of a petition for modification and the documents for registration, most states require the registering tribunal to file the support order(s) with the registry for foreign support orders or other appropriate registry. UIFSA requires that the nonmovant receive notice of the registration. The notice must inform the nonmovant:

- That a registered order is enforceable as of the date of registration in the same manner as an order issued by the registering tribunal;
- That a hearing to contest the validity or enforcement of the registered order must be requested within a specified number of days after notice (UIFSA suggests 20 days, but states have discretion in setting the number);
- 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
- The amount of any alleged arrearages.[230]

There are additional notice requirements in the rare event that the petitioner alleges the existence of two or more valid support orders.[231]

The nonmovant must challenge the registration, alleged arrears, or validity or enforcement of the alleged controlling order within the specified time period. If there is no timely contest or the contesting party does not establish a valid defense, the tribunal confirms the registered order.[232] After confirmation, UIFSA precludes further contest as to a matter that could have been asserted at the time of registration. Modification then proceeds as it would in a local matter. If the nonmovant requests a hearing, the registering tribunal must schedule the matter and give notice to the parties.

Evidentiary Provisions

UIFSA's evidentiary provisions in Sections 316, Special Rules of Evidence and Procedure, and 318, Assistance with Discovery, apply to a modification proceeding, regardless of whether it is pursuant to a petition for registration for modification or a pleading filed in the issuing state that has CEJ. In fact, UIFSA specifically provides that if the tribunal is exercising jurisdiction over a nonresident in a UIFSA proceeding or under other law of the state relating to a support order, the tribunal may receive evidence under Section 316, communicate with a tribunal outside the state under Section 317, and obtain discovery under Section 318.[233] Therefore, in a modification proceeding where

[230] Unif. Interstate Family Support Act § 605 (2008).
[231] Unif. Interstate Family Support Act § 605(c) (2008).
[232] Unif. Interstate Family Support Act §§ 606(b) and 607(c) (2008).
[233] Unif. Interstate Family Support Act § 211 (2008).

the parties live in different states, it is not necessary for the petitioner to be physically present in the forum state.

Choice of Law

When an order is registered for modification, the forum is to apply its own law, procedures, and defenses regarding modification.[234] Thus, the tribunal will apply its own threshold for determining whether modification is appropriate and, if so, apply its own support guidelines. For example, if a state conditions modification on a substantial change of circumstance or a numerical standard, such as a 25% change in the order amount, that standard applies to the registered order as well.[235] The forum cannot, however, change any term of the registered order that is not modifiable in the issuing state, including the duration of support.[236] To address case law that had arisen, Section 611, Modification of Child-Support Order of Another State, clarifies even further the choice of law regarding duration:

> In a proceeding to modify a child-support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.[237]

As a result of Section 611(d), a tribunal of a state where an order is registered cannot establish a new obligation once the duration of support has ended under the initial controlling order.[238]

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[234] Unif. Interstate Family Support Act § 611(b) (2008).

[235] For additional information on the basis for modification, see Chapter Twelve: Modification of Child Support Obligations.

[236] Unif. Interstate Family Support Act § 611(c), (d) (2008). *See, e.g., Holbrook v. Cummings*, 750 A.2d 724 (Md. Ct. Spec. App. 2000) (under UIFSA, the court is without power to modify a support order to terminate at the forum state's age of majority when that is not the issuing state's duration of support).

[237] Unif. Interstate Family Support Act § 611(d) (2008). The official Comment explains that the provision was added in 2001 in an effort to eliminate "scattered attempts" to undermine "a significant policy decision made when UIFSA was first promulgated." In other words, the 2001 amendment was simply a clarification of policy intended by the Uniform Law Commission since UIFSA's promulgation in 1992.

[238] *See, e.g., In re Marriage of Doetzl*, 65 P.3d 539 (Kan. Ct. App. 2003) (because the duration of child support was modifiable in the issuing state in only limited, specified situations, the duration of child support was not modifiable by the registering state when those limited, specified situations were not present); *In re Marriage of Schneider***,** 268 P.3d 215 (Wash. 2011) (court cannot modify order by requiring post-education support, which is allowed under the law of the registering state, when the duration of support is nonmodifiable under the law of the issuing state).

Assumption of CEJ

Once an order is modified under UIFSA, the forum tribunal assumes CEJ over the support order.[239] Within 30 days of an order modifying the child support order, the party obtaining the modification must file a certified copy of the order with the issuing tribunal that had CEJ over the earlier order and in each tribunal in which the party knows the earlier order has been registered.[240] The failure to file a certified copy with other tribunals does not affect the validity or enforceability of the modified order of the new CEJ tribunal.[241] All states must recognize this assumption of jurisdiction.[242] The new order is comprised of the newly modified terms, nonmodifiable terms of the original order, and arrearage amounts that accrued before modification, all of which are enforceable.[243]

Because UIFSA provisions leave it to each state to determine the appropriate tribunal for handling these matters, a court's order can subsequently be modified by an administrative agency where the state has appropriately assumed CEJ. The court that issued the original order is required by its own state law (UIFSA) to recognize the modified order and the loss of CEJ.

Void Order vs. Mistake of Law

With passage of FFCCSOA in 1994 and PRWORA's requirement in 1996 that states enact UIFSA, the existence of multiple valid orders for ongoing support has virtually disappeared. However, there are circumstances where a second current support order exists because the second tribunal was unaware of a prior order. There are also circumstances when a tribunal modifies an order contrary to the modification rules of UIFSA and there is a question about the validity of the modified order.

An issue over which courts have disagreed is the effect of an order issued contrary to FFCCSOA's and UIFSA's rules regarding modification jurisdiction. Are such orders void for lack of subject matter jurisdiction, or *res judicata,* if they are not timely appealed?

Subject matter jurisdiction is an indispensable element of any judicial proceeding. In the absence of subject matter jurisdiction, a court is without power to hear a case. As such, a party can raise the lack of subject matter jurisdiction at any time. The lack of subject matter jurisdiction can also be raised by the court *sua sponte*. Unlike personal jurisdiction, parties cannot waive subject matter jurisdiction, nor can they confer it where it otherwise does not exist.[244] "[[N]o

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[239] Unif. Interstate Family Support Act § 611(e) (2008).
[240] Unif. Interstate Family Support Act § 614 (2008).
[241] *Id*.
[242] Unif. Interstate Family Support Act § 612 (2008).
[243] *Id*.
[244] *See Sidell v Sidell*, 18 A.3d 499 (R.I. 2011).

action of the parties can confer subject-matter jurisdiction upon a . . . court" where the court has no authority to act.[245]

The majority of cases have held that UIFSA's rules regarding continuing, exclusive jurisdiction govern the subject matter jurisdiction of courts to modify child support orders.[246] As such, an order established contrary to the modification rules of UIFSA and FFCCSOA is void because of a lack of subject matter jurisdiction.[247]

Because lack of subject matter jurisdiction may be raised by a party at any time, if there is a question about the validity of a modification of an order, it is appropriate for the child support attorney to ask a tribunal with personal jurisdiction over the parties to rule on the validity of the modification. Any tribunal with personal jurisdiction over the parties and subject matter jurisdiction may make the determination of validity.[248] The attorney will determine how best to place that question before the court based on state laws, rules of procedure, and relevant case law. For example, one avenue is for the attorney in the issuing state to file a motion asking the tribunal that issued the second order or modified the original order to vacate its order on the ground that it is void for lack of subject matter jurisdiction. Another possible approach is for the attorney to ask a tribunal in their own state to rule on the validity of another state's order, if the tribunal has personal jurisdiction over both parties. Other states may require a different type of pleading. Keep in mind that only a tribunal can rule on the validity of an order; it is not a decision the attorney can make.[249]

However, some courts have resolved the question of the validity of a subsequent order differently. The minority view is that the modification rules of UIFSA and FFCCSOA do not convey subject matter jurisdiction.[250] The court in *Cepukenas*[251] held that a court is vested with subject matter jurisdiction by the state constitution. The legislature may enact statutes, such as UIFSA, which limit a court's exercise of subject matter jurisdiction. However, such legislative

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[245] *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).
[246] *See, e.g., Upson v. Wallace*, 3 A.3d 1148, 1156 (D.C. 2010); *Lamancusa v. Dep't of Revenue,* 250 So. 3d 812 (Fla. Dist. Ct. App. 2018); *Sidell v Sidell*, 18 A.3d 499 (R.I. 2011); *Lilly v. Lilly,* 250 P.3d 994 (Utah App. 2011).
[247] *See, e.g., McCarthy v. McCarthy*, 785 So. 2d 1138 (Ala. Civ. App. 2000); *Roberts v. Bedard,* 357 S.W.3d 554 (Ky. Ct. App. 2011); *Harvey v. Harvey*, 303 So. 3d 357 (La. App. 2020); *Otwell v. Otwell*, 56 So.3d 1232 (La. App. 3d Cir. 2011); *Bordelon v. Dehnert*, 770 So. 2d 433 (La. App. 2000), *writ denied*, 787 So. 2d 995 (La. 2001); *State ex rel. Harnes v. Lawrence*, 538 S.E.2d 223 (N.C. App. 2000); *In re J.R.S.*, No. 10-12-00142-CV, 2013 WL 3846352 (Tex. App. 2013) (mem. op.).
[248] *Clark v. Clark*, 918 N.W.2d 336 (Neb. App. 2018).
[249] *See* OCSE-AT-20-14: Updated Interstate Child Support Policy, "UIFSA (General)" at 5–6 (Nov. 18, 2020).
[250] *Ware v. Ware*, 337 S.W.3d 723 (Mo. App. 2011); *Rosas v. Lopez*, 556 S.W.3d 620 (Mo. App. 2018); *In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011); *Cepukenas v. Cepukenas*, 584 N.W.2d 277 (Wis. 1998).
[251] *Cepukenas v. Cepukenas*, 584 N.W.2d 277 (Wis. 1998).

enactments affect the court's competency to proceed rather than its subject matter jurisdiction. The courts in *Ware*[252] and *In re Marriage of Schneider*[253] reached a similar conclusion. These decisions hold that any modification contrary to FFCCSOA and UIFSA is a mistake of law, rather than a lack of subject matter jurisdiction. If a court enters an incorrect decision, the remedy is to timely appeal the ruling or to file a motion under the appropriate court rule to reopen the decision, as appropriate. If a party fails to timely raise a proper challenge, then the order is entitled to full faith and credit – even if it is based on a misapplication of UIFSA's rules.[254]

Does FFCCSOA Preempt UIFSA?

The Full Faith and Credit for Child Support Orders Act (FFCCSOA) is a federal statute that Congress enacted, based on a recommendation of the U.S. Commission on Interstate Child Support. It was effective in October 1994, prior to the federal requirement that states enact UIFSA. As a federal statute, FFCCSOA bound all state tribunals to apply UIFSA's main concepts of continuing, exclusive jurisdiction and recognition of a controlling order. Two years later, in 1996, Congress required states to enact UIFSA (1996) as a condition of receiving federal funds.[255] In 2014 Congress required states to enact UIFSA (2008) as a condition of receiving federal funds.[256]

From the inception, FFCCSOA and UIFSA were meant to be consistent.[257] However, because FFCCSOA was enacted first, it was recognized that FFCCSOA would need to be amended over time as UIFSA was amended.[258] Since 1994, there have been three sets of amendments to FFCCSOA.[259]

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[252] *Ware v. Ware*, 337 S.W.3d 723 (Mo. App. 2011) (relying on *Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. Banc 2009), the court held that the state constitution establishes the court's subject matter jurisdiction: "[t]he circuit courts shall have original jurisdiction over all cases and matters, civil and criminal." UIFSA merely set statutory limits on remedies the court can provide).
[253] *In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011) ("The legislature has limited the superior courts' *authority* – not the superior courts' *jurisdiction* – to modify another state's child support order by adopting the UIFSA.").
[254] *See* William Richman, William Reynolds, and Christopher Whytock, Conflict of Laws (4th ed. 2013), Chapter 5, "Judgments," and Part B "The Reach and Limits of Full Faith and Credit."
[255] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 321, 110 Stat. 2105, 2221.
[256] Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014).
[257] *See* H.R. Rep. No. 102-982 (1982) ("[FFCSOA, as proposed,] is consistent with the recommendations of the Commission and the terms of UIFSA."); H.R. Rep. 103-26 (1993).
[258] *See, e.g.,* 141 Cong. Rec. S2823-02 (1995) (stating, in summary of the Interstate Child Support Responsibility Act of 1995, that "The Full Faith and Credit Act, signed into law last year, which requires every state to respect child support orders from other states, would be modified to follow UIFSA.").
[259] *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 322, 110 Stat. 2105, 2221; Balanced Budget Act of 1997, Pub. L. No. 105-33, § 5554, 111 Stat. 251, 636; Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944–45 (2014).

One of the areas of differing language is registration. Section 611 of UIFSA requires that the party registering an order for modification do so in a state where the party does not reside. The language in FFCCSOA provides:

> If there is no individual contestant or child residing in the issuing State, the 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 a State with jurisdiction over the nonmovant for the purpose of modification.[260]

Because FFCCSOA does not expressly require that the registering party be a nonresident of the registering state, some courts have concluded there is a federal preemption of the state law. They have upheld a court's authority to modify a registered order where the court had personal jurisdiction over the nonregistering party, despite the fact that the petitioner had registered the order in his or her own state of residence.[261] The majority of courts, however, have concluded that there is no federal preemption.[262] As noted by the Tennessee Supreme Court:

> Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.[263]

These courts have found no express Congressional intention for FFCCSOA to preempt UIFSA. Rather the legislative history suggests that the acts were to be consistent.[264] The courts have also noted that the very fact that Congress in PRWORA mandated that all states adopt UIFSA strongly mitigates against a construction of FFCCSOA that would impliedly preempt UIFSA.[265] Concluding that the jurisdictional provisions of FFCCSOA do not preempt the jurisdictional provisions of UIFSA, these courts have applied traditional rules of statutory

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[260] 28 U.S.C. § 1738B(e)(i) (2018).
[261] *See, e.g., Draper v. Burke*, 881 N.E.2d 122 (Mass. 2008); *Bowman v. Bowman*, 917 N.Y.S. 2d 379 (N.Y. App. Div. 2011)
[262] *See, e.g., Pulkkinen v. Pulkkinen,* 127 So. 3d 738 (Fla. Dist. Ct. App. 2013); *Jackson v. Holiness*, 961 N.E. 2d 48 (Ind. App. 2012); *Basileh v. Alghusian*, 912 N.E. 2d 814 (Ind. 2009); *LeTellier v. LeTellier*, 40 S.W.3d 490 (Tenn. 2001).
[263] *LeTellier v. LeTellier*, 40 S.W.3d 490, 497 (Tenn. 2001), citing *Watson v. Cleveland Chair Co.,* 789 S.W.2d 538, 542 (Tenn.1989).
[264] *See, e.g.,* 141 Cong. Rec. S2823-02 (1995); H.R. Rep. No. 102-982 (1982).
[265] *See, e.g., Pulkkinen v. Pulkkinen,* 127 So. 3d 738 (Fla. Dist. Ct. App. 2013); *LeTellier v. LeTellier*, 40 S.W.3d 490 (Tenn. 2001).

construction to harmonize the federal and state laws. As noted by the Tennessee Supreme Court:

> A consistent reading of UIFSA and FFCCSOA requires only that "jurisdiction" under subsection (i) of FFCCSOA be construed as referring to both personal jurisdiction and subject matter jurisdiction. ... This construction is consistent with the specific jurisdictional provisions of UIFSA and with the intent of FFCCSOA.[266]

The child support attorney should argue against any party's position that there is a preemption issue between FFCCSOA and UIFSA.[267]

Jurisdiction to Modify under the UCCJEA and under UIFSA

In an attempt for one tribunal to hear all issues dealing with the child, a party may file a petition to modify both custody and support terms. The child support attorney should know that the jurisdictional bases found in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) are not the same as those under UIFSA.[268] Both Acts use the term "child's home state."[269] Under the UCCJEA, the child's home state has jurisdiction to determine custody. A court that has issued a custody order has exclusive continuing jurisdiction to modify the order until (1) the issuing court determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with the state and certain substantial evidence about the child is no longer available in the state; or (2) the issuing court or the court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the issuing state.[270] However, while UIFSA uses the concept of child's home state to facilitate the determination of controlling order, its rules regarding modification jurisdiction differ. UIFSA does not allow a modification on the basis of the child's home state if the controlling order was issued in another state and that state continues to have CEJ;[271] or if the issuing

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[266] *LeTellier v. LeTellier*, 40 S.W.3d 490, 498 (Tenn. 2001). *Accord Pulkkinen v. Pulkkinen,* 127 So. 3d 738 (Fla. Dist. Ct. App. 2013); *Jackson v. Holiness*, 961 N.E.2d 48 (Ind. App. 2012); *Gentzel v. Williams*, 965 P.2d 855, 860–61 (Kan. App. 1998).
[267] *See* Margaret Campbell Haynes & Susan Friedman Paikin, *"Reconciling" FFCCSOA and UIFSA*, 49 Fam. L.Q. 179, 331 (Summer 2015).
[268] *See, e.g., Tompkins v. Tompkins*, 597 S.W.3d 99 (Ark. App. 2020); *DeWitt v. Lechuga*, 393 S.W.3d 113 (Mo. Ct. App. 2013); *Sidell v Sidell*, 18 A.3d 499 (R.I. 2011); *Earls v. Mendoza*, 2011 Tenn. App. LEXIS 430, No. W2010-01878-COA-R3-CV, 2011 WL 3481007 (Tenn. Ct. App. Aug. 10, 2011).
[269] Unif. Child Custody Jurisdiction and Enforcement Act § 102(7) (1997); Unif. Interstate Family Support Act § 102(8) (2008).
[270] *See* Unif. Child Custody Jurisdiction and Enforcement Act § 202(a) (1997).
[271] *See Lesem v. Mouradian*, 445 S.W.3d 366 (Tex. App. 2013).

state has lost CEJ, but the child's home state where the petitioner has registered the order for modification is also the residence of the petitioner.[272]

ENFORCEMENT UNDER UIFSA

Although UIFSA places clear restrictions on the establishment and modification of support orders, it does not limit a petitioner's enforcement options in the same way. An obligee can seek to enforce a support order in any, and every, state in which the obligor receives income, owns property, or has assets, as well as in each state with personal jurisdiction over the obligor. To maximize enforcement, UIFSA provides several enforcement options.

Direct Income Withholding

Income withholding is an enforcement tool where an employer or other income holder deducts the obligated support amount from the obligor's income. It is, by far, the most effective means of obtaining full and timely payment of child support debts. In fact, every state provides for immediate income withholding, as soon as an order is established or modified, unless good cause is found.[273] Federal law first addressed income withholding in interstate cases in 1984. However, interstate income withholding was not as effective as Congress had hoped because of time delays when a second agency is involved.[274] Based on a recommendation of the U.S. Commission on Interstate Child Support, PRWORA required a state, as a condition of receiving federal funds, to have laws requiring the use of procedures that would extend the state's intrastate withholding system to cases where the support orders were issued in other states.[275] It also similarly required states to enact UIFSA (1996).[276] UIFSA contains a procedure for direct income withholding in Article 5 that satisfies the PRWORA requirement. It directs employers to comply with an income withholding order issued by any state and to treat that order as if it were issued by a tribunal in the employer's state.

Initiation of direct income withholding. UIFSA allows anyone – an attorney, a child support agency, a parent, even a friend or relative – to initiate direct income withholding.[277] This is accomplished by sending an income

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[272] *See Crenshaw v. Williams*, 710 S.E.2d 227 (N.C. App. 2011).
[273] *See* Chapter Eleven: Enforcement of Child Support Obligations.
[274] U.S. General Accounting Office, *Interstate Child Support: Wage Withholding Not Fulfilling Expectations*, HRD-92-65BR (Washington, DC: Gov't Printing Office 1992).
[275] *See* 42 U.S.C. § 666(b)(9) (2018). Implementing federal regulations are at 45 C.F.R. § 303.100(f)(1) (2019).
[276] The Preventing Sex Trafficking and Strengthening Families Act subsequently required states to enact UIFSA (2008) as a condition of receiving federal funds. *See* Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014).
[277] UIFSA provides that "an income-withholding order issued in another State may be sent by or on behalf of the obligee, or by the support enforcement agency, …." Unif. Family Support Act, § 501 (2008). According to the official Comment, "Section 501 is deliberately written in the passive voice; the act does not restrict those who may send an income-withholding order across state lines. Although the sender will ordinarily be a child support enforcement agency or the

withholding order,[278] issued by any state (as defined by UIFSA), directly to an obligor's employer or income holder. No pleading must accompany the order. Nor is it necessary to register the order for enforcement first.[279] OCSE has promulgated a form that child support agencies, courts, attorneys, and private individuals or entities must use to initiate direct income withholding.[280]

Although UIFSA permits direct income withholding, there are times when that remedy might not be appropriate. One example is when the initiating child support agency has already opened a two-state case and direct income withholding would duplicate action being taken by the responding state. Federal regulations require the initiating child support agency to "instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice" in the same case directly to the employer, unless the two states reach an alternative agreement on how to proceed.[281]

Employer response. If the order appears regular on its face, the employer must immediately provide a copy to the employee/obligor and treat the order as if issued by the appropriate tribunal of the employer's state.[282] Withholding must begin on receipt of the order, with the income holder distributing funds as directed in the order.[283] The employer must comply with the terms of the order/notice regarding:

- The duration and amount of current child support, stated as a sum certain;
- The person or agency to receive payments; and
- Medical support (either periodic payment or provision of health insurance coverage for the child in question);

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obligee, the obligor or any other person may supply an employer with the income-withholding order."

[278] UIFSA defines "income withholding order" as "an order or other legal process" directed to an employer or other debtor to withhold support from the obligor's income. *See* Unif. Interstate Family Support Act § 102(10) (2008). The phrase "legal process" is meant to cover various types of legal processes used by states to initiate withholding. An income withholding order may be a provision within the support order that requires income withholding or a separate withholding order, based on the underlying support order.

[279] Unif. Interstate Family Support Act § 501 (2008).

[280] The federal Income Withholding for Support (IWO) Form is a stand-alone withholding order that is completed based on the underlying support order. The revised form includes instructions to ensure compliance with laws to protect the employer and to ensure payments are made though the state disbursement unit or tribal entity as required. *See* https://www.acf.hhs.gov/css/form/income-withholding-support-iwo-form-instructions-sample.

[281] 45 C.F.R. § 303.7(c)(12) (2019).

[282] Unif. Interstate Family Support Act § 502(a) and (b) (2008). *See United States v. Morton,* 467 U.S. 822 (1984).

[283] Unif. Interstate Family Support Act § 502(c) (2008).

- The amount of the periodic payment of fees and costs for the support enforcement agency, issuing tribunal, or obligee's attorney; and

- The amount of payment on arrears and the interest on arrears, stated as sums certain.[284]

In addition, the employer must comply with the state law of the obligor's principal place of employment to determine any employer processing fee, the maximum withholding amount, and the time period for forwarding payment.[285] Similarly, the law of the state of the obligor's principal place of employment governs the way to prioritize withholding orders and to allocate withheld sums when there are multiple withholding orders for the same employee and two or more child support obligees.[286]

Contest to direct income withholding. The obligor has the right to challenge the validity or enforcement of an income withholding sent directly to the obligor's employer.[287] UIFSA provides a process for such a challenge, directing the obligor to register the order in the state of the employer and file a contest as if the withholding had been initiated within the state.[288] Generally, an obligor contesting the income withholding will do so on the basis of a mistake of fact, expiration of the statute of limitations, lack of jurisdiction by the issuing tribunal,[289] or another permissible constitutional due process challenge. According to the Comment to Section 506, Contest by Obligor, the obligor can also assert that there is a different support order that should be the controlling order in the case.[290]

To contest the direct income withholding order/notice, the obligor must notify the support enforcement agency providing services to the obligee, if one is involved; each employer that received a copy of the order; and the person designated to receive payments under the withholding order. If no person is designated, the obligor must notify the obligee.[291] Section 506 recognizes that one "simple, efficient, and cost-effective" method for an obligor to file a contest to direct income withholding is to allow the obligor to register the withholding order

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[284] *Id*.
[285] Unif. Interstate Family Support Act § 502(d) (2008). *See also* 42 U.S.C. § 666 (b)(6)(A)(i) (2018).
[286] Unif. Interstate Family Support Act § 503 (2008). *See also* 42 U.S.C. § 666(b)(6)(A)(i) (2018).
[287] Unif. Interstate Family Support Act § 506 (2008). Because an employer is not an obligor as defined by UIFSA, an employer does not have standing to challenge the direct income withholding order. *See Anderson Anesthesia, Inc. v. Anderson*, 776 S.E.2d 647 (Ga. Ct. App. 2015).
[288] Unif. Interstate Family Support Act § 506(a) (2008).
[289] *But consider Barr v. Barr*, 749 A.2d 1992 (Pa. Super. 2000) (the father could not assert that the Alabama divorce court lacked jurisdiction to enter a default support order as a defense to UIFSA direct wage withholding in Pennsylvania. The mother was not a Pennsylvania resident, and had not submitted to jurisdiction by registering the order in Pennsylvania. Therefore, the father must challenge the order in the issuing Alabama court).
[290] Comment to Unif. Interstate Family Support Act § 506 (2008).
[291] Unif. Interstate Family Support Act § 506(b) (2008).

using the registration process provided in Article 6 of the Act, and to seek protection from that tribunal pending resolution of the contest.[292] In the alternative, the obligor may still use any method that would be available for challenging an income withholding issued by the state to which the direct income withholding was sent. The Act requires the challenge to be heard in the same manner as if the income withholding order had been issued by a tribunal of the employer's state.[293]

Employer compliance. Employers should not fear liability for compliance with a direct income withholding order/notice; the Act provides immunity to an employer that proceeds accordingly.[294] In fact, an employer who fails to comply with another state's withholding order, is subject to the same penalties that would apply if the order had been issued by the employer's state.[295]

Arrearage payback. According to federal law, in addition to the amount to be withheld to pay current support, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.[296] States must have expedited procedures for adding an arrearage payback amount.[297]

Direction of Payments. UIFSA requires the employer receiving a direct income withholding to comply with the terms of the support order or income withholding order, including the address to which the payments are to be forwarded.[298] Where neither party to the case still lives in the state that issued the order, questions often arise as to where the payment should be sent.

In 2001, an OCSE Policy Interpretation Question (PIQ) addressed the issue:

> Section 501 of the Uniform Interstate Family Support Act (UIFSA) authorizes that an income withholding order of another State can be sent directly to the obligor's employer in another State without filing a pleading or registering the order. ... Section 502(c)(2) of UIFSA mandates the employer to "withhold and distribute funds as

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[292] *See* Comment to Unif. Interstate Family Support Act § 506 (2008).
[293] Unif. Interstate Family Support Act § 506(a) (2008).
[294] Unif. Interstate Family Support Act § 504 (2008).
[295] Unif. Interstate Family Support Act § 505 (2008). *See State v. Filipov*, 648-99-0016, 2000 Conn. Super. Lexis 266 (Conn. Super. Ct. Jan. 31, 2000) (court held a noncustodial parent's employer in contempt for failure to implement a direct income withholding order. The employer was required to (1) pay the custodial parent $29,259 for the full amount of income not withheld after proper notice was received, and (2) post a performance bond in the amount of $412,808 to secure future payments. After failure to comply, the CEO had to appear and show cause why he should not be incarcerated until the bond was posted and the income withholding was in place).
[296] *See* 42 U.S.C. § 666(c)(1)(H) (2018); 45 C.F.R. § 303.100(a)(2) (2019).
[297] 42 U.S.C. § 666(a)(15) (2018).
[298] Unif. Interstate Family Support Act § 502(c) (2008). *See* OCSE-PIQ-01-01: Use of the Federal Order/Notice to Withhold Income for Child Support (Feb. 2, 2001). *See also* OCSE-AT-17-07: Interstate Child Support Payment Processing, "One State Remedies: Direct Income Withholding," at 5-10 (July 17, 2017).

> directed in the withholding order by complying with the terms of the order which specify … (2) the person or agency designated to receive payments and the address to which payments are to be forwarded; … Therefore, if a support order or income withholding order issued by one State designates the person or agency to receive payments and the address to which payments are to be forwarded, an individual or entity in another State may not change the designation when sending an Order/Notice to Withhold Child Support [in the same case].[299]

OCSE confirmed this interpretation in 2010.[300] In doing so, it called attention to Section 319(b) of UIFSA, which was added in 2001. The new subsection of Section 319, Receipt and Disbursement of Payments, authorizes a change in the location of support payments in certain circumstances:

- Neither the obligee, nor the obligor, nor the child reside in the state;
- A support enforcement agency has requested redirection of payments to the support enforcement agency where the obligee receives services; and
- The tribunal (or support enforcement agency) orders such redirection and issues and sends to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.[301]

There is a corresponding amendment to Section 307, Duties of Support Enforcement Agency.[302] Section 319 is discussed in more detail under the later section titled Disbursement of Payments.

Administrative Enforcement

UIFSA provides another enforcement option that does not involve registration of the support order. UIFSA authorizes the responding support enforcement agency to use any administrative procedure authorized by state law to enforce a local support order.[303] Registration of the order is not necessary unless the obligor challenges the validity or the enforcement of the order.

Administrative enforcement of an order requires the same documents as those required for registration for enforcement. Upon receipt of the documents,

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[299] *See* OCSE-PIQ-01-01: Use of the Federal Order/Notice to Withhold Income for Child Support (Feb. 2, 2001).
[300] *See* 75 Fed. Reg. 38,612 at 38,617 (Jul. 2, 2010).
[301] *See* Unif. Interstate Family Support Act § 319(b) (2008).
[302] *See* Unif. Interstate Family Support Act § 307(e) (2008).
[303] Unif. Interstate Family Support Act § 507 (2008). For additional information on administrative enforcement, see Chapter Eleven: Enforcement of Support Obligations.

the responding support enforcement agency, without initially registering the order(s), must consider and, if appropriate, use any administrative procedure authorized by local law to enforce the support order or income withholding order. Given the broadened administrative authority that state child support agencies have as a result of PRWORA, administrative enforcement is often the preferred method of enforcing an obligation for child support because it is usually faster than remedies requiring a court hearing. Administrative remedies must include authority to order income withholding; seize periodic or lump sum payments; attach and seize assets held in financial institutions; attach public and private retirement funds; impose liens, force the sale of property, and distribute proceeds; and increase monthly payments to cover amounts for arrearages.[304]

If the obligor challenges administrative enforcement and the administrative review process has been exhausted, then UIFSA directs the responding state support enforcement agency to register the order with the appropriate tribunal. The child support agency or attorney in the responding state can also seek registration for enforcement if administrative enforcement would not be effective and a judicial remedy is preferable.

Registration for Enforcement of State Order

UIFSA authorizes the registration of an income withholding order or a support order issued in another state for the purpose of enforcement.[305] Registration for enforcement under UIFSA does not affect the issuing tribunal's jurisdiction to modify its order. It does not shift CEJ to the registering tribunal. In fact, UIFSA forbids the registering tribunal from modifying the registered order unless the terms of Sections 609 through 614 are met.[306] An order registered for enforcement remains an order of the issuing state, enforceable anywhere the obligor has income or assets.

Initiation of a registration request. It is unlikely that a child support attorney will be involved in the initiation of a registration request. Federal regulations require the initiating child support agency to determine whether there is one or more support orders in effect by using the federal and state case registries, state records, information provided by the recipient of child support services, and other relevant information sources.[307] Child support caseworkers should obtain copies of all existing support orders, as well as copies of the pay records.[308]

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[304] 42 U.S.C. § 666(c) (2018). For additional discussion of administrative and other enforcement remedies, see Chapter Eleven: Enforcement of Support Obligations.
[305] Unif. Interstate Family Support Act § 601 (2008).
[306] Unif. Interstate Family Support Act § 603(c) (2008).
[307] 45 C.F.R. § 303.7(c)(1) (2019).
[308] *See Commonwealth ex rel. Kenitzer,* 475 S.E.2d 817 (Va. App. 1996) (a stay of an income withholding order is neither a support order nor an income withholding order under UIFSA; therefore, it is not an order subject to registration under the Act).

Calculation of arrears by agency. A child support attorney can assist the child support agency in training caseworkers on how to calculate arrears under multiple support orders. Note that multiple current support orders should be rare because, as of October 1994 when FFCCSOA became effective, a tribunal was prohibited from issuing a new support order if an order already existed. However, registration may include enforcement of arrears under prior orders that predate 1994. Beginning with the first order and then using the highest support amount due under any existing order in each month (or other payment increment),[309] the worker will need to calculate the support due each month, giving credit for payments made by the obligor for the same time period. When calculating arrears, UIFSA directs that the interest to be included is based upon the law of the state that issued the support order.[310]

Documents. To register an order for enforcement, the initiating state agency or petitioner must send the following documents to the responding state:

- A transmittal letter requesting registration and enforcement;[311]
- Two copies (including one certified copy) of the order to be registered, including any modification of the order;
- The petitioner's sworn statement, or a certified statement by the custodian of the records, showing the amount of any arrears;[312]
- The name, Social Security number, and address of the obligor;
- The name and address of the obligor's place of employment and any source of income; and
- Unless protected, the name and address of the obligee and, if applicable, the person to whom payments are to be sent.[313]

Section 602(d) and (e) apply when two or more child support orders exist. In that case, the person seeking registration for enforcement must also provide a copy of every support order in effect, specify the order alleged to be the controlling order, and specify the amount of consolidated arrears, if any.[314] Such

[309] Under URESA, a support order issued by a responding state was considered a *de novo* order unless it expressly modified or superseded a prior order. This resulted in multiple valid support orders governing the same parties and child.
[310] Unif. Interstate Family Support Act § 604(a)(2) (2008).
[311] Unif. Interstate Family Support Act § 602(a)(1) (2008).
[312] Some courts have held that such pleadings are deficient without the arrears documentation. *See, e.g., In re Chapman*, 973 S.W.2d 346 (Tex. Ct. App. 1998).
[313] Unif. Interstate Family Support Act § 602(a) (2008).
[314] Unif. Interstate Family Support Act § 602(d) (2008).

information is needed in order for a tribunal to make a determination of the controlling order and the amount of consolidated arrears and interest.[315]

OCSE has developed a Letter of Transmittal Requesting Registration that meets UIFSA's requirements.[316] Instructions require a separate Letter of Transmittal Requesting Registration for each order. Note that the Letter of Transmittal has a case summary section that lists various current support obligations as well as types of arrears owed. As required by UIFSA, it includes a statement of the total amount of arrears under all orders.

A IV-D agency representative or party seeking registration can sign the Letter of Transmittal Requesting Registration; an attorney's signature is not necessary. A pleading is not usually required unless the law of the registering state requires that the enforcement remedy be specifically pled.

Note: It is not necessary to register an order in a state if that state issued the order the agency wants enforced. If appropriate, under "Section I. Action" on the Child Support Enforcement Transmittal # 1 – Initial Request, the worker should check box A "Enforce" under item 3 "Take the following action(s) on the responding tribunal's order and forward payment to the initiating jurisdiction's SDU."[317]

There is case law holding that the procedural requirements for registration of a support order are mandatory. In *In re Chapman*, an order confirming the registration of an out-of-state order was reversed because the foreign judgment was not accompanied by either a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearages.[318]

However, where the registration included all the required documents and information but was sent to the wrong place, a court has held that substantial compliance with the procedural registration requirements satisfies the statute so long as the obligor was not prejudiced by the manner in which the out-of-state order was filed.[319]

Note that UIFSA does not require that arrears and any interest on the arrears be reduced to a sum certain money judgment before a party can request registration and enforcement of the arrears. Section 605, Notice of Registration

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[315] *See* Unif. Interstate Family Support Act § 207 (2008).
[316] *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_r.pdf.
[317] *See* Chapter Eleven: Enforcement of Support Obligations for information about the State Disbursement Unit.
[318] 973 S.W.2d 346 (Tex. Ct. App. 1998).
[319] *In re Marriage of Owens and Phillips*, 108 P.3d 824 (Wash. App. 2005), *petition for review denied*, 126 P.3d 1279 (Wash. 2005) (order was registered with superior court rather than location required by UIFSA statute. In reaching its conclusion, appellate court noted that the obligor did not dispute the validity of the out-of-state order, did not claim prejudice by the registration error, had received notice of the registration, and had ample opportunity to answer).

of Order, requires that the notice of registration must inform the nonregistering party "of the amount of any ***alleged*** arrears." (emphasis added). It is also important to note that federal law does not require a sum certain money judgment in order for arrears to be enforceable. Under Section 466(a)(9) of the Social Security Act, a state must have procedures requiring that any payment or installment of support under any child support order is "on or after the date it is due," a judgment by operation of law, with the full force and attributes of a judgment, including the ability to be enforced. Section 466(a)(9) of the Act further requires that such past-due payments are entitled as a judgment to full faith and credit in any other state.[320] Therefore, arrears under a support order have judgment status without the necessity of a tribunal entering a sum certain money judgment. However, if there is a defense raised that the arrearages are not correct and that full or partial payment has been made, UIFSA authorizes the responding tribunal to determine the correct arrears.[321] See discussion that follows.

Responsibilities of the registering tribunal. Upon receipt, the registering tribunal must file the order as a foreign judgment, regardless of its form.[322] The registering tribunal must also provide notice to the nonregistering party.[323] The notice to the nonregistering party must include a copy of the registered order and any accompanying documents. It also must advise the party:

- That the registered order is enforceable as of the date registered;
- That a hearing to contest the validity or enforceability of the registered order must be requested within a specified number of days;[324]
- That any contest to the alleged arrears amount must be made in a timely manner or the arrears will be confirmed as part of the registration process and will preclude further contest;[325] and
- Of the amount of any alleged arrearages.[326]

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[320] 42 U.S.C. § 666(a)(9) (2018).
[321] *See* OCSE-AT-20-14: Updated Interstate Child Support Policy, "Registration for Enforcement," at 12–13 (Nov. 18, 2020).
[322] Unif. Interstate Family Support Act § 602(b) (2008).
[323] Unif. Interstate Family Support Act § 605(a) (2008).
[324] The Act suggests a 20-day response period. Unif. Interstate Family Support Act § 605(b)(2) (2008).
[325] *See In re Marriage of Sawyer,* 57 Cal. App. 5th 724, No. H046558, 2020 Cal. App. LEXIS 1108 (Nov. 20, 2020) (California trial court improperly stayed enforcement of part of father's child support arrears determined by a Minnesota 2001 order, based on evidence that children had intermittently lived with the father between 1993 and 2002, where the 2001 Minnesota order had been registered and confirmed in California in 2005, and the father did not timely challenge its registration).
[326] Unif. Interstate Family Support Act § 605(b) (2008).

If the registering party states that two or more support orders are in effect, Section 605 requires that the notice also:

- Identify the two or more orders and the order alleged to be the controlling order and the consolidated arrears, if any;
- Notify the nonregistering party of the right to a determination of which is the controlling order;
- State that the procedures provided in Section 605(b) apply to the determination of which is the controlling order; and
- State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.[327]

If the person requesting registration also wants the tribunal to determine the controlling order, the person requesting registration must also give notice of the request to each party whose rights may be affected by the determination.[328]

If an income-withholding order is being registered, UIFSA requires the support enforcement agency or the tribunal to also notify the obligor's employer, pursuant to that state's withholding law.[329]

If there is no timely contest or the contesting party does not establish a valid defense, the tribunal confirms the registered order.[330] After confirmation, UIFSA precludes further contest as to a matter that could have been asserted at the time of registration. Enforcement then proceeds as it would in a local matter.

Contest to registration. To contest registration of an order, the nonregistering party must request a hearing within a specified timeframe. UIFSA suggests a 20-day time period when the registered support order was issued by another state, as defined by UIFSA.[331] The nonregistering party can seek to vacate the registration, assert a permissible defense to the noncompliance allegation, contest the remedies being sought, and/or challenge the alleged arrears amount.[332]

If the obligor raises a defense after the challenge period expires, the child support attorney should argue that the defense is barred; the order and arrears are already confirmed by operation of law. Case law has upheld that position

[327] Unif. Interstate Family Support Act § 605(c) (2008).
[328] Unif. Interstate Family Support Act § 602(e) (2008). *See also* 45 C.F.R. § 303.7(d) (2019).
[329] *See* Unif. Interstate Family Support Act § 605(d) (2008).
[330] Unif. Interstate Family Support Act §§ 606(b) and 607(c) (2008).
[331] *See* Unif. Interstate Family Support Act § 606(a) (2008).
[332] Unif. Interstate Family Support Act § 606(a) (2008).

when an obligor untimely raised the defense of statute of limitations,[333] when an obligor untimely challenged the validity of the registered order,[334] and when an obligor untimely challenged the alleged arrearage.[335]

Note, however, that lack of subject matter jurisdiction can be raised at any time.[336]

If the obligor makes a challenge in a timely manner, the registering tribunal must schedule a hearing and give notice to all parties.[337] The contesting party has the burden to establish one of the following limited defenses:

- The issuing tribunal lacked personal jurisdiction over the contesting party;[338]
- The order was obtained by fraud;
- The order has been vacated, suspended, or modified by a later order;
- The issuing tribunal has stayed the order pending appeal;
- There is a defense in the registering state to the remedy sought;
- Full or partial payment has been made;
- The statute of limitations precludes enforcement of some or all of the arrears; or
- The alleged controlling order is not the controlling order.[339]

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[333] *See State of Louisiana v. Batiste,* 703 So. 2d 148 (La. Ct. App. 1997). *But see State of Washington v. Thompson*, 6 S.W.3d 82 (Ark. 1999) (in this case, the Supreme Court of Arkansas held that the notice of registration was so confusing that the respondent should be allowed to raise his defense of lack of personal jurisdiction even though the 20-day challenge period had expired).

[334] *See, e.g., Office of Child Support Enforcement v. Neely,* 41 S.W.3d 423 (Ark. Ct. App. 2001); *Smith v. Hall*, 707 N.W.2d 247 (N.D. 2005) (noncustodial parent precluded from contesting registration of tribal court order on grounds that tribal court lacked personal jurisdiction when he did not timely challenge the validity of the order within 20 days from receiving notice of its registration).

[335] *See Tepper v. Hoch*, 536 S.E.2d 654, 657-658 (N.C. App. 2000); *Flowers v. Office of the A.G.*, NO. 14-18-00714-CV, 2020 Tex. App. LEXIS 1231 (Tex. App. Feb. 13, 2020).

[336] *See Hawley v. Murphy*, 736 A.2d 268 (Me. 1999).

[337] Unif. Interstate Family Support Act § 606(c) (2008).

[338] *See South Carolina Dep't of Soc. Servs. v. Bess*, 489 S.E.2d 671 (S.C. 1997) (obligor properly raised lack of personal jurisdiction as defense to registration of foreign support order. Trial court erred in holding that it could not rule on validity of foreign judgment). *See also* Richman, Reynolds, and Whytock, *supra* note 254, Chapter 3, Part E "Understanding Personal Jurisdiction," and Chapter 5, Part B "The Reach and Limits of Full Faith and Credit."

[339] Unif. Interstate Family Support Act § 607(a) (2008).

Nonparentage and reduced income are not permissible defenses.[340] Courts have also held that laches is not a defense to registration of another state's support order for enforcement.[341]

The registering tribunal can stay enforcement if the obligor presents evidence of a full or partial defense. It can continue the proceeding to permit production of additional relevant evidence. It can also enforce any uncontested portion of the registered order during a stay or continuance.[342] It is clear, however, that when an order is registered for enforcement, the registering tribunal cannot modify the order.[343]

In the rare event there are multiple support orders for current support, the registering tribunal must determine the controlling order, as well as determine arrears under existing orders. If the orders include orders originally entered or registered in the state pursuant to URESA, the tribunal must apply the provisions of URESA to determine the validity of each order. Under URESA, a subsequent support order did not nullify a prior support order unless specifically so provided.[344]

Determination of arrears. In some cases, it may be necessary that the tribunal in the responding state, under UIFSA section 305(b)(4), determine the correct arrearage amount. In doing so, UIFSA section 604, Choice of Law, requires the tribunal in the responding state to apply the law of the issuing state regarding the computation of arrearages and accrual of interest on the arrears. If, however, there has already been a judicial determination of the arrearage (also known as a money judgment), the responding tribunal should give that order full faith and credit, absent any constitutional challenge to the order.[345]

In the context of determining the controlling order in the rare event of multiple support orders, the tribunal must also determine the amount of consolidated arrears under existing support orders. If one of the multiple orders is a URESA order that exists as a *de novo* order and the other order is a divorce decree, the tribunal must calculate arrears under both orders.[346] As noted earlier, when two valid child support orders exist, the obligor receives credit for child support payment under both orders beginning at the date that each order came into effect. Amounts collected for a particular period under one order must be

[340] *Villanueva v. Office of the Att'y Gen. of Texas*, 935 S.W.2d 953 (Tex. Ct. App. 1996).
[341] *See, e.g., In re Levy*, 2020 Cal. App. Unpub. LEXIS 3875, No. G057288 (June 22, 2020).
[342] Unif. Interstate Family Support Act § 607(b) (2008).
[343] Unif. Interstate Family Support Act § 603(c) (2008). *See, e.g., Office of Child Support Enforcement v. Cook*, 959 S.W.2d 763 (Ark. App. 1998).
[344] *New Hanover Co. v. Kilbourne*, 578 S.E.2d 610 (N.C. App. 2003).
[345] *See* OCSE-AT-20-14: Updated Interstate Child Support Policy, "Registration for Enforcement," at 13 (Nov. 18, 2020).
[346] *Id*.

credited against the amount accruing for the same period under another support order involving the same parties and child issued by a state or foreign country.[347]

Choice of law. Generally, UIFSA provides that the law of the issuing state governs "the nature extent, amount and duration of current support and the computation and payment of arrearages under the order, including the accrual of interest on the arrears."[348] The law of the issuing state governs whether the obligor should receive credit toward his or her child support obligation because of Social Security payments paid on his or her behalf to the child(ren).[349] The law of the issuing state also governs "the existence and satisfaction of other obligations" under the registered order.[350]

The law of the registering state governs the enforcement remedies that are available.[351] With regard to the applicable statute of limitations for enforcement of arrears, UIFSA adopts a policy in favor of the longest enforcement; the statute of limitations of the issuing state or the registering state, whichever is longer, applies.[352]

A noncustodial parent may have a valid defense to registration and enforcement of arrears, where the registering state has no statute of limitations, but the issuing state has a statute of limitations, which has resulted in expiration of the time for enforcing the arrears. If the judgment for arrears has become dormant and incapable of being revived, at least two state courts have upheld the noncustodial parent's challenge to enforcement of arrears.[353] However, if the arrears are still enforceable in the issuing state, the fact that they would be barred by the statute of limitations in the registering state is not a valid defense to registration.[354]

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[347] Unif. Interstate Family Support Act § 209 (2008). For more information on calculating arrears, *see* Chapter Eleven: Enforcement of Support Obligations.
[348] Unif. Interstate Family Support Act § 604(a) (2008).
[349] Comment to Unif. Interstate Family Support Act § 604, 9 Pt. 1B U.L.A. 355 (1999).
[350] Unif. Interstate Family Support Act § 604(a)(3) (2008).
[351] Unif. Interstate Family Support Act § 604(c) (2008). *See In re Cleopatra Cameron Gift Trust,* 931 N.W.2d 244 (S.D. 2019) (Noncustodial parent sought determination in South Dakota of whether California order requiring direct payment from a spendthrift trust to enforce the noncustodial parent's support obligation was entitled to full faith and credit. In concluding that it was not, the appellate court noted that the result would have been the same if the parent had registered the order for enforcement under UIFSA. Both UIFSA and FFCCOSA require the registering tribunal to apply its law regarding enforcement of a support order. South Dakota law recognizes the validity of spendthrift clauses and their prohibition of compulsory direct payments to a beneficiary creditor such as a custodial parent.)
[352] Unif. Interstate Family Support Act § 604(b) (2008). For information about the statute of limitations in each state for enforcing child support arrears, see Office of Child Support Enforcement, Intergovernmental Reference Guide, Section E, Statute of Limitations (Dec. 31, 2019), https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1.
[353] *See Thornton v. Thornton*, 247 P.3d 1180 (Okla. 2011); *Burnett-Dunham v. Spurgin*, 245 S.W.3d 14 (Tex. App. 2007).
[354] *See Harper v. Harper*, 2014 Guam 9 (Guam 2014).

Section 604(d) clarifies the choice of law after a tribunal determines the controlling order:

> After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.[355]

Confirmation of order following challenge. If the nonregistering party does not establish a valid defense to the validity or enforcement of the registered order, the tribunal must issue an order confirming the registration.[356] According to the 2001 official Comment to Section 607, "[a]lthough the statute is silent on the subject, it seems likely that *res judicata* requires that both the registering and nonregistering party who fail to register the 'true' controlling order will be estopped from subsequently collaterally attacking the confirmed order on the basis that the unmentioned 'true order should have been confirmed instead.'"[357] 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.[358]

Once a tribunal determines the consolidated arrears, UIFSA provides that a "judgment for consolidated arrears of support and interest, if any, ... must be recognized in proceedings" under UIFSA.[359] In other words, the determination is *res judicata* and binding on other states.

Continuing jurisdiction of issuing court. Registration of an order for enforcement does not shift CEJ to the registering tribunal. The order remains an order of the issuing state, enforceable anywhere the obligor has income or assets. Case law has upheld this fundamental principle of UIFSA.[360] "Conceptually, the responding tribunal is enforcing the order of a tribunal of another state or a foreign support order, not its own order."[361] Even if the individual parties and the child no longer reside in the issuing state, the controlling order remains in effect and may be enforced by the issuing tribunal.[362] Such enforcement may include a civil contempt proceeding.[363]

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[355] Unif. Interstate Family Support Act § 604(d) (2008).
[356] Unif. Interstate Family Support Act § 607(c) (2008).
[357] Comment, Unif. Interstate Family Support Act § 607 (2001).
[358] Unif. Interstate Family Support Act § 608 (2008).
[359] Unif. Interstate Family Support Act § 207(h) (2008).
[360] *See, e.g., Hamilton v. Hamilton*, 914 N.E.2d 747 (Ind. 2009); *Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011).
[361] Comment, Unif. Interstate Family Support Act § 603 (2008).
[362] *See* Comment, Unif. Interstate Family Support Act § 206 (2008).
[363] *Friedah v. Friedah,* 2019 Ohio 1842, Case No. 2018-L-086, 2019 Ohio App. LEXIS 1927 (Ohio App. May 13, 2019).

Change of Payment Location

The goal of Section 319 (Receipt and Disbursement of Payments) is to speed up the receipt of support payments while ensuring there is an accurate accounting record.[364] Subsections (b) and (c) address relocated parties. Subsection (b) provides that if no individual party or child resides in the state that issued the controlling order, upon the request of a support enforcement agency, either the support enforcement agency of the issuing state or a tribunal of the issuing state – depending upon state law – must take the following action:

> (1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and
>
> (2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.[365]

To ensure that tribunals are informed of how much money has been collected, subsection (c) requires the support enforcement agency of a state receiving redirected payment from another state to furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received. Note that the accounting is only required upon request. There are corresponding amendments to Section 307 listing the duties of a support enforcement agency.[366]

There is no requirement that a state child support agency make a request under Section 319. Indeed, there may be circumstances in which a request would not be the most effective action.[367] Before making a request for a change in the payment location under Section 319, the requesting agency should contact the child support agency in the state that issued the order and check federal resources, such as QUICK and the Federal Case Registry, to ensure the limited grounds for UIFSA Section 319(b) are met. State child support agencies should use the standardized federal form, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA § 319, to make and respond to requests under Section 319.[368]

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[364] Section 319(a) requires the agency or tribunal receiving the support to provide "a certified statement by the custodian of the record of the amounts and dates of all payments received" to a requesting party or tribunal of another state or a foreign country.
[365] Unif. Interstate Family Support Act § 319(b) (2008).
[366] *See* Unif. Interstate Family Support Act § 307(e) (2008).
[367] *See* OCSE-AT-17-07: Interstate Payment Processing, "Redirection of Payments Pursuant to UIFSA Section 319" at 18-22 (July 17, 2017).
[368] *See* https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970_0085_c.pdf.
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OTHER INTERSTATE ENFORCEMENT REMEDIES

UIFSA is not the only avenue available for interstate enforcement of child support. As noted earlier, Congress has passed legislation requiring states – as a condition of receiving federal funds – to have laws and procedures providing for additional interstate enforcement remedies that require minimal involvement of the courts. In addition, federal collection tools are available, as is federal criminal prosecution for the most egregious cases.

Interstate Income Withholding

The Child Support Enforcement Amendments of 1984 required states, as a condition of receiving federal funds, to have procedures for income withholding in interstate cases.[369] Interstate income withholding results in a two-state case. With the advent of direct income withholding under UIFSA, interstate income withholding is now rarely requested.

Liens

As a condition of receiving federal funds, a state must have laws and procedures providing that on the date each support installment becomes due, it becomes a judgment by operation of law if unpaid. This judgment is entitled to full faith and credit and is enforceable in every state.[370] Based on the judgment, the state can impose a lien against any real or personal property held by the obligor.[371] Each lien also is entitled to full faith and credit in other states and can be imposed administratively across state lines without registration of the underlying support order.[372] Child support liens serve as the basis for the seizure of bank accounts, government benefits, lottery winnings, and other assets.[373]

High-Volume, Automated Administrative Enforcement (AEI)

Pursuant to PRWORA, states also are required to implement AEI*,* which involves the use of automation to request and provide interstate enforcement assistance for large numbers of cases.[374] Requests must include specific information, including each obligor's name and Social Security number so that the assisting state can electronically seek matches from its databases. Child support agencies can use AEI to enforce ongoing support, as well as arrears. In making an AEI request, the requesting state certifies that the arrears amount is

[369] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 3(b), 98 Stat. 1305, 1306.
[370] 42 U.S.C. § 666(a)(9) (2018).
[371] 42 U.S.C. § 666(a)(4)(A) (2018).
[372] 42 U.S.C. § 666(a)(4)(B) (2018).
[373] For more information, *see* Chapter Eleven: Enforcement of Support Obligations.
[374] 42 U.S.C. § 666(a)(14) (2018).

accurately stated and that the requesting state has complied with all applicable due process requirements.[375]

The assisting state can use automated processing to search various state resources, including license records, the State Directory of New Hires, and financial institution data to locate an obligor and that person's assets.[376] When a match is found, the assisting state child support agency can attach wages; suspend motor vehicle, recreational, or professional licenses; impose liens; and seize property, as appropriate, to enforce current and past-due support.

The child support attorney will not be involved with enforcement through AEI unless there is a challenge requiring legal intervention. This is a "quick-grab" remedy. A case is not opened in the receiving state. Rather, the submitted case is included in the receiving state's match for whatever automated enforcement is available. It should not be used for cases that need ongoing monitoring.[377]

Federal Collections and Enforcement Program

OCSE provides a single procedure, known as the Federal Collections and Enforcement Program, for submitting cases to OCSE for each enforcement remedy provided by the program. These remedies are:

- Federal income tax refund offset;
- Federal administrative offset;
- U.S. passport denial;
- Multistate Financial Institution Data Match (MSFIDM);
- Federal insurance match; and
- Debt inquiry service.

The federal collections and enforcement program is another automated enforcement tool and, therefore, usually does not require attorney involvement unless there is a challenge. States are required to submit all cases that meet the criteria for federal income tax refund offset to OCSE for collection. In addition, states must have procedures in place to participate in the passport denial program and MSFIDM. Administrative offset, federal insurance match, and the debt inquiry service are optional programs.[378]

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[375] *Id*.
[376] *Id*. *See also* 42 U.S.C. § 666(a)(17) (2018).
[377] *See* Office of Child Support Enforcement, OCSE-AT-08-06: Information on High Volume Automated AEI.htm (Nov. 10, 2020).
[378] For more information on these enforcement tools and attorney involvement, see Chapter Eleven: Enforcement of Child Support Obligations.

Federal Criminal Nonsupport

The Child Support Recovery Act of 1992 (CSRA) made it a federal misdemeanor to willfully fail to pay a past-due child support obligation for a child who resides in another state.[379] The CSRA imposes a fine or jail sentence of up to six months for a first offense or up to two years for subsequent offenses for failing to pay a child support obligation that remains unpaid for more than one year or that is greater than $5000.[380]

Congress passed the Deadbeat Parents Punishment Act (DPPA) in 1998.[381] The DPPA makes it a felony offense to travel interstate or internationally to evade a child support obligation that has remained unpaid for longer than one year or is greater than $5,000.[382] In addition, the law covers the willful failure to pay any child support obligation for a child living in another state if the obligation has remained unpaid for a period longer than two years or is greater than $10,000.[383] A second or subsequent violation of 18 U.S.C. § 228(a)(1) becomes a felony.

Project Save Our Children. Project Save Our Children (PSOC) is a collaboration between the federal Department of Health and Human Services, the Office of Inspector General, the federal Department of Justice, OCSE, and the states to locate noncustodial parents and refer cases for federal prosecution under the CSRA or the DPPA.[384] This project was developed to assist states with their most difficult locate and criminal nonsupport cases.[385] If a child support agency believes an intergovernmental case may be appropriate for this project, it prepares and forwards the case to a child support attorney to review the PSOC screening and referral criteria listed below. If a case qualifies, the child support agency and the state PSOC coordinator may forward it to the OCSE PSOC coordinator.

PSOC locate. The PSOC program has access to various federal enhanced locate tools. A child support attorney will certify that a case prepared by the agency appears appropriate for criminal nonsupport and that all state and FPLS locate resources have been exhausted prior to referral to PSOC for locate. Often a finding and order of civil contempt in the state court will suffice for the PSOC process. If accepted, PSOC will use the enhanced locate tools to

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[379] Child Support Recovery Act of 1992, Pub. L. No. 102-521, 106 Stat. 3403 (codified at 18 U.S.C. § 228(a)(1) (2018)).
[380] Child Support Recovery Act of 1992, Pub. L. No. 102-521, 106 Stat. 3403 (codified at 18 U.S.C. § 228(a)(1) (2018)).
[381] Deadbeat Parents Punishment Act of 1998, Pub. L. No. 105-187, 112 Stat. 618 (codified at 18 U.S.C. § 228 (2018)).
[382] 18 U.S.C. § 228(a)(2) (2018).
[383] 18 U.S.C. § 228(a)(3) (2018).
[384] 18 U.S.C. § 228 (2018).
[385] *See* OCSE-AT-11-01: Project Save Our Children (PSOC) Procedures (Jan. 26, 2011).

determine the whereabouts of the obligor. Once the obligor is located, the case is returned to the state for local criminal prosecution.[386]

PSOC criminal nonsupport. The PSOC program can assist a state by investigating and pursuing federal criminal nonsupport for intergovernmental cases where all other enforcement remedies have been exhausted. Before a case is referred for PSOC criminal nonsupport, the child support agency must prepare the required referral, and the attorney must verify that the case meets all the statutory criteria for a federal criminal nonsupport case. The child support agency must have exhausted all available and reasonable alternative remedies.[387] If a case is accepted for PSOC criminal nonsupport, it will be investigated and prosecuted using PSOC project resources.

INTERNATIONAL CHILD SUPPORT CASES

International Treaties and Conventions

Although there have been a number of international treaties, such as the United Nations Convention on the Recovery Abroad of Maintenance (known as the New York Convention of 1956)[388] and the 1973 Hague Maintenance Convention,[389] the United States has never been a party to such treaties. One of the main reasons has been that such treaties required recognition of support orders that were issued using creditor-based jurisdiction.

In most of the world, jurisdiction to issue an order is based on residence of the custodial parent and child in the country. This is known as "creditor-based jurisdiction." It does not matter whether the respondent noncustodial parent has any contacts with the country. In contrast, the U.S. Supreme Court has held that U.S. due process requires sufficient minimum contacts between the respondent noncustodial parent and the forum in order for the tribunal to issue a child support order.[390] The United States cannot be a party to a treaty that requires recognition of orders that fail to comply with U.S. due process requirements concerning personal jurisdiction. This long-standing problem was resolved in the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.[391]

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[386] *See* Office of Child Support Enforcement, State Request for PSOC Locate Services (Form and Instructions).
[387] *See* Office of Child Support Enforcement, State Referral: Federal Criminal Prosecution for Non-Support (18 U.S.C. § 228), Project Save Our Children (Form and Instructions).
[388] Convention on the Recovery Abroad of Maintenance, June 20, 1956, 268 U.N.T.S. 3.
[389] Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations, Hague Conference on Private International Law.
[390] *See Kulko v. Superior Court of California*, 436 U.S. 84 (1978).
[391] *See* Mary Helen Carlson, *United States Perspective on the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 43 Fam. L.Q. 21 (Spring 2009).

The Hague Child Support Convention

Negotiations. Negotiations for the new Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Child Support Convention) began in 2003. On November 23, 2007, the member States[392] of the Hague Conference on Private International Law completed their work on the Convention.[393] The United States was the first country to sign, on November 23, 2007, indicating its commitment to work toward ratification in the United States.

Overview. The Hague Child Support Convention:

- Applies to children regardless of the marital status of the parents.
- Provides free services to a creditor in most Convention proceedings.
- Resolves the U.S. jurisdictional conflict by allowing a country, such as the United States, to take a reservation[394] to creditor-based jurisdiction so that it is not required to recognize and enforce such orders.
- Provides a streamlined process for the recognition and enforcement of support orders.
- Addresses practical issues like timeframes and forms.

Mandatory scope. The mandatory scope of the Convention identifies the support obligations to which the Convention applies. This includes applications for which Central Authorities[395] must provide assistance. In the United States these are applications that the state IV-D agency must transmit, receive, and initiate proceedings on, as appropriate. It also includes cases where a petitioner may make a direct request to the tribunal without IV-D assistance.

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[392] The Hague Conference on Private International Law refers to member countries as States (capital S), which are not to be confused with U.S. states.
[393] The full text of the Convention can be found on the HCCH website: *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, Hague Conference on Private International Law, https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support (last visited Feb. 6, 2021).
[394] A reservation is a unilateral statement made by a country, when ratifying a treaty, where it says it is excluding or modifying the legal effect of a certain provision of the treaty. The Hague Child Support Convention allows a Contracting State to make a reservation to certain provisions. When a State does that, it means the limitation will apply when it is a requesting as well as requested State.
[395] A Central Authority is the public entity designated by a Contracting State (a country that has consented to be bound by the Convention, whether or not the Convention has entered into force for that country) to carry out the duties of administrative cooperation and assistance under the Convention. The Central Authority is also responsible for serving as the point of contact in transmitting and receiving Convention applications.

Establishment. The Convention includes establishment of a child support order within its mandatory scope. The law of the requested State[396] applies. There is no requirement that a country change its duration of support for establishment purposes, so long as there is a support obligation at least to age 18. If there is an application for establishment of a new order, the Convention requires the requested State to also establish parentage, if necessary, to establish the child support obligation.

An application for the establishment of a support order is only available to a creditor. Another limitation is that the Convention does not provide for an application to establish parentage only.

The Convention includes establishment of a spousal support order within its mandatory scope. However, the Convention provides that a spouse who wants to establish a spousal support order must do so by making a direct request to the court. There will be no Central Authority involvement and such cases are not handled on a cost-free basis. Therefore, child support agencies in the United States do not have to provide services in a Convention case involving the establishment of spousal support.

Enforcement. Recognition and enforcement of a child support order issued by a Convention country is within the mandatory scope of the Convention for a child up to age 21. A country may limit the scope for recognition and enforcement to children up to age 18 by taking a reservation. The United States did not make such a reservation.

Recognition and enforcement of a spousal support order is also within the mandatory scope of the Convention. However, Central Authorities only must provide services related to recognition and enforcement of a spousal support order if that spousal support order is in conjunction with an order for child support.

An application for recognition and enforcement is available to both creditors and debtors.

Modification. The Convention includes modification of a child support order within its mandatory scope. The law of the requested State applies, including its jurisdiction provisions. An application for modification is available to both creditors and debtors, but there is a limitation on where a debtor can seek modification if the creditor still resides in the country that issued the order. There is no such restriction on the creditor under the Convention.

Modification of a spousal support order is also within the Convention's mandatory scope. However, the Convention provides that a spouse who wants to modify a spousal support order must do so by making a direct request to the

[396] A Requested State is the Convention country receiving the application. A Requesting State is the Convention country transmitting an application.

court. There will be no Central Authority involvement, and such cases are not handled on a cost-free basis.

Optional scope. A Contracting State can make a declaration to extend the application of the Convention "to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons." The United States did not make such a declaration.

Entry into force. The Hague Child Support Convention went into force in 2013 upon its ratification by Norway and Albania. As of January 15, 2021, the Hague Child Support Convention has entered into force in 40 countries.[397] However, as described below, the United States does not have a treaty relationship with every country.

U.S. Ratification of the Hague Child Support Convention

Since 1992, states have used UIFSA to process interstate and international child support cases. When entering negotiations of the Hague Child Support Convention, there was consensus among the Uniform Law Commission, the U.S. Department of State, OCSE, and state and local child support practitioners that UIFSA would be the appropriate vehicle to integrate the treaty into U.S. law. As a result, the U.S. delegation was able to ensure the Hague Child Support Convention included a recognition process very similar to UIFSA's process for registration and enforcement of orders, bases for recognition and enforcement similar to the long-arm bases of jurisdiction in Section 201 of UIFSA, and UIFSA's choice of law provisions regarding duration and statute of limitations. After final negotiations of the treaty, the Uniform Law Commission developed the 2008 amendments to UIFSA to be the state legislation implementing the Hague Convention.[398]

On September 29, 2010, the U.S. Senate gave its advice and consent to the President of the United States to ratify the Hague Child Support Convention. The Preventing Sex Trafficking and Strengthening Families Act, which included provisions pertaining to the Convention, was passed by Congress and signed by the President on September 29, 2014.[399] This legislation required states to enact UIFSA (2008) as a condition of receiving federal funding.[400] On August 30, 2016,

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[397] *See* the Status Table on the Child Support Convention page of the Hague Conference website, https://www.hcch.net/en/instruments/conventions/status-table/?cid=131 (last visited Feb. 6, 2021).
[398] *See* Unif. Interstate Family Support Act (2008), https://www.uniformlaws.org/viewdocument/final-act-with-comments-120?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb&tab=librarydocuments (last visited Feb. 6, 2021).
[399] Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014).
[400] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 321, 110 Stat. 2105, 2221.

after all states had enacted UIFSA (2008), President Obama signed the U.S. instrument of ratification of the treaty. On September 7, 2016, the United States deposited its instrument of ratification with the Kingdom of the Netherlands, depository for the Hague Child Support Convention. The Convention went into effect in the United States on January 1, 2017.

As of February 15, 2021, the treaty is in force between the United States and 38 countries: Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Nicaragua, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom of Great Britain and Northern Ireland. The United States objected to the accession by Kazakhstan and Guyana.[401]

Historical Overview of Reciprocal Arrangements

As early as 1960, states attempted to formalize interaction with international partners by developing nonbinding international reciprocal arrangements (called Parallel Unilateral Policy Declarations by the Department of State).[402] These arrangements are based on the principle of comity and the use of the law in force in the country involved. They are not treaties; they are simply declarations that the signatories have similar laws regarding child support enforcement. These arrangements were recognized by the Uniform Law Commissioners when drafting model interstate child support legislation. The 1968 Revised Uniform Reciprocal Enforcement of Support Act (RURESA) expanded the definition of "state" to include "any foreign jurisdiction in which this or any substantially similar reciprocal law is in effect."[403] From its earliest incarnation, UIFSA also included foreign jurisdictions in the definition of "state."[404]

In the 1996 welfare reform legislation, Congress, for the first time, included authority for the Secretary of State, with the concurrence of the Secretary of Health and Human Services, to declare reciprocity with foreign countries if

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[401] *See* OCSE-DCL-19-06: U.S. Objection to Accession of Kazakhstan to Hague Convention (July 30, 2019); Notification Pursuant to Article 65 of the Convention (Mar. 10, 2020) https://treatydatabase.overheid.nl/en/Treaty/Details/011740/011740_Notificaties_41.pdf; OCSE-DCL-20-03: U.S. Objection to Accession of Guyana to Hague Convention (April 27, 2020); Notification Pursuant to Article 65 of the Convention (Mar. 10, 2020), https://treatydatabase.overheid.nl/en/Treaty/Details/011740/011740_Notificaties_41.pdf.

[402] The first arrangement was made in 1960 between Michigan and Ontario. *See* William J. Brockelbank & Felix Infausto, Interstate Enforcement of Family Support 91-112 (2d ed. 1971).

[403] Revised Unif. Reciprocal Enforcement of Support Act § 2(m) n.11, 9B U.L.A. 381 (1987).

[404] Unif. Interstate Family Support Act § 1(19), 9 U.L.A. 15 (Supp. 1993): "The term state includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act]."

certain mandatory elements are met.[405] This legislation requires the foreign country to have in effect procedures available to United States residents for the establishment of paternity, the establishment of support orders for children and custodial parents, and the enforcement of support orders for children and custodial parents, including procedures for collection and distribution. These procedures must be available to United States residents at no cost. The law also permits states to enter into reciprocal arrangements with countries that are not the subject of a federal declaration. Unless superseded by a federal declaration, previous state declarations of reciprocity remain in effect.

Reciprocity

The main advantages of reciprocity are administrative cooperation and ease of enforcement. A country that the federal government or a state government has declared as a reciprocating country has a Central Authority and an established process in place to work cases with reciprocating countries. In addition, a party may easily register an order from a reciprocating country in the United States for enforcement.

Federal reciprocity. The Secretary of Health and Human Services, in consultation with the Department of State, may declare a foreign jurisdiction to be reciprocal only if that country has procedures to establish paternity and to establish and enforce support obligations. The country must also have a Central Authority to accept and send cases and must agree to provide its services without cost to the U.S. obligee.[406] From time to time, the Department of State issues a public notice in the Federal Register regarding progress with federal reciprocal child support agreements. The last notice was in 2014.[407] There have been no negotiation of federal bilateral agreements since the U.S. ratification of the Hague Child Support Convention.

The international page of OCSE's website provides a drop-down menu of the countries that have reciprocity with the United States.[408] As of January 2021, the United States has federal reciprocal arrangements in force with the following countries that have not joined the Hague Child Support Convention:

- Australia
- Canada
  - Alberta

[405] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 371, 110 Stat. 2105, 2252 (codified as amended at 42 U.S.C. § 659a (2018)).
[406] 42 U.S.C. § 659a(b) (2018).
[407] Department of State Public Notice 8832, 79 Fed. Reg. 49,368 (Feb. 12, 2014).
[408] https://www.acf.hhs.gov/css/partners/international (last visited Feb. 6, 2021).

  - British Columbia
  - Manitoba
  - New Brunswick
  - Newfoundland/Labrador
  - Northwest Territories
  - Nova Scotia
  - Nunavut
  - Ontario
  - Prince Edward Island (PEI)
  - Saskatchewan
  - Yukon
- El Salvador
- Israel
- Switzerland.

The international page of OCSE's website also provides case processing, payment processing, contact, language requirements, and other information specific to each foreign reciprocating country (FRC). In addition, there are Caseworker's Guides for the FRCs.[409] The Guides include information about the FRC's laws, policies, and procedures, as well as preferred forms.

State reciprocity. Federal law permits individual states to establish or continue existing reciprocal arrangements with foreign countries when there has been no federal declaration.[410] Note that these are parallel unilateral declarations, not written agreements to provide specific services. So, while U.S. states are required to follow all Title IV-D regulations and provide full services in

[409] *See* Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with Australia (2018); Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with Canada (2013); Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with El Salvador (2007); Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with Israel (2009); Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with Switzerland (2009). *See also* OCSE-IM-03-07: A Caseworker's Guide for Cases with Foreign Reciprocating Countries (2003).
[410] 42 U.S.C. § 659a (2018).

these cases, the foreign country will follow its own laws and regulations, which sometimes limit the services that it may provide.

UIFSA provides implementing state legislation. Section 308 authorizes an appropriate state official or agency to determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with the state.[411] In each case, the foreign jurisdiction has a Central Authority to provide administrative cooperation. A child support attorney may obtain Information about state-level declarations from the individual state child support agency or from the state's link on the Intergovernmental Reference Guide on the OCSE website.[412] If a country is a party to the Hague Child Support Convention as well as a state reciprocal arrangement, the procedures and applicable legal forms under the Hague Child Support Convention govern to the extent there is any conflict with provisions in the state reciprocal arrangement.

Jurisdiction

The nationality of a party to a child support action does not impact whether a U.S. tribunal has personal jurisdiction over that party.[413] Nor is it necessary for a person to apply through a Central Authority in order for a tribunal to have personal jurisdiction. Whether an individual may apply to and receive services from a child support agency is a separate question from whether a tribunal has personal jurisdiction over the individual.

The individual who is a non-resident and receives services from a U.S. child support agency, by direct application to the child support agency or through a Central Authority, submits to the personal jurisdiction of the U.S. tribunal when the agency files the signed petition with a U.S. tribunal. Keep in mind that submitting to the jurisdiction in this manner does not give the tribunal jurisdiction over other matters, such as custody, visitation, or divorce issues.[414]

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[411] Unif. Interstate Family Support Act § 308(b) (2008).
[412] *See* Office of Child Support Enforcement, Intergovernmental Reference Guide, Section C, Reciprocity (Dec. 31, 2019), https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1.
[413] Except in cases involving an unwilling litigant, when a court's authority over persons and things within its territory gives it power to impose judgment, the immediate, physical presence or absence of parties to a suit is not a necessary precedent to the court's jurisdiction to decide the suit. The requirement of jurisdiction is satisfied by a nonresident's consent to the court's exercise of jurisdiction. The act of the plaintiffs in bringing suit automatically establishes consent to jurisdiction. *See Estrada v. Ahrens*, 296 F.2d 690 (5th Cir. 1961).
[414] Unif. Interstate Family Support Act § 314 (2008).

Subject matter jurisdiction lies with the appropriate tribunal in each state or tribe, as provided by relevant law. Neither the foreign residence of one of the parties nor reciprocity impacts subject matter jurisdiction.[415]

Jurisdiction to modify an order is covered elsewhere in this chapter.

Applicable Law for Foreign Child Support Applications to United States

UIFSA. UIFSA (2008) is law in every U.S. state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.[416] It applies to all support cases where the parties reside in different jurisdictions or where the support order was issued in a different jurisdiction from the one where modification or enforcement is sought. Therefore, U.S. state tribunals and agencies must follow UIFSA when processing international cases.[417] Tribes, however, are not required to enact UIFSA as a condition of receiving Title IV-D funds.[418]

Other countries are not governed by UIFSA, federal regulations, or any other U.S. law. Child support attorneys need to keep this in mind when requesting information or documents from other countries.

Choice of law. Under UIFSA, the general rule regarding choice of law is that the responding state's law controls.[419] UIFSA notes certain exceptions that apply to orders issued by a state or a foreign country – the nature, extent, amount, and duration of the current support and other obligations of support (including the payment of arrears) are governed by the law of the state or foreign country issuing the controlling order.[420] With regard to enforcement of arrears, the tribunal must apply either the statute of limitations of the issuing state or foreign country, or that of the responding state – whichever law provides for the longer statute of limitations.[421]

Special rules of evidence. UIFSA Section 316, Special Rules of Evidence and Procedure, governs the admissibility of evidence. Under that section, the tribunal cannot require the physical presence of the nonresident applicant. The tribunal must allow the electronic transmission of documents. Additionally, the tribunal must permit a nonresident witness or party to testify by

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[415] *Ratner v. Ratner*, 342 N.Y.S.2d 58 (N.Y. Fam. Ct. 1973) (Family Court support jurisdiction is restricted neither in terms of the place of residence of the petitioner or child nor in terms of reciprocity).
[416] The Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944 (2014) required states to enact UIFSA (2008) as a condition of receiving federal funds. Note that the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 26 U.S.C. § 1738b (2018), does not apply to recognition of orders from other countries.
[417] *See* Unif. Interstate Family Support Act § 101(26) (2008).
[418] *See* 45 C.F.R. §§ 309.90, 309.120 (2019); Tribal Child Support Enforcement Programs, 69 Fed. Reg. 16,638, 16,667 (Mar. 30, 2004) (response to Comment 17 regarding 45 C.F.R. § 309.120).
[419] Unif. Interstate Family Support Act § 303 (2008).
[420] Unif. Interstate Family Support Act § 604 (2008).
[421] *Id*.

telephone, audiovisual means, or other electronic means. Keep in mind that in international cases, there may be time zone and language translation issues, as well as resource issues. Sections 317 and 318 of UIFSA also apply. Section 317, Communications Between Tribunals, explicitly authorizes a tribunal to communicate with a tribunal "outside" the state, which means the tribunal of another state, foreign country, or foreign nation that does not meet UIFSA's definition of a foreign country. Section 318, Assistance with Discovery, is similarly broad, authorizing a tribunal to help a tribunal "outside" the state – in other words, a tribunal of another state, foreign country, or foreign nation – with the discovery process.

UIFSA Definitions Applicable to International Cases

Foreign country. UIFSA (2008) distinguishes between a state and a foreign country. Section 102(5) defines "foreign country" to include:

> a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:
>
> (A) which has been declared under the law of the United States to be a foreign reciprocating country;
>
> (B) which has established a reciprocal arrangement for child support with this state as provided in Section 308;
>
> (C) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [act]; or
>
> (D) in which the Convention is in force with respect to the United States.[422]

The definition of "foreign country" therefore includes many, but not all, foreign nations.

Section 102(5)(A) refers to a country that has been declared under federal law to be a foreign reciprocating country. Section 102(5)(B) refers to a country with which a state has a state reciprocal arrangement. As noted earlier, Section 308 of UIFSA authorizes an appropriate state official or agency to determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with the state. Often a state's Attorney General or Secretary of State has a list of such state reciprocating countries. The Intergovernmental Reference Guide (IRG) also includes a section related to reciprocity. According to the official Comment to Section 102, Section 102(5)(C) "theoretically could require individualized determinations on a case-by-case basis. An alternative might be for each state to create an efficient method for

[422] Unif. Interstate Family Support Act § 102(5) (2008).

identifying foreign countries whose laws are 'substantially similar' to UIFSA."[423] Note that this "substantially similar" test was also part of URESA back in 1968. Section 102(5)(D) refers to a country with which the United States has a treaty relationship under the Hague Child Support Convention.

Outside this state. This term means a location in another state (as defined by UIFSA) or a country other than the United States, whether or not the country is a foreign country (as defined by UIFSA).[424] The special rules of evidence and procedure in Section 316 of UIFSA apply to individuals residing outside the state.[425] Sections 317 and 318 of UIFSA also refer to tribunals "outside this state."

Article 7 definitions. Section 701 of UIFSA contains definitions of words that apply to Article 7, which is the Article governing support proceedings under the Hague Child Support Convention. Among the definitions are the following:

Application. An application means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a Central Authority for assistance from another Central Authority.

Central Authority. A Central Authority is the entity designated by the United States or a foreign country to perform the functions specified in the Hague Child Support Convention.

Foreign support agreement. A foreign support agreement means an agreement for support in a record that (1) is enforceable as a support order in the country of origin; (2) has been (i) formally drawn up or registered as an authentic instrument by a foreign tribunal; or authenticated by, or registered or filed with, a foreign tribunal; and (3) may be reviewed and modified by a foreign tribunal.

U.S. Central Authority. The U.S. Central Authority is the Secretary of the U.S. Department of Health and Human Services.

Child Support Services in International Cases

Both the Strengthening Families Act and UIFSA (2008) change the prior federal requirement that a state child support agency had to provide IV-D services to any petitioner, regardless of the residence of the petitioner. Consistent with the Strengthening Families Act, UIFSA provides a state legislature two alternative approaches in how it provides support services in

[423] Comment, Unif. Interstate Family Support Act § 102 (2008).
[424] Unif. Interstate Family Support Act § 102(18) (2008).
[425] *See Gyger v. Clement*, 846 S.E.2d 496 (N.C. 2020) (for an international party in a child support action, the party's signature on the affidavit under penalty of perjury suffices. No notarization is required under UIFSA, and the trial court erred by not admitting into evidence plaintiff's affidavit. The trial court may accord whatever weight to plaintiff's statements it deemed appropriate, but plaintiff's affidavit was at the very least admissible.)

international cases.[426] Under Alternative A, a state mandates that its support enforcement agency, upon request, must provide services to any petitioner under UIFSA. That means the agency must provide services to the petitioner, even if the petitioner resides in a foreign nation that is not a party to the Hague Child Support Convention or a bilateral arrangement with the United States, and even if the petitioner does not request services through a Central Authority.[427] Under Alternative B, a state requires its support enforcement agency to provide services to a petitioner requesting services through a Central Authority of a foreign country that has been declared a foreign reciprocating country with the United States under a bilateral arrangement or in which the Hague Child Support Convention is in force with respect to the United States.[428] However, the state gives its support enforcement agency discretion as to whether it provides services to a petitioner (1) from a reciprocating country or Convention country who does not apply through the Central Authority of his or her own country, but rather applies directly to the support enforcement agency; or (2) who resides in a foreign nation that is not a foreign reciprocating country or Convention country.[429]

UIFSA also authorizes a petitioner to file directly with the tribunal, rather than go through a support enforcement agency.

Forms in International Cases

There is no requirement under UIFSA or the federal bilateral arrangements that a foreign petitioner must use the OMB-approved intergovernmental forms that are used in domestic actions in the United States.[430]

Forms for use by Convention countries. The Hague Convention forms were developed during the Convention negotiations by the Forms Working Group, in which the United States played a leadership role. The Convention forms include mandatory transmittal and acknowledgment forms and 12 recommended forms.[431] The 14 Convention forms were designed to comply with the Convention and reduce the complexity of international case processing for all Convention countries. The Permanent Bureau of the Hague Conference, as well

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[426] Unif. Interstate Family Support Act § 307(a) (2008).
[427] *See also* OCSE-PIQ-99-01: Direct Application for Title IV-D Services from International Residents (Jan. 14, 1999); OCSE-DCL-94-45: Residency Requirements for IV-D Services (July 27, 1994).
[428] Unif. Interstate Family Support Act § 307(a) (2008).
[429] *See* Comment, Unif. Interstate Family Support Act § 307 (2008).
[430] Unif. Interstate Family Support Act § 311 (2008); OCSE-DCL-11-22: Use of Federal Intergovernmental Forms by Foreign Reciprocating Countries (Nov. 30, 2011).
[431] In 2020 OMB renewed its approval of the Hague Child Support Convention Forms for use in the United States. *See* Hague Child Support Convention Forms OMB 0970-0488 (Apr. 28, 2020).

as OCSE, have published resources that include information about completing the forms.[432]

Each Convention country must use the mandatory transmittal form for outgoing cases to a Convention country. In terms of the 12 recommended forms, each Convention country determines its specific forms requirements in Convention proceedings. Most Convention countries have completed a Country Profile, which is a country-specific reference document published on the Hague Conference website.[433] The Country Profile allows a country to identify whether it wants other Convention countries to use the standard recommended Convention forms when sending an application under the Convention. Alternatively, a Convention Country may require use of different forms or may indicate that it does not have prescribed or preferred forms. The U.S. Country Profile indicates that countries should use the recommended Convention forms when sending cases to the United States.[434] It also notes that individual U.S. states may have additional requirements for establishment and modification applications, such as requiring a child's birth certificate if parentage is at issue.

Incoming Convention cases to the United States must always include the mandatory transmittal form. They should also include the recommended Convention forms that are specific to the relief sought.

A responding state child support agency must take all steps possible upon receipt of the application.[435] However, the responding state agency may also request further information or documentation as necessary to provide the service requested.[436]

Forms for use by FRCs that are not Convention countries. Even though the OMB-approved intergovernmental forms are not required, OCSE has developed forms for several FRCs that are similar in form and content to the intergovernmental forms. If the FRC does not send the federal intergovernmental forms, the child support attorney should review the documents to determine if there is sufficient information for the state to proceed; usually there is. If needed,

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[432] *See* The Hague Conference on Private International Law, Permanent Bureau, The Practical Handbook for Caseworkers under the 2007 Child Support Convention (2013) (hereinafter The Practical Handbook), especially Chapter 15, "Completing the Forms;" Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training (Dec. 5, 2017), especially Modules 3 through 7.
[433] See Hague Child Support Convention, Art. 57(2). *See also* Country Profiles, http://hcch.cloudapp.net/smartlets/sfjsp?interviewID=hcchcp2012&t_lang=en (last visited Feb. 6, 2021).
[434] *See* United States Country Profile, http://hcch.cloudapp.net/smartlets/sfjsp?t_gotosummary=584866&lang=en (last updated Nov. 6, 2019).
[435] *See* 45 C.F.R. § 303.7(b)(3) (2019).
[436] *See* 45 C.F.R. § 303.7(d)(2) (2019).

it may be possible for the local child support attorney or caseworker to complete the federal forms using information provided by the foreign applicant.

Verification of pleadings. UIFSA Section 311, Pleadings and Accompanying Documents, does not require a verified petition or other pleading.[437] Section 311(b) requires that the petition or pleading specify the relief sought. It must also conform substantially with the intergovernmental forms mandated for use by IV-D agencies.

Sworn statements. In order for a document, not excluded under the hearsay rule if given in person, to be admissible in evidence in a UIFSA proceeding, Section 316(b) requires that it be given under penalty of perjury.[438] As noted in the official Comment to Section 316, Special Rules of Evidence and Procedure, the subsection replaces "the necessity of swearing to a document 'under oath' with the simpler requirement that a document be provided 'under penalty of perjury,' as is required by federal income tax form 1040." Such a requirement means that the person attests to the accuracy of the information and acknowledges there is a penalty for lying; however, it does not require an oath or a signature before a notary.

The OMB-approved intergovernmental forms – Uniform Support Petition, Declaration in Support of Establishing Parentage, Letter of Transmittal Requesting Registration, and General Testimony – contain language that the signatory is completing the form under penalty of perjury.[439]

As noted earlier, OCSE does not require foreign jurisdictions to use OMB-approved intergovernmental forms and has recognized that foreign countries may use alternative forms.[440] Child support attorneys need to be aware that documents from FRCs will rarely be signed under penalty of perjury or notarized. In fact, notaries public in many other countries do not perform the same services as they do in the United States. Some countries do not have notaries at all, and in other countries, they are very expensive.

The United States requests that Hague Child Support Convention countries use the Hague recommended forms when sending an application to the United States. These forms are not signed under penalty of perjury. If a party raises a challenge or a tribunal requests that pleadings or testimony be submitted under penalty of perjury, the child support attorney should seek a continuance while the responding child support agency notifies the Central Authority in the Convention country of the need for such a signature. If the foreign applicant is

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[437] *See* Unif. Interstate Family Support Act § 311(a) (2008), which simply refers to filing a petition.
[438] Perjury is the "act or an instance of a person's deliberately making material false or misleading statements while under oath." Black's Law Dictionary 1254 (9th ed. 2009). *See also* 28 U.S.C. § 1746 (2018).
[439] OCSE-AT-19-08: OMB-Approved Standard Intergovernmental Child Support Enforcement Forms – December 2019 (Dec. 26, 2019).
[440] *See* 45 C.F.R. § 303.7(a)(4) (2019).

unwilling to sign under penalty of perjury under U.S. laws, the child support attorney may want to ask the tribunal whether it would allow admissibility of such documents if the applicant verified the truth of the facts stated therein through another means, such as signing the forms before an authorized U.S. embassy or consulate agent.[441] In the interim, the responding child support agency should process the case to the extent possible pending receipt of the needed statement or documentation from the foreign Central Authority.[442]

OCSE will assist with any issues involving forms from FRCs or Convention countries.

Certified copies. UIFSA Section 602, Procedure to Register Order for Enforcement, requires a certified copy of the order to be registered. That is the section that governs registration of any non-Convention foreign support order. In contrast, Article 7 of UIFSA governs registration of a Convention support order. UIFSA Section 706, Registration of Convention Support Order, does not require a certified copy. Rather it requires "a complete text of the support order" or an abstract of the order, if acceptable, by the responding jurisdiction. UIFSA also addresses certified copies of pay records, with different requirements governing Convention cases.[443] Because it is very expensive to get certified copies in many FRCs and Convention countries, it is important to safeguard them.

Translation

The child support attorney should ensure that the child support agency sends all forms and accompanying documents to another country in the official language of that country, as directed by the Caseworker's Guide, as requested by the country's Central Authority, or – in the case of a Convention country – as identified in the Country Profile. OCSE provides language information on the international page of its website.[444] If OCSE has forms translated into a country's required language, the forms are also accessible from the OCSE website. If a child support attorney needs assistance with translated forms in a language not on the website, the attorney can contact OCSE for assistance.

Establishment of Order in Convention Case – Incoming Application[445]

In the United States, Convention cases will continue to be processed at the local level. When a requesting Central Authority sends an Application for Establishment to the United States, it should send the application to the Central

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[441] *See* https://travel.state.gov/content/travel/en/records-and-authentications/authenticate-your-document/Notarial-Authentication-Services-Consular.html (last visited Feb. 6, 2021).
[442] *See* 45 C.F.R. § 303.7(b) and (d) (2019).
[443] *Compare* Unif. Interstate Family Support Act §§ 316(c), 602(a)(3) (2008) *with* Unif. Interstate Family Support Act § 706(b)(4).
[444] *See* https://www.acf.hhs.gov/css/partners/international (last visited Feb. 6, 2021).
[445] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 5: Establishment of a Convention Order, Including Where Necessary Establishment of Parentage.

Registry of the U.S. state where the noncustodial parent lives. The Central Registry may refuse to process the application only if it is manifest that Convention requirements are not met. The Central Registry may not reject the application solely because additional documents or information are needed.

A child support attorney will usually be involved with the case only after the Central Registry has referred it to the local child support office for processing.

Scope. Under Article 10 of the Hague Child Support Convention and UIFSA Section 704, Initiation by [Governmental Entity] of Support Proceeding Under Convention, the following establishment applications are available through the Central Authority to a creditor:

- Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child, and
- Establishment of a support order if recognition of an existing foreign support order is refused for certain reasons.
- In the United States, those reasons are listed in Section 708(b)(2), (4), and (9) of UIFSA (2008).
  - The issuing jurisdiction lacked personal jurisdiction consistent with Section 201 of UIFSA;
  - The order was obtained by procedural fraud; and
  - In a case where the respondent neither appeared nor was represented in the proceeding in the issuing country, the respondent did not have proper notice and an opportunity to be heard.

  If a foreign order cannot be recognized in the United States, the legal effect is that the order does not exist, and the U.S. tribunal can establish a new order.

Can a Convention country send an application for establishment to the United States under Section 704(b)(4) before requesting recognition and enforcement of an existing order when it knows in advance that a U.S. tribunal will refuse recognition and enforcement because the order was obtained on the basis of the creditor's jurisdiction, to which the United States has taken a reservation? According to the Convention Explanatory Report, the answer is yes; there is no obligation in the Convention to first apply for recognition before applying for establishment when it is known that recognition will be refused.[446]

[446] Alegria Borras and Jennifer Degeling, with the assistance of William Duncan and Philippe Lortie (Permanent Bureau), Explanatory Report for the Convention of 23 November 2007 on the

As noted earlier, a separate application for the establishment of parentage is not available under the Convention. It can only be requested in connection with a request to establish a support order. Also, an establishment application is ***not*** available to a debtor under the Convention.

Forms. In addition to the required Transmittal, the requesting Central Authority should transmit an Application for Establishment of a Decision, including Restricted Information on the Applicant, and a Financial Circumstances Form.

Applicable law. According to UIFSA Section 105, Application of [Act] to Resident of Foreign Country and Foreign Support Proceeding, the tribunal in the responding state will apply Articles 1 through 7 to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Article 1 through 6, Article 7 controls. Article 7 does not contain any specific provisions related to establishment of parentage or establishment of a support order in a Convention case. That means a tribunal will be following the provisions within Articles 1 through 4 of UIFSA that govern establishment.

Establishment of Convention order where no prior order. According to UIFSA Section 303, Application of Law of State, the law of the responding state will determine the duty of support. The responding state's support guidelines will determine any amount of support. UIFSA Section 401, Establishment of Support Order, also allows the tribunal to issue a temporary support order under certain circumstances. The Convention's Explanatory Report notes that a Contracting State is not required to change its law regarding the length of a duty of support. Therefore, once the tribunal issues a support order, it will be the law of that forum that determines how long the support duty runs. It also means that a Contracting State does not have to accept an application if the child would not be eligible for support in that State. The Explanatory Report provides the following example:

> If an application is made under Article 10(1) c) for the establishment of a maintenance decision in relation to a student child aged 21 years, the requested State is not bound to admit the application if it does not have jurisdiction to establish a maintenance decision for a child over the age of 18 years.[447]

This contrasts with the mandatory scope for recognition and enforcement, which requires a Contracting State to enforce a current support obligation to age 21 if that is what the issuing State law requires.

Establishment of Convention order where existing order not recognized. As noted earlier, in certain circumstances, an application may seek

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International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter Explanatory Report) (2013), Para. 256.

[447] Para. 275 of the Explanatory Report.

establishment even though there is an existing order. UIFSA Section 708 addresses the recognition and enforcement of a registered Convention support order. Subsection (b) lists the only grounds on which a tribunal may refuse recognition and enforcement. Section 708(c) calls out three of those grounds:

- The issuing jurisdiction lacked personal jurisdiction consistent with Section 201 of UIFSA;
- The order was obtained by procedural fraud; and
- In a case where the respondent neither appeared nor was represented in the proceeding in the issuing country, the respondent did not have proper notice and an opportunity to be heard.

If a tribunal refuses to recognize and enforce an order on one of these three grounds, Section 708(c) requires the tribunal to take additional steps. In such a circumstance, the tribunal may not dismiss the proceeding before allowing reasonable time for a party to seek the establishment of a new child support order. And, if the IV-D agency is involved because a Central Authority forwarded the application under Section 704 of UIFSA, the IV-D agency must take all appropriate measures to request a child support order. In determining appropriate measures, the child support attorney should review the facts of the case to determine whether there is a basis under its state laws for establishment of a support order. If additional information is needed, such as the creditor's financial information, to apply the state's support guidelines, the representative for the IV-D agency should request a continuance to obtain the information from the requesting Central Authority.

Establishment of Order in Convention Case – Outgoing Application

If the petitioner seeks support from a respondent living in a Convention country and there is no existing support order, the first step the local child support office should take is to determine whether long-arm jurisdiction to establish an order is available and appropriate under state law. In addition to personal jurisdiction issues, the local agency should consider practical issues related to a domestic long-arm action as compared to a Convention proceeding in the country where the respondent lives. An important question is: How long will it take to obtain an order in a domestic action, factoring in service of process on the respondent residing in another country? Other relevant questions are: Which jurisdiction has better access to income information of the respondent? Is enforcement of the order a factor that impacts the decision on the most appropriate forum for establishment of the order? The child support attorney may want to participate in the decision-making. If the decision is made to proceed through a long-arm action, the requested country may be able to facilitate service

of documents as a Request for Specific Measures under Article 7 of the Convention.[448]

Preparation and transmission of application. If the local agency determines that the most appropriate course of action is a Convention application, it will transmit the application under Article 7 of UIFSA. The Hague Country Profile is an excellent resource for identifying forms and information needed by the requested State. Most Convention countries have indicated in their Country Profiles that they want Contracting States to use the recommended Application form published by the Hague Conference as well as the Financial Circumstances Form. The Profile may indicate additional documents needed in an establishment case, such as certified birth records or proof of the marriage of the parents, if applicable. Attorneys are usually not involved in the preparation of an application. Once the agency has completed the application and is satisfied that the application complies with the Convention, the child support agency (as the requesting Central Authority) must transmit the application on behalf of the applicant to the requested Central Authority. The application must include the Transmittal form. There is no need to include certified documents unless the requested Contracting State asks for them. Under Article 44 of the Convention, any application and related documents must be in the original language and accompanied by a translation into the official language of the requested State or another language that the requested State has declared it will accept. As noted earlier, the international page of the OCSE website has the Convention forms translated into many languages.

Action in the requested State. The Central Authority in the requested State must review the application for compliance with the Convention. Article 6 of the Convention requires the requested Central Authority to initiate or help initiate any necessary proceedings in the requested State related to the Application for Establishment. If there is a proceeding, Article 29 of the Convention prohibits any requirement that the child or applicant be physically present in the proceeding. Article 10 of the Convention provides that the application for establishment is subject to the jurisdictional rules in the requested State. It also directs that the application shall be determined under the law of the requested State. That means the determination of a support duty, the support amount, and the duration of support is based on the law of the requested State.

[448] For more information about an Article 7 Request for Specific Measures, see Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 2: Central Authorities and Applications under the Hague Child Support Convention. A 2021 Special Commission on the Hague Child Support Conference will consider approval of a recommended form for Central Authorities to use in making, and responding to, an Article 7 request.

Recognition and Enforcement of Convention Order in Convention Case – Incoming Application[449]

When a requesting Central Authority sends an Application for Recognition and Enforcement to the United States on behalf of a creditor, it should send the application to the Central Registry of the U.S. state where the debtor lives or has income or assets. An application on behalf of a debtor should be sent to the Central Registry of the U.S. state where the creditor lives. The Central Registry may refuse to process an application only if it is manifest that Convention requirements are not met. The Central Registry may not reject an application solely because additional documents or information are needed.

Scope. Under Article 10 of the Hague Child Support Convention and UIFSA Section 704, Initiation by [Government Entity] of Support Proceeding under Convention, the following enforcement applications are available through the Central Authority to a creditor:

- Recognition or recognition and enforcement of a foreign support order; and
- Enforcement of a support order issued or already recognized in the requested State.

The following enforcement application is available to a debtor:

- Recognition of an order suspending or limiting enforcement of an existing support order in the requested State.

An applicant may use the Convention's procedures for recognition and enforcement of an order only if a Contracting State issued that order.[450] Note that any Contracting State may have issued the order; the issuing country does not have to be the Contracting State where the applicant resides.

Forms. Article 12 of the Convention requires that every application include a Transmittal using the required Convention form. An Application for Recognition and Enforcement must include additional documents. These documents are listed in Article 25 of the Convention. In the United States, the required documents are listed in UIFSA Section 706, Registration of Convention Support Order:

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[449] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application.

[450] *See* Para. 240 of the Explanatory Report. A tribunal may decide to recognize an order made in a non-Contracting State on the basis of comity but that would not be a Convention proceeding. *See* para. 241 of the Explanatory Report.

- A complete text of the support order (or an abstract of the order drawn up by the issuing foreign tribunal, if allowed under state law);[451]

- A record stating that the support order is enforceable in the issuing country;

- If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting to proper notice and an opportunity to be heard;

- A record showing the amount of any arrears and the date the amount was calculated;

- A record showing any requirement for automatic adjustment of support and the information necessary to make the calculations; and

- If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

The U.S. Country Profile indicates that an applicant should use the Convention forms when sending an application to a U.S. state. That means the Convention application will also include the following Convention forms, if applicable:

- Abstract of a Decision,

- Statement of Enforceability of a Decision, and

- Statement of Proper Notice.

The Statement of Enforceability and Statement of Proper Notice must be completed by a competent authority in the country that issued the order.

The documents listed in Article 25 of the Convention are the only documents a Contracting State can require accompany an Application for Recognition and Enforcement.[452] Therefore, a child support agency in the United States cannot require an applicant to send documents other than those listed in Section 706 of UIFSA as part of an application for recognition and enforcement.

Applicable law. According to UIFSA Section 105, Application of [Act] to Resident of Foreign Country and Foreign Support Proceeding, the tribunal in the responding state will apply Articles 1 through 7 to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Article 1 through 6, Article 7 controls. That means Article 6 provisions governing

[451] In enacting Section 706(b)(1) of UIFSA (2008), most state legislatures included UIFSA's bracketed language allowing the acceptance of an abstract in lieu of the complete text.
[452] *See* Art. 11(3) of the Hague Child Support Convention.

registration of an order apply unless there are inconsistent provisions within Article 7. Provisions where Article 7 controls include:

- UIFSA Section 706, Registration of Convention Support Order;
- UIFSA Section 707, Contest of Registered Convention Support Order;
- UIFSA Section 708, Recognition and Enforcement of Registered Convention Support Order; and
- UIFSA Section 709, Partial Enforcement.

Section 706, Registration of Convention Support Order, requires that a party seeking recognition of a Convention support order must register the order as provided in Article 6; administrative enforcement without registration is not permissible. The registering tribunal must comply with Section 706 regarding documents that must accompany the request for registration of a Convention support order and the only basis upon which it can vacate the registration on its own motion. It also must follow Section 707 regarding timeframes for contesting the registered order, and Section 708 regarding the limited grounds on which it may refuse to recognize and enforce a registered Convention support order. Section 709 addresses partial enforcement of a registered order. Section 710 governs recognition and enforcement of a foreign support agreement.

The law of the country that issued the order governs the duration of current support payments under the order. This is true, regardless of whether the duration is longer (or shorter) than the duration of the requested country. Many countries extend parents' support obligation beyond age 21, sometimes until the child has finished schooling or is self-sufficient. One distinction in Convention cases is that there is no Convention requirement that the Central Authority provide services to enforce an order for current support after the child turns 21. Therefore, the child support agency is not required to provide IV-D services to enforce any order beyond age 21. The applicant may retain private counsel to enforce any ongoing current support obligations after age 21. However, the child support agency must enforce arrears that arose before the child turns 21.

Ex officio review of registration. Section 706(d) of UIFSA provides that a tribunal may vacate the registration of a Convention support order even if the respondent has not filed a contest. This differs from registration under Article 6 of UIFSA. The tribunal may take such action only in the limited situation where the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy. An example of when a U.S. tribunal may vacate registration on the basis that recognition and enforcement would be manifestly incompatible with public policy is a support order against a left-behind U.S. parent

in a wrongful abduction case.[453] The Official Comment to UIFSA Section 706 notes another possible example: a tribunal might reject an application to enforce an order against a biological parent whose rights had been subsequently terminated and the child later adopted. It should be very rare that a tribunal vacates the registration on its own motion. Note that at this stage, neither party is able to present evidence.

UIFSA requires the registering tribunal to notify the parties of the registration or any order vacating the registration. There is no timeframe, but the notice must be given "promptly."

Challenge to registration. The Hague Child Support Convention contains specific timeframes that all Contracting States must follow. Those timeframes are reflected in UIFSA Section 707, Contest of Registered Convention Support Order. That means every U.S. state requires that, in the case of a registered Convention support order, the respondent must file a contest within 30 days after the notice of registration. If the contesting party does not reside in the United States – for example, the obligor lives abroad but the order was registered in a U.S. state where the obligor has property – the contest must be filed not later than 60 days after the notice. Section 707 provides that if the nonregistering party fails to timely contest the registered Convention order, the order is enforceable. If there is a contest, the tribunal must resolve it.

Defenses. UIFSA Section 708, Recognition and Enforcement of Registered Convention Order, lists the only grounds on which a party may contest a registered Convention support order:

- Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.[454]

[453] *See* the Department of State's transmittal to the U.S. Senate when the Convention was submitted for Advice and Consent to Ratification, S. Treaty Doc. No. 110-21, at 16 (2008).
[454] *See Hedges v. Hedges,* 2020 Wash. App. LEXIS 3144, No. 52877-1-II, 2020 WL 7040987 (Dec. 1, 2020) (where noncustodial parent did not receive prior notice or have any opportunity to participate in an evidentiary hearing, the Polish proceedings were manifestly incompatible with public policy. Therefore, the Polish order requiring the parent to pay support for disabled adult children may not be registered with the Washington State Department of Child Support and is not enforceable.).

This means that recognition and enforcement of the order would have an intolerable result.[455] The public policy exception should have only a very limited application.[456]

- The issuing tribunal lacked personal jurisdiction consistent with Section 201 of UIFSA.

  Section 201 is the UIFSA provision that lists sufficient contacts between a nonresident defendant and the forum that satisfy U.S. due process requirements. Even if the tribunal that issued the Convention order used creditor-based jurisdiction, the U.S. tribunal should recognize the order if the facts of the case would support a basis of personal jurisdiction under Section 201 of UIFSA. If a respondent raises this challenge, it may be necessary for the child support attorney to request a continuance to learn more about the facts of the case to determine whether they support long arm jurisdiction.

- The order is not enforceable in the issuing country.

- The order was obtained by fraud in connection with a matter of procedure.

- A record transmitted in accordance with Section 706 lacks authenticity or integrity.

  These documents are the complete text of the support order (or the abstract or extract of the order if allowed by the registering state), a record stating that the order is enforceable in the issuing country, and, where necessary, the record showing the amount of any arrears.

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[455] Robert Keith, *Ten Things Practitioners Should Know about the Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance*, 51 Fam. L.Q. 255, 262 (2017).

[456] *Cf. Brett v. Martin,* 445 P.3d 568 (Wash. App. 2019) (in a case involving the registration and enforcement of a non-Convention foreign support order, the Court of Appeals addressed the issue of "manifestly incompatible with public policy." It held that the chief constitutional concern embodied by the public policy exception is the right to due process. As an example of what nonconstitutional issue could amount to a manifest incompatibility of public policy, it noted the similar phrase in Article 22(a) of the Hague Child Support Convention and the example provided by the State Department to the Senate of recognition and enforcement of a decision against a left-behind U.S. parent in a wrongful abduction case. It held that the person raising a public policy defense must show a constitutional issue of equal importance to due process or a conflict with another sovereign law on the order of magnitude of the policy against parental abduction of children. The appellate court concluded that recognition and enforcement of a foreign spousal support decision that did not comply with Washington law presuming termination of spousal support upon remarriage did not constitute a manifest incompatibility with Washington public policy.).

- A proceeding between the same parties and having the same purpose is pending before a tribunal of the registering state and that proceeding was the first to be filed.

- The registered order is incompatible with a more recent order involving the same parties and having the same purpose, and that order is entitled to recognition and enforcement.

- The alleged arrears have been paid in whole or in part. (This is similar to a defense under Article 6 of UIFSA. It is a defense to the alleged arrears but is not a defense to the registration itself.)

- Lack of proper notice and opportunity to be heard if the respondent neither appeared nor was represented in the proceeding.

- The order was issued in violation of Section 711, which limits a tribunal's jurisdiction to modify.

Application outcomes. If the respondent challenges the registration of a Convention support order, the respondent has the burden of proving one of the allowable grounds on which a tribunal may refuse to recognize and enforce a registered order. In most cases, the result of the Application for Recognition and Enforcement will be that the order is recognized and enforceable in the same manner as if the responding state had made the order. However, UIFSA Section 709, Partial Enforcement, also recognizes the possibility of partial recognition and enforcement. For example, if there is a dispute about arrears, the tribunal may recognize and enforce the order with regard to current support while the challenge about arrears is under way.

In some cases, the tribunal will refuse to recognize the order because the non-registering party has proven a valid basis for challenging the recognition and enforcement. In some cases, the support order cannot be recognized because of a reservation that the Contracting State has made under the Convention. For example, the United States will not recognize an order based solely on creditor jurisdiction when there is no factual basis for personal jurisdiction over the debtor under UIFSA Section 201. UIFSA Section 708, Recognition and Enforcement of Registered Convention Support Order, provides that where an order cannot be recognized because:

- The issuing tribunal lacked personal jurisdiction consistent with UIFSA Section 201;

- The order was obtained by fraud in connection with a matter of procedure; or

- In a case where the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, the respondent did not receive proper notice and an opportunity to be heard;

then the tribunal cannot dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order. In fact, the IV-D agency must take all appropriate measures to request a child support order if the application for recognition and enforcement came from a Central Authority in the requesting State pursuant to Section 704. The child support attorney should ensure that the tribunal complies with this UIFSA provision, requesting that the tribunal continue the matter until such time as the agency is able to obtain the needed additional information or documents from the requesting Central Authority to proceed with establishment.

Note that Section 708 only requires the agency to take appropriate measures to establish a support order. If the child support attorney reviews the facts of the case and determines that an application is not appropriate, there is no obligation to proceed. An example would be if the child in question is age 20 and the law of the responding state only provides for support of a child to age 18 or completion of high school, whichever comes later. Only if the child is less than 18 years of age does the Convention require appropriate measures to establish a support order.

Recognition and Enforcement of Convention Order in Convention Case – Outgoing Application[457]

Preparation and transmission of application. Most Convention countries have indicated in their Country Profiles that they want Contracting States to use the recommended Application form published by the Hague Conference as well as the other recommended forms for Recognition and Enforcement of a Decision. A country cannot require additional documents or forms to accompany an Application for Recognition and Enforcement, other than those identified in the Convention. However, under certain countries' domestic law, there must be a power of attorney in order for the Central Authority to act on behalf of the applicant. In that limited circumstance, Article 42 permits a Central Authority of the requested State to require a power of attorney from the applicant to represent the applicant before authorities. The Country Profile indicates whether a power of attorney form is required.

Once the agency has completed the application and is satisfied that the application complies with the Convention, the child support agency (as the requesting Central Authority) must transmit the application on behalf of the applicant to the requested Central Authority. The application must include the Transmittal form. There is no need to include certified documents unless the

[457] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 4: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Outgoing Application.

requested Contracting State asks for them. Under Article 44 of the Convention, any application and related documents must be in the original language and accompanied by a translation into the official language of the requested State or another language that the requested State has declared it will accept. As noted earlier, the international page of the OCSE website has the Convention forms translated into many languages.

Action in the requested State. The Central Authority in the requested State must review the application for compliance with the Convention. Article 6 of the Convention requires the requested Central Authority to initiate or help initiate any necessary proceedings in the requested State related to the Application for Recognition and Enforcement. In some countries, it may be possible for the requested central Authority to determine if the order can be registered for enforcement or declared enforceable. In other countries, the requested Central Authority cannot make that determination. In those countries, the requested Central Authority must promptly refer the application to the appropriate competent authority. In both cases, the responsible authorities must act "promptly" or "without delay" in registering the decision or declaring it enforceable.

Article 23 of the Convention requires a procedure for the registration of a foreign order for enforcement, or for a declaration of the order's enforceability, that excludes submissions of evidence from the parties unless there is a challenge. Article 23 also limits available challenges and the ability of the competent authority in the requested State to review the order on its own motion. As noted earlier, under the Convention, a competent authority may refuse a declaration or registration only if recognition of the order would be manifestly incompatible with the public policy of the State addressed. At this stage neither the applicant nor the respondent is entitled to make any submissions of evidence.[458] At the time of the *ex officio* review, if there are serious questions concerning the integrity or authenticity of a document, the competent authority may ask for the complete certified copy of the document.[459]

Because the goal is to have an expedited process for recognition and enforcement of support orders, the Convention limits the right to challenge the registration or appeal a declaration of enforceability. Article 23 lists the only bases for challenging the registration. They are similar to the ones provided under UIFSA Section 708, Recognition and Enforcement of Registered Convention Support Order.

The Convention does not require that a Contracting State change its laws regarding subject matter and personal jurisdiction. Instead, the Convention includes indirect rules of jurisdiction. That means the actual basis of jurisdiction the issuing tribunal used is not determinative. As long as the facts would satisfy

[458] Para. 501 of the Explanatory Report.
[459] Para. 502 of the Explanatory Report.

one of the bases listed in Article 20 of the Convention, the requested State must recognize and enforce the order.[460]

One of the challenges a debtor can raise is that there is no basis for recognition of the order under Article 20 of the Convention. This is an area on which child support attorneys may want to help provide training to caseworkers who complete Convention applications. The required bases for recognition of an order under the Convention include many, but not all, of the bases for jurisdiction under Section 201 of UIFSA. For example, personal service on the respondent while present in the State is not listed in Article 20 of the Convention. Nor is intercourse in the State that may have resulted in conception of the child. Nor is presence of the child in the State because of acts or directives of the respondent. On the other hand, one of the bases listed in Article 20 of the Convention is the fact that the creditor was habitually resident in the State of origin when proceedings were instituted (i.e., creditor-based jurisdiction). The child support attorney can point out why it is important for the agency representative completing the application to check off as a basis for recognition the fact that the U.S. creditor was residing in the state that issued the order (if that is true). What will be determinative in the requested State is not the basis of jurisdiction used by the U.S. tribunal, but whether there is a basis for recognition under the Convention. Therefore, although the U.S. tribunal may have based jurisdiction on intercourse in the state that may have resulted in conception, the tribunal in the requested Convention State must recognize the U.S. order if the creditor obligee was habitually resident in the state at the time the proceeding was initiated.

The Convention provides that the competent authority is bound by the findings of fact on which the issuing State based its jurisdiction. It also prohibits the competent authority from reviewing the merits of the decision.

Possible outcomes. In most cases, the result of the Application for Recognition and Enforcement will be that the order the child support agency sends is recognized and enforceable in the requested State. However, the Convention recognizes the possibility of partial recognition and enforcement. For example, if there is a dispute about arrears, the competent authority may recognize and enforce the order with regard to current support while the challenge about arrears is under way. In some cases, the competent authority will refuse to recognize the order because the non-registering party has proven a valid basis for challenging the recognition and enforcement. In some cases, the support order cannot be recognized because of a reservation that the requested State has made under the Convention. This outcome should not occur in an application from a child support agency to recognize and enforce a U.S. order because U.S. tribunals do not base jurisdiction on any of the bases to which a Contracting State may take a reservation.

[460] Para. 433 of the Explanatory Report.

Enforcement of order. If the order is recognized as enforceable in the requested country, the country must provide the same enforcement remedies to a case as is provided in a domestic case. The Convention does not require any specific enforcement remedies.

Modification of Order in Convention Case – Incoming Application[461]

Scope. Under Article 10 of the Hague Child Support Convention and UIFSA Section 704, Initiation by [Government Entity] of Support Proceeding Under Convention, the following modification applications are available through the Central Authority to a creditor:

- Modification of a support order of a tribunal of the responding U.S. state; and
- Modification of a support order of a tribunal of another U.S. state or a foreign country.

The following modification applications are available through the Central Authority to a debtor:

- Modification of a support order of a tribunal of the responding U.S. state; and
- Modification of a support order of a tribunal of another U.S. state or a foreign country.

Incoming application to modify U.S. order. If the applicant seeks modification of a U.S. order, the applicant should send the application to the U.S. state that issued the order in two circumstances. The first is if the issuing state has continuing, exclusive jurisdiction (CEJ) to modify. Under UIFSA Section 205, Continuing, Exclusive Jurisdiction to Modify Child Support Order, an issuing state has CEJ if the obligee, obligor, or a child resides there at the time the application is filed. Even if all the parties have left the state, Section 205 provides that the state has CEJ if the parties consent in a record or in open court that the tribunal may continue to exercise its jurisdiction to modify the order. The second situation is based on UIFSA Section 611(f), Modification of Child-Support Order of Another State. That section provides that a U.S. tribunal retains jurisdiction to modify an order it has issued if one party resides in a different U.S. state and the other party resides outside of the United States. Note that this is not an exclusive jurisdiction to modify.

There are two circumstances in which the applicant should not send the application to the issuing state but, instead, should send the application to a U.S. state with personal jurisdiction over the other party. Usually that means the state

[461] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 6: Modification of a Support Order under the Convention – Incoming Application.

where the other party resides. The first circumstance is when there is no CEJ state as defined by Section 205 and the applicant chooses to submit to the jurisdiction of the respondent's state rather than use Section 611(f). The second is when the parties file consent in a record with the tribunal of the issuing state that they want a state that does not have CEJ to, nevertheless, assume modification jurisdiction. Section 205(b)(1) allows such a consent as long as the state assuming modification jurisdiction has jurisdiction over at least one of the parties or is the residence of the child.

The requesting Central Authority may not be aware of U.S. jurisdictional rules. If the application is transmitted to the incorrect state, UIFSA Section 306, Inappropriate Tribunal, authorizes a tribunal to forward pleadings to an appropriate tribunal in another state. According to the official Comment, although the section only addresses a tribunal, it is likely that a child support agency will also assist in transferring documents to the appropriate tribunal if that is what the requesting Central Authority wants.

On occasion, a requesting Central Authority may transmit to the United States a Convention application for modification when the relief the applicant seeks is modification of arrears under a U.S. order. Although some Convention countries allow cancellation of support arrears through a modification action, that is not the case in the United States. Under federal law, support arrears are vested judgments in favor of the obligee and retroactive modification, prior to the date of notice of the petition to modify, is prohibited.

Modification of arrears is different from arrears management programs that many states offer. Under these programs, states may cancel interest or a portion of state-owed arrears if the obligor complies with certain requirements.

Applicable law. A Convention application to modify a U.S. order will be processed under the general rules of UIFSA, not the Article 7 provisions governing Convention proceedings. If an applicant wants a U.S. state to modify an order it has issued, registration is not needed. The requesting Central Authority should send the text of the order to make sure the correct order is identified. The application should also include the Financial Circumstances Form developed by the Convention Forms Working Group. Other documents and information will be based on the issuing state's modification laws and support guidelines. If required documents are not included with the application, the state Central Registry or the local child support office working the case may request them from the requesting Central Authority.

Registration process. If an applicant wants to modify an order issued by a U.S. state other than the responding state, the responding state will need to register the order for modification. The registration procedure governing registration of a state order is in Article 6. Section 602, Procedure to Register Order for Enforcement, identifies the documents and information required to register an order for modification. Other documents and information will be based

on the registering state's modification laws and support guidelines. The requesting Central Authority will usually provide income and asset information through the Financial Circumstances Form developed by the Convention Forms Working Group. A U.S. tribunal may consider the Convention Transmittal form a sufficient transmittal letter for purposes of Section 602. If it does not, and additional documents are needed for registration, it is appropriate for the state Central Registry or the local child support agency to request them from the requesting Central Authority. The agency should continue to process the case to the extent possible.

Modification of order. If the registration of the U.S. order is confirmed, the tribunal will apply its state law to determine whether there is a basis for modification. If so, it will apply its support guidelines to determine the support amount. UIFSA Section 611, Modification of Child-Support Order of Another State, provides that a tribunal may not modify any aspect of a child support order that may not be modified under the law of the issuing state. That means the law of the issuing state determines whether the duration of the support obligation may be modified. Once the tribunal modifies the order, that order becomes the controlling order in the case and the modifying tribunal assumes CEJ.

Incoming application to modify Convention or non-Convention foreign support order. If the applicant seeks modification of a foreign support order, the applicant should send the application to the U.S. state with personal jurisdiction over the respondent. Usually, that will mean the state where the respondent resides.

The Central Registry acting on the application may refuse to process the application only if it is manifest that Convention requirements are not met. The Central Registry may not reject the application solely because additional documents or information are needed.

A child support attorney will usually be involved with the case only after the Central Registry has referred it to the local child support office for processing.

Forms. In addition to the required Transmittal, the requesting Central Authority should transmit an Application for Modification of a Decision, including Restricted Information on the Applicant, and a Financial Circumstances Form.

Applicable law. According to UIFSA Section 105, Application of [Act] to Resident of Foreign Country and Foreign Support Proceeding, the tribunal in the responding state will apply Articles 1 through 7 to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Article 1 through 6, Article 7 controls. Under U.S. law, a foreign order must be recognized as valid before the tribunal addresses modification. If the Convention application seeks modification of a non-Convention foreign support order, the order should be registered under Article 6 of UIFSA. If the Convention application seeks modification of a Convention order, the order must be registered under

Article 7 of UIFSA. Additionally, Section 711, Modification of Convention Child-Support Order, prohibits a tribunal from modifying a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued. The exceptions are if the obligee submits to the jurisdiction of the responding state tribunal; or the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

If the responding tribunal does not modify a Convention child support order because the order is not recognized in the responding state, Section 708(c) of UIFSA applies.

Registration process. As noted, U.S. law requires that a tribunal first recognize a foreign order as valid before the tribunal addresses modification. This is true even if the Application to Modify a Decision is not accompanied by an application to recognize and enforce the decision, which will probably be the situation. If the Convention application seeks modification of a non-Convention foreign support order, the order should be registered under Article 6 of UIFSA. If the Convention application seeks modification of a Convention order, the order must be registered under Article 7 of UIFSA.

UIFSA Section 311, Pleadings and Accompanying Documents, requires the filing of a petition or similar pleading in a proceeding to register and modify a support order. Child support attorneys and child support agencies should work with their tribunals to determine whether the Hague application is a sufficient pleading or whether the tribunal requires the agency to file a petition to which the application is attached.

Jurisdiction to modify. If the order was issued by a non-Convention country, the tribunal has jurisdiction to modify the order if UIFSA Section 615, Jurisdiction to Modify Child-Support Order of Foreign Country, is met. That section has two important requirements.

First, the order must be issued by a country that meets UIFSA's definition of a "foreign country." Under Section 102, that means a foreign reciprocating country under a federal bilateral arrangement, a country that has established a reciprocal arrangement with the registering U.S. state, or a country that has enacted a law or established support procedures that are substantially similar to UIFSA. A foreign country also includes a Convention country, but Article 7 governs modification of a Convention order, not Article 6.

The second requirement is that the foreign issuing tribunal lacks or refuses to exercise jurisdiction to modify its order. The example given in the Comment to that section is "the conundrum posed when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal" to modify the support order. In that circumstance, the foreign issuing tribunal is unable to exercise jurisdiction to modify under its law.

UIFSA does not define what evidence is needed for the U.S. tribunal to make the determination that the foreign issuing tribunal lacks or refuses to exercise its modification jurisdiction. It may be useful for the tribunals to communicate with each other, under UIFSA Section 317, rather than rely on representations of one or more of the parties or attorneys. Section 317, Communications Between Tribunals, authorizes a tribunal to communicate with a foreign tribunal about its laws, the legal effect of an order, and the status of a proceeding. The Comment to Section 615 also emphasizes that the ability of a U.S. tribunal to modify when the foreign country refuses to exercise its jurisdiction should be invoked with circumspection "as there may be a cogent reason for such refusal."

If the order was issued by a Convention country, the U.S. tribunal has jurisdiction to modify the order as long as it has personal jurisdiction over the respondent and there is no violation of Section 711 of UIFSA. Section 711, Modification of Convention Child-Support Order, prohibits modification of a Convention child support order if the obligee remains a resident of the foreign country that issued the order. There are two exceptions:

- The first is if the obligee submits to the jurisdiction of the U.S. tribunal, either expressly or by defending on the merits of the case without objecting to the tribunal's jurisdiction at the first available opportunity.

- The second exception is if the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order under its internal law. The example provided in the Convention's Explanatory Report is if the State of origin is not able to exercise jurisdiction to modify its decision because its laws require the debtor to reside in the forum for modification proceedings to be brought. This second exception is not talking about a refusal to modify because there is no merit to the modification request.[462] Section 317 of UIFSA authorizes a U.S. tribunal to communicate with the issuing Convention country to determine whether the foreign tribunal lacks or refuses to exercise jurisdiction to modify its order.

Modification of order. If the registration of the foreign support order is confirmed, the tribunal will apply its state law to determine whether there is a basis for modification. If so, it will apply its support guidelines to determine the support amount. If necessary, the child support attorney should remind the tribunal that it cannot modify the duration of support. The law of the foreign country that issued the support order governs the duration of support.

Should the obligee subsequently need to enforce the modified order in a different Convention country, the obligee may transmit the order along with a Convention application for recognition and enforcement to the Convention

[462] Para. 426 of the Explanatory Report.

country. Similarly, if the modification reduces or suspends the obligor's support obligation, the obligor may register the order in the Convention country that originally issued the order for recognition and enforcement.

Modification of Order in Convention Case – Outgoing Application[463]

An application for modification of a child support order is appropriate when there is an existing support order. According to the Convention Explanatory Report, the order may have been issued by the requested State, by a Contracting State other than the requested State, or even by a non-Contracting State.[464] Although there is no requirement in the Convention that the decision being modified be issued by a Contracting State, the decision must be one that falls within the scope of the Convention, in other words, child support up to age 21.[465]

The fact that the respondent lives in a Convention country does not mean the child support agency should send a Convention application for modification to that country. It is appropriate for the child support attorney to review UIFSA's modification jurisdiction rules with agency staff. If the order was issued by a U.S. tribunal, it is usually preferable for the U.S. party seeking modification to do so in the United States.

If the creditor resides in the state that issued the order, the tribunal in that state has CEJ under UIFSA Section 205 to modify its order. If the agency needs assistance from another country, it may be able to make a request under Article 7 of the Convention for another Central Authority to help locate or contact the debtor or facilitate the service of documents. If a different U.S. state issued the order, Section 611(f) of UIFSA applies. Under that section, if one party lives outside the United States but one party still lives in a U.S. state, the tribunal that issued the order retains jurisdiction to modify its order. Keep in mind that modification jurisdiction under Section 611(f) of UIFSA is not exclusive.

For various reasons, the agency may decide to file a Convention application for modification of the U.S. order in the respondent's country rather than in the United States. However, if the agency is providing services to a debtor seeking modification, it would be rare that a debtor would seek modification of a U.S. order in the creditor's country rather than in the United States. One barrier is that the requested country is not required by the Convention to provide a debtor with free legal assistance; so the proceeding could be costly. The second barrier is that the debtor would then have to request

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[463] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 7: Modification of a Support Order under the Convention – Outgoing Application.
[464] *See* Para. 262 of the Explanatory Report: "The decision to be modified could have been made in a Contracting State or a non-Contracting State, but whether it can be modified depends on the law of the requested State." *See also* The Practical Handbook, Para. 794.
[465] *See* Para. 263 of the Explanatory Report.

the U.S. tribunal to recognize the modification of its order; such recognition would not be automatic.

Preparation and transmission of application. If the local agency determines that the most appropriate course of action is a Convention application, it will transmit the application under Article 7 of UIFSA. The Hague Country Profile is an excellent resource for identifying forms and information needed by the requested State. Most Convention countries have indicated in their Country Profiles that they want Contracting States to use the recommended Application form published by the Hague Conference as well as the Financial Circumstances Form. The information in the Financial Circumstances Form is critical for the competent authority in the requested State to determine a modified support amount. If the debtor is the applicant, the information may also be needed to determine the debtor's eligibility for legal assistance in the requested State. With limited exception, a requested State must provide free legal assistance, if needed, with respect to all applications by a creditor for a child below the age of 21. However, there is no automatic right to cost-free legal assistance to a debtor. Under Article 17 of the Convention, for applications other than child support applications by a creditor, a Contracting State may make the provision of free legal assistance subject to a means or a merit test. The information contained in the Financial Circumstances Form will help the requested State determine the debtor's entitlement to assistance if it uses a means test. The requested State will need the complete text of the order, unless it has indicated in its Country Profile that an abstract of the order is acceptable. In addition to Convention required documents, a country may require specific forms, documents, or information under domestic law that governs modification.

Attorneys are usually not involved in the preparation of an application. Once the agency has completed the application and is satisfied that the application complies with the Convention, the child support agency (as the requesting Central Authority) must transmit the application on behalf of the applicant to the requested Central Authority. The application must include the Transmittal form. There is no need to include certified documents unless the requested Contracting State asks for them. Under Article 44 of the Convention, any application and related documents must be in the original language and accompanied by a translation into the official language of the requested State or another language that the requested State has declared it will accept. As noted earlier, the international page of the OCSE website has the Convention forms translated into many languages.

There are no restrictions in the Convention on where a creditor may seek modification of an order. Usually, the agency will send a Convention application for modification to the country in which the debtor resides. Although there are no restrictions in the Convention on where a creditor may seek modification, there are restrictions on where a debtor may seek modification if the order was issued by a Contracting State. Based on Article 18 of the Convention, if the creditor habitually resides in the Contracting State that issued the order, the obligor must

send a Convention application for modification to that country. The Convention does not define "habitual residence." According to the Explanatory Report, it is a case-by-case determination, looking at the connection between the individual and the State of origin.[466]

There are three exceptions to the requirement that the debtor must seek modification in the issuing Contracting State where the creditor habitually resides. The Convention permits a debtor to bring a proceeding to modify a decision or make a new decision in a different Contracting State only in the following situations:

- Where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

- Where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or

- Where the decision made in the State of origin cannot be recognized or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.[467]

Action in the requested State. The Central Authority in the requested State must review the application for compliance with the Convention. Article 6 of the Convention requires the requested Central Authority to initiate or help initiate any necessary proceedings in the requested State related to the Application for Modification. If there is a proceeding, Article 29 prohibits any requirement that the child or applicant be physically present in the proceeding. Article 10 provides that the application for modification is subject to the jurisdictional rules in the requested State. Regardless of what country issued the support order, the competent authority in the requested State will apply its country's laws and defenses regarding the availability of modification. If the competent authority modifies the order, it will determine the support amount based on the laws in its country.

If the competent authority in the requested State modifies the order, this modified order constitutes a Convention order. Should the creditor subsequently need to enforce this order in a different Convention country, the creditor may transmit the order along with a Convention application for recognition and enforcement to the Convention country. Similarly, if the modification reduces or suspends the debtor's support obligation, the debtor may send an application for

[466] *See* Para. 63 of the Explanatory Report.
[467] Art. 18 of the Hague Child Support Convention. *See also* Paras. 425–427 of the Explanatory Report.

recognition and enforcement of the modified order to the Convention country that originally issued the order.[468]

Some Convention countries allow cancellation of support arrears through a modification action. However, that is not permitted in the United States. Under federal law, support arrears are vested judgments in favor of the obligee, and retroactive modification, prior to the date of the filing of the petition, is prohibited. Therefore, if a requested State modifies arrears under a U.S. order that has been transmitted to the country for modification, it is unlikely a U.S. tribunal will later recognize that arrears modification.

In some countries, the domestic law only allows the competent authority to make a new decision, not a modification decision. As the result would be the same regardless of the terms used, a Contracting State would be in compliance with its obligation to provide for modification decisions under the Convention if it made a new decision upon a request for a modification decision. The Diplomatic Session agreed that the word "modification" should include the concept of "making a new decision" if the domestic law of a Contracting State permits only this concept instead of "modification."[469]

Establishment of Order in Case Involving Non-Convention Foreign Country – Incoming Application from Non-Convention Foreign Country[470]

As noted earlier, OCSE has developed Caseworker Guides for processing cases from FRCs. They identify the forms the Central Authority of an FRC will send to a state agency when requesting establishment of an order. The child support agency will process the application as it would an intergovernmental request from a state for establishment of a support order.

Establishment of Order in Case Involving Non-Convention Foreign Country – Outgoing Application to Non-Convention Foreign Country

The relevant Caseworker Guide will identify the forms a child support agency should send to the Central Authority of an FRC to request the establishment of a support order. The Guide will also explain the laws, policies, and procedures of the FRC related to parentage and support establishment. The FRC will apply its law to determine the existence of a support obligation and the amount of support.

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[468] *See* Para. 268 of the Explanatory Report
[469] *See* Para. 264 of the Explanatory Report.
[470] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 9: Processing of a Non-Convention Case.

Enforcement or Modification of Non-Convention Foreign Support Order – Incoming Application from Non-Convention Foreign Country[471]

Registration for enforcement or modification. Article 6 of UIFSA governs the registration of non-Convention foreign support orders for enforcement or modification.

The child support attorney needs to be aware that some foreign jurisdictions have administrative processes for establishing support obligations that include mediation and consent agreements. If the order is enforceable in the foreign jurisdiction, it may be enforceable in the United States. If there are any doubts about the enforceability of an order, the attorney should contact the requesting jurisdiction or OCSE. Some jurisdictions will include a certificate of enforceability with the application, or the attorney can request this document to file with the registration if necessary.

Required documents. UIFSA requires the same documents and information for the registration of an order issued by a non-Convention foreign country as it does for registration of an order issued by a state.[472] Pursuant to Section 616, Procedure to Register Child-Support Order of Foreign Country, a party or support enforcement agency seeking to modify (or to modify and enforce) a foreign child support order not under the Hague Child Support Convention may file a petition for modification at the same time it requests registration of the order. The petition must specify the grounds for modification.[473]

There is case law addressing the relationship between the required documents and subject matter jurisdiction. For example, the Alabama Court of Civil Appeals has held that strict compliance with registration requirements is necessary to confer jurisdiction on the courts.[474] However, where the foreign country submitted certified copies of the orders to be registered but failed to submit a transmittal letter, the Alabama Court of Civil Appeals held that compliance was met.[475] It found that the lack of a letter of transmittal was inconsequential. Its purpose was a "perfunctory cover letter" to convey a request to register and enforce the issuing tribunal's order. That purpose was accomplished by the materials contained in the packet transmitted from the foreign country.

Registration process. The registering tribunal must send the respondent a notice of registration of the foreign support order.[476] The time period for a

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[471] *See* Office of Child Support Enforcement, International Case Processing Under UIFSA 2008: Training, Module 9: Processing of a Non-Convention Case.
[472] *See* Unif. Interstate Family Support Act § 602 (2008)
[473] Unif. Interstate Family Support Act § 616 (2008).
[474] *See, e.g., L.V. v. I.H.*, 123 So. 3d 954 (Ala. Civ. App. 2013).
[475] *See, e.g., L.V. v. I.H.*, 123 So. 3d 954 (Ala. Civ. App. 2013).
[476] Unif. Interstate Family Support Act § 605 (2008).

challenge under Section 605 and the defenses listed in Section 607 of UIFSA apply to registered orders that were issued by a foreign country.[477]

Contest to registration. UIFSA Sections 605 through 608 apply to a contest of a registered support order issued by a non-Convention foreign country.[478] The defense that a respondent is most likely to raise is lack of personal jurisdiction in the issuing country. If the other country relied solely on the presence of the child or creditor for jurisdiction to enter its order, the order – depending upon the case facts -- may not be enforceable in the United States.[479] However, keep in mind that the child support agency must register the order if it appears valid on its face. It is up to the respondent to raise a challenge. The agency or child support attorney cannot make a binding determination that the order is unenforceable; this authority rests with the tribunal.

Depending on the defense the obligor raises, the child support attorney may need to contact the requesting Central Authority for additional information. For example, if the obligor challenges the jurisdiction of the issuing tribunal, the attorney should determine if there are any facts that would establish jurisdiction under U.S. law. If the facts of the case support jurisdiction under U.S. laws, regardless of what law the issuing tribunal applied, U.S. tribunals should recognize and enforce the foreign order.[480]

As in any registration action, once registration is confirmed, the obligor cannot raise any defense to the registration that could have been raised in a timely contest.[481] If the applicant sought a modification of the registered order, the tribunal will apply its law to determine whether there is a basis for modification as well as its support guidelines.

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[477] *See* Unif. Interstate Family Support Act § 607 (2008). *See also Arnell v. Arnell,* 416 S.W.3d 188 (Tex. App. 2013) (discusses defenses to registration of a Swiss order).

[478] *See County of Los Angeles Child Support Services Dep't v. Superior Court of Los Angeles County*, 243 Cal. App. 4th 230 (2015) (A California trial court erred when, in registering a Swiss judgment of paternity and support, it granted the man's request for genetic testing. The California Court of Appeals observed that when paternity has been established in another jurisdiction, non-parentage may not be raised as a defense to registering for enforcement the foreign order).

[479] *See Luxembourg ex rel. Ribeiro v Canderas*, 768 A.2d 283 (N.J. Super. Ct. Ch. Div. 2000). *See also In re Marriage of Lohman*, 361 P.3d 1110 (Colo. Ct. App. 2015) (The trial court erred when it concluded that because a support order was properly entered under English law, it need not comport with American due process guarantees. Reversing, the appellate court observed that the U.S. Constitution forbids a United States court from recognizing or enforcing a foreign court's judgment unless the foreign court's exercise of jurisdiction was permissible under the laws of the United States.).

[480] *See Willmer v. Willmer*, 144 Cal. App. 4th 951 (Cal. Ct. App. 2006); *Luxembourg ex rel. Ribeiro v. Canderas*, 768 A.2d 283 (N.J. Super. Ct. Ch. Div. 2000).

[481] Unif. Interstate Family Support Act § 608 (2008). *See Liuksila v. Stoll*, 887 A.2d 501 (D.C. 2005).

Enforcement or Modification of Non-Convention Foreign Support Order – Outgoing Application to Non-Convention Foreign Country

The relevant Caseworker Guide will identify the forms a child support agency should send to the Central Authority of an FRC to request the enforcement or modification of a support order. The Guide will also explain the laws, policies, and procedures of the FRC related to enforcement and modification. The agency should include a copy of the order and the payment record. The Caseworker's Guide for that particular country will indicate if it requires certified copies and additional documentation. For example, the country may require proof that the respondent was given notice and an opportunity to respond to the action. The best documentation of service is a certified copy of the return of proof of service that was filed with the tribunal. The FRC will apply its law regarding recognition of a foreign order, as well as enforcement remedies. The law of the FRC will also govern the availability of modification, and any determination of a modified support amount.

U.S. Jurisdiction to Modify Foreign Support Order When Foreign Country Lacks or Refuses to Exercise Jurisdiction to Modify

If the order was issued by a foreign country, as defined by UIFSA, and that country "lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws," UIFSA provides that a tribunal of the registering state may assume modification jurisdiction and bind all parties subject to its personal jurisdiction. The consent of both parties is not necessary. Nor does it matter whether the petitioner is a resident of the registering state or of the foreign country.[482] The Comment to Section 615 explains:

> The standard example cited for the necessity of this special rule involved the conundrum posed when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal in order to sustain a modification of child support. In that circumstance, the foreign issuing tribunal lacks jurisdiction to modify under its law. Ordinarily, under Section 611 the responding state tribunal is not authorized to issue a new order, in effect modifying the foreign support order, because the child or the obligee continues to reside in the issuing country. To remedy the perceived inequity in such a fact situation, this section provides an exception to the rule of Section 611.[483]

Foreign Support Agreement

The Hague Child Support Convention also requires procedures for the recognition and enforcement of maintenance arrangements. UIFSA refers to

[482] Unif. Interstate Family Support Act § 615(a) (2008).
[483] Comment to Unif. Interstate Family Support Act § 615 (2008).

these arrangements as foreign support agreements. UIFSA Section 701 contains the definition of a foreign support agreement. Section 710(b) lists the documents that must accompany an application or direct request for recognition and enforcement of a foreign support agreement. Section 710 also outlines the procedure for recognition and enforcement of such an agreement, which is similar to the procedure for recognition and enforcement of a Convention support order. There are two differences. First, the tribunal must suspend a proceeding for recognition and enforcement of the agreement during the pendency of a challenge or an appeal of the agreement before a tribunal of another U.S. state or a foreign country. Second, there is no requirement to allow a reasonable time for a party to request establishment of a new order if the foreign support agreement is not recognized and enforced.

Comity

If an order exists but the issuing country does not meet the definition of "foreign country" under UIFSA, it cannot be registered under UIFSA. However, the order may be enforceable under comity.[484] Comity to a valid foreign judgment[485] is a case-specific finding, usually based on elements of similarity of process. The U.S. tribunal will look at notice, due process, and the basis of personal jurisdiction. The essential inquiry is whether the parties were afforded a fair opportunity in an impartial forum to fully litigate the issues.[486] If the U.S. tribunal finds that due process was satisfied, it may recognize and enforce the order on the principle of comity; that obviates the need for the tribunal to re-litigate the issues. While such a ruling might be persuasive in a similar case involving an order from the same foreign jurisdiction, it does not create a binding precedent. An important distinction regarding recognition of an order based on comity is that is does not require a finding that the issuing foreign jurisdiction is a "'foreign country" under other UIFSA definitions.

Being an equitable remedy, comity is not prescribed by statute. Nevertheless, UIFSA contains some important procedural improvements. UIFSA Section 210, Application of [Act] to Nonresident Subject to Personal Jurisdiction, extends the operation of the evidentiary and discovery provisions in Sections

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[484] *See* Unif. Interstate Family Support Act § 104 (2008). *See, e.g.*, *Juma v. Aomo*, 68 A.3d 148 (Conn. App. 2013); *Gaudreau v. Kelly*, 826 N.W.2d 164 (Mich. App. 2012); *Gonzales-Alpizar v. Griffith*, 317 P.3d 820 (Nev. 2014); *Kalia v. Kalia*, 783 N.E.2d 623 (Ohio App. 2002).

[485] *See In re Alexander Ten,* 2019 Wash. App. LEXIS 3058, No. 79302-1-I, 2019 WL 6699974 (Dec. 9, 2019) (The underlying purpose of the comity doctrine is to respect a foreign state's application of its own laws and ensure there is an end to litigation. With this purpose in mind, the trial court should have extended comity to Russian 2014 orders titled "Law Enforcement Order" and "Decision of the Court Bailiff," along with the Russian 2010 judicial child support order. "Whether the 2014 decisions were issued as a ruling by a quasi-judicial body or an administrative agency, it is clear they were official child support enforcement decisions. It appears both of the 2014 decisions fall within the broad definition of a "judgment" for purposes of comity.).

[486] *See Gonzales-Alpizar v. Griffith*, 317 P.3d 820 (Nev. 2014) (case remanded to trial court to determine whether custodial parent obtained the Costa Rican child support order by fraud).

316, 317, and 318 to a case involving a foreign support order recognized on the basis of comity.

Service Abroad Under Various Treaties

Hague Child Support Convention. The Hague Child Support Convention details assistance that Central Authorities are required to provide with regard to applications for support. Among those responsibilities is the requirement to take all appropriate measures "to facilitate service of documents."[487] Even in the absence of an application, Central Authorities must also assist with service if a Convention country makes a request for specific measures under Article 7 of the Convention.

Under Article 7(1), a Central Authority may request assistance with service of documents, when no Article 10 application is pending, if the measures are necessary to assist a potential applicant in making an application or in determining whether such an application should be initiated. For example, if a U.S. child support agency is initiating a long-arm proceeding to establish a support order and the alleged obligor resides in a Convention country, it is appropriate for the agency to make an Article 7(1) request that the Central Authority in the Convention country help it serve the U.S. pleadings on the alleged obligor. Because the request must be supported by reasons, it would be appropriate for the agency request to note that the assistance is needed to establish a U.S. order that the potential applicant would subsequently request the Convention country to recognize and enforce. If satisfied that the measures are necessary to assist the potential applicant, the requested Central Authority must facilitate the service of documents.

Under Article 7(2), a Central Authority may request assistance with service of documents in relation to a case having an international element concerning child support in the requesting State. Article 7(2) applies even if both the debtor and creditor lived in the requesting State. An example is when the obligor resides in the United States but has a temporary work assignment abroad, and the child support agency needs assistance with service of process in a domestic support proceeding. The requested Central Authority has discretion with regard to assisting with service under this Article.

Hague Service Convention. As noted earlier, if a child support agency is proceeding to establish a child support order using long-arm jurisdiction over a defendant who resides in another country, the agency may need to request assistance in that country with service of process. The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) streamlines methods of serving documents originating in one country that is a party to the Convention upon persons residing in another country that is also a party to the Convention.

[487] Art. 6 of Hague Child Support Convention.

The United States and many other countries are signatories to both the Hague Child Support Convention and the Hague Service Convention. Note that a country may designate a central authority under the Hague Service Convention that differs from the central authority under the Hague Child Support Convention. Some countries that are signatories to the Hague Service Convention view it as the exclusive means to provide service.[488] If an attorney needs assistance with service from a country that is a signatory to both treaties, check the Convention country's Country Profile; it will provide information about how service must be accomplished. If allowed, it is usually preferable for the attorney to specify that the request is under the Hague Child Support Convention – not the Hague Service Convention – since costs may differ.

There are also countries that are a party to the Hague Service Convention but are not parties to the Hague Child Support Convention. When asking one of those countries for assistance in serving a resident in their country for a U.S. proceeding, the child support agency must comply with the Hague Service Convention. Service of process under the Hague Service Convention is relatively easy. The Convention spells out three alternative methods of service:

- Service according to the local law of the foreign jurisdiction to which the request was sent;
- Service by a particular method specified in the request; or
- Service by delivery to the addressee if he or she agrees to voluntarily accept it.

The Convention also requires signatory countries to inform the Hague ministry of any objections that they have to service.

Service is initiated by using a Request for Service Form, which can be completed online.[489] The request form states the name and address of the person to be served and the desired method of service. It is important to include reference to the authority for the request; an agency should state that the request is made pursuant to Rule 4(c)2(A), United States Federal Rules of Civil Procedure, and any other pertinent federal or state law.[490] Although the form can be completed online, it cannot be submitted online. The agency should mail the completed form and underlying documents to be served, with accompanying

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[488] That is not the view of the United States. *See* Robert Keith, *"Ten Things Practitioners Should Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,"* 51 Fam. L.Q. 255 (2017). Therefore, in child support cases, you may need to comply with the Hague Service Convention in outgoing cases but a central authority in a foreign country does not need to comply with it in an incoming child support case to the United States.

[489] The form is available at https://www.hcch.net/en/instruments/specialised-sections/service.

[490] Instructions on requesting service under the Hague Service Convention can be found in the U.S. Department of Justice, OIJA Guidance on Service Abroad in U.S. Litigation, https://www.justice.gov/civil/page/file/1064896/download.

translations, if applicable, directly to the foreign Central Authority. The Hague Service Convention website lists the names and addresses for each Central Authority. The Hague Service Convention also recommends that a country provide a summary of the documents being served to accompany any service sent to a resident of a Convention country.

Unless requested otherwise, the Central Authority itself or its designee will serve process according to its country's laws. That means if U.S. state law requires personal service for a proceeding based on long-arm jurisdiction, the child support attorney needs to make that request on the form. If the Central Authority has to employ a judicial officer or some other competent person to serve process, the Central Authority can request advance payment for any costs. To expedite matters, it is advisable to contact the Central Authority prior to sending the request for service to determine whether to also include payment. If payment is requested in foreign currency, make sure to check the applicable official or publicly reported market exchange rate to determine the currency exchange rate. On the reverse side of the Request for Service form, there is a Certificate of Service form that the Central Authority will return to the requesting agency once service is completed.

Inter-American Convention on Letters Rogatory and Additional Protocol. During the 1970s, countries that were members of the Organization of American States (OAS) entered into a pair of international agreements collectively called the Inter-American Convention on Letters Rogatory and Additional Protocol (Inter-American Convention). Similar to the Hague Service Convention, these are in force with 17 Central and South American countries. The United States has ratified it, noting a reservation only to Article 2b that pertains to evidence. In contrast to the Hague Service Convention, the Inter-American Convention requires that all service requests come from the requesting country's Central Authority. The Central Authority in the United States for that Convention is the Office of International Judicial Assistance (OIJA), within the U.S. Department of Justice. Requests from the United States are transmitted via a private contractor carrying out the service functions of the U.S. Central Authority on behalf of the Department of Justice. For that reason, outbound service requests under the Inter-American Convention must come from OIJA, by way of its contractor ABC Legal. ABC Legal charges no fee to send service requests pursuant to the Inter-American Convention. U.S. litigants, however, must complete and submit to ABC Legal all required forms and obtain the official seal of a U.S. domestic court. Instructions on requesting service under the Inter-American Convention can be found in the OIJA Guidance on Service Abroad in U.S. Litigation.[491]

[491] *See* https://www.justice.gov/civil/page/file/1064896/download (last visited Feb. 7, 2021). The online form is available through the U.S. Department of Justice, https://www.justice.gov/civil/page/file/914416/download.Translated Spanish and Portuguese versions of the form can be found at https://www.abclegal.com/international-service-of-process/forms.

Application of the Hague Evidence Convention

As noted earlier, UIFSA provides that an affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury.[492] This provision can be problematic in international cases. Some countries are opposed to a request that a resident in a sovereign nation submit to the perjury laws of a U.S. state by signing a declaration or affidavit.

In processing a Convention case or a case with an FRC, it is possible that a child support attorney may also encounter issues about the applicability of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention).[493] Officials in some foreign countries may request that matters should proceed in their jurisdiction using the Hague Evidence Convention. This process can be cumbersome and lengthy. Case law is clear that in the United States, the Hague Evidence Convention is not the exclusive means to facilitate production of documents or other evidence in an international case.[494] However, the law in other countries may require the exclusive use of the Hague Evidence Convention in such cases.

If an issue regarding application of the Hague Evidence Convention arises, the child support attorney should contact the requesting Central Authority to discuss the issue and determine the best action. Whether the Hague Evidence Convention is applicable at all may turn on whether the actions being taken can be considered to be an "evidentiary proceeding." In most situations, where requests for documents or public information are made, the requests may be preliminary to even filing an action and, clearly, would not be a part of an evidentiary proceeding. For example, requesting assistance in locating a party or verifying identity and obtaining genetic material for a DNA test prior to filing an application for establishment of a support order should not be considered an evidentiary proceeding. It could also be argued that, at the discovery stage of a

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[492] Unif. Interstate Family Support Act § 316(b) (2008).

[493] The full text and related documents can be found on The Hague Conference website or the U.S. Department of State website. *See Evidence Section*, Hague Conference on Private International Law, https://www.hcch.net/en/instruments/conventions/specialised-sections/evidence (last visited Feb. 7, 2021). *See also Judicial Assistance*, U.S. Department of State, https://www.state.gov/judicial-assistance/ (last visited Feb. 7, 2021). *See In re Letter of Request from the Dist. Court Stara Lubovna, Slovak Republic*, 2009 U.S. Dis. LEXIS 103126, No. 3:09-mc-20-34MCR (M.D. Fla. Nov. 5, 2009) (Florida man must provide a blood or DNA sample pursuant to the Convention on Taking Evidence Abroad for use in a paternity proceeding being conducted in the Slovak Republic).

[494] *See Societe Nationale Industrielle Aerospatiale v. United States Dist. Court. for S.D. of Iowa,* 482 U.S. 522 (1987).

proceeding, production of materials that may or may not ever be introduced as evidence would not warrant application of the Evidence Convention.[495]

On the other hand, if a U.S. tribunal needs testimony or evidence after the legal proceeding has begun, a Contracting State to the Hague Evidence Convention may require compliance with the formal procedures of the Hague Evidence Convention. For example, it may not allow a party residing in its country to participate in a telephonic hearing unless authorized by the Central Authority under the Hague Evidence Convention.

The Central Authorities for the Hague Evidence Convention differ from the Central Authorities under the Hague Child Support Convention or federal bilateral child support arrangements. To obtain additional testimony or evidence from a foreign applicant under the Hague Evidence Convention, the U.S. judicial authority must transmit a Letter of Request to the country's designated Central Authority for that Convention. The Letter of Request must be in the country's official language. For more information about preparation of a Letter of Request, see the Practical Handbook on the Operation of the Evidence Convention, which is accessible on the website of the Hague Conference on Private International Law.[496]

Currency Conversion

Although the Hague Child Support Convention is silent on currency conversion, UIFSA addresses currency conversion in several sections that are applicable to all cases, including Convention cases. If a responding tribunal in a foreign country requests conversion of a support amount stated in U.S. dollars, Section 304(b) of UIFSA requires the U.S. initiating tribunal to convert the amount into the equivalent amount in the foreign currency. If requested to enforce or modify a support order stated in foreign currency, Section 305(f) requires the responding U.S. tribunal to convert the support amount into the equivalent amount in U.S. dollars. Similarly, Section 307(d) provides that a support enforcement agency requesting registration and enforcement of a support order stated in a foreign currency must convert the amount into the equivalent amount in U.S. dollars.

Each entity is required to make the conversion "under the applicable official or market exchange rate as publicly reported." A few countries maintain an official exchange rate for their currency. However, the vast majority of

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[495] *See* Robert Keith, *"Ten Things Practitioners Should Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,"* 51 Fam. L.Q. 255 (2017). *See also* Robert Keith, *What the Trial Judge Needs to Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,* 69 Juv. & Fam. Ct. J. 5 (2018).

[496] https://www.hcch.net/en/publications-and-studies/details4/?pid=6431. For information about the Hague Evidence Convention as it relates to the United States, see information on the U.S. Department of State website, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence.html (last visited Feb. 7, 2021).

countries recognize that the value of their currency is subject to daily market fluctuations. Therefore, a specific amount of support in a foreign currency will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.[497] Some state child support agencies have official policy on which website it wants staff to use for currency conversion in international support cases. Many states do not have a statewide policy and leave it up to the local agency or child support attorney to determine which publicly available exchange rate site to use.

When United States is enforcing foreign order (money collected in United States and sent to another country). When registering a foreign support order for enforcement or modification that has a support amount stated in a foreign currency, the best practice is for the agency or tribunal to include the U.S. dollar equivalence in the notice of registration. The date when the conversion rate is obtained should also be noted. Using equivalence language notifies the parties of the amount owed in U.S. dollars but also makes it clear that the order is not being modified into U.S. dollars. In other words, the obligor still owes the amount as specified in the foreign order. Because many countries note dates in a different format from the United States, it is advisable to write out the date of the currency conversion, specifically including the name of the month.

There is no Convention or UIFSA provision nor is there federal policy regarding what date should be used for converting a support amount stated in foreign currency into a U.S. dollar amount. The child support agency or tribunal will follow state law and procedure.

Because currency conversion is an administrative action, no tribunal action is required to update the account periodically as conversion rates change. The child support attorney should follow the forum state's law or local policy regarding frequency of adjustments. A new income withholding notice can be sent out reflecting the current exchange rate.

When foreign country is enforcing U.S. order (money collected in foreign country and sent to United States). For outgoing cases, keep in mind that U.S. orders are issued in U.S. dollar amounts, but will be enforced by the other country in a different currency. When the foreign jurisdiction enforces the U.S. order, it should not modify the U.S. order to the foreign currency. To enforce the order, the requested jurisdiction will necessarily follow its laws regarding currency conversion. Some countries cannot update conversion rates periodically. It may be necessary for the requesting U.S. agency to obtain an order establishing arrears, which will also include interest, if appropriate, and send that new order for enforcement. For some cases, this might happen more than once. Communication with the Central Authority of the Convention country or FRC is critical for these cases.

[497] Official Comment to Section 304, UIFSA (2008).

Account reconciliation. The issuing tribunal determines the "official" accounting. Because of rate fluctuations, it is rare that accounts "match up." If a state child support agency is enforcing a foreign support order and the obligor has paid off arrears using the U.S. dollar equivalence rate that the agency is using, but the issuing foreign jurisdiction states that arrears are still owed in the foreign currency, it is the issuing jurisdiction's accounting that governs. If needed, ask the foreign Central Authority to send an order stating the remaining arrears in the foreign currency.

TRIBAL CASES

Tribal Sovereignty

History of tribal powers prior to European contact. Most Indian tribes had developed their own forms of self-government long before contact with European nations. Although the forms of government varied, the traditional decision-making body was the tribal council. Council leaders were usually consensus-oriented, achieving "control over members by persuasion and inspiration, rather than by peremptory commands."[498] Historically, Indian Tribes had no written laws. Conduct was governed by custom. Sanctions for violation of the norm of conduct included mockery, ostracism, and religious sanctions. Tribal justice also often included restitution or compensation to the injured party.

Contact with European nations – and increasing interaction with American society – forever changed tribal government. However, even then, tribal sovereignty was recognized; various foreign governments negotiated treaties with American Indian tribes, obtaining land in exchange for small goods, money, or promises.

Post formation of the United States. A tribe's presence within the territorial boundaries of the United States subjects the tribe to federal legislative power. Tribes can no longer exercise external powers of a sovereign, such as entering into treaties with foreign countries.[499] However, that does not mean that all preexisting tribal powers are abolished. The guiding principle is that tribal powers are exclusive in matters of internal self-government, except to the extent that federal treaties or statutes limit such powers.

In the 20th century, a crucial turning point in recognition of tribal sovereignty was passage of the Indian Reorganization Act of 1934.[500] The Act reflected conflicting philosophies toward tribal self-government. On the one hand, the Act abolished the allotment policy of the late 1880s that had broken up

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[498] F. Cohen, Handbook of Federal Indian Law 230 (ed. 1982).
[499] *See Johnson v. McIntosh*, 21 U.S. (8 Wheat) 543, 574 (1823). *See also* Cohen, *supra* note 498.
[500] 18 Stat. 596 (1934) (codified at 25 U.S.C. §§ 461–479 (2018)).

reservations.[501] It also guaranteed the right of any Indian Tribe to "organize for its common welfare," including the adoption of an "appropriate constitution and bylaws." On the other hand, it replaced the traditional consensus decision-making approach of tribes with a requirement that the constitution and by-laws would become effective when ratified "by a majority vote of the adult members of the Tribe" in a special election. It also required the Secretary of the Interior to "review the final draft of the constitution and bylaws . . . to determine if any provision" was contrary to applicable laws. Historically, Indian tribes had governed through custom rather than formal written laws. The Indian Reorganization Act resulted in tribes ratifying constitutions and laws that, in large part, copied codes of the Bureau of Indian Affairs.[502]

Congressional attitude toward Indian tribes, as reflected in legislation, has varied in the years since the Indian Reorganization Act. In the 1950s Congress passed several acts that resulted in termination of some tribes as federally recognized, self-governing entities. In 1953, Congress enacted Public Law 83-280 (Public Law 280),[503] which authorized states to impose jurisdiction over reservations, with or without tribal consent. The Indian Civil Rights Act[504] narrowed the reach of Public Law 280 by requiring tribal consent (majority consent of the adult members) for state imposition of jurisdiction. Since its passage, no tribe has consented to a relinquishment of exclusive authority over their members in Indian country. Subsequently, several acts have affirmed tribal self-governance, including the Indian Self-Determination and Education Assistance Act of 1975,[505] which authorizes federal grants to tribes to improve tribal governments; and the Indian Child Welfare Act of 1978,[506] which recognized the importance of tribal control over custody and adoption proceedings. In 1991, Congress amended the Indian Civil Rights Act to define the "powers of self-government" to include "the inherent power of Indian Tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians."[507] In 1994 Congress enacted the federal Full Faith and Credit for Child Support Orders Act.[508] The Act requires a state to recognize and enforce another

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[501] In 1887, Congress passed the General Allotment Act. This Act provided for the division of Tribal lands into 160-acre parcels allotted to individual Indians and for the sale of "surplus" Tribal lands to non-Indians. The allotment system was designed to break up reservations and dilute the powers of Tribal governments. By 1934, Indians had lost two-thirds of their land: from 148 million acres in 1887 to 48 million acres in 1934.

[502] Most tribes have now replaced BIA codes with codes that address diverse issues.

[503] Codified as amended at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (2018). For more information, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).

[504] Pub. L. No. 90-284 (1968) (codified at 25 U.S.C. §§ 1301–1341 (2018)).

[505] Pub. L. No. 93-638 (1975) (codified at 25 U.S.C. §§ 450–450n (2018)).

[506] Pub. L. No. 95-608 (1978) (codified at 25 U.S.C. §§ 1901–1963 (2018)).

[507] The amendment was a Congressional "fix" to the Supreme court decision in *Duro v. Reina*, 495 U.S. 676 (1990). *Duro* held that tribal courts do not have criminal jurisdiction over non-member Indians. The language overturns *Duro* by defining powers of tribal self-government to include the "inherent power of Indian Tribes" to "exercise jurisdiction over all Indians."

[508] Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063, (1994) (codified at 28 U.S.C. § 1738B (2018)).

state's child support order. "State" is defined as "a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in Section 1151 of title 18)."[509] Therefore, states and tribes are required to recognize and enforce valid child support orders, without regard to whether such orders were issued by a state or tribal court or agency.

Finally, amendments to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) authorized federal funding to an Indian tribe or tribal organization that demonstrates the capacity to operate a child support enforcement program that meets the objectives of Title IV-D, "including the establishment of paternity, establish, modification, and enforcement of support orders, and location of absent parents."[510]

Tribal Child Support Programs

Federal legislation. Until passage of PRWORA, Title IV-D of the Social Security Act did not mention tribes or Native Americans. Federal policy, however, was clear that Title IV-D state child support agencies had to provide services to Indian children, based on an application for IV-D services or the receipt of public assistance. As a practical matter, there were a number of challenges including jurisdictional issues.

Amendments to PRWORA provided authority under Title IV-D of the Social Security Act for direct funding of tribes and tribal organizations for operating child support enforcement programs.[511] A tribe or tribal organization demonstrates capacity to operate a tribal child support program meeting the objectives of Title IV-D of the Act when its tribal child support enforcement plan includes:

- Procedures that provide that the tribal child support agency will cooperate with states and other tribal child support agencies to provide child support services in accordance with instructions and requirements issued by the Secretary or designee; and

- Assurances that the tribe or tribal organization will recognize child support orders issued by other tribes and tribal organizations and by states in accordance with the requirements under FFCCSOA.[512]

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[509] 28 U.S.C. § 1738B(b) (2018).
[510] See Section 5546 of the Balanced Budget Act of 1997, Pub. L. No. 105-33 (codified as amended at 42 U.S.C. § 655(f) (2018)).
[511] 42 U.S.C. § 655(f) (2012). "Tribal organization" and "Indian Tribe" are defined in the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638 (1975) (codified at 25 U.S.C. § 450–450n (2018)).
[512] Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063, (1994) (codified at 28 U.S.C. § 1738B (2018)).

The direct funding allows tribes to provide services that comply with Title IV-D child support requirements while preserving tribal customs, values, and culture.[513]

Federal regulation. Consultation with tribes and tribal organizations gave tribes the opportunity to articulate their perspectives in meeting child support requirements within the context of their communities, cultures, and customs. The Department of Health and Human Services published a final rule on March 30, 2004.[514] The regulation enables tribes and tribal organizations currently operating a comprehensive tribal child support program directly or through agreement, resolution, or contract, to apply for, and receive direct Title IV-D funding upon approval. The regulations address the requirements the tribal child support program must meet, taking into account the special government-to-government relationship between tribes and the federal government.[515] Tribes may use tribal IV-D program start-up funding to explore the numerous options available to tribes when developing a specific component of a comprehensive IV-D program.

Current federal regulations provide that there must be 100 children, under the age of majority as defined by the tribe, who are subject to the jurisdiction of the tribal court or administrative agency for child support purposes. This may include Indian children who are not members of the applying tribe but who reside on the reservation and non-Indians who reside on the reservation.[516] In certain circumstances, a tribe with less than the minimum number of children may request a waiver.[517] Two or more tribes may also enter into consortia to meet the 100-child requirement.

A tribe may delegate any of the functions of the tribal IV-D program to another tribe, a state, or another agency or entity pursuant to a cooperative arrangement, contract, or tribal resolution.[518] However, the tribal IV-D agency is ultimately responsible for securing compliance with the requirements of the tribal IV-D program by such tribe, state, agency or entity. This differs from a cooperative agreement between a state IV-D program and a tribe, where the tribe performs agreed-upon activities and the state IV-D program reimburses the tribe for these activities. Under these cooperative agreements, the state is

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[513] For general information related to tribal IV-D programs, *see* https://www.acf.hhs.gov/css/child-support-professionals/tribal-agencies (last visited Feb. 7, 2021). *See also* Chapter Three: State, Local, and Tribal Roles in the Child Support Program.
[514] 69 Fed. Reg. 16,638 (Mar. 30, 2004) (to be codified at 45 C.F.R. Part 309).
[515] For specific requirements that tribal child support programs must meet in providing Title IV-D services, *see* Chapter Nine: Establishment of Parentage; Chapter Ten: Establishment of Child Support and Medical Support Obligations; Chapter Eleven: Enforcement of Support Obligations; and Chapter Twelve: Modification of Support Obligations.
[516] *See* 45 C.F.R. §§ 309.10(a) (2019) and 309.65(a)(1) (2019).
[517] 45 C.F.R. § 309.10(c)(1) (2019).
[518] 45 C.F.R. § 309.60(c) (2019).

ultimately responsible for the operation of its IV-D program and ensuring all requirements are met.[519]

The federal regulations require a tribal IV-D program to accept all applications for child support services from tribal members, and all other applicants.[520] There may be circumstances under which the only appropriate service that the tribal program can provide is to request assistance from another tribal or state child support program with legal authority to take actions on the case.[521] A tribe must have either a judicial or an administrative system to hear, establish, and enforce child support orders.[522] The tribal program must also promptly provide all IV-D services required by law and regulation.[523]

Both state and tribal IV-D programs must extend the full range of services available under their IV-D plan to other IV-D agencies upon request.[524] This includes locate-only services. There is no mandated format for how a tribe or state requests assistance from another state or tribal IV-D agency. A request for assistance may be made in writing, through electronic referral (when tribes are receiving system services in a state system) or any other reasonable means.

In some circumstances, it may become necessary for a tribe to refer a case to a state child support agency. For example, a tribal IV-D agency may have an open case but lack jurisdiction over the noncustodial parent. As another example, an applicant or recipient of services, who is both a tribal member and citizen of a state, may opt to have the state, rather than the tribe, provide IV-D services. When this occurs, state agencies must communicate with the tribe to achieve the most effective outcome for the children involved. Similarly, when the circumstances in the foregoing examples are reversed, it may be appropriate for a state agency to transfer a case to a tribal IV-D agency. When this happens, the Final Rule effective January 2017 provides that states may close such cases so long as specific requirements are met.[525]

State and tribal IV-D programs may not charge another IV-D program a fee for child support services. Although the tribal regulation does not specifically address fees for services, OCSE has indicated that such charges would be inappropriate.[526] The tribal court that is not part of a tribal IV-D program may,

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[519] 42 U.S.C. § 654(33) (2018).
[520] 45 C.F.R. § 309.65(a)(2) (2019).
[521] 69 Fed. Reg. 16,638, 16,653 (Mar. 30, 2004).
[522] *See* OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q25 and A25.
[523] *See* 45 C.F.R. Part 309, Subpart C – Tribal IV-D Plan Requirements (2019).
[524] 45 C.F.R. § 302.36 (2019).
[525] Final Rule re Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93,492 (Dec. 20, 2016). *See specifically* 45 C.F.R § 303.11(b)(21) (2019).
[526] *See* 45 C.F.R. § 303.7(d) (2019); OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q57 and A57.

however, charge fees and other costs to the state IV-D agency for services provided.[527]

Tribal and State Child Support Cooperative Agreements

Current federal law allows for the continued use of cooperative agreements to further child support efforts.[528] State IV-D agencies may enter into cooperative agreements with an Indian tribe, tribal organization, or Alaska Native Village, group, regional or village corporation so long as it "has an established Tribal court system or Court of Indian Offenses with the authority to establish paternity, establish, modify or enforce support orders or to enter support orders in accordance with child support guidelines established or adopted by such Tribal entity."[529] There are now a number of intergovernmental agreements between American Indian nations and states that address child support needs of Native American children, resulting in increased cooperation and understanding.[530] Attorneys participating in the drafting of such agreements can help ensure they address issues, such as service of process and jurisdiction.

Tribal or State Court Jurisdiction in Support Cases

Cases involving domestic issues, such as child support, often raise jurisdictional issues between tribal and state courts. This is especially true if one of the parties is a non-Indian or a non-member Indian. A number of factors come into play. For example, did the cause of action arise in Indian country? Does the state have Public Law 280 jurisdiction? If so, does that jurisdiction give the state concurrent jurisdiction over civil child support matters? It is beyond the scope of this publication to address every permutation that may arise in a child support case involving a party that is an Indian. However, a state or tribal child support attorney should be familiar with the appropriate analysis to conduct in determining jurisdiction.[531] Attorneys also need to be conscious of license to practice issues. An attorney is not able to participate in a legal proceeding in a state or tribal court unless the attorney has met that forum's requirements for admission or a limited appearance.[532] To learn the licensing requirements for a

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[527] OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q58 and A58.
[528] 42 U.S.C. § 654(33) (2018).
[529] Pub. L. No. 104-193, 110 Stat. 2166 at 2256 (codified as amended at 42 U.S.C. § 654(33) (2018)).
[530] *See* Office of Child Support Enforcement, Intergovernmental Reference Guide, Section C, Reciprocity, Q. C2 and C2.1 (Dec. 31, 2019), https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1.
[531] *See* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).
[532] *See, e.g.,* Application for Admission to Practice before the Mashantucket Pequot Tribal Court, http://www.mptnlaw.com/docs/Bar%20Application.pdf; Admission for Practice before Wind River Tribal Court, https://www.windrivertribalcourt.com/admission-to-practice/ (last visited Feb. 7, 2021).

tribal court, child support attorneys should contact the tribal court clerk for the most current information.

Paternity establishment. The decision of whether a tribal court or state court has exclusive or concurrent jurisdiction in a paternity case is influenced by a number of factors:

- Whether the state is a Public Law 280 state with civil jurisdiction over domestic matters.
- Whether the mother and alleged father are members of the same tribe.
- Whether one party is an Indian and the other is not.
- Whether a party resides on a reservation or tribal land.
- Whether conception occurred on or off the reservation.
- Whether the mother applied for public assistance from the state and the state child support agency is bringing the paternity action.
- Whether there is a tribal forum for a paternity action.
- Which court – state or tribal – is making the initial decision regarding jurisdiction.

It is impossible to draw many "bright lines" because the court rulings often conflict.[533]

State child support attorneys should keep in mind that if paternity has been determined previously under tribal law, which often includes custom, the attorney should not initiate a state action for paternity establishment. Also note that in a UIFSA support proceeding, a party may not plead nonparentage as a defense if parentage has already been determined pursuant to tribal law.[534]

Support establishment. The decision of whether a tribal court or state court has exclusive or concurrent jurisdiction in a support establishment case is influenced by most of the same factors listed with regard to paternity establishment.[535]

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[533] For a discussion of various fact patterns and case law, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).
[534] Unif. Interstate Family Support Act, § 315 (2008).
[535] For a discussion of various fact patterns and case law, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).

Support enforcement. If there is an existing tribal or child support order entered with proper jurisdiction, that order must be recognized.[536]

Full Faith and Credit. In 1994, Congress enacted the Full Faith and Credit for Child Support Orders Act (FFCCSOA),[537] which specifically applies to Indian country (as defined by 18 U.S.C. § 1151), as well as States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.[538] The Act requires the appropriate parties of such jurisdictions to:

- Enforce according to its terms a child support order made consistently with FFCCSOA by a court or an agency of another state [as noted, the Act defines "state" to include "Indian country" as defined by 18 U.S.C. § 1151]; and

- Not seek or make a modification of such an order except in accordance with FFCCSOA.

Therefore, tribes and states must recognize and enforce each other's valid child support orders, which means orders entered with appropriate subject matter and personal jurisdiction.[539] There is no federal directive regarding how such recognition must occur. Tribes are not required to enact UIFSA. However, many tribes use a registration process for enforcement purposes under FFCCSOA.

Comity. Comity between sovereigns is a voluntary, rather than mandated, recognition of each other's judgments and decrees:

> "[c]omity", in the legal sense, is neither a matter of absolute obligation on the one hand, nor a mere courtesy and good will upon

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[536] *See Alaska v. Central Council of Tlingit and Haida Indian Tribes of Alaska,* __ P.3d __, Supreme Court No. S-149 (Supreme Court of the State of Alaska Mar. 25, 2016) (A federally recognized Alaska Native tribe adopted a process for adjudicating the child support obligations of parents whose children are members of the tribe or are eligible for membership, and it operated a Title IV-D federally funded child support agency. The Tribe sued the State and won a declaratory judgment that the Tribe's inherent rights of self-governance include subject matter jurisdiction to adjudicate child support for children who are members of the Tribe or eligible for Tribal membership. The order also required the State to treat Central Council's tribal courts and the Tribal Child Support Unit as it would any other state's courts and child support enforcement agency under UIFSA and the regulations connected to Title IV-D. The Supreme Court affirmed, holding that Central Council's tribal courts have inherent sovereign authority to exercise non-territorial subject matter jurisdiction over child support matters and thus are "authorized tribunals" for purposes of UIFSA. The Supreme Court did not address the issue of personal jurisdiction, which it held must be decided on a case by case basis.).

[537] Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063, (1994) (codified as amended at 28 U.S.C. § 1738B (2018)).

[538] *See* OCSE-AT-02-03*:* Applicability of the Full Faith and Credit for Child Support Orders Act to States and Tribes (May 28, 2002).

[539] *See also* 45 C.F.R. 309.120(b) (2019). *See, e.g., Grandberry v. Grandberry,* No. AP 98-004A, 1999 Puyallup App. LEXIS 4 (Puyallup Tribal Ct. App. Oct. 30, 1999). *See also Smith v. Hall*, 707 N.W.2d 247 (N.D. 2005).

> the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of the laws.[540]

A state court held that a tribal child support order that directed the parents to "help each other financially" was not a recognizable child support order to which the state trial court could extend comity.[541]

Whereas FFCCSOA only addresses valid child support orders,[542] a basis for tribes to recognize a state's paternity adjudication is the doctrine of comity. Although not a child support case, an example of a tribal court applying comity to recognize a state court decision is the case of *Smith v. Scott*.[543] In this case, the Mashantucket Pequot Tribal Court used the doctrine of comity to recognize and enforce a Connecticut money judgment for damages in a sexual abuse case. In deciding whether a particular judgment is to be recognized and enforced through comity, the tribal court set forth several requirements that must be met. First, comity will not apply unless there is reciprocal recognition of judgments. In this case, it means the other sovereign, the State of Connecticut, must recognize judgments of the Mashantucket courts. Second, the foreign judgment must not contravene the public policy of the tribe. Finally, the foreign judgment must have been issued by a court of competent jurisdiction in the foreign jurisdiction.

Enforcement of Tribal Support Order

The following discussion focuses on enforcement of a tribal support order. It assumes that it is a valid support order, with appropriate subject matter and personal jurisdiction.

Obligor (Indian or Non-Indian) resides and works on reservation. When the obligor resides and works on the reservation, tribal courts may enforce the support order through a variety of means. The following remedies are common under tribal codes:

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[540] *Hilton v. Guyot*, 159 U.S. 113 (1895).
[541] *John v. Baker*, Alaska Supreme Court No. S-11176 (Dec. 16, 2005) (although a tribal child support order need not match the format of a support order issued by the Alaska courts, it must, at a minimum, be concrete enough to be enforceable. Where the tribal order did not state a specific dollar amount and provided no criteria by which to judge whether the parties were fulfilling their obligations, the state court was not required to extend comity).
[542] 28 U.S.C. § 1738B(b) (2018) defines "child support" as "a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child."
[543] 30 Indian L. Rep. 105 (Mashantucket Pequot Tribal Court, No. MPTC-CV-2002-182 April 23, 2003).

- An ongoing assignment of part of the obligor's periodic earnings or trust income.
- An order to withhold and pay money due.
- Contempt.
- Lien and execution on property.

Some tribal codes provide for the suspension of driver's licenses and fishing licenses.[544] Under a number of tribal codes, a tribal court can order distribution of a member's per capita payment for support of children.[545]

Tribes operating federally funded IV-D programs must provide for enforcement by income withholding.[546] A non-tribal employer operating on the reservation must honor a tribal income withholding order. By entering into "consensual relations" with the tribe "through commercial dealings," the non-Indian employer is subject to tribal jurisdiction.[547]

Tribal courts also often invoke non-punitive enforcement remedies, such as dispute resolution or admonishment by tribal elders.

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[544] Tribes that suspend driver's and other licenses include the Suquamish Tribe of Port Madison, in Suquamish, Washington, at STC § 9.6.27(g)(2018), the Lummi Nation in Bellingham, Washington, at LCL11.06.140(h) (2008), and the Tulalip Tribe in Tulalip, Washington, at TTC 4.10.380(8) and 4.10.390 (e) (2019).

[545] *See, e.g.,* Nottawaseppi Huron Band of the Potawatomi § 8.17-7 and Nottawaseppi Huron Band of the Potawatomi Indian Gaming Revenue Allocation Plan, Resolution Number 03-15-12-01; *State ex rel. Maney v. Maney,* 4 Cher. Rep. 23, CV 99-558, 2005 N.C. Cherokee Sup. Ct. LEXIS 8 (N.C. Cherokee Sup. Ct. May 10, 2005); *Cutting v. Quidgeon*, No.CV-05-0112, 1 M.C.T.R.33 (Mohegan Tr. Ct. June 21, 2005); *Cramer v. Greene, Jr.*, No. CV-05-0135 (Mohegan Tr. Ct. Nov. 1, 2005) (court ordered withholding from per capita distributions to satisfy child support arrears); *Dallas v. Oneida*, Docket No. 03-AC-027 (Oneida App. Comm. App. Ct., Mar. 24, 2004).

[546] 45 C.F.R. § 309.110 (2019).

[547] *FMC v. Shoshone-Bannock Tribes,* 905 F.2d 1311, 1314 (9th Cir. 1990).

Obligor (Indian or non-Indian) resides on reservation, but works off reservation. When the obligor resides on a reservation but works off the reservation, the tribal child support agency can enforce its order by sending an income withholding order directly to the off-reservation employer. Although tribes are not required to enact UIFSA as a condition of receiving federal IV-D funds, states are. Therefore, each state has enacted UIFSA, which requires an employer to honor direct income withholding orders/notices sent by states;[548] the UIFSA definition of "state" includes "an Indian nation or tribe."[549] The tribal child support agency must use the standard federal income withholding form to initiate the withholding.[550]

Assuming tribal code authority, the tribal child support attorney can seek enforcement of the support order against any property the obligor may own on the reservation or to which the obligor may be entitled such as a member's per capita payment. The tribal court may also enforce the support order by a show cause order, if that remedy is available, since it continues to have personal jurisdiction over the obligor.[551]

If the obligor owns property off the reservation, the tribal child support attorney can seek enforcement of the order in a state tribunal. One avenue is for the attorney to send a request to the appropriate state child support agency seeking registration for enforcement pursuant to UIFSA. Because UIFSA defines "State" to include Indian tribes, a support order issued by a tribe is enforceable in the state as soon as it is registered for enforcement; there is a presumption that the registered order is valid. If the obligor wishes to challenge the validity of the registered order, he or she must do so within the time limit for raising a challenge. Currently all states follow the Model Act's suggested 20-day time limit. At least one state court has held that a motion to vacate a tribal support order based on lack of personal jurisdiction is a defense to registration that must be raised within the 20-day time period or it is waived.[552]

A tribal child support attorney can also ask the appropriate state tribunal to recognize and enforce the tribal support order pursuant to FFCCSOA. If the tribal order is a valid support order, the state tribunal must recognize the order. State law is then available to enforce the tribal support order.

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[548] *See* Unif. Interstate Family Support Act, §§ 501, 502 (2008). *See also* OCSE AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q47 and A47.
[549] Unif. Interstate Family Support Act, § 102(26) (2008). Previous versions of UIFSA also included tribes within the definition of "state."
[550] 45 C.F.R. § 309.110(l) (2019).
[551] *See, e.g.*, Navajo Nation Code tit. 9, § 1717.
[552] *Smith v. Hall*, 707 N.W.2d 247 (N.D. 2005).

Enforcement of State Support Order

The following discussion focuses on enforcement of a state support order. It assumes that it is a valid support order, with appropriate subject matter and personal jurisdiction.

Obligor (Indian or non-Indian) resides and works off reservation. Whether or not the obligor is an Indian, as long as the obligor resides and works off the reservation, a state tribunal can enforce its support order just as it would enforce a support order involving non-Indian parties.

Indian obligor resides and works on reservation. If the obligor derives income from employment on the reservation, the most effective enforcement is for the state child support agency to seek enforcement of the order by income withholding. If the Indian obligor works on a reservation where the tribe receives federal IV-D funding, the state agency can forward the state income withholding order to the tribal child support agency for processing. Pursuant to 45 C.F.R. § 309.110(n), the tribal child support agency must receive and process income withholding orders from the state or other tribes and ensure that such orders are promptly served on employers.[553] If the tribe does not receive federal funding for a IV-D program, the tribe is not required to comply with the federal regulation concerning income withholding.[554]

In most circumstances, the state child support agency should not send a direct income withholding order to the employer on the reservation. UIFSA requires that an employer honor a direct income withholding request. However, as noted earlier, no tribe has enacted UIFSA nor is there a requirement that tribes receiving federal IV-D funding do so. Therefore, an employer in Indian country is not required to honor a state-issued direct income withholding request unless tribal law so provides. At least two courts have found that sending a state garnishment order directly to an obligor's employer located on a reservation is an unlawful infringement on tribal sovereignty.[555] The cases involved commercial debts, but the courts' reasoning is relevant for child support.

However, if the obligor is a federal employee on the tribal reservation, the state child support agency can initiate income withholding pursuant to 42 U.S.C. § 659. The authority exists regardless of tribal membership and whether they are employed with the Indian Health Service, Bureau of Indian Affairs, U.S. Fish and

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[553] *See also* OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q43 and A43.
[554] OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q48 and A48.
[555] *See, e.g.*, *Joe v. Marcum*, 621 F.2d 358 (10th Cir. 1980); *Begay v. Roberts*, 807 P.2d 1111 (Ariz. App. 1990).

Wildlife Service, Housing and Urban Development, Department of Labor, or any other federal agency.[556]

If the obligor has assets in addition to wages, it may be more effective for the state child support attorney to seek recognition and enforcement of the state child support order pursuant to FFCCSOA. Tribes within Indian country are required to give full faith and credit to valid state child support orders, regardless of whether they receive federal IV-D funding.[557] Procedurally, many tribes have enacted a Recognition and Enforcement of Foreign Judgments Ordinance or Act that can be used to file a state order with the tribal court. Once the tribal court recognizes the state support order under FFCCSOA, the tribal court can use enforcement methods that are available under tribal law. For example, there are a number of tribal court decisions in which the tribal trial court recognized a foreign (state) child support order and allowed the garnishment of a tribal member's per capita payments for past-due child support.[558]

If the state has complete Public Law 280 jurisdiction over domestic matters, the state child support attorney can probably also seek enforcement against any nontrust property[559] that is owned by the Indian obligor and located within the state, including personalty.[560]

Indian obligor resides on reservation but works off reservation. When the obligor derives income off the reservation, the easiest and most effective enforcement remedy is for the state child support agency to enforce the order by income withholding against the off-reservation income.[561]

The state child support attorney can also enforce the state support order against any personal or real property that the obligor owns off the reservation. In

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[556] *See* OCSE-IM-02-01: Income Withholding from Federal Employees Working on Indian Reservations (Feb. 11, 2002).
[557] 28 U.S.C. § 1738B (2018).
[558] *See, e.g., Cramer v. Greene*, 1 M.T.C.R. 43, No. CV-05-0135, 2005 Mohegan App. LEXIS 2 (Mohegan Tribal Ct. App. Nov. 1, 2005); *Cutting v. Quidgeon*, 1 M.T.C.R. 33, No. CV-05-0112, 2005 Mohegan App. LEXIS 3 (Mohegal Tribal Ct. App. Jun. 21, 2005) (where there is a valid foreign child support order, the court may order enforcement of past-due child support for children who are not themselves enrolled members of the Tribe, but are children of enrolled members, through the garnishment of the respondent's per capita payments); *Kent County FOC v. Darrel D. Day*, Case Nos. 12-142CS/PC; 12-143CS/PC; 12-144CS/PC; 12-145CS/PC; 12-146CS/PC (Nottawaseppi Huron Band of the Potawatomi Tribal Court Apr. 18, 2013), https://www.nhbpi.org/wp-content/uploads/2018/06/darrelday.pdf.
[559] 25 U.S.C. § 1322(b) (2018) excludes trust property from execution.
[560] *See Calista Corp. v. DeYoung*, 562 P.2d 338 (Alaska 1977) (allowed state with Public Law 280 jurisdiction to collect child support arrears by obtaining cash distributions from stock in corporations formed pursuant to the Native Claims Settlement Act).
[561] *See First v. State*, 808 P.2d 467 (Mont. 1991) (applying a preemption/infringement test, the Montana Supreme Court found no federal preemption to state enforcement against off-reservation income [unemployment benefits] and no unlawful infringement on the right of reservation Indians to make their own laws and be ruled by them).

appropriate cases, the attorney may seek enforcement by contempt. However, the attorney will need to ensure there is proper service of process.[562]

If the obligor owns property on the reservation against which the support order may be enforced, the state child support attorney may ask the tribal court to recognize and enforce the state support order pursuant to FFCCSOA. If the tribe receives Title IV-D funding, the state child support attorney can forward the enforcement request and required documents for recognition of the order to the tribal child support agency. Once a tribal court recognizes a state support order under FFCCSOA, the tribal court can use enforcement methods that are available under tribal law.

Indian obligor resides off reservation but works on reservation. The state child support agency can enforce the order against any personal or real property that the obligor owns off reservation. In appropriate cases, the attorney may also seek enforcement by contempt. However, the attorney will need to ensure there is proper service of process.[563]

The state child support agency may also seek enforcement of the order by income withholding. However, as noted earlier, an employer in Indian country is not required to honor a state-issued direct income withholding request against wages earned by an Indian obligor, unless tribal law so provides. Such direct state action would likely be considered an infringement on tribal sovereignty, regardless of whether the employer was the tribe, a tribally-owned employer, or an employer that also does business within the state – especially if the tribe had not authorized income withholding for support enforcement.[564] If the Indian obligor works on a reservation where the tribe receives federal IV-D funding, the state child support agency can forward the state income withholding order to the tribal child support agency for processing.[565]

Probably the best approach is for the state child support attorney to seek recognition and enforcement of the order pursuant to FFCCSOA. Tribes within Indian country are required to give full faith and credit to valid state child support orders. If the tribe receives Title IV-D funding, the state child support attorney can forward the enforcement request and required documents for recognition of the order to the tribal child support agency. Once a tribal court recognizes a state support order under FFCCSOA, the tribal court can use enforcement methods that are available under tribal law.

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[562] For a discussion of state/tribal issues related to service of process, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).
[563] For a discussion of state/tribal issues related to service of process, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (2007).
[564] *See Joe v. Marcum,* 621 F.2d 358 (10th Cir. 1980) and *Begay v. Roberts,* 7 P.2d 1111 (1990).
[565] 45 C.F.R. § 309.110(n) (2019).

Non-Member or Non-Indian obligor resides and works on reservation. The state child support agency may attempt to enforce the state child support order against any personal or real property that the obligor owns off reservation.

As noted earlier, direct enforcement by state income withholding will likely be unsuccessful, because tribes are not required to enact UIFSA with its direct income withholding provisions. Additionally, if the non-member or non-Indian obligor works for the tribe or a tribally owned business, there are issues of tribal sovereign immunity. Therefore, unless the state has jurisdiction over the obligor's employer on the reservation, it is advisable for the state child support attorney to use other enforcement methods.[566]

If the tribe operates a federally funded IV-D program, the state child support agency can ask the tribal child support agency for assistance in processing the state income withholding order. As noted earlier, federal regulations require the tribal child support agency to promptly serve the state withholding order on the employer.[567] If the tribe does not operate a IV-D child support program, the attorney may seek recognition of the state income withholding order under FFCCSOA and then request its service on the employer.[568]

If the obligor owns property on the reservation and tribal law allows enforcement of the state order against such property, the state child support attorney may ask the tribal court to recognize and enforce the state support order pursuant to FFCCSOA. If the tribe receives Title IV-D funding, the state child support attorney can forward the enforcement request and required documents for recognition of the order to the tribal child support agency. Once a tribal court recognizes a state support order under FFCCSOA, the tribal court can use enforcement methods that are available under tribal law.

Non-Member or Non-Indian obligor resides off reservation but works on reservation. The state child support agency may attempt to enforce the state child support order against any personal or real property that the obligor owns off reservation.

As noted earlier, direct enforcement by state income withholding will likely be unsuccessful because tribes are not required to enact UIFSA with its direct income withholding provisions. Additionally, if the non-member or non-Indian obligor works for the tribe or a tribally owned business, there are issues of tribal sovereign immunity. Therefore, unless the state has jurisdiction over the obligor's employer on the reservation, it is advisable for the state child support attorney to use other enforcement methods.

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[566] *See* OCSE-PIQT-04-01: Direct Income Withholding when Employers are Subject to a Tribe's Jurisdiction (Oct. 28, 2004).
[567] 45 C.F.R. § 309.110(n) (2019).
[568] *See* OCSE-AT-05-07: Miscellaneous Issues regarding 45 CFR part 309, the Tribal Child Support Enforcement Program Final Rule (May 12, 2005), Q44 and A44.

If the tribe operates a federally funded IV-D program, the state child support agency can ask the tribal child support agency for assistance in processing the state income withholding order. Federal regulations require the tribal child support agency to promptly serve the state withholding order on the employer.[569]

If the obligor owns property or derives income from employment on the reservation and tribal law allows enforcement of the state order against such property, the state child support attorney may ask the tribal court to recognize and enforce the state support order pursuant to FFCCSOA. If the order is recognized as a valid order, the tribal court will then use tribal law to enforce the state support order. *Grandberry v. Grandberry*[570] involved parties who were both non-Indians and resided off the reservation. The plaintiff sought enforcement in tribal court of a state child support order against the defendant, who was an employee of the Puyallup Tribe working at the Tribal College located within the reservation. The defendant argued that simply because he was an employee of the tribe did not mean the tribe automatically had jurisdiction over him. The plaintiff argued that by voluntarily working for a tribal enterprise, the defendant had consented to tribal jurisdiction. She sought full faith and credit of the order and garnishment of wages. The Puyallup Tribal Court had held that the defendant had entered into a consensual relationship with the tribe, thereby giving the tribe jurisdiction over him. Furthermore, FFCCSOA authorized the tribe to recognize and enforce the valid state child support order. The Puyallup Tribal Court of Appeals upheld the tribal court's decision. It concluded that, upon granting full faith and credit to the foreign support order, the tribal court had authority to enforce the order against a non-Indian who lives off reservation but is employed by the Tribe. Such enforcement under the Puyallup Tribal Code of Laws included wage withholding.

The state child support agency may also ask the tribal child support agency to help enforce the state order if the tribe has a tribal child support program.

Non-Member or Non-Indian obligor resides on reservation but works off reservation. When the obligor derives income off the reservation, usually the most effective enforcement remedy is for the state child support agency to use income withholding.

A state child support attorney can also ask the tribal court to recognize and enforce the state support order pursuant to FFCCSOA. Once recognized, the tribal court will then use tribal law to enforce the state support order. This may be particularly effective if the obligor owns property on the reservation and tribal law allows enforcement of the support order against such property. If the tribe operates a IV-D child support program, the state child support attorney can

[569] 45 C.F.R. § 309.110(n) (2019).
[570] No. AP 98-004A, 1999 Puyallup App. LEXIS 4 (Puyallup Tribal Ct. App. Oct. 30, 1999).

forward the enforcement request, and required documents for recognition of the support order, to the tribal child support program.

Tribal Child Support Today

Nine tribal programs initially led the way.[571] As of 2020, more than 60 tribes operate tribal child support programs, which include start-up and comprehensive tribal child support programs.[572] With the addition of new tribal programs, an ever-increasing number of Indian children are receiving the money and opportunities they need to thrive.

CONCLUSION

Since 1950 with the development of URESA, lawmakers have recognized that enforcement of child support between jurisdictions can only be improved through laws and processes that focus on the unique barriers inherent in the processing of such cases. URESA has now been superseded by UIFSA. UIFSA's goal is one ongoing support order that is recognized by all states. One way it accomplishes that is through clear rules regarding modification jurisdiction. FFCCSOA ensures that similar rules govern tribal child support orders. In addition to these laws that focus on interstate cases, PRWORA required the establishment of systems at the federal and state levels that facilitate interstate support enforcement. Such systems include the expanded FPLS, federal and state case registries, and federal and state directories of new hires.

There has also been an increasing recognition that child support laws and procedures need to address international cases. As a result, the U.S. has entered into bilateral arrangements with several countries and, most significantly, ratified the Hague Child Support Convention in 2016.

Child support attorneys play a critical role in the establishment and enforcement of child support orders where parents reside in different jurisdictions. It is a specialized area of law, and often the processing of such cases requires proceedings before tribunals. In addition to being familiar with applicable state and tribal laws, attorneys should be aware of federal policy guidance. Networking through national and regional child support associations is also important. Often, having a point of contact in another jurisdiction can help resolve a barrier that has blocked a case from moving forward.

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[571] Chickasaw Nation of Oklahoma; Forest County Potawatomi Community, Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians, Wisconsin; Lummi Nation, Washington; Menominee Tribe, Wisconsin; Navajo Nation, New Mexico; Port Gamble S'Klallam Tribe, Washington; Puyallup Tribe of Indians, Washington; Sisseton-Wahpeton Oyate, South Dakota.

[572] *See* https://www.acf.hhs.gov/css/training-technical-assistance/tribal-child-support-agency-contacts (last visited Feb. 7, 2021).

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Exhibit 13-1: The Uniform Interstate Family Support Act (2008) State Citations

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Alabama	Ala. Code §§ 30-3A-101 to 30-3A-906
Alaska	Alaska Stat. §§ 25.25.010 to 25.25.903
Arizona	Ariz. Rev. Stat. §§ 25-1201 to 25-1362
Arkansas	Ark. Code Ann. §§ 9-17-101 to 9-17-903
California	Cal. Fam. Code §§ 5700-101 to 5700-905
Colorado	Colo. Rev. Stat. Ann. §§ 14-5-101 to 14-5-903
Connecticut	Conn. Gen. Stat. Ann. §§ 46b-301 to 46b-425
Delaware	Del. Code Ann. tit. 13, §§ 6-101 to 6-903
District of Columbia	D.C. Code Ann. §§ 46-351.01 to 46-359.03
Florida	Fla. Stat. Ann. §§ 88.0011 to 88.9051
Georgia	Ga. Code Ann. §§ 19-11-100 to 19-11-191
Hawaii	Haw. Rev. Stat. §§ 576B-101 to 576B-902
Idaho	Idaho Code §§ 7-1001 to 7-1076
Illinois	750 Ill. Comp. Stat. §§ 22/100 to 22/999
Indiana	Ind. Code Ann. §§ 31-18.5-1-1 to 31-18.5-9-1
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Louisiana	La. Ch. C. art. §§ 1301.1 to 1309.3
Maine	Me. Rev. Stat. Ann. tit. 19-A, §§ 2801 to 3401
Maryland	Md. Code Ann. Fam. Law §§ 10-301 to 10-371
Massachusetts	Mass. Gen. Laws Ann. ch. 209D, §§ 1-101 to 9-901
Michigan	Mich. Stat. Ann. §§ 552.2011 to 552.2905
Minnesota	Minn. Stat. Ann. §§ 518C.101 to 518C.902
Mississippi	Miss. Code Ann. §§ 93-25-101 to 93-25-903
Missouri	Mo. Rev. Stat. §§ 454.849 to 454.999
Montana	Mont. Code Ann. §§ 40-5-1001 to 40-5-1092
Nebraska	Neb. Rev. Stat. Ann. §§ 42-701 to 42-751.01
Nevada	Nev. Rev. Stat. §§ 130.0902 to 130.802
New Hampshire	N.H. Rev. Stat. Ann. §§ 546-B:1 to 546-B:60
New Jersey	N.J. Rev. Stat. §§ 2A: 4-30.124 to 2A: 4-30.201

State	Citation
New Mexico	N.M. Stat. Ann. §§ 40-6A-101 to 40-6A-903
New York	N.Y. Fam. Ct. Act §§ 580-101 to 580-903
North Carolina	N.C. Gen. Stat. §§ 52C-1-100 to 52C-9-902
North Dakota	N.D. Cent. Code §§ 14-12.2-01 to 14-12.2-49
Ohio	Ohio Rev. Code Ann. §§ 3115.101 to 3115.903
Oklahoma	Okla. Stat. tit. 43, §§ 601-101 to 601-903
Oregon	Or. Rev. Stat. §§ 110.500 to 110.677
Pennsylvania	23 Pa. Cons. Stat. Ann. §§ 7101 to 7903
Rhode Island	R.I. Gen. Laws §§ 15-23.1-100 to 15-23.1-904
South Carolina	S.C. Code Ann. §§ 63-17-2900 to 63-17-4040
South Dakota	S.D. Codified Laws §§ 25-9C-101 to 25-9C-903
Tennessee	Tenn. Code Ann. §§ 36-5-2001 to 36-5-2903
Texas	Tex. Fam. Code Ann. §§ 159.001 to 159.901
Utah	Utah Code Ann. §§ 78B-14-101 to 78B-14-902
Vermont	Vt. Stat. Ann. tit. 15B, §§ 1101 to 1903
Virginia	Va. Code Ann. §§ 20-88.32 to 20-88.95
Washington	Wash. Rev. Code §§ 26.21A.005 to 26.21A.915
West Virginia	W. Va. Code §§ 48-16-101 to 48-16-903
Wisconsin	Wis. Stat. Ann. §§ 769.101 to 769.903
Wyoming	Wyo. Stat. Ann. §§ 20-4-139 to 20-4-213
Guam	Guam Code §§ 5-35101 to 5-35905
Puerto Rico	P.R. Laws Ann. tit. 8, §§ 541 to 548c
Virgin Islands	V.I. Code Ann. tit. 16, §§ 391 to 449d

Exhibit 13-2: UIFSA Notice Requirements

SECTION	ACTOR	RECIPIENT	TYPE OF NOTICE	TIMEFRAME
207(d)	Party ***seeking*** controlling order determination.	Each party whose rights might be affected.	Notice of controlling order request.	Prior to proceeding.
207(g)	Party ***obtaining*** controlling order determination.	Each tribunal that had issued or registered an earlier order.	Certified copy of order determining controlling order.	Within 30 days after issuance of order.
305(a)	Responding Tribunal.	Petitioner.	Where/when petition or pleading filed.	None specified.
305(e)	Responding Tribunal.	Petitioner/ Respondent/ Initiating Tribunal.	Copy of order.	None specified.
307(b)(4)	Support Enforcement Agency.	Petitioner.	Copy of any written notice received from an initiating, responding, or registering tribunal.	Within two business days of receipt.
307(b)(5)	Support Enforcement Agency.	Petitioner.	Copy of any written communication from respondent or respondent's attorney.	Within two business days of receipt.
307(b)(6)	Support Enforcement Agency.	Petitioner.	Notice that jurisdiction over respondent cannot be obtained.	None specified.
502(a)(2)	Employer.	Obligor.	Copy of income withholding order.	Immediately.

SECTION	ACTOR	RECIPIENT	TYPE OF NOTICE	TIMEFRAME
506(b)	Obligor.	Support Enforcement Agency providing services to obligee ***and*** (i) person or entity identified for payment or (ii) obligee, if none identified; and each employer that has directly received an income withholding order.	Notice of contest to direct withholding.	None specified.
605(a)	Registering Tribunal.	Nonregistering Party.	Notice of registration.	When order is registered.
605(d)	Registering Tribunal.	Employer.	Notice of income withholding.	Upon registration of income withholding order for enforcement.
606(a)	Nonregistering Party.	Registering Tribunal.	Notice of contest to validity or enforcement of registered order.	Within 20 days after date of notice of registration unless registered under Section 707.
606(c)	Registering Tribunal.	Parties.	Notice of the date, time and place of hearing to contest registration.	None Specified.
614	Party obtaining modification.	Issuing tribunal that had CEJ and every tribunal where order registered.	Certified copy of modified order.	Within 30 days after issuance of modified order.

SECTION	ACTOR	RECIPIENT	TYPE OF NOTICE	TIMEFRAME
706(e)	Registering Tribunal.	Parties.	Notice of registration of a Convention order or of the order vacating the registration.	Promptly.
707(b)	Party contesting registered Convention order.	Not specified. Presumably the tribunal.	Contest to registration of Convention order.	Not later than 30 days after notice of registration. Timeframe is expanded to 60 days if contesting party does not reside in U.S.

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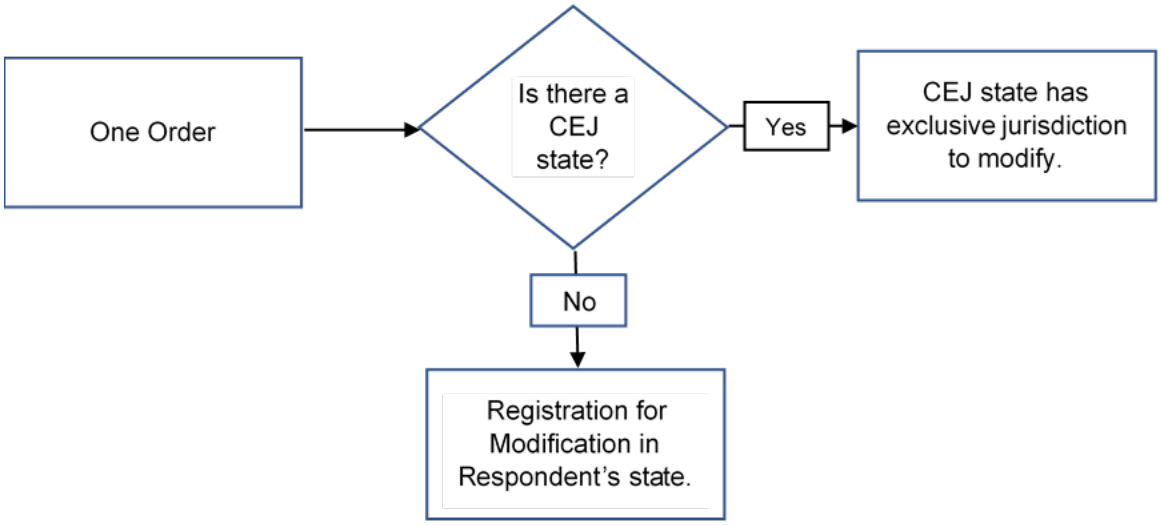
EXHIBIT 13-3: JURISDICTION TO MODIFY A STATE CHILD SUPPORT ORDER

Jurisdiction to Modify a State Child Support Order (absent consent by parties to transfer modification jurisdiction)



A state has CEJ if (1) it issued the order and, at the time of filing the modification request, is the residence of the obligor, individual obligee, or child; or (2) it issued the order and the parties consent in a record or open court that the tribunal may continue to exercise jurisdiction to modify its order even if no party or child lives there. Section 205, Continuing-Exclusive Jurisdiction to Modify Child-Support Order

UIFSA (2008) authorizes an issuing tribunal to retain jurisdiction to modify its order if one party resides in another state and the other party resides outside of the United States. Section 611(f), Modification of Child-Support Order of Another State.

A tribunal may also modify a registered order of another state if the registering state is the residence of the child or a party who is subject to the personal jurisdiction of the tribunal, and all of the parties have filed consents in a record in the issuing tribunal for a tribunal of the registering state to modify the support order and assume CEJ. Section 611(a)(2), Modification of Child-Support Order of Another State.

A tribunal may also modify a registered order of another state if all of the individual parties reside in the registering state and the child does not reside in the issuing state. Section 613, Jurisdiction to Modify Child-Support Order of Another State When Individual Parties Reside in This State.

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